



Original: English

No.: ICC-01/09-01/11
Date: 10 September 2014

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

**Public redacted version of “Addendum to Prosecution’s Corrected version of
“Prosecution’s eighth application pursuant to Regulation 35(2) of the
Regulations of the Court”, 21 August 2014, ICC-01/09-01/11-1463-Conf”**

Source: The Office of the Prosecutor

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

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Other

Introduction

1. On 22 August 2014, the Office of the Prosecutor ("Prosecution") filed an application to amend its List of Evidence and be permitted to rely upon 57 new items relating to witnesses P-0604 and P-0495 ("Application").¹ The Prosecution hereby seeks to append 23 additional items of evidence to the Application consisting of transcriptions [REDACTED] and their accompanying English translations [REDACTED], and fifteen photographs [REDACTED] ("photographs").²
2. As explained further below, these 23 items could not be included in the Application as the final transcripts and translations [REDACTED] were only completed on 27 August 2014, and the information about the 15 photographs [REDACTED] were subject of redactions until 28 August 2014.
3. The Prosecution intends to rely upon all these items for the same purposes identified in its Application and incorporates by reference the legal arguments advanced therein in its support, including as further clarified in its "Reply to the Defence Response".³
4. With respect to the [REDACTED], draft transcriptions and translations were provided to the Defence on 22 August 2014 and the final versions formally disclosed on 29 August. As regards the photographs, they are merely visual evidence [REDACTED] which have been previously disclosed [REDACTED] the interview were disclosed to the Defence on 16 May 2014.
5. Any prejudice to the Defence in admitting these 23 items is outweighed by the cogency of the information contained in these documents which is essential for a proper assessment of the evidence of this witnesses and to ensure that the Chamber has before it necessary evidence for the determination of the truth.

¹ ICC-01/09-01/11-1463-Conf-Corr+Corr-Anx.

² [REDACTED].

³ ICC-01/09-01/11-1463-Conf-Corr, paras 23-33, 35-38 and ICC-01/09-01/11-1471-Conf+Anxs respectively.

Confidentiality

6. The Prosecution filed this request and its Annex A as confidential, *ex parte*, Prosecution and VWU only as they contain confidential information pertaining to Prosecution witnesses as well [REDACTED], which are subject to standard pre-approved redactions and, as such, should not be divulged to public, the Defence and Accused. A confidential version of this filing is being filed simultaneously.

Statement of facts

7. On 21 August 2014, the Prosecution filed its [REDACTED].⁴ [REDACTED].⁵
8. [REDACTED], disclose their draft transcriptions and translations to the Defence on 22 August 2014 in anticipation of the witness' testimony.⁶ [REDACTED]⁷, [REDACTED].⁸ As such, it was only on 27 August 2014 that these [REDACTED] were fully translated and that the Prosecution was finally able to assess their full value and determine that [REDACTED] were of importance to its anticipated examination of P-0604. By that time however, the Prosecution had already filed its Application.
9. Furthermore, in its Application the Prosecution provided notice to the Defence of its intention to seek to rely upon the transcripts [REDACTED].⁹
10. As regards the photographs¹⁰, [REDACTED].¹¹
11. On 16 May 2014, the Prosecution disclosed the transcripts of this interview to the Defence. While the transcripts contained discrete Rule 81(2) redactions to the details of its ongoing Article 70 investigation, [REDACTED]. The Prosecution re-disclosed the same transcripts on 21 August and again on 27

⁴ [REDACTED].

⁵ [REDACTED].

⁶ [REDACTED].

⁷ [REDACTED].

⁸ [REDACTED].

⁹ [REDACTED].

¹⁰ [REDACTED].

¹¹ [REDACTED].

August 2014 with minor Rule 81(2) standard pre-approved redactions not affecting the content.

12. Full disclosure of the photographs is being effected to Defence at the time of this filing.

Relevance of additional documents related to P-0604 and P-0495

13. The Prosecution requests permission to add to its List of Evidence the English translation and [REDACTED] transcription [REDACTED].¹²
14. [REDACTED]¹³, [REDACTED].¹⁴
15. [REDACTED].¹⁵
16. [REDACTED] P-0604's state of mind at the time which, coupled with his then-cooperative behaviour are at odds with the unsavoury accusations that the same witness levels against the Prosecution in his recent affidavit¹⁶ and raises further doubts as to the genuineness of his recantation.¹⁷ With respect to the photographs, as already explained in its Application, the Prosecution seeks leave of the Chamber to amend its List of Evidence and add the photographs as they relate to witness P-0495's credibility and, generally, to witness interference.¹⁸ [REDACTED].

Addition of items to the List of Evidence is not unfairly prejudicial to the Accused

17. The Prosecution submits that there is no unfair prejudice to the Defence in allowing the Prosecution to add these four items to its List of Evidence for the purposes identified in paragraphs 3, 29-32 and 35-38 of its Application.¹⁹ The pool of material concerned by this addendum is discreet and circumscribed: the

¹² [REDACTED].

¹³ [REDACTED].

¹⁴ [REDACTED].

¹⁵ [REDACTED].

¹⁶ [REDACTED].

¹⁷ ICC-01/09-01/11-1463-Conf-Corr, para 30.

¹⁸ ICC-01/09-01/11-1463-Conf-Corr, paras 34-38.

¹⁹ ICC-01/09-01/11-1463-Conf-Corr, para 3.

[REDACTED] total only 26 pages of translation, including cover pages, and reflect only [REDACTED]; the photographs [REDACTED]. These all fall within the same category of items covered by the Application and are to be used for the same purposes.

18. Moreover, with respect to [REDACTED] the Defence were furnished courtesy copies (draft) of the four items on 22 August and finalised ones were disclosed on 29 August. On 27 August the Defence were also put on notice that the Prosecution intended to seek leave of the Chamber to add these items to its List of Evidence for their use in the examination of witness P-0604.²⁰
19. Finally, the items listed in Annex A do not bring new facts to the matters charged in the Prosecution's Document Containing the Charges, but as outlined in the Application, provide further information with respect to alleged interference with Prosecution witnesses.

Relief requested

20. For the foregoing reasons, the Prosecution requests leave to supplement its filing ICC-01/09-01/11-1463-Conf-Exp by the addition of the items listed in Annex A hereto.



Fatou Bensouda,
Prosecutor

Dated this 10th day of September 2014
At The Hague, The Netherlands

²⁰ See e-mail communication from the Prosecution to Trial Chamber V – Communications, the Defence teams of Messrs. Ruto and Sang and the Common Legal Representatives at 19:51 hours.