



Original: **English**

No.: **ICC-01/09-01/11**

Date: **12 July 2013**

TRIAL CHAMBER V(A)

Before: Judge Chile Eboe-Osuji, Presiding Judge
Judge Olga Herrera Carbuccion
Judge Robert Fremr

SITUATION IN THE REPUBLIC OF KENYA

**IN THE CASE OF
THE PROSECUTOR v. WILLIAM SAMOEI RUTO and JOSHUA ARAP SANG**

**Public Redacted version of
Prosecution's Update on Disclosure and Request for additional time to disclose
certain materials (ICC-01/09-01/11-768-Conf)**

With Confidential Annex A

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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Legal Representatives of the Applicants

Unrepresented Victims

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Others

1. Following the Chamber's 3 June 2013 decision ("3 June Decision") setting the trial date for 10 September 2013,¹ the Prosecution hereby updates the Chamber, the parties and the participants on a number of matters related to that decision, and requests an extension of the disclosure deadline for a limited number of materials.

Submissions

[REDACTED]

2. [REDACTED].

[REDACTED]

3. [REDACTED].²

4. [REDACTED].

5. [REDACTED].

Transcripts and/or translations of A/V materials

6. Finally, in the 3 June Decision, the Chamber noted that it considered that "three months after the full disclosure of the evidence that the Prosecution intends to

¹ ICC-01/09-01/11-762.

² [REDACTED].

rely on at trial allows the Defence sufficient time to be ready for trial". The Prosecution understands this to mean that 10 June 2013 is the deadline for the disclosure of *any other* materials the Prosecution may wish to rely on, notwithstanding that this date was only explicitly ordered in respect of the materials relating to [REDACTED].

7. Following a request from the Sang defence team regarding the transcriptions and/or translations of Audio/Video (A/V) materials contained on the Prosecution's list of evidence, the Prosecution realised that transcriptions and/or translations were outstanding for a number of these items. Whilst a number of transcriptions and/or translations have recently been completed and disclosed, the quantity of materials involved, the lack of qualified Kalenjin translators,³ and amount of time it takes to prepare accurate transcripts and translations, mean that the Prosecution will be unable to disclose transcriptions and/or translations for all A/V items included on its list of evidence by 10 June 2013.

8. Mindful of the prior jurisprudence of this Court,⁴ the Prosecution has therefore reviewed its list of evidence and now decided that it will no longer rely on all of the A/V materials contained therein. For those items that it still intends to rely on, and for which transcriptions and/or translations remain outstanding, the requests have been prioritised. The transcriptions and/or translations of these items will be disclosed as soon as possible. These items and the expected dates of completion of the transcripts and/or translations are listed in Annex A.

³ [REDACTED].

⁴ See e.g. ICC-01/04-01/07-1336, para. 13 where Trial Chamber II stated: "The Chamber is of the view that the transcripts and translations form an integral part of the video and must for that reason be considered as constituting one and the same piece of evidence – when one is missing, the evidence is not complete. Therefore, until the transcript and the necessary translations into one of the working languages of the Court have been provided to the Defence, the Prosecution has not complied with its disclosure obligations and its obligations under regulation 39(1) of the Regulations."

9. In order to be able to rely on these items at trial, the Prosecution requests an extension of the 10 June 2013 disclosure deadline in order to provide the Defence with the relevant transcripts and/or translations. The original A/V files were disclosed to the defence within the 9 January 2013 deadline. The time it takes to prepare transcripts and translations, the amount of A/V materials in the Prosecution's collection that have had to be transcribed and translated, and the lack of persons qualified to perform this work, means that it is not possible to have all the associated transcripts and translations completed to meet the disclosure deadlines. Consequently, the Prosecution submits that it has shown good cause for the deadline to be extended pursuant to Regulation 35(2).

Relief Requested

10. The Prosecution requests an extension to the disclosure deadline of 10 June 2013 for a limited number of A/V materials for which transcripts and/or translations remain outstanding.



Fatou Bensouda, Prosecutor

Dated this 12th July 2013

At The Hague, the Netherlands