

Trial Hearing
Witness: KEN-OTP-P-0658

(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 and
7 Judge Robert Fremr
8 Trial Hearing
9 Tuesday, 2 December 2014
10 (The hearing starts in open session at 10.34 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.
15 Court officer, please, the case.
16 THE COURT OFFICER: Thank you, Mr President.
17 The situation in the Republic of Kenya, in the case of The Prosecutor versus
18 William Samoei Ruto and Joshua Arap Sang, ICC-01/09-01/11.
19 PRESIDING JUDGE EBOE-OSUJI: Thank you.
20 Appearances.
21 MR GARCIA: Good morning, your Honours, Mr President. The appearances
22 remain the same for the Prosecution.
23 MR NDERITU: Good morning, Mr President, your Honours. The appearances on
24 our end are also the same. Thank you.
25 PRESIDING JUDGE EBOE-OSUJI: Mr Bourgeois we note your appearance as well.

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1 MR BOURGEOIS: Present, Mr President.

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

3 MS BUISMAN: Good morning, Mr President, your Honours. Today

4 Joshua Arap Sang who is present with us is represented by Kigen-Katwa, lead
5 counsel; Logan Hambrick; and myself, Caroline Buisman.

6 MR KHAN: Mr President, your Honours, good morning. The legal team for
7 Mr Ruto remains as before.

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

9 Witness, welcome back. We are starting a bit late because -- later than announced
10 because of matters in the other case that needed to be attended to by Judge Fremr.

11 And, quickly, the schedule for the day will need to be adjusted accordingly. So we
12 will go from now till 12.30 today and then we will rise and resume at 2.30 and
13 continue to 4.30.

14 Mr Khan, we were informed that you wanted to speak to the Chamber.

15 MR KHAN: Mr President --

16 PRESIDING JUDGE EBOE-OSUJI: Do we -- we are in open session.

17 MR KHAN: Indeed, and we can stay in open session.

18 Mr President, I'm grateful for the time. It's -- we received some very sad news, tragic
19 news, from Kenya this morning that the Al-Shabaab terrorist group has committed
20 another terrorist act taking 36 Christians, mainly Christians, in a quarry on the border
21 of Kenya, in Mandera, and executing them. Indeed, there are reports coming in,
22 seems to suggest some were even executed.

23 Your Honours, be that as it may, it is another very vile terrorist attack only ten days
24 after 28 officers, who were serving in the administration police in the Republic of
25 Kenya, were also executed in this most heinous fashion.

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1 Your Honour, Mr Ruto, of course will continue to comply with any orders of the
2 Court and your Honours if you require him to attend tomorrow, he will be here, but,
3 your Honour, the application is that, given the severity of this attack and it's coming
4 so close on the heels of another very organised and barbarous attack against officers,
5 his presence is required in the Republic of Kenya to try to protect the citizens of that
6 country and to ensure that the --

7 PRESIDING JUDGE EBOE-OSUJI: So you are applying for his excusal?

8 MR KHAN: Your Honours, indeed.

9 PRESIDING JUDGE EBOE-OSUJI: All right.

10 MR KHAN: I'm asking for the excusing of Mr Ruto. Your Honours he will be here
11 otherwise.

12 PRESIDING JUDGE EBOE-OSUJI: All right. One second. You can sit.

13 Any observations from the Prosecution?

14 MR STEYNBERG: Your Honours, obviously the Prosecution obviously condemns
15 these attacks as well and exceptionally in these circumstances we do not object.

16 PRESIDING JUDGE EBOE-OSUJI: Thank you.

17 (Trial Chamber confers)

18 PRESIDING JUDGE EBOE-OSUJI: The excusal is granted.

19 MR KHAN: Mr President, your Honours, we're most grateful.

20 PRESIDING JUDGE EBOE-OSUJI: We will now proceed with the testimony of the
21 witness.

22 Mr Garcia, we are in public session.

23 MR GARCIA: Yes, your Honours. I do believe that we ended yesterday's session
24 in public as well, so I'll continue in public for the moment.

25 PRESIDING JUDGE EBOE-OSUJI: Thank you.

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1 WITNESS: KEN-OTP-P-0658 (On former oath)

2 QUESTIONED BY MR GARCIA: (Continuing)

3 Q. Good morning, Mr Witness.

4 A. Good morning.

5 Q. Now, Mr Witness, when we left off yesterday you were speaking to us about
6 having gone to Langas to the house of person number 20. Now, can you tell us what
7 if anything you observed in Langas while you were there. Remember the five
8 seconds.

9 A. Excuse me, I don't have the papers right in --

10 Q. If not, we have an extra one here.

11 MR KHAN: Your Honours, I can assist my learned friend if he wishes to have our
12 second copy.

13 MR GARCIA: I'm very grateful. Thank you.

14 Q. Now, Mr Witness, my question was what happened? What did you see in
15 Langas while you were?

16 A. On which date?

17 Q. When we left off yesterday you said that you had left from Eldoret to the house
18 of person number 20 in Langas?

19 PRESIDING JUDGE EBOE-OSUJI: The witness was asking on which date?

20 MR GARCIA:

21 Q. Do you remember, Mr Witness, on what date that was?

22 A. Okay. I can't remember if it was on 1st.

23 Q. So I understand it would have been 1 January --

24 A. Yes.

25 Q. -- is that correct? Now, do you remember what happened on that day while

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1 you were in Langas?

2 A. Yeah, around afternoon, maybe at 2, we heard some cries from a certain
3 direction of -- from another direction. There were people who were coming, chasing
4 some people, coming direction of town, and we just went out to find out what is
5 going on.

6 Q. And what did you see?

7 A. What I could believe it -- there were so many groups of people coming,
8 following some people, including some women, and on reaching almost highway
9 from Kapsabet to Eldoret, not far from -- yeah, the highway, and then could hear
10 some commotions and then group of people. Somebody was catch up by the
11 attackers.

12 Q. When you say somebody was catch up, they were caught up by the attackers?

13 A. Yes.

14 Q. And the attackers from what you -- what you could see, could you tell us what
15 ethnicity they were?

16 A. Because it was coming from the directions where the Kalenjin community
17 would fight, in the site of Kapsaret areas.

18 Q. Okay. So because they were coming from the direction of Kalenjin, did you
19 mention a town or a village?

20 A. Area called Kapsaret areas.

21 Q. From Kapsabet?

22 A. Kapsaret.

23 Q. Can you spell that for us?

24 PRESIDING JUDGE EBOE-OSUJI: It's already spelt on the record, Kapsaret.

25 MR GARCIA: Thank you.

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1 Q. So, Mr Witness, because they were coming from this direction, from the
2 Kapsaret area, what ethnic group do you think they belonged to?

3 A. Mostly Kalenjin Nandis.

4 Q. Now, do you recall, Mr Witness, if these people that chasing these -- these other
5 people if they were armed? Did they have any weapons?

6 A. Yes, they were having, like, something like machetes and arrows of course at
7 their back, and this group who were -- chase I think from the same area of the town
8 called Yamumbi areas and part of the town. They were coming closer, maybe they
9 were targeting police stations of the Langas.

10 Q. Now, just to be clear on this last response of you, the people that were -- that
11 were being chased you say were from what area?

12 A. Area of Yamumbi and part of the border of Langas and -- and town -- and, yeah,
13 Kapsaret areas.

14 Q. Do you know of what ethnicity they were, these people that were being chased?

15 A. Mostly were Kikuyus and other tribes like Kisiis and -- but in -- in other -- other
16 tribes are not so much in numbers but also Kisiis and also Kambas.

17 Q. Can you tell us roughly how many people were chasing these -- these people?

18 A. No, it was scattered so you cannot count. Scattered from all over.

19 Q. And what happened? What did you see?

20 A. Some -- a woman of least 40 -- or, I cannot -- was caught because she was
21 not -- be able to run fast because she was pregnant, I think so.

22 MR KHAN: Mr President --

23 PRESIDING JUDGE EBOE-OSUJI: The word at line 13 is that scattered?

24 MR GARCIA: Yes, your Honour, it is.

25 PRESIDING JUDGE EBOE-OSUJI: In two places.

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1 MR GARCIA: Yes, indeed. At line 16 as well.

2 PRESIDING JUDGE EBOE-OSUJI: All right. So the word "guarded" should be
3 changed to "scattered". All right, proceed please.

4 MR GARCIA:

5 Q. Now, you said --

6 MR KHAN: Mr President, I do apologise. It would be very helpful -- at page 5,
7 line 15, the witness talks about "we" and, your Honour, using the PIS it would be
8 helpful to have clarity before we move on who are the "we" that are being referred to.
9 And, as I said, the witness of course can be invited to look at the PIS.

10 MR GARCIA: I can ask that question, your Honour. I just want to continue with
11 the narrative and I'll ask him the question, clarify for Defence counsel.

12 Q. Now, Mr Witness, what did you -- what happened? What did you see?

13 A. After a women was catch up and then she was being questions.

14 Q. So just before we continue, so this woman was -- the attackers caught up to her;
15 is that what you're --

16 A. Yes.

17 Q. -- you're saying?

18 A. Yes.

19 Q. So that it be clear for the record because you said a woman was catch up. And
20 then you said that she was being questioned. Who was questioning her?

21 A. Of course before we -- before I reach there and some of other people, and then
22 by the time we reach there there was -- she was still ask -- asked questions. I don't
23 know what kind of questions.

24 Q. Who was questioning her?

25 A. These attackers anyway.

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1 Q. And were you able to hear the type of questions they were asking her?

2 Remember the five seconds.

3 A. I cannot remember, but I cannot -- I could not hear because it was -- it was just
4 going that directions and then hear some words, but you could not -- if she was being
5 asked I would not -- I cannot know.

6 Q. Now, did you personally see what happened to this woman?

7 A. Yes, she was killed after that, after that -- after that questioning, but according to
8 the message I get from there immediately, so she was asked that if -- because
9 under -- she deliver a baby on the spot, and then the baby was a baby boy, then
10 said -- then they were said that this must another Mungiki.

11 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, if you looked at line 16 of page 7, the
12 word appearing there "cut", C-U-T, is that -- was that where it's supposed to occur, or
13 should that be "caught".

14 MR GARCIA: I think either could apply, but I can ask the --

15 PRESIDING JUDGE EBOE-OSUJI: I know that.

16 MR GARCIA: -- I think, but I can ask the witness the question, your Honours --

17 PRESIDING JUDGE EBOE-OSUJI: All right.

18 MR GARCIA: -- and he can clarify.

19 PRESIDING JUDGE EBOE-OSUJI: Okay.

20 MR GARCIA:

21 Q. Mr Witness, just before when I asked you initially what happened, what -- what
22 you saw, you said some -- a woman of at least 40 -- or, I cannot -- and you said
23 was -- and what we have here on the transcript is "... was cut because she was
24 not -- be able to run fast..." Was it cut or caught that you --

25 A. Caught by the group.

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1 Q. As in caught up? Caught by the group?

2 A. Yeah -- no, no, before --

3 PRESIDING JUDGE EBOE-OSUJI: As the past tense of catch?

4 THE WITNESS: Yes.

5 PRESIDING JUDGE EBOE-OSUJI: That's what you meant to say?

6 THE WITNESS: Yes, yes, yes.

7 PRESIDING JUDGE EBOE-OSUJI: Okay.

8 MR GARCIA: Thank you for that, your Honour. So caught.

9 Q. All right. I'm interested in knowing what you -- what you saw happen with
10 this lady personally. You, yourself, what did you see?

11 A. When I reached there she was already down and sitting down and making
12 some noises and, according to what -- before I reach there, then the -- I could see her
13 sitting down and then just stay back to -- to see what is going on, and then in a few
14 seconds I understand she deliver a baby, and then also after these warriors confirm
15 that she is a boy and then they said that "We don't want any other Mungiki around
16 here."

17 Q. All right. Now, did you see all of this yourself?

18 A. Yes, it was something which happened in a few seconds and -- because, yeah,
19 we say -- I see it, some of the things happening.

20 Q. When you say -- you said that when you arrived there she was already down on
21 the floor. Was she injured or not at that point?

22 A. I think she was not. She fall down on -- herself because of tiredness of running,
23 at least, and then she was pregnant. I think she was almost collapsed also because
24 of --

25 Q. All right. So she's on the ground. Did you say that she delivered a baby as

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1 well?

2 A. Yes.

3 Q. While there on the ground, is that -- is that your testimony?

4 A. Yeah, but I cannot confirm how she delivered because I could not see her
5 delivering, but of course the baby was seen later after that.

6 Q. And what happened after that? I understand she's on the ground and she
7 delivers a baby. What happened?

8 A. Then the baby was killed on the spot because she was a -- it was a -- because he
9 was a boy, and after that then the mother was also killed on the spot.

10 Q. Can you tell us how they were killed?

11 A. Cutting them.

12 Q. They were cut with what? Remember the five seconds.

13 A. Machete or panga.

14 Q. And who cut them? Who killed them?

15 A. I cannot confirm who exactly, but -- but I saw it later it was cut, but I cannot
16 confirm who exactly cut it, but the group.

17 Q. And this lady, could you tell us of what ethnicity she was?

18 A. Because the name of Mungiki, must be a Kikuyu.

19 Q. Now in regards to this mention of Mungiki, what did the -- what did the
20 attackers say exactly regarding the baby boy?

21 A. They were saying that "We don't want another Mungiki."

22 PRESIDING JUDGE EBOE-OSUJI: Is it -- so the point being that the witness
23 deduced that the attackers must have taken the woman for a Kikuyu? Isn't that
24 essence of the testimony?

25 MR GARCIA: That's my understanding, your Honour.

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1 PRESIDING JUDGE EBOE-OSUJI: Yes. Okay.

2 MR GARCIA:

3 Q. Now, Mr Witness, the -- the attackers were speaking in what language when
4 they were saying this?

5 A. Kalenjin.

6 Q. And what happened after this, Mr Witness? What did you do?

7 A. Just disappear back to where I was staying.

8 Q. And afterwards, what did you do? Did you at any time return back to Eldoret?

9 A. No, we -- I stay at house number 20 for about the next -- until the second day of
10 the month -- until 3 January.

11 Q. Now, during this period of time from 1 January to 3 January 2008, did you at
12 any point listen to the radio?

13 MR KHAN: Mr President, sorry, we're moving clearly into another area and my
14 learned friend had promised to try to clarify who is the "we" that was referred to --

15 PRESIDING JUDGE EBOE-OSUJI: Indeed. Indeed.

16 MR KHAN: -- in relation to the earlier incident.

17 MR GARCIA: Indeed, your Honour.

18 PRESIDING JUDGE EBOE-OSUJI: That was the promise.

19 MR GARCIA: I can clear that up. I did undertake that. I thank Defence counsel
20 for reminding me.

21 Q. Now, Mr Witness, you mentioned at one point -- a couple of times you
22 said -- you said "we". Were you there with other people and if -- if so is the case can
23 you indicate their numbers on the PIS sheet?

24 A. As I have clear said that the group of people, yeah, whom we were together, it's
25 just a group of people. I cannot name them. Not even in this -- in the list. And

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1 just a few people because a group of people were standing on the way

2 along -- next -- not far from Eldoret Showground.

3 Q. All right. And just to be a little bit clearer, more specific, is there anybody

4 who -- here who appears on this list that you were with while seeing all these events

5 who was with you --

6 A. No.

7 Q. -- while these events occurred?

8 A. No.

9 Q. All right, Mr Witness. So then I'll go back to my last question. From 1 to
10 3 January 2008, did you at any time listen to the radio?

11 A. Not really so much because I was really in a scare mood I was also being
12 worried about what is taking place, that I could not listen, but maybe I could watch
13 the TV.

14 Q. I'll just go through the days. On 1 January 2008, do you recall having listened
15 to the radio on that day? Take your time if necessary.

16 A. I can't remember very well if I -- I listened to the radio.

17 Q. How about on the 2nd or on 3 January?

18 A. I was continuing listening to the -- viewing the TV and watching what is going
19 on all over and I could also listen to the TV and could hear Honourable William Ruto
20 in Nairobi at the tallying centre in KICC. At a particular time he was quoting one of
21 the person - returning officer from Molo - that he has given them indication that the
22 rigging was taking place there.

23 Q. I understand that that's what you would have heard on the television, but my
24 question is more specifically if you had heard the radio. Did you hear the radio
25 during those days?

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1 A. Yes, I could listen to the radio some other time, also the time in the evenings.

2 Q. What radio station would you listen to?

3 A. I could listen to radio Kass FM. And also Citizen radio.

4 Q. All right. Now in regards to Kass FM, do you remember what, if anything,
5 was being said on Kass FM on these days, first days of January 2008?

6 A. Of course there was some information about the violence, how it is taking place,
7 and also the way I could hear -- there was some messages that -- coming up that how
8 things are going on in different places. They were --

9 Q. All right. You said that there was some information about the violence and
10 messages that come -- coming up on how things were going on in different places.
11 Who was -- who was giving out these messages on Kass FM? Who was talking?

12 A. I could hear some -- Joshua sometimes saying that -- telling people to -- to take
13 care, to start step aside because he could understand that from inside source that
14 police will use live bullets, so they were -- he was telling them sometimes not to -- to
15 go directly to the -- where the site he could mention, that maybe they will be killed, so
16 they should step aside from that side otherwise they will be killed because the police
17 have decided to kill -- to use live bullet or to kill on the spot.

18 Q. Now, just at the start of your response you said, correct me if I'm wrong, but I
19 could hear "Joshua." Are you speaking about Mr Joshua Sang?

20 A. Yes.

21 Q. And you said that you could hear sometimes saying -- saying to people to
22 take -- to step aside and you're saying that he could understand from inside source
23 police could use live bullets. Can --

24 A. Yes.

25 Q. I'd like you to just explain that to the Court. Take your time. What is it that

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1 Mr Sang was saying exactly?

2 A. He was talking in Kalenjin informing the -- could know the spot where the -- the
3 killing is taking place and could know that the police is around that area and he told
4 the people, the youths to step aside or just to step aside because the police will use
5 live bullets against them and they will be killed.

6 Q. You say that he could understand from inside source the police could use live
7 bullets. What -- you're understanding what -- what inside source?

8 A. Maybe get the message from the police, some source from the police or security
9 operators.

10 Q. Now, you say that he was telling this to the youth. Was it in relation to specific
11 areas or regions or towns? Did he mention any of that? Just wait the five seconds.

12 A. I could hear some places in (indiscernible) in our area called Silas in Eldoret.

13 PRESIDING JUDGE EBOE-OSUJI: Witness, when you said he would -- that Mr Sang
14 would tell people to, you used the words "step aside" from places where the police
15 might use live bullets, what did you understand him to be saying by telling people to
16 step aside?

17 THE WITNESS: To just decide to stay behind from the place whom according to
18 Sang knows that if they continue attack there, then the police will catch them and kill
19 them because the police had decided to use the live bullet by then.

20 PRESIDING JUDGE EBOE-OSUJI: By staying behind, do you mean to go there or
21 not to go there?

22 THE WITNESS: Not to go there.

23 PRESIDING JUDGE EBOE-OSUJI: Pardon me?

24 THE WITNESS: Not -- by the time they were there and then they tell them just to
25 retreat to not to go further, otherwise they will be killed.

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

2 Mr Garcia, you can ask follow-up questions from that.

3 MR GARCIA: Thank you, your Honours.

4 Q. Now, Mr Witness, to your understanding, why was Mr Sang putting out this
5 message to the youths at that time?

6 A. He was specifically saying that he had information that police will use now live
7 bullets so they have to take care.

8 Q. And to your understanding, why was he putting out this message? Why was
9 Mr Sang telling the youths to take care to watch out for the live bullets? Remember
10 the five seconds.

11 A. Because he had information that people will be killed, so he was trying to save
12 them.

13 PRESIDING JUDGE EBOE-OSUJI: See what I'm trying to understand, Mr Garcia,
14 and Witness too, is whether the message, according to you, would mean people, you
15 can go there, but be careful because there will be live bullets, or people, there are live
16 bullets, do not go there at all, or any of those combinations. I'm giving you certain
17 options. It may be that there are other things also involved in the message as you
18 understood it. Can you help me understand better?

19 THE WITNESS: According to my understanding, he was aware that the youths
20 were still on the attack area and he could inform them so that if the police will catch
21 up on them, they will kill them, all of them, so he was trying to tell them if
22 whatever -- if they are still continuing doing, by that time they should step aside.

23 MR GARCIA:

24 Q. Now, you said that one of the areas was Silas in Eldoret. What was going on in
25 Silas at that -- at that time when mister -- Mr Sang was putting out this message on

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1 Kass FM?

2 A. I was not there, but according to me, that he was -- I think he was sure that some
3 youths were still going towards there because that area is neighbouring Munyaka.

4 Q. And this area -- this area Silas is -- the residents of it are of what ethnic group?
5 I understand that it's neighbouring Munyaka?

6 A. Mixed Kikuyus and Kalenjins.

7 Q. Now, I understand that you weren't there at that point in Silas, but did you have
8 any information as to what was going on there at that time? Remember the five
9 seconds.

10 A. I'm saying that personally I didn't go there.

11 Q. We understand that, but did you have any information on what --

12 MS BUISMAN: Asked and answered.

13 MR GARCIA: I'm trying to clarify a matter with the witness, your Honours, just
14 simply --

15 PRESIDING JUDGE EBOE-OSUJI: Objection overruled.

16 MR GARCIA:

17 Q. Mr Witness, did you have -- I understand that you were not there and
18 everybody in the courtroom knows that, but did you have any information at the
19 time --

20 PRESIDING JUDGE EBOE-OSUJI: No, we do not know that. Not everybody in the
21 courtroom knows that. Just ask the question, please.

22 MR GARCIA:

23 Q. Mr Witness, do you know what was happening at that time in Silas when
24 Mr Sang was putting out this message?

25 A. I can say this, but I was not there, and as I say that I didn't go there after, but

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1 I think -- I am not sure what happened next, but I didn't make any follow-up after
2 that.

3 Q. Just to be clear, you didn't make any follow-up as to Silas?

4 A. Yes.

5 Q. Now, apart from Silas, were there any other areas that were mentioned by
6 Mr Sang?

7 A. Also along the highway of Nairobi-Eldoret at Cheptiret area.

8 Q. What did he say about the Cheptiret area?

9 A. Also the same, the same word as the other one of Silas.

10 Q. Can you tell us to us for the record just so it's clear?

11 A. He was telling the youths to move away from the highway because police now
12 are around that area and you might be killed because a few there -- a few -- you might
13 be killed, that's what he was saying.

14 Q. And Cheptiret, can you tell us what ethnic groups are resident of this area?

15 A. Kalenjins.

16 Q. Now, were there other areas that were mentioned by Mr Sang?

17 A. By then I cannot remember.

18 Q. Now, do you have any information on what was occurring near Cheptiret at
19 that time when Mr Sang was putting out these messages on Kass FM?

20 A. People were blocking road and actually they were -- there were some -- many
21 things which are taking place. People are removed from the buses and -- yeah, and
22 even the -- I understand the -- but I don't know how he was killed, a district officer
23 was killed around that area, and some two police officers.

24 Q. You said that some people I understand are removed from the buses. They
25 were removed from the buses?

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1 A. Yes.

2 Q. People of what -- can you just explain to us what happened exactly with these
3 buses?

4 A. They block the road, highway, could see that if there is any passenger who
5 might be Kikuyu ethnicity.

6 Q. Who was blocking the highway?

7 A. Warriors.

8 Q. And you mention warriors. They're of what ethnicity?

9 A. Kalenjins.

10 Q. I think you said Kalenjin for the record.

11 And what is it that would happen if any passenger might be of Kikuyu ethnicity?

12 And wait five seconds.

13 A. As I have said, I can't -- I don't have any incident that happen that maybe
14 Kikuyu was (indiscernible), but I understand that he was being removed and
15 supposed to be killed, but I don't have any -- any records of that kind.

16 Q. Now, Mr Witness, I'd like to just move on to what happened after you left. I
17 understand that you were in Lngas. What did you do afterwards? I think we left
18 off at 2 or 3 January.

19 A. At the same day, the 1st, around 4 or what -- somewhere there, there is a group
20 of people trying to demonstrate demanding for peace in town and it was in the same
21 area of Lngas. Those were Luo community. They are trying to see that now they
22 wanted peace by then.

23 PRESIDING JUDGE EBOE-OSUJI: Did you mention the time of day? Did you
24 say -- you said around --

25 THE WITNESS: 4.

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1 PRESIDING JUDGE EBOE-OSUJI: 4?

2 THE WITNESS: Yes.

3 PRESIDING JUDGE EBOE-OSUJI: Thank you.

4 MR GARCIA:

5 Q. Now, Mr Witness, I'm more interested in what happened afterwards.

6 You --we had arrived on 3 January I believe. What did you after 3 January and
7 onwards?

8 A. On 3 January I went to Kapsabet.

9 Q. Why did you go to Kapsabet?

10 A. I understand there was announcement that there will be a peace -- that the
11 prayer kind like that meetings to and demonstration to demand the rights of
12 whatever, so I went there because (Redacted).

13 Q. Okay. You said to demand the rights of whatever. They were
14 demanding -- it's a demonstration --

15 A. That it --

16 Q. Just wait, wait until I finish. There was a demonstration to demand the rights
17 of what exactly?

18 A. To make sure that Kibaki leaves the State House for Raila, their right also.

19 Q. And when to your recollection did this -- this demonstration occur? On what
20 day, if you can remember that?

21 A. It was on 3 January 2008.

22 Q. Did you personally attend this demonstration?

23 A. Yes, I went there as -- just observing, but I didn't participate in the
24 demonstration, but I was there.

25 Q. And where did the demonstration occur at?

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1 A. It started in the place called -- within Kapsabet town, but it started in a place
2 called Kamobo and later at Kipchoge Stadium.

3 Q. Can you spell for us the place in -- where it started?

4 A. Which place?

5 Q. You mentioned --

6 A. Kamobo?

7 Q. Is that K-A-M-O-B-O?

8 A. Yes. Yes.

9 Q. Now, just -- just try and wait the five seconds, Mr Witness. Just remember,
10 look at the red light on my microphone. When it goes off - I think yesterday we
11 were doing fine - just count five seconds and then -- and then you can respond.
12 Otherwise it's going to be become difficult.

13 So I understand that and just for the record it was in a place called -- and then it
14 finally was held in Kipchoge Stadium; is that correct?

15 A. Yes.

16 Q. So it's K-I-P-C-H-O-G-E?

17 A. Yeah.

18 Q. Is that the correct spelling?

19 A. Yes.

20 Q. Can you tell us approximately how many people attended this -- this
21 demonstration?

22 A. I cannot. Thousands. I cannot know how many, but it's a large group
23 anyway.

24 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, is there an I in Kipchoge? I don't
25 think there is, in choge?

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1 MR GARCIA: No, no. There is no second I, your Honour.

2 PRESIDING JUDGE EBOE-OSUJI: Yes.

3 MR GARCIA: I didn't -- if I did pronounce the second I, then I misspoke, but I don't
4 think I pronounced --

5 PRESIDING JUDGE EBOE-OSUJI: Yes, it's K-I-P for Kip and choge is C-H-O-G-E.

6 MR GARCIA: Indeed, your Honour. I thought I -- if I did, then I misspoke and I
7 apologise.

8 PRESIDING JUDGE EBOE-OSUJI: It's all right. Okay.

9 MR GARCIA: Now, we would like to have the floor to show a video to the witness,
10 a certain extract. And just for the record the video which we'd like to play for the
11 witness and we're going to be playing certain extracts from, it's KEN-OTP-0026-4596.
12 It already has an EVD. It's EVD-T-OTP-00024. The transcript is at binder number 3
13 and it's tab 51. The translation at binder 3, tab 52. Both the transcript and the
14 translation also have EVDs, EVD numbers.

15 Now the first time stamp that I'd like to show to the witness is time stamp 5.15 to 5.24.

16 At the translation is just basically a screen so you'll not see much in the translation,
17 but for the record the translation is at 0080-0064 at 0068, lines 97 to 102, and the
18 transcript -- the corresponding transcript is 0080-0029 at 0032, lines 94 to 99.

19 If we could play that brief extract, 5.15 to 5.24, to the witness. We'll be doing that
20 right now.

21 (Viewing of the video excerpt KEN-OTP-0026-4596)

22 MR GARCIA: We're just going to replay that.

23 (Viewing of the video excerpt KEN-OTP-0026-4596)

24 MR GARCIA:

25 Q. Now, Mr Witness, you've seen and heard that --

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1 A. I didn't -- I didn't see anything.

2 Q. You did not see anything?

3 A. No.

4 MR GARCIA: Thank you, court officer.

5 PRESIDING JUDGE EBOE-OSUJI: Can you see it now? Can you see a video?

6 THE WITNESS: I can see the pictures, yeah.

7 PRESIDING JUDGE EBOE-OSUJI: You can see the pictures now is still? All right.

8 MR GARCIA: So we'll go through that again. We're playing time stamp 5.15 to
9 5.24.

10 (Viewing of the video excerpt KEN-OTP-0026-4596)

11 MR GARCIA:

12 Q. Now, first of all, Mr Witness, you've seen the extract. Can you confirm or not
13 whether this is something that you saw on that day in Kapsabet?

14 A. Yes, this is the same.

15 Q. And can you tell us exactly what we've seen in that extract? Remember the
16 five seconds.

17 A. I see what is exactly played in the video.

18 Q. And just for us here in the court, what is that? What are the people -- what is
19 that chanting?

20 A. They were just singing a traditional song which is meant for actually
21 for -- during circumcision, but because of that event of -- it's like a war. When
22 people sing outside the circumcision days and then it have something meaning which
23 mean people are now complaining.

24 MR GARCIA: Your Honours, I'd ask that we go into private session just for a
25 minute.

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1 PRESIDING JUDGE EBOE-OSUJI: Private session.

2 *(Private session at 11.23 a.m.) Reclassified as Open session

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

4 MR GARCIA:

5 Q. Now, Mr Witness, you're saying during circumcision. Circumcision of
6 what -- what ethnic group?

7 A. Kalenjin.

8 Q. (Redacted)

9 A. (Redacted)

10 Q. Now, you're saying it's a traditional song. You also said that it's like a war
11 when people sing outside the circumcision days. I want you to explain that clearly
12 to the Court. What do you mean it's like a war if it's --

13 A. This song is always meant for some specific young people singing, but I cannot
14 talk much about that, I can -- it's prohibited, but it's always sing when it is supposed
15 to be during the circumcision, when the -- singed by youths in the -- when they were
16 in the bush, but it's not meant for the people to sing outside. But now it was meant
17 to incite the youths, the people to be ready for war at that particular day.

18 MS BUISMAN: Sorry, is there a reason this is in private session rather than public?

19 PRESIDING JUDGE EBOE-OSUJI: It's all right. We can proceed. How long do
20 you want to -- you said for a little while -- sorry, you said for just a minute. I forget
21 the reference to time you had indicated.

22 MR GARCIA: Your Honour --

23 PRESIDING JUDGE EBOE-OSUJI: Have we passed it now?

24 MR GARCIA: Yes. I just said one minute because of the subject matter, obviously.
25 Yes, we can go back into public now.

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1 MR KHAN: And, Mr President, while that's being done perhaps we don't delay
2 matters, but there's some interference, background interference, on the headphones.

3 PRESIDING JUDGE EBOE-OSUJI: Yes, I can hear it. It's probably some
4 electronic --

5 MR KHAN: Indeed.

6 PRESIDING JUDGE EBOE-OSUJI: -- statics happening. We will see.

7 Open session now.

8 (Open session at 11.25 a.m.)

9 THE COURT OFFICER: We're in open session, Mr President.

10 MR GARCIA:

11 Q. Now, Mr Witness, this specific song -- I just want to clear up things on the
12 record, but this specific song, if I understand you correctly, is it only sung normally
13 within -- during the circumcision, Kalenjin circumcision?

14 A. Yes.

15 Q. Is that --

16 A. Yes.

17 Q. Is that your testimony?

18 A. Yes.

19 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, had there been a song? You played a
20 clip. Was that the song? Maybe we can hear it again, the clip you played.

21 MR GARCIA: A sort of chant, I imagine, your Honour. We can play it again.

22 PRESIDING JUDGE EBOE-OSUJI: Yes, please.

23 (Viewing of the video excerpt KEN-OTP-0026-4596)

24 PRESIDING JUDGE EBOE-OSUJI: Was it what you had in mind that was being
25 described as a song? I realise you had the first -- moved the scrubber further along

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1 in the video.

2 MR GARCIA: I'm taking the song part from the witness's answer at 25 --

3 PRESIDING JUDGE EBOE-OSUJI: All right.

4 MR GARCIA: -- 5. They were just singing a traditional song. This is how the
5 witness himself has described it, your Honour.

6 PRESIDING JUDGE EBOE-OSUJI: Witness, what we just heard, was that what you
7 were describing as a song?

8 THE WITNESS: Yes, sir. Yes, your Honour.

9 PRESIDING JUDGE EBOE-OSUJI: All right. Thank you.
10 Please proceed.

11 MR GARCIA: Thank you, your Honour.

12 Q. Mr Witness, just for the record, I'd like to know this song, can it be sung or can it
13 be chanted outside of a Kalenjin circumcision? Wait for the five seconds to respond.

14 A. Yes, it can be sung, but when -- when there is some action, a big complaint that
15 people might have or mean the people preparing to do something like a fight or
16 demand something they need so that song could make them -- rally them together,
17 make them become emotional or do that, because that song actually is for men who
18 were from -- who have been circumcised, circumcision ceremony

19 Q. And you say "... but now it was meant to incite the youth"?

20 A. Yes.

21 Q. "... the people to be ready for war."

22 A. Mm-hmm.

23 Q. What -- explain that to the Court. How was it meant to incite the youth?

24 A. Actually, during that day of 1st -- of 3rd, it was still kind of preparations to -- to
25 demand at that particular moment to evict Kikuyus from the -- their soil of Kalenjin.

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1 MR KHAN: Mr President, I think in fairness, and this is something I've alluded to
2 before, the witness gives different versions of an answer. And it's only fair to look at
3 the answer given at page 28, line 6 in relation to this song that it can be sung, and I
4 quote, "It can be sung when there is some big action, a big complaint that people have
5 or mean the people preparing to do something like a fight or demand something."
6 Your Honours, simply to latch on to an convenient word of incitement is perhaps not
7 a fair representation and even in -- even in examination-in-chief, particularly in
8 examination-in-chief fairness should be the order of the day.

9 So, your Honours, that's the basis of my objection. Out of fairness to the witness, the
10 full answer should be put and his explanation elicited.

11 PRESIDING JUDGE EBOE-OSUJI: Objection overruled. Let's see how it goes. If
12 Mr Garcia at the end of his examination-in-chief hasn't cleared up what's bothering
13 you, you can take it up in cross-examination, but I think we can all agree that what we
14 heard was a chant rather than a song.

15 Does it matter if it's described as a song or as a chant, Mr Garcia?

16 MR GARCIA: I think the important thing is to stick with what the witness has
17 described it as. He sees it as a song and this is his --

18 PRESIDING JUDGE EBOE-OSUJI: We may be -- I'm not sure to what extent -- how
19 much further you want to push that argument you just made because of the word in
20 English that this witness has used must control the view of his testimony.

21 MR GARCIA: Your Honours, I think we can -- we can agree obviously that's it's
22 more of a chant, but the witness used "song" and that's why I've been referring to --

23 PRESIDING JUDGE EBOE-OSUJI: All right.

24 MR GARCIA: -- traditional song so as not to confuse or mislead the witness on this.

25 MR KHAN: Mr President, just for the record, we agree with your Honour that this

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1 is properly described as a chant. Of course, the portion of the video in due course
2 may be in evidence, but for the accuracy for the transcript we agree with your
3 Honours' characterisation.

4 MR GARCIA: I'd like to play another extract to the witness. Just for the record,
5 we're going to be playing time stamp 5.56 to 6.10.

6 (Viewing of the video excerpt KEN-OTP-0026-4596)

7 MR GARCIA:

8 Q. Now, Mr Witness, you've seen and heard that second extract. Can you
9 describe to the Court what it is that we've seen and heard there? Remember the five
10 seconds.

11 A. Still the same song. They are still continuing with the same chanting anyway,
12 the song which is sing.

13 Q. Just for the record, what is this song that they're continuing to chant?

14 A. Same circumcision song.

15 Q. Now, Mr Witness, I understand, just to be clear on this matter, were you there
16 when they were -- when they were singing or chanting this -- this traditional song?
17 Did you witness this?

18 A. Yes, your Honour.

19 Q. Now, can you tell us what, if any, was the effect on the people that were there
20 chanting it? Remember the five seconds.

21 A. Ask the question again. You say what is the effect of what?

22 Q. Did it have any effect on the people that were there the chanting of this?
23 Remember the five seconds.

24 A. In fact, the song is actually -- was meant to create emotion and it can create to
25 everybody. It's like any -- even a Christian song you can sing sometimes to -- to

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1 make you feel like you're -- you feel (indiscernible). This creates some emotions.

2 Q. Now, you were there, Mr Witness. Did it or did it not create emotion amongst
3 the people who were chanting it. Remember the five seconds.

4 A. It did. Of course it did. It creates emotion.

5 Q. What kind of emotion?

6 A. People were become more -- more of a -- a (indiscernible), want a fight, yeah.
7 They create such -- such a -- become like an -- people are so incited through such a
8 kind of songs.

9 MR KHAN: Mr President, I think the more proper question would be what, if any,
10 emotion did this song create in you, rather than seeking to get a response in relation
11 to any effect it had on any people. If to the extent the witness speaks to that, of
12 course we have the video and maybe the video will be the best evidence but, your
13 Honour, it should be elicited, why, what was the manifestations of that, your
14 Honours, otherwise it really is of very limited forensic utility, there's no basis for that
15 assertion.

16 MR GARCIA: Your Honour, the witness was there. He can testify as to what he
17 saw. And if Defence counsel wants to broach the question through other angles they
18 will have their chance through cross-examination.

19 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia may proceed with the questioning in
20 that way.

21 MR GARCIA:

22 Q. Now, you're saying, Mr Witness, that people were becoming more -- we didn't
23 hear the word. They were becoming more what?

24 A. I'm saying more emotion.

25 Q. And you said more of a -- more of want to fight. What are you trying to tell

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1 us?

2 A. Yes, I want to tell you that there are some words in Kalenjin which make people
3 to be prepared. It's like -- to prepare any kind of youth or to prepare any group of
4 the people who were actually demanding anything to be strong in demanding it.

5 Q. And this mention you made of wanting to fight, where does that come in?

6 A. People to be prepared for any -- anything that coming ahead of them.
7 Especially during that time it was about demanding their rights of -- of where to get
8 their rights because they say haki -- haki yago (phon) -- haki yao. That's their rights
9 of stolen votes.

10 Q. Thank you, Mr Witness, for that. Now, I'd like to go to 7.24.

11 PRESIDING JUDGE EBOE-OSUJI: He did use an expression. It's on the transcript
12 haki something.

13 MR GARCIA: Thank you. I'm grateful, your Honour.

14 Q. Mr Witness, you say they -- in response to my question to get their rights
15 because they say something that's their rights. What word did you use?

16 A. Haki yao. Their rights. Their -- it were using the haki yetu in Swahili.

17 PRESIDING JUDGE EBOE-OSUJI: Haki yao?

18 THE WITNESS: Yes. Their rights.

19 PRESIDING JUDGE EBOE-OSUJI: Can you write it and spell it please. We want to
20 get it on the record. Can you spell it for us.

21 THE WITNESS: I can spell it but I don't have pen or neither piece of paper.

22 Okay.

23 PRESIDING JUDGE EBOE-OSUJI: Yes, can you spell it please.

24 THE WITNESS: H-A-K-I and then yao is Y-A-O.

25 PRESIDING JUDGE EBOE-OSUJI: H-A-K-I, Y-A-O.

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1 THE WITNESS: Yes.

2 PRESIDING JUDGE EBOE-OSUJI: Thank you.

3 Mr Garcia, proceed please.

4 MR GARCIA: I'd like to go to time stamp 7.24. It's not an extract, it's just to show
5 the image on the screen to the witness to have him identify someone.

6 Actually, your Honours, I'm going to move to another extract. Time stamps 15.11 to
7 15.41. The corresponding transcript is 0080-0029, and that's at tab 51 of bundle 3.
8 So 0080-0029 from 309 to 321, and the translation is at tab -- it's at tab 52 of binder 3.
9 0080-0029 at lines 312 to 329.

10 (Viewing of the video excerpt KEN-OTP-0026-4596)

11 MR GARCIA: I'd like to ask for the assistance of the court officer to give the
12 transcript and the translation to the witness.

13 MR KHAN: Mr President, perhaps firstly he can be given just the original transcript
14 rather than the translation and he can then -- if there are particular -- if anything turns
15 upon it, if there are particular parts that my learned friend wishes to have explained
16 or clarified let's here from the witness first. After that, of course, the OTP transcript
17 can be put to the witness, but your Honours if we're going into language I think he
18 should be given the original Kalenjin or Swahili and the witness can then give his
19 interpretation of that. Later on, of course, we can view that as against the
20 OTP-prepared transcript. I think that's the proper way -- translation. That's the
21 proper way of doing it.

22 Your Honours, we've got -- there may be issues, as we know, regarding translations,
23 so it would be useful to get it from the witness first.

24 MR GARCIA: Your Honour, actually the way we've usually proceeded is to give, if
25 I'm not mistaken, the witness both the transcript and the translation and have him

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1 confirm in court whether or not the transcript and obviously the translation are
2 correct. That's how we've done it. The manner that is being suggested by Mr Khan
3 will, in my opinion, just delay things further.

4 There has been a clarification note that's been given to the Defence regarding certain
5 matters regarding the transcript and the translation of the words that appear, and so
6 the Defence is -- is already advised of the matter. The witness has already looked at
7 this and listened to it once, so I don't see the purpose of hiding the translation from
8 the witness at this point.

9 MR KHAN: Your Honour, one can usage adjectives all in once. I'm not seeking to
10 hide something from the witness. Of course the Prosecution have to prove their case.
11 We're saying that if my learned friend is taking, as he is, the witness to the original
12 words uttered, particularly given the fact that he has given previous evidence
13 regarding his interpretation as to the use of words, we should get his own spin as to
14 any words uttered, any translation, and the meaning given to any words in the
15 original language.

16 After that, of course, your Honours, if my learned friend wishes then to put the OTP
17 translation to the witness they can do so but, your Honours, we have some concerns
18 about the translation. It goes to the credibility of the witness. It goes to his
19 understanding of the Kalenjin language and the English language and his
20 understanding, in addition, to the weight or import of words that are uttered. That
21 is an important part of the Prosecution's narrative with this witness --

22 PRESIDING JUDGE EBOE-OSUJI: All right.

23 MR KHAN: -- and we say it should be conducted in the manner we've already
24 adumbrated.

25 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, the -- a part of what comes out of the

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1 concerns expressed by Mr Khan is that perhaps not all witnesses are able, with equal
2 proficiency, to work straight from hearing the audio and moving straight to the
3 translation of audio they've heard.

4 So some witnesses may be strong enough to do that, but it may have worked well
5 with other witnesses, it doesn't mean we must do that with every witness who comes
6 to Court. There's a specific reason why you want to proceed in this way. This is
7 your examination-in-chief. You can argue it but the Defence are also complaining
8 that the translation may amount to leading questions, in essence, if what was
9 translated was in a different language of course.

10 MR GARCIA: Actually, your Honour, maybe I didn't explain myself clearly enough.
11 What I want to do with the witness is simply have him look at the -- listen to what's
12 being said, have the transcript before him, tell the Court whether the transcript, first
13 of all, first stage is correct. If he has any corrections, then he makes the corrections
14 using the paper that he has before him and write down the words that he's heard, and
15 then afterwards he can tell us by looking at the translation if that is correct. So that is
16 what I meant. I --

17 PRESIDING JUDGE EBOE-OSUJI: All right. Okay. Let's proceed along those
18 lines, that's in a -- basically what Mr Khan is arguing.

19 MR KHAN: Mr President, in that case, I wasn't clear. It's my submission the
20 witness should not be given the translation just yet.

21 PRESIDING JUDGE EBOE-OSUJI: That's -- he's not doing that. Mr Garcia is not
22 doing that --

23 MR KHAN: Your Honour --

24 PRESIDING JUDGE EBOE-OSUJI: -- he's starting with the --

25 MR KHAN: Your Honour, what he is doing is playing the original language with

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- 1 the translation in front of the witness and --
- 2 PRESIDING JUDGE EBOE-OSUJI: No.
- 3 MR GARCIA: I just -- I don't want to interrupt, but --
- 4 PRESIDING JUDGE EBOE-OSUJI: No, no --
- 5 MR GARCIA: -- the translation --
- 6 PRESIDING JUDGE EBOE-OSUJI: Okay, let me --
- 7 MR GARCIA: -- we can keep it aside.
- 8 PRESIDING JUDGE EBOE-OSUJI: All right. Everybody, Mr Khan, it's all right.
- 9 Mr Garcia, proceed please.
- 10 MR GARCIA: So once again we're going to play 15.11 to 15.41 time stamp. Not yet.
- 11 Not yet.
- 12 Q. We'll play that for you, mister -- now, Mr Witness, we're going to be playing an
- 13 extract for you. There's a transcript before you and I'd ask the court officer if he can
- 14 help in this regard. Now it's at -- the transcript is 0080-0021, binder number 3,
- 15 number 51 and it's at page 0039. If that could be opened up for the witness. 0039.
- 16 PRESIDING JUDGE EBOE-OSUJI: Did you say 0021?
- 17 MR GARCIA: It's the -- no. The transcript itself is 0080-0029.
- 18 PRESIDING JUDGE EBOE-OSUJI: 29, yes.
- 19 MR GARCIA: I'm sorry if I misspoke. And the page itself is 0039 and it's lines
- 20 9 -- 309 to line 324, so that's 15.11 to 15.41.
- 21 Q. Do you see that, Mr Witness?
- 22 A. From here?
- 23 Q. From line 309 --
- 24 A. Okay.
- 25 Q. -- it says 15.11 --

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1 A. Okay.

2 Q. -- to line 324, that's 15.41 -- 323, actually. Now, Mr Witness, I'm going to play
3 an exact to you. I want you to look at the -- what written at lines 313, 314 and 320,
4 321. Listen to what's being played and tell us whether the transcript is correct or not.
5 Is that all right?

6 A. Yes.

7 (Viewing of the video excerpt KEN-OTP-0026-4596)

8 MR GARCIA:

9 Q. Now, Mr Witness, if you want, we can -- we can play it over one more
10 time but --

11 A. Okay.

12 Q. Would that be -- yes. So we're going to be doing it one more time.

13 PRESIDING JUDGE EBOE-OSUJI: (Microphone not activated)

14 MR GARCIA: I'm sorry, your Honour, but I don't think microphone is on.

15 PRESIDING JUDGE EBOE-OSUJI: I was asking whether on the frozen frame we
16 have, is that a woman?

17 MR KHAN: And, your Honour, in relation to that --

18 PRESIDING JUDGE EBOE-OSUJI: Just trying to observe.

19 MR KHAN: -- both red and blue, the person in red and next door -- to that person in
20 blue, I think both of those are of interest to that observation.

21 MR GARCIA: It looks like a woman to me. We can ask the witness. Maybe he
22 can -- if it is a question that --

23 PRESIDING JUDGE EBOE-OSUJI: It's all right. I thought the -- all the observers of
24 the screen, so we can move on if that's what you think you've seen. That's what I
25 think I've seen. The witness --

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1 MR GARCIA: I see the same, yes.

2 PRESIDING JUDGE EBOE-OSUJI: Yes. The witness doesn't necessarily need to
3 confirm it. We've seen it. Just to note. Proceed, please.

4 MR GARCIA: Certainly.

5 Q. So we're going to be playing the extract once again for you, Mr Witness.

6 (Viewing of the video excerpt KEN-OTP-0026-4596)

7 MR GARCIA:

8 Q. Now, Mr Witness, you've had the benefit of listening to it twice now. If I direct
9 your attention to lines 313 and 314, are those -- is that transcription correct? Are
10 those words correct?

11 A. It is different from what is -- I can hear from the -- from here. This -- I cannot
12 understand this -- even this language. Those is Kalenjin, but I don't think somebody
13 was -- could not listen very well.

14 Q. Now, the language that's being -- what's being -- what's being spoken, what
15 language is that being spoken?

16 A. This I don't know. Something like ongen morion, I cannot understand that.

17 Q. I understand that, but the person that's -- that's speaking that we hear in the
18 extract, in what language is the person speaking?

19 A. He was speaking Nandi.

20 Q. Okay. So one of the subscribes of Kalenjin language; is that correct?

21 A. Yes.

22 Q. All right. Now do you understand -- do you understand Nandi well?

23 A. Yes, I understand, your Honour.

24 Q. Now, would you be able to write for us on that piece of paper that you have
25 what -- what indeed is being said in that -- in the extract? I understand that

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1 there's -- the person speaks on two occasions. I just want you to deal with the first
2 one, the first things the person says.

3 If you want, we can -- we can have you listen to it one more time so you can put
4 down the words.

5 A. Okay.

6 (Viewing of the video excerpt KEN-OTP-0026-4596)

7 MR GARCIA:

8 Q. Just to help you, Mr Witness, we're going to be playing that -- that extract one
9 more time, the first -- the first words that are pronounced, lines 313 to 314.

10 MR KHAN: Mr President, I'm sorry. I do apologise to my friend for rising once
11 again. Your Honour, the witness has said, as far as I understand it, that "I don't
12 know, I can't understand that. I can't understand the language that's being spoken."
13 Your Honour, is the witness saying he doesn't understand the language that's being
14 spoken on the video or is it the case the witness is saying he doesn't understand
15 what's written in the written transcript?

16 PRESIDING JUDGE EBOE-OSUJI: My --

17 MR KHAN: Before we go further, your Honour, perhaps that should be clear.

18 PRESIDING JUDGE EBOE-OSUJI: Yes.
19 Can you clear that up?

20 MR GARCIA: Your Honour --

21 PRESIDING JUDGE EBOE-OSUJI: I have certain view of what I thought the witness
22 meant, but it's better for you to clear it up once and for all.

23 MR GARCIA: I can already say to the Court that it's the latter, is that the witness
24 doesn't understand what's written there.

25 Q. But, Mr Witness, when you said you couldn't understand, and I think you

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1 mentioned words here, "kimoryony." Is it -- is it the words here in the -- in the
2 transcript that you can't understand or the words that are being in the -- said in the
3 video?

4 A. I can't understand the word written in this transcript, but I can understand what
5 is said by the person there. Here he's talking another language I cannot even
6 understand, is written here in the transcript.

7 Q. So some of the words on the -- on the transcript you don't even understand?

8 A. Yes.

9 Q. Okay.

10 PRESIDING JUDGE EBOE-OSUJI: But are there any -- are there any words on the
11 transcript that you do understand?

12 THE WITNESS: Look the word "mutyo" I can understand and then "kinam kalamiiit"
13 in the second -- line 313, I can understand some of words, but toward the end I cannot
14 understand. Like ongen -- yes, ongen I can, but what is not clear what is written
15 there is said there, so I cannot understand it.

16 PRESIDING JUDGE EBOE-OSUJI: So you're saying that you're having difficulty
17 reading the words on the transcript?

18 THE WITNESS: Yes, it is not -- it's not -- I don't think it's our language. It's
19 something different.

20 PRESIDING JUDGE EBOE-OSUJI: It is something different in your view?

21 THE WITNESS: Yes.

22 PRESIDING JUDGE EBOE-OSUJI: All right. But you can understand --

23 THE WITNESS: What --

24 PRESIDING JUDGE EBOE-OSUJI: -- what is being spoken?

25 THE WITNESS: Yes.

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1 PRESIDING JUDGE EBOE-OSUJI: So when you listened to the speaker in the video,
2 you understood what he was saying?

3 THE WITNESS: Yes.

4 PRESIDING JUDGE EBOE-OSUJI: All right.

5 Mr Garcia, why don't we have the witness listen extract by extract and he can tell us
6 what he understands if that is the case of what he just heard. Can we do that?

7 MR GARCIA: Indeed, your Honour. Just to avoid any problems in the future, and
8 I know that maybe cross-examination will be on this point, what the witness did in
9 clarification is just put down the words that he heard and then we can compare to
10 what words are problematic for him, but we can --

11 PRESIDING JUDGE EBOE-OSUJI: Since he started that exercise, let's complete it just
12 now because you've asked him to do that. It may well be that we put it on the record
13 and then move on, but then we will not be doing that -- I do not know how many
14 extracts you want to take the witness through. We will not be doing that, that he
15 writes out everything in long hand.

16 MR GARCIA: I'm guided by the Chamber. The reason why I chose this -- this
17 manner of proceeding is because it's only these two sentences that the word -- that the
18 witness expressed some reserves regarding the transcription in -- in the whole of the
19 transcript, so that's why we wanted to go through this exercise.

20 PRESIDING JUDGE EBOE-OSUJI: In the whole of the transcript?

21 MR GARCIA: The transcript, obviously looked at the video in clarification sessions
22 so --

23 PRESIDING JUDGE EBOE-OSUJI: All right. Okay.

24 MR GARCIA: These are the problematic areas that he -- that he saw.

25 PRESIDING JUDGE EBOE-OSUJI: I see. So you will not be --

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- 1 MR GARCIA: Not at all. This is --
- 2 PRESIDING JUDGE EBOE-OSUJI: -- doing this for everything else?
- 3 MR GARCIA: This is not my intention at all --
- 4 PRESIDING JUDGE EBOE-OSUJI: Good.
- 5 MR GARCIA: -- your Honour. This is --
- 6 PRESIDING JUDGE EBOE-OSUJI: It's good to know that.
- 7 MR GARCIA: It's quite laborious already so --
- 8 PRESIDING JUDGE EBOE-OSUJI: Yes.
- 9 MR GARCIA: -- I just wanted to go through these segments.
- 10 MR KHAN: Mr President, perhaps my learned friend also can just refer precisely in
- 11 the proofing note to what he's referring to.
- 12 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, let's just proceed.
- 13 Mr Garcia, please.
- 14 MR GARCIA: All right. We're going to be playing the extract one more time.
- 15 (Viewing of the video excerpt KEN-OTP-0026-4596)
- 16 MR GARCIA:
- 17 Q. So, Mr Witness, you've heard the -- the first things that the person says.
- 18 Can -- were you able to write down the words?
- 19 A. Yes, but maybe I can miss some of the words, but I can understand that, yes.
- 20 Q. Well, can you tell us what is the problem with lines 313, 314? Where is the
- 21 problem?
- 22 A. 313 because it started from 311 and then to 313, and then it say "mutyo kinam
- 23 kalamiit eh ongen morion," that's one I cannot understand.
- 24 Q. Which words can't you understand?
- 25 A. It's what he sing there is different from what I'm seeing here.

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1 PRESIDING JUDGE EBOE-OSUJI: All right. Can you lead in this part, Mr Garcia,
2 looking at the transcript?

3 MR GARCIA: Certainly.

4 Q. Now, Mr Witness, the first words on 311, ongen; is that correct, according to
5 what you heard?

6 A. Ongen -- ongen is yes, you know, but I don't know if it is really what he's
7 singing -- is being singed there.

8 Q. Okay.

9 MR KHAN: Mr President, I -- I do object and the reason also for the objection is we
10 have a duty of fair notice -- we have a right of fair notice I should say and, your
11 Honour, in the proofing note what the -- and the Prosecution have -- have had this
12 application granted and it's there for a purpose. What they do is put down some
13 words in a language I can't understand, not one of the languages of the Court, in the
14 Kalenjin language.

15 Your Honours, I can sit if my learned friend is standing.

16 I'm grateful. Not one of the official languages of the Court with no attempt to
17 translate what these words mean. All that's clear is that these words differ from
18 what is in the OTP disclosure. So we have OTP disclosure that we've based our
19 preparation upon and we are produced on the eve of testimony a proofing note that
20 contains a Nandi transcript apparently we're hearing from the witness, but the
21 Prosecution in advance of this testimony haven't translated this.

22 And, your Honours, we say it is inappropriate for the Prosecution when they failed to
23 disclose a change of narrative to suddenly present it like a rabbit out of the hat in the
24 courtroom for the first time. If they had exercised, we say with regret, proper
25 diligence and provided the Defence with an English translation, they could

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1 perhaps -- they'd be on surer footing. They haven't done that and, therefore, we say
2 it should be not allowed.

3 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, what Mr Garcia is doing, as I
4 understand it, is identifying the words that the witness says he doesn't understand
5 from the transcript. Isn't that the case?

6 MR KHAN: Your Honour, what he's doing is controverting Prosecution disclosure
7 that has been given the Defence and upon which preparation for cross-examination is
8 made. And he's doing that when it came to his knowledge by way of proofing that
9 the witness changed or ostensibly gives a different version of events and a different
10 formulation to that in the OTP transcription and, therefore, the OTP English
11 translation is called into question.

12 PRESIDING JUDGE EBOE-OSUJI: All right.

13 MR KHAN: We're not provided with an English translation. And what my learned
14 friend seeks to do is to ambush the Defence, effectively, and present the -- a new
15 version, a new translation for the first time in Court. We say that should not be
16 prohibit -- that should not be allowed for the reasons I've stated.

17 PRESIDING JUDGE EBOE-OSUJI: All right. You can make submissions on that at
18 the right time, but for now we are going to proceed and have Mr Garcia identify the
19 words that the witness says he does not understand from the transcript and then we
20 move on.

21 MR GARCIA: And just for the record, your Honour, I direct Defence counsel to the
22 preparation note, page 6. And it's at 15.13 where the witness says what he gathers or
23 what his interpretation of what is being said is noted. In any case --

24 MR KHAN: (Microphones overlapping) --

25 PRESIDING JUDGE EBOE-OSUJI: Let's not argue any more.

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1 MR GARCIA:

2 Q. Now, Mr Witness, were you able to determine -- okay, I was going through
3 obviously the -- the words. The first one is ONGEN and then we have I was going to
4 the words O-N-G-E-N and then we have "... morion katoy kanyin eh." Are those
5 words correct? Is that what's being said?

6 A. No. According to me, that's -- it was said that (Speaks Nandi).

7 Q. And just -- what does that mean exactly? What is the translation of what you
8 just told us?

9 A. If I can just translate directly, some people may translate opposite, but
10 according to me it say that go slowly and then cut the (indiscernible) and then chase
11 the -- the -- the Kikuyu, (indiscernible) kimaroyk, to his home in Nyeri.

12 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, what text are you looking at now?

13 MR GARCIA: Your Honours, we're looking at 0080-0029, at page 0039, and it's lines
14 309 to 323. And the lines that the witness is speaking about is the lines 313 to 314.

15 PRESIDING JUDGE EBOE-OSUJI: All right.

16 MR GARCIA: It's binder number 3 and it's tab number 51 for the transcript.

17 PRESIDING JUDGE EBOE-OSUJI: Now, one --

18 MR GARCIA: The trans --

19 PRESIDING JUDGE EBOE-OSUJI: One thing at a time. You began with the words
20 at 311. Have you cleared that up, the words at 311, O-N-G-E-N, and then the next
21 word M-O-R-I-O-N and then we have K-A-T-O-Y, next word K-A-N-Y-I-N and then
22 the next word E-H.

23 MR GARCIA: What I'd like to do your Honour and that's why I asked the witness to
24 translate what he understood is I'm going to play to him each one of these extracts
25 and isolate it so the witness can have a chance to write down what other words that

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1 he heard and see if all of these words are correct. But I'll just go through each one of
2 them. I think it's a little bit unfair if I go through all of them in one single going and
3 then ask the witness to start writing down and tell us which ones are incorrect. So
4 I'm just going to do that right now with the Court's leave.

5 MR KHAN: Mr President, can I just also, just for the record, it's for my friend, I can't
6 say more than I've said, I didn't hear the "Nyeri". If my learned friend wants to stop
7 the video when "Nyeri" is spoken -- I don't speak the language, that's why I'm
8 labouring under these immense difficulties, but as a non-native speaker, obviously of
9 Nandi, I didn't personally hear the word "Nyeri."

10 PRESIDING JUDGE EBOE-OSUJI: We have a case before us and we have -- we will
11 get to the bottom of it.

12 THE WITNESS: Yes.

13 PRESIDING JUDGE EBOE-OSUJI: Mr Kigen-Katwa, we haven't heard from you.

14 MR KIGEN-KATWA: Mr President, I request for your permission to address the
15 Court on this issue. This witness is Ms Buisman's witness. Mr President, I want to
16 say what I am saying with a lot of caution because we are the ones who use audios
17 most of the time in our Defence.

18 Mr President, the observations of the witness in respect to the contents of paragraph
19 311 to 314 --

20 PRESIDING JUDGE EBOE-OSUJI: Lines, you mean.

21 MR KIGEN-KATWA: -- yes, lines are inaccurate. I would say it could probably be
22 explained by the different sub-tribes of Kalenjin.

23 In fairness, Mr President, other than the -- other than the fact that I haven't heard the
24 word "Nyeri", the contents of what the Prosecution have given us in their proofing
25 notes at page 6 I would say is a fair translation of what was said, but again say I didn't

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1 hear the word "Nyeri", but that doesn't mean it is not there. it's just that it could have
2 been said with a different shed.

3 And, Mr President, you had suggested to my learned friend, Mr Garcia, to, for
4 instance, go through the words used at 311 starting with the word O-N-G-E-N. The
5 difficulty with that, Mr President, is that the arrangement of the words as used by the
6 speaker is different from the arrangement of the words at that line 311, and so if that
7 approach is given it would be very difficult for the witness to be able to say what was
8 said by that speaker. And --

9 PRESIDING JUDGE EBOE-OSUJI: So you are saying that what the -- what the
10 person on the video is actually saying is not accurately represented on the transcript?

11 MR KIGEN-KATWA: Yes, Mr President.

12 PRESIDING JUDGE EBOE-OSUJI: That's what you're saying?

13 MR KIGEN-KATWA: Yes, that's what I'm saying.

14 PRESIDING JUDGE EBOE-OSUJI: Isn't that what the witness is also saying.

15 MR KIGEN-KATWA: That is true, Mr President. What -- the point I was making is
16 that if we were to ask the witness to pick each of the words starting with the words at
17 311, it wouldn't resolve the issue because the order which they were -- speakers use
18 the order of the words is different from the arrangement and the order used in that
19 line 311 up to line 315.

20 What my learned friend, Garcia, had suggested being to go manually through the
21 words word-by-word might probably resolve the issue.

22 PRESIDING JUDGE EBOE-OSUJI: That's what I was actually going to do because
23 when he said he would go one -- I mean, frame by frame I think that -- that should
24 work.

25 All right.

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1 MR GARCIA:

2 Q. Now, Mr Witness, just look at line 311, all right. It says "Ongen morion..."

3 Now, we're going to be playing for you the small extract just dealing with that first
4 sentence. Write down on paper next to you what other words that you hear and
5 then we can see if -- where the problem is, all right? I'm going to play them now.

6 (Viewing of the video excerpt KEN-OTP-0026-4596)

7 MR GARCIA:

8 Q. Now, could you hear the words in that first extract?

9 A. The first -- repeat again for the last.

10 (Viewing of the video excerpt KEN-OTP-0026-4596)

11 MR GARCIA:

12 Q. Now, were you able to put down the words that you heard in that first --

13 MR KIGEN-KATWA: Would it help, Mr President, if I read the words and see if the
14 witness can confirm that's how he heard them?

15 THE WITNESS: Yes.

16 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, do you have a problem with that?

17 MR GARCIA: I have no problem at all with that, your Honour.

18 THE WITNESS: Okay.

19 PRESIDING JUDGE EBOE-OSUJI: All right. Mr Kigen-Katwa.

20 MR KIGEN-KATWA: The first word is K-I-K-I-O-N.

21 THE WITNESS: K?

22 MR KIGEN-KATWA: K-I-K-I-O-N. And the second word is K-I-M-A-R-O-Y-K.

23 THE WITNESS: Second word is?

24 MR KIGEN-KATWA: K-I-M-A-R-O-Y-K. Then the next one is K-O-T-O-O-C-H.

25 Then the next one is K-A-A. And the last one is N-Y-E-R-I.

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1 MR GARCIA:

2 Q. Mr Witness, that's what Mr Kigen-Katwa understood. Is this your
3 understanding as well of the words? Or if you -- if it's not the case then tell us what
4 is different.

5 PRESIDING JUDGE EBOE-OSUJI: Can you play it one more time.

6 (Viewing of the video excerpt KEN-OTP-0026-4596)

7 MR GARCIA:

8 Q. Now, tell us, Mr Witness, what -- are the words the same as those that have
9 been given to you by Mr Kigen-Katwa or are they different?

10 A. Yes, he was saying "kikion," which is "were chase." "Kimaroyk," yes, is
11 also -- that's what --

12 PRESIDING JUDGE EBOE-OSUJI: No, don't look at Mr Kigen-Katwa. The
13 question, Witness, is that Mr Kigen-Katwa is only trying to help and he suggested
14 what he heard, according to him, and the question to you is: Do you agree with that
15 suggestion that what's -- the person on the video's singing the words uttered by that
16 person in the order in which the words have been uttered are the same as
17 Mr Kigen-Katwa has helped out with? Do you agree with Mr Kigen-Katwa that he's
18 correct in saying that's what the man on the video is saying?

19 THE WITNESS: Yes, the man on the video is -- I can write on my own the way I
20 listened and then not to follow what -- because he's also understanding the same
21 language as I do. So I can just write the way I can hear.

22 PRESIDING JUDGE EBOE-OSUJI: All right. Go ahead and do that.

23 THE WITNESS: Yes.

24 MR GARCIA:

25 Q. Do you want to hear it one last time --

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1 A. Mmm.

2 Q. -- again? Yes. And just write down those words as you hear them.

3 (Viewing of the video excerpt KEN-OTP-0026-4596)

4 THE WITNESS: Okay.

5 MR GARCIA:

6 Q. All right. Maybe -- maybe just to help, those could be put on the projector,
7 confidentially obviously, on the ELMO, I believe, and everybody could see it on their
8 screen and we won't have to --

9 MR KIGEN-KATWA: Mr President, as that is being done may I correct myself.

10 The last word is "kanyi", K-A-N-Y-I, and that is the same thing that my client, who
11 understands the language, says he heard. K-A-N-Y-I as opposed to N-Y-E-R-I.

12 PRESIDING JUDGE EBOE-OSUJI: Well, let's see what the witness comes up with
13 and we do see that word on the transcript. Perhaps in -- with different inflections.
14 I don't know, but we'll see.

15 MR GARCIA: It's confidential, so it's just to the people in the courtroom.

16 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, that sentence has to be very important
17 in this case. You do realise how long we've spent trying to figure it out.

18 MR GARCIA: Your Honour, it has a certain importance, the first, the second and the
19 third sentence, or else I wouldn't have brought it up and -- and it's a -- a correction
20 to a transcript which is already in evidence, so I -- I believe that it was important for
21 us to correct the record on that if this witness could.

22 MR KHAN: Mr President, just for the record, I think it's very dangerous to correct
23 an OTP piece of evidence through a witness whose language skills we don't know,
24 whose qualifications have not been led as being a competent person to correct an
25 official OTP translation. I'll say no more than that.

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1 PRESIDING JUDGE EBOE-OSUJI: Noted.

2 Please proceed.

3 THE COURT OFFICER: In order to see the document on the retro projector, I invite
4 you to press Docucam witness button, please.

5 MR GARCIA:

6 Q. So the first word is K-I-K-I-O-N. The second is K-I-M-O-R-I-O-K. The third
7 one is K-O-T-O-C-H. Fourth is kanyi, K-A-N-Y-I. And the fifth is Nyeri, N-Y-E-R-I.
8 Is that correct, Mr Witness?

9 A. The second one is K-I-M-A-R-I-O-K.

10 Q. Thank you. Now, can you translate that to us. What is the person saying?

11 MR KIGEN-KATWA: Mr President, before that is done, and I do not mean to
12 interrupt the witness, may I just again indicate that the position on our side is that the
13 last word is K-A-N-Y-I and the last word N-Y-E-R-I is not there, and that is supported
14 by the transcript that is already an exhibit, line 311 and 313.

15 MR GARCIA: Defence counsel has already said that. This is the second time. We
16 understand that it's the witness's understanding of it.

17 PRESIDING JUDGE EBOE-OSUJI: Proceed. Proceed.

18 MR GARCIA:

19 Q. Mr Witness, what -- what is your -- what is your translation of that?

20 A. Kikion is to chase. Kimoriok is Kikuyu. To go high -- home Nyeri. That's
21 what I can understand. But the way this -- this man is singing directly, I can
22 understand directly. Maybe the way it is written or the way it was put in the
23 transcript is different. I cannot understand that. And I was not there when he was
24 writing this.

25 Q. I understand that. So what is your translation? What is the -- what is the

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1 person --

2 A. My --

3 Q. -- saying?

4 A. -- translation is that this person is singing to show that Kikuyus should be just
5 go home to Nyeri. That is in a short way. I can understand that, the way it is being
6 singed, not even the way it is being translated according to my language.

7 Q. And you said previously that this is -- was said in what language exactly?

8 A. This was said in Nandi which I am -- I'm a Nandi.

9 Q. Now, the first word, kikion, what does that mean?

10 A. Was chased. That is to chase somebody to go, yeah, kikion.

11 Q. And kimoriok, what does that mean?

12 A. That's one word -- another word of Kikuyu.

13 Q. The third word, kotoch, what does that mean?

14 A. To go up, yeah, somebody -- kotoch is somebody to go somewhere at higher.

15 Q. And kanyi?

16 A. Home.

17 Q. And obviously we have Nyeri?

18 A. Yes, but if -- if there is any different translations, then I can accept that, but
19 I -- the way the song is being sung is directly you can understand. I understand
20 what is being sang.

21 Q. And who is -- who is speaking? Do you know the voice?

22 A. I don't know. I know the audio, but I don't know him.

23 Q. Now, I'd like you to listen to the second extract. Can you tell us -- and this is
24 lines 313 to 314. We'll go through the same exercise. Just -- we'll play it for you a
25 couple of times. Write down the words that you hear?

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1 MR KIGEN-KATWA: Mr President, may it go on record what the witness also said
2 that the first word, kikion, is a past tense. It is in the past as opposed to future or
3 current.

4 PRESIDING JUDGE EBOE-OSUJI: Your observation is noted.

5 Proceed, Mr Garcia.

6 Mr Kigen-Katwa, I've noticed you've been rising and you excuse yourself. It's up to
7 you to decide whether you want to take over the cross-examination of this witness.

8 We need to be consistent.

9 Mr Garcia, please proceed.

10 MR GARCIA:

11 Q. Listen to this extract, Mr Witness.

12 (Viewing of the video excerpt KEN-OTP-0026-4596)

13 MR GARCIA:

14 Q. We're going to play it once again, Mr Witness.

15 (Viewing of the video excerpt KEN-OTP-0026-4596)

16 MR GARCIA:

17 Q. Do you need us to play it once again, Mr Witness, or is that sufficient?

18 A. Play it again.

19 (Viewing of the video excerpt KEN-OTP-0026-4596)

20 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, did we have testimony as to the date
21 when this demonstration took place? Did you already ask the witness that question?

22 MR GARCIA: Yes, I did, your Honour.

23 PRESIDING JUDGE EBOE-OSUJI: What is it again? Remind me.

24 MR GARCIA: I believe it's 3 January 2008.

25 PRESIDING JUDGE EBOE-OSUJI: All right. Proceed.

Trial Hearing
Witness: KEN-OTP-P-0658

(Open Session)

ICC-01/09-01/11

1 MR GARCIA:

2 Q. Do you need to hear it one more time, Mr Witness, or is that -- you've --

3 A. I've already write that "Wui mutyo sinam kalamit sioon kimarok kotoch gaa

4 Nyeri kimarioko inaado ko neindotae ko werto naoo."

5 MR GARCIA: Could we have that as well -- I'd ask the assistance of the court officer
6 to put that as well on the -- on the projector.

7 Q. So for the record, Mr Witness, you've written down, the first word is --

8 A. No. Let me -- I can change the -- "werto" it says.

9 Q. Now, Mr Witness, just for the record, the first word is W-U-I. And then I think
10 that's an N-U-T-Y-O. S -- is that an S-I-N-O-M?

11 A. S-I-N-A-M.

12 Q. Then you have --

13 PRESIDING JUDGE EBOE-OSUJI: Sorry, sorry. Rewind.

14 Witness, what is the second word?

15 THE WITNESS: M-U-T-Y-O.

16 PRESIDING JUDGE EBOE-OSUJI: M-U-T-Y-O?

17 THE WITNESS: Yeah.

18 PRESIDING JUDGE EBOE-OSUJI: All right. And then third word you said is

19 S-I-N-A-M?

20 THE WITNESS: Yes.

21 PRESIDING JUDGE EBOE-OSUJI: Proceed, please.

22 MR GARCIA:

23 Q. Then the fourth word is K-A-L-A -- is that W-I-T?

24 A. K-A-L-M-I-T.

25 Q. Can you -- can you spell out the rest of the words that you have on -- on that for

Trial Hearing
Witness: KEN-OTP-P-0658

(Open Session)

ICC-01/09-01/11

- 1 the next one?
- 2 A. And then S-O-O-N.
- 3 Q. The word after that?
- 4 A. Then K-I-M-A-R-O-K --
- 5 Q. I see --
- 6 PRESIDING JUDGE EBOE-OSUJI: Sorry. Pause, please.
- 7 Did you say S-O-O-N --
- 8 THE WITNESS: Yes.
- 9 PRESIDING JUDGE EBOE-OSUJI: -- or S-I-O-O-N? Which is it?
- 10 THE WITNESS: S-I-O-O-N.
- 11 PRESIDING JUDGE EBOE-OSUJI: All right.
- 12 MR GARCIA:
- 13 Q. The next word, Mr Witness?
- 14 A. K-O-T-O-C-H.
- 15 Q. After that I see G-A-A.
- 16 A. Yes.
- 17 Q. Then we have Nyeri, N-Y-E-R-I. Then you have K-I-M-A -- is that an
- 18 R-I-O-K-O?
- 19 A. Kimarioko, yes. And then --
- 20 Q. What is -- what is that word after it, after kimarioko?
- 21 A. Inaado.
- 22 Q. Can you spell that out?
- 23 A. I-N-A-A-D-O.
- 24 Q. The next word is K-O?
- 25 A. Mm-hmm.

Trial Hearing
Witness: KEN-OTP-P-0658

(Open Session)

ICC-01/09-01/11

1 Q. And after that, can you spell that out for us too?

2 A. Neindotae. I can ask Mr Katwa-Kigen to ask me --

3 Q. Just try it out first --

4 A. Neindotae --

5 Q. Just try it out first. Is that the -- I see N-E-I-N-D-O-I-T-A -- is that an E or an R
6 at the end?

7 A. It is N-E-I-N-T-O-T-A-E.

8 PRESIDING JUDGE EBOE-OSUJI: Can you pronounce it slowly.

9 THE WITNESS: Neindotae.

10 PRESIDING JUDGE EBOE-OSUJI: That would -- it sounded like N-E-I-N-T-O-T-A-E,
11 neintotae you said?

12 THE WITNESS: Yeah.

13 PRESIDING JUDGE EBOE-OSUJI: Is that D or T?

14 THE WITNESS: Neindotae. Neindotae.

15 PRESIDING JUDGE EBOE-OSUJI: All right. That's a D, N-E-I-N-D-O-T-A-E. Is
16 that it?

17 THE WITNESS: Yes.

18 PRESIDING JUDGE EBOE-OSUJI: All right.

19 MR GARCIA:

20 Q. And the last words are K-O and then after that you had W-E -- is that an R-T-O?

21 A. Yes.

22 Q. And then N-A-O-O, is --

23 A. Yes.

24 Q. -- that correct?

25 A. Yes.

Trial Hearing
Witness: KEN-OTP-P-0658

(Closed Session)

ICC-01/09-01/11

1 Q. Now, can you tell the Court, what -- what does that mean, that sentence?

2 A. I say that go slowly and then you chase a Kikuyu to go high up home in Nyeri
3 and the person who is going -- who is to lead is The Big Man, you know?

4 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, we will not take any more questions.
5 We have to rise. If you want to clear something up from what he said, you can do
6 that.

7 MR GARCIA: Thank you, your Honour.

8 PRESIDING JUDGE EBOE-OSUJI: We rise?

9 MR GARCIA: Yes, indeed, your Honour.

10 PRESIDING JUDGE EBOE-OSUJI: All right. We will rise and return at 2.30.

11 And the witness will be ushered out of the courtroom.

12 THE COURT OFFICER: All rise.

13 PRESIDING JUDGE EBOE-OSUJI: One second, please. Closed session first. That
14 was the usual procedure.

15 *(Closed session at 12.31 p.m.) Reclassified as Open session

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

17 (The witness stands down)

18 PRESIDING JUDGE EBOE-OSUJI: Court will rise.

19 THE COURT OFFICER: All rise.

20 (Recess taken at 12.31 p.m.)

21 *(Upon resuming in closed session at 2.40 p.m.) Reclassified as Open session

22 THE COURT USHER: All rise.

23 Please be seated.

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

25 We will -- we've excused the witness currently on the stand for the rest of the day.

Trial Hearing
Witness: KEN-OTP-P-0658

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Trial Hearing
Witness: KEN-OTP-P-0658

(Closed Session)

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Trial Hearing
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Trial Hearing
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Trial Hearing
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- 24 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
- 25 MR STEYNBERG: (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0658

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- 1 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
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Trial Hearing
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Trial Hearing
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Trial Hearing
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- 24 MS LIJNZAAD: (Redacted)
- 25 PRESIDING JUDGE EBOE-OSUJI: (Redacted)

Trial Hearing
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- 24 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
- 25 THE INTERPRETER: (Redacted)

Trial Hearing
Witness: KEN-OTP-P-0658

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- 1 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
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- 7 MR BOURGEOIS: (Interpretation) (Redacted)
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Trial Hearing
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- 23 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
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Trial Hearing
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- 2 MR BOURGEOIS: (Interpretation) (Redacted)
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- 18 THE INTERPRETER: (Redacted)
- 19 MR BOURGEOIS: (Interpretation) (Redacted)
- 20 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
- 21 Let us leave it at that for now and we will reconvene tomorrow at 9.30.
- 22 Mr Nderitu, you were rising?
- 23 MR NDERITU: Yes, Mr President, I am rising with a request that I would want to
- 24 make regarding my excusal from proceedings from tomorrow.
- 25 It's --

Trial Hearing
Witness: KEN-OTP-P-0658

(Closed Session)

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- 1 PRESIDING JUDGE EBOE-OSUJI: You are requesting to be excused?
- 2 MR NDERITU: Yes, Mr President, I am requesting to be excused and if I may just
- 3 explain the reasons, the circumstances regarding the request?
- 4 PRESIDING JUDGE EBOE-OSUJI: Can you put that in writing?
- 5 MR NDERITU: Yes, I will.
- 6 PRESIDING JUDGE EBOE-OSUJI: Yes, let's do that.
- 7 MR NDERITU: Thank you.
- 8 PRESIDING JUDGE EBOE-OSUJI: All right. The Court will rise.
- 9 THE COURT USHER: All rise.
- 10 (The hearing ends in closed session at 4.22 p.m.)
- 11 RECLASSIFICATION REPORT
- 12 Pursuant to Trial Chamber V(a) 's Decision, ICC-01/09-01/11-981, dated 24 September
- 13 2013, the version of the transcript with its redactions becomes Public.