

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 18 December 2014

TRIAL CHAMBER V(A)

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

SITUATION IN THE REPUBLIC OF KENYA

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

Public

**Decision on the Prosecution and Ruto Defence Requests for Materials Related to
P-0800 to be Admitted into Evidence and Assigned evidence (EVD and MFI)
Numbers**

Decision to be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

Ms Fatou Bensouda
Mr James Stewart
Mr Anton Steynberg

Counsel for William Samoei Ruto

Mr Karim Khan
Mr David Hooper
Mr Essa Faal
Ms Shyamala Alagendra

Counsel for Joshua Arap Sang

Mr Joseph Kipchumba Kigen-Katwa
Ms Caroline Buisman

Legal Representatives of Victims

Mr Wilfred Nderitu

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

The Office of Public Counsel for Victims

Ms Paolina Massidda

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others

Trial Chamber V(A) (the 'Chamber') of the International Criminal Court, in the case of *The Prosecutor v William Samoei Ruto and Joshua Arap Sang*, pursuant to Articles 64(9)(a) and 69(4) of the Rome Statute, renders this 'Decision on the Prosecution and Ruto Defence Requests for Materials Related to P-0800 to be Admitted into Evidence and Assigned Evidence (EVD and MFI) Numbers' (the 'Decision').

1. On 20 November 2014, the Chamber directed the Office of the Prosecutor ('Prosecution') to file a written request to admit into evidence items used during the examination-in-chief of Witness 800.¹
2. On 25 November 2014, during the cross-examination of Witness 800, the Chamber enquired as to whether any agreement had been reached on the admission of materials used by the defence team for Mr Ruto (the 'Ruto Defence') during the cross-examination of the witness.² The Prosecution confirmed that they had no objections to the Ruto Defence's recommendations.³ The Ruto Defence stated that they would formally request the admission of evidence and marking of materials for identification via a written submission.⁴
3. On 26 November 2014, the Prosecution filed the 'Prosecution request for materials related to P-0800 to be admitted into evidence and assigned evidence (EVD) numbers' (the 'Prosecution Request'),⁵ seeking that the following items listed in Annex A ('Prosecution Proposed Exhibits') be admitted into evidence and assigned EVD numbers:⁶

- i. KEN-OTP-0111-0555 (track 1);⁷
- ii. KEN-OTP-0106-0371;

¹ ICC-01/09-01/11-T-157-Conf-Eng, page 37, lines 3-5.

² ICC-01/09-01/11-T-160-Conf-Eng, page 93, lines 8-9.

³ ICC-01/09-01/11-T-160-Conf-Eng, page 93, lines 19-20.

⁴ ICC-01/09-01/11-T-160-Conf-Eng, page 93, lines 15-18.

⁵ ICC-01/09-01/11-1710-Conf.

⁶ Prosecution Request, ICC-01/09-01/11-1710-Conf-AnxA.

⁷ See paragraph 8 below.

- iii. KEN-OTP-0107-0717;
- iv. KEN-OTP-0135-0430;
- v. KEN-OTP-0111-0555 (track 2);⁸
- vi. KEN-OTP-0131-0431;
- vii. KEN-OTP-0109-0426 (tracks 1, 2, 3);⁹
- viii. KEN-OTP-0132-0167;
- ix. KEN-OTP-0111-0159; and
- x. KEN-OTP-0145-0554.

4. On 28 November 2014, the Ruto Defence filed the 'Ruto Defence request for materials related to Witness P-0800 to be accepted into evidence and assigned evidence (EVD and MFI) numbers' (the 'Ruto Defence Request'),¹⁰ seeking that the following items ('Ruto Defence Proposed Exhibits') be admitted into evidence and assigned EVD numbers:¹¹

- i. KEN-D09-0042-0602;
- ii. KEN-D09-0042-0603;
- iii. KEN-D09-0022-0002 (MFI-T-D09-00049);
- iv. KEN-D09-0036-0150;
- v. KEN-D09-0042-0609;
- vi. KEN-D09-0042-0289;

⁸ See paragraph 8 below.

⁹ See paragraph 8 below.

¹⁰ ICC-01/09-01/11-1714.

¹¹ Ruto Defence Request, ICC-01/09-01/11-1714, para. 3.

vii. KEN-D09-0042-0297; and

viii. KEN-D09-0042-0316.

5. The Ruto Defence also requested that the following materials ('Ruto Defence Materials') be marked for identification and assigned MFI numbers:¹²

- i. KEN-D09-0042-0553;¹³
- ii. KEN-D09-0042-0554;¹⁴
- iii. KEN-D09-0042-0570;
- iv. KEN-D09-0042-0607;
- v. KEN-D09-0042-0605;
- vi. KEN-D09-0042-0002;
- vii. KEN-D09-0042-0449;
- viii. KEN-OTP-0068-0042;¹⁵
- ix. KEN-D09-0035-0115;¹⁶
- x. KEN-D09-0042-0148;
- xi. KEN-D09-0042-0451;
- xii. KEN-D09-0042-0283;
- xiii. KEN-D09-0042-0284;
- xiv. KEN-D09-0042-0325;

¹² Ruto Defence Request, ICC-01/09-01/11-1714, para. 2.

¹³ See paragraph 9 below (MFI-T-D09-00303).

¹⁴ See paragraph 9 below (MFI-T-D09-00304).

¹⁵ See paragraphs 8 and 9 below (EVD-T-D09-00296).

¹⁶ See paragraph 9 below (EVD-T-D09-00295).

- xv. KEN-OTP-0116-0495_R02;
- xvi. KEN-OTP-0116-0497_R02;
- xvii. KEN-OTP-0138-0017_R01;
- xviii. KEN-OTP-0116-0479;
- xix. KEN-OTP-0138-0626_R01;
- xx. KEN-OTP-0129-0573_R02;
- xxi. KEN-OTP-0107-0317_R01;
- xxii. KEN-OTP-0117-0930_R02;
- xxiii. KEN-OTP-0138-0015_R01;
- xxiv. KEN-OTP-0141-0026_R01;¹⁷ and
- xxv. KEN-OTP-0142-0699_R01.

6. On 28 November 2014, the Prosecution and the defence team for Mr Sang (the 'Sang Defence') confirmed via email that they have no objections to the Ruto Defence Request.¹⁸
7. On 5 December 2014 and 8 December 2014 respectively, the Ruto and Sang Defence confirmed that they have no objections to the Prosecution Request.¹⁹
8. The Chamber notes that items i., v. and vii. of the Prosecution Proposed Exhibits (KEN-OTP-0111-0555, tracks 1 and 2, and KEN-OTP-0109-0426, tracks 1, 2 and 3) were only referred to during the court sessions in their redacted versions: KEN-

¹⁷ See paragraph 9 below (EVD-T-D09-00267).

¹⁸ Email communication from the Prosecution to Trial Chamber V-A Communications on 28 November 2014 at 14:00 and email communication from the Sang Defence to Trial Chamber V-A Communications on 28 November 2014 at 14:35.

¹⁹ Email communication from the Ruto Defence to Trial Chamber V-A Communications on 5 December 2014 at 14:15 and email communication from the Sang Defence to Trial Chamber V-A Communications on 8 December 2014 at 11:38.

OTP-0111-0555_R01 and KEN-OTP-0109-0426_R01. The Chamber considers that the references were intended to be made to the redacted versions and will treat the Prosecution Request accordingly. The Chamber further notes, with regard to the Ruto Defence Request, that item KEN-OTP-0068-0042 of the Ruto Defence Materials was only provided to the Chamber in its redacted version, KEN-OTP-0068-0042_R01. The Chamber equally considers that the reference was intended to be made to the redacted version and will treat the Ruto Defence Request accordingly.

9. The Chamber notes that items i. and ii. of the Ruto Defence Materials have been already marked for identification, and that items viii., ix. and xxiv. have been admitted into evidence. There is thus no need to grant the relief sought with respect to these documents.
10. The Chamber has taken into consideration that no party objects to either the Prosecution Request or the Ruto Defence Request. The Chamber also notes that the Prosecution Proposed Exhibits and the Ruto Defence Proposed Exhibits (together, the 'Proposed Exhibits') and the Ruto Defence Materials were referred to in the course of Witness 800's testimony except for KEN-D09-0036-0150, which was referred to in the testimony of Witness 658.²⁰ The Chamber is therefore satisfied that, for the purposes specified in the Prosecution Request and the Ruto Defence Request, the Proposed Exhibits should be admitted into evidence and that the Ruto Defence Materials should be marked for identification.
11. The Chamber therefore admits the Proposed Exhibits into evidence and instructs the Ruto Defence Materials to be marked for identification, apart from the five items listed in paragraph 9. Accordingly, EVD and MFI numbers shall be assigned to the Proposed Exhibits and the Ruto Defence Materials, respectively.

²⁰ Notwithstanding that the item relates to Witness 658 rather than Witness 800, the Prosecution does not object to admission of this item.

12. As a final matter, the Chamber notes that item xxiv. of the Ruto Defence Materials had already been admitted into evidence prior to the Ruto Defence Request of 28 November 2014. The Chamber also recalls that item iv. of the Ruto Defence Proposed Exhibits pertains to Witness 658, rather than Witness 800. Given these errors, the Chamber stresses that it is incumbent upon the parties to carefully check and review the materials contained within their submissions before seeking orders from the Chamber.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

GRANTS the Ruto Defence Request in part;

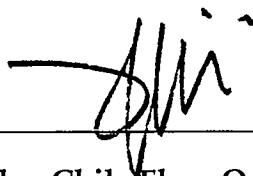
GRANTS the Prosecution Request;

DIRECTS the Registry to assign the Proposed Exhibits as listed in paragraphs 3 and 4, and specified in paragraph 8 of the Decision an EVD number;

DIRECTS the Registry to assign the Ruto Defence Materials listed in paragraph 5 and specified in paragraph 8 of the Decision, apart from the five items listed in paragraph 9, an MFI number; and

DIRECTS the Registry to confirm these numbers have been assigned via a written filing no later than 9 January 2015.

Done in both English and French, the English version being authoritative.



Judge Chile Eboe-Osuji
(Presiding)



Judge Olga Herrera Carbuca



Judge Robert Fremr

Dated 18 December 2014

At The Hague, The Netherlands