

Trial Hearing
Witness: KEN-OTP-P-0326

(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
7 and Judge Robert Fremr
8 Trial Hearing
9 Monday, 7 October 2013
10 (The hearing starts in open session at 9.43 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: Good morning. Situation in the Republic of Kenya, in the
17 case of The Prosecutor versus William Samoei Ruto and Joshua Arap Sang, case
18 reference ICC-01/09-01/11, and for the record we are in open session.
19 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
20 Appearances remain the same, I take it?
21 MR STEYNBERG: No, your Honours. We have a few new faces on the Prosecution
22 side. With me this morning are Ade Omofade, Lara Renton, Yulia Nuzban and
23 Grace Goh our case manager.
24 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
25 Defence?

1 MR KHAN: Good morning, Mr President, your Honours. The appearances for the
2 Defence remain the same, except the intern Manuel Ventura is not here and
3 Grace Sullivan, who is going to come back into court, has popped out for a moment,
4 but she will be returning hopefully in a short while.

5 MR KIGEN-KATWA: Mr President, Mr Sang's team remains the same, except that
6 my case manager, Judy Mionki, is not present. Thank you, Mr President and your
7 Honours.

8 PRESIDING JUDGE EBOE-OSUJI: Thank you.
9 Victims' counsel?

10 MR NARANTSETSEG: Good morning, Mr President, your Honours. In the
11 absence of Mr Nderitu, the victims are represented by myself, Orchlou Narantsetseg,
12 from OPCV, and behind me Ms Carolin Herzig, the case manager. Thank you.

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

14 We've concluded the testimony of the first Prosecution witness. We are poised to
15 begin with the second witness, but I understand that the Defence has requested to go
16 into private session for something.

17 MR KHAN: Indeed, Mr President, your Honours. It will be hopefully a short
18 matter - I would anticipate 15 minutes for everybody, maybe 10 minutes even - and
19 after that we've also requested, if the Court's so minded, a short ex parte session
20 which again will not take too long. We think probably 15 minutes at most.

21 For that I would ask that the Victims and Witnesses Unit and the Sang Defence and
22 ourselves be present only. Your Honours, we've informed the Victims and
23 Witnesses Unit both by email and again in person this morning about the subject
24 matter of the application.

25 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, as regards the second part of your

1 request, that is the ex parte session, one difficulty. That is not necessarily a negative
2 answer to your request, but it is something to keep in mind in case you may consider
3 revisiting that request.

4 That difficulty is this. Apparently for -- due to technical reasons, on any occasion
5 when we switch modes from inter partes to private it takes 30 minutes. We are
6 required to observe a 30-minute break so that tapes and transcripts could be
7 reconfigured for the appropriate mode of the session and the same coming back in.
8 So 30 minutes going out and 30 minutes coming back in, whichever way, whenever
9 an inter partes session is involved. So one hour of break.

10 MR KHAN: I know, your Honours, and that's most unfortunate. I had spoken to
11 the legal officer to the Court and I had hoped that -- to do it all together, but if it was
12 going to save time the other proposal that I mooted was that it may be possible to
13 split the inter partes private session submissions and then maybe after the first break
14 have the ex parte session before the witness comes back. But, your Honour, I was
15 told that effectively, unless I didn't understand, that that would be time neutral. I
16 mean, it wouldn't save any time from the original proposal.

17 So, your Honours, it's unfortunately just a function it seems of the technical
18 requirements of the audio/video section and I don't know a solution to it.

19 PRESIDING JUDGE EBOE-OSUJI: The solution would be to think carefully whether
20 we need to go into an ex parte session to discuss whatever it is you may have in mind.

21 MR KHAN: Your Honour, the other option, with the Court's leave - I think an
22 ex parte is unfortunately needed - is if it accommodates the Court considerations to
23 do it at 4.30 and that way the witness could be released and that may be another
24 option.

25 Your Honours, we're in your hands, but it's a matter I think that we have to address

Trial Hearing
Witness: KEN-OTP-P-0326

(Open Session)

ICC-01/09-01/11

1 the Bench on in ex parte session.

2 PRESIDING JUDGE EBOE-OSUJI: Fair enough. We'll keep in mind the
3 revised -- the suggestion - the last suggestion - you just made to defer it until later --

4 MR KHAN: Yes, indeed.

5 PRESIDING JUDGE EBOE-OSUJI: -- when such a break may coincide with a natural
6 break in the normal course of things.

7 MR KHAN: Yes, indeed. And, your Honours, when your Honours hear the nature
8 of the inter partes private you may be somewhat informed about the -- some of the
9 concerns, but of course it will not be even perhaps half of the concerns. But, your
10 Honours, at least it may inform whether or not the ex parte takes place now, or later,
11 or at all.

12 I'm grateful.

13 PRESIDING JUDGE EBOE-OSUJI: Prosecutor, I take it you are in no position to
14 object to go into private session?

15 MR STEYNBERG: I have no objection to go into private session. My learned friend
16 has very kindly advised me of the nature of the issue he wishes to deal with.
17 My only suggestion, in order to save court time, is that the ex parte submissions could
18 it seems to me be done by way of written submissions which would save us a good
19 deal of court time.

20 PRESIDING JUDGE EBOE-OSUJI: How's that for a suggestion?

21 MR KHAN: Your Honour, unfortunately there's some limitations on multi-tasking.
22 It's an urgent matter and it's a matter that I would like some -- a ruling on rather
23 quickly. I'm in court and so it would be more efficient, in our respectful submission,
24 that we raise these matters very briefly in ten minutes or so for the Bench to deliberate
25 over and give a ruling. A written filing of course will take considerably longer,

Trial Hearing
Witness: KEN-OTP-P-0326

(Private Session)

ICC-01/09-01/11

1 because I'm here.

2 PRESIDING JUDGE EBOE-OSUJI: Fair enough.

3 Why don't we move into -- court officer, we go now into a private session. Thank
4 you.

5 (Private session at 9.50 a.m.)

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 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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

Page 6 redacted – Private session

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

Page 7 redacted – Private session

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

Page 8 redacted – Private session

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

Page 9 redacted – Private session

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

Page 10 redacted – Private session

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

Page 11 redacted – Private session

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

Page 12 redacted – Private session

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

Page 13 redacted – Private session

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

Page 14 redacted – Private session

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

Page 15 redacted – Private session

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

Page 16 redacted – Private session

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

Page 17 redacted – Private session

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

Page 18 redacted – Private session

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

Page 19 redacted – Private session

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

Page 20 redacted – Private session

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

Page 21 redacted – Private session

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 (Open session at 10.30 a.m.)

15 THE COURT OFFICER: We are in open session, your Honour.

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

17 The next Prosecution witness is Witness 326 and the Chamber renders the following
18 ruling in relation to the testimony of this witness.

19 In the Chamber's decision of 3 September 2013, the Chamber deferred its decision on
20 protective measures in the courtroom for this witness until additional and updated
21 information and the views of the respective -- and the views of this witness has been
22 transmitted to the Chamber.

23 The Chamber ordered the Victims and Witnesses Unit and the Prosecution to provide
24 the additional and updated information for this witness in relation to the
25 Prosecution's request for protective measures in the courtroom.

1 On 20 September 2013, the VWU sent to the Chamber its report by e-mail as concerns
2 its security assessment for in-court protective measures for this witness. In their
3 report, the VWU recommended that during the testimony of this witness before the
4 Court the following measures should be implemented: Image and voice distortion,
5 use of pseudonyms, limited private sessions for testimony that may be of a unique
6 nature such as may reveal the identity of the witness to the wider public and for
7 testimony that may reveal the identity of friends and family. The VWU also
8 recommended redactions to public records, where necessary, to prevent
9 identification.

10 This morning the Prosecution in private session renewed its request for in-court
11 protective measures for the witness.

12 Having considered the recommendation of the Victims and Witnesses Unit, the
13 Chamber grants the request for in-court protective measures to the extent of the
14 recommendation of the VWU; that is image and voice distortion, use of pseudonym,
15 limited private sessions and redactions to public records where necessary to
16 prove -- to prevent identification.

17 That is the Chamber's ruling.

18 We will now bring down the shades, go into private session and bring in the witness.

19 (Closed session at 10.35 a.m.)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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

Page 24 redacted- Closed session.

Trial Hearing
Witness: KEN-OTP-P-0326

(Closed Session)

ICC-01/09-01/11

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Open session at 10.40 a.m.)

13 THE COURT OFFICER: We are in open session, your Honour.

14 PRESIDING JUDGE EBOE-OSUJI: Thank you very much. Can -- will the oath be
15 administered to the witness?

16 Please proceed with the oath.

17 WITNESS: KEN-OTP-P-0326

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

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

21 Witness, welcome to the Court. This is to inform you ahead of time that you now
22 have been granted certain protection measures while you are testifying in Court.

23 What it means in effect is that your voice and your face are not exposed to the public.

24 Your voice is being distorted and your image is not available to the public, but your

25 testimony would be heard in public to the extent that it can be made out by those who

Trial Hearing
Witness: KEN-OTP-P-0326

(Open Session)

ICC-01/09-01/11

1 do not recognise your voice.

2 You are also being designated a pseudonym by the designation 326. That is what
3 you will be known by. The public will only know you by that. They will not know
4 your real name.

5 You will also be given limited opportunity to go into private session with the Court in
6 case there is some testimony that you will necessarily have to give that will reveal
7 your identity. Sometimes that happens, and when that happens in relation to you
8 such testimony would be heard in private session, meaning the public will not hear it.
9 Now, you have been given your oath to tell the truth and nothing but the truth. The
10 Court requires that you keep that in mind at all times. That is the only way you can
11 assist us in finding out what happened in this case, to tell the truth and nothing but
12 the truth.

13 In doing that, it is important that you listen carefully to the questions the lawyers will
14 ask you. First the Prosecution lawyer, Mr Omofade, will ask you questions. You
15 will listen to him very carefully and answer his questions very truthfully to the best of
16 your ability. Try to understand the question before you answer. Try not to give
17 information for the sake of giving it. Only answer what you understand. Try not
18 to guess as well.

19 When he finishes, the Defence counsel - first Mr Ruto's lawyer and next Mr Sang's
20 lawyer - will ask you questions. Again, you'll listen carefully before answering.
21 The Court is here to make sure that your testimony proceeds smoothly and that
22 includes that you are treated fairly by lawyers asking you questions. Do you
23 understand?

24 THE WITNESS: Yes.

25 PRESIDING JUDGE EBOE-OSUJI: I take it you will be speaking in English?

Trial Hearing
Witness: KEN-OTP-P-0326

(Open Session)

ICC-01/09-01/11

1 THE WITNESS: Yes.

2 PRESIDING JUDGE EBOE-OSUJI: Thank you.

3 There is one more rule and this is a practical one, a logistical rule. You have to give a
4 gap - observe a gap - between who asks you a question and before you start
5 answering. The reason for that is because we have interpreters who are interpreting
6 proceedings. They will be interpreting in this case into French and it's important
7 that we give them pace, or space rather, to interpret well.

8 And also in your testimony -- after you've observed the initial gap to allow them to
9 catch up, from time to time in your testimony also pause again to allow them to digest
10 the information you give in order to be able to interpret it. It helps if you speak in
11 sentences and pause periodically between sentences in order to allow them to manage
12 the information you give.

13 Thank you very much. With that out of the way, Mr Omofade will begin his
14 questions to you.

15 MR OMOFADE: I'm grateful, your Honours.

16 Good morning, Witness.

17 Your Honours, there are a number of sheets that I referred to earlier that I think
18 maybe the court officer ought to hand round before I commence, and perhaps I
19 should apologise as well. It looks like we have one copy left -- less, and perhaps the
20 extra copy could be handed to the witness, rather than to the Common Legal
21 Representative, and I will provide an extra copy during the break? I wonder if that
22 could be done? Thanks for the indulgence.

23 And, your Honours, for the first set of questions that I intend to pose, might I request
24 that we go into private session?

25 PRESIDING JUDGE EBOE-OSUJI: Into private session? For how long do you

Trial Hearing
Witness: KEN-OTP-P-0326

(Open Session)

ICC-01/09-01/11

1 expect that to be?

2 MR OMOFADE: Your Honours, I look at the time. It's about 12-minutes-to-11. I
3 would say probably until the break, most certainly.

4 PRESIDING JUDGE EBOE-OSUJI: Until the break, the break being at --

5 MR OMOFADE: 11 o'clock.

6 PRESIDING JUDGE EBOE-OSUJI: -- 11.

7 MR OMOFADE: It may well go into the next session. I have to place that caveat.

8 The initial questions that I intend to pose relate to background information and
9 hopefully we will be efficient later on.

10 PRESIDING JUDGE EBOE-OSUJI: I take it I see no objection to that?

11 MR KHAN: Mr President, no, we don't, but I just raise something that can be
12 considered at the break. We don't need to raise it now. I've seen on the PIS form 25
13 names. I will be objecting if all of those 25 names have to be withheld from the
14 public. I think it's overkill, but your Honours perhaps the Prosecution can consider
15 it over the next break? But that -- I thought I'd just raise it now.

16 There's no need to go to that scale of anonymity, because it will make the evidence
17 very difficult to follow for anybody. Some of these people are very well-known and
18 it's important to see and hear what some of the allegations are, because your Honours
19 in this room it may seem sensible, but for people outside they may find it very
20 remarkable. Your Honours, many of these are not family members of the witness
21 either.

22 PRESIDING JUDGE EBOE-OSUJI: Let's proceed first and see how we go.

23 MR KIGEN-KATWA: May I say, Mr President, that I share the same position.

24 PRESIDING JUDGE EBOE-OSUJI: What position? That you do not object to going
25 into limited private session for background information first?

Trial Hearing
Witness: KEN-OTP-P-0326

(Private Session)

ICC-01/09-01/11

- 1 MR KIGEN-KATWA: I have no --
- 2 PRESIDING JUDGE EBOE-OSUJI: You do not object?
- 3 MR KIGEN-KATWA: I do not object to that.
- 4 PRESIDING JUDGE EBOE-OSUJI: Good.
- 5 MR KIGEN-KATWA: I object to the volume of the names that are intended to be
- 6 concealed.
- 7 PRESIDING JUDGE EBOE-OSUJI: Fair enough. Okay, fair enough.
- 8 Why don't we begin then and we go into private session first.
- 9 (Private session at 10.50 a.m.)
- 10 (Redacted)
- 11 (Redacted)
- 12 (Redacted)
- 13 (Redacted)
- 14 (Redacted)
- 15 (Redacted)
- 16 (Redacted)
- 17 (Redacted)
- 18 (Redacted)
- 19 (Redacted)
- 20 (Redacted)
- 21 (Redacted)
- 22 (Redacted)
- 23 (Redacted)
- 24 (Redacted)
- 25 (Redacted)

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

Page 30 redacted – Private session

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

Page 31 redacted – Private session

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

Page 32 redacted – Private session

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

Page 33 redacted – Private session

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 (Redacted)
19 (Closed session at 11.05 a.m.)
20 (Redacted)
21 (Redacted)
22 (Redacted)
23 (Redacted)
24 (Redacted)
25 (Redacted)
26
07.10.2013

- 1 (Recess taken at 11.05 a.m.)
 - 2 (Upon resuming in private session at 11.38 a.m.)
 - 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 (Redacted)
 - 19 (Redacted)
 - 20 (Redacted)
 - 21 (Redacted)
 - 22 (Redacted)
 - 23 (Redacted)
 - 24 (Redacted)
 - 25 (Redacted)
 - 26
- 07.10.2013

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

Page 36 redacted – Private session.

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

Page 37 redacted – Private session.

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

Page 38 redacted – Private session.

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

Page 39 redacted – Private session.

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

Page 40 redacted – Private session.

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

Page 41 redacted – Private session.

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

Page 42 redacted – Private session.

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

Page 43 redacted – Private session.

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

Page 44 redacted – Private session.

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

Page 45 redacted – Private session.

Trial Hearing
Witness: KEN-OTP-P-0326

(Private Session)

ICC-01/09-01/11

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Open session at 12.11 p.m.)

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

8 PRESIDING JUDGE EBOE-OSUJI: Thank you.

9 Mr Omofade, please proceed.

10 MR OMOFADE:

11 Q. Witness, we've heard from you about the Orange Democratic Movement, the
12 ODM. Could you tell the Court how the ODM came to be created?

13 A. The ODM came after the 2005 referendum. It was a movement used during
14 the campaign for the referendum, and later when the referendum had been done
15 because the ODM supported the "No" side and the "No" side declared won the day
16 because it was against the proposed constitution which was drafted and taken for the
17 referendum. So by that time it was not a political party but it was a movement
18 during the campaign, during referendum time. So when it became a party, it
19 became a party because it was just like a movement, a slogan being used by
20 politicians, and during this time the campaign was headed by the then -- it was
21 headed by --

22 MR KHAN: (Overlapping speakers)

23 PRESIDING JUDGE EBOE-OSUJI: Do you need -- Mr Omofade, you might direct
24 the witness.

25 MR OMOFADE: I intend to do so, your Honour.

- 1 Q. Okay. Just taking you back a bit, Witness, the -- you refer to 2005 and the
2 referendum and you've told the Court that the ODM as a political party did not exist
3 in 2005. What was there in 2005? What was the movement called?
- 4 A. The movement was called Orange Movement. It was Orange Movement.
- 5 Q. And did this movement campaign in the referendum that took place in 2005?
- 6 A. It took a camp -- it campaigned.
- 7 Q. And what position did the Orange Movement adopt as regards the proposed
8 constitution for Kenya?
- 9 A. The Orange was for the devolved constitution which was giving peoples power,
10 resources, and the "Yes" side was about a central government and centralising
11 resources and everything. So that is the movement.
- 12 Q. Would it be fair to say then that the Orange, that they were for "No"? The
13 Orange Democratic Movement campaigned "No" and the other side campaigned
14 "Yes"?
- 15 A. True.
- 16 Q. And which movement eventually won the referendum?
- 17 A. The "No" movement, which was symbolised by Orange.
- 18 Q. Okay. Now tell us who were the key members of the Orange Movement, the
19 "No" campaign, as it were?
- 20 A. The "No" campaign was headed by Raila Odinga.
- 21 Q. Yes. Were there any other members?
- 22 A. Raila Odinga and Musalia Mudavadi.
- 23 Q. And just for the transcripts, I'll spell that. It's M-U-S-A-L-I-A and the surname,
24 the second name, is M-U-D-A-V-A-D-I. Is that correct?
- 25 A. Yes.

- 1 Q. Any others, Mr Witness?
- 2 A. There were other people, Members of Parliament, like Mr Anyang' Nyong'o was
3 also in the movement.
- 4 Q. Could you spell Anyang' Nyong'o?
- 5 A. A-N-Y-A-N-G' N-Y-O-N-G-'O, Nyong'o.
- 6 Q. Thank you. Do you remember any other Orange Movement leaders?
- 7 A. There are quite a number of Member of Parliaments and some others.
- 8 Q. Any prominent ones that went on to form the ODM subsequently?
- 9 A. I mentioned there are quite a number of them.
- 10 Q. After the "No" campaign, after the Orange Movement won the referendum,
11 what became of the movement?
- 12 A. After the referendum, a majority of people liked the movement and it was
13 mostly the slogan of most of the people. They used to appreciate and applaud those
14 who headed the campaign for "No" side during that time, and from there, there was
15 some group of people who thought this movement might be turned into political
16 party. Then some people like Mugambi Manyara went further to do the registration
17 of the ODM as a political party after picking the concept.
- 18 Q. And I'll ask start by asking you to spell one of the names, the name you
19 mentioned just now. Would it be fair to say that Manyara is M-a-n-y-a-r-a?
- 20 A. Correct.
- 21 Q. And when was it that the Orange Movement evolved into a political party?
- 22 A. I'm not accurate with the date but it was the year 2006.
- 23 Q. And who were the founding members of the Orange Democratic Movement as
24 a party in 2006?
- 25 A. The founding members carried the bigger team who campaigned for the "No,"

Trial Hearing
Witness: KEN-OTP-P-0326

(Open Session)

ICC-01/09-01/11

1 which was headed by Raila Odinga and some close allies like Professor Anyang'
2 Nyong'o and there were also Janet Ong'era, who was later appointed to be the
3 executive director.

4 Q. Do any other names come to mind, Mr Witness, the founding members of the
5 Orange Democratic Movement?

6 A. No, it's not coming but I think I'll -- some might be -- I might mention some
7 later.

8 Q. Was William Samoei Ruto a founding member?

9 A. Actually, Mr William Samoei Ruto, by then he was still in KANU and he was
10 also allied for the ODM side.

11 Q. Okay. Let me take you back a bit. Was Mr William Samoei Ruto part of the
12 Orange Movement?

13 A. May you frame the question a bit --

14 Q. You've told us earlier that Mr -- that the Orange Movement campaigned "No"
15 during the referendum in 2005. Now, the Orange Movement itself and the
16 movement that was campaigning "No," was Mr William Samoei Ruto part of this
17 campaign?

18 A. Yes, he was part of the campaign.

19 Q. And would it be fair to say, therefore, that when the ODM evolved as a political
20 party in 2007 -- 2006 is the date you gave us, was Mr William Samoei Ruto part of that
21 party from its inception?

22 A. Actually, by that time Mr Ruto was in KANU, but during the campaign time for
23 the movement - before it was a political party, it was a movement for the
24 constitution - he was part --

25 MR KHAN: Your Honour, can I just ask -- raise an issue now, now the answer's

1 been given. Just because an answer's given that the Prosecution doesn't like is not of
2 course a licence to lead. And my learned friend -- the last question was leading by
3 my learned friend. I didn't object, but I'd ask that in future he makes sure that he
4 doesn't.

5 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, the rule against leading really is about
6 matters that are contested, isn't it, the rule against leading if it is -- or something on
7 which you believe there is some -- you have a serious reason to suspect that
8 credibility is attached to how the witness answered the question? If you don't have
9 those, we will make some headway if some leading questions are allowed on some
10 matters that we need not quarrel about.

11 MR KHAN: Well, your Honour, it is in dispute because the Prosecution are putting
12 this person forward as almost an expert of the ODM. So I think let's see the basis of
13 his knowledge and how accurate it is by way of non-leading questions. That's my
14 request, your Honour.

15 MR OMOFADE: Well, your Honours, there has to be some utility in agreeing facts
16 with the other side, and on 3 September last year there were agreed facts and --

17 MR KHAN: Your Honour, the issue is not one of agreed facts or not. We have
18 reason, and I don't want to say too much -- it would be helpful so the Court is in a
19 position to assess the basis of the witness's knowledge and the accuracy of the
20 witness's knowledge because it may be relevant to have the testimony elicited by way
21 of non-leading questions. I'm not being obstructionist; it will become clear. But,
22 your Honour, I didn't object when my learned friend said it. An answer was given.
23 All I'm asking is in future we exercise a little bit of care to make sure that leading
24 questions are not put first time around or, as in this case, the second time around
25 when the witness gave the same answer he gave the first. So, your Honour, it's not

1 an excuse when counsel doesn't get an answer that they want to then become a little
2 bit lax and ask leading questions to try to get something that they perhaps thought
3 would be helpful.

4 Your Honour, the second question of course is formulated quite differently from the
5 way it was formulated the first time around, and I'll say no more than that.

6 PRESIDING JUDGE EBOE-OSUJI: We'll proceed this way. The usual rules would
7 apply where -- the general rule in examination-in-chief are non-leading questions.
8 That's the general rule. There are some exceptions. We will proceed along those
9 lines, including where memories may be jogged properly - properly - on matters that
10 are not contentious.

11 Can you proceed, Mr Omofade.

12 MR OMOFADE: I'm grateful, your Honour.

13 Q. You've mentioned Mr Ruto as being part of KANU. Could you tell us what
14 KANU, the acronym KANU, stands for?

15 A. Kenya African National Union party.

16 Q. And to your knowledge, did there come a time when Mr Ruto became part of
17 the Orange Democratic Movement, the political party?

18 A. Yes. Mr Ruto was in ODM party, even become one of the Pentagon members.

19 Q. Do you know when this was? If you don't remember the exact date, do you
20 have a year when this might have happened?

21 A. That was in the year 2007. It was late 2007.

22 Q. Now, I would like to take you back a bit to the --

23 PRESIDING JUDGE EBOE-OSUJI: Mr Omofade, before you do that, can we have a
24 clearer answer to your last question. I mean, the witness said Mr Ruto was in the
25 ODM party. That is one proposition.

1 The second proposition was even became one of the Pentagon members; that's the
2 second proposition. And your next question was: "Do you know when this was?"
3 Which one?

4 MR OMOFADE: Your Honour, I propose to come back to the subject matter of the
5 Pentagon subsequently, but the -- perhaps I should put the question again anyway.

6 Q. Do you know when -- the exact date and year that Mr Ruto became a member of
7 the ODM, leaving aside the Pentagon for the time being?

8 A. Mr Ruto became a member of ODM party, it was in the month of -- between
9 June and July is when he became a member of ODM party.

10 Q. And just for the sake of clarity, are we still talking about 2007?

11 A. That is when Mr Ruto become an ODM member.

12 Q. Now, do you know when ODM was registered as a political party, if you have a
13 month or a year?

14 A. ODM -- there were two ODM. There was first Orange Democratic Movement
15 Party. That was registered by Mr Mugambi Manyara. Then when the ODM was
16 going to -- when the members of ODM met and they were thinking of how to register
17 the party, when they sent some people to go and do the name search they found that
18 that had been registered as a political party by Mugambi Manyara and so they had to
19 have a second thought of how to maintain and have a party.

20 By then they also sent the then -- the executive director to go and do the registration,
21 and the executive director said that, "I can't go and do this. I'll use some of the
22 people from my office." He uses Mr Daniel Manzo, who was a lawyer practising in
23 his office, to go and do this registration on his behalf - on behalf of the party - and
24 they went further and registered ODM Party of Kenya.

25 So there were two ODM. The first one was similar -- was registered by the name

1 "ODM Party." The other one was registered by the name "ODM Party of Kenya."
2 The first party, ODM Party, was having a symbol of one orange. The other one,
3 which was registered second, was having one whole orange and a half. So there
4 were two ODM parties. So the first one to be registered was ODM Party with a
5 symbol of one full orange. Then later they registered another ODM Party of Kenya,
6 which was having one-and-a-half orange which was registered again by the -- a
7 lawyer who was practising in the office of Janet Ong'era by the name Daniel Manzo.

8 Q. Thank you for that, Mr Witness. I'm going to just backtrack slightly and ask
9 you: The first ODM party that you say was registered, do you know the dates or the
10 time period when this initial ODM was registered?

11 A. Actually I can't know the exact date, because Mr Manyara went behind
12 anybody -- behind the knowledge of the people who was owning the movement to do
13 the registration. So I'm not specific with the date, or the time, or the year.

14 Q. Are you aware, however, of how it came -- of when, rather, that it came about
15 that the second ODM party was registered; the one with an orange and a half?

16 A. This came when they were going for the registration and they found that the
17 ODM had been registered and that was in the year 2007.

18 Q. Do you know the month?

19 A. It was around May, or -- May there or June.

20 Q. Now, this second ODM party, do you know who the key leaders were at the
21 time of its registration?

22 A. The second ODM party, those who -- the leaders who converged were Kalonzo
23 Musyoka, Raila Odinga, Musalia Mudavadi --

24 Q. I'm going to ask you to pause while we get some spellings. I believe the first
25 name you mentioned was Kalonzo. Could you spell the surname, please.

Trial Hearing
Witness: KEN-OTP-P-0326

(Open Session)

ICC-01/09-01/11

1 A. Musyoka. M-U-S-Y-O-K-A.

2 PRESIDING JUDGE EBOE-OSUJI: Does the witness have a notepad in front of him
3 with a pen? That might assist him with his spellings.

4 Court officer, please furnish him with a notepad and a pen in case he needs to write
5 these things down to spell.

6 MR OMOFADE: I'm grateful, your Honour. That would assist.

7 Q. So, Mr Witness, we had Kalonzo Musyoka, which you spelled for us kindly.

8 You then provided the name Raila Odinga, which appears to have been properly
9 picked up by the transcript. Were there any other individuals, key leaders of the
10 ODM - the second ODM - at the time of its formation?

11 A. Musalia Mudavadi.

12 Q. And I believe this is a name you provided earlier, Mudavadi. M-U-S-A-L-I-A
13 Mudavadi: M-U-D-A-V-A-D-I. Is that correct?

14 A. Yes.

15 Q. Any others that come to mind?

16 A. There was also Julia Ojiambo and she was also in her own political party called
17 Labour Party, but she was also within the ODM by that time.

18 Q. So you're telling -- okay. Perhaps we start with the spelling. Julia as in Julia.
19 And Ojiambo is that O-J-I-M-B-O? Would that be correct?

20 A. O-J-I-A-M-B-O.

21 Q. And you say she was still part of the Labour Party, but had come together with
22 those who were intending to form the ODM. Do you have any other names of
23 prominent leaders of the new formed party?

24 A. Mr William Ruto. Mr Joseph Nyagah.

25 Q. And Nyagah, is that spelled N-Y-A-G-A-H? Would that be correct?

1 A. Yes.

2 Q. Now, Mr William Ruto, was he still part of KANU at the time of the formation
3 of the ODM; the second ODM?

4 A. By that time it had not -- he had not declared that he has resigned from KANU,
5 because during that time he was still a member of parliament and the party which
6 sponsored Mr Ruto to the parliament was KANU. He only become officially in
7 ODM when the electoral commission body had given a go ahead for people to go for
8 elections, or for party nominations.

9 Q. Okay. So what you've described here is, to all intents and purposes, two ODM
10 parties existing side by side. How did this come to be resolved eventually?

11 A. The ODM, as you know, we were going to have a presidential nomination, so
12 among the members, the key leaders who are vying to be a presidential candidate or
13 the flag-bearer for the ODM, they couldn't reach a consensus and some would even
14 say, "If it's not me, then I can't be anymore in ODM." So that's what made even some
15 other people - key leaders - to walk out of ODM. Like Julia Ojiambo dropped
16 because she thought that, when people goes for flag-bearer nomination, maybe she
17 will not be lucky to be elected as one of the flag-bearers and so she had to leave.
18 And also within that ODM, because now we had remained with ODM Party of Kenya,
19 it was not ODM formal -- or the other ODM original, so being that the person who
20 went to do the registration was from Kiambaa region and was called Daniel Manzo,
21 they conversed with the -- Mr Kalonzo Musyoka, they ran out with the party and so
22 Kalonzo Musyoka became the flag-bearer of ODM Kenya - ODM Party of Kenya - and
23 so they left Raila team without party.

24 Q. Pause there, Mr Witness. I ask you to pause mainly to deal with a number of
25 spellings. So you're saying, if I'm correct, that the ODM Party of Kenya, the

1 flag-bearer nomination was actually won by Mr Musyoka? Is that what you're
2 telling us?

3 A. After Daniel Manzo, who was holding the certificate of the party and the party
4 symbol, talked with Mr Kalonzo Musyoka, then they agreed and then Kalonzo picked
5 the party. So he became the flag-bearer of that ODM Party of Kenya, which was
6 having a symbol of one full orange and a half.

7 Q. And at this time the original ODM that was initially set up, was Mr Manyara
8 still the leader of that party?

9 A. Mr Manyara was holding the certificate and the party symbol, and he was the
10 chairman of that party and the party was his because he is the one who did the legal
11 registration of the party.

12 Q. Well, let's move back to ODM Party of Kenya then where Mr Musyoka won the
13 flag-bearer nomination. What became of the other key leaders that you've
14 mentioned earlier? Raila Odinga, William Samoei Ruto, Kalonzo, what became of
15 them? What happened?

16 A. I've said Kalonzo never won, because they never did the nomination of
17 flag-bearer. Kalonzo conversed with Manzo and they took the party, so Kalonzo
18 automatically become the flag-bearer of ODM Party of Kenya. He leave the rest, like
19 Mr Raila Odinga, William Ruto, Joseph Nyagah, Charity Ngilu, without a party and it
20 was -- time was running. It was not a good time, even political party would not
21 have registered by that time, so it forced Mr Raila and the other Pentagon members to
22 talk to see a possible solution where they can get another party of which Mr Joseph
23 Nyagah tried and went to persuade Mr Manyara to bring back the original party of
24 ODM of which Mr Manyara brought back.

25 Q. So are you saying that Mr Manyara agreed and reconciled with

1 Mr Raila Odinga, Mr Samoei Ruto and the others who were left without a party?

2 A. Yes.

3 Q. Now, you've repeatedly referred to the Pentagon. For some of us this simply
4 refers to a five-sided figure. What did it mean in the context of the ODM?

5 A. This meant the number of the five key leaders of -- which actually they became
6 six when Madam Charity Ngilu joined them, but they could not leave the name
7 Pentagon.

8 Q. But this is something that occurred subsequently and we'll come to that, but --

9 PRESIDING JUDGE EBOE-OSUJI: Well, you need to watch the transcript. I see
10 "five cadres." I thought he meant key leaders. Sorry, I thought he said -- I heard
11 him say "five key leaders."

12 MR OMOFADE: That's what I heard as well, your Honour.

13 Q. Was -- when you referred to Madam Charity Ngilu joining the Pentagon, were
14 you referring to the fact that there were five leaders initially that formed the original
15 Pentagon but they kept the name nonetheless?

16 A. Yes, these five key leaders were: Mr Raila Odinga, Honourable William Ruto,
17 Musalia Mudavadi, Joseph Nyagah and Najib Balala.

18 Q. And Najib Balala, would that be N-A-J-I-B B-A-L-A-L-A? Is that correct?

19 A. Correct.

20 MR OMOFADE: Now, I think the only name missing from the transcript here
21 appears to be -- appears to be Kalonzo --

22 PRESIDING JUDGE EBOE-OSUJI: I think it was Musalia Mudavadi.

23 MR OMOFADE: Musalia Mudavadi. I'm grateful, your Honour.

24 Q. Mr Mudavadi, the name you mentioned earlier; is that correct?

25 A. Yes.

Trial Hearing
Witness: KEN-OTP-P-0326

(Open Session)

ICC-01/09-01/11

1 Q. Now, to your knowledge what was the purpose of this Pentagon?

2 A. According to the ODM policy and manifesto, ODM was going to deliver
3 devolved government, devolved resources and equal distribution of resources. So
4 these five key leaders were representing regions. Mostly they were provinces back
5 in Kenya. These provinces where they had a great support were Rift Valley Province,
6 which -- whose key leader was Ruto, Coast Province which had a key leader -- their
7 key leader was Najib Balala. Nyagah was representing Upper Eastern.

8 Q. Pause there, Mr Witness. I'm just going to clarify something for the transcript
9 before we go too far.

10 MR OMOFADE: Your Honour, I believe what the witness said was that the, "ODM
11 was going to deliver devolved government." I believe the transcript says "evolved
12 government." "... devolved government and devolved resources."

13 Q. And then the only other clarification that I seek from you, Mr Witness, is you
14 said, "Rift Valley Province, whose key leader was Ruto." I'm quoting you. And
15 then you said, "Kos Province." Is that Kos or Coast Province?

16 A. I spell Coast. C-O-A-S-T.

17 Q. And then you went on to, "Nyagah was representing Upper Eastern." Was that
18 your testimony?

19 A. Yes, then Musalia Mudavadi Western and Ngilu Eastern.

20 Q. This is Charity Ngilu, the name you mentioned earlier?

21 A. Yeah.

22 PRESIDING JUDGE EBOE-OSUJI: And, Witness, you have to say "Yes" or "No."
23 "Yeah" does not read well on the transcript. It may not represent your answer very
24 well.

25 THE WITNESS: Sorry, your Honour.

Trial Hearing
Witness: KEN-OTP-P-0326

(Open Session)

ICC-01/09-01/11

1 PRESIDING JUDGE EBOE-OSUJI: You meant "Yes"?

2 THE WITNESS: I meant "Yes." Y-E-S.

3 MR OMOFADE:

4 Q. Now, the -- when you were interviewed by the Office of the Prosecutor, did you
5 provide a sketch of what you believed to be the structure of the ODM; the one that
6 you've been talking about that took over the party of Mr Manyara?

7 A. Yes.

8 MR OMOFADE: Your Honours, I wonder if document KEN-OTP-0077 --

9 MR KHAN: Your Honour, can I say that before that document's put, evidence
10 should be elicited from the witness regarding what is purportedly on that document
11 and then your Honours will be in a position to assess the witness's account fully.
12 We've had this before. We shouldn't just put the document on the screen. Let's
13 elicit the evidence in the usual way first.

14 PRESIDING JUDGE EBOE-OSUJI: I do not know what this document is.

15 Mr Omofade, does counsel -- do you have difficulty with the indication given by
16 Mr Khan?

17 MR OMOFADE: Your Honours, I really can't see what the difficulty is. This is a
18 sketch that the witness has sketched. I don't know -- aside from the fact that the
19 witness drew this and then the idea would be --

20 PRESIDING JUDGE EBOE-OSUJI: So this is a sketch?

21 MR OMOFADE: It is, your Honour.

22 MR KHAN: Your Honour, it's a previous consistent statement, if anything. That's
23 what my learned friend wants to use. So in the same way he can't just read evidence
24 out from a statement, he can't simply present a document drawn. There's no
25 difference in principle. The correct way is to elicit evidence from the witness's

Trial Hearing
Witness: KEN-OTP-P-0326

(Open Session)

ICC-01/09-01/11

1 mouth and not, "Here's one I prepared earlier." This is not a cookery class and, your
2 Honours, that's why I've said previously leading can take many forms.
3 So my learned friend either can use an ELMO, he can elicit it by way of
4 testimony - oral testimony - and then later on, once a foundation is drawn, if it
5 becomes relevant he can make an argument as to why a sketch can be put in.
6 Your Honour, what I'm interested in, with the greatest of respect, is to see -- to hear
7 from the witness now in court the witness's recollection regarding structure. We
8 were not present when the statement was taken, and it would be useful in our
9 submission for that evidence to be elicited in public before your Honours so we can
10 assess how it's given.
11 MR OMOFADE: Your Honours, there are two ways to go about this. I can elicit
12 the testimony yet again, or I can ask the witness to draw yet another sketch aside
13 from the one that's already been disclosed to my friends which they're aware of. To
14 have a diagram of a sort explaining the structure of a complex organisation, a political
15 party, to elicit that and to form a sketch in our minds I think is rather complicated.
16 But I'm happy to lead the witness through this, but all that will happen is we'll ask
17 him to draw another sketch.
18 PRESIDING JUDGE EBOE-OSUJI: Let me try to understand. Are we now talking
19 about something like an organigram, or are we talking about a sketch of a location?
20 MR OMOFADE: Your Honour, more accurately it is an organigram.
21 PRESIDING JUDGE EBOE-OSUJI: Why don't you try your best to elicit information
22 on that in a viva voce way and then we will see whether you will need at the end of
23 the day to wrap it up with a diagram.
24 MR OMOFADE: Your Honour, I will do that. It's something that can be done.
25 Q. Mr Witness, the -- you've explained to us in brief terms the Pentagon and the

1 five members that were at the -- well, it became six. You've explained six members
2 of the Pentagon. What I would like you to do also is to tell us in your own words
3 what the structure of the ODM itself was. Was there a chairman, for instance?

4 A. Okay. If I can start the way ODM was managed, it was at first the ODM had
5 people first; Kenyan people first. That's why even within our campaign it was
6 written, "Raila, people's president." So it was people first, people's voice, and then
7 down there was the five Pentagon members of equal power, but of course there had
8 to be a flag-bearer which they got. After 1 September nomination, they had a
9 flag-bearer by the name -- Raila Odinga was their presidential flag-bearer.

10 Q. And just pause there because, when there became a flag-bearer, how many
11 members were there of the Pentagon?

12 A. Actually, the five Pentagon members, they went for a party nomination which
13 was done on 1 September at Kasarani Stadium, and Raila Odinga was elected to carry
14 the party flag as the party flag-bearer, then he picked his running mate to be Musalia
15 Mudavadi and then the rest of the members remained within the Pentagon
16 member -- to be Pentagon members.

17 Q. Okay. So in terms of structure what was the next layer, if any, below the
18 flag-bearer and the Pentagon?

19 A. Below the flag-bearer was sort of administrative staff, or office, which was being
20 headed by the executive director of the party, Madam Janet Ong'era, and within there,
21 there was some secretary and also accounts office and besides there was also a
22 national elections board.

23 MR KHAN: And, your Honour, now if it assists I have no objection for the sketch to
24 be shown.

25 PRESIDING JUDGE EBOE-OSUJI: You have no objection for the sketch to be

Trial Hearing
Witness: KEN-OTP-P-0326

(Open Session)

ICC-01/09-01/11

1 brought in at this stage?

2 MR KHAN: No, none at all. The organigram, or drawing.

3 PRESIDING JUDGE EBOE-OSUJI: Mr Omofade, that was a timely objection because
4 we are now at the lunch-break time. Why don't you bring in your sketch now and
5 then we can adjourn for lunch afterwards.

6 MR OMOFADE: Your Honours, the aim was for the witness to have the organigram
7 in front and then point to certain things and subsequently for me to have it admitted.
8 So I think we -- there's a first step which we might ideally conclude with after lunch.

9 PRESIDING JUDGE EBOE-OSUJI: So then why don't we deal with the sketch and
10 everything after lunch, is that it?

11 MR OMOFADE: Indeed, your Honour.

12 PRESIDING JUDGE EBOE-OSUJI: All right. Why don't we proceed in that way.
13 We will take the lunch break now and come back at 2.30.

14 Mr Khan, we owe you some information relating to your request to meet in chambers.
15 We've inquired into it, as indicated earlier. Your request seemed reasonable, but it
16 looks like logistically it might be a little too unwieldy for the Court. We've inquired
17 and it looks like it would be complicated. It's not as easy as we thought it would be.
18 That being the case, it would be better if you filed your request in writing. It will
19 make it easy for everyone.

20 MR KHAN: Mr President, is it possible in that case that I can do that tomorrow
21 morning?

22 PRESIDING JUDGE EBOE-OSUJI: Fair enough, yes.

23 MR KHAN: I'm grateful.

24 PRESIDING JUDGE EBOE-OSUJI: So we will rise for lunch now. The shades will
25 first come down for the witness to leave the courtroom, to be escorted out, and then

Trial Hearing
Witness: KEN-OTP-P-0326

(Open Session)

ICC-01/09-01/11

- 1 we'll rise after that.
- 2 (Closed session at 1.05 p.m.)
- 3 (Redacted)
- 4 (Redacted)
- 5 (Redacted)
- 6 (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 (Recess taken at 1.05 p.m.)
- 10 (Upon resuming in open session at 2.33 p.m.)
- 11 THE COURT USHER: All rise. Please be seated.
- 12 THE COURT OFFICER: We are in open session, your Honour.
- 13 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
- 14 Mr Omofade, please proceed.
- 15 MR OMOFADE:
- 16 Q. Witness, we left off at the point where the Defence lawyer for Mr Ruto had
- 17 agreed for you to be shown a copy of the organigram that you drew concerning the
- 18 structure of the ODM. You drew this when you were spoken to by the investigators
- 19 of the Office of the Prosecutor. Firstly, do you remember doing that?
- 20 A. Yes.
- 21 MR OMOFADE: And if I wonder if the court officer could now display the relevant
- 22 document on the screen. I did read out the ERN number. I don't know if I'm still
- 23 required to do so.
- 24 THE COURT OFFICER: Document KEN-OTP-0077-0639 is currently available on
- 25 the screens and on the witness's screen. It is a confidential document and it will not

1 be broadcasted outside this courtroom, unless otherwise instructed.

2 MR OMOFADE: I'm grateful for that.

3 Q. Witness, do you see that organigram in front of you on the screen?

4 A. Yes.

5 Q. Now, you were telling us before the break that, in terms of structure, people
6 came first in the ODM, and if we look at the top of that organigram, do you see where
7 you've written "people's voice"?

8 A. Yes.

9 Q. What does that refer to?

10 A. This refers to the citizens of Kenya.

11 Q. And underneath that the next box that we see, could you read what you've
12 written in there, please.

13 A. I've written "party patron/party flag bearer."

14 Q. And you've already told us that Raila Odinga was the party patron or the flag
15 bearer at the time; is that correct?

16 A. Yes.

17 Q. But you've also told us that he had -- I believe you called it a running mate; is
18 that correct?

19 A. Yes.

20 Q. And who was that?

21 A. Musalia Mudavadi.

22 Q. And to the right-hand side there's another box that you've drawn. What have
23 you written in there?

24 A. "Pentagon."

25 Q. And I don't propose to re-hash, but you've already told us who the members of

1 the Pentagon were. Now, following your arrow downwards from your box where
2 you have "party patron/party flag bearer," you have another box directly down from
3 that one. What have you written in there?

4 A. "3 party officials," that was chairman, secretary, treasurer.

5 Q. And at this time in 2007, do you know who those -- do you know which
6 individuals held those positions?

7 MR KHAN: Your Honour, if it helps, I did mention to my friend there's no objection
8 for my learned friend to lead on this, on this matter, all the way to the next document
9 as well. He can lead if he wishes.

10 PRESIDING JUDGE EBOE-OSUJI: Thank you.

11 MR OMOFADE: I'm grateful to my friend.

12 Q. Well, in that case, let me help you, Mr Witness. The chairman at this time, was
13 the chairman Mr Henry Kosgey; Kosgey spelled K-o-s-g-e-y?

14 A. True.

15 Q. Was the secretary Peter Anyang' Nyong'o?

16 A. Yes.

17 Q. I believe Anyang, spelled for the transcript's sake, is A-n-y-a-n-g. And was the
18 treasurer Omingo Magara?

19 A. Yes.

20 Q. Now, to the right-hand side of that box you've penned in "national delegates,"
21 and there's a figure underneath, 4.200; is that correct?

22 A. Correct.

23 Q. And you'll be pleased to know that I'm not going to ask you to list them, but
24 which regions did these delegates represent?

25 A. We had 210 constituencies and each constituency was producing 20 delegate

1 members. So if you calculate that, they come to 4.200 delegates in total.

2 Q. You've also told us about the national executive committee. Would that be
3 the box that you've listed to the left of the organigram on the same line as the three
4 party officials?

5 A. Yes.

6 MR OMOFADE: Your Honours, I just go back slightly for the sake of the transcript
7 to spell. The treasurer was Omingo Magara, O-M-I-N-G-O. The second name is
8 M-A-G-A-R-A.

9 Q. Now, was the executive director at this time Janet Ong'era?

10 A. Yes.

11 Q. Was she also the administrator of the staff?

12 A. Yes.

13 Q. And would it be fair to say that the heads of department were all under her
14 authority?

15 A. Yes.

16 Q. And if we look at the organigram that you've drawn, the final box is "heads of
17 departments," for example, security, media, campaign strategies, resource
18 mobilisation, elections board. Is that what you've written there?

19 A. Yes.

20 Q. To your recollection does this organigram that you've drawn, does it reflect the
21 structure of the ODM as it existed in June 2007 and thereabouts?

22 A. That is the reflection.

23 Q. Now, I might come back to issues relating to the structure and the premises of
24 the ODM a bit later on, but following the nomination of Raila Odinga as the flag
25 bearer of the ODM in 2007, are you aware of what strategy the ODM adopted in order

Trial Hearing
Witness: KEN-OTP-P-0326

(Open Session)

ICC-01/09-01/11

1 to contest the national elections?

2 PRESIDING JUDGE EBOE-OSUJI: Before you do that, what do you propose to do
3 with this document? Has it already gone in?

4 MR OMOFADE: Your Honour, it hadn't gone in. I've just been reminded by my
5 colleague next to me as well. Might this be ascribed an exhibit number. I think it
6 should be exhibit -- Prosecution exhibit number 7, if I'm correct.

7 MR KHAN: No objection, but on the basis that it only establishes it was drawn by
8 the witness.

9 MR KIGEN-KATWA: No objection on our part, Mr President.

10 PRESIDING JUDGE EBOE-OSUJI: The document will go in as Prosecution exhibit
11 next in the series.

12 THE COURT OFFICER: Your Honour, document KEN-OTP-0077-0639, confidential
13 document, will be attributed reference number EVD-T-OTP-00007 and will be
14 referred to as Prosecution Exhibit Number 7.

15 MR KHAN: Your Honour, with your leave, perhaps it can just be noted that in
16 future I can say, "No objection," and it's always on that basis. Then it's quicker.
17 That when I say, "No objection," it's always -- it will be no objection to the document
18 being admitted without any concession regarding the facts contained therein. That
19 way, it will be a little bit quicker.

20 PRESIDING JUDGE EBOE-OSUJI: That's on -- we understand that.

21 MR KHAN: I'm grateful.

22 PRESIDING JUDGE EBOE-OSUJI: That's how it's understood anyway. So we
23 will -- the document would be reflected on the record as the court officer has
24 indicated.

25 MR OMOFADE:

1 Q. Mr Witness, I was asking if you're aware of the election strategy that the ODM
2 employed in order to contest the national elections in 2007.

3 A. ODM had a strategy of reaching the people on the ground. First of all, it was
4 through the delegates on the ground; and secondly, the ODM party structure through
5 the elected members; then the ODM nominated for various posts like civic,
6 parliamentary, Pentagon members, and the flag bearer. That was the strategy. And
7 also through media, through campaign materials such as billboards, flyers, and
8 posters.

9 Q. And, Mr Witness, to -- just to zero in on that, you did mention previously the
10 Pentagon members and you identified a number of provinces that some of them were
11 responsible for. Would it be fair to say that in order to implement the election
12 strategy of the ODM, these Pentagon members sort of were assigned the
13 responsibility of their own provinces to drum up electoral votes?

14 A. That is true.

15 Q. Now, I want us to focus for the time being on the Rift Valley. Are you aware of
16 who was responsible for delivering - if that's a term that can be used - delivering the
17 Rift Valley for the ODM in the 2007 elections?

18 A. The Rift Valley, mostly it was left for one of the Pentagon members called
19 Mr Ruto and also he was being assisted by some of the people on the ground.
20 Probably it was also lucky that the chairman of ODM also comes from Rift Valley, so
21 they could reach the people of Rift Valley and had the experience from the Rift Valley
22 region.

23 Q. Now, these strategies, you've referred to a number of means that were
24 employed in order to win the election. You've referred to the media, to campaigning,
25 to rallies. Were these employed, to your knowledge, in the Rift Valley?

Trial Hearing
Witness: KEN-OTP-P-0326

(Open Session)

ICC-01/09-01/11

1 A. Pardon?

2 PRESIDING JUDGE EBOE-OSUJI: Mr Omofade, can you hold that question for a
3 minute and let's go back to the last answer before. As it appears on the transcript,
4 the last sentence is "Probably it was also lucky that the chairman of ODM also comes
5 from the Rift Valley so that they could reach the people of Rift Valley and their
6 experience from the Rift Valley region." Is that -- I'm not sure that's what I heard. If
7 the witness can repeat that.

8 MR OMOFADE:

9 Q. Witness, did you hear Mr President's question? Or do you want me to rehash
10 it? Can you provide your answer to my earlier question again. You were talking
11 about the chairman of the Rift Valley -- chairman of the ODM also coming from the
12 Rift Valley and then you spoke about the ability to reach the people of the Rift Valley.
13 Could you repeat what you said.

14 A. I said Rift Valley, the campaign was being co-ordinated through Pentagon
15 member, which the Pentagon member representing Rift Valley was Mr William Ruto,
16 and the chairman also was coming from Rift Valley so they could assist one another
17 to reach the people, and for those who are also lucky to be nominated within the
18 ticket also could reach the people, like parliamentary seats and civic seats. I
19 think -- is it clear?

20 PRESIDING JUDGE EBOE-OSUJI: So the word might have been "aspirants" from
21 the Rift Valley --

22 THE WITNESS: Yes.

23 PRESIDING JUDGE EBOE-OSUJI: -- rather than "experience" from the Rift Valley?

24 THE WITNESS: Aspirants.

25 PRESIDING JUDGE EBOE-OSUJI: Thank you.

1 MR OMOFADE:

2 Q. And what I then asked you was, to your knowledge, were the same means of
3 using campaign posters, rallies, the media, and the other means that you've referred
4 to, were these also employed in the Rift Valley Province?

5 A. Yes.

6 Q. Now, to your knowledge also, what was the ethnic make-up of the
7 Rift Valley Province?

8 A. Rift Valley Province is mostly dominated by the Kalenjin and some few
9 minority tribes such as Kisiis, Luos, Kikuyus, Luhyas, just to mention a few.

10 Q. And when you say the majority, are you able - and please don't do so if you
11 can't - but are you able in terms of percentages to say what percentage would have
12 been Kalenjin?

13 A. Actually, I can't estimate but they are the majority.

14 Q. Now, do you know what the predominant issues were in terms of pressing
15 campaign issues for the Rift Valley region in 2007?

16 A. As the ODM manifesto and policy it was advocating for equal distribution of
17 resources, of which the resources include land and equal distribution of
18 parliament -- and equal distribution of opportunities, also equal distribution of
19 leadership over governance.

20 Q. And was this the ODM manifesto for the entire country or for the Rift Valley
21 alone?

22 A. It wasn't for Rift Valley alone. It was the general policy for ODM.

23 Q. And as regards the Rift Valley, are you aware what one of the -- I'll take that
24 again.

25 Are you aware of what the most pressing issues were in the 2007 election?

Trial Hearing
Witness: KEN-OTP-P-0326

(Open Session)

ICC-01/09-01/11

1 A. It was a land issue.

2 Q. Tell us more about this land issue as it's applied to the Rift Valley Province.

3 A. Most of the people who were in Rift Valley are squatters. They never had
4 pieces of land so they stay squatters, and some part of Rift Valley land are just lying
5 fallow, belonging to individuals. So ODM was advocating that when they get the
6 power of leadership, they will look into those serious issues so that people of other
7 areas like Rift Valley and the coast and other parts of Kenya, those were facing the
8 same problem, to have equal share of land.

9 Q. Now you've told us briefly about the ethnic composition of the
10 Rift Valley Province. Was the distribution of land, to your knowledge at least, was
11 the distribution of land reflective of the ethnic composition of the Rift Valley?

12 A. In fact, according to what people were experiencing in Rift Valley, even some
13 people were born there, grew up there, and their ancestors were buried there but still
14 they're squatters, they never had land. Also some issues were touching the majority
15 of Kalenjins because they have some ethnic staying in them, and this ethnic, some of
16 them even have a bigger piece of land more than the people whose ancestors were the
17 majority there.

18 MR OMOFADE: Your Honours, I just pause to go back to line 7 where the witness's
19 response appeared to be the Rift Valley -- "Some parts of Rift Valley land are just
20 lying." There's an omission there, it appears to be the word "fallow" that I heard.
21 I'm not sure if I'm correct.

22 PRESIDING JUDGE EBOE-OSUJI: That's what I heard too but it's for the witness to
23 confirm.

24 MR OMOFADE:

25 Q. Witness, is that what you said when you mentioned something about "Some

1 parts of land in the Rift Valley just lying" - and there's a word missing - "belonging to
2 individuals." What did you say there?

3 A. Some individuals have large piece of land which are lying fallow.

4 PRESIDING JUDGE EBOE-OSUJI: So the word is "fallow"?

5 THE WITNESS: Fallow.

6 PRESIDING JUDGE EBOE-OSUJI: Thank you.

7 MR OMOFADE:

8 Q. Now, in terms of the -- in terms of the --

9 PRESIDING JUDGE EBOE-OSUJI: Mr Omofade, you might also look at line 18. Is
10 the word "scatters" or "squatters"?

11 MR OMOFADE: Your Honour, what I heard was "squatters." It does say "scatters,"
12 but --

13 MR KHAN: Your Honour, if it helps, we can confirm it's "squatters."

14 PRESIDING JUDGE EBOE-OSUJI: Thank you. I think that does. We can move on
15 now.

16 MR OMOFADE:

17 Q. Now, which ethnic group in the Rift Valley appeared to be more dissatisfied
18 with the distribution of land in the province?

19 A. Mostly the Kalenjins.

20 Q. And to your knowledge which ethnic group were they most -- which ethnic
21 group, or groups even, were they most dissatisfied with?

22 A. It is about other community or other tribes who are -- who are also in Rift Valley
23 and on pieces of land.

24 Q. Well, perhaps it would help then if you are -- are you able to tell us which
25 other -- I know you used the word "tribes." Which other ethnic groups appeared to

1 own more pieces of land to the detriment, as they perceived it, of the Kalenjin?

2 A. I can't be specific on that.

3 Q. That's fine. Now, in terms of the campaigns that took place, are you able to
4 help the Court on the nature of the rallies that took place in the build-up to the 2007
5 general elections in Kenya?

6 A. There were quite a number of rallies which were held before election by the
7 ODM. I think ODM had rallies across the country within the provinces of Kenya
8 and more so in almost all regions in Kenya.

9 Q. And I see you say you think ODM had rallies. Are you actually aware that
10 rallies took place?

11 A. I am aware that rallies took place.

12 Q. And, as a general fact, who amongst the ODM leadership would attend such
13 rallies?

14 A. Mostly when the ODM had rallies planned by the ODM Orange Headquarters,
15 all Pentagon members were supposed to be present and some of the aspirants who
16 were nominated to run with the ODM ticket if it is within their area.

17 Q. And only say this if you are aware, but generally what would be the size of
18 these rallies? How many people would attend?

19 A. Being that ODM was a party which most people liked, the people -- the rally
20 were full to their capacity. In fact, it could carry like even more than 10,000 people.

21 Q. So would it be fair to say that the average rally would have attendance in the
22 thousands? Would that be fair?

23 A. That's fair.

24 Q. And this is okay, but did you ever have any cause to attend any of these rallies?

25 A. Yes, I had a chance to attend some of the rallies. Like one in Uhuru Park,

1 another one in Kitale and Trans-Nzoia and some other Nairobi rallies.

2 Q. Well, Uhuru Park, where was that?

3 A. Uhuru Park is situated in Nairobi. It is a park within Nairobi city centre.

4 Q. And in terms of capacity, the number of people that that park could contain, do
5 you -- are you able to help us?

6 A. I can't say specifically that it can carry to this capacity, but I think it can carry
7 over a million.

8 Q. Okay, let's look at the rally you're talking about then. Can you help us as to
9 which month in 2007 you attended this particular rally?

10 A. Immediately before the voting day, we had our last rally at Uhuru Park and I
11 managed to attend that.

12 Q. And it may be common knowledge, but when was the voting day?

13 A. The voting day was on 27th, yes.

14 Q. And what month, if you --

15 A. Of December 2007.

16 Q. So would it be fair to say that this rally took place in the build-up to the
17 elections -- to the election day on the 27th?

18 A. Yes, it was the last rally.

19 Q. What time of the day did this rally occur, do you remember?

20 A. Mostly rallies do start in the morning. Like that one, being that it was a big
21 rally and it was the last rally, people started getting as early as -- some started as early
22 as 7 in the morning.

23 Q. And this particular one -- well, perhaps I should ask what time did you get
24 there?

25 A. I was there at around 7 in the morning, (Redacted).

1 Q. And in terms of capacity, when the rally was in full swing how many would
2 you estimate to have attended that rally?

3 A. It was a million and over.

4 MR KHAN: Your Honour, could I just ask, because it will avoid confusion later, but
5 the witness said that it was immediately before voting which was 27 December. Just
6 for specificity, can we have the date of the rally please? It would be helpful at this
7 stage.

8 MR OMOFADE:

9 Q. When you said just before voting, do you mean on the day of voting, or do you
10 mean days or the day before voting?

11 A. It was when we were nearing the voting day.

12 Q. Do you remember exactly how many days before voting? If you don't
13 remember, please don't hazard a guess.

14 A. No, it's a long time.

15 Q. And just for the sake of clarity, you have said you recall it to be the last rally
16 before the elections. Do you remember if it was a few days, or a few weeks, before
17 the election day?

18 A. It was a few days.

19 Q. Now, you've been telling us about the capacity; the number of attendance at the
20 rally. In terms of the ODM leadership at the time, can you help us as to firstly
21 whether any of them attended?

22 A. ODM leaders, all of them, the Pentagon members, attended, and the already
23 nominated ODM aspirants also attended the rally.

24 Q. Did you see them there? These ODM Pentagon members, did you see them
25 yourself?

1 A. Yes.

2 Q. Can you tell us which Pentagon members you recall seeing at the rally before
3 the elections?

4 A. The party flag-bearer, who is Mr Raila Odinga; Najib Balala; Musalia Mudavadi;
5 William Ruto; Charity Ngilu; Joseph Nyagah.

6 Q. Do you remember if any of them spoke during this rally?

7 A. I remember.

8 Q. Now, help us just with the layout so we have a clear picture in our minds.

9 Where were the Pentagon members in proximity to the audience, as it were? Were
10 they amongst them? Were they on an elevated platform? Were they on a stage?
11 Were they walking around? Where were they?

12 A. ODM Pentagon leaders were sitting in front of the dais.

13 Q. I'm afraid, Witness, it's just the last word you mentioned that the transcript
14 doesn't appear to have taken. You said they "... were sitting in front of the ..." and
15 there's a word missing?

16 A. Dais, or platform. A raised area.

17 MR OMOFADE: I heard the witness say, "A platform. A raised area."

18 Q. Were there -- you said you heard them speaking. How could the audience of a
19 million hear the Pentagon members speaking in such a huge environment?

20 A. They were using public address system.

21 Q. Now, do you recall who spoke first at this particular rally?

22 A. There were quite a number of people who spoke, but I don't know if you want
23 to ask me about the Pentagon members who spoke first, or the general?

24 Q. Indeed. Can we restrict it to the Pentagon members for the time being? Do
25 you recall which of the Pentagon members spoke first? If you don't, please tell us.

1 A. The Pentagon member who spoke first was Mr Joseph Nyagah.

2 Q. And I'm not going to ask you to go through the order, it's quite clear you might
3 not recall, but did Mr William Samoei Ruto -- did he speak during that rally?

4 A. Yes, Mr Ruto spoke.

5 Q. And just generally, what was the general theme of that particular rally?

6 A. The general theme was to urge members and citizens of Kenya to go and vote
7 and vote for ODM, because it's the only party having a good policy structure and a
8 party which will give the citizens a voice to speak, a voice to have resources devolved,
9 a voice to have good leadership and a voice to address the past injustices which has
10 happened to the people of Kenya.

11 Q. And you've just told us that Mr Ruto spoke. Do you recall what he spoke
12 about during that rally?

13 A. Okay, I can't recall the exact words he used, but I remember he stood up, he was
14 very happy to see the people who have attended the rally because it was of
15 magnitude. He said he's very happy that ODM is going to win from what he has
16 seen on the ground, from what he has seen the most of the people were saying, and
17 also he said for those people who have suffered it's a time -- they are going to have a
18 nice time in leadership. It is a time for those people who have suffered due to
19 inequitable resource distribution, it's a time they are going to have equitable and for
20 those people who knew that they had grabbed resources like land from most of the
21 Kenyan people it's a time to give back the land. And not only Ruto spoke that. It
22 was spoken by quite a number of the leaders, because land matter in Kenya was
23 serious by that time.

24 Q. Do you know if Mr Ruto said anything else?

25 A. He talked a lot. As I have said, I can't remember every word he said by that

1 time. It's a long time.

2 Q. When you were speaking earlier you said a lot of people spoke - a lot of
3 members of the Pentagon spoke - and that they all spoke about the issue of
4 inequitable resource distribution. Who else spoke about this amongst the Pentagon
5 members?

6 A. The party flag-bearer, Mr Raila Odinga, also talked about the issue of land, and
7 even some of the aspirants also talked, but -- yeah, quite a number of people talked
8 about it because it was the centre of the ODM policy.

9 Q. Did the -- we've heard from you that the Pentagon members were also
10 representing their respective provinces where the ODM was concerned. Did any of
11 them address in particular any issues relating to their own provinces?

12 A. Actually, it was -- the Uhuru Park rally was a general rally for our whole nation,
13 but when it was back to the provinces ODM was there to look into major problems
14 touching people on the ground. Like if it is not Eastern, it's about water issue. So
15 they were touching an area as per the need of that area.

16 Q. Now, when you were speaking earlier, you said Mr Ruto's statement was some
17 words to the effect and you -- rightly you didn't quote. You said it's time for those
18 people who have suffered. What people did you understand Mr Ruto to be referring
19 to?

20 A. Most of the squatters, those who don't own land, and also the vulnerable group
21 who were employed -- unemployed like youths.

22 Q. Did you have cause to attend a further rally? You've spoken -- when I was
23 questioning you earlier you spoke about the rally in Uhuru Park, which you've just
24 spoken about, and then you spoke about a further one in the Rift Valley itself. Do
25 you remember when this particular rally took place?

1 A. I can't remember, but it was when you are approaching the nominations of
2 ODM party and also there was one of the ODM members who was an aspirant and
3 she happened to be killed by unknown people around South Sea area in Nairobi.
4 (Redacted) the burial was
5 in Trans-Nzoia and then there was also a rally in Kitale.

6 Q. So would it be fair to say that the rally took place around about the same time as
7 the burial that you're speaking about?

8 A. Yes.

9 Q. Was it on the same day?

10 A. Yes.

11 Q. And you say this was in Kitale, K-I-T-A-L-E. Do you recall the exact location
12 in Kitale?

13 A. We were in Kitale, next to Kitale Golf Hotel. So I don't know -- I don't
14 remember the exact name of the park, or the field.

15 Q. But was it an open space, or was it inside premises?

16 A. The rally was in an open place.

17 Q. And again as I asked you concerning the rally at Uhuru Park, are you able to
18 recall the attendance; the number of people that attended this rally?

19 A. I could approximate it was a million and over.

20 Q. And do you recall what time of the day this particular rally took place?

21 A. The rally started in the morning and it ended up in the evening. In the
22 morning, people had some entertainment and even some of the speakers from
23 different regions could talk. Then it was being closed by speeches from the
24 Pentagon leaders and then a prayer.

25 Q. And on this occasion again, did all the Pentagon leaders attend?

1 A. They attended, all of them.

2 Q. And I've asked you this once, but I don't think you were specific. Do you
3 remember the month that this took place, this event?

4 A. It took place in December. Late December.

5 Q. And I suppose it's an obvious point, but if the rally in Uhuru Park was the last
6 rally of the ODM, this one must have taken place before that one. Would that be
7 fair?

8 A. Sorry, in fact I have not heard the question you have asked clearly. I thought it
9 was Uhuru Park rally.

10 Q. Okay, let's -- let's start again. The rally in Kitale in the Rift Valley, do you
11 remember when it took place? Do you remember the month?

12 A. Yes. It was in -- between November and December. Yes, that is the month,
13 yeah.

14 Q. Thank you. And what I was then asking is: It must have taken place before
15 the rally in Uhuru Park?

16 A. True.

17 Q. Now, do you recall any of the speakers? You've told us of those that attended,
18 but do you remember if all of the Pentagon members spoke at this particular rally?

19 A. Yes, I can remember the speakers.

20 Q. Can you name them without at this point recalling what they said?

21 A. Mr Ruto talked, Mr Raila Odinga talked, Musalia Mudavadi talked, and Madam
22 Ngilu talked, Balala also talked, Nyagah also talked.

23 Q. And bearing in mind what you've told us earlier about Mr Ruto being
24 responsible for the Rift Valley, do you recall what the composition of that particular
25 attendance was, the people attending, because this rally was in the Rift Valley itself?

Trial Hearing
Witness: KEN-OTP-P-0326

(Open Session)

ICC-01/09-01/11

1 A. In Rift Valley ODM -- ODM as a party had like 90 per cent support and it was
2 also known to be a "toff" (phon) zone for ODM. So the magnitude, all the people
3 who attended, the majority were ODM supporters and I can't say that a specific tribe
4 attended ODM.

5 MR KHAN: Sorry, could it be clarified? Did the witness say he can say or he can't
6 say that a specific tribe attended? I think the transcript perhaps didn't reflect the
7 answer.

8 MR OMOFADE: I'm actually getting there in a minute myself.

9 Q. Now, let's -- let's start with the first part of your response, Witness. The -- you
10 said: ODM as a party had like 90 per cent support. Are you saying that amongst
11 the inhabitants of the Rift Valley, ODM had about 90 per cent support? Is that -- is
12 that your -- your -- your testimony?

13 A. Yes, that is the way I can rate the ODM support in Rift Valley by that time.

14 Q. But then you went on to say, "It was also known to be a tough zone for ODM."
15 What do you mean by that?

16 A. I mean it was a zone with a bigger number supporting the ODM. So it was
17 their stronghold.

18 Q. So when the transcript reads "tough" as in t-o-u-g-h, is what you're saying
19 actually top zone, t-o-p, or am I hearing wrong?

20 A. No, it is not t-o-p, it is "toff" (phon).

21 Q. In any event, it was a stronghold for the ODM. You've said you're unable to
22 say the ethnic composition, but you have told us earlier that in terms of the Rift Valley
23 generally, the Kalenjin were the majority. Would that be a fair recollection of your
24 testimony?

25 PRESIDING JUDGE EBOE-OSUJI: Mr Omofade, let's not do it that way. Mr Khan's

1 concern was what the transcript depicts, which is in the place he rose, the transcript
2 says -- attributed the witness the following, I quote: "I can say that specific tribe
3 attended ODM." The question is, did the witness say that he is able to say which
4 ethnic group, or that he is unable to say which ethnic group attended?

5 MR OMOFADE: Quite clear, your Honour.

6 Q. Mr Witness, I asked you previously if you were able to say the ethnic
7 composition is -- the term that I used, the ethnic make-up of the million or so people
8 that attended this rally. Now, are you able or are you not able to help us with that?

9 A. I say I'm unable to identify.

10 Q. Well, then what I was referring back to was your earlier testimony where you
11 said that the majority --

12 MR KHAN: Your Honour, can I just ask my learned friend to exercise caution here,
13 for obvious reasons.

14 PRESIDING JUDGE EBOE-OSUJI: Fair enough.

15 Mr Omofade.

16 MR OMOFADE:

17 Q. Let's look at the rally itself then. You've talked about those who were present
18 amongst the Pentagon members. Did Mr Ruto eventually speak at that particular
19 rally?

20 A. Yes, Mr Ruto speak.

21 Q. Do you recall what he said?

22 A. I can recall. He first -- he was very remorseful for the death of the aspirant;
23 that was one. And he said the government should investigate to know the cause of
24 the death, and he was very sorry. Then he went further to talk about the party - the
25 ODM party - and what he will deliver -- what the ODM will deliver to the people,

Trial Hearing
Witness: KEN-OTP-P-0326

(Open Session)

ICC-01/09-01/11

1 mostly that people of Trans-Nzoia and people of Rift Valley, because he knows the
2 problem that people of Rift Valley has. He's also from that place. So he said let the
3 people of Rift Valley vote for ODM because ODM is the party with a good manifesto.
4 It's the party which is going to deliver truthful leadership. It's the party which is
5 going to solve people's problems which people have faced for a long time, and it is a
6 time for them to have relief, and more so to the landless people, it's a time they're also
7 going to be given their piece of land. It's a time, and a time where the eras of
8 hyenas - I'm using that how he quote - for those people who get big piece of land has
9 to return so that the landless can be resettled. And he welcomed ODM members in
10 that area. Then later he gave the flag bearer the podium to talk.

11 Q. Now, when he made this speech, do you recall --

12 PRESIDING JUDGE EBOE-OSUJI: Mr Omofade, one second. There may be
13 difficulty with the transcript. I might have heard the witness say "hyenas" and then
14 he said he was using the word in quotes.

15 MR OMOFADE:

16 Q. Mr Witness, when you were giving your response earlier, you said in part, "It's
17 a time and a time where ... " What the transcript has is " ... errors of ... "
18 What did you actually say? And I do recall you demonstrate so with your fingers as
19 well. What was it that you were saying?

20 A. The era of hyenas. "Hyenas," it means that -- he was using the term those who
21 have grabbed land in Rift Valley.

22 PRESIDING JUDGE EBOE-OSUJI: And did you say that the word "hyenas" were
23 precisely used and you were quoting?

24 THE WITNESS: Pardon?

25 PRESIDING JUDGE EBOE-OSUJI: My question was: Did you say that you were

1 using the word "hyenas" in quotes, that you were quoting precisely the word that was
2 used in the speech?

3 THE WITNESS: Yes.

4 MR OMOFADE:

5 Q. So the -- what I heard therefore was the era of hyenas and that seems to be the
6 amendment to the transcript that probably ought to be made. What did you
7 understand this to mean, this era of hyenas, you as a person present at that rally?

8 A. It means for those people who have grabbed lands.

9 Q. What else, if anything, did he say?

10 A. I say I can't recall everything, but just talk about the policy of ODM and the
11 problem or the challenges the people on the ground were facing like that one of land.

12 Q. Do you recall the response or the reaction of the -- of those attending the rally to
13 the speech that you referred to?

14 A. Actually, the rally was cheering up.

15 Q. What do you mean by that, Witness, when you say, "the rally was cheering up"?

16 A. The background from the people who attended the rally, they were sounding in
17 happiness.

18 MR OMOFADE: Your Honours, I'm looking at the transcript and there appears to
19 be a couple of missing words in line 21 of the previous page. The witness's response
20 appears to have been, and I start from line 20, " ... of ODM and the problem or the
21 challenges the people on the ground were facing like ... " And my recollection of this
22 part seems to be "like one of land," but I don't know, maybe perhaps the witness can
23 repeat the response.

24 PRESIDING JUDGE EBOE-OSUJI: Maybe the question again and the answer might
25 help the witness, help him recall.

1 MR OMOFADE:

2 Q. What I asked you before you gave that response was: What else, if anything,
3 did he say? You started to respond and it's recorded as follows: "I say I can't recall
4 everything, but just talk about the policy of the ODM and the problem or the
5 challenges the people ... "

6 Can you complete what you said?

7 A. I said I can't recall every word he talked, but generally it was ODM's policy and
8 challenges the people on the ground face, like one is land problem, unemployment of
9 the youth which mostly were within the theme of the ODM.

10 Q. And then I was asking you about the reaction of the people -- the attendants, the
11 attendees to this rally. Do you recall if there was any media coverage of this
12 particular rally?

13 A. There were quite a number of media houses who attended and who were doing
14 coverage.

15 Q. And are you able to name any of them? Do you remember any one in
16 particular, any ones?

17 A. There was KTN, Kenya Television Network; there was NTV; there was Citizen;
18 there was K24; there was KBC, and quite a number of radio stations.

19 Q. So do I -- do we take it that the first list you've provided were television
20 stations?

21 A. Yes.

22 Q. Do you recall which radio stations covered this particular rally?

23 A. There was Radio Ramogi.

24 Q. Could you spell that, Witness? Ramogi, is it R-A-M-O-G-I?

25 A. Yes.

- 1 Q. In that case, please proceed.
- 2 A. There was Kass FM, Mulembe.
- 3 Q. And again I'm going to ask you to spell the last word you provided.
- 4 A. M-U-L-E-M-B-E FM; Radio Citizen; Kiss FM?
- 5 Q. Did you say Kiss FM, K-I-S-S?
- 6 A. Yeah, it is Kiss.
- 7 Q. Now, did you attend any other rallies that were held by the ODM in that period?
- 8 You mentioned specifically the one in Uhuru Park and this one at Kitale. Did you
- 9 attend any other in the buildup to the elections in December 2007?
- 10 A. I attended other rallies also.
- 11 Q. Now, in terms of media coverage, would the same number of media outlets that
- 12 you've referred to cover those rallies as well?
- 13 A. Yes.
- 14 Q. The rally at Uhuru Park - and I didn't ask you at the time - was that covered by
- 15 the same TV stations and the radio stations that you've listed a few questions ago?
- 16 A. Yes, it was covered by almost all media bodies in Kenya, plus international.
- 17 Q. Now, I want to ask you specifically about one of those radio stations you
- 18 mentioned, Kass FM. Did Kass FM also cover the rally at Uhuru Park?
- 19 A. I can say it covers, but I was not specific that it was there. But might be -- there
- 20 must be a representative from the Kass FM who was there.
- 21 Q. Are you familiar with any -- are you familiar with any radio programmes on
- 22 Kass FM that broadcasted predominantly to the Kalenjin ethnic group?
- 23 A. Pardon, your question?
- 24 Q. Have you listened to Kass FM before?
- 25 A. I -- I don't -- I don't listen to Kass FM (Redacted)

1 (Redacted), unless if there is a specific thing of interest for me.

2 Q. In that case, are you familiar at least with some of the radio programmes
3 presented by Kass FM?

4 A. I'm not familiar with the Kass programme.

5 Q. Have you heard of the programme Lenee Emet, even if you haven't listened to
6 it?

7 MR KIGEN-KATWA: Mr President and your Honours, I strongly object to that.
8 That's a leading questions. And Mr President and your Honours, clearly the
9 Prosecution borders on cross-examining their own witness. Their witness has said
10 that (Redacted), and to put words in his mouth as to
11 the specific programme borders on cross-examining him. We strongly object,
12 Mr President and your Honours.

13 PRESIDING JUDGE EBOE-OSUJI: So your objection is that the question is leading?

14 MR KIGEN-KATWA: Sorry, Mr President, I missed that.

15 PRESIDING JUDGE EBOE-OSUJI: Your objection is that the question is
16 impermissibly leading?

17 MR KIGEN-KATWA: Yes, Mr President.

18 PRESIDING JUDGE EBOE-OSUJI: Prosecutor, the objection --

19 MR OMOFADE: Your Honours --

20 PRESIDING JUDGE EBOE-OSUJI: -- to be sustained.

21 MR OMOFADE: But perhaps, Mr President, we might make some progress, and I
22 did allude to this earlier. There has to be a reason that parties come together and
23 agree facts. Now, one of the agreed facts - and I'm sure Mr Kigen-Katwa is aware of
24 this - one of the agreed facts in September, and I read from it, "In 2007/2008 the Lenee
25 Emet programme was broadcasting Kalenjin languages, Swahili and sometimes a bit

1 in English. 'Lenee Emet' means 'what is the opinion of the country.' 'Lenee Emet' is
2 a Kalenjin phrase/expression."

3 These are facts that have been agreed. If we have to rehash this with every single
4 witness when they're not in contention -- the difficulty I have is we might be here for
5 a few days. So except this is really controversial, then I'll have to possibly put this
6 list of agreed facts aside and go the long way round.

7 MR KIGEN-KATWA: Mr President, I will confirm that in fact that is an agreed fact.
8 Our objection, Mr President, is that when we agreed on those facts, we did not agree
9 that the witnesses that the Prosecution would come to testify would have those
10 agreed facts put in their mouths and required that they testify on even when the
11 witnesses have said explicitly, but it is not part of their testimony.

12 Mr President, I think my learned friend has completely misconstrued what was the
13 intention of the agreed facts.

14 Mr President, just one more observation. Mr President, I understood you to have
15 upheld my objection and I would rather that my learned friend moves on to
16 something else.

17 PRESIDING JUDGE EBOE-OSUJI: Mr Omofade, you have to move on.

18 MR OMOFADE: Your Honours, I --

19 PRESIDING JUDGE EBOE-OSUJI: But on that note we're -- we are -- time is up for
20 the day. We will have to leave it there and take it up tomorrow and continue with
21 this witness tomorrow. We will bring down the blinds and escort the witness out of
22 the courtroom.

23 (Closed session at 4.05 p.m.)

24 (Redacted)

25 (Redacted).

Trial Hearing
Witness: KEN-OTP-P-0326

(Closed Session)

ICC-01/09-01/11

- 1 (Redacted)
- 2 (Redacted)
- 3 (Redacted)
- 4 (Redacted)
- 5 (Redacted)
- 6 (The hearing ends in closed session at 4.05 p.m.)