

1 International Criminal Court
2 Trial Chamber V(a) - Courtroom 1
3 Situation: Republic of Kenya
4 In the case of The Prosecutor v. William Samoei Ruto and Joshua Arap Sang
5 - ICC-01/09-01/11
6 Presiding Judge Chile Eboe-Osuji, Judge Olga Herrera-Carbuccia
7 and Judge Robert Fremr
8 Trial Hearing
9 Wednesday, 3 December 2014
10 (The hearing starts in open session at 9.39 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, the case please.
16 THE COURT OFFICER: Thank you, Mr President.
17 The situation in the Republic of Kenya, in the case of The Prosecutor versus William
18 Samoei Ruto and Joshua Arap Sang, ICC-01/09-01/11.
19 We are in open session.
20 PRESIDING JUDGE EBOE-OSUJI: Thank you.
21 Appearances?
22 MR GARCIA: Good morning, Mr President, your Honours. Appearances remain
23 the same for the Prosecution.
24 PRESIDING JUDGE EBOE-OSUJI: Thank you.
25 MR NDERITU: Good morning, Mr President, your Honours. The appearances

1 remain the same on our side. Thank you.

2 MR BOURGEOIS: Good morning, Mr President. Mr Bourgeois, duty counsel.

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

4 MS BUISMAN: Good morning, Mr President, your Honours. Our team remains
5 the same as yesterday and Honor Lanham, our case manager, has joined us as well.

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

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

9 And Witness, welcome back to the Court. And we excused you for the afternoon of
10 yesterday because of some other debates - procedural debates - that needed to happen
11 in the case. Welcome back.

12 Mr Garcia will continue, but in a minute.

13 Private session, please.

14 *(Private session at 9.41 a.m.) Reclassified as Open session

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

16 PRESIDING JUDGE EBOE-OSUJI: Thank you.

17 (Redacted)

18 (Redacted)

19 (Redacted)

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9 (Redacted)
10 (Redacted)
11 (Redacted)
12 (Open session at 9.43 a.m.)
13 THE COURT OFFICER: We are back in open session, Mr President.
14 PRESIDING JUDGE EBOE-OSUJI: Thank you.
15 Mr Garcia, please.
16 WITNESS: KEN-OTP-P-0658 (On former oath)
17 QUESTIONED BY MR GARCIA: (Continuing)
18 Q. Good morning, Mr Witness.
19 A. Good morning.
20 Q. Now, Mr Witness, I see that you have before you possibly the document on
21 which you were writing on yesterday. Do you see that next to you?
22 A. Yes.
23 Q. Now, yesterday I asked you what those words meant and I just want to be -- to
24 be clear on this. Your response, and this is at transcript -- yesterday's transcript 165,
25 page 59, line 7 to 9 -- 8 to 9 actually. You said that the translation was, "I say go

1 slowly and then you just -- a Kikuyu to go high up home in Nyeri and the person who
2 is to lead is The Big Man, you know?"

3 Now I just want to make sure, is this a translation - a literal translation - of the words
4 that you've written down, or is this your interpretation of them?

5 A. Let me repeat again.

6 Q. Yes. And just actually before you do that, what I'm interested in at this point is
7 having you translate for us literally what those words are, what they mean, the words
8 that you wrote down on the document, all right?

9 A. Yes.

10 Q. And then afterwards I'll ask you what the meaning is.

11 A. Yes.

12 Q. So what is the literal translation of these words?

13 A. According to me this is to say that you go slowly and then you catch the pen
14 and then you chase the Kikuyus to their home high in Nyeri and the person who is
15 leading is The Big Man.

16 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, can you remind us again the tab?

17 MR GARCIA: Yes, your Honour. It's tabs 51 and 52 and at tab 51 it's transcript
18 0080-0029 from lines 309 to 321. The translation is at tab 52. It's at 0080-0029 at 0039,
19 lines 312 to 329.

20 THE INTERPRETER: Message from the English booth: Could counsel please slow
21 down when quoting numbers at speed? Thank you.

22 MR GARCIA: Just to repeat those, the translation is at tab 52 and that's ERN

23 KEN-OTP-0080-0029 at 0039, lines 312 to 329. The transcript is at tab 51 and that's
24 0080-0029 and it's lines 309 to 321. So both of them are in binder 3.

25 MR KHAN: And, Mr President, with your -- with your leave, at page 4, lines 22,

1 there's obviously a mistake because the witness, at least I heard him say the word
2 "pen" and that does not appear in the transcend transcript.

3 MR GARCIA: Indeed that is the case, your Honour. I was going to go through that
4 with the witness. I was just giving the references out for the moment.

5 Q. Now, you say that in this translation you said that it was also said that the
6 person who was leading is The Big Man; is that correct?

7 A. Yes.

8 Q. What are the words for that in Nandi? Did you write them down in your
9 document?

10 A. Yes. Werto na oo.

11 Q. Can you just spell out the words for us, which ones they are?

12 A. Werto is W-E-R-T-O.

13 Q. Did you say another word as well or is that the only one?

14 A. And then na oo is N-A and then O-O.

15 Q. Okay. And what was your understanding of this that was said?

16 A. That is The Big Man.

17 Q. Just -- I'm going to be a bit clearer, but how did you understand this when the
18 person spoke and said these words? What did you understand of this?

19 A. If I can understand directly the way he was singing, he was meaning that the
20 Kikuyu community to -- to be sent to Nyeri or to send -- (indiscernible) of Kikuyus
21 and the person who is leading is then President Kibaki, The Big Man.

22 Q. I just want to be -- put a correction to the transcript. You said that the Kikuyu
23 community to be sent to Nyeri or of Kikuyus. What was the word that you said?

24 A. Kimoriok.

25 Q. Is that the word that you used before, K-I-M-O-R-I-O-K?

1 A. Yes.

2 Q. Kimoriok?

3 A. Yes.

4 Q. Thank you for that. I just want to show you one image, another image of this
5 video for you to answer a question. For the record the time stamp is 16.56.

6 MR KHAN: While that is being done, perhaps the time stamp could be repeated for
7 the record? Thank you.

8 MR GARCIA: I'm going to be playing from 16.56 to 17.01. If we could have the
9 floor as well?

10 THE COURT OFFICER: You do have the floor, Mr Garcia.

11 MR GARCIA: Thank you.

12 Q. Now, Mr Witness, I just want you to look at this extract and then I have a
13 question for you afterwards.

14 (Playing of the video excerpt KEN-OTP-0026-4596)

15 MR GARCIA:

16 Q. Now, Mr Witness, I have shown you a -- we've shown you a brief extract from
17 that video. Were you able to recognize the place that's shown on that -- on that
18 extract?

19 A. Repeat again.

20 Q. Can you tell the Court what is the place that we see on that -- on that brief
21 extract that we showed you?

22 A. (No audible response)

23 Q. So, Witness, we're just -- we're going to show it to you again and we'll add a
24 couple of seconds to that so you can take a good look. So we'll start again at 16.56.

25 (Playing of the video excerpt KEN-OTP-0026-4596)

1 MR GARCIA: So for the record we played from 16.56 to 17.16.

2 Q. Mr Witness, could you tell us what exactly is the place that we've seen in that
3 brief extract?

4 A. I think here it's inside the Kipchoge Stadium.

5 Q. Thank you for that, Mr Witness.

6 PRESIDING JUDGE EBOE-OSUJI: How do we know that, Mr Garcia?

7 MR GARCIA: Your Honour, the fact that it is Kipchoge Stadium?

8 PRESIDING JUDGE EBOE-OSUJI: Yes.

9 MR GARCIA: Well, we could show the witness a bit more. I'm concerned about
10 the time obviously. He's already seen it during the clarification, the preparation
11 session, and it's simply for the witness to confirm the place that is showed in the
12 video. That's -- that's the limited purpose of that extract.

13 PRESIDING JUDGE EBOE-OSUJI: But one or two questions could be put --

14 MR GARCIA: Certainly, your Honour.

15 PRESIDING JUDGE EBOE-OSUJI: -- to elucidate.

16 MR GARCIA:

17 Q. Mr Witness, just -- just for -- if you can clear this up for us, can you tell us
18 exactly why you believe this is Kipchoge Stadium that you saw in that extract?

19 A. Because I see the people sitting next to the stadium. It was resembling
20 Kipchoge Stadium.

21 Q. Now, I understand, Mr Witness, that you were there yourself on that day; is that
22 correct?

23 A. Yes.

24 Q. Now just to confirm, when you see these images, the short extract that I showed
25 you, does it -- is it the same as what you saw on that day on 3 January?

1 MR KHAN: Your Honour, I'd ask that the witness not be lead.

2 MR GARCIA: I didn't think we had -- I mean that this was in contention, but I can
3 ask a more neutral question.

4 MR KHAN: Your Honour, I have said that if my learned friend is given consent by
5 the Defence to lead, we will of course do that. Your Honour, these issues are in
6 contention. Maybe that's illustrated by the amount of time we sent -- we've spent on
7 two or three lines already.

8 MR GARCIA:

9 Q. Now, Mr Witness, when you see -- you've seen those images, the ten seconds
10 that we played, you've mentioned to the Court that it is Kipchoge Stadium. You've
11 also mentioned to the Court yesterday that you were at a rally at Kipchoge Stadium
12 on 3 January. Can you tell us -- what can you tell us about those images that you just
13 saw?

14 A. I can't confirm exactly if the same imagine, but if I see the people, it's like the
15 same, but I can't remember really. If we can play a bit longer, then I can be sure of
16 the same -- if it was the same, but --

17 Q. Certainly, Mr Witness.

18 A. This is part of the -- yes, I could not identify every section of the video.

19 Q. All right. So we'll just play it again and we'll add some time to that so you can
20 get your bearings. We'll start again at 16.56.

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

22 MR KHAN: Your Honours, if it helps, what I can concede, so there's no confusion, is
23 the date of the event and that the recording relates to that event. Of course the
24 interpretation of a gloss that's been put on words is a matter that the Bench will have
25 to decide in due course. That's in contention, but the actual video, I accept it's an

1 authentic video of the -- of the demonstration that the Prosecution have stated.

2 PRESIDING JUDGE EBOE-OSUJI: Mr Kigen-Katwa or Ms Buisman?

3 MS BUISMAN: We take the same position, Mr President.

4 PRESIDING JUDGE EBOE-OSUJI: Thank you.

5 THE INTERPRETER: Interpreters would like to note a strong 50 cycle hum on the
6 line.

7 MR KHAN: And, Mr President, just one addition. Previously - and I think it may
8 well be relevant - my learned friend showed a clip 17.56 to 17.01.

9 PRESIDING JUDGE EBOE-OSUJI: You have to state -- once second. You have to
10 come again. Overlapping speakers is noted in the beginning of --

11 MR KHAN: Yes, I'm grateful.

12 Your Honour, previously my learned friend showed a clip 16.56 to 17.01 and it was
13 paused in a particular location and a white piece of paper was being held with the
14 words written in manuscript, "The blood of dead Kenyans is in the head of Kibaki."
15 I think when a still is paused like that and put for the witness, what's displayed
16 should be recorded somehow so later on we know what we're looking at. We have a
17 time stamp, but perhaps something that's that obvious should just be read into the
18 record. So, your Honour, perhaps it has been done by my comment now in fact.

19 PRESIDING JUDGE EBOE-OSUJI: You have marked it, but we will leave it up to the
20 questioner, and of course the Court, to intervene for that sort of purpose because the
21 pause we do not want to accentuate things more than the questioner might have
22 wanted. That's not to say things should not be accentuated but we can't have a
23 standard rule for that sort of thing in every case. That's the point, really.

24 The interpreters noted a "hum." Yes, indeed, there is a "hum." I think it's probably
25 because the video was paused. Sometimes machines do that.

1 Mr Garcia, please proceed.

2 The situation now becomes this. The Defence accept that the image, the video image,
3 is indeed the Kipchoge Stadium and of the events in question. Their contention is
4 the interpretation of the words. So you can proceed now.

5 MR GARCIA: And I'm grateful for that. Just to remind as well the Defence counsel
6 that the video is already in evidence so, indeed, if Defence wishes to refer to any
7 extract it's already in evidence so it can be referred to without needing obviously to
8 put certain things on the record or state them on the record.

9 PRESIDING JUDGE EBOE-OSUJI: Yes, and you also do mark the points with the
10 time stamps, a thing that you should do. Proceed.

11 MR GARCIA:

12 Q. Now, Mr Witness, I'm just going to show you one last small extract and it's at
13 time stamp 27.22 to 27.30.

14 (Playing of the video excerpt KEN-OTP-0026-4596)

15 MR GARCIA:

16 Q. Now, Mr Witness, do you recognize the person that's on that extract that's
17 shown in the video?

18 A. Yes.

19 Q. Who is that?

20 A. That's the former Kapsabet mayor, Michael Rono.

21 PRESIDING JUDGE EBOE-OSUJI: All right. Now here is where we might have a
22 description. Somebody wearing a red cap and a white shirt.

23 MR GARCIA: So, indeed, it is a person wearing a red cap, a white shirt and it's at
24 time stamps 27.22-27.30 of the video.

25 Q. Now, you say, Mr Witness, it's the former mayor of Kapsabet?

1 A. Yes.

2 Q. Can you tell us of what ethnicity this person is?

3 A. Nandi.

4 Q. And can you tell us at the time what party this person was supporting?

5 A. Orange Democratic Movement.

6 MR GARCIA: One last extract from the same video, time stamp 24.59 to 25.10.

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

8 MR GARCIA:

9 Q. Now, Mr Witness, we see on the screen a man with a -- I believe it is maybe a
10 light blue shirt, correct me if I'm wrong, but can you identify this person for us?

11 A. Yes.

12 Q. Who is that?

13 A. It's Ismael Choge.

14 Q. So you mentioned -- I think it didn't get on the record. It is Ismael Choge?

15 A. Yes.

16 Q. Is that correct?

17 A. Yes.

18 Q. Now, Mr Witness, who was -- who is Mr Ismael Choge?

19 A. He was a politician from that side.

20 Q. When you say he was a politician, did he occupy any particular function?

21 A. Yes, he is a prominent politician from ODM.

22 Q. Can you tell us of what ethnicity he is?

23 A. He's a Nandi.

24 Q. Thank you, Mr Witness.

25 Now, Mr Witness, we're going to move away from the -- from the Kapsabet rally that

1 you say occurred on 3 January. Did anything else occur in the weeks after the month
2 of January?

3 A. I can't remember any other thing that happened that particular days, but there
4 was continuation of on-and-off blocking of the roads and fight in Eldoret and
5 surrounding.

6 Q. And when you say that there was continuation of the blocking of the roads in
7 Eldoret, can you tell us from when to when did this last? What dates,
8 approximately?

9 A. I'm not sure -- I -- I'm -- I don't still remember exactly, but probably by mid of
10 January.

11 Q. Right. When you say mid of January is this when they would have started or
12 finished? What -- when did that --

13 A. When it's -- just stop it a little bit, but already negotiation was still already going
14 on in Nairobi.

15 Q. And who exactly was blocking the roads until mid-January?

16 A. Majority Kalenjins in my region.

17 Q. Now, do you know why they were blocking the roads?

18 A. They were still not satisfied that Kibaki was still in the power.

19 Q. Now, Mr Witness, during your testimony you mentioned -- your Honours,
20 could we go in private session for a minute, please?

21 PRESIDING JUDGE EBOE-OSUJI: Private session.

22 *(Private session at 10.05 a.m.) Reclassified as Open session

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

24 MR GARCIA:

25 Q. Now, Mr Witness, during your testimony you mentioned a Mr Lucas Sang.

1 Can you tell the Court what happened to Mr Lucas Sang?

2 A. I think on 31st, I don't know the time, I understand later he was killed in the
3 same -- he was killed by -- I don't know how he was killed, but he was killed.

4 Q. Do you know where he was killed?

5 A. I get a message later that it is around Munyaka area.

6 Q. Now were there any funerals held for him?

7 A. Yes, later.

8 Q. When later?

9 A. I can't remember the date, but I think after -- maybe it was on 10th. It was on a
10 Thursday, but it was on 10th or, yeah, second week of -- of January.

11 MR KHAN: Mr President, before my learned friend continues with that, it would be
12 useful -- we've got some testimony from 3 January until mid-January where the
13 witness gives an account about roadblocks. We don't know where the witness was
14 during this period and I think that should be elicited so that we can follow the
15 testimony. Where was he during this period?

16 PRESIDING JUDGE EBOE-OSUJI: I will leave that to you, Mr Garcia.

17 MR GARCIA: It is for Defence counsel. The witness stated he was -- he was in
18 his -- in his area.

19 Q. Now, Mr Witness, you say, I can't remember the date but I think --

20 MR KHAN: Mr President, of course Defence counsel can cross-examine, but it's not
21 a licence for unfairness. The witness hasn't told us where he was during this period.
22 Your Honours, we have got a PIS form, we are in private session at the moment. The
23 Prosecution have thought it fit to elicit evidence regarding a temporal scope from
24 3 January to middle of January. We need to know and we have a right we say to
25 know where was he? Was he in Kapsabet? Was he in Eldoret? Was

1 he -- whereabouts was he? And, your Honour, it's relevant of course to the
2 testimony. It is quite a simple issue.

3 PRESIDING JUDGE EBOE-OSUJI: Mr Khan, let's do this. Hold on. We
4 understand the point you are making and no one -- Mr Garcia, you can sit.
5 When one counsel is up the other should sit down, please.

6 Mr Khan, the point is this: No one is saying that you are not entitled to have that
7 information. The point is that you are not entitled to have every information you
8 want during the examination of the opposite party because you have a right of
9 cross-examination. And if we accepted the proposition that everything the
10 cross-examiner wants asked must be asked for -- sorry, by the examiner-in-chief, it
11 becomes difficult to know where to keep the gate of that kind of regime.

12 The answer was that the witness may answer no question of the sort, then you can
13 complain that your entitlement is being denied but, at this moment, that complaint
14 doesn't arise.

15 Let Mr Garcia ask his questions. When it's glaringly obvious that there is unfairness,
16 the Chamber will point it out, but we're not there yet.

17 Mr Garcia, please.

18 MR GARCIA:

19 Q. Just to go back on your answer, you said that, Mr Witness, that you couldn't
20 remember the date, but it was after -- it was on 10th. It was a something day.
21 What -- what day were you mentioning?

22 A. It was on a Thursday.

23 Q. On a Thursday; is that it?

24 A. Yes.

25 Q. Now, did you or did you not participate in the funeral for Mr Lucas Sang?

1 A. Yes, but a bit briefly, not long.

2 Q. How many people were there when you -- while you were there present?

3 A. I can't remember. I can -- I didn't count people.

4 Q. The reason I am asking you this question, Mr Witness, is would you be able to
5 speak about this in public session, or is it identifying?

6 A. It is no problem. I can -- I can speak in public, no problem.

7 MR GARCIA: Your Honours, I'd ask that we go in public session, please.

8 PRESIDING JUDGE EBOE-OSUJI: Public session.

9 (Open session at 10.11 a.m.)

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

11 PRESIDING JUDGE EBOE-OSUJI: Please, Mr Garcia, proceed.

12 MR GARCIA:

13 Q. Now, Mr Witness, you said that you attended at the funerals of Mr Lucas Sang;
14 is that correct?

15 A. Yes, sir. Yes, your Honour.

16 Q. Now, can you tell us where this was -- where the funerals were held?

17 A. In his home in around Kuinet.

18 MR GARCIA: So just for the record Kuinet is K-U-I-N-E-T if it hasn't been captured.

19 Q. And when you arrived there could you tell us who was present at the funerals
20 of Mr Lucas Sang?

21 A. Many people.

22 Q. Any notable persons or personalities that you recognized amongst the many
23 people?

24 A. Yes, Kibor Jackson.

25 Q. Anyone else?

- 1 A. Former MP from Keiyo, Mr Sumbeiywo. I can't remember the other name.
- 2 Q. Can you spell Sumbeiywo for us, please?
- 3 A. S-U-M-B -- M-B-E-W-Y-W -- mm.
- 4 Q. I understand you are just taking the time now to write down the name. Can
- 5 you just spell it once again for us, each letter of the last name?
- 6 A. S-U-M-B-E-W -- B-E-Y-U-A.
- 7 Q. And did you say this was a former MP from Keiyo?
- 8 A. Yes.
- 9 Q. Is that what -- your testimony?
- 10 A. Yes, North. Keiyo North, yeah. Yes.
- 11 PRESIDING JUDGE EBOE-OSUJI: Let's try again with the spelling. Do we have
- 12 S-U-M-B-E-Y-W-A?
- 13 THE WITNESS: Yes.
- 14 PRESIDING JUDGE EBOE-OSUJI: All right.
- 15 MR GARCIA:
- 16 Q. Anybody else that you recognized there, any personalities?
- 17 A. There is former nominated MP, Tabitha Seii.
- 18 MR GARCIA: All right. Just for the record that is Tabitha, T-A-B-I-T-H-A, Seii,
- 19 S-E-I-I.
- 20 Q. Is that correct, Mr Witness?
- 21 A. Yes.
- 22 Q. Now, did anyone speak during the funerals of Mr Lucas Sang?
- 23 A. The same people.
- 24 Q. Did Mr Kibor speak during the funerals?
- 25 A. Yes, your Honour.

1 Q. Were you there listening to this when Mr Kibor was speaking?

2 A. Yes, your Honour.

3 Q. Can you tell the Court what Mr Kibor said?

4 A. I can't recall exact words he said, but he was telling people to be ready to fight
5 with the Kikuyus, but I can't still remember exact word.

6 Q. That's all right, Mr Witness. Now, what we're interested in is not necessarily
7 the exact words, unless you know them, but in general what was he saying
8 without -- without needing to refer to the exact words?

9 A. I can't remember exactly, but he was telling the youth to be prepared to fight
10 with the Kikuyus.

11 Q. Anything else?

12 A. I can't remember exact words.

13 Q. Now, do you remember anyone else who spoke at the funeral?

14 A. Tabitha Seii was saying -- she was saying that if young men are not ready to
15 fight, then I can decide to wear the trouser and then I can go myself to the -- to the
16 war.

17 Q. Now, how did you understand that? What did you understand that to mean?

18 A. Yeah, being a woman she was really giving a morale, men, young men to go to
19 fight, because if a woman has decide to go herself, then men is -- will be excited to go
20 to the war.

21 Q. When you say that "... she was really giving a morale ...", what do you mean by
22 that? Remember the five -- remember the five seconds, Mr Witness.

23 A. Giving them courage to go.

24 Q. Now, did you hear the speeches of anyone else while you were there?

25 A. Sumbeiywo was also saying -- was also giving the same information, giving the

1 word of sympathy and also encouraging and also praising the late, that he was -- that
2 he died when he was fighting for us.

3 MR KHAN: Mr President, can I -- I think it's only fair to witness. My learned
4 friend at one point said we're not interested in the exact words. Your Honour,
5 I think we shouldn't go straight to second best evidence. If the witness can
6 remember the precise words, that's what we should get.

7 PRESIDING JUDGE EBOE-OSUJI: That's a good point. I had in mind to make that
8 point as well.

9 Witness, if you can remember the exact words, make efforts to do that, but what
10 Mr Garcia was really telling you on that occasion was since you indicated you
11 couldn't remember the exact words, you could give evidence of what you understood
12 the message of the speech to be, but when you do -- when you can give us exact
13 words, make efforts to do that, all right?

14 Mr Garcia.

15 MR GARCIA: Yes. Your Honour, just for record, what I do remember - maybe I
16 misspoke - is telling the witness if he can't remember the exact words, then tell us the
17 gist of it or the general meaning, but if he does obviously remember --

18 PRESIDING JUDGE EBOE-OSUJI: That's what I said.

19 MR GARCIA: -- the exact words, it's even better.

20 PRESIDING JUDGE EBOE-OSUJI: That's what I said so --

21 MR GARCIA: It's even better so --

22 PRESIDING JUDGE EBOE-OSUJI: -- let's move on.

23 Mr Garcia, I don't know when you move away from the killing of Lucas Sang, but it
24 appears that so far the manner of your eliciting information about killings had been to
25 enquire who did it and all that. I don't know whether you have done it as regards

1 Mr Sang, Lucas Sang, who was killed, I mean who were the culprits, if that sort of
2 information is available to be given?

3 MR GARCIA: I haven't elicited that information, but I can elicit it, your Honour.

4 PRESIDING JUDGE EBOE-OSUJI: Yes, please.

5 MR GARCIA: I think that was elicited through other witnesses, but I can do it again
6 through this witness obviously.

7 Q. Now, Mr Witness, obviously if you know the exact words, you can tell them to
8 us and that will be the best thing, but in response to my last question you were saying
9 that "... Sumbeiywo was also saying -- was also giving the same information, giving
10 the word of sympathy and also encouraging and also praising the late, that he
11 was -- that he died when he was fighting for us." And he was praising whom
12 exactly?

13 A. The late Lucas Sang.

14 Q. Now, do you remember the exact words that he used, or do you just remember
15 the general meaning of what he was saying?

16 PRESIDING JUDGE EBOE-OSUJI: He or she?

17 THE WITNESS: He was just --

18 PRESIDING JUDGE EBOE-OSUJI: Who are we talking about now?

19 MR GARCIA: Sumbeiywo.

20 PRESIDING JUDGE EBOE-OSUJI: I'm sorry, I was still thinking about Tabitha.
21 Sorry.

22 MR GARCIA: We're speaking -- just for the record we are speaking about what
23 Sumbeiywo would have said.

24 PRESIDING JUDGE EBOE-OSUJI: All right.

25 MR GARCIA:

1 Q. Now, Mr Witness, do you remember exactly words, or it's just the general
2 meaning of what he was conveying to the people there?

3 A. I have just said that I can't remember the exact word, but I can remember that he
4 was also at a time praising the late, that he is -- we need to be like him, that he has
5 died as a hero and he was fighting for the community.

6 Q. And when you said "... fighting for the community," you understand -- you
7 understood that to be what community?

8 A. Kalenjin.

9 Q. Now, how did you happen to know, Mr Witness, that there was a funeral for
10 Mr Lucas Sang that had been organised on that particular day?

11 A. During the Wednesday, his body was moved, was driven around Eldoret town
12 and with the white piece of -- like he was being driven as a hero in the town to be
13 seen that when after removed from the mortuary.

14 Q. And how is it that you were informed that there was going to be a funeral for
15 him on that particular date? Wait for five seconds before you answer.

16 A. Of course it was already announced over the radio that the funeral will be there
17 the following day and he was -- his body was supposed to be taken to stay overnight
18 at his place.

19 Q. Now, it was announced on what radio?

20 A. Kass FM.

21 Q. Do you remember who was announcing that the funerals would be held on that
22 date on Kass FM?

23 A. It was announced around in the evening, yeah, by Joshua Sang.

24 Q. Now, was there any media present at the funeral of Mr Lucas Sang?

25 A. I'm not sure.

1 Q. What I mean is were there any representatives of the media?

2 A. I can't remember.

3 Q. Now, you mentioned that Mr Joshua Sang had announced this on the evening
4 before. Do you know where Mr Joshua Sang was on that day of the funerals of
5 Mr Lucas Sang?

6 A. He was also present.

7 Q. What was he doing?

8 A. Just to keep up sympathy to the family and also praise the late.

9 Q. And how did Mr Joshua Sang praise the late Lucas Sang?

10 A. By giving his condolences and talk about him.

11 Q. Were you there when Mr Joshua Sang spoke about Mr Lucas Sang?

12 A. Yes.

13 Q. Can you tell the Court what Mr Joshua Sang said? Take five seconds and give
14 us a full answer, please.

15 A. In short he was just giving a sympathy and also praise the late for being fighter
16 of the community.

17 Q. Is that all that he said?

18 A. That's what I can remember.

19 Q. Do you remember the words he used when he was speaking, Mr Joshua Sang?

20 A. The words exactly I have just said that he was giving sympathy to the late and
21 also praising him for being the fighter, that he has died fighting for the community.

22 Q. And just to be clear, was Mr Joshua Sang giving his sympathies?

23 A. Yes.

24 Q. Anything else that you recall Mr Joshua Sang saying on that day?

25 A. No.

1 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, look at line -- page 24, line 6. There's
2 something written to the effect quote and unquote "... driven as another row in
3 town ..." Was that the testimony?

4 MR GARCIA: I can clear that up with the witness, your Honour, just to be --

5 Q. Now, Mr Witness, you said that in response to my question as to how you
6 happened to know that Mr Lucas Sang -- that there had been a funeral organised for
7 him on that particular day you said, "During the Wednesday his body was moved,
8 was driven around Eldoret town and with the white piece of ..." A piece of what
9 exactly?

10 A. Lots of white paper -- white clothes, like this, handkerchiefs like this, to show
11 that it's like a peaceful ceremony to send somebody who is a hero. Always we have
12 red handkerchiefs or red wraps to show that red is somebody has died, but this one
13 he was with a white -- yeah, what do you call?

14 Q. Is it a white piece of cloth --

15 A. Yes.

16 Q. -- or clothing?

17 A. Yes.

18 Q. So a white piece of cloth, I imagine. And you said "... like he was being driven
19 as another row in town ..." What did you mean exactly?

20 A. In the streets of Eldoret.

21 PRESIDING JUDGE EBOE-OSUJI: I thought he said "hero."

22 THE WITNESS: Hero.

23 MR GARCIA:

24 Q. Did you say "... as a hero ..."?

25 A. Yes.

1 Q. All right, "... as a hero in town ..." Thank you for that, Mr Witness.

2 Now, Mr Witness, I would like to bring you back to the period between 2005 and 2007.

3 Now, in the year 2005 did you attend any political meetings?

4 A. Yes, your Honour, 2005.

5 Q. Yes, 2005. Did you attend political meetings or any meetings where
6 politicians --

7 A. Yes.

8 Q. -- were gathered?

9 A. Yes, your Honour.

10 Q. On what date? Do you remember the date you would have attended such a
11 meeting?

12 A. There was several campaigns of new constitutions in 2005 and on 7 October
13 we -- I attend a meeting at State House, Nakuru.

14 Q. All right. Now, before 7 October, did you attend any meeting before that?

15 A. Yes, on 1 October.

16 Q. And what was the -- what was 1 October 2005 exactly?

17 A. It was in a small shoppings called Olainguse.

18 Q. Let me go through that again. Where was this meeting or gathering on 1
19 October 2005?

20 A. Olainguse.

21 MR KHAN: Your Honour, again we need to be fair. The witness's answer was it
22 was a small shopping centre. Your Honour, that's clearly the answer that was given.

23 MR GARCIA: Actually the answer the witness has just answered he said it's at
24 Lainguse, so --

25 THE WITNESS: Olainguse.

1 MR GARCIA:

2 Q. And just for the spelling, Mr Witness, is that O-L-E-N-G-U-S-E; is that correct?

3 A. Yes, your Honour.

4 Q. Now, what is Olainguse, exactly?

5 A. It's around Burnt Forest area.

6 Q. Is it a town, a village? What is it?

7 A. There's a small shopping centres.

8 Q. And why were people gathered on 1 October 2005? What was the purpose?

9 A. It was an international for the elders' day and it was organised by a group of
10 elders there (Redacted)

11 (Redacted)

12 Q. All right. Now, Mr Witness --

13 A. No problem. Sorry, sorry. You can remove that side?

14 PRESIDING JUDGE EBOE-OSUJI: Move on. It's all right.

15 MR GARCIA:

16 Q. It's all right, Mr Witness. Just -- let's just move on. Just listen to my questions,
17 answer my questions. Now, look at your PIS document, were you there with anyone,
18 anyone who is mentioned in that document?

19 A. Number 13, number 17. Yeah, those are the ones I was with and there were
20 many other people.

21 Q. Now, were there any politicians that were there on that day?

22 A. Yes.

23 Q. Can you give us the names of these politicians that were there?

24 A. Three MPs of Eldoret, Uasin Gishu, and then the Honourable David Koros of
25 Eldoret South, Honourable Lagat from Eldoret East and Honourable William Ruto of

1 Eldoret North and also Mr Magud, former mayor of Eldoret.

2 Q. Can you give us the spelling of Mr Magud?

3 A. M-A-G-U -- G-U-D.

4 Q. Now, did any of the politicians speak during this -- during this gathering?

5 A. Yes, in fact all of them.

6 Q. Now, were you there when Mr Ruto spoke?

7 A. Yes.

8 Q. Can you tell the Court what he said?

9 A. He was just referring telling the people they are to be prepared to do what they
10 have already done before and they have to finish to make sure that we remove the
11 Kikuyus from our land, from our soil, he used "our soil."

12 Q. You said that he said that to be prepared to do what they have already done
13 before?

14 A. Yes.

15 Q. What did he mean by that? What had they done before? Explain that to the
16 Court clearly.

17 A. Actually the area was -- there was another violence took place in previous years
18 in that area and then Kikuyus were removed -- were almost removed from the area,
19 but some of them were still remain in the area. But actually even that functions there
20 was a football club between the area from Kikuyus and Kalenjin, but actually he was
21 talking in Kalenjin despite the fact that there was also Kikuyus who were having a
22 club there, a football club.

23 Q. So you said that there had been another violence that had taken place in the
24 previous years?

25 A. In the same region. In the same areas.

1 Q. All right. And this is the area of what? What is the area known as?

2 A. Burnt Forest area.

3 Q. And can you tell us when in the past the violence had occurred?

4 A. 1992 and some others I cannot recall, but mostly in 1992.

5 Q. And what had happened in 1992?

6 A. There was a fight within areas like Rironi which is along -- and Burnt Forest
7 areas where Kikuyus were dominated areas. There is even an area called Rironi now
8 changed to Kaplelach to mean that it was having a name of Kikuyu, that Rironi, but
9 now it has been change to Kaplelach.

10 Q. And what is -- can you spell that name for us, this Kaprironi?

11 A. Rironi is R-I-R-O-N-I and now it has been changed to Kaplelach.

12 Q. And Kaplelach, can you spell that? Is that K-A-P-L-E-L-A-C-H?

13 A. Yes.

14 Q. So at the time in 1992 this area Rironi it was inhabited by people of what
15 ethnicity?

16 A. Kikuyus.

17 Q. And in 2005 were there Kikuyus remaining in that area?

18 A. Yes, there -- because there are some -- in some other parts like Lainguse there
19 are still some Kikuyus, area of Burnt Forest town and some areas there is also
20 Kikuyus were still remain. They were still in majority.

21 Q. And you said that Kikuyus had been removed in the past. Who had removed
22 them from that area?

23 A. Kalenjins.

24 Q. And just to be clear for the record, in what language was Mr Ruto speaking
25 when he was saying this?

1 A. Kalenjin. He was speaking in Nandi and even the chief of the area wanted to
2 speak in Swahili, but he was stopped from doing so. But, yeah.

3 Q. Now, how did the crowd that was gathering there react to Mr Ruto saying these
4 things?

5 PRESIDING JUDGE EBOE-OSUJI: Before we proceed, who stopped -- who stopped
6 the chief of the area from wanting to speak in Swahili?

7 THE WITNESS: The area MP, David Koros.

8 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, we are interested in knowing exactly
9 what Mr Ruto said in the speech if the witness can remember the exact words.

10 MR GARCIA: Certainly, your Honour, and I will also broach the subject that the
11 Court has just broached in its question.

12 Q. Now, Mr Witness, can you tell the Court the exact words that were used by
13 Mr Ruto when he said this to the people at that gathering on 1 October 2005? Are
14 you able to give us that?

15 A. I can't remember exact words, but he was using some words to say that these
16 people have been in our soil. They have to be removed from our soil once and for all,
17 but I can't join the exact word he used by then, but he used such a word "our soil."

18 PRESIDING JUDGE EBOE-OSUJI: Hold that question, please.

19 Private session.

20 *(Private session at 10.38 a.m.) Reclassified as Open session

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

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

23 (Redacted)

24 (Redacted)

25 MR GARCIA: (Redacted)

1 PRESIDING JUDGE EBOE-OSUJI: Yes.

2 THE WITNESS: (Redacted)

3 PRESIDING JUDGE EBOE-OSUJI: Yes, (Redacted)

4 MR GARCIA: (Redacted)

5 PRESIDING JUDGE EBOE-OSUJI: -- (Redacted)

6 (Redacted)

7 (Redacted)

8 MR GARCIA: (Redacted)

9 (Redacted)

10 Q. Now, Mr Witness, I am just going to ask you the question --

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

12 MR GARCIA: We can come back into public.

13 PRESIDING JUDGE EBOE-OSUJI: Yes.

14 MR GARCIA:

15 Q. (Redacted)

16 (Redacted)

17 PRESIDING JUDGE EBOE-OSUJI: All right, let's go back to public.

18 (Open session at 10.40 a.m.)

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

20 PRESIDING JUDGE EBOE-OSUJI: Thank you.

21 MR GARCIA:

22 Q. Now, Mr Witness, I asked you if you can recall the exact words that Mr Ruto

23 would have used on that 1 October 2005. You stated that, from my understanding, is

24 that can't -- did you say that "... they have to be removed from our soil once and for

25 all"? And you say that "I can't join the exact words he used by then." Do you

1 remember any of the words as in can you tell us how he was referring to people that
2 were of Kikuyu ethnicity?

3 A. I got -- he used some other words which I cannot still remember because he
4 talked -- he was the one who talked at length, so I can't remember his exact words,
5 but I can remember him. There were some other words he used, but when he was
6 referring to Kikuyus he was just saying that the Kikuyus -- he was almost saying the
7 Kikuyus, but he was referring as visitors, but there were some other words he used.
8 I can't remember what he used to mean the Kikuyus.

9 Q. Now, to your recollection did Mr Ruto say anything else that you remember
10 today?

11 A. I can't remember any other words, but he talked at length, but one of them is the
12 eviction of Kikuyus was actually one of the main words he used that they have to be
13 removed once and for all.

14 Q. Now, what was the reaction of the crowd that was listening to this, listening to
15 Mr Ruto when he said these things?

16 PRESIDING JUDGE EBOE-OSUJI: One second, sorry.

17 Witness, you said that Mr Ruto had said for the people or Kalenjins to do what they'd
18 done -- what they had done before.

19 THE WITNESS: Yes.

20 PRESIDING JUDGE EBOE-OSUJI: Did he say that?

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

22 PRESIDING JUDGE EBOE-OSUJI: He used those words?

23 THE WITNESS: Yes, your Honour.

24 PRESIDING JUDGE EBOE-OSUJI: Please proceed, Mr Garcia.

25 MR GARCIA:

1 Q. Now, Mr Witness, what was the reaction of the crowd upon hearing these
2 words from Mr Ruto?

3 A. They were cheering him.

4 Q. Now, you said that a person was impeded in speaking in Swahili. Who was
5 this?

6 A. The area chief, Mr Biwott.

7 Q. So is that B-I-W-O-T-T?

8 A. Yes.

9 Q. And this was a person of what ethnicity?

10 A. Nandi.

11 Q. And who stopped him from speaking in Swahili?

12 MR KHAN: Mr President, this has been asked and answered. The witness said
13 "David Koros".

14 MR GARCIA:

15 Q. Mr Witness, do you know why Mr Koros would have asked Mr Biwott not to
16 speak in Swahili?

17 A. Because what was being talked is about incite -- some word that incited against
18 Kikuyus and the concerned Kikuyus were there.

19 Q. Now, how do you know this, that this is the reason why they were -- Mr Koros
20 was stopping him from speaking in Swahili?

21 A. I cannot know beyond that, but he was stopping him saying, "No, we are -- we
22 need to talk ourself."

23 Q. Just to complete did you say, "No, we are -- or we need to talk ourselves"? Is
24 that it?

25 A. Yes.

1 Q. Now, Mr Witness, during this period of time 2005 --

2 PRESIDING JUDGE EBOE-OSUJI: Are you moving away from this meeting?

3 MR GARCIA: Yes, your Honour.

4 PRESIDING JUDGE EBOE-OSUJI: All right. Please one second.

5 Witness, you've testified as to what Mr Ruto said and you said he spoke in Kalenjin.

6 Did he speak in any other language during his speech?

7 THE WITNESS: No, your Honour.

8 PRESIDING JUDGE EBOE-OSUJI: Thank you.

9 Proceed.

10 MR GARCIA:

11 Q. Now, Mr Witness, I'd like to ask you some questions regarding this period of
12 time before the referendum in 2005 in Kenya. Were you -- were you listening to the
13 radio during this period of time?

14 A. Yes, your Honour.

15 Q. Can you tell us what radio station you were listening to?

16 A. I was listening to several radio stations, but mostly Radio Citizen and Kass FM.
17 By then it was newly launched and I could listen mostly with that.

18 Q. And when you would listen to Kass FM, would you listen to any programme in
19 particular or any host in particular?

20 A. Yes, I listened to Lene Emet.

21 Q. And who was the host of that show?

22 A. Mr Sang.

23 Q. Now, can you tell us what was being said on that -- on the show of Lene Emet
24 by Mr Sang regarding the referendum at that time?

25 A. During that time actually he was for the -- against the draft constitutions and he

1 was giving a negative side of the draft most of the time, also this topic in the morning.

2 And that was said, so I can still remember, but the callers were actually very excited
3 when he was using his programme in the morning.

4 Q. What was he saying exactly about the draft constitution?

5 A. The draft constitution that it was viewed that this new constitution if it's going
6 to pass through then Kikuyus will use them to take away our lands and those are the
7 main words he was also using. And also some other callers could also use the same
8 that it will give -- oh, I can't remember the words, but it will give chance to -- for
9 many people to come to take our lands. That is most things that he was using to
10 incite the public and also he was also using the same to give praise to the then people
11 who were supporting the -- who were against the draft constitution by then.

12 Q. Now, you said that he was saying that if the constitution would pass, "... then
13 Kikuyus will use them to take away our lands." Can you tell us how he was
14 referring to Kikuyus while on air while he was broadcasting?

15 A. There were some many words he could use. One of them is murgelda. Kab
16 Murgelda, yes.

17 Q. It's M-U-R-G-E-L-D-A?

18 A. Yes, kab murgelda. Yes, yes.

19 Q. Did you say something before murgelda? Is there something that comes before
20 that?

21 A. Kab murgelda, yes. Yes, K-A-B and then murgelda.

22 Q. And literally what does that mean, kab murgelda?

23 A. It's one we know for Kikuyus, one of the names of the Kikuyus according to
24 our -- our community calls Kikuyus that name some -- more so at the time.

25 Q. Did he use any other words to refer to Kikuyus while he was on air, or

1 broadcasting?

2 A. The people from up pichun doror.

3 Q. You said "The people from up"?

4 A. Yes.

5 Q. What else exactly? You used another word?

6 A. That is -- that is pichun doror. Those people from the other side, a higher place,
7 I cannot explain directly what is the meaning in English.

8 PRESIDING JUDGE EBOE-OSUJI: All right. Can you write that word? Did you
9 say "pichun doror," or something like that? Can you write, please, and spell it for
10 the record.

11 THE WITNESS: Okay, pichun is P-I-C-H-U-N and then doror is D-O-R-O-R.

12 MR GARCIA:

13 Q. And you say that there were callers who would call into his programme. What
14 would these callers say?

15 A. They were really against the draft and saying Kikuyus must know that it's our
16 land and they have -- later on they have to go. They will not accept that to happen
17 any more.

18 Q. And when callers would say this on air, how would Mr Sang react to that?

19 A. He was really supporting them.

20 Q. Now after the referendum, between the period of time of after the referendum
21 to 2007 before the post-election violence, were you listening to Kass FM as well?

22 A. Yes, it is a radio which is always there. The whole time I could listen to it.

23 Q. And can you tell us what Mr Sang would be saying on the radio during that
24 period of time? What was the general message?

25 A. I can't -- there are so many words. I cannot just remember what exactly what

1 you want.

2 Q. Was he speaking about the Kikuyus on the radio?

3 MS BUISMAN: Sorry, that is leading. Very leading.

4 THE WITNESS: I have just said earlier that during referendum and after
5 referendum he was just leading the people to -- like he was actually for the people
6 who were supporting the people's demands, that now it's already -- people have
7 already organised themselves and they are now against the Kikuyus, and most of the
8 time he could talk to confirm that he was really for that.

9 MR GARCIA:

10 Q. Okay. So you say that after the referendum he was saying that people have
11 already organised themselves and they are now against the Kikuyus. Can you
12 explain that?

13 MR KHAN: Mr President, can I just say also just we have taken quite a long time
14 with this witness already. I wonder what is the utility of reading back every single
15 time almost the witness's previous answer? This kind of shadowing is not necessary.
16 There is a record and my friend can, in my respectful submission, simply put his next
17 question instead of reading the previous answer.

18 PRESIDING JUDGE EBOE-OSUJI: That's allowed. He can bring back the witness's
19 previous answer as a springboard to another line of questions. So that is permissible.
20 Mr Khan, you know that.

21 One second.

22 Proceed, Mr Garcia.

23 MR GARCIA:

24 Q. Now, Mr Witness, you said that after the referendum -- and I think this is
25 Mr Sang would have said that people have already organised themselves and they are

1 now against the Kikuyus. Can you explain that to us?

2 A. I didn't say that he was saying that, but I said the general public from the
3 Kalenjin community has already take a certain position against Kikuyus. I didn't say
4 that he was already prepared to arrange themselves. No, it was already have a
5 strong perceptions that Kikuyus are enemies of the community.

6 Q. Okay. Now, from what you could listen on the radio after the referendum,
7 what was Mr Sang's opinion on this, on the position of the Kikuyus?

8 A. He was -- he was always using the word, "Nobody love you," mazamak chi.
9 That is to show that the Kalenjin community are not being loved unless they stand
10 firm to fight for themselves.

11 Q. I think you said a word after, "Nobody love you." What is the word exactly?
12 Can you spell it for us?

13 A. That is sometimes he could use this word to say, okay, "Ongen mazhamak chi;"
14 that is to say, "You know that nobody love you." That -- ongen is O-N-G-E-N and
15 then mazhamak M-A-Z-H-A-M-A-K and then Chi is C-H-G -- C-H-I.

16 Q. Now, in the period just preceding the post-election violence and the elections in
17 Kenya on 27 December, what was being said on Kass FM regarding the elections?

18 A. Actually he was sometimes take the people from the ODM's side to the station
19 and most of the time he could direct people to the side of ODM mostly, but actually
20 he could also bring the people of the other side, of PNU, to the station to campaign for
21 their Party of National Unity, yes, but the people already react opposite that they
22 could not even support what people from PNU could say.

23 Q. Now I'd just like to know, Mr Witness, did he ever have people from the ODM
24 in the studio with him?

25 A. Yes, your Honour.

- 1 Q. Can you tell us which people?
- 2 A. I can't remember them, but one of them is Mheshimiwa William Ruto.
- 3 MR GARCIA: Your Honours, I see the time.
- 4 PRESIDING JUDGE EBOE-OSUJI: Yes, we will take our morning break now. How
- 5 much longer do you want to spend with this witness?
- 6 MR GARCIA: I have 30 minutes left, your Honour.
- 7 PRESIDING JUDGE EBOE-OSUJI: All right.
- 8 We will take our morning break now and come back in 30 minutes.
- 9 We go to closed session.
- 10 MR KHAN: Mr President, while that is being done, in the break perhaps page 41,
- 11 line 9, can be corrected?
- 12 *(Closed session at 11.00 a.m.) Reclassified as Open session
- 13 THE COURT OFFICER: We are in closed session, Mr President.
- 14 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 15 I am sure it will be corrected, Mr Khan.
- 16 (The witness stands down)
- 17 PRESIDING JUDGE EBOE-OSUJI: Court will rise.
- 18 THE COURT OFFICER: All rise.
- 19 (Recess taken at 11.01 a.m.)
- 20 (Upon resuming in open session at 11.35 a.m.)
- 21 THE COURT USHER: All rise.
- 22 Please be seated.
- 23 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
- 24 Witness, welcome back.
- 25 Mr Garcia, please proceed.

1 MR GARCIA:

2 Q. Now, Mr Witness, when we left off you had mentioned that Mr Sang had had
3 Mr William Ruto as a guest in studio. Can you -- do you remember what they
4 would have spoken about?

5 A. The campaign was about then to campaign for the party of Orange Democratic
6 Movement and, yeah, support took directly to the Kalenjin community to support
7 ODM.

8 Q. Can you tell us, Mr Witness, what was Mr Sang's position on people who did
9 not support the ODM?

10 A. Actually the people who could not support ODM by then, he could react and
11 say, "That is yours," and then he could mention some, yeah, word which could show
12 that he was not supporting for the -- anybody who was not supporting ODM by then.

13 Q. Now just for the transcript, Mr Witness, you say, "He could react and say that
14 is ..." and we didn't understand the word. What was the word?

15 A. That if somebody could call in who is supporting the other -- the opposite party,
16 like PNU, could talk shortly and then could say, "Okay, that is yours," but when
17 somebody called in from the ODM side could add more words to support it which
18 means his heart was in the other side of ODM.

19 MR GARCIA: Your Honours, I'd like to go into private session for two/three
20 minutes.

21 PRESIDING JUDGE EBOE-OSUJI: But before that, this is to elaborate on the
22 testimony, is the witness's testimony to the effect that, if a caller called in expressing
23 support for the party opposed to ODM, Mr Sang would cut that caller short and say
24 "That is your view" to that person, but if -- is that what you said?

25 THE WITNESS: Yes, your Honour.

1 PRESIDING JUDGE EBOE-OSUJI: All right. But if somebody called in supporting
2 the ODM, then that person had more time to speak on Mr Sang's show. Is that what
3 you were saying?

4 THE WITNESS: Yes, your Honour.

5 PRESIDING JUDGE EBOE-OSUJI: Thank you.

6 You want to go to a private session now, you said?

7 MR GARCIA: Yes, for a couple of minutes, your Honour.

8 PRESIDING JUDGE EBOE-OSUJI: Private session.

9 *(Private session at 11.40 a.m.) Reclassified as Open session

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

11 PRESIDING JUDGE EBOE-OSUJI: Thank you.

12 MR GARCIA:

13 Q. (Redacted)

14 A. (Redacted)

15 Q. (Redacted)

16 A. (Redacted)

17 (Redacted)

18 Q. (Redacted)

19 (Redacted)

20 A. (Redacted)

21 Q. (Redacted)

22 A. (Redacted)

23 (Redacted)

24 (Redacted)

25 Q. (Redacted)

1 (Redacted)
2 A. (Redacted)
3 (Redacted)
4 (Redacted)
5 Q. (Redacted)
6 (Redacted)
7 A. (Redacted)
8 (Redacted)
9 Q. (Redacted)
10 MS BUISMAN: (Redacted)
11 MR GARCIA: (Redacted)
12 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
13 MR GARCIA:
14 Q. (Redacted)
15 A. (Redacted)
16 Q. (Redacted)
17 A. (Redacted)
18 (Redacted)
19 (Redacted)
20 (Redacted)
21 (Redacted)
22 Q. (Redacted)
23 (Redacted)
24 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
25 (Redacted)
26 MR GARCIA: (Redacted)

1 THE WITNESS: (Redacted)
2 MR GARCIA:
3 Q. (Redacted)
4 (Redacted)
5 A. (Redacted)
6 (Redacted)
7 (Redacted)
8 (Redacted)
9 (Redacted)
10 Q. (Redacted)
11 (Redacted)
12 (Redacted)
13 A. (Redacted)
14 Q. (Redacted)
15 A. (Redacted)
16 Q. (Redacted)
17 (Redacted)
18 A. (Redacted)
19 (Redacted)
20 (Redacted)
21 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
22 (Redacted)
23 (Redacted)
24 MR GARCIA: (Redacted)
25 (Redacted)

1 Q. (Redacted)
2 (Redacted)
3 (Redacted)
4 A. (Redacted)
5 MR GARCIA: (Redacted)
6 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
7 (Redacted)
8 THE WITNESS: (Redacted)
9 (Redacted)
10 (Redacted)
11 (Redacted)
12 (Redacted)
13 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
14 (Redacted)
15 THE WITNESS: (Redacted)
16 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
17 (Redacted)
18 THE WITNESS: (Redacted)
19 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
20 THE WITNESS: (Redacted)
21 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
22 (Redacted)
23 (Redacted)
24 THE WITNESS: (Redacted)
25 (Redacted)

1 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
2 (Redacted)
3 MR GARCIA:
4 Q. (Redacted)
5 (Redacted)
6 A. (Redacted)
7 (Redacted)
8 (Redacted)
9 (Redacted)
10 Q. (Redacted)
11 A. (Redacted)
12 Q. (Redacted)
13 (Redacted)
14 A. (Redacted)
15 (Redacted)
16 (Redacted)
17 (Redacted)
18 Q. (Redacted)
19 (Redacted)
20 A. (Redacted)
21 (Redacted)
22 (Redacted)
23 Q. (Redacted)
24 (Redacted)
25 A. (Redacted)

- 1 (Redacted)
- 2 (Redacted)
- 3 (Redacted)
- 4 (Redacted)
- 5 (Redacted)
- 6 Q. (Redacted)
- 7 (Redacted)
- 8 A. (Redacted)
- 9 (Redacted)
- 10 (Redacted)
- 11 Q. (Redacted)
- 12 A. (Redacted)
- 13 (Redacted)
- 14 (Redacted)
- 15 Q. (Redacted)
- 16 A. (Redacted)
- 17 (Redacted)
- 18 Q. (Redacted)
- 19 A. (Redacted)
- 20 Q. (Redacted)
- 21 A. (Redacted)
- 22 Q. (Redacted)
- 23 (Redacted)
- 24 A. (Redacted)
- 25 PRESIDING JUDGE EBOE-OSUJI: (Redacted)

1 (Redacted)

2 THE WITNESS: (Redacted)

3 PRESIDING JUDGE EBOE-OSUJI: (Redacted)

4 THE WITNESS: (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 PRESIDING JUDGE EBOE-OSUJI: (Redacted)

11 THE WITNESS: (Redacted)

12 PRESIDING JUDGE EBOE-OSUJI: (Redacted)

13 THE WITNESS: (Redacted)

14 PRESIDING JUDGE EBOE-OSUJI: (Redacted)

15 THE WITNESS: (Redacted)

16 PRESIDING JUDGE EBOE-OSUJI: (Redacted)

17 (Redacted)

18 THE WITNESS: (Redacted)

19 PRESIDING JUDGE EBOE-OSUJI: (Redacted)

20 (Redacted)

21 THE WITNESS: (Redacted)

22 (Redacted)

23 PRESIDING JUDGE EBOE-OSUJI: (Redacted)

24 (Redacted)

25 THE WITNESS: (Redacted)

1 (Redacted)
2 (Redacted)
3 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
4 (Redacted)
5 THE WITNESS: (Redacted)
6 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
7 THE WITNESS: (Redacted)
8 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
9 (Redacted)
10 (Redacted)
11 (Redacted)
12 (Redacted)
13 THE WITNESS: (Redacted)
14 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
15 (Redacted)
16 THE WITNESS: (Redacted)
17 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
18 (Redacted)
19 MR GARCIA:
20 Q. (Redacted)
21 (Redacted)
22 (Redacted)
23 A. (Redacted)
24 (Redacted)
25 Q. (Redacted)

1 (Redacted)

2 A. (Redacted)

3 Q. And the people that you mentioned that would get in, do you know if they had
4 particular names?

5 A. There is one person not really his name. He's called Councillor High-Rise.

6 Q. So Councillor High-Rise?

7 A. Yes.

8 PRESIDING JUDGE EBOE-OSUJI: As in high-rise building?

9 THE WITNESS: It's high-rise, yeah, like that, yeah, Councillor High-Rise.

10 MR GARCIA:

11 Q. Any other names that come to mind?

12 A. There is Kiptindinyo, but I know his -- his real name is called Julius Ruto.

13 Q. Okay. His real name is?

14 A. I think Julius Ruto if I'm --

15 Q. Julius Ruto?

16 A. Yes.

17 Q. And the name that you said that he would go on the radio station was what?
18 Can you spell that for us?

19 A. Kiptindinyo. Kiptindinyo.

20 PRESIDING JUDGE EBOE-OSUJI: I think we've seen that word before, haven't we,
21 Mr Garcia?

22 MR GARCIA: Could be, your Honour. We could go on to the next name.

23 Q. Mr Witness, do you recall any other name, any other person?

24 A. There is somebody called Laitoriat, not really his name.

25 Q. Can you spell that for us?

1 A. Laitoriat is L-A-T-O -- L-A-I-T-O-R-I-A-T.

2 Q. You mentioned before a Kiptindinyo and I think it is -- K-I-P-T-I-N-Y-O. Do
3 you know what that means?

4 A. Kiptindinyo is some -- some -- it's just a name which can be given to somebody
5 who -- I cannot explain, but it's a name from the Kalenjin community which can be
6 used to -- somebody who is -- who is like -- who have specific -- who can come like at
7 night to do something which is -- Kiptindinyo, yeah, somebody who is not actually
8 doing anything good but he can be -- can be a nickname, it's a nickname of somebody
9 else.

10 Q. All right. So from what I understand it's somebody who doesn't -- who comes
11 at night, doesn't do good things; is that it?

12 A. Yes, maybe, yeah. Up to good things, yes.

13 Q. Are there any other names that come to mind now of people who could get
14 in -- who could get on?

15 A. Chief Whip.

16 Q. Chief Whip?

17 A. Yeah.

18 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, you know when to -- a good time to
19 get out to the open?

20 MR GARCIA: We can go into open session, your Honour.

21 PRESIDING JUDGE EBOE-OSUJI: Open session then.

22 (Open session at 11.59 a.m.)

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

24 MR GARCIA:

25 Q. Mr Witness, we were just mentioning the names of callers that would get on

1 Kass FM to speak with Mr Sang. You just mentioned Chief Whip. Is there anybody
2 else that comes to mind?

3 A. There are so many others I cannot remember, but so many.

4 Q. Now, for these people, Councillor High-Rise, Kiptindinyo, Laitoriat, Chief Whip,
5 when they would come on line and speak to Mr Sang what would they say generally?

6 A. Some of them could support the -- the side of new draft. They could talk at
7 length about -- sometimes talk about the unity of Kalenjin, sometimes talk about the
8 supporting the draft constitution, sometimes -- depending on a political reaction on
9 that particular day, because Sang could bring several topic on daily basis, some
10 developments, sometimes could be Kalenjin unity, some -- yeah. This is the group of
11 people whom actually sent a message to the ground because they have long airtime to
12 speak and could change the directions of the community.

13 Q. Can you tell us what type of message they would send to the community, to the
14 ground?

15 A. Some of them sometimes could be to -- to -- to -- to take people to support the
16 Honourable William Ruto, that could be take a line to show that nobody had a
17 leader -- could be a head of -- a king of the Kalenjin by then, or the leader of the
18 Kalenjin by then. So they could talk in support of him and anybody who talks
19 contrary to that could not get any support even from the public; the rest of the people
20 who were calling in.

21 Q. You said that one of the messages would be "... to show that nobody could get a
22 leader ... a king of Kalenjin by then." What do you mean by that?

23 A. Yes, it was something like position that Ruto was actually taking over from the
24 retired president as a -- somebody who could lead the Kalenjin in the direction of -- of
25 that, yeah.

1 Q. Well, who was talking about this exactly, that --

2 A. Most of callers by then. And it was not daily. It some every day could be a
3 different topic.

4 Q. And when you say that "... position that Ruto was actually taking over from the
5 retired president ...", what exactly do you mean by that?

6 A. You know, Kalenjin believe that one leader at a time and President Moi was
7 somebody who was actually the big person who was being a head of Kalenjin from
8 long time, since '50s to after the retirement of -- in active politics.

9 Q. And at that point in time, in 2005, was there a leader of the Kalenjin?

10 A. Yes, actually. There was nothing special from Ruto, but because he was just a
11 national MP like the other MPs, but because of this -- this propaganda that had been
12 led by the -- in the radio stations, he take over the mantle and become somebody who
13 was really well-known and active and somebody who could be like a leader of the
14 Kalenjin.

15 Q. And you're saying "propaganda," but what radio station was putting out this
16 propaganda of him being --

17 A. I can confirm it was Kass FM most of the time, but also the same callers could
18 also call to another radio station which belonged to Royal Media; that was Chamgei
19 FM.

20 Q. And who on Kass FM was putting out this propaganda that Mr Ruto was a
21 leader of the Kalenjin?

22 A. Mr Sang actually was like -- you know, Sang is a good speaker. He can -- he
23 can manipulate. He can change mind of the people when he talks and that is how
24 he's -- he can use his talent to make people change.

25 Q. And can you just briefly explain to us what was this propaganda that Mr Sang

1 was putting out there regarding --

2 A. I could say --

3 Q. Remember the five seconds -- regarding Mr Ruto?

4 A. I could say that sometimes could even put a question to say that, "Who is
5 supposed to be head of the Kalenjin at the moment?", and people could -- and he
6 could take people as if we have seen somebody who is fighting for us, who have been
7 somebody who is supporting. He was with us within the constitution; that is to say
8 that Ruto was then the person who was against the constitution which could have
9 take over our lands. So that is to say that he was meaning Ruto, but when the people
10 call actually it is hundred -- almost 90 per cent could support the same idea.

11 PRESIDING JUDGE EBOE-OSUJI: Lines 3 and 4, Mr Garcia. I think we have the
12 witness said "Royal Media," which was "Chamgei FM."

13 MR GARCIA: Yes, indeed, your Honour. Chamgei and I think it was mentioned
14 by the witness initially in his testimony, so I think we do have the spelling. It's
15 C-H-A-M-G-A-I.

16 Q. Can you give us the -- is that the correct spelling, Mr Witness?

17 A. Chamgei is C-H-A-M-G-E-I. Chamgei.

18 MR GARCIA: I stand corrected. So it's G-E-I.

19 Q. Now, Mr Witness, do you know if the radio station Kass FM was open all the
20 time during 2005?

21 A. Yes, it's was open and I think it was started in the -- actually it was launched
22 officially in June 1st, I think, 2005.

23 Q. And in 2005 was it - and during the idea was it - always continuously
24 broadcasting?

25 A. Yes, your Honour. But there was a time it was closed briefly in August, or I

1 cannot remember the time, but August or July.

2 Q. And we're speaking about 2005?

3 A. Yes, your Honour.

4 Q. Do you remember why it was closed briefly?

5 A. It was perceived that people have used the same radio to incite other people
6 against other communities.

7 Q. Who was inciting people against other communities?

8 A. Sang was in the radio and several people could call in to say Kikuyus directly,
9 and that was the time actually there was a lot of tension against and the time was
10 about the -- the draft constitution was about to be -- take place in October.

11 Q. I asked the question who was inciting people against other communities and
12 you say that, "Sang was in the radio ..."?

13 A. Yes, it's the programme Lene Emet and then the people who call in could talk
14 directly against particular communities, especially Kikuyus.

15 Q. What was Sang saying at that time?

16 A. He had -- he was just putting the programme and then the people could call in
17 and then that one could show that he was supporting the same message. People
18 could call in and people were incited at that particular point. That's why even when
19 it was closed some of the shopping market was -- the things of the communities, like
20 women were taken over by the community like in a place called Chepterit.

21 Q. I'm going to come back to that in a second. You said that, "... people ..." would
22 "... call in ..." and "... say Kikuyus directly, and that was a time actually there was a lot
23 of tension." What were the people calling in to say about Kikuyus at that time?

24 A. There was -- it was about a new constitution, but actually it was like they want
25 to take advantage of new constitution to take our land after all.

1 Q. Okay. So when you're saying "they," the people would say that the Kikuyus
2 wanted to take over the land? Is that it?

3 A. Yes, take advantage of new constitution, if they're going to win it, and then they
4 will take over our land.

5 Q. And what would Mr Sang say to that when this was being said on the radio?
6 Remember the five seconds.

7 A. Mr Sang would not say directly but using some parables to show that he was
8 supporting the group, but he was not talking directly because Kass FM is a national
9 radio. It can be -- it can be listened to by even security. So he could not talk live
10 like directly. Otherwise, he could be arrested.

11 Q. So what was he saying in parables to show his support for the group?

12 A. That's what I was telling you, that say sometimes could say, "You know that
13 nobody loves you. You need to be united so that you'll be more stronger.
14 Otherwise the divisions about you, yourself, could show that you will be -- you will
15 not succeed if you were not united." And so those things that could -- could say that
16 you could give an enemy to enter into your territory.

17 Q. I'd just like for you to explain to us that last part. He "... could say that you
18 could give an enemy to enter into your territory." What do you mean by that?

19 A. Yes, to if you could -- your unity will make people now come in and to fight you
20 as a community.

21 Q. And when he's saying about -- when he's talking about the unity of the
22 community, who was he -- who was he speaking about?

23 A. Actually, according to him, I think people who could support Honourable Ruto
24 are now united, but me I'm sure that Kalenjin community have been united since
25 even during the Moi time. They were in the same party. I don't know why during

1 this referendum it is coming like a new thing when the Kalenjin were informed that
2 you have to be united and yet they have been united in the same party since the time
3 I can remember.

4 MR GARCIA: Your Honours, I'd like to go in private session for two minutes.

5 PRESIDING JUDGE EBOE-OSUJI: Private session.

6 *(Private session at 12.11 p.m.) Reclassified as Open session

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

8 PRESIDING JUDGE EBOE-OSUJI: Thank you.

9 MR GARCIA:

10 Q. (Redacted)

11 (Redacted)

12 MS BUISMAN: (Redacted)

13 PRESIDING JUDGE EBOE-OSUJI: (Redacted)

14 THE WITNESS: (Redacted)

15 MR GARCIA:

16 Q. (Redacted)

17 A. (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

- 1 (Redacted)
- 2 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
- 3 (Redacted)
- 4 (Redacted)
- 5 (Redacted)
- 6 THE WITNESS: (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 MR GARCIA:
- 10 Q. (Redacted)
- 11 A. (Redacted)
- 12 Q. (Redacted)
- 13 A. (Redacted)
- 14 Q. (Redacted)
- 15 A. (Redacted)
- 16 (Redacted)
- 17 (Redacted)
- 18 Q. (Redacted)
- 19 (Redacted)
- 20 A. (Redacted)
- 21 Q. (Redacted)
- 22 A. (Redacted)
- 23 Q. (Redacted)
- 24 A. (Redacted)
- 25 Q. (Redacted)

- 1 A. (Redacted)
- 2 (Redacted)
- 3 Q. (Redacted)
- 4 A. (Redacted)
- 5 Q. (Redacted)
- 6 A. (Redacted)
- 7 (Redacted)
- 8 Q. (Redacted)
- 9 A. (Redacted)
- 10 (Redacted)
- 11 Q. (Redacted)
- 12 A. (Redacted)
- 13 (Redacted)
- 14 Q. (Redacted)
- 15 A. (Redacted)
- 16 MS BUISMAN: (Redacted)
- 17 (Redacted)
- 18 MR GARCIA: (Redacted)
- 19 Q. You said, Witness, as well that, if I'm not mistaken, it was -- he put it in the Lene
- 20 Emet programme on the Monday?
- 21 A. Yes.
- 22 Q. What did he put, what did Mr Sang put?
- 23 A. To say what exactly that -- the group of three leaders have -- trying to isolate the
- 24 Nandis after they say, okay, we want to unite as Nandis so that later on we come as
- 25 Kalenjins, sub-tribes can be okay, but Sang by then was to unite the entire Kalenjin,

1 but his unity was like -- was actually behind somebody, it was not really unity, it was
2 like actually the people to become behind Ruto and whoever could say contrary to
3 that, that could be opposite.

4 PRESIDING JUDGE EBOE-OSUJI: (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 What meeting was this, Witness?

10 THE WITNESS: They were submitting in Laikipia which really just met and discuss
11 about the unity of Nandis, those who are three MPs, Honourable
12 William -- Honourable Kipruto Kirwa and Henry Kosgey and John Sambu, and they
13 were -- during their talking actually they talk about uniting Nandis first and then
14 later on Kalenjin.

15 PRESIDING JUDGE EBOE-OSUJI: Thank you.

16 THE WITNESS: And -- and this message didn't go well with Sang.

17 PRESIDING JUDGE EBOE-OSUJI: That message did not go well with Sang?

18 THE WITNESS: Yes.

19 PRESIDING JUDGE EBOE-OSUJI: Thank you.

20 Mr Garcia, please proceed.

21 MR GARCIA:

22 Q. Can you tell us -- have a drink. Can you tell us, Mr Witness, to your
23 understanding why this message of having the Nandis unite first did not go well with
24 Mr Sang at the time?

25 PRESIDING JUDGE EBOE-OSUJI: Can we ask that in public?

1 MR GARCIA: Yes, we can, your Honours.

2 PRESIDING JUDGE EBOE-OSUJI: Open session.

3 (Open session at 12.18 p.m.)

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

5 MR GARCIA:

6 Q. Mr Witness, I'm going to repeat my question: Can you tell the Court why is it,
7 to your understanding, that this message of the Nandis uniting first is something that
8 displeased Mr Sang or didn't go well with Mr Sang?

9 A. By then Mr Sang was saying we want to be united as Kalenjin and that one
10 could be not good for the certain communities like Nandi community to just isolate
11 themselves and say we want to be united first as Nandis and could put even the song
12 which could show the same that we need to unite as a Kalenjin first, which say,
13 Kipsigis ak Nandi ongiyamegai, which is -- this song was actually to sing to
14 propagate the same message of being united as Kalenjin first, not as a -- as a Nandi.

15 Q. And you said something in Nandi. Can you just repeat that and spell us the
16 words you mentioned?

17 A. I was saying that there was a song which is saying that -- which was
18 sanged -- by that time Sang was putting it which was actually played all the time that,
19 Kipsigis ak Nandi ongiyamegai Tugenyeke ongiyamegai. That is a song which is for
20 the unity of the Kalenjin.

21 Q. And the unity of the Kalenjin behind what leader?

22 A. Behind -- by then it was --

23 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, easy. Did the witness say that?

24 MR GARCIA: I can ask the question again and reformulate it.

25 PRESIDING JUDGE EBOE-OSUJI: Let's be careful, very careful.

1 Witness, you said that -- you've told us about a meeting and you mentioned three
2 leaders, we have that on record, and you say those leaders were exploring -- or, rather,
3 promoting the idea of unity of the Nandi, and you say that did not go down well with
4 Mr Sang who wanted -- who was in favour of unity of the Kalenjins. That's your
5 message, isn't it?

6 THE WITNESS: Yes, your Honour.

7 PRESIDING JUDGE EBOE-OSUJI: And so the Nandis are, is that the case, a
8 sub-group of a broader ethnic group called the Kalenjins; is that the case?

9 THE WITNESS: Yes, your Honour.

10 PRESIDING JUDGE EBOE-OSUJI: All right.

11 So Mr Sang, according to you, was in favour of the broader unity, whereas these
12 leaders were in favour of the first Nandis, the sub-group --

13 THE WITNESS: Yes.

14 PRESIDING JUDGE EBOE-OSUJI: -- unity?

15 THE WITNESS: Yes, by then, not -- not that they didn't want it, the larger Kalenjin
16 community, but they wanted first to unite as Nandis.

17 PRESIDING JUDGE EBOE-OSUJI: Thank you. And you said that in favour of -- as
18 I understood your testimony, you were saying that in favour of his own vision of
19 unity of Kalenjins --

20 THE WITNESS: Yes.

21 PRESIDING JUDGE EBOE-OSUJI: -- that Mr Sang was playing a certain song --

22 THE WITNESS: Yes, your Honour.

23 PRESIDING JUDGE EBOE-OSUJI: -- regularly on his radio show.

24 THE WITNESS: Yes.

25 PRESIDING JUDGE EBOE-OSUJI: That's your testimony. Can you write out the

1 title of that song. You said it in your testimony, beginning with Kipsigis. I think I
2 heard that. Can you write the whole thing out like you've done before, put it on the
3 record for us. Thank you.

4 (Pause in proceedings)

5 THE WITNESS: Yes. Okay.

6 PRESIDING JUDGE EBOE-OSUJI: Please, spell it one word at a time.

7 THE WITNESS: I think just part of the song, it's not full song, but I can start to say
8 Kipsigis is Kipsigis which is K-I-P-S-I-G-I-S. And then ak, A-K. And then Nandi,
9 N-A-N-D-I. Ongiyamegei, that is O-N-G-I-Y-A-M-E-G-E-I. And then another
10 Tugenyek, that is T-U-G-E-N-Y-E-K. And then ak, A-K. And then Keiyo, that is
11 K-I -- K-E-I-Y-O. Ongiyamegei, the same word as the other one.

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

13 THE WITNESS: And it was a song always played, yeah.

14 PRESIDING JUDGE EBOE-OSUJI: Thank you. And you say the song means what?

15 THE WITNESS: This is to say, "Kipsigis and Nandi let's unite, also Tugen and Keiyo,
16 let's unite." And then it's played -- these songs were actually played by a musician
17 from Kipsigis.

18 PRESIDING JUDGE EBOE-OSUJI: Thank you.

19 Mr Garcia, proceed.

20 MR GARCIA: Thank you, your Honour.

21 Now, I would like to have the help of the court officer to show the witness a
22 document. It's KEN-OTP-0036-0091, it's confidential. It's already in evidence,
23 EVD-T-OTP-00244. It can be found in binder number 3, tab 60.

24 Your Honour, I'd ask we go in private, just one minute, to ask him questions on it.

25 PRESIDING JUDGE EBOE-OSUJI: Private session.

1 *(Private session at 12.26 p.m.) Reclassified as Open session

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

3 MR GARCIA:

4 Q. Now, Mr Witness, do you see the screen before you? There's a document. Do
5 you see that document?

6 A. Yes, your Honour.

7 Q. It has the date (Redacted). Do you recognize that front page?

8 A. Yes, your Honour.

9 MR GARCIA: Can we flip over to the next page, 00 -- actually, 0093?

10 Q. Now, this is the third page of the document, Mr Witness. Am I correct in
11 stating that your name appears there as number --

12 A. 2.

13 Q. -- 2 and that you signed it as well at the time?

14 A. Yes, your Honour.

15 Q. And do you recognize as well this page as the -- do you recognize it?

16 A. Yes, your Honour.

17 MR GARCIA: If I could show page 0092 to the witness?

18 Q. Do you recognize that page, Mr Witness?

19 A. Yes, your Honour.

20 MR GARCIA: And finally, 0094.

21 Q. Do you recognize that page, Mr Witness?

22 A. Yes, your Honour.

23 Q. Can you tell us, Mr Witness, (Redacted)

24 (Redacted)

25 A. (Redacted)

1 Q. Now, I notice it says (Redacted)

2 A. Yes, your Honour.

3 Q. Is that the correct date (Redacted)

4 A. Yes, your Honour.

5 Q. Thank you, Mr Witness.

6 We can go back into public session, your Honour.

7 PRESIDING JUDGE EBOE-OSUJI: Open session.

8 (Open session at 12.29 p.m.)

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

10 PRESIDING JUDGE EBOE-OSUJI: Thank you.

11 MR GARCIA:

12 Q. Now, Mr Witness, did you listen to Kass FM radio after the post-election
13 violence in 2008?

14 A. Yes, your Honour.

15 Q. Now, can you tell us generally what was being said on Kass FM after the
16 post-election violence?

17 A. First it was talking about what was going on in Serena which was -- Ruto was
18 part of the committee members.

19 PRESIDING JUDGE EBOE-OSUJI: Going on where? Serena you said?

20 THE WITNESS: Serena Hotel, yeah.

21 PRESIDING JUDGE EBOE-OSUJI: Serena Hotel?

22 THE WITNESS: Yes.

23 PRESIDING JUDGE EBOE-OSUJI: Thank you.

24 MR GARCIA:

25 Q. All right. Is anything else being said on Kass FM?

1 A. And that was about actually -- and then later on, after the agreement, after -- on
2 28 February, they start talking about making of the government and they want to say
3 who is supposed to be which position in the ministry of -- of the coalition
4 government.

5 Q. Now, Mr Witness, to your knowledge, were there -- were any youth arrested for
6 their implication in the post-election violence?

7 A. That was the third topic which was also being discussed after the forming of the
8 government. They give the pressure to the then prime minister of Kenya,
9 Honourable Raila Odinga, that the youths who had been arrested should be released
10 and -- the youth who had been arrested during the violence.

11 And to make matters worse, even the leaders, including Ruto himself, was actually
12 putting that pressure to say youths must be released because of -- they have been
13 supporting us and now we are in the government and they are now suffering in jail.
14 And I could not refuse that some youths could be released, that's no problem, but this
15 was all youths who didn't -- they didn't even specify it, those youths who commit
16 crime during the time, so I could fail to understand why they could raise that third
17 thing to say that youths in general to be released, instead of making the law to take its
18 routes and then innocence could come out.

19 And that pressure actually give to the government. I think some -- after that they
20 didn't -- I think nobody has ever been arrested on -- in connection with that, if there is,
21 maybe one or two.

22 Q. You said that, Mr Witness, that this was the third topic. Who was -- who was
23 talking about this on Kass FM?

24 A. It was -- because MPs from the Kalenjin community were actually talking about
25 these and Sang was putting this pressure that our youths have been arrested, they

1 need to be released, so that this is conditions to the -- to the government by then.

2 Q. And can you give us a time frame of when this was being said?

3 A. That is --

4 Q. Just -- just a minute. Wait until I finish. A time frame, approximately of
5 when people were saying this on the radio, Mr Sang and other people?

6 A. That is between February and up to April when the government was
7 formed -- officially formed.

8 Q. Just for the record we're speaking about 2008?

9 A. Yes, 2008.

10 Q. And you said that including Mr Ruto himself was actually putting that
11 pressure?

12 A. Yes, your Honour.

13 Q. Can you tell us specifically what you remember Mr Ruto doing or saying in this
14 regard?

15 A. I can't remember. He was in a meeting in Kisumu -- I can remember, but it was
16 in a -- a television, I cannot know when, but he was actually saying that youths
17 should be released because they are the ones who are -- who are help us by blocking
18 roads and whatever, and yet they are suffering, they have to be released, so it was an
19 open thing that he was campaign the youths to be released, in general, not a specific
20 individual who maybe could look innocent.

21 Q. And in regards to Mr Ruto saying this himself in a meeting in Kisumu, are you
22 able to give us an approximate date for this, or a month?

23 A. I think during that time because when he was there he was really cheered by the
24 group there in Kisumu when he was talking about this.

25 Q. You said during what -- what time exactly?

1 A. I think after formation of the government, after April or before, just in March,
2 but I can't remember exact date.

3 MR GARCIA: Your Honours, I'd like to go into closed session for about five
4 minutes.

5 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, it has been well over an hour when
6 you said you would be finishing in 30 minutes. We will let you go on until 1, but
7 then you stop, that's the end of it, unless you stopped sooner than that, which is also
8 welcome. But your examination-in-chief will definitively be ending at 1 o'clock.

9 MR GARCIA: I'm grateful, your Honour.

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

11 *(Private session at 12.35 p.m.) Reclassified as Open session

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

13 MR GARCIA: Just one minute, your Honour.

14 Q. (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 A. (Redacted)

19 (Redacted)

20 (Redacted)

21 Q. (Redacted)

22 A. (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

1 (Redacted)
2 (Redacted)
3 (Redacted)
4 (Redacted)
5 (Redacted)
6 (Redacted)
7 (Redacted)
8 Q. (Redacted)
9 A. (Redacted)
10 (Redacted)
11 Q. (Redacted)
12 A. (Redacted)
13 (Redacted)
14 (Redacted)
15 (Redacted)
16 (Redacted)
17 (Redacted)
18 (Redacted)
19 (Redacted)
20 MR GARCIA: (Redacted)
21 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
22 (Redacted)
23 (Redacted)
24 (Redacted)
25 THE WITNESS: (Redacted)

1 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
2 (Redacted)
3 THE WITNESS: (Redacted)
4 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
5 THE WITNESS: (Redacted)
6 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
7 (Redacted)
8 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
9 THE WITNESS: (Redacted)
10 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
11 (Redacted)
12 (Redacted)
13 THE WITNESS: (Redacted)
14 (Redacted)
15 (Redacted)
16 (Redacted)
17 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
18 (Redacted)
19 (Redacted)
20 THE WITNESS: (Redacted)
21 (Redacted)
22 (Redacted)
23 (Redacted)
24 (Redacted)
25 (Redacted)

1 (Redacted)
2 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
3 (Redacted)
4 THE WITNESS: (Redacted)
5 (Redacted)
6 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
7 THE WITNESS: (Redacted)
8 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
9 (Redacted)
10 (Redacted)
11 THE WITNESS: (Redacted)
12 (Redacted)
13 (Redacted)
14 (Redacted)
15 (Redacted)
16 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
17 (Redacted)
18 MR GARCIA: (Redacted)
19 THE COURT OFFICER: (Redacted)
20 MR GARCIA: (Redacted)
21 (Redacted)
22 (Redacted)
23 THE WITNESS: (Redacted)
24 MR GARCIA: (Redacted)
25 (Redacted)

- 1 Q. (Redacted)
- 2 (Redacted)
- 3 (Redacted)
- 4 (Redacted)
- 5 A. (Redacted)
- 6 Q. (Redacted)
- 7 A. (Redacted)
- 8 Q. (Redacted)
- 9 A. (Redacted)
- 10 Q. (Redacted)
- 11 (Redacted)
- 12 (Redacted)
- 13 A. (Redacted)
- 14 MR GARCIA: (Redacted)
- 15 (Redacted)
- 16 MR GARCIA:
- 17 Q. (Redacted)
- 18 (Redacted)
- 19 A. (Redacted)
- 20 Q. (Redacted)
- 21 A. (Redacted)
- 22 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
- 23 MR GARCIA: (Redacted)
- 24 Q. (Redacted)
- 25 A. (Redacted)

1 MR GARCIA: (Redacted)
2 Q. (Redacted)
3 (Redacted)
4 A. (Redacted)
5 Q. (Redacted)
6 A. (Redacted)
7 MR GARCIA: (Redacted)
8 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
9 (Redacted)
10 MR GARCIA: (Redacted)
11 (Redacted)
12 MR KHAN: (Redacted)
13 MR GARCIA: (Redacted)
14 THE WITNESS: (Redacted)
15 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
16 MR GARCIA: (Redacted)
17 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
18 MR GARCIA: (Redacted)
19 (Redacted)
20 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
21 (Redacted)
22 MR GARCIA: (Redacted)
23 (Redacted)
24 THE COURT OFFICER: (Redacted)
25 (Redacted)

- 1 (Redacted)
- 2 MR GARCIA: (Redacted)
- 3 (Redacted)
- 4 THE COURT OFFICER: (Redacted)
- 5 MR GARCIA: (Redacted)
- 6 Q. (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
- 11 (Redacted)
- 12 MR GARCIA: (Redacted)
- 13 (Redacted)
- 14 Q. (Redacted)
- 15 (Redacted)
- 16 A. (Redacted)
- 17 (Redacted)
- 18 (Redacted)
- 19 (Redacted)
- 20 (Redacted)
- 21 Q. (Redacted)
- 22 (Redacted)
- 23 A. (Redacted)
- 24 (Redacted)
- 25 (Redacted)

1 (Redacted)
2 (Redacted)
3 Q. (Redacted)
4 A. (Redacted)
5 (Redacted)
6 (Redacted)
7 MR GARCIA: (Redacted)
8 (Redacted)
9 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
10 MS BUISMAN: (Redacted)
11 (Redacted)
12 (Redacted)
13 (Redacted)
14 (Redacted)
15 (Redacted)
16 (Redacted)
17 (Redacted)
18 PRESIDING JUDGE EBOE-OSUJI: (Redacted)
19 MR GARCIA: (Redacted)
20 (Redacted)
21 (Redacted)
22 (Redacted)
23 (Redacted)
24 (Redacted)
25 (Redacted)

1 (Redacted)

2 (Redacted)

3 PRESIDING JUDGE EBOE-OSUJI: Mr Khan?

4 MR KHAN: I have no observations. Thank you, sir.

5 PRESIDING JUDGE EBOE-OSUJI: The document will be admitted as the next
6 Prosecution exhibit.

7 THE COURT OFFICER: The confidential audio bearing number
8 KEN-OTP-0047-0345 will bear number EVD-T-OTP-00251, it's confidential
9 transcription bearing number KEN-OTP-0111-0242 will bear the number
10 EVD-T-OTP-00252 and finally its confidential translation bearing number
11 KEN-OTP-0112-0353 will bear the number EVD-T-OTP-00253.

12 MR GARCIA:

13 Q. Now, Mr Witness, I understand that you've already given testimony about one
14 Kapsabet rally that you attended. Did you attend any other rallies in Kapsabet in
15 either 2007 or 2008?

16 A. No, your Honour. Yes, because I was in the one which was not really a rally,
17 demonstrations that was on 3rd, and there --

18 MR KHAN: Your Honours, I do object.

19 Your Honour, my learned friend has said again in a question of his, page 83, line 22,
20 that he, the witness, had given evidence of attending one Kapsabet rally.

21 Your Honour, that's not my recollection at all that there's evidence been given of a
22 Kapsabet rally. We've heard evidence about a demonstration, but your Honour
23 that's it.

24 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia, you leave -- end it at 1, but what's
25 your reaction?

1 MR GARCIA: Your Honour, indeed. We can put -- it's obvious that I misspoke
2 and it should have been "demonstration." I don't want to cause any confusion.

3 Q. Mr Witness, did you attend any rally or demonstration in Kapsabet prior to
4 that?

5 A. Prior to when?

6 Q. To the one in January, 3 January?

7 A. There was one on 5 December in Kapsabet for the campaign of ODM.

8 MR GARCIA: I'd like to go into private session, your Honour, for two or three
9 minutes?

10 PRESIDING JUDGE EBOE-OSUJI: Two minutes.

11 MR KHAN: We are in private, Mr President.

12 PRESIDING JUDGE EBOE-OSUJI: Oh, we are in private. Yes.

13 MR GARCIA: Okay, sorry about that.

14 Q. Now, mister --

15 PRESIDING JUDGE EBOE-OSUJI: Two minutes.

16 MR GARCIA:

17 Q. Mr Witness, did you attend personally this rally?

18 A. Yes, your Honour.

19 Q. I'd like to play for you an extract at 0036-0101, time stamp 1.11.02 to 1.11.37.

20 (Playing of the audio excerpt KEN-OTP-0036-0101)

21 MR GARCIA:

22 Q. Now, Mr Witness, I'm not going to ask you about the content of what's being
23 said, but just simply the image. Does that remind you of anything?

24 A. Yes, this is the same meeting.

25 Q. All right. Now, I understand --(Redacted)

1 (Redacted)

2 MR KHAN: Mr President, I don't know how many times I'll rise about leading
3 questions.

4 MR GARCIA:

5 Q. Mr Witness, you recognize this image?

6 A. Yes, your Honour.

7 Q. (Redacted)

8 A. (Redacted)

9 (Redacted)

10 Q. (Redacted)

11 A. (Redacted)

12 MR KHAN: Mr President, I object.

13 MR GARCIA: (Redacted)

14 (Redacted)

15 MR KHAN: Mr President --

16 PRESIDING JUDGE EBOE-OSUJI: There's --

17 (Trial Chamber confers)

18 MR KHAN: Mr President, can I just also -- well, perhaps (Redacted)

19 (Redacted)

20 PRESIDING JUDGE EBOE-OSUJI: Just that one last answer and that's it.

21 MR GARCIA:

22 Q. (Redacted)

23 A. (Redacted)

24 MR GARCIA: That's all. Thank you, your Honour.

25 Thank you, Mr Witness. I have no further questions for you.

1 MR KHAN: Sorry, Mr President, my learned friend had undertaken two things:
2 On Monday he undertook, and pursuant to your Honour's question, that he would
3 come back regarding the map that he exhibited, whether or not there was
4 interpellations by the Prosecution, the legends on the map. We haven't heard about
5 that.

6 And, secondly, my learned friend gave an undertaking, (Redacted)
7 (Redacted) regarding the death of Lucas Sang. We haven't heard about that either.

8 PRESIDING JUDGE EBOE-OSUJI: All right. Well, let's do this: Now, you can
9 add that question about the death of Lucas Sang, can you?

10 MR KHAN: Your Honour, I'll do that. I'll assist my friend. Thank you.

11 PRESIDING JUDGE EBOE-OSUJI: Good.

12 Mr Garcia, on the other matter?

13 MR GARCIA: I do have a response for the Chamber. Obviously with the limited
14 amount of time I didn't want to interrupt. I can give it now or --

15 PRESIDING JUDGE EBOE-OSUJI: That can be given later on.

16 MR GARCIA: All right.

17 Let's adjourn and come back at 2.30 for lunch, we adjourn for lunch, that is. Come
18 back at 2.30.

19 Now, Witness, at that time, who will start, Ms Buisman or Mr Khan?

20 MS BUISMAN: I will start.

21 PRESIDING JUDGE EBOE-OSUJI: All right. And when we come back --

22 THE WITNESS: And --

23 PRESIDING JUDGE EBOE-OSUJI: One second. At 2.30 Ms Buisman, the lawyer for
24 Mr Sang, will start her cross-examination of you.

25 THE WITNESS: And --

1 PRESIDING JUDGE EBOE-OSUJI: You want to say something?

2 THE WITNESS: Yes. Before I could close this side and -- there is -- on 26 I mention
3 about the car which was driven around the -- the Eldoret streets, but I remember
4 saying here it was K-A-G, but for benefit of doubt I could say it was K-A-R, not
5 K-A-G.

6 PRESIDING JUDGE EBOE-OSUJI: All right, that point -- that correction is noted.

7 THE WITNESS: Okay.

8 PRESIDING JUDGE EBOE-OSUJI: We will -- yes, Mr Nderitu.

9 MR NDERITU: Yes, sorry, Mr President, your Honours, to interrupt, but I just
10 wanted to mention that I will still be holding on for a ruling regarding my request to
11 examine the witness. Thank you.

12 PRESIDING JUDGE EBOE-OSUJI: Yes, we will rule when we come back. We will
13 now --

14 MR KHAN: Mr President, could --

15 PRESIDING JUDGE EBOE-OSUJI: Let's go into closed session and have the witness
16 out of the room.

17 *(Closed session at 1.04 p.m.) Reclassified as Open session

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

19 PRESIDING JUDGE EBOE-OSUJI: Please, the witness to be ushered out of the room
20 and while he's leaving, Mr Khan, yes.

21 MR KHAN: Mr President, at some point today, perhaps before the next session, I
22 wonder if we could have -- or, at the end of the day, as my learned friend,
23 Dr Buisman, is going first, if we could have maybe ten minutes.

24 Your Honour, there's an issue about metadata and the Defence exhibits, what the
25 protocol requires and I'd like a ruling from the Chamber. Your Honour, that's the

1 first issue.

2 And just for the record, I do note that the video that's been shown by the Prosecution,
3 according to the Prosecution themselves, (Redacted)

4 (Redacted)

5 (Redacted) I just note for the record that it goes against the Prosecution's own
6 statement. And I'll say no more than that.

7 PRESIDING JUDGE EBOE-OSUJI: All right. We will leave it at that now.

8 The Court will rise.

9 THE COURT USHER: All rise.

10 (Recess taken at 1.06 p.m.)

11 (Upon resuming in open session at 2.36 p.m.)

12 THE COURT USHER: All rise.

13 Please be seated.

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

15 Witness, welcome back. We're in open session.

16 Mr Nderitu, we've reviewed your request to ask questions and we've seen the
17 questions indicated. The Chamber grants leave to ask only questions 9 and 10.

18 Only those two questions. The rest of the questions have been covered by the
19 Prosecutor in one way or the other. Questions 9 and 10 and I believe those can be
20 done in open session.

21 Witness, what has happened here is the -- Mr Nderitu had requested -- Mr Nderitu is
22 a lawyer for victims in the case. He requested for permission to ask you some
23 questions and the Chamber has granted him leave to ask two questions.

24 Mr Nderitu.

25 MR NDERITU: I am much obliged, Mr President, your Honours. Just a

1 clarification from your Honours whether I would then be able to ask any
2 consequential questions to questions 9 and 10?

3 PRESIDING JUDGE EBOE-OSUJI: That naturally flow from the two, yes.

4 MR NDERITU: I'm much obliged.

5 QUESTIONED BY MR NDERITU:

6 Q. Good afternoon, Mr Witness.

7 A. Good afternoon.

8 Q. As you are now, no doubt, aware I am here representing the victims that are
9 participating in this case and I would want to know from you whether you are aware
10 of any Kalenjin or ODM supporters who were accidentally attacked by armed
11 Kalenjin youth, and here I'm talking in relation to all the locations at which you
12 mentioned there having been armed Kalenjin youth?

13 A. Your Honour, I cannot just remember one incident where an ODM supporter
14 was accidentally harmed by the -- the same group, but I know about person who was
15 shot by -- I think by a police, or what, but he was coming -- he's -- he was a supporter
16 or one of the group of youths who came to attack Langas.

17 Q. Mr Witness, so that we are clear, your evidence, as I understood it just now, is
18 that the person you're aware of as having been harmed was harmed by a police officer,
19 not by an armed Kalenjin youth; am I correct?

20 A. Yes, your Honour.

21 Q. Thank you, Mr Witness. And just so that again there is clarity, might you be
22 aware of any Kalenjin or ODM supporter who was attacked, whether accidentally or
23 not, by the armed Kalenjin youth?

24 A. I can't remember very well, and I cannot specifically say who, but -- because
25 I cannot just use this time to mention some people whom I cannot remember up to

1 now who are they.

2 Q. Thank you, Mr Witness. And are you aware of any properties belonging to
3 Kalenjin or ODM supporters that were destroyed by the armed Kalenjin youth?

4 A. Your Honour, the same I can repeat that properties were destroyed, but I cannot
5 say that by who or by Kalenjin supporters or ODM supporters, but I didn't -- I cannot
6 confirm that, your Honour.

7 Q. Mr Witness, so that it is clear, by saying you cannot confirm that, are you saying
8 that you are not aware?

9 A. Properties were destroyed for the ODM supporters in some places, but I cannot
10 confirm who really destroyed them or in that -- that thing I can say that.

11 Q. Thank you, Mr Witness.

12 Mr President, with your leave, there is a question that I would want to ask which
13 relates to that and that is with regard to whether there were houses that were
14 occupied by non-Kalenjin people but owned by Kalenjins and what happened to
15 those.

16 PRESIDING JUDGE EBOE-OSUJI: Proceed.

17 MR NDERITU: I thank you, Mr President.

18 Q. Mr Witness --

19 A. Yes, your Honour.

20 Q. -- I would want you to confirm whether there were any houses that were
21 occupied by non-Kalenjins that belonged to Kalenjin people in the localities that you
22 did mention, if you're aware of any houses that belonged or were owned by Kalenjins
23 but were occupied by non-Kalenjins?

24 A. Your Honour, still the same; I'm still saying that there is several houses which I
25 could not know the -- their owner, but it was also destroyed, but I cannot confirm that

1 it was belonged to Kalenjins or any other tribes, but the -- during my testimony
2 I would say that there were some houses which actually I knew it was belonged
3 to -- to -- to a certain community which is Kikuyu mainly, and also there are some
4 houses which were destroyed along that area -- in some areas which could be -- it
5 could be also part of the Kalenjin houses, but owned by businesses only by Kikuyus.

6 Q. Mr Witness, I do not want you to speculate, that's one. And secondly, I am not
7 very sure that you understood my question. Let me just rephrase it.
8 What I am asking you is are you aware of houses that were owned by -- and I will
9 take it step by step. Were you aware of any houses that were owned by Kalenjins
10 but occupied by non-Kalenjins, a simple "Yes" or "No"?

11 A. The question -- the answer is no.

12 MR NDERITU: Thank you.

13 That is all, Mr President, your Honours. I thank you for that and I will be seeking
14 leave to leave the courtroom in the next 15 minutes.

15 PRESIDING JUDGE EBOE-OSUJI: You can take the leave. But the questions about
16 Kalenjin or ODM supporters who were attacked, it needs -- is your interest limited to
17 those sorts of persons being attacked by Kalenjin youth or does your interest as
18 victims counsel also goes so far as to cover those people in that group attacked by
19 anyone, whether or not the attackers were Kalenjin? Do you follow my --

20 MR NDERITU: Yes, Mr President. I do follow your line. The difficulty I have
21 with that is that there hasn't been placed on the record, as such, attacks by
22 non-Kalenjins. And I do appreciate, it's a question I really would want to ask, but --

23 PRESIDING JUDGE EBOE-OSUJI: You can ask it. The fact that it wasn't -- if there
24 was the possibility that the violence affected both sides necessarily there will be
25 victims of those sorts of violence --

1 MR NDERITU: Yes.

2 PRESIDING JUDGE EBOE-OSUJI: -- if there was that possibility and you should
3 explore both sides --

4 MR NDERITU: Yes.

5 PRESIDING JUDGE EBOE-OSUJI: -- shouldn't you.

6 MR NDERITU: Yes. Thank you.

7 Q. Mr Witness, I am sure you have heard the question -- the issue that the
8 Honourable President is raising and I will put this to you in the form of a question.
9 And would you please tell the Court whether you are aware of other persons,
10 non-Kalenjins or Kalenjins, that were harmed during the post-election violence?
11 And if you could inform --

12 PRESIDING JUDGE EBOE-OSUJI: No, no, no, no. That's Kalenjins, not -- because
13 the Prosecutor has dealt with non-Kalenjins to an extent who were attacked.

14 MR NDERITU: Thank you.

15 PRESIDING JUDGE EBOE-OSUJI: Now the point is whether there were Kalenjins
16 who were attacked by persons who were not Kalenjins.

17 MR NDERITU: Thank you, Mr President.

18 PRESIDING JUDGE EBOE-OSUJI: Kalenjins -- Kalenjins attacked by non-Kalenjins.

19 MR NDERITU: Thank you, Mr President.

20 Q. Mr Witness, would you tell us if you are aware of Kalenjins, persons from the
21 Kalenjin community, who were attacked by non-Kalenjins? And perhaps at the
22 same -- same time if you could give evidence as to whether you're aware of persons
23 who were of -- who were supporters of the ODM who were attacked by either
24 non-Kalenjins or non-ODM supporters.

25 A. Your Honour, to follow that angle, I cannot remember or if there is any, I hope

1 there is, but I cannot confirm that.

2 Q. Thank you, Mr Witness. When you say you hope there is, I believe that you're
3 saying that you believe that there may have been; am I correct?

4 A. Yes, your Honour.

5 MR NDERITU: That is all, Mr President, your Honours.

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

7 Witness, that concludes the questions from Mr Nderitu. Now the lawyer for
8 Mr Sang, Ms Buisman, will begin her cross-examination.

9 QUESTIONED BY MS BUISMAN:

10 Q. Good afternoon, Witness. Do you hear me?

11 A. Yes, I hear you.

12 Q. Good afternoon.

13 A. Good afternoon.

14 Q. We met very briefly during a courtesy meeting organised by the VWU. My
15 name is Caroline Buisman and I'll be asking you some questions on behalf of Joshua
16 Arap Sang.

17 And just to start off, because today we talked a lot about 2005 and 2006, I want to
18 bring your mind back to the time around the election results. And I recall on
19 Monday you told Mr Garcia, from the Prosecution, that during the period starting
20 31 December you couldn't recall the exact date, but it was in the period immediately
21 after the results were announced, you heard Mr Sang say on Kass FM that people
22 should open the roads. Do you recall saying that?

23 A. Yes, your Honour.

24 Q. And more specifically, you mentioned women in general who may need to
25 reach the hospital. Do you recall saying that?

1 A. Yes, your Honour.

2 MS BUISMAN: Now I would like you to listen to an audio of Kass FM, and that's
3 around that period, and I would like you to tell us if you recognize Mr Sang's voice.

4 With your permission, Mr President, I would like also to give a translation and
5 transcription to the witness so that we can go through this process a bit smoother?

6 PRESIDING JUDGE EBOE-OSUJI: Proceed.

7 MS BUISMAN: Just for you all, this is in the core binder, I believe that everyone has
8 received a message to bring the core binder to the courtroom today. The core binder
9 tab number 13. This is an audio we would like to play to the witness.

10 THE COURT OFFICER: Ms Buisman, could be please confirm the ERN number for
11 the record please?

12 MS BUISMAN: The ERN number is 0013-0061 and of course it starts with KEN-D11.
13 The transcription is 0014-0001.

14 Could I have the floor, please?

15 THE COURT OFFICER: You do have the floor.

16 (Playing of the audio excerpt KEN-D11-0013-0061)

17 MS BUISMAN:

18 Q. Mr Witness, do you hear that?

19 A. Yes, your Honour.

20 Q. And did you recognize the voice?

21 A. Yes, your Honour.

22 Q. Could you tell us whose voice that was, please?

23 A. Yes, it is Mr Sang's voice.

24 MS BUISMAN: Thank you. So then I would like to play a little further of this
25 audio, if I have the floor?

1 MR GARCIA: Can we please possibly put the time stamps on the record as well?

2 MS BUISMAN: Yes, the time stamp is we start this from 00.02.16. Sorry, that is
3 actually the length of the audio. We are starting at the beginning of the audio, so it's
4 00. At the moment, after this first passage that we just listened to, we're at 00.28.
5 So it's 28 seconds.

6 Q. Mr Witness, just before we carry on on the audio, can you look with me at the
7 transcript? Did you find that in your -- what was given to you?

8 A. Yes, I can find.

9 Q. So if you can just look at the first paragraph in Kalenjin, just read it quickly and
10 then we start again, then I would like you to listen to it and see if it is correct, the
11 transcription here in Kalenjin, from what you hear in the audio, okay?

12 A. Yes, your Honour.

13 MS BUISMAN: So if we could play that first part again?

14 (Playing of the audio excerpt KEN-D11-0013-0061)

15 PRESIDING JUDGE EBOE-OSUJI: Ms Buisman, you said you were playing the first
16 paragraph again.

17 MS BUISMAN: Yes, and then the whole audio was played.

18 Q. Mr Witness, could you follow that or do we have to start again?

19 A. I follow.

20 Q. Yeah, you follow the entire -- so we are actually going through and then I will
21 put on the record what the English translation is. You are -- you are with us, right?

22 A. I am with you.

23 MS BUISMAN: Yeah, so we just carry on playing it until the end.

24 PRESIDING JUDGE EBOE-OSUJI: How long is it and do we need to play it until the
25 end?

1 MS BUISMAN: It is 2 minutes and 16 -- 2 minutes and 16 seconds. We are almost
2 there, Mr President.

3 PRESIDING JUDGE EBOE-OSUJI: Proceed.

4 (Playing of the audio excerpt KEN-D11-0013-0061)

5 MS BUISMAN:

6 Q. Mr Witness, you could follow. I'm just going to read out now into the
7 transcript the English translation and please help me. If there's anything that in your
8 view is incorrect in the English, then we would like you to point that out.

9 So the starting point of this audio is as follows:

10 "Greetings Kalenjin people wherever you are tuned in to Kass FM. This is Joshua
11 Arap Sang, saying we are well here in Nairobi. What I would like to appeal to our
12 Kalenjin people is the matter that God's servants already requested; along with
13 political leaders - led by William Ruto - that all Kalenjin people, wherever you are,
14 please open the roads.
15 Open the roads so that food may reach those in need of it. Open the roads so that
16 people who have experienced various problems may reach the hospitals: There are
17 expectant mothers who need to deliver, but this is difficult for them to reach the
18 hospital. Further, open the roads so that a traveller may go his way.
19 Open the roads so that the Red Cross workers may reach people who are in need of
20 humanitarian assistance, such as food or taking such people to hospital. Also, food
21 is a basic need for everyone, but now it cannot reach the market. We appeal that you
22 open roads so that those foods may reach the market; that people may gain access to
23 food.
24 There are so many people who cannot now reach their places of work. Their one
25 major concern is that they may lose their jobs for failure to arrive in time. Therefore,

1 we would like to appeal in all humility to everyone everywhere to open every road
2 that is closed, and to allow those people with assistance to reach those in need.

3 Further, religious and political leaders have appealed that we refrain from any form
4 of violence, because we see that destruction has pervaded many areas, worse still,
5 people have turned one to another. Roads are closed, and people are forced to pay
6 so that a vehicle that could be of help to people may pass. So life has become
7 extremely difficult in many areas.

8 That is why we are saying let us open the roads wherever you are. And also people
9 should move away from the roads because so much is going on now; so much power
10 has arrived, and it may affect people in a big way that tomorrow may bring much
11 sorrow in terms of lives lost. Therefore open the roads and keep the peace in Kenya.
12 Thank you very much. Let's do so. I am Joshua Araap Sang."

13 Witness, do you agree -- do you think this is a fair translation of what you've heard in
14 Kalenjin?

15 A. Yes, your Honour.

16 Q. For your information, this was an audio that was a pre-recorded message that
17 was played on 4 January 2008. Is this a message you have heard?

18 A. As I indicate on Monday, that I heard message -- Mr Sang saying over the radio.
19 If it was this one or any other, I heard him talking about women who are pregnant.

20 Q. So you would agree that it's either this one, or it is a similar one?

21 A. Maybe, yes.

22 MS BUISMAN: Thank you, Witness.

23 I would like to tender this into evidence, if I may?

24 PRESIDING JUDGE EBOE-OSUJI: Any objection?

25 MR GARCIA: Just in regards to the date of this recording. I understand that that

1 date is the lead counsel for -- it's Ms Buisman who put that in there and not
2 necessarily the witness agreeing to it, but that's the only comment I have on this.

3 PRESIDING JUDGE EBOE-OSUJI: Other than that you have no objection to the
4 document going in -- to the material going in, audio and translation transcript?

5 MR GARCIA: Not on the basis of what the witness has just responded, your
6 Honour.

7 PRESIDING JUDGE EBOE-OSUJI: Mr Khan?

8 MR KHAN: I'm grateful. No objections at all. Thank you so much.

9 PRESIDING JUDGE EBOE-OSUJI: The audio and the transcript and -- with the
10 translation will be admitted as the next in the Sang Defence exhibits.

11 THE COURT OFFICER: Ms Buisman, could you please provide us with the ERN
12 number of the translation please?

13 MS BUISMAN: Yes, sorry. The -- it's 4 January 2000 and -- sorry, it's the
14 KEN-D11-0013-0061 and the trans --

15 THE COURT OFFICER: We just need the ERN number of the translation.

16 MS BUISMAN: Okay, sorry. KEN-D11-0014-0001.

17 THE COURT OFFICER: That's the ERN number of the transcripts.

18 The audio document KEN-D11-0013-0061 will bear the number EVD-T-D11-00063 and,
19 if I understand it properly, the transcript of that audio bearing the number
20 KEN-D11-0014-0001 will bear the number EVD-T-D11-00064.

21 PRESIDING JUDGE EBOE-OSUJI: Yes, court officer, what happened was that the
22 transcript comes with a translation as well so they are in the same document.
23 Ms Buisman.

24 MS BUISMAN:

25 Q. Just one follow-up question on this audio. Can you confirm that Joshua Arap

1 Sang said that people should -- okay, I'll just read it out again, you tell me that this is
2 correct.

3 "Roads are closed, and people are forced to pay so that a vehicle that could be of help
4 to people may pass. So life has become extremely difficult in many areas."

5 Did you hear him say that?

6 A. As I said earlier, I could not stay long in the radio, but I could not confirm the
7 entire -- the entire script, but I said I heard the opening roads, taking people to the
8 hospital (indiscernible) of, yeah, that's the message I could heard, but the rest I could
9 say, okay, if it was a follow-up talking, then I can say I didn't hear it at that particular
10 moment.

11 Q. But can you confirm that you heard during that period that Mr Joshua Arap
12 Sang was condemning extortion and wanted people to be able to pass to reach their
13 destination?

14 A. As I've -- I've informed you earlier that I just confirm what I hear that open the
15 roads so that a woman could go to hospital, open the roads for benefit of people who
16 were going to work. That one I could say, okay, I heard. But the other -- I'm not
17 saying -- I could not be remembering the entire script if I could hear.

18 PRESIDING JUDGE EBOE-OSUJI: What Ms Buisman's last question was about is
19 whether quite apart from the radio broadcast, whether at that time, never mind the
20 radio broadcast, whether you also heard it said, or whether you were of the view that
21 Mr Sang was asking people not to be extorting money from others. Do you --

22 THE WITNESS: I can't remember.

23 PRESIDING JUDGE EBOE-OSUJI: You cannot remember that?

24 THE WITNESS: Yes.

25 PRESIDING JUDGE EBOE-OSUJI: Okay.

1 Ms Buisman, he said he can't remember.

2 MS BUISMAN: I'll move on.

3 Q. I also heard you say on the same day, Monday, that you heard Mr Joshua Arap
4 Sang tell people to calm down and maintain the peace. Do you recall saying that to
5 the Prosecution, Mr Witness?

6 A. Yes, I recall.

7 MS BUISMAN: I would like you to listen to another audio. And again tell us that
8 it's -- if it's Mr Sang and then we move on from there.

9 For the court officer, this is audio KEN-011-0011-0048, and translation

10 KEN-D11-0011-0049. It's 1 minute and 18 seconds long and it's at tab 10 of the core
11 binder. And if I may ask the court -- yeah, to give it to the witness, please.

12 May I have the floor, please.

13 (Playing of the audio excerpt KEN-D11-0011-0048)

14 MS BUISMAN:

15 Q. Mr Witness, did you hear that?

16 A. I hear.

17 Q. Could you also follow it from the transcript?

18 A. Yes, your Honour.

19 Q. And for the record, we stopped at 22 seconds. And, again, this was an audio
20 that started from zero.

21 Did you recognize the voice?

22 A. Yes, your Honour.

23 Q. Could you tell us who that was, please?

24 A. Mr Joshua Sang.

25 Q. Thank you. May I tender this -- let's just go through it. I'm just reading in the

1 English and could you please follow with me and tell me if it is a correct translation.
2 So it starts: "Greetings listeners of Kalenjin wherever you are listening to Kass FM.
3 This is Joshua Arap Sang, telling you we are fine, and to implore that we keep peace
4 everywhere-peace in Kenya. May peace be promoted today and forever. Let us
5 keep on maintaining peace."

6 Is that a fair translation, Mr Witness?

7 A. Yes, your Honour.

8 Q. And could you tell us is this the message that you heard during that period?

9 A. I can still con -- say that, actually, I sometimes could hear Mr Sang saying
10 similar message, but I don't know if it is -- it was at this particular moment, but this
11 was -- actually, I just put on during my time of -- which -- to -- to show that
12 sometimes he could breach peace, but otherwise I don't know if it was this one or the
13 others.

14 Q. Thank you, Mr Witness.

15 For the record, it is 1 January 2008 and I would like to tender this audio also as an
16 exhibit.

17 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia?

18 MR GARCIA: No objection, your Honour, but once again on the question of the date,
19 the witness was not asked that question. It's something that is being led by
20 Ms Buisman.

21 MR KHAN: No objection.

22 PRESIDING JUDGE EBOE-OSUJI: Mr Khan has no objection he says.

23 The audio and the transcript bearing its translation will be admitted as the next in the
24 Sang Defence exhibits.

25 THE COURT OFFICER: The audio document bearing number KEN-D11-0011-0048

1 will bear the number EVD-T-D11-00065. The transcript and the translation of the
2 audio document bearing number KEN-D11-0011-0049 will bear the number
3 EVD-T-D11-00066. Both documents are public.

4 MS BUISMAN: Thank you.

5 Q. I would like, since you've told us that you listened to Kass quite regularly,
6 I would like to go through this audio. There's some other voices from Kass FM
7 personnel and we go per each and then we stop and I would ask you first of all if the
8 translation is correct and if you can identify the voice.

9 PRESIDING JUDGE EBOE-OSUJI: Before we do that, Witness, can you tell the Court
10 when, around the dates when you said you heard Mr Sang from time to time
11 broadcasting calls for peace?

12 THE WITNESS: Your Honour, I cannot remember exact time but it's early January,
13 but during that time it was as if some other messages could accompany it which
14 could also make people to continue with the violence.

15 PRESIDING JUDGE EBOE-OSUJI: Your testimony is that it would have been -- you
16 don't remember the exact --

17 THE WITNESS: But during that --

18 PRESIDING JUDGE EBOE-OSUJI: -- date but it would be early January that you
19 would --

20 THE WITNESS: Yes, during those days.

21 PRESIDING JUDGE EBOE-OSUJI: One second. You would be hearing broadcasts
22 about peace but also around the same time you will have been -- you would hear
23 mixed messages from Mr Sang that also inflamed matters; is that your testimony?

24 THE WITNESS: Yes, your Honour.

25 PRESIDING JUDGE EBOE-OSUJI: Thank you.

1 MS BUISMAN:

2 Q. And just for the record - to Mr Garcia, you told us to be more precise - that this
3 was particularly as of the 30th, like the 31st, the 1st, the 2nd and the 3rd, do you recall
4 saying that? This is at -- on Monday, this was at page 68, lines 7 to 9. Is that
5 aftermath of the violence you can confirm that?

6 A. Yes, I can confirm, your Honour.

7 MS BUISMAN: Thank you, Witness. Then I would like to go back to this audio
8 and, as I said, we start with -- at page -- 22 seconds, that's where we start, and it is
9 starting, for people looking at the transcripts, including yourself, Mr Witness, we start
10 at voice number 2.

11 (Playing of the audio excerpt KEN-D11-0011-0048)

12 MS BUISMAN:

13 Q. Mr Witness, can you tell us what you heard, whose voice was that?

14 A. I heard -- he says it name Moses Rono, and that I can recall that he was one of
15 the presenters in the Kass FM. I can still remember, but it's a long time since I could
16 know.

17 Q. But did you recognize his voice?

18 A. Yeah, I can recognize him but it's long since I -- it's not like as -- could -- I could
19 recognize for Sang.

20 Q. And then there was a third voice, did you recognize that voice, too?

21 A. This one I cannot remember very well recognizing his voice.

22 Q. Can I just ask you, is the person Mr Gilbert Arap Lang'at, is that someone you
23 know?

24 A. Apart from a few individuals in Kass FM, I don't know majority of them but I
25 could hear their voices. But I don't know them in persons.

1 Q. Yes.

2 PRESIDING JUDGE EBOE-OSUJI: Line 1 at page 107 he said Moses Rono.

3 MS BUISMAN: That is correct but there's been two voices and the first --

4 PRESIDING JUDGE EBOE-OSUJI: I know, but - one second - just at line 1 you see
5 rode -- where R-O-D-E appears should be R-O-N-O.

6 Proceed, Ms Buisman.

7 MS BUISMAN:

8 Q. Yes. I'll just read into the record what it says in English. If you have any
9 objection to the translation, I would like to hear from you, Mr Witness. It says:
10 "My name is Moses Rono in Kass FM News. We beseech that peace prevails in
11 Kenya now and always."

12 And then Voice 3: "My name is Gilbert Arap Lang'at. It is my appeal that we keep
13 the peace. May the Lord's peace be sufficient for us."

14 Is that a fair translation, Mr Witness?

15 A. It is.

16 MS BUISMAN: Then I would like to carry on in the audio and we are now at 33
17 seconds. We start with voice number 4.

18 (Playing of the audio excerpt KEN-D11-0011-0048)

19 MS BUISMAN:

20 Q. Mr Witness, could you hear that?

21 A. I hear.

22 Q. Did you recognize the first voice you heard?

23 A. Yes, your Honour.

24 Q. Can you tell us who that was, please?

25 A. Geoffrey Lelmet.

1 Q. Is that someone you know?

2 A. I don't know him in person, but I could remember him that he was in Kass FM.

3 Q. And what about the next voice? Did you recognize that voice?

4 A. I recognize that's Winnie, but also I could also know and remember that he was
5 also working at Kass FM. I could also know, but I don't know what is the aim of
6 these messages.

7 Q. Thank you. I'll just read that into the record again and, if there's any objection
8 to the translation, you could let me know again.

9 So starting at Voice 4 it says:

10 "My name is Geoffrey Lelmet. I appeal to all people of Kenya to keep the peace and
11 to mind our nation which we have built for many years".

12 And then voice number 5: "This is I, Winnie Ruto. We appeal for peace,
13 countrymen. We appeal for peace in our country."

14 Is that a fair translation, Mr Witness?

15 A. Yes, your Honour.

16 MS BUISMAN: Then I would just like to finish off this audio and we start with voice
17 number 6 which is at 46 seconds.

18 (Playing of the audio excerpt KEN-D11-0011-0048)

19 MS BUISMAN:

20 Q. Could you hear that, Mr Witness?

21 A. I could hear, yes.

22 Q. Could you recognize the voice number 6?

23 A. Yes, your Honour.

24 Q. Could you tell us who that is, please?

25 A. Mr Kwambai.

1 Q. Do you know any other name of Kwambai?

2 A. I don't know because this -- I could not even understand translation because he
3 was talking in other sub-tribe of Kalenjin. I'm not familiar about it.

4 Q. Do you know which -- which language that was, sub-tribe language?

5 A. If I'm not wrong, it might be Pokot.

6 Q. And did you hear the second -- the seventh, or the second voice in this
7 particular part but the seventh voice on this audio? Did you hear that one?

8 A. Yes, I hear.

9 Q. Do you recognize the voice?

10 A. Yes, your Honour.

11 Q. Could you please tell us who that was, please?

12 A. Mark Sirma.

13 Q. Someone you know from Kass FM?

14 A. As I have I told you before that I don't know many of the Kass FM but I could
15 recognize by voice only, but face-to-face it's only a few individual.

16 Q. Did you hear -- did you understand her language?

17 A. Yes, this one I understood.

18 Q. Or his language?

19 A. This I understand him.

20 MS BUISMAN: Then with that caveat, that the sixth voice is something you couldn't
21 quite hear yourself, I would like to read into the record the English translation.

22 PRESIDING JUDGE EBOE-OSUJI: Just wait a minute.

23 Witness, you said Mr Kwambai belongs to a sub-group within did you say "Kalenjin"?

24 THE WITNESS: Yes, your Honour.

25 PRESIDING JUDGE EBOE-OSUJI: And you mentioned the group. Did you say

1 "Pokot"?

2 THE WITNESS: Yes, your Honour.

3 PRESIDING JUDGE EBOE-OSUJI: How do you spell that, P-O-K-O-T?

4 THE WITNESS: Yes, your Honour.

5 PRESIDING JUDGE EBOE-OSUJI: All right, thank you.

6 MS BUISMAN:

7 Q. Mr Witness, on that note you said "Pokot." Could it be Marakwet?

8 A. Yes, I'm -- I'm -- I'm -- the two Garam (phon) I've been also hearing in the Pokot
9 and also in the Marakwet. Either of the two, either. I cannot -- but I've just said I
10 cannot because there is some other sub-tribe. I cannot, really.

11 Q. Yeah, okay. We understood that. I was just suggesting to you it was actually
12 Marakwet, but I'll read it into the transcript now and then we'll move on:

13 "By name, I am Kiplagat, son of Kwambai. We are fine in Nairobi, all is well ... We
14 appeal to all our Kalenjin listeners wherever you are; do not ruin the peace wherever
15 you are; instead, let us maintain peace which we have built over many years, so that
16 our country may develop. We are well."

17 And then the seventh voice: "I am Mark Sirma. I am saying let peace reign in
18 Kenya."

19 Was that a fair translation, Mr Witness?

20 PRESIDING JUDGE EBOE-OSUJI: Not of number 6 --

21 THE WITNESS: Yes, number 6 I could --

22 PRESIDING JUDGE EBOE-OSUJI: -- because the witness says he couldn't
23 understand that.

24 MS BUISMAN: Fair point, Mr President.

25 PRESIDING JUDGE EBOE-OSUJI: Yes.

1 MS BUISMAN:

2 Q. Did you hear this particular appeal for peace from the staff of Kass FM? Did
3 you hear this during that period, Mr Witness?

4 PRESIDING JUDGE EBOE-OSUJI: You can ask questions about voice number 7.

5 MS BUISMAN: In general this audio.

6 PRESIDING JUDGE EBOE-OSUJI: Witness, did you understand voice number 7?

7 THE WITNESS: Yes.

8 PRESIDING JUDGE EBOE-OSUJI: Mark Sirma?

9 THE WITNESS: I understand, your Honour.

10 PRESIDING JUDGE EBOE-OSUJI: All right. You heard what Ms Buisman read out
11 saying he says, "I am saying let peace reign in Kenya"?

12 THE WITNESS: Yes.

13 PRESIDING JUDGE EBOE-OSUJI: Was that what Mr Sirma said?

14 THE WITNESS: Yes, your Honour.

15 PRESIDING JUDGE EBOE-OSUJI: Thank you.

16 Ms Buisman, continue.

17 MS BUISMAN:

18 Q. Do you recall, Mr Witness, whether you heard this particular message from the
19 Kass -- the staff of Kass FM appealing for peace, did you hear that during this period?

20 A. As I've said earlier that I heard Sang appealing for peace and also, yes, some of
21 the staff of Kass FM I could hear, but I could not remember exact words or exact time.

22 MS BUISMAN: Thank you.

23 May I briefly go into private session, please?

24 PRESIDING JUDGE EBOE-OSUJI: Are you moving away from this particular --

25 MS BUISMAN: I am.

1 PRESIDING JUDGE EBOE-OSUJI: Private session.

2 *(Private session at 3.33 p.m.) Reclassified as Open session

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

4 PRESIDING JUDGE EBOE-OSUJI: Thank you.

5 MS BUISMAN:

6 Q. Mr Witness, do you know someone called William Arap Kirwa?

7 A. Yes, your Honour.

8 Q. Can you tell us what is your relationship with him?

9 A. I have no relationship with him, but he was a MD for -- managing director of
10 ATC and I sometimes could see him and meet him and talk with him in person, not
11 really anything much about him.

12 Q. But you confirm he's PNU?

13 A. I could confirm he was a -- actually, during that time of election, he was one of
14 the people who was supporting PNU.

15 Q. Is he a friend?

16 A. No, he's a person I know.

17 Q. Do you know, (Redacted)

18 (Redacted)

19 A. (Redacted)

20 Q. Are you aware that William Kirwa was sometimes hosted by Mr Sang at Kass
21 FM?

22 A. Yes, I remember.

23 Q. Would you recognize his voice?

24 A. Yes, I know him.

25 MS BUISMAN: So I would like to go back into public session. (Redacted)

1 (Redacted)

2 (Redacted)

3 (Redacted) So we're going back into public. We're

4 hearing this in public. I want you to listen to it and then I'll ask you questions about
5 it.

6 Public, please.

7 PRESIDING JUDGE EBOE-OSUJI: Open session.

8 (Open session at 3.36 p.m.)

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

10 PRESIDING JUDGE EBOE-OSUJI: Thank you.

11 MS BUISMAN: Witness, I would like you to listen to another audio of Kass FM and
12 this we can find at the core binder tab 15. The number for the audio is

13 KEN-D11-0013-0057 and the translation is -- and transcription is KEN-D11-0015-0068.

14 The entire message is one minute and 54 seconds, and if the court reporter could
15 please give a copy of the translation/transcription to the witness?

16 I would like to listen to this message, if I have the floor?

17 (Playing of the audio excerpt KEN-D11-0013-0057)

18 PRESIDING JUDGE EBOE-OSUJI: Ms Buisman, is that the end?

19 MS BUISMAN: It is.

20 PRESIDING JUDGE EBOE-OSUJI: But you announced the material at 0068 and 0069
21 as transcript and translation. We do not see a transcript. What we see is a
22 translation which may not contain the whole thing even.

23 MS BUISMAN: I would like to correct myself. We don't have a transcription of this
24 message. We only have a translation. And apologies to the Court for that.

25 I would like the witness to maybe confirm if it's a fair translation and if -- if he

1 heard -- if he could recognize the voice.

2 PRESIDING JUDGE EBOE-OSUJI: You need to be careful there. I do not
3 understand Kalenjin but I think I heard the words Kenya and Rift Valley. Are they
4 in the translation? Specifically with reference to Kenya, it was towards the end after
5 the mention of Raila Odinga, Mwai Kibaki and Raila Odinga. Further down after
6 that there was, I believe, another reference to Kenya and then Rift Valley.

7 MS BUISMAN: Mr President, we will come back to this, in fact, because it looks like
8 maybe there is some part missing. I will come back to that. I will move on at this
9 stage.

10 PRESIDING JUDGE EBOE-OSUJI: All right.

11 MS BUISMAN:

12 Q. Witness, have you heard of Reverend Jackson Kosgei?

13 A. Yes, your Honour.

14 Q. And can you tell us who that is?

15 A. He's a prominent Kalenjin reverend and he's a bishop of a certain church
16 I cannot remember and he's a person -- yeah, I know him.

17 Q. Do you think you would recognize his voice?

18 A. Yes, your Honour.

19 MS BUISMAN: So then I would like to listen to another recording.

20 And for the record this is -- the audio is D11-0013-0056 and the translation is at
21 D11-0015-0066. And unfortunately we have no transcription. It's tab 14 of the core
22 binder.

23 MR GARCIA: Your Honour, as a principle, the Prosecution is going to object to
24 material being put to the witness and the witness being cross-examined without there
25 being a transcript of the material. We think that's unfair to the witness. The proper

1 procedure and the procedure that has been adopted for the all the witnesses is that a
2 transcript and a translation is given to the witness so he can follow, first confirm
3 whether the transcript is correct, and then we can look at the translation. So we
4 object to this manner of proceeding with the witness.

5 PRESIDING JUDGE EBOE-OSUJI: There have been instances in the past when we
6 moved directly to translation without the transcript in the absence of a transcript.
7 That's not to say it's ideal, but we can proceed.

8 Witness, just be careful and listen carefully. If you need to have the audio repeated
9 so you can really follow, please indicate the need for that, okay?

10 THE WITNESS: Yes. Yes, your Honour.

11 PRESIDING JUDGE EBOE-OSUJI: Thank you.

12 Ms Buisman?

13 MS BUISMAN: Yes, please. The whole message is 1 minute and 29 seconds and
14 I think the -- I've already given you the information, so if I could just have the floor
15 and, yes, if we can bring it to the witness, please.

16 PRESIDING JUDGE EBOE-OSUJI: What tab did you say the translation is at?

17 (Playing of the audio excerpt KEN-D11-0013-0056)

18 MS BUISMAN:

19 Q. Mr Witness, could you recognize the voice?

20 A. Yes, I do.

21 Q. And can you confirm that he was asking to maintain the peace?

22 A. Yes, I heard but the last -- some sentence like human -- "human life is sacred," I
23 didn't hear him saying that.

24 MS BUISMAN: Mr President, also on this audio and translation we'll come back
25 to -- to you. We have to -- I have to look at this again.

1 I just want to say for the record we stopped at 1 minute and 14 seconds.

2 Q. Mr Witness, you also -- you've spoken about William Ruto. Would you
3 recognize his voice?

4 A. Yes, your Honour.

5 MS BUISMAN: Could I go to tab 12 at the core binder and this is

6 KEN-D09-0024-0013? That is the translation and transcription and the audio is

7 D09-0024-0012. It's already an exhibit. It's Exhibits 24 and 25, 24 for the audio and

8 25 for the translation. The total is 2 minutes and 17 seconds, but we will not play the
9 full audio, we just play the first two paragraphs.

10 PRESIDING JUDGE EBOE-OSUJI: Proceed.

11 MS BUISMAN: And if the witness can be shown the translation and transcription?

12 (Playing of the audio excerpt KEN-D09-0024-0012)

13 MS BUISMAN:

14 Q. Mr Witness, did you hear that?

15 A. Yes, your Honour.

16 MS BUISMAN: For the record, we stopped at 55 seconds. And it's the first two
17 paragraphs, two in English and two in Kalenjin.

18 Q. Mr Witness, did you recognize the voice?

19 A. Yes, your Honour.

20 Q. Could you please tell us who it was?

21 A. It's Honourable William Ruto.

22 Q. And if you could look with me, I'm going to read the English translation into the
23 record and you tell me if it's a fair translation?

24 "... William Arap Ruto of Eldoret North. I would like to take this opportunity to

25 wish the Kalenjin listeners and the people of the nation of Kenya a blessed New Year

1 and every success in the New Year that has God's blessings. I would like to tell our
2 Kalenjin listeners that there is serious insecurity in the country. There are issues
3 surrounding the elections that have been very complicated.

4 As ODM people, we are trying to talk so that we can solve those issues in a peaceful
5 manner. We continue to talk with the people in the nation of Kenya and those from
6 other countries. Gordon Brown, the prime minister of Britain, talked with
7 Honourable Raila. Also, Honourable Raila talked with many people from different
8 countries. We are trying to find a just solution to the issues that transpired in the
9 elections."

10 Is that a fair translation, Mr Witness?

11 A. Yes, it is.

12 Q. Do you recall if you heard this during that period following the announcement
13 of the elections?

14 A. Yes, I hear, I can recall.

15 Q. And the date of this message was 3 January 2008. Does that correspond with
16 your recollection?

17 A. I heard the voice, but I could not remember exact time and date, but --

18 Q. In that period just following the --

19 A. I cannot remember.

20 Q. Just there's a few names. I want you to tell me if you know of them and if
21 you've heard them before. Bishop Stephen Kiwasis, is that someone -- a name you're
22 familiar with?

23 A. Yes. He was -- yes, I know him. Yes, I know him.

24 Q. Can you briefly tell us who he is?

25 A. He was the second bishop of diocese of Eldoret of SEK.

1 Q. Did you ever hear him speak on Kass FM?

2 A. Yes, I heard him, but I cannot remember when but -- I cannot remember.

3 Q. Do you recall that he also made -- he also made an announcement calling for
4 peace in that period? Do you recall that?

5 A. I cannot confirm.

6 Q. What about Bishop Sila Yego?

7 PRESIDING JUDGE EBOE-OSUJI: Before we get to the second bishop, can you
8 mention -- can you spell the one -- first one you mentioned.

9 MS BUISMAN: That's Bishop Stephen, S-T-E-P-H-E-N, K-E-W-A-S-I-S. The second
10 that I just asked you, Bishop Sila Yego, is S-I-L-A Y-E-G-O.

11 Q. Is that someone you're familiar with?

12 A. Yes, (Redacted).

13 Q. Did you hear him speak on the radio, Kass FM?

14 A. I didn't hear him, but I heard some people say they heard him talking.

15 Q. Are you aware that he also called for peace on radio Kass FM during that initial
16 period following the announcement of the election?

17 A. Yes.

18 Q. Do you know someone called Bishop Thomas Kogo? And I'll just immediately
19 spell that. T-H-O-M-A-S. Kogo is K-O-G-O. Is that someone you're familiar with?

20 A. Yes, your Honour.

21 Q. Have you heard him speak on radio Kass FM?

22 A. I know him, but I cannot remember when -- if he talks on radio Kass FM, but I
23 know really some religious leaders do speak about peace during that time.

24 Q. Are you aware that he also made an announcement appealing for peace in that
25 aftermath, immediate aftermath, of the announcement of the election? Are you

1 aware of that?

2 A. I cannot recall everybody who made peace during that time.

3 Q. One more name -- two more names I would like to put to you. Kiplagat,

4 K-I-P-L-A-G-A-T, is that someone you know?

5 A. Kiplagat who? Who? Kiplagat who?

6 Q. That is Bethwel Kiplagat.

7 A. Yes.

8 Q. Are you aware that he made an announcement on Kass FM calling for peace in
9 that immediate aftermath following the announcement of the election?

10 A. For him I'm sure.

11 PRESIDING JUDGE EBOE-OSUJI: What --

12 MS BUISMAN:

13 Q. One last name --

14 PRESIDING JUDGE EBOE-OSUJI: Sorry, one second.

15 What was the answer?

16 THE WITNESS: Bethwel Kiplagat.

17 PRESIDING JUDGE EBOE-OSUJI: And you say for him?

18 THE WITNESS: Yes, I could -- I hear him talking about peace during that time.

19 PRESIDING JUDGE EBOE-OSUJI: You heard him --

20 THE WITNESS: Yeah.

21 PRESIDING JUDGE EBOE-OSUJI: -- talk about peace?

22 THE WITNESS: Yes, I heard him.

23 PRESIDING JUDGE EBOE-OSUJI: Thank you.

24 MS BUISMAN:

25 Q. And then one last name and then we'll call it a day. Sumbeiywo. I'm spelling

1 that, S-U-M-B-E-I-Y-W-O. And sorry, I'll also give you the other name which is
2 Lazaro, L-A-Z-A-R-O. Is that someone you know?

3 A. Lazaro Sumbeiywo I know, yes.

4 Q. And is this also someone who announced on the radio -- made an
5 announcement calling for peace in that immediate aftermath? Is that something
6 you're aware of?

7 A. Yes, I'm aware.

8 MS BUISMAN: Thank you. I leave it here for today.

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

10 Ms Buisman, I know that you did not -- you put on reserve the two documents that
11 were straight translations without transcripts, and I hope you make efforts to produce
12 the transcript. I note the concern raised by Mr Garcia about fairness to the witness,
13 and I also noted that on the occasion during his examination-in-chief when the
14 concern was raised by the Defence about moving straight to translation, some issues
15 were raised as to the ease with which different witnesses are able to work straight
16 from audio to translation, although we ended up on that occasion working -- having
17 the witness listen to the video and write out what he understood of it that was not
18 consistent with the transcript produced by the Prosecutor. It amounted to having
19 the witness work straight from the media, the multimedia source to give an evidence.
20 Again, the point being, let's be sensitive to these concerns about different witnesses'
21 abilities to do this thing directly from audio to translation while still trying to get to
22 the bottom of the story to the extent that we can in this process.

23 On that note, we will adjourn for the day and reconvene tomorrow at 9.30 and we will
24 go into closed session to excuse the witness from the courtroom.

25 Mr Khan, I remember you did -- now I remember you mentioned a need to address

1 some matter. Can that wait until tomorrow. It can?

2 MR KHAN: It can.

3 PRESIDING JUDGE EBOE-OSUJI: Yes.

4 MR KHAN: Thank you so much.

5 PRESIDING JUDGE EBOE-OSUJI: Thanks. Preferably around, I mean towards the

6 end of the session we should just let witnesses testify as much as possible and reserve

7 procedural discussions towards --

8 MR KHAN: Indeed.

9 PRESIDING JUDGE EBOE-OSUJI: -- ends of segments.

10 MR KHAN: Indeed.

11 PRESIDING JUDGE EBOE-OSUJI: Thank you.

12 MR KHAN: I'm grateful.

13 PRESIDING JUDGE EBOE-OSUJI: Closed session, please.

14 *(Closed session at 4.05 p.m.) Reclassified as Open session

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

16 PRESIDING JUDGE EBOE-OSUJI: Thank you.

17 (The witness stands down)

18 PRESIDING JUDGE EBOE-OSUJI: Court will rise.

19 THE COURT OFFICER: All rise.

20 *(The hearing ends in closed session at 4.05 p.m.) Reclassified as Open session

21 RECLASSIFICATION REPORT

22 Pursuant to Trial Chamber V(a) 's Decision, ICC-01/09-01/11-981, dated 24 September

23 2013, the version of the transcript with its redactions becomes Public.