

Trial Hearing
Witness: KEN-OTP-P-0789

(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-Carbuccia
7 and Judge Robert Fremr
8 Trial Hearing
9 Tuesday, 13 January 2015
10 (The hearing starts in open session at 9.38 a.m.)
11 THE COURT USHER: All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
15 Court officer, please call the case.
16 THE COURT OFFICER: (Interpretation) Thank you, Mr President. Situation in
17 the Republic of Kenya, in the case of The Prosecutor versus William Samoei Ruto and
18 Joshua Arap Sang, ICC-01/09-01/11.
19 We are in open session.
20 PRESIDING JUDGE EBOE-OSUJI: Thank you.
21 Appearances?
22 MS ZAGO: Good morning, Mr President. Good morning, your Honours. For the
23 Prosecution, Mr Anton Steynberg, senior trial lawyer; Lucio Garcia; Lara Renton;
24 Melissa Simms, trial lawyers; Jasmina Suljanovic, case manager; myself, Alice Zago,
25 trial lawyer. Thank you.

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- 1 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
- 2 MR NARANTSETSEG: Good morning, your Honours. The same on our side.
- 3 Thank you.
- 4 MR KOECH: Good morning, your Honours. For Mr Sang today we have
- 5 Katwa-Kigen, lead counsel; Caroline Buisman; Honor Lanham, case manager; and
- 6 Logan Hambrick. I'm Philemon Koech. And Mr Sang is present.
- 7 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
- 8 MR HOOPER: And for Mr Ruto we remain constituted as we were yesterday.
- 9 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
- 10 And, Mr (Redacted) we note your appearance on the record.
- 11 We will continue the examination-in-chief of the witness.
- 12 Ms Zago, we ended in the private session yesterday. Do you want to go back in or
- 13 begin in open for today?
- 14 MS ZAGO: I would request to please be allowed to go back to private session. I
- 15 have follow-up questions from yesterday's session. Thank you.
- 16 PRESIDING JUDGE EBOE-OSUJI: We will go back into the closed session -- indeed,
- 17 into the private session again.
- 18 Witness, welcome back to the proceedings. We will remind you to be mindful of the
- 19 need to observe the pauses between the questioning and the commencement of your
- 20 answers.
- 21 We will go back into private session now.
- 22 *(Private session at 9.41 a.m.) Reclassified as Open session
- 23 THE COURT OFFICER: (Interpretation) We are in private session, your Honour.
- 24 WITNESS: KEN-OTP-P-0789 (On former oath)
- 25 (The witness gives evidence via video link)

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1 QUESTIONED BY MS ZAGO: (Continuing)

2 Q. Good morning, sir.

3 A. Good morning.

4 (Redacted)

5 (Redacted)

6 (Redacted)

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13 (Redacted)

14 (Redacted)

15 Q. You said before that Mr Sang was a presenter of the Lene Emet programme?

16 A. That's right.

17 Q. Does Lene Emet mean anything?

18 A. Yes, it does.

19 Q. What does it mean?

20 A. It means "What is the world saying?"

21 Q. And in what language?

22 A. Well, it is a translation from Kalenjin.

23 Q. You also mentioned yesterday that Mr Sang host an evening programme called

24 Kusgong. Does it mean anything?

25 A. Yes, it does.

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1 Q. What does it mean?

2 A. It means "Looking back."

3 Q. Is this also Kalenjin language?

4 A. Yes, it is.

5 (Redacted)

6 (Redacted)

7 Q. And what was the show about?

8 A. The Lene Emet show was a current affairs programme. It was a live show that
9 dealt with issues or current affairs issues, either politics, agriculture, development,
10 things that were happening currently.

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

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24 MS ZAGO: Mr President, it is 11. I can stop here.

25 PRESIDING JUDGE EBOE-OSUJI: Witness, we will be taking our morning break

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- 1 now, all of us including you, so we will be reconvening in 30 minutes.
- 2 The Court will rise.
- 3 THE COURT USHER: All rise.
- 4 (Recess taken at 10.58 a.m.)
- 5 (Upon resuming in open session at 11.33 a.m.)
- 6 THE COURT USHER: All rise.
- 7 Please be seated.
- 8 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
- 9 Ms Zago, we're continuing in private, is that it, for the next line of questions?
- 10 MS ZAGO: Two follow-up questions in private and then a section in public, a brief
- 11 session in public if possible.
- 12 I see that my learned colleague on the other side is on his feet.
- 13 MR KOECH: Yes, indeed, Mr President. I just wanted to say for the record that
- 14 we've been joined by Cynthia Bondi and Marie-Ange Ukwigize.
- 15 PRESIDING JUDGE EBOE-OSUJI: All right. Thank you very much.
- 16 Okay. I see we have a full gallery literally or almost full. For the need of witness
- 17 protection, sometimes we do go into private session to take parts of witnesses'
- 18 testimonies. We will not be drawing the curtains, but you will be seeing what's
- 19 going on, but you will not hear what's happening. So we will do that now. We
- 20 don't know how long we'll be in there and hopefully we can emerge some public
- 21 parts of the witness's testimony. We hope so.
- 22 We go now to the private session.
- 23 *(Private session at 11.35 a.m.) Reclassified as Open session
- 24 THE COURT OFFICER: (Interpretation) We are in private session.
- 25 PRESIDING JUDGE EBOE-OSUJI: Thank you.

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20 PRESIDING JUDGE EBOE-OSUJI: All right. Witness, we will now be going to the
21 public session. As the lawyer has indicated, it is about events in 2005. The
22 understanding is that these are events which anybody in Kenya would be in a
23 position to comment upon. It need not result in anyone implicating you as the
24 witness testifying, but it is important that you be careful to not give uniquely
25 identifying information in your answers. What I mean by that would be if there is

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1 any element in your answer to which you would be amongst only a few people who
2 would be in a position to know that sort of information, do not give such an answer in
3 the public session. You can request for us to go into private session for you to fully
4 answer it. Do you understand?

5 THE WITNESS: I understand, your Honour.

6 PRESIDING JUDGE EBOE-OSUJI: Thank you. We will now go to the public
7 session.

8 (Open session at 11.39 a.m.)

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

10 PRESIDING JUDGE EBOE-OSUJI: Thank you.

11 MS ZAGO:

12 Q. Witness, in 2005 we understand there was a referendum in Kenya?

13 A. That's correct.

14 Q. Could you please tell us briefly what the referendum was about?

15 A. The referendum was about a constitutional review that the country was
16 undergoing in order to change the main constitution and rescind other laws for the
17 country. The referendum was then put to the public to vote for the constitution that
18 had been devolved at that time.

19 Q. What type of issues did the referendum address?

20 A. Well, after the constitutional review, the question now was put to the public to
21 vote either yes or no to the constitution that had been reviewed.

22 Q. Can you recall examples of topics that would be concerned by this or affected
23 by this referendum?

24 PRESIDING JUDGE EBOE-OSUJI: Why don't you, if you have anything in mind,
25 just point the witness to it through your questioning so that we don't have him giving

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1 a lecture at large about issues in the constitutional referendum discussions or debate.

2 MS ZAGO: I'm guided, Mr President.

3 Q. Witness, did the reform address in any way land related issues?

4 A. Yes, it was also it was part of the review.

5 Q. Who were the promoters of this reform?

6 A. Well, during the constitutional review/reform there were laws that were fronted

7 and it was of course issues of systems of government, devolution, issues of land

8 management and things like this, but for the real referendum question it was either

9 you vote for the referendum - I mean for the constitution - or you reject it.

10 Voting no would mean retaining the former -- the old constitution and voting yes

11 would mean now the new laws would come to effect.

12 Q. Were there political parties or coalitions promoting the referendum?

13 A. Well, of course the referendum is a political exercise and leaders from across the

14 divide decided to choose whichever side of the constitution they would support or

15 reject.

16 Q. Was there a political party or alliance that specifically promoted the

17 referendum?

18 A. Yeah, just briefly is that the ECK, the former ECK Electoral Commission of

19 Kenya, who were conducting the vote had assigned different you would say

20 indicators of those who were saying no and those who were saying yes and they used

21 some fruits to distinguish between the two -- the two questions in the referendum,

22 where those who were rejecting the constitution will use -- would use a fruit orange

23 and those who were supporting would use banana.

24 If my memory serves me right is that mostly at that point the government, or those

25 who were on the government side, were fronting the constitution that was reviewed

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1 at that time, and those who were against it because of whatever -- you know, because
2 of the laws that had been reviewed, which actually formed mostly the people on the
3 opposition, they used support orange. And in fact later the orange side was
4 transformed into a movement, it was called the Orange Movement, who front for the
5 rejection of the proposed constitution.

6 PRESIDING JUDGE EBOE-OSUJI: So the Banana side were on the "Yes" side?

7 THE WITNESS: Yes.

8 PRESIDING JUDGE EBOE-OSUJI: And the Orange -- Orange side were on the "No"
9 side?

10 THE WITNESS: That's correct.

11 MS ZAGO:

12 Q. Sir, to your knowledge, in the Rift Valley which ethnic group or groups
13 predominantly supported the "No" side?

14 A. Well, to my understanding, mostly people from the Rift Valley predominantly
15 rejected the proposed constitution and so they were supporting the "No" side.

16 Q. Would you be able to tell us in particular the ethnic groups that supported the
17 "No" side?

18 A. You mean in the Rift Valley?

19 Q. Yes, sir.

20 A. Aside from the Kalenjin?

21 PRESIDING JUDGE EBOE-OSUJI: Are we assuming from your answer that the
22 Kalenjin were on the "No" side?

23 THE WITNESS: That's correct.

24 PRESIDING JUDGE EBOE-OSUJI: Then who else were on the "No" side in terms of
25 ethnic groups from the Rift Valley?

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1 THE WITNESS: Well, of course Rift Valley is predominantly Kalenjin, but also there
2 were the Turkana, the Maasai, the Samburu. Mostly aside from the Kalenjin, those
3 were the other sub-tribes that in Rift Valley who were supporting -- who were
4 rejecting the constitution.

5 MS ZAGO:

6 Q. And always in the Rift -- Rift Valley, which ethnic groups predominantly
7 supported the "Yes" side?

8 A. Mostly the Kikuyu.

9 Q. And in the Rift Valley who were the most prominent political figures of the
10 "No" side?

11 A. Yeah, that would include William Ruto and I don't quite remember the rest of
12 the leaders.

13 MS ZAGO: Mr President, I'd like to request respectfully to be allowed to go to a
14 private session again.

15 PRESIDING JUDGE EBOE-OSUJI: Private session.

16 *(Private session at 11.48 a.m.) Reclassified as Open session

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

18 MS ZAGO:

19 Q. Sir, did you listen to Mr Sang's programmes during this period?

20 A. Yes.

21 Q. How frequent would you listen to the programme?

22 A. Well, not very much because myself I was not a very political person.

23 Q. Would you be aware generally of the topics that were addressed during
24 Mr Sang's programmes in the period that we are referring to?

25 A. Yes.

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1 Q. Would Mr Sang cover the referendum as a topic in his programmes?

2 A. Yes.

3 Q. Would Mr Sang say anything about the referendum?

4 A. Well, of course he was now more or less like a civic educator, to educate the
5 people on the contents of the proposed constitution, and of course bring guests to the
6 studio that would also aid in doing the same.

7 Q. Did Sang - Mr Sang, apologies - express any views concerning the reform itself?

8 A. Well not that I'm aware of, but through his guests or his -- or his listeners I'm
9 not aware if Arap Sang himself had a position of his own.

10 Q. What would be discussed concerning the referendum during his programme?

11 A. Well, while doing civic education of course he would, you know, dissect
12 through the proposed laws that were in the -- in the constitution, or in the proposed
13 constitution, and most of the time experts would come - either lawyers or other
14 leaders would come - to the studio to discuss about the proposed constitution.

15 Q. And what were the views expressed about the proposed constitution during his
16 programme?

17 A. Well majority of the leaders who would come and also the listeners who would
18 come were rejecting the constitution, or they were supporting the Orange part of
19 the -- of the vote.

20 Q. And what were they saying about the constitution, or sorry about the proposed
21 reform to the constitution?

22 A. Well, they of course rejected the proposed constitution as it were in terms of the
23 laws that were being fronted in there, because I remember a little bit earlier there was
24 what they used to call a Bomas Draft, a proposed constitution that most of the leaders
25 had agreed to, but prior to the vote or prior to putting the questions of referendum

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1 there was another draft that came out that most of the leaders rejected that it did not
2 take into consideration the aspirations of the constitutional review which was done in
3 Bomas. So most of the laws that were in there was being rejected by most leaders
4 and also listeners rejected also some of those laws that were in there.
5 So most of the listeners and the leaders who came to programme would reject or
6 would now say, "We do not want the proposed constitution the way it is because it
7 was mutilated from the Bomas Draft to now to what was being proposed to the
8 public."

9 Q. Who were the leaders whom you said would come from the Orange part to
10 Mr Sang's programme?

11 A. They were a cross section of leaders including Raila Odinga, William Ruto, also
12 Musalia Mudavadi. There were an array of leaders, a cross section of leaders, of
13 course all of them from Orange and others from Banana but mostly for the part of
14 Orange I remember very well Raila Odinga and also William Ruto and other leaders.

15 Q. Would these leaders express the reasons why they were opposing the reform?

16 A. Well, the one who came out very predominantly was a question of devolution, I
17 think which was part of the -- which was in the Bomas draft, but they needed to
18 devolve -- devolve a system of governance and not the parliamentary one that was
19 being proposed at that point in time. So mostly they were rejecting it because of that.
20 And of course there were issues of land question, but I have not -- I don't have a
21 recollection of how exactly the issue of land was in the constitution or the one that
22 was being proposed.

23 PRESIDING JUDGE EBOE-OSUJI: The witness did use the expressions "devolution"
24 at line 45 -- sorry, page 45, line 2. At line 3 the word should be "devolved" and not
25 "develop, " just for the record.

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1 Ms Zago, continue.

2 MS ZAGO: Thank you.

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12 (Redacted)

13 Q. Thank you. Let me ask you about callers during this period; callers who
14 supported the "Yes" campaign. Do you remember how frequent they would call in?

15 A. Well I was not following Arap Sang's programme continuously, but from my
16 own understanding is that the callers would be mostly those who do not support the
17 proposed constitution and there were less callers who would support the proposed
18 constitution.

19 (Redacted)

20 (Redacted)

21 (Redacted)

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23 PRESIDING JUDGE EBOE-OSUJI: Thank you.

24 We will leave it there for now and take our lunch-break, and we will come back at

25 2.30 our time. The Court will rise.

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1 THE COURT USHER: All rise.

2 (Recess taken at 1.01 p.m.)

3 (Upon resuming in open session at 2.34 p.m.)

4 THE COURT USHER: All rise.

5 Please be seated.

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

7 We're in open session, Ms Zago. Do we go back into the private session or remain in
8 open session?

9 MS ZAGO: Private session, please.

10 PRESIDING JUDGE EBOE-OSUJI: Private session then.

11 MR KOECH: Mr President, perhaps --

12 *(Private session at 2.34 p.m.) Reclassified as Open session

13 THE COURT OFFICER: (Interpretation) We are in private session, Mr President.

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

15 Yes, Counsel?

16 MR KOECH: Yes, I wanted to enquire whether my learned friend could indicate
17 how much time she still needs to finish the Prosecution leading the evidence in-chief?

18 PRESIDING JUDGE EBOE-OSUJI: That's a proper question.

19 Ms Zago?

20 MS ZAGO: Yes, Mr President. We intend to finalise, if possible, the
21 examination-in-chief by the end of tomorrow.

22 PRESIDING JUDGE EBOE-OSUJI: By the end of tomorrow? Try and make it
23 sooner than that. Try your best.

24 MS ZAGO: We will. Thank you, Mr President.

25 PRESIDING JUDGE EBOE-OSUJI: Especially on the background questions, the

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1 stage setting questions, we've heard a lot about certain types of evidence in the case
2 so that this witness can be pointed specifically to what is unique about his testimony
3 and then he can finish and move on.

4 Thank you.

5 MS ZAGO: I'm guided.

6 Q. Sir, good afternoon.

7 A. Good afternoon to you.

8 Q. You mentioned before that Mr William Ruto would go to the Lene Emet show
9 during the referendum campaign. What would Mr Ruto say at the Lene Emet?

10 A. Well they were talking about the referendum, and from what I gathered is that
11 Mr Ruto was on the part that were rejecting the proposed constitution.

12 Q. And when he was talking about the referendum, what was he saying?

13 A. Well I don't remember all specifically what he was saying, but I can tell you that
14 he was for the rejection of the proposed constitution.

15 Q. Do you recall if he addressed any specific issues concerning the reform?

16 A. Not that I can recall.

17 Q. Do you recall if he ever addressed land related issues?

18 A. Yeah, vividly.

19 Q. What do you recall about these land related issues?

20 A. Well of course I know that land was an emotive issue and touched on mostly
21 people from the Rift Valley, and I know that he talked about historical injustices to the
22 good land and that he of course would have wanted proper management of land
23 issues.

24 Q. And what would be the proper management of land issues, according to
25 Mr Ruto?

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1 A. I would not recall that, Counsel.

2 PRESIDING JUDGE EBOE-OSUJI: Do you mean you do not recall, or you would not
3 recall?

4 THE WITNESS: I do not recall of any specificities concerning proper land
5 management according to Ruto at that time during the referendum.

6 MS ZAGO:

7 Q. You mentioned that Mr Ruto talked about historical injustices to the land.
8 What do you mean by "historical injustices"?

9 A. Well, issues of land in Kenya, as we all know, is that they had historical
10 background of how land was transferred from you would say the white settlers to
11 squatters and there were a lot of irregularities as from what I know in terms of
12 issuance of land.

13 Q. What irregularities?

14 A. You would say that the people who used to own land, or the people who were
15 so to speak robbed of their land during colonial periods, when Kenya had its
16 independence the rightful owners were not given back their land.

17 Q. And who were the rightful owners?

18 A. It was the indigenous people who used to occupy those lands prior to
19 colonialism.

20 Q. And with respect to the Rift Valley, who would be these rightful owners?

21 A. Of course the Kalenjins themselves.

22 Q. Did you spoke about -- did he speak about any other issues apart from the land?

23 A. Yeah, I would remember vividly about issues of devolution.

24 PRESIDING JUDGE EBOE-OSUJI: Counsel, you need to be clear there. Who are
25 you interested in as being the one speaking? Do you mean this witness speaking, or

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1 somebody else speaking, about those issues? Your question to him was, "Did you
2 speak about any other issues apart from the land?" Do you mean did the witness
3 speak, or did Mr Ruto speak?

4 MS ZAGO: It was probably my mistake. I intended to say "Did he ...", being
5 Mr Ruto, "... speak about any other issues?" I might ask the question again to be
6 clear to the witness, Mr President.

7 PRESIDING JUDGE EBOE-OSUJI: Witness, can you -- is it the same answer?

8 THE WITNESS: Yes.

9 PRESIDING JUDGE EBOE-OSUJI: So you understand -- did you understand the
10 lawyer to have been asking about what Mr Ruto spoke about?

11 THE WITNESS: Yeah, yeah.

12 PRESIDING JUDGE EBOE-OSUJI: So that's your --

13 THE WITNESS: I understood.

14 PRESIDING JUDGE EBOE-OSUJI: And that's your answer?

15 THE WITNESS: Yes.

16 PRESIDING JUDGE EBOE-OSUJI: Good.

17 Proceed, Ms Zago.

18 MS ZAGO:

19 Q. Very briefly, could you tell us what Mr Ruto would say about devolution when
20 on Lene Emet?

21 A. Well, I can recall that he used to support a devolved system of governance.

22 Q. But that -- what does it mean? What does a devolved system of governance
23 mean?

24 A. Yeah, devolving functions from the -- you would say from the national
25 government to the county governments.

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17 Q. And what Mr Sang say when Mr Ruto came to his show and expressed his
18 position?

19 A. Well, I'm not getting your question properly.

20 Q. Did Mr Sang say anything to Mr Ruto, or after Mr Ruto expressed his views or
21 his positions with respect to the constitutional reform, when Mr Ruto was at the Lene
22 Emet programme?

23 A. Not any that I know of.

24 Q. You also said earlier that the callers for the "Yes" camp or the "Yes" side were
25 less than the ones for the "No" side, and my question is what would the callers for the

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1 "Yes" side say when they were on air?

2 A. They were supporting the proposed constitution.

3 Q. Do you remember why they were supporting the constitution?

4 A. Well, I cannot recall.

5 Q. Did Mr Sang say anything to the callers or a response to the callers who
6 expressed support for the "Yes" side?

7 A. Well, Arap Sang, you know, gave callers the opportunity to air their views in his
8 programme. I'm not aware of any specific sentiments that he would say to particular
9 callers whether they were supporting or rejecting.

10 Q. Are you not aware or you do not recall?

11 A. I do not recall.

12 Q. Do you need some additional time to think about it?

13 A. No.

14 (Redacted)

15 (Redacted)

16 (Redacted)

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16 (Redacted)

17 Q. Do you remember any particular song that he would play, Mr Sang would play,
18 during the show occasionally as you've said?

19 A. Yeah, yeah. There was another song also which it was more or less of a gospel
20 song.

21 Q. Can you tell us about the theme or the content of that song, please?

22 A. Okay, the song was more or less a prayer. It was a song that was more or less
23 of a prayer, but it was referred to as Kimi Bek Kwenet.

24 Q. Does it mean anything?

25 A. Yes, Kimi Bek Kwenet is a -- would say we are in depth of water.

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1 Q. And just to be clear, is that Kalenjin?

2 A. Yes, it is.

3 Q. And do you know why that song was played?

4 A. Yes. As I've said it was a gospel song, but it was a prayer kind of.

5 MR KOECH: Mr President, if I may interrupt, perhaps this can be led in public, this
6 particular portion of the song.

7 PRESIDING JUDGE EBOE-OSUJI: Ms Zago?

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 PRESIDING JUDGE EBOE-OSUJI: All right. We will remain in the private session.

19 (Redacted)

20 (Redacted)

21 (Redacted)

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13 (Redacted)

14 MS ZAGO:

15 Q. Sir, going back to the previous song that you describe, that it was a sort of a

16 gospel you said, what did this --

17 A. Yes.

18 Q. What did the song say briefly?

19 A. Well, as I said it was more or less of a -- of a prayer song that was saying "Kimi

20 Bek Kwenet," as in we are in depth of water, and it's praying that may God, you know,

21 take -- take them out of the water.

22 Q. Who is "them"?

23 A. Well, okay, let me put it this way: It's a song, it's a gospel song that is

24 prayerful in nature. So that if you have, for example, if you have tribulations, you

25 would say: I am inside water, and you pray to God to take you to dry land.

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1 So it was a song that would signify that we are in -- in a -- I mean, it's just like any
2 other prayer that I have -- I have issues, I have tribulations, may God take you to dry
3 land. So it was -- it's a gospel song, but prayerful in nature.

4 Q. Who is the "we"? I'm trying to understand who is the "we" that you're
5 mentioning here?

6 A. The song if you -- I don't know if you had the translations of the song, because
7 it's a gospel song. It's available anywhere. The lyrics of the song in terms of the
8 prayer, it speaks as -- as a -- you would say as a people.

9 In the one of the lyrics it would say we have -- you would say: We have people in
10 hospitals, may God heal them. We have people who are hungry, may God feed
11 them. So it's a song that describes general tribulations of humankind, and it's a
12 prayer that says, "May God help us through our problems."

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 PRESIDING JUDGE EBOE-OSUJI: So in the song then the "we," if I understand your
18 answer, would be taken in purely neutral context? The "we" would be humanity, is
19 that the point?

20 THE WITNESS: Exactly, your Honour.

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 Q. You said that this song said "We are in depth of water," and who was "we" at
3 that time in that context?

4 A. Well, I think that was clarified that "we" would mean humanity and, because it
5 was a song composed in Kalenjin, I think where you're going is that did it refer to the
6 Kalenjin community at that point, but I'm not in a position to say that. I'm saying it's
7 "we" as humanity, a prayer song that the composer of the song meant to be played as
8 a prayer.

9 (Redacted)

10 (Redacted)

11 (Redacted)

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1 Q. Who were the leaders from the Kalenjin community at that time?

2 A. Well, the leaders included William Ruto. They included other various leaders
3 from different parts of Rift Valley. As I'm saying, I do not remember exactly the
4 specific leaders at that time.

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 Q. Expressing what views exactly?

12 A. Okay, let me put it this way: During the referendum there were two sides, all
13 right? There was the ODM and there was the -- I mean, there was the Orange part of
14 the "No" camp and then there was the Banana side of the "Yes" camp. At that point
15 the government was pushing for the adoption of the proposed constitution, and the
16 Orange side was, for example, pushing for the rejection of the proposed constitution.

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0789

(Private Session)

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20 (Redacted)

21 A. Well, some of them are rallies, some of them are events of a political nature.

22 I cannot recall really. It's -- I think it has been a long while ago.

23 Q. Is there any activity in 2006 that stands out for you?

24 A. Well, I would not know what you mean by that, but I remember a major event
25 that happened was the installation of William Ruto as a Kalenjin elder.

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1 Q. When was that exactly in 2006?

2 A. Sometime in 2006, maybe somewhere mid-2006.

3 Q. And where did this event take place?

4 A. Took place in Eldoret.

5 Q. Do we have to understand that you were there present?

6 A. That is correct.

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 MS ZAGO: Mr President, I see that it's past 4 p.m. and I can continue perhaps in
17 public session next -- tomorrow morning with additional questions on the topic.

18 PRESIDING JUDGE EBOE-OSUJI: We will leave it there then for the day and we
19 reconvene tomorrow.

20 Witness, we will be adjourning now for the day. The usual caution applies to you to
21 refrain from discussing your testimony with anyone overnight, okay?

22 THE WITNESS: Understood, your Honour.

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

24 The Court will rise.

25 THE COURT USHER: All rise.

Trial Hearing
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- 1 *(The hearing ends in private session at 4.01 p.m.) Reclassified as open session
- 2 RECLASSIFICATION REPORT
- 3 Pursuant to Trial Chamber V(a) 's Decision, ICC-01/09-01/11-981, dated 24 September
- 4 2013, the version of the transcript with its redactions becomes Public.