



Original: **English**

No.: **ICC-01/09-01/11**
Date: **22 December 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 Redacted Document
with Confidential *EX PARTE*, only available to the Prosecution and the VWU
Annexes A, B and C**

**Public Redacted version of "Prosecution's Tenth Application for In-Court
Protective Measures for Three Witnesses", 19 December 2014, (ICC-01/09-01/11-
1766-Conf-Exp)**

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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Introduction

1. The Office of the Prosecutor (“Prosecution” or “OTP”) hereby submits its tenth request for in-court protective measures (“Tenth Application”) in respect of three witnesses scheduled to testify in the upcoming trial session starting on 12 January 2015: [REDACTED] and P-0789 [REDACTED].
2. In regards to Witnesses [REDACTED] the Prosecution requests that Trial Chamber V(A) (“Chamber”) authorise the usual suite of protective measures: i) image and voice distortion under Rule 87(3)(c) of the Rules of Procedure and Evidence (“Rules”) and Regulation 94(b) and (c) of the Regulations of the Registry (“RoR”); (ii) assignment and use of a pseudonym under Rule 87(3)(d) and Regulation 94(a) of the RoR; and (iii) *in camera* sessions under Articles 64(7) and 68(1) of the Rome Statute (“Statute”), Rule 87(3)(e) and Regulation 94(e) of the RoR.
3. As regards to Witnesses P-0789, the Prosecution seeks [REDACTED]¹ [REDACTED] and, pursuant to Article 64(7) of the Statute and Rule 88 of the Rules, requests that the Chamber authorise this witness to be heard entirely *in camera*. Alternatively, should this measure be rejected, the Prosecution requests that P-0789 be granted the same in-court protective measures listed in paragraph 2 above.
4. Additionally, as explained further, [REDACTED].
5. The protective measures invoked in paragraphs 2-4 above strike an appropriate balance between the Court’s duty under Article 68(1) of the Statute to protect witnesses who appear before the Court, and the Accused’s right under Article 67(1) of the Statute to a public hearing. The requested protective measures do not unduly prejudice the Accused as the witnesses will remain anonymous to the public only.

¹ [REDACTED].

6. Due to the imminent testimony of these witnesses, the Prosecution also requests that the Chamber order responses on an expedited basis, or alternatively that it require the parties and participants to respond orally, as has been the practice with a number of previous witnesses.

Confidentiality

7. Pursuant to Regulation 23bis (1) of the Regulations of the Court ("RoC"), this application is designated as "Confidential, *EX PARTE*, only available to the Prosecution and the VWU", as it contains confidential information related to witnesses. A Confidential redacted version will be filed shortly.

Submissions

8. In-court protective measures of the kind listed in paragraphs 2-4 above are necessary to ensure the witnesses' safety during and after their testimony and protection from eventual reprisals from supporters and/or sympathisers of the Accused.
9. The Prosecution incorporates by reference the general assertions contained in its Second Request regarding the general necessity of these in-court protective measures and their proportionality *vis-à-vis* the rights of the Accused.² In sum, the Prosecution submits that the protective measures that it is requesting strike an appropriate balance between the Court's duty under Article 68(1) of the Statute to protect witnesses who appear before the Court, and the Accused's right under Article 67(1) of the Statute to a public hearing. Further, the requested protective measures do not unduly prejudice the Accused as the witnesses will remain anonymous to the public only.
10. The Prosecution has detailed below the relevant information regarding each of the three witnesses.

Witness [REDACTED]

² ICC-01/09-01/11-1044-Conf-Exp, paras.7-9.

11. The Prosecution requests the usual suite of in-court protective measures for witness [REDACTED] and additionally [REDACTED].
12. [REDACTED].
13. [REDACTED].
14. [REDACTED].³ [REDACTED].
15. [REDACTED].
16. [REDACTED].
17. [REDACTED].
18. [REDACTED].⁴ [REDACTED].
19. [REDACTED].
20. [REDACTED].⁵ [REDACTED].
21. [REDACTED].
22. [REDACTED].
23. [REDACTED].
24. The identity of [REDACTED] was disclosed to the Accused on 9 January 2013.
25. [REDACTED].
26. [REDACTED].

Witness [REDACTED]

27. The Prosecution also requests that the usual suite of in-court protective measures be granted for [REDACTED] and [REDACTED].
28. [REDACTED] is an insider witness whose identity was disclosed to the Defence on 11 February 2013. [REDACTED].
29. [REDACTED].
30. [REDACTED].
31. [REDACTED].
32. [REDACTED].
33. [REDACTED].

³ [REDACTED].

⁴ [REDACTED].

⁵ [REDACTED].

34. [REDACTED].
35. [REDACTED].
36. [REDACTED].⁶
37. [REDACTED].⁷
38. [REDACTED].
39. [REDACTED].⁸
40. [REDACTED].⁹ [REDACTED].
41. [REDACTED].
42. [REDACTED].
43. [REDACTED].
44. [REDACTED].
45. [REDACTED].
46. [REDACTED].
47. [REDACTED].
48. [REDACTED].

Witness P-0789

49. The Prosecution [REDACTED] requests that the Chamber authorise Witness P-0789 to be heard entirely *in camera*. Alternatively, should this request be rejected, the Prosecution requests that the witness be granted the same in-court protective measures listed in paragraph 2 above. [REDACTED].¹⁰
50. The Prosecution hereby incorporates by reference the factual submissions [REDACTED]¹¹, [REDACTED]¹², [REDACTED].¹³
51. [REDACTED]¹⁴ [REDACTED].¹⁵

⁶ [REDACTED].

⁷ [REDACTED].

⁸ [REDACTED].

⁹ [REDACTED].

¹⁰ [REDACTED].

¹¹ [REDACTED].

¹² [REDACTED].

¹³ [REDACTED].

¹⁴ [REDACTED].

¹⁵ [REDACTED].

52. The Prosecution however submits that since [REDACTED], new circumstances have emerged which militate in favor of allowing the witness to testify entirely *in camera* [REDACTED].
53. [REDACTED].
54. [REDACTED].
55. [REDACTED].
56. Prosecution staff met with P-0789 on [REDACTED]. The witness reiterated that he was still reconsidering his continued participation with the Court, though he expressed confidence that [REDACTED]. [REDACTED].
57. Two days later, on 1 August 2013, P-0789 sent an email to the Prosecution stating that he was withdrawing as a witness. [REDACTED].¹⁶
58. The Prosecution was unable to contact P-0789 thereafter. [REDACTED].¹⁷
59. On [REDACTED] the Prosecution's Public Information Desk received an email and attachments from [REDACTED] on behalf of P-0789. The attachments consisted of [REDACTED] wherein he reiterated the reasons for his withdrawal [REDACTED].¹⁸
60. [REDACTED].¹⁹ [REDACTED].
61. [REDACTED].²⁰ [REDACTED].
62. The witness also advised the Prosecution that he still did not wish to testify in the case [REDACTED].
63. [REDACTED].²¹ [REDACTED].
64. The Prosecution submits that the objective and subjective circumstances of P-0789 justify the robust protective measures sought (testimony entirely *in camera*) for the following reasons.
65. First, [REDACTED].
66. Second, [REDACTED].
67. Third, [REDACTED].

¹⁶ [REDACTED].

¹⁷ [REDACTED].

¹⁸ [REDACTED].

¹⁹ [REDACTED].

²⁰ [REDACTED].

²¹ [REDACTED].

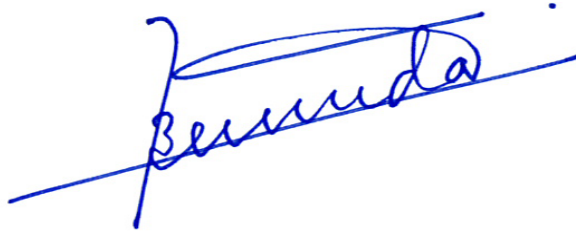
68. Fourth, [REDACTED].²² [REDACTED].
69. For all the foregoing reasons, the Prosecution believes that the individual circumstances of P-0789 are such that they warrant special consideration and militate in favour of the Chamber granting the Prosecution's application to let P-0789's evidence be heard entirely *in camera* [REDACTED].

Relief

70. Accordingly, the Prosecution submits that there are objective grounds to believe that, if protective measures are not implemented, the relevant witnesses will all be placed at risk, and that the measures requested are reasonable in the circumstances. Given the foregoing reasons, the Prosecution requests that the Chamber grant the following in-court protective measures:
- a) **For Witness [REDACTED]**: image and voice distortion; use of pseudonyms during testimony; *in camera* sessions; redactions to public records, where necessary to prevent identification; [REDACTED].
 - b) **For Witness P-0016**: image and voice distortion; use of pseudonyms during testimony; *in camera* sessions; redactions to public records, where necessary to prevent identification; [REDACTED].
 - c) **For Witness P-0789**:
 - i. use of *in camera* session for the entire duration of his evidence; or, in the alternative

²² [REDACTED]

- ii. image and voice distortion; use of pseudonyms during testimony; *in camera* sessions; and redactions to public records, where necessary to prevent identification.



Fatou Bensouda, Prosecutor

Dated this 22nd day of December 2014

At The Hague, the Netherlands