

Trial Hearing  
Witness: KEN-OTP-P-0658

(Open Session)

ICC-01/09-01/11

1 International Criminal Court  
2 Trial Chamber V(a) - Courtroom 1  
3 Situation: Republic of Kenya  
4 In the case of The Prosecutor v. William Samoei Ruto 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 Thursday, 4 December 2014  
10 (The hearing starts in open session at 9.35 a.m.)  
11 THE COURT USHER: All rise.  
12 The International Criminal Court is now in session.  
13 Please be seated.  
14 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.  
15 Court officer, please, the case.  
16 THE COURT OFFICER: Thank you, Mr President.  
17 The situation in the Republic of Kenya, in the case of The Prosecutor versus 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 very much.  
21 Appearances?  
22 MR GARCIA: Good morning, Mr President, your Honours. Appearances are the  
23 same for the Prosecution, save for the fact that Mr Steynberg is not here this morning  
24 and will be back in the second session.  
25 MR NARANTSETSEG: Good morning, your Honours. For the victims, James

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1 Mawira, Charlotte Devinat and myself, Orchlon Narantsetseg.

2 Thank you.

3 MR BOURGEOIS: Your Honours, Mr Bourgeois, duty counsel.

4 MS BUISMAN: Good morning, Mr President, your Honours. Today the team for

5 Mr Joshua Arap Sang remains the same, with one addition. Cynthia Bondi joined us  
6 today.

7 MR KHAN: Mr President, your Honours, good morning. The team for Mr Ruto  
8 remains the same.

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

10 Witness, welcome back to the courtroom. We are in open session and Ms Buisman  
11 will continue cross-examination. Remember the advice given to you earlier to listen  
12 carefully to the question, one question at a time, you understand the question and  
13 then answer it as briefly as possible but giving the answer that in your mind the  
14 question calls for. Also remember it's important to observe the five seconds' pause.  
15 All right?

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

17 THE WITNESS: Yes, your Honour.

18 PRESIDING JUDGE EBOE-OSUJI: Thank you.

19 Ms Buisman, we're in open session.

20 MS BUISMAN: Yes, thank you, Mr President.

21 Yesterday we had some translation and transcription difficulties that have now been  
22 resolved. I think our team has provided you with a copy. We have given a new  
23 ERN number to the translation and transcription that I would like to read into the  
24 record.

25 One is for William Kirwa. This is at core binder tab 30, the new -- the new number is

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- 1 KEN-D11-0021-0120 and you've all been given a new copy in your binder in the -- it's  
2 the assistants of the Judges who have helped do that.  
3 So given that we now have a translation and a transcription, and this is for William  
4 Kirwa and we talked about it yesterday, I would like to put it to the witness, have him  
5 listen to it and have him also have a look at the translation and see if it's accurate.  
6 If the court officer would be so kind to give the witness a copy?  
7 PRESIDING JUDGE EBOE-OSUJI: There is an index also supplied?  
8 MS BUISMAN: I beg your pardon, Mr President?  
9 PRESIDING JUDGE EBOE-OSUJI: There is an index also supplied this morning, is  
10 that the case?  
11 MS BUISMAN: Yes, and it refers to the new ERN number at core binder tab 30.  
12 PRESIDING JUDGE EBOE-OSUJI: All right. Does the index - new index - update  
13 the old one, or what?  
14 MS BUISMAN: It does.  
15 PRESIDING JUDGE EBOE-OSUJI: All right. Okay.  
16 MS BUISMAN: And I would like to play the audio which is KEN-D11-0013-0057.  
17 (Playing of the audio excerpt KEN-D11-0013-0057)  
18 QUESTIONED BY MS BUISMAN: (Continuing)  
19 MS BUISMAN:  
20 Q. Mr Witness, did you hear that?  
21 A. Yes, your Honour.  
22 Q. Do you recognize the voice?  
23 A. Yes, your Honour.  
24 Q. Will you please tell us who that was?  
25 A. It's the voice of a former MD of ATC, William Kirwa.

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1 Q. Did you hear this message previously?

2 A. Yes, your Honour.

3 Q. And our date is 3 January 2008. Does that correspond to your recollection of  
4 when you would have heard it, approximately?

5 A. I'm not sure about the dates, but I can remember him talking on the radio.

6 Q. But in that period following the announcement of the elections?

7 A. Yes.

8 MS BUISMAN: Then I will now read into the record the English translation. I  
9 think if you --

10 PRESIDING JUDGE EBOE-OSUJI: All right, one second. Be on the lookout for the  
11 transcript. There are inaudibles. I know that his last answer at line 12 was "Yes".  
12 Witness, can you come closer to the microphone please, yes, and lean in the direction,  
13 okay?

14 MS BUISMAN: So I would like to read into the record the English translation.

15 Q. And, Mr Witness, if you could follow with me on the documents that you've  
16 been provided and then I will ask you again if it's a fair translation:

17 "Greetings Kalenjin people wherever you are. My names are William arap Kirwa,  
18 the Managing Director of ADC. I just wanted to request you, our people of Kalenjin,  
19 wherever you are, from our people in Hills of the Kony [Mount Elgon], and our  
20 Nandi people. Our Keiyo people, our Kipsigis people, our Tugen people, our  
21 Marakwet people. I request all of you, including our Pokot people wherever you are,  
22 that please let us keep peace.

23 True, there are weighty issues in the country. However, I beg our men to calm down  
24 these issues, so that we see how our country will stay. Nobody will touch our soil,  
25 Kalenjin people. I pray so much that we promote peace.

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1 Also, I request the Honourable President Mwai Kibaki and Raila Odinga to sit down  
2 and discuss between themselves so as to get peace in our country. If possible they  
3 should get a committee of people from both sides so that they analyse how these  
4 issues of how votes were cast. So that the truth can come out and we tell our people  
5 the truth.

6 Even as this goes on, our people, I request these two leaders to sit down and talk to  
7 each other. I request that we calm down issues, let us stay as we always stayed.  
8 We have received so many people as Kalenjins to our land. We have received  
9 people from various places. I request so much that let us keep peace. Let us calm  
10 those issues. I request ... let us keep ... because we all belong to Kenya. This  
11 country belongs to all of us. This country belongs to us Kalenjin people. We also  
12 have other people in Rift Valley, and we have others in Nairobi and all over this  
13 country of ours. Therefore, I request so much that for us ..." -- "... for as long as these  
14 issues have not been sorted out, or as they are being sorted out, we request the  
15 Government to keep peace.

16 Thank you so much our Kalenjin house."

17 Witness, do you confirm this is a fair translation of the Kalenjin audio?

18 A. Yes, your Honour.

19 Q. And you confirm, even though you don't know the explicit dates, that someone  
20 from PNU -- you hear someone from PNU on Radio Kass FM in the immediate  
21 aftermath calling for peace as well as a solution between ODM and PNU, correct?

22 A. I confirm that he was one of the PNU.

23 MS BUISMAN: Thank you, Witness.

24 May I tender this document now into evidence, please?

25 PRESIDING JUDGE EBOE-OSUJI: Prosecutor?

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1 MR GARCIA: Just a couple of issues, your Honour. It still hasn't been confirmed  
2 by the witness as to what station or where he heard this message, and the line 12 on  
3 page 4, which is also important, is still as "(inaudible)." I think those matters need to  
4 be cleared up, but I do confirm that the witness says he's heard this before but we still  
5 don't know from where.

6 MS BUISMAN: Mr President, I believe, but I will clarify it with the  
7 witness -- I believe he said it yesterday.

8 Q. Witness, did you hear him speak on Kass FM?

9 A. Yes, I can remember he speaks in Kass FM, but I don't know the real date.

10 Q. Thank you.

11 PRESIDING JUDGE EBOE-OSUJI: Mr Khan?

12 MR KHAN: Mr President, no objections. And if it assists - of course I'm in the  
13 Court's hands, but it may save time - your Honours, I can indicate, having looked at  
14 the documents of the Sang team, we have no objections to any of them. If that  
15 should change, of course I will rise.

16 PRESIDING JUDGE EBOE-OSUJI: I will always call on you one at a time.

17 MR KHAN: Okay, your Honour. I'm grateful.

18 PRESIDING JUDGE EBOE-OSUJI: One document at a time.

19 The document is admitted as the next Sang Defence exhibit.

20 We've noted the concern or the indication by Mr Garcia as to some things being  
21 indicated "(inaudible)." There are also things indicated "(inaudible)" in the  
22 Prosecutor's own transcripts from time to time. We have admitted materials of that  
23 nature as well.

24 The document is admitted.

25 MS BUISMAN: Thank you, Mr President.

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1 THE COURT OFFICER: The public audio bearing number KEN-D11-0013-0057 will  
2 bear the number EVD-T-D11-00067. Its transcript and transcription bearing the new  
3 ERN number KEN-D11-0021-0120 will bear the number EVD-T-D11-00068. Both  
4 documents are public.

5 PRESIDING JUDGE EBOE-OSUJI: Thank you.

6 Ms Buisman?

7 MS BUISMAN: Thank you.

8 If I could clarify, I believe the inaudible part that my learned colleague is referring  
9 to - and he might correct me if I'm wrong - is the answer to the question whether or  
10 not he listened after the election results were announced. I believe he said "Yes," but  
11 let me confirm with the witness. It is in that -- it's page 4, line 12.

12 Q. Did you say "Yes," Mr Witness?

13 A. About what?

14 Q. Did you listen to this message at some point in the immediate aftermath of the  
15 announcement of the election results?

16 A. That's why I'm saying that I listened, but I cannot remember when.

17 Q. Witness, you just heard this message. Can you confirm that you heard him say  
18 that, "Nobody will touch our soil, Kalenjin people?" Did you hear him say that?

19 A. I cannot confirm that.

20 Q. And can you confirm that he said "We have received so many people as  
21 Kalenjins to our land. We have received people from various places. I request so  
22 much that let us keep peace"? Is that something you heard?

23 A. I can still remember that he talk about peace, but I cannot still remember the  
24 contents of the message.

25 Q. So, if I can summarise, you do not remember the exact words?

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1 A. Yes.

2 Q. But the same gesture is --

3 A. Yes.

4 Q. Would that be fair that you heard that?

5 A. Yes, your Honour.

6 MS BUISMAN: I would then like to move to another document we spoke about  
7 yesterday and this is the audio of Kosgei. Again we had the difficulty of translation  
8 and transcription, but we have now a new number for the translation and  
9 transcription which is KEN-D11-0021-0125 and it's on tab 29 of the core binder.

10 Q. Yesterday you confirmed that you know Reverend Kosgei. That's right, isn't it,  
11 Mr Witness?

12 A. Yes, your Honour.

13 MS BUISMAN: I would like to listen to that tape again, and if the witness could be  
14 provided with a copy of the translation and the transcription so he could follow as we  
15 go along.

16 Thank you.

17 PRESIDING JUDGE EBOE-OSUJI: That's all right. Witness. If you need some  
18 time to clear your throat, please do so.

19 THE WITNESS: Okay.

20 MS BUISMAN: And the number of the audio is KEN-D11-0013-0056 and, if I could  
21 have the floor, I would like to listen to it now.

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

23 MS BUISMAN:

24 Q. Mr Witness, did you hear that?

25 A. Yes, your Honour.

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1 Q. And do you recognize the voice?

2 A. Yes, I do.

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

4 A. It was Reverend Kosgei.

5 MS BUISMAN: Could I tender this document also into evidence? I probably need  
6 to first read the English translation into the record.

7 Q. Mr Witness, do you recall having heard this message in the aftermath of the  
8 announcement of the elections?

9 A. I can recall, but I'm still repeating that during that time there were several  
10 clergymen who went to station, including him, but at the time I cannot remember.

11 Q. But did you hear him at Kass FM?

12 A. Yes, your Honour.

13 MS BUISMAN: I will now read into the record the --

14 PRESIDING JUDGE EBOE-OSUJI: Before you do, let's correct the transcript.

15 Where we see "(inaudible)" in line 14, the witness said "... clergymen who went to  
16 station ..." at that time "... but ... I cannot remember."

17 Witness, can you come closer to the mic and speak more with greater force to the  
18 voice. If you need ... (Microphone not activated)

19 THE WITNESS: Okay, your Honour.

20 PRESIDING JUDGE EBOE-OSUJI: (Microphone not activated) ... The question the  
21 lawyer asked you was whether you heard this message by Reverend Kosgei in the  
22 aftermath of the announcement of the election results. Can you please give us your  
23 answer again?

24 THE WITNESS: I have indicated, your Honour, that I listened to the message which  
25 was not from him alone, including other clergymen or church bishops.

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1 PRESIDING JUDGE EBOE-OSUJI: Thank you.

2 Ms Buisman?

3 MS BUISMAN: Then I would now read into the record the English translation.

4 Q. And again I would like you to follow me on the -- on the document and, if  
5 there's any problem with the translation, I would like you to let me know:

6 "Hello the house of Kalenjin. This is Reverend Kosgei on behalf of other bishops  
7 servants of God that we work together. We want to appeal for peace from the  
8 Kalenjin people. We have been terrified hearing that the war has extended to the  
9 burning of churches and burning of people. That has intensified beyond our people.  
10 Reduce, please exercise restraint, our people. You have heard what arap Ruto has  
11 said, that political leaders have started talks on these issues. And he has spoken to  
12 many people. So we are seeking for solutions, all this, being assisted by God. We  
13 are appealing to you, our people, wherever you are, we are appealing to you men, we  
14 are appealing to you elders, we are appealing to everyone. Please, let's maintain  
15 peace.

16 Let us exercise restrain, let us soften our hearts. We cannot resolve anything with  
17 anger, and we cannot help our country and ourselves if we proceed with anger. Do  
18 not be overpowered by the bad things but let us overpower the bad things with the  
19 good things. Our people, nothing will affect us. God/Jehova is with us. We are  
20 looking for solutions. It has been heard and the anger of our people has been heard.  
21 So now, exercise restrain and do not exceed the borders (over-react). Someone's life  
22 is paramount, God is great. Let us have mercy to all people. Restrain from the war  
23 wherever you are. We have appealed to you and please listen in God's name. We  
24 cannot lack solution. Thank you very much."

25 Witness, did you -- could you follow that?

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1 A. Yes, your Honour.

2 Q. And is this a fair translation of what you heard in Kalenjin?

3 A. Yes, I can confirm that.

4 MS BUISMAN: Could I please tender this document as our next exhibit?

5 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia?

6 MR GARCIA: Just one comment before, your Honour. It seems that there -- it  
7 seems that there are two different answers from the witness on the question of  
8 whether he heard this before or not. If we look at page 10, and that's the answer at  
9 lines 13 and 14, it says, "At the time I cannot remember," and then afterwards when  
10 the -- when the Court, yourself Mr President, asked him the question he says -- he  
11 gives a different answer, or it looks different, "I have indicated, your Honour, that I  
12 listened to the message which was not for him alone, including other clergymen or  
13 church bishops."

14 So if the witness indeed confirms at some point clearly that he did hear this message  
15 then the Prosecution has no objection, but if he says he cannot remember having  
16 heard this message then the Prosecution will object on the basis that the authenticity  
17 of this recording has not been demonstrated.

18 MS BUISMAN: Mr President, if I may?

19 PRESIDING JUDGE EBOE-OSUJI: Yes.

20 MS BUISMAN: It's our position that the identification of the voice is sufficient. We  
21 can argue about dates, but -- and also Mr Witness did confirm that he heard him on  
22 Kass FM, even if the date was not specific. So the date can be argued at a later stage,  
23 but as to in terms of authenticity voice recognition should suffice.

24 MR GARCIA: Your Honour, there's a serious problem with that type of argument is  
25 that what the Defence is putting to the Court and to the witness is that this is a

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1 recording, something that would have been broadcasted on Kass FM at a certain time  
2 period, so the voice as such is not sufficient and we've done this with other  
3 recordings.

4 If the witness is able to indicate or give some evidence on the record that he heard this  
5 before then, yes, indeed there is indicia of reliability and authenticity, but if the  
6 witness can't give that evidence then how are we to know exactly if this was or not  
7 broadcasted?

8 And I notice as well, and the main preoccupation of the Prosecution here, is that  
9 Mr Sang himself is in the metadata as being part of the chain of custody, and this has  
10 happened with other recordings of this nature in the past and I think they have been  
11 MFI'd instead.

12 If the witness recognizes the voice that's fine, but we still don't know if this was  
13 broadcasted on Kass FM. That's why Defence counsel has always been asking the  
14 witness for other recordings if the witness has heard this in the past and that's just to  
15 put on the record some indicia of the authenticity. It's not the case in regard to this  
16 recording at this point in time.

17 PRESIDING JUDGE EBOE-OSUJI: Witness, we've got you on this -- in the witness  
18 seat. You've heard what the lawyers are saying. Now help us clarify the matter, if  
19 you can. If you cannot, don't feel that you must.

20 The question now is whether you heard Reverend Kosgei at about the time in the  
21 period after the announcement of the election results, and the debate now is whether  
22 you were saying that you had -- you do not remember hearing Reverend Kosgei  
23 specifically, or that you heard several clergymen and Reverend Kosgei may be one of  
24 them although you cannot remember, or what? Can you help us? What is it?

25 THE WITNESS: Your Honour, this message was repeated several time and I can

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1 confirm that I listened to Reverend Kosgei that particular moment. But I cannot  
2 exactly remember the time or the day, but I can confirm Kosgei was among the people  
3 who sent the message to the radio about this peace message.

4 PRESIDING JUDGE EBOE-OSUJI: All right, thank you very much. That is very  
5 helpful.

6 Mr Khan?

7 MR KHAN: Mr President, in light of the witness's answer, I see no basis to object.

8 PRESIDING JUDGE EBOE-OSUJI: The document is admitted as the -- or the audio  
9 and the transcripts and translation are admitted as the next Sang Defence exhibit.

10 THE COURT OFFICER: The audio bearing number KEN-D11-0013-0056 will bear  
11 the number EVD-T-D11-00069. Its transcript and translation bearing the new ERN  
12 number KEN-D11-0021-0125 will bear the number EVD-T-D11-00070. Both  
13 documents are public.

14 PRESIDING JUDGE EBOE-OSUJI: Thank you.

15 Ms Buisman?

16 MS BUISMAN: Thank you, Mr President.

17 Q. And thank you, Mr Witness, for confirming that. And you did testify at some  
18 point about the Kiambaa burning and I believe you heard about it on 1 January 2008;  
19 is that correct?

20 A. Yes, your Honour.

21 Q. I would like you to confirm -- I'm looking again at this document and I would  
22 like you to confirm that you heard Reverend Kosgei referring to the following. I'm  
23 just reading it out to be very clear on the record. "We want to appeal for peace from  
24 the Kalenjin people. We have been terrified hearing that the war has extended to the  
25 burning of churches and burning of people." Is that -- did you hear that when you

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1 listened to the message?

2 A. I cannot confirm that because I've just said I listened but I cannot remember  
3 what kind of message it was, but for peace but --

4 MS BUISMAN: With the Court's permission, I would like to play out the first  
5 paragraph again.

6 Q. And if you could listen with us and confirm --

7 A. Yes, I --

8 PRESIDING JUDGE EBOE-OSUJI: The witness has said --

9 THE WITNESS: I --

10 PRESIDING JUDGE EBOE-OSUJI: One second. The witness is saying that he  
11 remembers Reverend Kosgei's message, but he does not remember the details of the  
12 time. Isn't that what he's saying?

13 MS BUISMAN:

14 Q. But you did hear him talk about burning of churches and burning of people?

15 A. I can say I hear him talking about peace, but I cannot remember him talking  
16 about burning of churches or whatever. I can confirm -- I have already confirmed  
17 that I listened to him talking about peace, but I cannot still remember the contents of  
18 what he said.

19 Q. I understand, but when you listened to the audio we just played --

20 A. Yes, I can --

21 Q. -- is that what you heard?

22 A. Yes, that's what I hear.

23 Q. And does that confirm that it is in that time period, because you heard about it  
24 on 1 January and I mean it's our submission this audio --

25 PRESIDING JUDGE EBOE-OSUJI: Ms Buisman, you can make that argument. We

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1 have to move on.

2 MS BUISMAN:

3 Q. Then I'd like to move on to another peace message, and yesterday you told us  
4 that you were certain that Bethwel Kiplagat, you heard him make a peace message in  
5 that time period. Do you remember saying that?

6 A. I remember.

7 Q. And about Sumbeiywo, Lazaro Sumbeiywo, you confirmed that you heard  
8 other people say it although you were not exactly sure yourself. Do you remember  
9 saying that?

10 A. Yes, your Honour.

11 Q. And in terms of Sila Arap Yego, you say that, well, he was sort part of the  
12 clergymen who probably also made a peace announcement, but you were not a  
13 hundred per cent sure; is that correct?

14 A. Yes, your Honour.

15 Q. But you were very certain of Kiplagat --

16 A. Yes.

17 Q. -- that's right?

18 A. Yes.

19 MS BUISMAN: I would like you to listen to another peace message and this is at  
20 core binder 8 and the number is -- for the audio, it's KEN-D11-0011-0037, that's the  
21 audio, and the translation has the same number but 0038. And I would like the court  
22 officer to provide the witness with a copy so that he can follow as we go along.

23 PRESIDING JUDGE EBOE-OSUJI: Of course you mean core binder tab 8.

24 MS BUISMAN: Yes.

25 Q. Mr Witness, you have the document in front of you?

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1 A. Yes, your Honour.

2 MS BUISMAN: And I would like to play the audio, please.

3 (Playing of the audio excerpt KEN-D11-0011-0037)

4 MS BUISMAN:

5 Q. Mr Witness, I just stopped after the first paragraph on the transcript. Could  
6 you please confirm who -- do you recognize the voice?

7 A. Yes, I do.

8 Q. (Redacted)

9 A. (Redacted)

10 Q. Thank you. For the record we just stopped at 43 seconds. This was the  
11 beginning up to 43.

12 Now I would like to carry on -- maybe I will read this first in the transcript and then  
13 we carry on with the peace message. Could you please follow with me, Mr Witness.  
14 First paragraph:

15 "My name is Bishop Sila Araap Yego, of AIC Kenya. I have come here so as to bring  
16 New Year prayers to pray for our nation, Kenya, and more so for our Kalenjin nation  
17 during these days of great peril. We have come with my brethren with whom we  
18 usually pray together in Nairobi; in order that we may pray for the Kalenjin people,  
19 and tell you that Jehova loves us, and Jehova wants us to do good deeds. Jehova  
20 wants us to see the New Year, and for us to receive it in great jubilation, so that our  
21 children may receive blessings."

22 PRESIDING JUDGE EBOE-OSUJI: Is that "jubilation"?

23 MS BUISMAN: Yes.

24 PRESIDING JUDGE EBOE-OSUJI: All right.

25 MS BUISMAN:

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1 Q. Mr Witness, is that a fair translation of what you heard in Kalenjin?

2 A. Yes, your Honour.

3 MS BUISMAN: Thank you. We'd like to continue this audio, please.

4 (Playing of the audio excerpt KEN-D11-0011-0037)

5 MS BUISMAN:

6 Q. Mr Witness, could you hear that?

7 A. Yes, your Honour.

8 Q. Thank you. We stopped at 2 minutes and 5 seconds for the record.

9 And I would like to read this into the record and, Mr Witness, I'd like you to kindly  
10 look with me through the document and tell me if anything is inaccurate.

11 Starting from paragraph 2:

12 "I would now like to pray, to pray for you all wherever you are tuned in to Kass FM  
13 radio station. Jehova, our Father: We thank you very much because you love us.

14 Thank you, Jehova, because you love our nation, Kenya. Thank you, Jehova, because  
15 you have brought us until we have seen the New Year.

16 Now we would like to pray, Jehova, especially for our Kalenjin people. We know  
17 you love these people, Jehova. Your holy word reached the Kalenjin people early on.  
18 And you anointed leaders from among the Kalenjin people. Jehova, we say thank  
19 you. We know you will continue to do so.

20 And now Jehova, during these days when our hearts are heavy as a result of different  
21 challenges; when people face danger, we beseech you, Jehova, to give us your peace  
22 which comes from heaven -- which no man gives -- so that our people understand  
23 how to live in peace with other people. Help us, oo, Jehova, you have that peace  
24 yourself. We beseech you to pour that peace on us as we begin the New Year, today  
25 the 1st. So that tomorrow, we will hear reports of people walking in peace.

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1 God help us. If there is any heaviness that people feel in their hearts, let them know  
2 how to deal with it. Help us Jehova in that manner. We want to believe that you  
3 will help us, and that you will speak with each person among our people. In the  
4 name of Jesus, our redeemer. Amen."

5 Is that a fair translation, Mr Witness?

6 A. It is.

7 Q. And did you hear indeed that he referred to the beginning of the New Year and  
8 he was saying "... today the 1st"? Did you hear that also in Kalenjin?

9 A. Yes, your Honour.

10 MS BUISMAN: And just for the record, we have the affidavit also of this bishop.  
11 It's core binder tab 18, and he in his affidavit he announces he made peace -- peace  
12 messages.

13 PRESIDING JUDGE EBOE-OSUJI: That's not right, Ms Buisman.

14 MS BUISMAN: (Microphone not activated). I am aware that we cannot bring  
15 affidavits in that way, but I just wanted you to be aware of that.

16 Q. Mr Witness, listening to this peace message, did you hear it before?

17 A. As I indicate yesterday, I cannot confirm, but I heard that he talked on -- about  
18 peace, that is Bishop Silas Yego, but I cannot just confirm the time and -- because  
19 actually on 1st I was not in a stable place.

20 Q. But what you heard --

21 A. Yes, I heard.

22 Q. -- was it on Kass FM?

23 A. Yes, your Honour.

24 Q. Did it have the same gist, talking of peace?

25 A. Yes, he's talking about peace.

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1 MS BUISMAN: Thank you, Mr Witness.

2 I would like to move on with the tape to Voice 2.

3 (Playing of the audio excerpt KEN-D11-0011-0037)

4 MS BUISMAN:

5 Q. Mr Witness, did you hear that?

6 A. Yes, your Honour.

7 Q. Did you recognize the voice?

8 A. Yes, I do.

9 Q. Could you please tell us who that was?

10 A. The voice of Ambassador Bethwel Kiplagat.

11 Q. And just to confirm, you were certain that you heard him in the aftermath of the  
12 announcement of the election; is that right?

13 A. Yes, your Honour.

14 Q. Let me just read this first paragraph into the record, and also for the record we  
15 stopped at 3 minutes and 10 seconds:

16 "I, here, Bethwel Kiplagat, have come here with my brothers. We have come for  
17 prayer; there is nothing else we have come for today. But we have come for prayer  
18 as we begin the New Year, and we are seeing that today we have obtained  
19 information from the land of the Kalenjin people, and our hearts are heavy. We are  
20 hearing that people have killed one another, harmed ourselves, people no longer  
21 speak and agree with one another. So my request is this: True, we have gone ... I  
22 have been to many countries and assisted to facilitate dialogue among people, people  
23 who were at war with each other -- in Sudan, in Mareka, eh, in Mozambique, or in  
24 Somalia -- and you saw me on television speaking with these people until I brought  
25 them."

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1 Is that a fair translation, Mr Witness?

2 A. Yes, your Honour.

3 MS BUISMAN: Then I would like to proceed until the end of his message.

4 (Playing of the audio excerpt KEN-D11-0011-0037)

5 PRESIDING JUDGE EBOE-OSUJI: All right. Can we stop there, please.

6 Ms Buisman, I see you've sat down. This looks like a long transcript. I hope your  
7 plan isn't to sit down, get to the end and have this witness confirm the whole thing.

8 MS BUISMAN: I have a question or two.

9 PRESIDING JUDGE EBOE-OSUJI: No. You have to make it manageable out of  
10 fairness for the witness. Little chunks, you stop and ask the question, if that is what  
11 you intend to do. We now see the point where "It is peace with justice." That was  
12 in English. If you want to now stop there and have the witness testify to the  
13 transcript to the extent that he can and move on.

14 MS BUISMAN: I'm guided.

15 Q. Mr Witness, did you hear that?

16 A. What?

17 Q. Did you hear that properly?

18 A. Yes.

19 Q. The audio?

20 A. Yes, your Honour.

21 Q. Okay. I'm just going to read out into the record our English translation and  
22 please tell me if it is a fair translation.

23 "So, the first thing I would like to say it this: No outsider can come and bring to an  
24 end the issue at hand except the leaders. The leaders of this nation -- Kalenjin  
25 leaders, leaders from the whole nation of Kenya -- it is they who can. No one else

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1 can manage to accomplish this task.

2 So, now you may have heard it said that there were some people attempting ... Araap

3 Sumbeiywo is here. The task we are engaged in does not seek to find a solution to

4 this impasse. What we are doing is to pray, and then to approach the other side and

5 speak with them, and speak also with this other side, work things out so that the two

6 sides can meet and dialogue. Secondly, peace cannot come on its own ... without

7 justice. If there is no justice, it is not possible. You even heard me talk about this

8 yesterday, you heard, perhaps some of you listened to me as I spoke yesterday,

9 saying ... 'Peace must go with justice. It is peace with justice.'"

10 Is that a fair translation, Mr Witness?

11 A. Yes, your Honour.

12 Q. Do you remember having heard this particular message?

13 A. I remember Mr Bethwel Kiplagat, but I can still say I cannot still remember the

14 contents of the message, but it was for peace. I remember Bethwel Kiplagat.

15 MS BUISMAN: Thank you. And for the record, we stopped at 4 minutes 22.

16 If we could now carry on until the end of this particular voice.

17 PRESIDING JUDGE EBOE-OSUJI: How long is that? Let's do it maybe one or two

18 extracts at once.

19 MS BUISMAN: I will.

20 PRESIDING JUDGE EBOE-OSUJI: And not more than that.

21 MS BUISMAN: We will stop --

22 PRESIDING JUDGE EBOE-OSUJI: Yes.

23 MS BUISMAN: -- at some point.

24 (Playing of the audio excerpt KEN-D11-0011-0037)

25 MS BUISMAN:

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1 Q. Mr Witness, did you follow this audio?

2 A. Yes, your Honour.

3 Q. For the record, we stopped at 5.45. That's at page 0040 of the  
4 translation -- actually 0041, it goes into 0041 of the translation into English.

5 I would now like to read it in English and, Mr Witness, if again you could look with  
6 me and -- so I'm reading it out and you tell me if it's an accurate translation:

7 "So, the only thing I would like to request is that, if possible, the opportunity arises,  
8 and the problem subsides. Once it subsides (why are we fighting now) this trouble  
9 that we are facing, then people can meet and dialogue. As I have already mentioned,  
10 we cannot address this problem unless people tell the truth; people to come out  
11 openly and mention all the underlying issues; then it be discussed and agreement  
12 reached regarding which of the highlighted issues is true, and which is not.

13 So, if we now want a solution to anything that comes along, we have two ways. One  
14 is whereby we use force. We use force. Sometimes, we can actually succeed in  
15 eliminating the existing challenge. However, from experience (work that we have  
16 done -- be it in Sudan, be it wherever else -- people can fight, but in the end they must  
17 engage in dialogue.

18 There is not another way, other than for people to sit down and dialogue among  
19 themselves; these ones at the top to engage and come up with a way to attain  
20 peace -- a peace that has strength; that has roots. But if we merely pronounce peace  
21 in a superficial way, without going deep to establish the root cause of the present  
22 trouble, then we cannot be helped."

23 Did you follow that?

24 A. Yes, your Honour.

25 Q. Is it a fair translation?

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1 A. Yes.

2 MS BUISMAN: Then we go on with the last part of this voice, please.

3 (Playing of the audio excerpt KEN-D11-0011-0037)

4 MS BUISMAN:

5 Q. Thank you, Witness. Did you hear that, Mr Witness? Did you follow the  
6 audio?

7 A. Yes.

8 Q. And we stopped at 6.38.

9 I'm just going to read out the English translation and, Mr Witness, if you could read  
10 with me and tell me if it's accurate:

11 "The one thing I am requesting is ... how I wish. I weep as I see children; I weep as I  
12 see women facing trouble until work has become a problem. Yet, when something  
13 like this comes up, it will not harm only the people on the other side, our enemies,  
14 alone. It is not only they who will die; it will be us all. It is like we are in the same  
15 boat. There is no other place except where you may be. We are all in the same  
16 place. So if one now begins ... to dig a hole to allow water into the boat, it will be us  
17 all who will perish.

18 So, now here in Kenya, wherever the place -- whether it is Eldoret or  
19 wherever -- when shops are closed, there is no place where we get fuel, it affects us all.  
20 There is nothing ... it cannot be said that it is only the other side. So, my only request  
21 is ... I weep, nothing else. I pray and I weep, urging us to find a way to avert this  
22 current crisis."

23 Mr Witness, can you confirm if that is an accurate and fair translation?

24 A. Yes, your Honour.

25 Q. And can you also confirm that at the beginning of this message he was speaking

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1 about Sudan, Mozambique and Somalia? Do you recall that in the audio?

2 A. Yes, your Honour.

3 Q. Do you recall that also in the peace message that you heard in 2008?

4 A. (Inaudible).

5 PRESIDING JUDGE EBOE-OSUJI: Witness, did you give an answer?

6 THE WITNESS: I said that yes, but it's too -- it's long time ago. I cannot still  
7 remember the contents, but it was a peace message.

8 PRESIDING JUDGE EBOE-OSUJI: The question from Ms Buisman was -- again,  
9 think about it and see if you recall, but her question was that in the audio there are  
10 references to certain countries like Sudan, Mozambique, Somalia, whether you recall  
11 hearing those countries mentioned in the comments by the ambassador at the time.

12 THE WITNESS: Yes, your Honour, I can remember.

13 PRESIDING JUDGE EBOE-OSUJI: You remember hearing those countries  
14 mentioned at the time, that is after the election results --

15 THE WITNESS: Yes.

16 PRESIDING JUDGE EBOE-OSUJI: -- when he spoke?

17 THE WITNESS: Yes. When he spoke, he referred to that countries because he has  
18 been negotiating peace in those countries.

19 PRESIDING JUDGE EBOE-OSUJI: But do you recall hearing him at the time in his  
20 speech mention those countries?

21 THE WITNESS: Yes, your Honour.

22 PRESIDING JUDGE EBOE-OSUJI: All right.  
23 Proceed.

24 MS BUISMAN:

25 Q. And just -- you just said it so you do confirm you also remember that he -- he

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1 did this, he facilitated dialogue among people in Sudan, in Mozambique, in Somalia;

2 you confirm that you were aware of that?

3 A. I was aware.

4 MS BUISMAN: Thank you, Mr Witness.

5 Then we go to voice number 3, then we will go through the same procedure.

6 (Playing of the audio excerpt KEN-D11-0011-0037)

7 MS BUISMAN:

8 Q. Mr Witness, did you hear -- did you hear the audio?

9 A. Yes, your Honour.

10 Q. Did you recognize the voice?

11 A. I cannot because I have never been listening to him too much.

12 Q. Thank you, Witness. In that case, we will stop here.

13 I just want to say for the record we stopped at 7.09 and this is at page 0041 of the  
14 translation.

15 MS BUISMAN: Given that he has identified two voices of the three and confirmed  
16 that he was quite clear, particularly about voice 2 and about the specific message,  
17 I would like to tender this document into evidence.

18 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia?

19 MR GARCIA: Your Honour, indeed the -- given the witness's answer in regard to  
20 the second voice, the Prosecution has no objection as to that part going in, obviously,  
21 but in regards to the first voice, and more particularly even the third voice, the  
22 witness doesn't even recognize the third voice so we're confronted with the issue of  
23 the fact that the witness cannot confirm that what is in the transcript was indeed  
24 broadcasted on the air of Kass FM by the third voice.

25 So we could obviously - I leave it in the Court's hands - admit the document, but with

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1 those reservations made by the Prosecution.

2 PRESIDING JUDGE EBOE-OSUJI: Ms Buisman, any reply?

3 MS BUISMAN: Yes. As far as the first voice is concerned, there is even a reference  
4 to 1 January which would assist in identifying it. He also did recognize the voice  
5 and he was quite clear -- he wasn't exactly sure like he was with the second voice, but  
6 he did recall that he was making a peace message at Kass FM in that period. So  
7 I think there's sufficient -- and it's also one audio. Unless the suggestions that we put  
8 in a third voice, I don't see how that would actually go to the authenticity of this  
9 audio and I would ask for the entire audio to be admitted.

10 PRESIDING JUDGE EBOE-OSUJI: The point is, are you insisting that it be admitted  
11 at the instance of this witness's testimony even as regards voice number 3; is that your  
12 position, Ms Buisman?

13 MS BUISMAN: Well, it is because it's one audio and we've had other audios like the  
14 Kass FM staff, we also admitted it as one document. There was one voice that he  
15 didn't particularly recall. Yes, that's my submission, unless there is a suggestion that  
16 we have put different audios together. But I mean, our main concern is of course  
17 with voice 1 and 2, but I -- I would ask that the entire audio be admitted.

18 PRESIDING JUDGE EBOE-OSUJI: The material will be admitted, but not at this  
19 stage, we're not ruling that it is admitted for purposes of voice number 3.

20 MS BUISMAN: I'm guided.

21 PRESIDING JUDGE EBOE-OSUJI: Yes. That's not to say that you may not argue  
22 the point at the appropriate time, but the Prosecution has noted their reservation in  
23 that regard. When the time comes, if you don't prove it up beyond this, then it will  
24 be a matter for argument between the two sides.

25 Mr Khan, I didn't get back to you. I promised to.

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- 1 MR KHAN: Mr President, I have no observations --
- 2 PRESIDING JUDGE EBOE-OSUJI: Yes.
- 3 MR KHAN: -- in light of the ruling of the Court.
- 4 PRESIDING JUDGE EBOE-OSUJI: Yes, indeed. The document -- the audio and the
- 5 transcripts are admitted with the observations already made on record.
- 6 THE COURT OFFICER: The audio bearing number KEN-D11-0011-0037 will bear
- 7 the number EVD-T-D11-00071. Its transcript and translation bearing number
- 8 KEN-D11-0011-0038 will bear the number EVD-T-D11-00072. Both documents are
- 9 public.
- 10 PRESIDING JUDGE EBOE-OSUJI: Thank you very much.
- 11 Ms Buisman?
- 12 MS BUISMAN: Thank you, Mr President. You'll be pleased to know we are almost
- 13 through with the peace messages. We have just two very small ones to place before
- 14 the witness.
- 15 Q. Witness, we spoke about William Ruto yesterday and we already had you listen
- 16 to one audio that had his voice on it. Do you recall that?
- 17 A. Yes, your Honour.
- 18 Q. And you recognize the voice?
- 19 A. I do.
- 20 Q. So I would like to place one more audio and this is -- this is the core binder 11.
- 21 It is -- has -- the audio has an MFI --
- 22 PRESIDING JUDGE EBOE-OSUJI: You have to say core binder tab 11 because "core
- 23 binder 11" might be confusing for somebody who is looking at the transcripts later on
- 24 in the proceedings.
- 25 MS BUISMAN: I will take your suggestion.

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1 Core binder tab 11. The audio has an MFI, but the transcript has not been used yet.

2 It's a message in English so we don't have the transcription problem. I'll give you

3 the exact reference. The MFI for the audio MFI-T-D11-00026 and the audio itself is

4 KEN-D11-0013-0058 and then the transcript is at KEN-D11-0014-0083.

5 I would like that to be placed before the witness if someone could assist.

6 And if I have the floor, I would like to listen to the audio.

7 (Playing of the audio excerpt KEN-D11-0013-005)

8 MS BUISMAN:

9 Q. Mr Witness, did you hear that on the audio?

10 A. Yes, your Honour.

11 Q. Did you recognize the voice?

12 A. Yes, your Honour.

13 Q. Can you please confirm on the record who that was?

14 A. It's the voice of William Ruto, Honourable.

15 Q. Mr Witness, did you hear this message before?

16 A. I cannot confirm that.

17 Q. But yesterday you did confirm you heard Mr Ruto during that period on Kass

18 FM?

19 A. Yes, your Honour.

20 Q. Calling for peace, that's correct?

21 A. Yes.

22 Q. Do you confirm that during that period ODM, most notably Honourable Ruto,  
23 asked to stop the violence?

24 A. Through William Ruto or through the party?

25 Q. Let's do it step by step. Through ODM?

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1 A. Yes, I could hear that ODM was also trying to make peace, but I cannot  
2 remember that side of the story.

3 Q. Just I think I should still read it into the record even though it was in English, if  
4 I -- so it reads as follows:

5 "ODM believes that the loss of life, the destruction of property that is going on in our  
6 country is unnecessary, unwarranted and should stop immediately. Urgent steps  
7 should be taken. We are prepared as the ODM to make urgent steps towards  
8 resolving this issue. We just hope the other side realises the urgency with which  
9 the ..." station "... the situation ..." is "... in our country needs to be dealt with."

10 In light of the recognition of the voice, I would like the transcript which wasn't used  
11 before to be MFI'd.

12 PRESIDING JUDGE EBOE-OSUJI: Will be MFI'd.

13 MS BUISMAN: And then one last --

14 THE COURT OFFICER: One second, please.

15 The document KEN-D11-0014-0083 will bear the number MFI-T-D11-00073. The  
16 document is public.

17 PRESIDING JUDGE EBOE-OSUJI: Thank you.

18 MS BUISMAN: Yes, thank you.

19 There's one last recording that I would like to place before the witness and this is at  
20 core binder tab 31. The audio is KEN-D11-0013-0060 and we have a translation  
21 which is new and the number is KEN-D11-0021-0123.

22 And I would like to listen to this short message and ask the witness if he recognizes  
23 the voice.

24 (Playing of the audio excerpt KEN-D11-0013-0060)

25 MS BUISMAN:

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1 Q. Mr Witness, could you follow the audio?

2 A. Yes, your Honour.

3 Q. And did you recognize the voice?

4 A. Yes, your Honour.

5 Q. Could you please tell us who that was?

6 A. It was the voice of the Bishop of Eldoret, Thomas Kogo.

7 Q. Then I will read this into the record and please look with me at the document

8 and tell me if it's a fair translation:

9 "I am Thomas Kogo of Eldoret Diocese."

10 A. Diocese.

11 Q. Diocese, sorry.

12 PRESIDING JUDGE EBOE-OSUJI: Diocese.

13 MS BUISMAN:

14 Q. "... Diocese. I want to say, oh our community - protect pregnant women,

15 protect the old men, protect a woman, protect children, and protect even strangers

16 passing by.

17 May God help us and let us raise our hands that God forgives us, the almighty (chepo

18 kipkoyo), and let us continue well.

19 May God bless you."

20 Mr Witness, is that a fair translation?

21 A. It is.

22 MS BUISMAN: And for the record, I will just spell the word that I said in Kalenjin

23 which is C-H-E-P-O, K -- new word K-I-P-K-O-Y-O.

24 Q. Mr Witness, did you hear this message before?

25 A. Yes, your Honour.

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1 Q. Do you recall if that was during the aftermath of the announcement of the  
2 election results?

3 A. About that time. I cannot remember the time.

4 MS BUISMAN: Thank you, Witness.

5 May I ask that this document be tendered as our next exhibit?

6 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia?

7 MR GARCIA: No objection, your Honour.

8 PRESIDING JUDGE EBOE-OSUJI: Mr Khan?

9 MR KHAN: No objection.

10 PRESIDING JUDGE EBOE-OSUJI: The audio and the accompanying transcript  
11 admitted as the next Sang Defence exhibit.

12 THE COURT OFFICER: The audio bearing number KEN-D11-0013-0060 will bear  
13 the number EVD-T-D11-00074. Its transcript bearing number KEN-D11-0021-0123  
14 will bear the number EVD-T-D11-00075. Both documents are public.

15 PRESIDING JUDGE EBOE-OSUJI: Thank you.

16 MS BUISMAN: Thank you.

17 Q. Mr Witness, are you aware that Joshua Arap Sang was critical -- played a critical  
18 role in finding these people to announce peace at Kass FM in the immediate aftermath  
19 of the election result announcement? Are you aware of that?

20 A. I cannot confirm if he was the one doing this or he was just doing it because of  
21 the policy of the Kass FM.

22 Q. Are you aware that Joshua Arap Sang was fundamental and was -- played a  
23 critical role in recording and coordinating these messages? Are you aware of that?

24 A. Yes, I do.

25 Q. Are you also aware that it was Joshua Arap Sang who played these peace

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1 messages in the aftermath of the announcement of the election results? Are you  
2 aware of that?

3 A. Yes, I do.

4 Q. And also are you aware that these messages were played over and over again?  
5 Are you aware of that?

6 A. Yes.

7 Q. And the reason for that is because they're prerecorded messages, they are not  
8 live; are you aware of that?

9 A. I'm not expert in knowing live or not live.

10 Q. No problem. Are you aware that these peace messages were played together  
11 with music?

12 A. Yes.

13 MS BUISMAN: Then I leave it here because I see the time. Thank you, Mr Witness.

14 PRESIDING JUDGE EBOE-OSUJI: Indeed.

15 Witness, we will take our morning break and we will come back in 30 minutes.

16 The blinds will come down and the witness will be ushered out of the courtroom.

17 \*(Closed session at 11.01 a.m.) Reclassified as Open session

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

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

20 (The witness stands down)

21 PRESIDING JUDGE EBOE-OSUJI: While the witness is being ushered out, Mr Khan,  
22 you said you had an issue?

23 MR KHAN: Yes, indeed, Mr President.

24 PRESIDING JUDGE EBOE-OSUJI: What is the level of urgency to that?

25 MR KHAN: Your Honour, it can wait. It's -- we've given our -- in fact it was on

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1 Monday we gave our intended list of evidence to the Prosecution, and it's in relation  
2 to some redactions to the source and it's the ambit and interpretation of the redactions  
3 protocol.

4 Your Honour, it looks -- and I've spoken to my learned friend that it looks like we're  
5 not going to start our cross-examination before Monday. So, your Honours, it won't  
6 prejudice us by waiting. I don't know if it prejudices the Prosecution. I don't think  
7 so because they're not even seeking to use the documents as yet. So it can wait  
8 whenever -- as far as we're concerned as to whenever it's convenient for the Chamber  
9 to hear the matter. It's a short matter, five minutes or so.

10 PRESIDING JUDGE EBOE-OSUJI: Five minutes.

11 Mr Garcia, you know what this is about?

12 MR GARCIA: Indeed, your Honour. It regards six documents -- four documents,  
13 actually, that were disclosed by the Defence and the source identity is redacted and  
14 the Prosecution is disputing the justification for those redactions. So indeed we can  
15 wait until -- until right before the cross -- the examination -- the cross-examination of  
16 Mr Khan to resolve this matter.

17 PRESIDING JUDGE EBOE-OSUJI: All right. Then let's take our morning break  
18 now.

19 Court will adjourn.

20 THE COURT USHER: All rise.

21 (Recess taken at 11.02 a.m.)

22 (Upon resuming in open session at 11.36 a.m.)

23 THE COURT USHER: All rise.

24 Please be seated.

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

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1 Witness, welcome back.

2 Ms Buisman?

3 MS BUISMAN:

4 Q. Welcome back, Mr Witness. So yesterday you confirmed to the Judge the  
5 suggestion that you heard these peace messages that we've just gone through, around  
6 the same time you also heard mixed messages that inflamed matters. Do you recall  
7 that you said that yesterday?

8 A. Yes, your Honour.

9 Q. And I just want to go through them, looking at your testimony. I would  
10 summarise them as follows, and obviously you can correct me if I'm wrong. You  
11 spoke about retreat messages during the aftermath of the election and you said that  
12 Joshua Arap Sang told people to retreat because police was using live bullets. Is  
13 that -- do you recall saying that?

14 A. Yes, your Honour.

15 Q. And you also spoke about an announcement on the 31st of a harambee; is that  
16 correct?

17 A. Yes, your Honour.

18 Q. And for the record harambee is a Kiswahili word for fund-raising, isn't it?

19 A. Yes, your Honour.

20 Q. And then the last one that you were speaking about was a message  
21 immediately -- on the 30th immediately after the announcement of the result, and you  
22 said that Mr Sang said three things during that message: First, he said to people to  
23 demand your rights and come out in the streets. Do you recall that?

24 A. Yes, your Honour.

25 Q. And you also mentioned that he talked about -- he also told the youth in his

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1 own area to block the roads; is that correct?

2 A. Yes, your Honour.

3 Q. And then he also was talking - and I'm just quoting you, this is Monday, so that  
4 was 1 December, page 11, at line 24 -- he was talking like in Kalenjin and he was  
5 saying that "... the leg of the calf from the stomach has just shown but now it has  
6 returned to the stomach again." Is that correct?

7 A. Yes.

8 Q. So that is the totality of that message as far as I recall it, and these are the three  
9 categories of messages that you referred to; is that correct?

10 A. Correct.

11 Q. Now, Witness, asking people to retreat is not the same as asking people to use  
12 violence. Do you agree with me?

13 A. I can agree, but my functions -- my -- the way I was putting it, it -- I  
14 can't -- I'm -- the word "retreat" okay is not violent, but according to me, this is -- it is  
15 like somebody was commanding the youths.

16 Q. So that's your interpretation?

17 A. Yes.

18 Q. You confirm that. And retreat is rather the opposite from going out in the  
19 streets; is that not right?

20 A. That is what I said. I said he was saying that during that particular moment to  
21 make the youths to go aside because he was aware that they will be use live bullets at  
22 that particular moment and there was some mix-up. This is to show that Sang was  
23 in command.

24 Q. But that again is your interpretation, right?

25 A. (No audible response)

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1 Q. Anyway, moving to the next, the blocking of the road in his area, you did say  
2 that your interpretation was that this was to block the Kikuyu, but again you said  
3 these were not the words used by Mr Sang. It's your interpretation. That's correct,  
4 isn't it?

5 A. It's not my interpretations. It's the word he said to block the road.

6 Q. And just about the calf, you said it meant that he was disappointed in the result  
7 of the election; is that correct?

8 A. That is what I -- I said, but that according to my -- still remembering what I said  
9 is that he was actually saying that -- that word.

10 Q. And you agree -- you remember that a lot of people at that time were surprised  
11 by the outcome of the election? Do you agree with that?

12 A. That one I don't know what you -- what mean, but so there was surprise but  
13 they were doing it. Why do they surprised and they were just doing it?

14 Q. I'm not talking about doing anything. I'm talking about the announcement of  
15 the election, that came as a surprise to a lot of people in Kenya, did it not?

16 PRESIDING JUDGE EBOE-OSUJI: Perhaps you can help the witness understand the  
17 question. I don't think he understands the question you are asking. Why is it  
18 that -- you I might suggest to him why they may have been surprised. Maybe  
19 perhaps that could help him understand your question.

20 MS BUISMAN:

21 Q. People in Kenya generally were surprised that Kibaki won and not Raila  
22 Odinga. Do you agree with that?

23 A. Prior to election, there were some messages from ODM and some people -- it  
24 already incite people that election will be rigged. So it is like people were aware and  
25 even had plan of mass actions. It's like it was actually planned and destructions

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1 was -- because they were already aware that election will be rigged.

2 Q. But "mass action" as you talked about, what -- what was announced was a  
3 peaceful mass action. Do you agree with that? That was the ODM announcement  
4 on the 31st.

5 A. I agree, but why should they stop immediately again if they discovered that it's  
6 not peaceful mass action and it is not mass action to block the roads. It's not peaceful  
7 to block the roads.

8 PRESIDING JUDGE EBOE-OSUJI: Well, Witness, you can answer questions fully.  
9 What we will try to avoid is arguing.

10 THE WITNESS: Okay. Yes, your Honour.

11 PRESIDING JUDGE EBOE-OSUJI: You can -- those answers you were putting as an  
12 argument, you can turn them around so that they come out as a positive proposition.  
13 For example, instead of saying "Why would they block the road?" You can -- if that  
14 is your position, you can say, "Well, if that is the case, they will not block the road."  
15 Something like that, instead of saying why or ask the lawyer questions so that you get  
16 into an argument with her.

17 We try not to have arguments between lawyers and witnesses. I will not permit her  
18 to argue with you. I will also not allow you to argue with her.

19 But one matter I need you to clear up is when you say that people were already aware  
20 that the elections would be rigged, I need you to explain to me what you mean by  
21 "aware"? The use of that word, people were already aware that the elections would  
22 be rigged, what are you trying to tell us, or what are you telling us?

23 THE WITNESS: Your Honour, this is the position I have been -- I can confirm to  
24 myself that prior to election, prominent leaders, especially the Honourable William  
25 Ruto, have been quoted in some places saying that, "We are aware that they are

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1 planning to rig elections and now let them try and then they will see." So it is

2 already that that thing is already in the minds of the public by then.

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

4 Please proceed, Ms Buisman.

5 MS BUISMAN: Yes, thank you for that clarification.

6 Q. Well, you said when you heard this particular message immediately after the

7 announcement of the results then there was this reference to the calving, you said

8 there was already a lot of activity in the streets. Is that right?

9 A. Yes, your Honour.

10 Q. A lot of demonstrations?

11 A. Yes, your Honour.

12 Q. And I suggest to you there were not only Kalenjins. That's right, isn't it?

13 A. At -- in my testimony it's part of my area.

14 Q. But there are other tribes?

15 A. Yes, your Honour.

16 Q. That was in --

17 A. As I have said during my testimony.

18 Q. There were Luos in the street?

19 A. Yes, your Honour.

20 Q. Luyhas?

21 A. I said this before, your Honour, it's yes.

22 Q. And you also said some other tribes. Can you be -- can you tell us what other  
23 tribes?

24 A. We have so many tribes in Kenya, 42 in number, but there is even like Desos  
25 and Turkanas can be also be there.

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- 1 Q. I think you might have to spell that for the record, please.
- 2 A. Which one?
- 3 Q. Both.
- 4 PRESIDING JUDGE EBOE-OSUJI: Turkana will be T-U-R-K-A-N-A, is that it?
- 5 THE WITNESS: Yes.
- 6 PRESIDING JUDGE EBOE-OSUJI: All right. Can you spell the first one. Did you
- 7 say Tesos?
- 8 THE WITNESS: Teso, yeah.
- 9 PRESIDING JUDGE EBOE-OSUJI: How do you spell that?
- 10 THE WITNESS: D-E -- D-E-S-O.
- 11 PRESIDING JUDGE EBOE-OSUJI: D-E-S-O?
- 12 THE WITNESS: Yes.
- 13 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 14 MS BUISMAN:
- 15 Q. Any other that you can remember?
- 16 A. There is also some Kisiis who were for ODM by then, yes.
- 17 Q. Any other?
- 18 A. But I cannot mention all tribes, because -- there is also -- there is --
- 19 Q. Only those you remember.
- 20 A. -- there is also people from no distance. Some of the people Swahilis or -- yes,
- 21 people like that.
- 22 Q. Would they have a name or is it just a Swahili population?
- 23 A. Somali communities.
- 24 Q. Thank you, Witness. Now, you told us that you heard -- you listened to Kass
- 25 FM because it's your language. What about all the other -- people from other ethnic

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1 groups? They -- they listened to their own radio programmes?

2 A. I cannot confirm how -- if they listen or they just listen to the national radio,  
3 because we have also national radios like Swahili which broadcast in Swahili or  
4 English.

5 Q. And you also said you heard many messages from television and radio.  
6 Which television channel?

7 A. (Indiscernible) I could follow this from Kenyans and one of them -- also I could  
8 also another Al Jazeera from the international TV.

9 Q. So there was a lot of messages from all over, huh? And there was a lot of  
10 activities in the street. Would you agree with me that you cannot confirm that  
11 people were triggered who were in the streets by the Kass announcement? You  
12 don't know?

13 A. As I can confirm, that my region mostly listened to Kass FM.

14 Q. What about the other ethnic groups?

15 A. The other ethnic groups can listen to any other stations, but I can confirm to  
16 mostly listened stations in my region is Kass FM.

17 Q. But as you say yourself there were already rumours about the election that  
18 would be rigged, so people were already in the streets when you heard that  
19 announcement on Kass. Is it possible that people were triggered by other events?

20 A. If you can tell me, your Honour, which other -- which kind of other events?

21 Q. It was you who was telling us that you heard even before there were rumours  
22 that the elections would be rigged and that people were talking about it. So was that  
23 not the trigger of people being in the streets?

24 A. Yes, that is one of the -- the message that already people had prepared that  
25 election will be rigged. That's why they were being incited before by the same

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1 leaders.

2 MS BUISMAN: Thank you. Now, I would like you to listen to another audio and  
3 this is the audio on 29 December. It is in the core binder at tab number 6 and the  
4 audio has the number KEN-D11-0006-0025. It also has an EVD number,  
5 EVD-T-D11-00016 and the transcript and translation has the number  
6 KEN-D11-0008-0001 and the EVD number is EVD-T-D11-00017, one-seven.

7 So if a copy could also be placed in front of the witness?

8 Mr Witness, I will follow the same procedure. You have the copy in front of you.

9 We are going to listen to certain passages, not the entire audio, and I will ask you to  
10 look at the document and tell us if it's a fair translation.

11 PRESIDING JUDGE EBOE-OSUJI: I thought you said we were done with that  
12 exercise?

13 MS BUISMAN: These are not --

14 PRESIDING JUDGE EBOE-OSUJI: Obviously not.

15 MS BUISMAN: Well, these are not peace messages of other people. It is not peace  
16 messages after the 1st and this is directly relevant as you will find --

17 PRESIDING JUDGE EBOE-OSUJI: I am not saying it is not relevant, but proceed.

18 MS BUISMAN: I didn't mean to say --

19 PRESIDING JUDGE EBOE-OSUJI: Proceed.

20 MS BUISMAN: -- we were finished with audios. I want to make that very clear  
21 because there will be quite a few coming.

22 THE COURT OFFICER: Ms Buisman, I am sorry to interrupt, but the ERN number  
23 of the audio is ending by 23 in our records. Could you please confirm?

24 MS BUISMAN: Yes, I confirm and it's track 0025.

25 I would like us to listen to -- it's time stamp 43.19 up to 44 and this is at page 22 of the

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1 translation which is 0023.

2 (Playing of the audio excerpt KEN-D11-0006-0023)

3 MS BUISMAN:

4 Q. Witness, could you follow the audio?

5 A. Yes, your Honour.

6 Q. And could you also follow the transcription?

7 A. Yes, your Honour.

8 Q. So I would like to read this into the record into English and please confirm that  
9 this is a fair and accurate translation, starting at page 21 -- sorry, page 22:

10 "That is the position now. The results have not been announced; and since the  
11 announcement has not been made, what is your worry? What is worrying you when  
12 I have told you the cow will calve? You know every cow in birth pangs will  
13 eventually calve.

14 It is like this: The cow will rub herself against a wall, but it must eventually calve;  
15 without doubt it will calve. In that case, what is the basis of all these issues - issues  
16 that could result in destruction here and there; and then people will develop a bad  
17 picture of us, wondering where this has come from given that we are a good people  
18 and that we voted well."

19 Mr Witness, does this correspond to what you have heard in Kalenjin?

20 A. Yes, your Honour.

21 Q. Is it a fair translation?

22 A. It is.

23 Q. Did you recognize the voice?

24 A. Yes, your Honour.

25 Q. Can you tell us who is it, please?

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1 A. It's the voice of Joshua Sang.

2 Q. And can you confirm -- I'm just told that at page 49, line 4, of the transcript,  
3 there is a missing word "calve," C-A-L-V-E.

4 THE WITNESS: Page?

5 MS BUISMAN: 49 of the transcript, line 4. Sorry --

6 PRESIDING JUDGE EBOE-OSUJI: Witness, that's not for you. That's for the court  
7 reporters.

8 MS BUISMAN:

9 Q. Mr Witness, did you hear this message on 29 December 2007? Did you hear  
10 Mr Sang speak about this cow that will calve?

11 A. I can't remember very well about that -- that message of Sang, because if it was  
12 announced in the afternoon or whatever, I was not in the radio all the time.

13 Q. Would you agree that this is the same cow and calf as the one that you were  
14 referring to in your message meaning the result of the election? Is that fair?

15 A. The message that I was saying, it was on 30th, not 29.

16 Q. But the cow that you were talking about and the calf had the same meaning, is  
17 that right, meaning they are waiting for the announcement of the election results to  
18 come out? Is that right?

19 A. Yes, according to this message it is that way.

20 Q. According to you? That is what I understood you to say.

21 A. Yes, it is clear that after the expectation of the cow to come out, the calf, but it  
22 was returned. That is now -- it's another action, but initially they were waiting for  
23 that to happen, yes? But it is -- because it didn't happen the way they wanted, that is  
24 to mean to -- directly that it is opposite to what could happen.

25 Q. No, I understood that and this is before the election, just one day. Would you

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1 agree, having listened to this, that even -- what Joshua Sang is saying that the election  
2 result will be announced even though it might take a bit longer than expected, it will  
3 calve, the election result will be announced. That's what he says, right?

4 A. Yes, I agree, your Honour.

5 Q. So he's asking people to be patient; is that right?

6 A. That is, yes, your Honour.

7 Q. And just so you know, this recording is actually from the morning programme.  
8 Is that a morning programme you listened to on the 29th, can you recall?

9 A. Yes, if it is that programme, okay, I listened to that programme, but I cannot  
10 recall all messages what happened that particular morning.

11 Q. But you do recall that you did listen to Kass FM that morning?

12 A. Yes, I could -- I could do, but, your Honour, to listen the whole time all through  
13 to the -- to 8 o'clock can be -- you cannot collect all information.

14 Q. I understand, Mr Witness. Just I want the correct myself. I think I said it was  
15 the day before the election, but I meant to say it was a day before the --

16 A. Announcement.

17 Q. -- result was announced.

18 A. Yes, your Honour.

19 Q. The election had already taken place?

20 A. Yes, your Honour.

21 Q. Thank you, Witness. I'd like you to listen to another part of the same audio  
22 and again listen to it and see if you -- if you've heard it before, if it makes sense to you.  
23 This is now at 51.51 up to 52.45. It is at pages 0025 to 0026 of the translation. Are  
24 you there, Witness?

25 A. 002?

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1 Q. It's 0025 to 0026 and in fact in normal numbers it's page 24 of the transcription  
2 and translation.

3 A. Okay.

4 Q. Have you found it?

5 A. Yes, your Honour.

6 MS BUISMAN: So if I may have the floor, we will now listen to the message.

7 (Playing of the audio excerpt KEN-D11-0006-0023)

8 MS BUISMAN:

9 Q. Mr Witness, could you follow that on the audio?

10 A. Yes, your Honour.

11 Q. Could you also follow it on the document, the translation and transcription?

12 A. Yes, your Honour.

13 Q. Did you recognize the voice?

14 A. Yes, your Honour.

15 Q. Can you confirm who it was?

16 A. It was Mr Sang.

17 Q. Thank you, Witness. I would like to now record in the transcript the English  
18 translation and we ask you again to tell us if it's a fair translation of what you've  
19 heard in Kalenjin:

20 "Kalenjin people: I wish to insist on this. Honestly, some discontent may be there,  
21 since protected periods of waiting for this to happen may ... eh? It's like waiting for  
22 money of the bank and it takes long - it can be frustrating. Similarly, it is frustrating  
23 if waiting for a cow to calve takes too long. Or a woman in labour - the process  
24 usually frustrates her children, siblings, herself and husband.

25 So what? It's not like in the frustration we destroy property. We do not destroy

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1 things. We just bear the frustration as we think about what may be happening, and  
2 pray and be patient. That is how it is.

3 People of Cheplaskei who have barricaded the road, open the road. Same to people  
4 of Mulango, Eldoret. Open the roads. Nandi Hills, abandon; open all roads. You  
5 know you could attempt to do what others are doing, but as a result a curfew could  
6 be the declared. Will that help? That will worsen the situation."

7 Mr Witness, is that a fair translation of what you've heard in Kalenjin?

8 A. Yes, your Honour.

9 Q. And do you recognize this? Have you heard it before?

10 A. The voice?

11 Q. Sorry.

12 A. I recognize the voice of Mr Sang.

13 Q. And we already know that you listened -- at least for part of the morning of 29th  
14 you listened to Kass FM, but do you recall having heard this particular part of the  
15 message?

16 A. Yes, I have said that yes, I could -- I cannot remember well, but I just remember  
17 some of the -- sometimes he could -- as I have already said even the whole of this  
18 week that sometimes he could inform people to open the roads.

19 MS BUISMAN: Just for the record, not for you, Mr Witness, for the record, page 93  
20 of the transcript, lines -- 53, lines 19 and 20, should read "... curfew could be  
21 declared ...", not "chaired."

22 Q. Mr Witness, do you recall any parallel or comparison with the phrase "woman  
23 in labour"? Do you recall that?

24 A. (No audible response)

25 Q. Sorry, did you answer?

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1 A. Yes, your Honour.

2 Q. What was your answer?

3 A. I said I can recall, yes.

4 Q. You can?

5 A. Yes, I can. Yeah.

6 Q. And the reference to waiting for money in the bank, is that something you recall  
7 as well?

8 A. Not really, but the words "woman" is I think I can -- yeah, I can remember.

9 Q. Thank you. And can you just confirm that in this particular part Mr Joshua  
10 Arap Sang is condemning destruction of property and he's asking people to be patient?  
11 Do you confirm that?

12 PRESIDING JUDGE EBOE-OSUJI: I think you can move on with that sort of  
13 question. The witness has said repeatedly that Mr Sang was sending mixed  
14 messages. Sometimes he would broadcast messages of peace. Other times he  
15 would be saying things that would inflame the circumstances. I don't know whether  
16 we need to stop him at every point that the transcript, which is already in evidence,  
17 indicates a message of peace, unless there's a specific reason why you need to stop to  
18 do that, but just to have him confirm that which is on the record and which is not  
19 inconsistent with his testimony is something we will try to avoid doing just for mere  
20 purposes of getting him to say, "Yes, I see it" as well.

21 MS BUISMAN: I'm guided. Can I ask the question a bit differently?

22 Q. Mr Witness, do you confirm that you heard -- at that particular time did you  
23 hear Mr Sang condemning the destruction of property?

24 A. If I can answer that way, yes.

25 Q. And do you also confirm that Mr Joshua Arap Sang in that particular period

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1 was asking people to open the roads?

2 A. I can confirm, but that particular time. But this is only for some few time, but  
3 the rest of the day you cannot -- yeah. I can confirm the time that he was actually  
4 preaching this.

5 Q. Thank you, Witness. I'd like to go to another part of this audio which starts at  
6 time stamp 20.45 up to 21.59, and the pages in the transcription/translation document  
7 are 0014 to 0015?

8 A. Physically page?

9 Q. The number page is 13 to 14 and on the bottom there is another KEN number  
10 which has the pages 0014 to 0015.

11 PRESIDING JUDGE EBOE-OSUJI: What tab? Did you already indicate the tab?

12 MS BUISMAN: 6 of the core -- tab 6 of the core binder.

13 PRESIDING JUDGE EBOE-OSUJI: Where we are?

14 MS BUISMAN: It is the same audio, yeah.

15 Q. Did you find it, Mr Witness?

16 A. Page 13?

17 Q. Yes?

18 A. Uh-huh.

19 MS BUISMAN: If I have the floor, I'd like to listen to this part of the audio.

20 (Playing of the audio excerpt KEN-D11-0006-0023)

21 MS BUISMAN:

22 Q. Mr Witness, did you follow?

23 A. Yes, your Honour.

24 Q. So then I would like to read the English translation and we'll ask you again if it's  
25 a fair translation of what you heard on the audio:

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- 1 "You know how you voted, and Kenyans expressed their will. Therefore I do not  
2 think one can change anything now. So all we need to do now is to be patient and  
3 wait for Electoral Commission to make the announcement at any time. Let us not  
4 fan tension.
- 5 Let us leave it to the politicians. You have heard Hon. Ruto and others and Nyagah  
6 are on the side waiting for the results. So be patient over there at home. Don't  
7 engage in violence as others could take advantage to engage in unruly activities.  
8 The election was just a day; you have voted and have succeeded.
- 9 People at the grassroots are not to blame. Getting angry at one another at the  
10 grassroots will not resolve anything. If there are any issues, they will be solved  
11 above, but they (the people at home) are not responsible. So, don't displace your  
12 anger onto unwarranted targets. You have been with your neighbours all long; even  
13 if they voted for a person you did not want, leave them alone. Still, we all live in  
14 Kenya and each one is looking out for their property.
- 15 So, I beseech you in Jesus' name, Kalenjin people: Let's be patient. People of Bomet,  
16 people of Kericho, all is well; let's be patient. At Litein, let us be patient. Nakuru,  
17 Kabarnet, Eldama Ravine all the way to Eldoret, all these places - Cherangani, Pokot,  
18 exercise restraint; all is well. We are ok. We are ok. In a short while, I know the  
19 results, which you are yearning for, will be announced."
- 20 Is that a fair translation?
- 21 A. Yes.
- 22 MS BUISMAN: For the record I will spell: Litein is L-I-T-E-I-N and Eldama Ravine  
23 E-L-D-A-M-A R-A-V-I-N-E.
- 24 Q. Witness, can you confirm that Cherangani, one of the places that Joshua Arap  
25 Sang is referring to in the very last paragraph, is his area? Do you agree with that?

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1 A. I can agree Cherangani is his own area.

2 Q. And generally in that time do you recall Joshua Arap Sang telling people not to  
3 get angry with their neighbours, or others on the civilian side, even if they are  
4 frustrated with their politicians? Do you recall him giving out that sort of message?

5 A. Your Honour, I didn't listen to whole part of the messages. I can confirm when  
6 I read it now, but I cannot remember when I heard him. But I didn't deny that he  
7 was not preaching peace, but he was, but this kind of messages deeply I cannot really  
8 remember.

9 MS BUISMAN: Thank you, Witness.

10 I will just move on to another part of the audio. Now, at time stamp 31.41 up to  
11 32.56 if -- it's on the document it's page 17 to 18, which corresponds to 0018 to 0019 in  
12 the KEN number.

13 Q. Did you find that, Mr Witness?

14 A. Yes, your Honour.

15 PRESIDING JUDGE EBOE-OSUJI: Ms Buisman, how much -- I did not ask you this  
16 question already, but you -- I am sure you anticipated it coming. How much longer  
17 would you need to stay with this witness?

18 MS BUISMAN: At least until tomorrow. Yeah, tomorrow afternoon.

19 PRESIDING JUDGE EBOE-OSUJI: Tomorrow afternoon?

20 Proceed.

21 MS BUISMAN: So you've found it. If I have the floor, I would like to listen to that  
22 part please.

23 (Playing of the audio excerpt KEN-D11-0006-0023)

24 MS BUISMAN:

25 Q. Mr Witness, could you follow the audio?

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1 A. Yes, your Honour.

2 Q. Then I would like you to look with me at the translation and tell me again if it's  
3 a fair translation at page 17:

4 "Our Kalenjin people, I would like to beseech you to continue being patient. Let's be  
5 patient people of Eldoret, people of Kericho, people of Kabarnet - generally the whole  
6 Kalenjin community. I would like to tell you to take all these things slowly.

7 Ignore propaganda now spreading through sms, some of which I have received here  
8 in the studio, indicating that some people have been asked to announce that  
9 so-and-so has won. No, no. Be patient.

10 Justice will prevail in the nation of Kenya. If justice was upheld until we elected the  
11 leaders as we did, is it possible for you to say something went wrong really?

12 Ministers were beaten - the number of ministers who were beaten is approaching  
13 twenty now, which shows us that the Electoral Commission is transparent. They are  
14 doing their duty. Therefore, I do not think there is any issue that is hidden; they are  
15 just awaiting results from some region.

16 And if there is an issue beyond that, let us leave it to politicians. You have heard  
17 about politicians from different parties - let's leave those issues to them. Let's not  
18 dabble in this please as it does not involve people at the grassroots. It has nothing to  
19 do with the people with whom we live, nor with idlers. Do not engage in  
20 skirmishes."

21 Mr Witness, is that a fair translation?

22 A. It is.

23 Q. And did you recall -- do you recall hearing this before?

24 A. I can -- do confirm, but I am repeatedly saying that I could not remember exact  
25 word because of the time is long.

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1 Q. But you remember a message like this?

2 A. I remember message of peace.

3 Q. And you remember that Joshua Arap Sang generally had confidence in the ECK,  
4 the Electoral Commission of Kenya? Do you confirm that?

5 A. According to what I could see in these transcripts, I also confirm that he was  
6 having confidence in Electoral Commission.

7 Q. And according to your recollection, is that correct as well?

8 A. I am not sure about that.

9 Q. Well, let's look at what he says about propaganda, this is at page 17 midway,  
10 where he said, "Ignore propaganda now spread through sms ..." You see that, right?

11 A. (No audible response)

12 Q. Do you agree with me that that propaganda refers to Raila being sworn in as  
13 president?

14 A. Yes, there is some messages of propaganda that took place at that time, but it's  
15 not part of -- yes, part of my testimony.

16 Q. No, but you do see that Mr Joshua Arap Sang was against this sort of  
17 propaganda? Do you recall -- do you see that in the transcript?

18 A. I can see that in the transcript.

19 Q. And does that -- does that correspond with your recollection of that time?

20 A. As I have said earlier, there were some mixed message that come out from the  
21 same Sang could do the opposite of what actually -- he was actually most of his time  
22 announcing things of the peace and could put some incite word that could cause  
23 opposite, but actually most of his time when he was at studio he was preaching peace.

24 Q. Thank you, Witness. Just help me. There is -- there is a gap in the transcript  
25 when I asked you to look at what he says about propaganda. This is at page 70,

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1 midway. This is -- at the transcript 61, line 10, and I asked you, "You see that, right?"

2 When I refer you to that passage at page 17. In my recollection you said "Yes"?

3 A. Yes, your Honour.

4 Q. Thank you, Witness. Then I would like to take you to one more passage in

5 the transcript which is at 42.39, that's the time stamp, and it's page 21 of the

6 translation/transcription document which corresponds with KEN number 0022.

7 A. Page?

8 Q. 21. Do you see that, Witness?

9 A. Yes, your Honour.

10 Q. We start at "Voice 1." And just one thing I want to clarify with you:

11 Everything we've heard so far was Joshua Arap Sang himself, correct, of this audio?

12 A. Yes, your Honour.

13 MS BUISMAN: Thank you.

14 If I have the floor, I'd like to listen to this passage.

15 (Playing of the audio excerpt KEN-D11-0006-0023)

16 MS BUISMAN:

17 Q. Witness, did you follow that on the audio?

18 A. Yes.

19 Q. So just look with me through the translation, please:

20 "Right ... Kalenjin people wherever you are, you are tuned in to your station, Kass FM,

21 where we are still waiting for the results from the Electoral Commission, results am

22 sure are almost complete now and soon we will be letting you know who has won.

23 In this regard, I wish to let you know that nothing is amiss; be patient until we are

24 informed on who has won this election so that we can all celebrate whoever has won

25 the seat of the president of Kenya as decided by Kenyans in the ballot box."

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1 Is that a fair translation?

2 A. It is.

3 Q. And do you recall Joshua Arap Sang saying that whoever has won, it's the ballot  
4 box that decides? Do you recall that?

5 A. I cannot recall.

6 Q. Okay. Then I would like to go to another portion of this audio at page 34,  
7 Mr Witness, which is page 0035 of the KEN number, and it is at time stamps 93.20 up  
8 to 93.43.

9 PRESIDING JUDGE EBOE-OSUJI: Before you play that.

10 Witness, you've testified about this matter of, in your view, Mr Sang sending mixed  
11 messages and you say -- I believe you said most of the time he was preaching peace,  
12 but from time to time he would inject words or phrases that would work in the  
13 opposite direction. That was your evidence?

14 THE WITNESS: That is part of my evidence that I have been saying that there were  
15 some mixed word. That's what I can confirm, but I could also confirm that he was  
16 also preaching peace.

17 PRESIDING JUDGE EBOE-OSUJI: On those occasions when he would, according to  
18 you, have injected words or phrases or messages that worked against his message of  
19 peace, did you at the time form the impression that he was deliberately injecting those  
20 negative messages within the overall message of peace, or that perhaps he expressed  
21 himself awkwardly and that people may then hang on to those awkward phrasing to  
22 disrupt the peace? What is -- what was your appreciation of what was going on at  
23 the time, as a person listening to the messages according to your testimony?

24 THE WITNESS: By then, your Honour, people were listening actually to the radio  
25 and anything that Sang could said they cannot even verify. They think that it is

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1 accurate and they will act according to what they get it. If they believe that the  
2 election is not yet confirmed, yes, but they are sure that the election is going to be  
3 rigged, then they will also continue doing destructions that even they believe that the  
4 radio have said this; that is Mr Sang have said this.

5 PRESIDING JUDGE EBOE-OSUJI: My question really was -- relates to how you  
6 appreciated his message yourself.

7 THE WITNESS: Yes, I appreciated he was really trying effort to make peace by then  
8 sometimes.

9 PRESIDING JUDGE EBOE-OSUJI: Sometimes?

10 THE WITNESS: Yes, most of the time, but he could not use the entire radio's  
11 broadcast to announce negative things. Otherwise it could not be good for him.  
12 Otherwise he could just jump in in an opposite word that even in a second it could  
13 read past the message.

14 PRESIDING JUDGE EBOE-OSUJI: Okay, that's the point I'm -- what I'm trying  
15 to -- what I'm driving at. Those instances where he would inject those negative  
16 words you said it could be a matter of seconds?

17 THE WITNESS: Yes.

18 PRESIDING JUDGE EBOE-OSUJI: What I'm trying to understand from you is how  
19 you viewed things at the time. Did you get the impression that he deliberately  
20 injected those negative words in order to disrupt the peace, or that maybe he said  
21 something that he did not choose his words well, he may not have meant to disrupt  
22 the peace, but he just said this thing should not have been said in your view because  
23 you could see it being problematic? How did you see it?

24 THE WITNESS: My views is that he was doing this deliberately.

25 PRESIDING JUDGE EBOE-OSUJI: Thank you.

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1 Please continue.

2 MS BUISMAN: Thank you. I'd like to have the floor for, as I said earlier, to page 34  
3 of the translation.

4 Q. Are you with me, Mr Witness?

5 A. I am with you, your Honour.

6 MS BUISMAN: Thank you.

7 So I will play now.

8 (Playing of the audio excerpt KEN-D11-0006-0023)

9 MS BUISMAN:

10 Q. Did you follow that, Mr Witness, on the audio?

11 A. Your Honour -- yes, your Honour.

12 Q. So I will just read the English and you tell me if it's correct:

13 "Only one thing: Keep maintaining peace. Maintain peace." Do not be angry.

14 "Do not be too angry. Why do you fret and yet you know that someone has to win

15 this leg ...? One person has to win. And the announcement will be made stating

16 who has won. And whoever wins will be the valid winner. Except, I know how

17 people's hearts operate. Jehovah too. Don't imagine that he does not; he does."

18 Is that a fair translation?

19 A. It is, your Honour.

20 Q. Do you agree that looking at this message he is open to either ODM or PNU

21 winning the presidential elections? Do you agree with me?

22 A. I agree.

23 Q. And is that your general recollection of that time?

24 A. I would say I could not put general recollection, but I was still having a reserve

25 to some words, but I'm saying most of the time he was actually meaning what he was

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1 saying, yeah.

2 Q. Thank you, Witness. And there's one last portion - I'm sure the Judges will be  
3 delighted to hear that - that I'd like you to listen to and then we move on from this  
4 audio. The last portion is at page 26 for you, Mr Witness, time stamp 53.13 up to  
5 53.33.

6 A. Page?

7 Q. 26. And in fact it starts at 25 in the Kalenjin. It starts at 25. It's the English  
8 that starts at 26. It corresponds with KEN number 0027. Are you with me?

9 A. I am with you.

10 MS BUISMAN: So I will play the audio now.

11 (Playing of the audio excerpt KEN-D11-0006-0023)

12 MS BUISMAN:

13 Q. Could you follow that on the audio, Mr Witness?

14 A. Yes, your Honour.

15 Q. And I'll read the English translation into the record and again I'll ask you if it's a  
16 fair translation:

17 "I want to ask each one to remain stationed in one place. Stay wherever you are.

18 And people intending to leave home, please relax at home. If it is not absolutely

19 necessary for you to go to town, stay at home. As for those people who are

20 screaming and setting vehicles on fire in Kericho, No please. Do not set anybody's

21 vehicle on fire. Do not stone vehicles. Kericho people, do not do that. That

22 behaviour does not befit the Kalenjin people."

23 Is that a fair translation, Mr Witness?

24 A. It is fair, yeah.

25 Q. Do you recall from that time that Mr Joshua Arap Sang would tell people not to

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1 go and put vehicles on fire? Do you recall?

2 A. I can't recall but the flow of the transcript is clear, but I can't recall myself.

3 Q. Do you recall that he told people not to use violence? Do you recall that?

4 A. Yes, I can remember he used that or some words.

5 Q. And do you also recall that he asked people not to go and demonstrate? Do  
6 you recall that?

7 A. The people were already in town by the time I was listening to it.

8 Q. But can I ask you, in this audio that I have played for you have you heard  
9 anything inciting?

10 A. I think this document is -- I could not listen any inciting.

11 PRESIDING JUDGE EBOE-OSUJI: Did you mean you did not hear any inciting  
12 words?

13 THE WITNESS: In this -- in this video that I have listened to.

14 PRESIDING JUDGE EBOE-OSUJI: In the audio you've just listened to?

15 THE WITNESS: Yes.

16 MS BUISMAN:

17 Q. Any mixed messages?

18 A. No, you have just quote several places. I am not talking about that.

19 Q. I appreciate that, but I want you to explain to us one thing. You're now talking  
20 the 29th. Why is this man who's calling for peace, who's telling people to stay at  
21 home, not to go in the streets, to relax at home, why is this same man in your view  
22 taking an absolute opposite position the day after?

23 MR GARCIA: Your Honour, I object to the -- I understand that it's been led by  
24 Defence counsel as to the date on which this recording would have been done, but  
25 there is nothing in evidence in that regard. When this item of evidence of -- was

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1 admitted, no evidence was put on the record as to the exact date on which it was  
2 broadcasted.

3 So I object to the fact that we are -- that Defence counsel is prefacing her questions as  
4 if that is already something that's certain, or it's on the record, that it is on the 29th  
5 that this was broadcasted. I think you need to be fair to the witness. If anything,  
6 Defence counsel can ask the witness whether he remembers this type of message,  
7 what she's just played on various occasions, being broadcasted on that date.

8 MS BUISMAN: If I may briefly respond?

9 PRESIDING JUDGE EBOE-OSUJI: Please.

10 MS BUISMAN: Well, first there's lots of references here to the announcement of the  
11 results, so we know that the election has taken place. I think that's not in dispute.  
12 So it could be the 28th, or the 29th. But there is a date in this recording, it is already  
13 in evidence, but we will find the date and we will play it after lunch.

14 PRESIDING JUDGE EBOE-OSUJI: Are you particularly interested in the date as  
15 such, or are you interested in the mixed messages being sent?

16 MS BUISMAN: I am interested in the period, in the sense that I mean -- I mean,  
17 if -- this is just after the elections, I think that is not in dispute, and the 30th is after the  
18 announcement of the election. So in any event we are in a very, very short time span.  
19 I mean, as I said, we will find the date for you, but the question remains the same  
20 even if it were the 28th.

21 PRESIDING JUDGE EBOE-OSUJI: The reason I ask you that question is one may  
22 well dwell on the date if that's important to you, but beyond the date there is also the  
23 other question about why somebody who is preaching peace would also be preaching  
24 the opposite of peace --

25 MS BUISMAN: Absolutely.

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1 PRESIDING JUDGE EBOE-OSUJI: -- within the same time frame.

2 Isn't that basically the purport of your question?

3 MS BUISMAN: That's exactly the point.

4 PRESIDING JUDGE EBOE-OSUJI: Yes.

5 MS BUISMAN: Thank you, Mr President.

6 PRESIDING JUDGE EBOE-OSUJI: All right.

7 Witness, you can answer that question.

8 THE WITNESS: I will not -- I can answer this way. That if during my testimony I  
9 say Sang could use the same time to preach peace, and when I say this he could also  
10 use the same to mix -- to send mixed message because already -- the people were  
11 already demonstrating. It's something that already taking place by then.

12 PRESIDING JUDGE EBOE-OSUJI: The question is why would you form the view --

13 THE WITNESS: Your Honour --

14 PRESIDING JUDGE EBOE-OSUJI: Well, maybe -- hold on one second. Perhaps I  
15 will let Ms Buisman repeat her own question.

16 Ms Buisman, can you repeat your own question because the reason is I do not want to  
17 mix my own question with yours. I also have a question in that regard, but ask  
18 yours please first.

19 MS BUISMAN:

20 Q. My question is we are talking about the same person, Mr Witness. You have  
21 confirmed on the 1st, on the 4th, you have heard him speak about peace. You have  
22 confirmed that throughout you've heard him speak about peace, that most of the time  
23 he speaks about peace. And now we're talking about the 29th. He's speaking about  
24 peace. He's asking people to be patient, to accept the winner as the winner will be  
25 pronounced by the ECK. How is it that this same person one day after - or two if I'm

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1 wrong on the date, which I'm not but - would then ask people to go out in the street,  
2 where here he's saying stay at home? Do you get the point?

3 A. I get the point, but I've said mixed. Even if in this audio he was saying at a  
4 certain place he knows about the heart of the -- the heart of the people. He knows  
5 what they believe. So what -- what was he meaning by that?

6 Q. Well, can I ask you another question?

7 A. Yes.

8 Q. Could you be confused? Could you -- because we talk -- we talked a lot about  
9 what you thought it meant and what he actually said. We have to make that  
10 distinction, do you agree, Mr Witness?

11 A. I am -- I am not confused, your Honour. I know exactly what you are asking,  
12 but I don't want also to believe that Sang never used some of the mixed or whatever  
13 message, but I can confirm - I have already confirmed to you - that he preached peace.

14 Q. But also the messages where you say there were some mixed messages in that  
15 message, you said a lot of the words were not said by him. You thought that's what  
16 they meant. Do you -- do you recall?

17 A. I am saying some of the messages he could say it, but some of the messages  
18 could be said by the listeners or callers.

19 Q. Indeed. And just to give you one example of what you said --

20 PRESIDING JUDGE EBOE-OSUJI: So what you're asking the witness is that the  
21 witness heard some words from Mr Sang for what the words are on their face, but the  
22 witness gave an interpretation of what it actually meant in the context even though  
23 Mr Sang would not have used the words in those interpretations? Isn't that your  
24 question?

25 MS BUISMAN: Indeed.

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1 PRESIDING JUDGE EBOE-OSUJI: Witness, do you understand what we're saying  
2 here?

3 THE WITNESS: Yes.

4 PRESIDING JUDGE EBOE-OSUJI: That there were times when you said, "Well, this  
5 is what Mr Sang is saying, but in light of what was happening at the time this is what  
6 was meant by those words"?

7 THE WITNESS: Yes, your Honour. I could -- I could confirm in the transcript that  
8 we have gone through and I could also confirm that during that time I listened also  
9 Sang preaching peace, but at the same times I say, your Honour, I have some portions  
10 which inflamed the violence, but actually I can accept that Sang used most of the time  
11 to preach peace.

12 PRESIDING JUDGE EBOE-OSUJI: All right.

13 Ms Buisman? The question is -- and you remember I asked you the question earlier  
14 about in your own views those times when you said he used words which would  
15 result in the disruption of peace, even though he was overall preaching peace, and I  
16 asked you do you think he would have deliberately inserted those disruptive words  
17 in his message. What was your answer again, can you help me?

18 THE WITNESS: My answer is, yes, deliberately it would.

19 PRESIDING JUDGE EBOE-OSUJI: That he inserted those disruptive words  
20 deliberately?

21 THE WITNESS: Yes, your Honour.

22 PRESIDING JUDGE EBOE-OSUJI: And the question that follows is what gave you  
23 that impression that he was deliberately inserting those negative messages within his  
24 overall message of peace?

25 THE WITNESS: Because I could believe that because after knowing that everything

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1 and his radio is being listened to, he will not exactly use words directly but he can use  
2 indirectly that could mean to use that. Otherwise, he could not use that word as if to  
3 preach peace entirely. Then that something could not happen.

4 MS BUISMAN:

5 Q. Can I ask you on that note, if I may?

6 PRESIDING JUDGE EBOE-OSUJI: Yes, please. Always feel free to ask follow-up  
7 questions from mine, and Mr Garcia will do the same thing if he has follow-up  
8 questions from the ones that I ask.

9 Please proceed.

10 MS BUISMAN: Thank you, Mr President. I appreciate it.

11 Q. On that note, because you were just saying -- sorry, I want to quote you exactly.  
12 So, Witness, you were saying -- when the Judge was asking you some questions you  
13 were saying, "... maybe not the exact words directly, but he can use indirectly ...", yeah?  
14 So you're making a distinction between direct and indirect and this is exactly the  
15 point. Are you sure that you -- could you not be mistaken about what the indirect  
16 meaning of his words were?

17 A. Repeat again the question.

18 Q. You were making a specific distinction between "... exact words directly, but he  
19 can use indirectly ..." I want you to -- are you sure that you know the indirect  
20 meaning of what Mr Joshua Arap Sang said directly?

21 A. Your Honour, it is I am from that community and I am -- I could listen to that  
22 language also. I could also listen to what he mean, because I'm always listening to  
23 his -- to his -- the radio, when he's in the studio, and I can understand that this one is  
24 not actually accurate. It's not the right word. He could have not used at that  
25 particular time, but that doesn't mean that I'm saying I was not listening. I was

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1 listening the entire to Lene Emet, all the time, because I enjoyed the same -- the same  
2 programme, but that particular moment I could tell you that this is the position that  
3 there are some words could come to inflame the violence.

4 Q. Is it possible, Mr Witness, that you misunderstood what Sang wanted to convey?  
5 Is it possible?

6 A. It's not possible that I'm -- I was confused, because I really take it until I decide  
7 even to take it as my testimony. I am not confused at that particular, your Honour.

8 MS BUISMAN: Can I ask one question in private, please?

9 PRESIDING JUDGE EBOE-OSUJI: Private session.

10 MS BUISMAN:

11 Q. Mr Witness, you say you're of that --

12 THE COURT OFFICER: Ms Buisman, please.

13 \*(Private session at 12.57 p.m.) Reclassified as Open session

14 THE COURT OFFICER: We now are in private session.

15 PRESIDING JUDGE EBOE-OSUJI: Thank you.

16 MS BUISMAN:

17 Q. Mr Witness, I hear you're of that same community, (Redacted)  
18 (Redacted)

19 A. (Redacted)

20 Q. And you also told us that sometimes -- which we will deal with much later, (Redacted)  
21 (Redacted)

22 A. I'm not so what?

23 Q. You told us throughout your testimony that, (Redacted)  
24 (Redacted). Is that not a fair summary of what  
25 you told us throughout these days in testimony?

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1 A. Yes. What I could say that I say (Redacted)

2 (Redacted)

3 (Redacted) I could listen to the same radio, not the same -- no different.

4 MS BUISMAN: Thank you.

5 We can go back into public.

6 PRESIDING JUDGE EBOE-OSUJI: One second.

7 Witness, one other question that arises from Ms Buisman's question just asked to you

8 now, which you should have the opportunity to respond to while you're here, is that

9 (Redacted)

10 (Redacted)

11 (Redacted)?

12 THE WITNESS: Your Honour, (Redacted)

13 (Redacted).

14 PRESIDING JUDGE EBOE-OSUJI: Thank you.

15 We will go to -- you can ask follow-up questions now, or later.

16 MS BUISMAN: One question before the break in public, please.

17 PRESIDING JUDGE EBOE-OSUJI: We go to public session.

18 MS BUISMAN: Just a little -- oh.

19 (Open session at 1.00 p.m.)

20 THE COURT OFFICER: We are in open session.

21 PRESIDING JUDGE EBOE-OSUJI: Thank you.

22 Ms Buisman?

23 MS BUISMAN:

24 Q. Mr Witness, just one very concrete example on the same issue. You heard that

25 Mr Sang said, "Whoever wins wins. Be patient," on 29 December. Why then on the

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1 30th he was, according to you, so disappointed with the results if the day before he  
2 was saying over and over again, "We accept whoever is the winner"?

3 A. I don't know.

4 MS BUISMAN: That's a good moment.

5 PRESIDING JUDGE EBOE-OSUJI: We will now take our lunch-break at this time  
6 and we'll come back at 2.30.

7 We'll go into closed session and usher the witness out of the room.

8 \*(Closed session at 1.02 p.m.) Reclassified as Open session

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

10 PRESIDING JUDGE EBOE-OSUJI: Thank you.

11 (The witness stands down)

12 PRESIDING JUDGE EBOE-OSUJI: Court will rise.

13 THE COURT OFFICER: All rise.

14 (Recess taken at 1.02 p.m.)

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

16 THE COURT USHER: All rise.

17 Please be seated.

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

19 And welcome back, Witness.

20 Ms Buisman?

21 MS BUISMAN:

22 Q. Good afternoon, Witness.

23 A. (No audible response)

24 Q. I'll come back briefly on the topic that we discussed before lunch and that is the  
25 indirect message behind the direct words. I just wanted to ask you, did you provide

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1 the Prosecution with any audio containing any of these hidden words, or indirect  
2 words, or messages?

3 A. I didn't because I could not access the message from -- that I told them.

4 Q. You didn't give them audios? Did you give them notes?

5 A. Yes.

6 Q. Contemporaneous notes?

7 A. That is to mean what?

8 Q. That means notes that you took at the time you heard messages. Did you give  
9 any such notes to the Prosecution?

10 A. I was informing them that I heard this. I didn't tell them what is, but --

11 Q. You have no notes at the same time that you heard these messages?

12 A. No notes.

13 Q. Just to be clear, the Prosecution asked you to listen to two audios in your  
14 proofing. Am I right to think that?

15 A. Yeah, that is my -- my -- I told them about that time.

16 Q. Had you listened -- during the time that you discussed your testimony with the  
17 Prosecution --

18 A. Yes, your Honour.

19 Q. -- they had you listen to two audios from Kass FM; is that correct?

20 A. Yes, your Honour.

21 Q. And one was 7 February 2011 that we discussed yesterday; is that right?

22 A. Yes, your Honour.

23 Q. And the other one was 18 February 2008, correct?

24 A. Yes, your Honour.

25 Q. And just I would like you to confirm these are not audios that you produced.

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1 That's right, isn't it?

2 A. If I give information, that is to say my information.

3 Q. I understand.

4 A. Yes.

5 Q. But you didn't -- you did not give them these audios? That's right, isn't it?

6 That's right?

7 A. I'm telling you that's my information.

8 PRESIDING JUDGE EBOE-OSUJI: Witness, the question was this, so we also need to  
9 understand what you're saying. Remember your testimony is for us, so the lawyers  
10 are asking you questions to get answers from you. So the answers you are giving to  
11 lawyers' questions on both sides is for the use of the Judges so that we understand  
12 what you're saying to make our judgment in this case.

13 And the question Ms Buisman is asking you is that those two audio tapes that you  
14 listened to when the Prosecutors were preparing you to come to court and  
15 testify -- you gave the date as 7 February 2000 and what? 11?

16 MS BUISMAN: Indeed.

17 PRESIDING JUDGE EBOE-OSUJI: You agreed and the other one was 18  
18 February 2008. You agreed to that date. Her question -- her question to you is that  
19 you were not the person who gave the OTP those two tapes to begin with. Is that the  
20 case?

21 THE WITNESS: I was just -- I didn't give the tape, but I give the information.

22 MS BUISMAN: That answers my question.

23 PRESIDING JUDGE EBOE-OSUJI: All right, let's proceed.

24 MS BUISMAN: Thank you.

25 Q. Now, Witness, I'm going to put to you our position and it's because as of the

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1 30th there was a ban on the radio. Do you confirm that that is the case? And to be  
2 more precise, it was on live audios, live broadcasting. There was a ban  
3 immediately imposed immediately after the announcement of the results, the 30th in  
4 the evening. Is that something you recall?

5 A. I heard of that, but I could also listen to the radio. I don't know what was  
6 going on.

7 Q. But do you con -- because I have a document to show that there was such a ban  
8 imposed. Is it -- do you accept my proposition, or is it necessary for me to show you  
9 that document?

10 A. It was there, but I can confirm that I was still listening to the radio.

11 Q. I just want to put it to you that Joshua Arap Sang, apart from broadcasting  
12 pre-recorded peace messages and music, he was not on air to broadcast news or any  
13 other message between the 30th, after the election results were announced, up until  
14 the 9th. Is that something you can accept?

15 A. No.

16 MS BUISMAN: Okay. I just want one document I would like to place in front of  
17 you, and this is the cross-examination bundle tab 2. It is -- it's already in evidence.  
18 It has an EVD number T-D11-00051 and the KEN number is D09-0022-0010.

19 I would like to place this in front of the witness. Could the court reporter assist,  
20 please?

21 Q. Mr Witness, do you have the document in front of you?

22 A. I have.

23 MS BUISMAN: For the record, this is a report from Reporters Without Borders and  
24 it's commenting on the media ban on live broadcast that was imposed immediately  
25 after the announcement of the results.

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1 PRESIDING JUDGE EBOE-OSUJI: Did you say "report," or a press release?

2 MS BUISMAN: It is.

3 PRESIDING JUDGE EBOE-OSUJI: A press release?

4 MS BUISMAN: I also have the -- the actual letter imposing the ban, but it's my  
5 understanding that the witness does not dispute that there was a ban.

6 Q. Can you confirm that, Mr Witness?

7 A. I can confirm there was some ban, but there was some messages could come  
8 from the radio even those that were (indiscernible) made now. There was no -- I  
9 could not know the difference between recording or pre-recording. It was talking.

10 Q. But you do know there was a lot of talk about this ban both by Kenyan media as  
11 well as international media? Do you confirm that?

12 PRESIDING JUDGE EBOE-OSUJI: He's not disputing that there was a ban. His  
13 point is that there may have been a ban, but as far as he was concerned if he turned on  
14 the radio he was listening to something being broadcast on the radio that he didn't  
15 know if it was live or if it was pre-recorded, what he was listening to at the time.

16 MS BUISMAN:

17 Q. Now, Witness, I just want you to look at this document with me and go to the  
18 fourth paragraph starting with, "Most of the broadcast media ..." Do you see that?

19 A. I can see.

20 Q. So I'm just reading it out. It says -- this is a press release, as the Presiding  
21 Judge rightly pointed out. It's from the Reporters Without Borders criticising the  
22 ban, and here they say, "Most of the broadcast media suspended ..." --

23 PRESIDING JUDGE EBOE-OSUJI: You have to start saying "quote" or "unquote,"  
24 Ms Buisman.

25 MS BUISMAN:

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1 Q. Quote:

2 "Most of the broadcast media suspended all their news programmes, effectively  
3 plunging Kenya into a news blackout. Local broadcast journalists said they were  
4 afraid the police could raid their stations and order them to close. One  
5 privately-owned station, Kiss FM, is continuing to broadcast a phone-in programme."  
6 Do you see that?

7 A. Yes, your Honour.

8 Q. Do you agree with me that Kiss FM is a different radio station from Kass FM?  
9 That's right, isn't it?

10 A. Yes.

11 Q. You -- did you ever listen to Kiss FM?

12 A. Some time, but not most of the time.

13 Q. Now, according to this report, most of the broadcast media did suspend all their  
14 news programmes and only Kiss FM is reported as an example as an exception. Do  
15 you change your view on Kass FM and Joshua Arap Sang being on air, apart from  
16 recording pre-recorded peace messages, during that time?

17 A. I'm not changing, but I do understand that there was a ban which I could also  
18 understand it, but sometimes I could -- the radio was talking. I don't know if it was  
19 banned, or live, or what.

20 Q. Now, Witness -- I mean, I'm done with that document. Do you -- just to be  
21 coming back to your message about it's on the 30th when you say that Joshua Arap  
22 Sang said to people in his neighbourhood to block the roads. Firstly, you said  
23 "Kipkege." I -- can you agree with me that the actual spelling is Kipkeikei and I'll  
24 spell it for the record. I just want your agreement that that is the village you're  
25 referring to?

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1 A. Kipkeikei, yes.

2 Q. If I can spell, K-I-P-K-E-I-K-E-I village?

3 MR GARCIA: Just one thing I object. Just one clarification, if it could be? I see  
4 that Defence counsel has said "... in his neighbourhood ..." I'm just wondering if that  
5 is correct, or if it's not rather village?

6 MS BUISMAN: I'm just looking at the transcripts of 1 December and I am -- there is  
7 at page 9, lines 6 to 10, and I will just quote him so we're precise, "And he was quoting  
8 his village in Trans-Nzoia district that you should be blocking the roads that  
9 particular time." I can go on, but that's -- so that is (Microphone not activated) can  
10 clarify is it his neighbourhood or is it his village? Let me say area to clarify. That  
11 was maybe the problem. It's his area, correct?

12 A. It's his area but I cannot say the village. Village -- I don't know. Even  
13 maybe -- if I know, maybe I'm wrong in the site, but I know he's coming from those  
14 areas.

15 Q. The spelling that I just suggested to you, do you agree with that?

16 A. What?

17 Q. Kipkeikei?

18 A. Kipkeikei. If pronounced it's Kipkeikei, I can understand that, whether the  
19 spelling or what, it's Kipkeikei.

20 Q. And this is in Cherangani location; that's right, is it not?

21 A. Yeah, I cannot say the details of the locations, or whatever, but I can say  
22 the -- the area is famous. It is well-known. I know about it.

23 Q. You don't know the location?

24 A. The locations I cannot -- either it's Cherangani, or whatever, but I know  
25 Kipkeikei.

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- 1 Q. And it's in Trans-Nzoia --
- 2 A. Yes.
- 3 Q. -- east district; that's right, is it not?
- 4 A. Yes, east, or whatever, I know I've mentioned Trans-Nzoia.
- 5 Q. In the Trans-Nzoia county?
- 6 A. Currently county, yes.
- 7 Q. Just not to argue with you but the village, Mr Joshua Arap Sang is actually from
- 8 is Seum, I'm sorry for my pronunciation, it's S-E-U-M, but it's very close, it's the
- 9 same -- it's the same area. Do you know that village?
- 10 A. Mr Sang is always sometime broadcasting his home village of Seum.
- 11 Q. Yes, Seum.
- 12 A. I cannot -- I cannot dispute that he is coming from Seum --
- 13 Q. And --
- 14 A. -- but if I say around that area -- Kipkeikei is surrounding area, but I cannot
- 15 know if it's Seum, but I know Sang comes from Seum.
- 16 Q. And that's --
- 17 A. That's -- yes, your Honour.
- 18 PRESIDING JUDGE EBOE-OSUJI: And Ms Buisman, when you say Seum is very
- 19 close, it's the same area, what do you mean?
- 20 MS BUISMAN: I was going to ask that question right now, Mr President.
- 21 Q. And Seum village is 2 kilometres from Kipkeikei village can you confirm that?
- 22 A. I don't know kilometres, your Honour.
- 23 Q. But we agree --
- 24 A. What -- what I can talk about is Kipkeikei. What mention is Kipkeikei.
- 25 Anything to do with other villages, Seum or any other I didn't mention in my

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1 testimony, my Honour.

2 Q. Yeah, so we agree it's the same area. I'm not -- I'm not disputing that, I just  
3 want that to be clear. It's the same area, is it not, as where he's from?

4 A. Yes, your Honour.

5 Q. Now, do you accept --

6 PRESIDING JUDGE EBOE-OSUJI: One second.

7 Witness, is it -- am I to understand that in terms of at the village level Kipkeikei and  
8 Seum are different villages? Never mind if they are in the same area. If you can  
9 answer the question, you may, if you can't you can also tell me. If Kipkeikei is a  
10 village, is a separate village from Seum from your own understanding?

11 THE WITNESS: Kipkeikei, your Honour, is along the roads and it's a main name  
12 known, but Seum also can be a village or as -- as Kipkeikei, but what I was talking  
13 about is Kipkeikei which I mention in my testimony.

14 PRESIDING JUDGE EBOE-OSUJI: All right. But you also -- do you  
15 understand -- is it the case that you also know of a place called Seum.

16 THE WITNESS: Seum I know as a village of Mr Sang who always sometime could  
17 say "Home in Seum."

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

19 Please proceed, Ms --

20 MS BUISMAN:

21 Q. Because it's the same location; that's right, isn't it? It's the same location.  
22 Kipkeikei and Seum are the same location, right?

23 A. I say let's talk about Kipkeikei. I don't know if it's in the same location or not  
24 your Honour. Don't put question on that, I cannot confirm that. The boundary of  
25 the locations I don't know.

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1 Q. Okay, but you confirm that it's Kipkeikei village where he said block the roads?

2 A. He was talking about youth from Kipkeikei.

3 Q. And do you agree with me that Kipkeikei it about 71 kilometres from Eldoret?

4 A. I was talking about -- yes, I can confirm that, your Honour, but I was talking  
5 about listening to the radio, not -- and even during my questioning, I said that I didn't  
6 know what happened at their place.

7 Q. I -- I got you right.

8 A. Yes.

9 Q. I just wanted you to confirm that it is about 71 kilometres from Eldoret.

10 A. I can confirm that it's far. I don't dispute the kilometres, it is in the other  
11 district.

12 Q. That's fine, Mr Witness.

13 PRESIDING JUDGE EBOE-OSUJI: Five seconds pauses. Witness you need to wait  
14 for five seconds when Ms Buisman finishes asking her question before you start  
15 answering, and Ms Buisman you have to wait for five seconds after the witness  
16 finishes his answer before asking your next question.

17 MS BUISMAN: Indeed, Mr President.

18 Q. Do you agree it's near Kitale?

19 A. Agree.

20 Q. Do you agree that it's largely a Kalenjin location?

21 A. I was talking about roads being blocks which may be coming from other  
22 locations which dominated by other tribes, like Kikuyu. They have areas like  
23 Suwerwa, they have other areas -- any other places surrounding dominated by  
24 Kikuyus.

25 Q. And do you agree that the closest areas where Kikuyus were living is Karara, I'll

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1 spell that, K-A-R-A-R-A, and Kapsara, K-A-P-S-A-R-A; is that correct?

2 PRESIDING JUDGE EBOE-OSUJI: Can you hold that question. One thing at a time.

3 The witness did mention a place where he said was dominated by Kikuyus. He said

4 Suwerwa. You said?

5 THE WITNESS: There is some areas which -- like --

6 PRESIDING JUDGE EBOE-OSUJI: No, no, what -- I just want to get the spelling of

7 the word you used before. You mentioned the location of a place, Suwerwa.

8 THE WITNESS: I mentioned Suwerwa --

9 PRESIDING JUDGE EBOE-OSUJI: Suwerwa?

10 THE WITNESS: -- but also some -- the areas like what he has -- she has just said.

11 PRESIDING JUDGE EBOE-OSUJI: All right. One thing at a time. Can you spell

12 Suwerwa for the record. Can you spell it.

13 THE WITNESS: S-U-W-E-R -- W-R-A.

14 PRESIDING JUDGE EBOE-OSUJI: All right. You are also saying there are other

15 places?

16 Ms Buisman, can you now continue.

17 MS BUISMAN: Yes.

18 Q. You said Suwerwa, that's right, which is from Marakwet in Kalenjin; is that

19 right?

20 A. (Indiscernible), yes, but the villages of the -- where Kikuyus are living -- I just

21 mentioned Suwerwa but I cannot -- but I know about Kapsara, the tea factory. I've

22 been there, there's a lot of Kikuyus. So -- also, as I say, the high -- the road being

23 blocks which come from that direction, I didn't say somebody could go direct block

24 the road from where there's -- the -- if they block an highway from Nairobi,

25 you'd -- you are not in Nairobi, you are in the Eldoret, but you are blocking the road

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1 from Nairobi.

2 Q. I'm only asking you to clarify, I'm not -- (Overlapping speakers)

3 A. Yes, I'm -- that's -- that's -- according to me, you are heading to straight that  
4 village where the roads were being blocked, maybe the road from the -- I don't know,  
5 even the youths could go directly to block the road for them. I cannot still remember  
6 the roads from both sides. I'm familiar with the sides, that's why I say I was not there.

7 Q. And just, did you say the same about Karara? Did you also confirm --

8 A. Karara, in fact, is not far -- okay, I didn't -- I don't want to mention that, so  
9 I -- what I wanted to mention, but I know Karara is another place, neighbouring even  
10 Uasin Gishu more than the other side.

11 Q. Do you agree that the closest neighbourhood where there were Kikuyu is about  
12 13 kilometre from Kipkeikei; is that something you can confirm?

13 A. I don't know, but there is a road from that side.

14 Q. And do you know -- the people from Karara and Kapsara where would they be  
15 fleeing to?

16 A. I may confirm to the safest area, like Kitale or any other places, but if  
17 you -- don't talk about Karara because Karara they are using another route to go to  
18 Kitale. Sometimes they go to highway, they could go to use the Eldoret-Kitale  
19 Highway. It is called Nyapingwa (phon), close to the other side.

20 MR BUISMAN: Okay. Witness, I'd like to place a map in front of you and this  
21 is -- I think it's tab 6 from the cross-examination bundle and, yes, it is and the KEN  
22 number is KEN-D11-0021-003. If this map can also be placed in front of the witness,  
23 please, and if it could also be put on the screen?

24 Q. Witness, do you have the map in front of you?

25 A. Yes, your Honour.

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1 Q. Do you also see it on the screen?

2 A. Yes, your Honour.

3 Q. Now, Witness, if we go from the right -- top of the map and on the right side we  
4 see Kipkeikei Primary School, do you see that?

5 A. Yes, your Honour.

6 Q. And then if you move from there north to the left to sort of -- to the west,  
7 northwest, we see Kapsara; is that right?

8 A. Yes, your Honour.

9 Q. And going south west we see Karara; is that right?

10 A. Yes, your Honour.

11 Q. And going straight west we see Kitale; is that right?

12 A. Yes, your Honour.

13 Q. And going down we see Ziwa sort of south of Kipkeikei; is that right?

14 A. Yes, your Honour.

15 Q. And then even more south there is Eldoret. That's right, isn't it?

16 A. Yes, your Honour.

17 Q. Now, I'm putting to you if you look at the Kikuyu areas they're fleeing to Kitale.  
18 They're not passing through the area of Kipkeikei at all. Do you agree?

19 A. I'm saying I don't know the roads of there. I just using the word he said. If  
20 they travelled to the other side, if they use whatever means to go to the -- to block the  
21 roads to join the other groups, I don't know, but, your Honour, this message I'm -- I  
22 don't want to change my words which I heard. I just use the same word. If -- I  
23 think it never -- I mentioned just -- I mentioned Kikuyu as part of it, but also Kisiis  
24 which also affected during this time, so at that word at -- just leave it. If they  
25 travelled to go distance to block the road, I don't know, that's why I say I didn't know

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1 what happened in that area.

2 MR BUISMAN: Thank you.

3 I would like to tender this map into evidence.

4 PRESIDING JUDGE EBOE-OSUJI: Mr Garcia?

5 MR GARCIA: Your Honour, I'm just concerned about the fact that it hasn't been put  
6 to the witness to confirm that indeed the locations are rightly indicated, and these are  
7 the places he's speaking about. That's my only concern.

8 PRESIDING JUDGE EBOE-OSUJI: Mr Khan?

9 MR KHAN: Mr President, I didn't object to the Prosecution's interpolation on the  
10 map. I will do the same on this occasion.

11 PRESIDING JUDGE EBOE-OSUJI: The document will be admitted as the next Sang  
12 Defence exhibit.

13 THE COURT OFFICER: The public document KEN-D11-0021-0003 will bear the  
14 number EVD-T-D11-00076.

15 PRESIDING JUDGE EBOE-OSUJI: Ms Buisman, try to understand the point of the  
16 questioning here. Is it that if assuming roads were blocked at Kipkeikei, that no  
17 Kikuyus would be affected by that?

18 MS BUISMAN: Indeed, because the Kikuyu would flee into the other direction, and  
19 they wouldn't come near that location. And I hear the witness, he doesn't know the  
20 area, but my point is if that's the message that's been broadcasted it is a bit senseless  
21 to ask people to block the roads in that area. That is my point. And I'm not going  
22 to -- I'm just going to move on from here, but that's the point.

23 PRESIDING JUDGE EBOE-OSUJI: You can move on, but doesn't that presuppose  
24 that there are no Kikuyus at Kipkeikei at least? Have you exhausted that kind of  
25 enquiry?

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1 MS BUISMAN: I did ask the question to the witness.

2 Q. And I understood you to confirm that this is largely a Kalenjin area, and I can be  
3 more precise, mixed with Luhyas. And Kalenjin is mainly Nandi and Marakwet.  
4 Would you confirm that?

5 A. Your Honour, if I know Trans-Nzoia is mixed district country -- county. So if  
6 you tell me that, I cannot say "Yes" or "No." But I know Trans-Nzoia is cosmopolitan  
7 district. And if I say even those Kikuyus cannot miss to be there. That's why I  
8 could say maybe if they block small roads, they could also do that. And even  
9 highway from any other place like this Ziwa-Kitale Road can be blocked.

10 A Kikuyu cannot miss there to be there. By accident he was trying the road there.  
11 So if I say that, I didn't mean that it was there, because I didn't say it was blocked at  
12 this -- at this -- at this site. But I was saying the youth from that -- that site  
13 (indiscernible) have to go. So if we asked -- if we -- if we use this even this map, we  
14 might not know, maybe they have blocked or they didn't block even it however, but  
15 the message was that youths to block the road and to block the road. They might  
16 have done it or not.

17 Q. And you did identify as the Kikuyu areas --

18 A. So --

19 Q. -- Kapsara and Karara?

20 A. Yes, it is. But this part all -- they were not only Kikuyus who were targeted.  
21 This I said during my testimony to (indiscernible) Kikuyus, because mostly Kikuyus  
22 were affected mostly. But also other tribes, like Kisiis were also affected and even  
23 Luhyas.

24 PRESIDING JUDGE EBOE-OSUJI: All right.

25 MS BUISMAN:

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1 Q. I am putting to you that Sang never said block the areas. As we heard on the  
2 29th he said open the roads. On 4 January he said open the roads and we submit he  
3 did not say block the roads on the 30th. I know you're not going to agree with me,  
4 but I'm putting it to you. What's your answer to that?

5 A. I'm not disputing what I said earlier that he said.

6 Q. And just one follow-up and then I'll move on. Our submission is that it would  
7 make no sense for him to instruct people around Kipkeikei village to block the roads  
8 when the Kikuyu are actually fleeing in another direction? That's what I'm putting  
9 to you

10 PRESIDING JUDGE EBOE-OSUJI: Witness, you don't have to answer that question.  
11 The lawyer will make that argument to us when the time comes for her to make  
12 submissions.

13 Ms Buisman, you have to move on.

14 MS BUISMAN:

15 Q. Yes, we're going to move into a different area altogether. You spoke, and this  
16 is actually last week mainly, you spoke about the allegation about fake ballot papers.  
17 Do you recall having spoken about that?

18 A. Yes, your Honour.

19 Q. So you said on the 26th you heard a rumour about fake ballot papers, and you  
20 heard an announcement in the morning on Kass FM. That is correct, is it not?

21 A. Yes, I do.

22 Q. You listened between 6.30 and 8 on the 26th; that's correct, is it not?

23 A. I think between that time.

24 Q. And the announcement was that people should be ready to block the roads  
25 because some vehicles will be passing along with the wrong ballot papers. That's

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1 correct, is it not?

2 A. That is it.

3 Q. Now, you said that people were talking about this. You were talking about  
4 ODM supporters, and you said these were mainly Luos, Luhyas, some small other  
5 tribes and Kalenjins.

6 A. That is in my region.

7 Q. And these are the people who came out on the 26th. That's right, is it not?

8 A. Yes, your Honour.

9 Q. And can you confirm, apart from the Luos, Kalenjins and the Luhyas, what  
10 other tribes were present?

11 A. I've already say main, even during the other questioning, I was saying that main  
12 tribes that were by then supporters of ODM were largely Kalenjin, and in my area -- I  
13 don't mean nationwide -- and Luos who were also living in that area. It doesn't  
14 mean that there was no other tribes. There is even Kisiis, even Luhyas, some other  
15 subtribe of Luhyas could also supporting ODM.

16 Q. It was mainly ODM supporters, no other people came out?

17 A. The people who were really complaining by then.

18 Q. What about ODM Kenya?

19 A. The people ODM Kenya were -- is a group of -- initially were together as ODM  
20 but later on become Akamba, like mostly supported by Akamba. But anyway that  
21 party is also one of the national party.

22 Q. So would you agree that ODM Kenya also came out on the 26th of December?

23 A. I cannot divert my-- my -- my initial statement that I say largely ODM  
24 supporters Kalenjin and mainly Luos, so anything to do with ODM Kenya  
25 or -- I cannot just heard on this stage. Whether they came out or not, I don't know.

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1 Q. You mentioned that this was announced on the radios. You specifically  
2 mentioned Kass FM and Chamgei. Do you remember that, saying that?

3 A. I was -- let me be clear on -- on this matter, because if I can still remember and if  
4 I am -- I can quote that because it was really clear to my mind. It was Sang who also  
5 mentioning the number plates of other vehicles during that time that particular day,  
6 that they are really, if they want to carry some ballot papers. So that one I can stick  
7 on that.

8 Q. Do you agree that other people from other ethnic groups they were there, not  
9 necessarily by listening to Kass? They might have listened to their own radio  
10 stations. Would you agree with that?

11 A. If they did, if they listened to that, like now the protests were in town where  
12 Luos actually were there in large numbers also and they were actually like -- they  
13 were main really die-hard supporters of ODM. And that one always could come  
14 that way. But this announcement, I was meaning that announcement that was made  
15 that there are these ballot papers might be coming. It was not something I just  
16 imagined today. It was something that it was well speculated at that particular time.

17 Q. Well speculated. When are you aware that this was --

18 PRESIDING JUDGE EBOE-OSUJI: One second.

19 Witness, what do you mean by "speculated," the word?

20 THE WITNESS: It was really, really said, said openly, that there is some ballot  
21 papers that is coming up that even I understand. According to me, even one of the  
22 vehicle was burning down basing on the same rumour.

23 PRESIDING JUDGE EBOE-OSUJI: What do you mean "well articulated"? Can you  
24 proceed, Ms Buisman?

25 MS BUISMAN: That was going to be my question.

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1 Q. At that time, if I understand you well, at that time the rumour was already  
2 widespread. Is that -- is that how I understand you?

3 A. Yes. One of the source of this information was through Kass.

4 Q. Yes, one of the sources. You accept that there will be other sources?

5 A. I cannot -- the source that I use and that I could listen to was that of Kass FM.

6 Q. You were not aware that as of 23 December this rumour was already out?

7 A. And in part of my testimony I said that there was this information that election  
8 will be rigged, but that things of -- transportation of ballot papers, fake ballot papers  
9 were there in 26, because it was a transportation day for the ballot papers, real ballot  
10 papers at the same time.

11 Q. But do you agree that the rumour about ballot papers was the same rumour that  
12 PNU agents would be used? Do you recall that?

13 A. It was the same. That's why it was said and even I can remember that even  
14 police will be used, a demonstration police will be used. And that one also I can  
15 say -- I can say that because one of the vehicles of the -- which was carrying to the  
16 Kisii area is not there I even heard from the media, was burned down, and even  
17 officers were killed basing on the same rumour.

18 Q. So my point is, this rumour was going on, was in newspapers as of 24 December.  
19 It went on into 25 December, 26th, 27th. Is that something I need to show you, or do  
20 you accept my proposition?

21 A. If you show me, but I was -- if you show me, it's okay. But what I was talking  
22 is about what Sang was saying during that morning, to tell people to be alert. That is  
23 my position, either yes, it was there, the same rumour, but the action was not yet  
24 could -- people could be ready to say, "Okay, if ballot papers is there, then we have to  
25 block, not to reach the destination of the -- where it can be used to rig election. "

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1 Q. I understand.

2 PRESIDING JUDGE EBOE-OSUJI: Pause five seconds, Ms Buisman. While you  
3 take the pause, at line 10 at page 98, I had expressed my understanding of the  
4 witness's testimony around the word "articulated." I didn't ask the witness a  
5 question about articulated.

6 Proceed, Ms Buisman.

7 MS BUISMAN:

8 Q. Mr Witness, I understand you're not changing your testimony, nor am I trying  
9 to have you change it. I just want you to confirm that you accept that this rumour  
10 was there even before you heard it on Kass FM?

11 A. Oh, you want me to confirm that it was there? The rumour was there? Yes,  
12 I can confirm it was there, but as also source of that information was through that  
13 same radio station I have just said, Kass FM. I cannot refute that it was there even  
14 earlier, that there is some papers could be prepared outside the country to come and  
15 used for the rigging. That --

16 Q. Do you know that on the 23rd it was Raila Odinga who was speaking about this?  
17 Do you know that?

18 A. I don't know, but about ballot papers which are make I'm talking about the area.  
19 The same 26. Yes, there was a rumour. Yeah, if it was there, it was already there.  
20 This is part of the things that also could be prepared the public to believe, that if  
21 election could be rigged then it will not be fair. It will be like they have already used  
22 the same ballot papers. And there was no need for somebody to announce through  
23 the radio that, "Take care, block the roads for this particular purpose." Whether it  
24 was already said or not, I cannot dispute that it was there a rumour.

25 MS BUISMAN: Now, I would like you to listen yet again to an audio and this audio

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1 dates 25 December 2007, the evening before. This audio is to be found in the main  
2 cross-examination binder, so it's not the core binder, for this witness at tab 14. It's  
3 the evening programme of 25 December 2007 and the audio and transcription are  
4 already in evidence. The EVD number for the audio is EVD-T-D11-00048 and the  
5 KEN number is KEN-D11-0013-0028. That's the audio. And the transcription is  
6 KEN-D11-0014-0568, and the EVD number for the transcription is EVD-T-D11-00049.  
7 And if the court officer would be so kind as to place a copy in front of the witness?

8 PRESIDING JUDGE EBOE-OSUJI: What did you say is the precise page?

9 MS BUISMAN: Not yet.

10 Q. I was just going to ask the witness if he has the copy in front of him?

11 A. Yes, I have.

12 MS BUISMAN: And I would like to go to page 8 of this document, which is  
13 KEN-D11-0014-0576, and I'd like to play the audio at time stamp 13.18 up to -- up to  
14 19 point -- okay, it starts from page 7 at the bottom and it is 13.18 up to 19.27.

15 (Playing of the audio excerpt KEN-D11-0013-0028)

16 MS BUISMAN: Apologies, there is a problem with the time stamp. We'll go to the  
17 next while we sort out this particular time stamp.

18 The next one is 20.05 up to 20.28. Page 9.

19 (Playing of the audio excerpt KEN-D11-0013-0028)

20 MS BUISMAN: Mr President, again my apologies for this. I think we're just going  
21 to move on to another topic and sort out these time stamps in the afternoon.

22 PRESIDING JUDGE EBOE-OSUJI: All right.

23 MS BUISMAN:

24 Q. Witness, we'll leave that document for tomorrow. I'm just going to go to  
25 another document, but let me first ask you a few questions. Were you aware of an

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1 incident in Eldoret -- maybe I'll -- let's go to private.

2 PRESIDING JUDGE EBOE-OSUJI: Private session.

3 \*(Private session at 3.31 p.m.) Reclassified as Open session

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

5 PRESIDING JUDGE EBOE-OSUJI: Thank you.

6 MS BUISMAN:

7 Q. Mr Witness, were you aware of an incident in Eldoret early March 2007 when

8 two people were killed and, to be more precise, in a suspicious manner in Eldoret?

9 Do you remember that?

10 A. In March, or February?

11 Q. Early March 2007?

12 A. Two people were killed? Yes, I can remember -- 2007?

13 Q. Yes, 2007.

14 A. I cannot remember who was this.

15 Q. Do you remember that people at some point in that same period, that's

16 March 2007, came out and carried a peaceful demonstration demanding justice and

17 that the culprit to be brought to book? This is the same killings. Do you recall that?

18 A. If you remind me about the killing itself, but I cannot remember who was --

19 Q. (Redacted)

20 (Redacted)

21 A. (No audible response)

22 PRESIDING JUDGE EBOE-OSUJI: Witness, you have to lean forward.

23 THE WITNESS: Yes, your Honour.

24 PRESIDING JUDGE EBOE-OSUJI: Thank you.

25 MS BUISMAN:

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1 Q. (Redacted)

2 (Redacted)

3 A. I can't remember that incident in the first place.

4 MS BUISMAN: That's fine.

5 I just would like to go to another audio, which is 7 March 2007. It's in the -- it's tab  
6 37 in the witness binder.

7 PRESIDING JUDGE EBOE-OSUJI: One second. The record should reflect that the  
8 question posed by counsel about (Redacted)  
9 (Redacted).

10 Is that correct, Witness?

11 THE WITNESS: (Redacted)

12 PRESIDING JUDGE EBOE-OSUJI: Yes. The reason I'm saying it is --

13 THE WITNESS: But I don't know the things --

14 PRESIDING JUDGE EBOE-OSUJI: It's all right. I just want to reflect your answer  
15 on the transcript. It didn't come out well on the transcript, so I want to make sure  
16 we get it.

17 Ms Buisman?

18 MS BUISMAN: Yes, and I'd like to go to public at this stage.

19 PRESIDING JUDGE EBOE-OSUJI: Open session.

20 (Open session at 3.35 p.m.)

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

22 PRESIDING JUDGE EBOE-OSUJI: Thank you.

23 Ms Buisman?

24 MS BUISMAN: Yes. It's 7 March 2007, tab 37 of the witness binder. The audio is

25 KEN-D11-0015-0120 and the transcription is KEN-D11-0019-0177. The time stamp is

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1 6.21 up to 8.12 and the page is 0179.

2 If that document could be placed in front of the witness?

3 (Playing of the audio excerpt KEN-D11-0015-0120)

4 MS BUISMAN:

5 Q. Mr Witness, can you follow the audio?

6 A. Yes, I can follow.

7 Q. Just can you recognize the voice?

8 A. Yes, it's from Sang.

9 Q. You said Mr Sang, right?

10 A. Yes.

11 MS BUISMAN: Okay. Let us continue to listen to the audio.

12 (Playing of the audio excerpt KEN-D11-0015-0120)

13 MS BUISMAN:

14 Q. Did you follow that, Mr Witness?

15 A. Yes, your Honour.

16 Q. I'll just read the paragraph that was just played starting with:

17 "... I want to thank Eldoret people so much for the work they did following the killing  
18 of two people. You showed true unity. I want to thank the Kalenjin people and the  
19 entire people of Eldoret. That is the generosity we have between us and other  
20 communities. If it was someone else, he/she would have said why bother since none  
21 of ours was killed. However, the people of this country are ours. You showed a  
22 good example to an extent that police took action to send the Rift Valley police chief  
23 to go and investigate the issue and explain why those people (were killed) died.  
24 That unity is very important."

25 Is that a fair translation, Mr Witness?

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1 A. Yes, that's a fair translation.

2 Q. And does this reflect your memory on this incident?

3 A. (No audible response)

4 Q. Mr Witness --

5 A. Yes, your Honour.

6 Q. -- does it reflect your -- does it, or not yet? Otherwise, we just continue  
7 playing.

8 A. Yeah, I understand the message, but I can't recall the incident.

9 Q. Thank you. Let's just carry on. We go on to the next page.

10 MR GARCIA: Your Honour, I'm going to object on the basis of relevance. I don't  
11 see how this is relevant to the witness's narrative, or to the charges. It's regarding  
12 the killing of two people in March 2007.

13 MS BUISMAN: Mr President, if I could react? I could say the same thing about  
14 2005, 2008, 2011, 2006. We have heard a lot of evidence from this witness led by the  
15 Prosecution, about an hour, on 2005 incidents.

16 PRESIDING JUDGE EBOE-OSUJI: Proceed, Ms Buisman.

17 (Playing of the audio excerpt KEN-D11-0015-0120)

18 MS BUISMAN:

19 Q. Mr Witness, could you follow the audio?

20 A. Yes, I follow.

21 Q. So I'm going to read the English translation and ask you if it's a fair translation:  
22 "We applaud the human rights group led by Arap Koros and Ken Wafula. That is a  
23 good example that people should always show, because I know that in the old days,  
24 the Kalenjin people would not shy away when called upon to step forward over an  
25 issue that has arisen. Many were saying why go out to demonstrate? Don't we

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1 have things to do? I want to say it is not about lack of work. The same incident  
2 may happen to someone tomorrow, to another person the day after and to you today.  
3 So we need that unity. We just tell you to continue doing and showing good. You  
4 did not cause chaos, you did not stone things, and people who seek justice in the right  
5 way should not cause chaos and destroy property, because it is not those people who  
6 destroyed property."

7 Witness, is that a fair translation?

8 A. It is.

9 MS BUISMAN: Thank you.

10 So let us move on to the next part.

11 (Playing of the audio excerpt KEN-D11-0015-0120)

12 MS BUISMAN:

13 Q. Witness, did you hear that?

14 A. I hear that.

15 Q. Let me read the English translation and you tell me again whether it's an  
16 accurate translation:

17 "If they were killed, then some people killed them. It was not an accident.  
18 Therefore, whenever you demonstrate, do not stone vehicles, or steal from shops or  
19 fight. What you did yesterday was good. Thank you so much. Keep up the spirit  
20 of unity with other communities. We know there are issues to do with those killings.  
21 The police say that they were killed by the public, but with investigations, it became  
22 apparent they were killed ... Perhaps they were shot, or something like that. It is  
23 clear that it was imperative that these questions were raised. Thank you so much to  
24 all of you who came out to demand justice."

25 Mr Witness, is that a fair translation?

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1 A. It is, your Honour.

2 Q. Witness, can you confirm that the message here is again not to destroy property?

3 Do you confirm that?

4 A. Yes, the message is clear that during that particular incidents, which I cannot  
5 remember or I cannot -- maybe I was not even there in Eldoret back then, is they  
6 demonstrated in a case for which Mr Sang comment in that particular moment, but  
7 I cannot say yes.

8 Q. But do you agree, having listened earlier to another audio dating 29 December,  
9 or at least following the elections waiting for the results, that was a similar message  
10 conveyed there as it is here? Do you agree with that?

11 A. This that was taking place in that particular moment was different from this one.  
12 The other one was an incident where people, according to what I can hear and could  
13 listen, is somebody -- some people were killed and people actually maybe they did a  
14 peaceful demonstration by then. But this one of 29 is like it was already -- there is  
15 some incidents where it was never any peaceful demonstration. Even on 26th,  
16 people were blocking roads. They were not peaceable at all.

17 Q. Do you agree that Joshua Arap Sang here is asking for justice, peace and unity?  
18 Do you agree?

19 A. Basing on what was just given to me right now?

20 Q. Indeed.

21 A. I can confirm in this transcript where you prepare -- I don't know how you  
22 prepare it, but it's a -- it's he was preaching peace which I don't dispute in this  
23 (indiscernible), but I was still saying there was some messages.

24 Q. And you also agree that consistently what you heard today and yesterday  
25 there's a consistent message of peace?

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- 1 PRESIDING JUDGE EBOE-OSUJI: Ms Buisman, you have to move on.
- 2 MS BUISMAN: I will move on. I have one more -- I would like to MFI this audio
- 3 on the basis of voice recognition.
- 4 PRESIDING JUDGE EBOE-OSUJI: It will be marked MFI.
- 5 THE COURT OFFICER: The audio bearing number KEN-D11-0015-0120 will bear
- 6 the number MFI-T-D11-00077. Its transcript bearing number KEN-D11-0019-0177
- 7 will bear the number MFI-T-D11-00078. Both documents are public.
- 8 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 9 Ms Buisman, please proceed.
- 10 MS BUISMAN: Thank you.
- 11 I would like to go to the next audio which dates 6 March 2006. It's the same
- 12 binder - it's the cross-examination binder for this witness - tab 22. And the audio is
- 13 KEN-D11-0013-0029 and the EVD number is EVD-T-D11-00054. The transcription
- 14 has number KEN-D11-0014-0252 and the EVD is 00060. We only have a translation
- 15 and not a transcription, but it's --
- 16 PRESIDING JUDGE EBOE-OSUJI: Did you say "14" or "19" in your D11?
- 17 MS BUISMAN: I might have said "14," but it is 19.
- 18 PRESIDING JUDGE EBOE-OSUJI: So that's D11-0019-0252?
- 19 MS BUISMAN: Indeed, Mr President.
- 20 PRESIDING JUDGE EBOE-OSUJI: Yes, proceed.
- 21 MS BUISMAN: It's already in evidence. We would like to listen to time stamps
- 22 5.58 up to 6.46, and this is at page 0254 and if that could be placed in front of the
- 23 witness, please.
- 24 Q. Do you have it in front of you?
- 25 A. Yes.

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- 1 MS BUISMAN: And we'll play. It's the last paragraph of that page.
- 2 (Playing of the audio excerpt KEN-D11-0013-0029)
- 3 MS BUISMAN:
- 4 Q. Mr Witness, could you follow that?
- 5 A. Can you repeat again?
- 6 Q. Could you follow the audio?
- 7 A. Yes, I wanted to --
- 8 PRESIDING JUDGE EBOE-OSUJI: To play it again.
- 9 THE WITNESS: -- play it again.
- 10 MS BUISMAN:
- 11 Q. Of course we can do that. Start again at 5.58.
- 12 A. Last paragraph, yeah?
- 13 Q. Yes, it's the last paragraph of page 2 of that document and it goes into page 3.
- 14 A. Okay.
- 15 Q. It starts --
- 16 PRESIDING JUDGE EBOE-OSUJI: Last paragraph starting with, quote, "And this is
- 17 not for the Kalenjin community alone".
- 18 THE WITNESS: Yes, your Honour.
- 19 PRESIDING JUDGE EBOE-OSUJI: Unquote. That's the paragraph?
- 20 MS BUISMAN: That is indeed the paragraph.
- 21 PRESIDING JUDGE EBOE-OSUJI: All right.
- 22 MS BUISMAN:
- 23 Q. You are with me, Mr Witness?
- 24 A. Yeah, I am with you now, your Honour.
- 25 Q. So we will listen to it again.

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1 (Playing of the audio excerpt KEN-D11-0013-0029)

2 PRESIDING JUDGE EBOE-OSUJI: Okay. Did you follow that?

3 THE WITNESS: Yes, I follow.

4 PRESIDING JUDGE EBOE-OSUJI: Let's just play it a little and then stop, also give  
5 him time to read the translation.

6 MS BUISMAN: That's a fair suggestion given that there's no transcription. Did you  
7 understand that?

8 A. I understand.

9 Q. Should I read it out now?

10 A. Yes, I can --

11 Q. And you tell me if it correct, please:

12 "And this is not for the Kalenjin community alone, but for all forty two tribes of this  
13 nation. What can be done so that every tribe upholds the rights of the country rights  
14 as well as their own individual community rights?"

15 Is that a fair translation?

16 A. Yes.

17 MS BUISMAN: Thank you. We will carry on.

18 (Playing of the audio excerpt KEN-D11-0013-0029)

19 PRESIDING JUDGE EBOE-OSUJI: Can we pause now? We need to be checking in  
20 with the witness --

21 MS BUISMAN: There's only a few seconds left, five seconds left so we thought --

22 PRESIDING JUDGE EBOE-OSUJI: Yes, but let's be sensitive to the fact that there is  
23 no transcription and not everyone can read at a rapid pace, including myself.

24 MS BUISMAN:

25 Q. Witness, could you follow that?

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1 A. Yes, I follow.

2 MS BUISMAN: So I will read out the translation into English. You might have  
3 to -- no, let me wait. Let's listen to the very few last lines because I think it's one line  
4 and then I read out the English into the record.

5 (Playing of the audio excerpt KEN-D11-0013-0029)

6 MS BUISMAN: Thank you.

7 Q. I'll read out the translation which is as follows:

8 "Because tribalism is not about the Kalenjin deciding to be united in undertaking their  
9 activities; no, that is not tribalism. As such, while as we unite as the Kalenjin  
10 community, what is it that we can do so that we can same time sustain the country's  
11 unity? This is because as though we are seeking leadership, and everyone is seeking  
12 leadership, you are seeking to lead the whole nation, not the Kalenjin alone. At the  
13 end of the day, you will rule over all the people in the nation, not the Kikuyu alone, or  
14 the Luhya or the Luo only - no, you will rule over the whole country if you are elected  
15 as the country's president."

16 Mr Witness --

17 A. Yes, I can.

18 Q. -- is it a fair translation?

19 A. Yes.

20 Q. There's one last paragraph also at page 3. It's the second last paragraph on that  
21 page 3, but it's the last that I will read out for today. It's starts at 8.13 time stamp and  
22 the first words are "National unity ..." Are you with me, Mr Witness?

23 A. I am with you.

24 MS BUISMAN: So if you can play that right now? Thanks. And for your  
25 knowledge, it's only 45 seconds so I propose to listen to the whole thing and then that

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1 will be it for the day.

2 PRESIDING JUDGE EBOE-OSUJI: No, no, no. Again, the witness is reading a  
3 translation and processing it. We have to allow him pace to do that.

4 MS BUISMAN: So we do it in two parts. We stop around 20 seconds.

5 (Playing of the audio excerpt KEN-D11-0013-0029)

6 MS BUISMAN:

7 Q. Mr Witness, could you hear that?

8 A. Yes, I --

9 PRESIDING JUDGE EBOE-OSUJI: Wait. Okay.

10 THE WITNESS: Yes, I hear.

11 MS BUISMAN:

12 Q. I'm just going to read that out into the transcript and you tell me if it's accurate  
13 or fair:

14 "National unity is most paramount so that as we move to have community unity, we  
15 first have to achieve national Unity. This is because if the country is not well, then  
16 no community will live well with its rights. It is important that we foster national  
17 unity so that we can now go back and foster community unity."

18 Is that a fair translation, Mr Witness?

19 A. It is.

20 MS BUISMAN: I propose now we go into part 2 of this paragraph, and for the  
21 record that was at time stamp 8.32.

22 (Playing of the audio excerpt KEN-D11-0013-0029)

23 MS BUISMAN:

24 Q. Mr Witness, could you follow --

25 PRESIDING JUDGE EBOE-OSUJI: Wait, wait, wait. Let him -- when he finishes,

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1 he'll tell us.

2 Witness, have you finished reading?

3 THE WITNESS: Yes, I have finished reading, your Honour.

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

5 MS BUISMAN:

6 Q. Mr Witness, did you follow the audio?

7 A. Yes, I do.

8 Q. Let me read the English and you tell me if it is an accurate translation.

9 "So how can we you and I accomplish all this and nurture this country including the  
10 leaders that we elected through dialogue. I had earlier asked what it that can push

11 us towards violence as well as what is it that we can do to avoid going towards that

12 path and keep in mind the unity is the pillar of the country and of the community."

13 Is that a fair translation, Mr Witness?

14 A. It is.

15 MS BUISMAN: Thank you.

16 I see the time. Thank you.

17 PRESIDING JUDGE EBOE-OSUJI: Do you have a follow-up question on this quickly  
18 so we can wrap it up? We want to avoid coming back and replaying this.

19 MS BUISMAN:

20 Q. Mr Witness, you heard Mr Joshua Arap Sang speak about 42 tribes, correct?

21 A. Yes.

22 Q. And you agree 42 tribes includes the Kikuyu?

23 A. Yes, your Honour.

24 Q. He is calling for all tribes to co-exist. That is correct, is it not?

25 A. Yes, your Honour.

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1 Q. And again he's saying we want to avoid violence at the end. That is correct,  
2 right?

3 A. Yes, your Honour.

4 Q. Thank you, Mr Witness. We will see each other -- oh, no. Mr Witness, have  
5 you heard this audio before?

6 A. Your Honour, this audio you -- I think you select part of it which actually can  
7 positive to Sang, but I have never said Sang is continuously doing these other things.  
8 Even this unity of the nation, he has been doing that the same, but I'm saying this  
9 unity that he's preaching also because he was leading people to a certain direction of  
10 which he knows Kalenjin have been united since then, but I don't know why when he  
11 was -- Sang just come to the radio it come a issue.

12 Q. Can I just ask you, my question was: Did you hear this before?

13 A. It's long time, but maybe I heard, but I don't know.

14 Q. And if it wasn't this message, have you heard him talk about national unity  
15 before?

16 A. Yes, I've heard, but -- yes, I've heard.

17 Q. And so you know this is 2006 in that period. Do you recall that?

18 A. I can't confirm, your Honour.

19 MS BUISMAN: Thank you, Witness. We will see each other tomorrow.

20 THE WITNESS: Thank you.

21 PRESIDING JUDGE EBOE-OSUJI: Thank you, Witness. We will be rising for the  
22 day.

23 We will go into closed session and usher the witness out of the courtroom.

24 \*(Closed session at 4.06 p.m.) Reclassified as Open session

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

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- 1 PRESIDING JUDGE EBOE-OSUJI: Thank you.
- 2 (The witness stands down)
- 3 PRESIDING JUDGE EBOE-OSUJI: Court will rise.
- 4 THE COURT OFFICER: All rise.
- 5 \*(The hearing ends in closed session at 4.06 p.m.) Reclassified as Open session
- 6 RECLASSIFICATION REPORT
- 7 Pursuant to Trial Chamber V(a) 's Decision, ICC-01/09-01/11-981, dated 24 September
- 8 2013, the version of the transcript with its redactions becomes Public.