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

Date: **22 June 2016**

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

With Confidential Annex 1 and 3, and Confidential, *ex parte* Annex 2

**Public redacted version of "Prosecution application pursuant to Regulation 35(2)
for addition of documents to the list of evidence", 6 September 2013, ICC-01/09-
01/11-915-Conf**

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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**Victims Participation and Reparations
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Others

1. In terms of Regulation 35(2) of the Regulations of the Court (the “Regulations”), the Prosecution hereby requests from Trial Chamber V(a) (“the Chamber”) the addition to the list of evidence (“LOE”), namely (1) the *curricula vitae* and reports of expert witnesses P-0464, P-0488 and P-0542 (including the translation of the report of P-464 and maps connected to P-0488’s report);¹ (2) documents relating to the P-0015’s recantation,² (3) a four page statement of P-0016 taken in [REDACTED] 2013;³ (4) the transcript of a handwritten statement of P-0019, which is included in the LOE filed on 9 January 2013;⁴ (5) a six pages statement of [REDACTED] taken on [REDACTED] 2013;⁵ and (6) transcripts and translations of audio and video materials which are already on the LOE (a chart listing these transcripts and translations is appended as Annex 1, confidential).
2. Revised versions of the unredacted and redacted LOE including the said documents, marked with a green highlight, are appended as confidential *ex parte* Annex 2 and confidential Annex 3 respectively. An amended version will be filed if need be on the basis of the Chamber’s decision on this application.

Confidentiality

3. This application and its annexes are filed as confidential, as they relate to evidence which remains confidential at this stage of the proceedings.

¹ Report of P-0464 and its translation: KEN-OTP-0093-0871 and KEN-OTP-0093-1308; P-0464’s curriculum vitae: KEN-OTP-0093-1148.

Reports of P-0488: KEN-OTP-0092-0882, KEN-OTP-0092-0917, KEN-OTP-0092-0931 and KEN-OTP-0092-1380; maps connected to the testimony of P-0488: KEN-OTP-0092-0957, KEN-OTP-0092-0958, KEN-OTP-0092-1169, KEN-OTP-0092-1401, KEN-OTP-0092-1402, KEN-OTP-0092-1457, KEN-OTP-0092-1512, KEN-OTP-0092-1513, KEN-OTP-0092-1514, KEN-OTP-0092-1515, KEN-OTP-0092-1516, KEN-OTP-0092-1517, KEN-OTP-0092-1518, KEN-OTP-0092-1519, KEN-OTP-0092-1520, KEN-OTP-0092-1521, KEN-OTP-0092-1522, KEN-OTP-0092-1523 and KEN-OTP-0092-1524; P-0488’s curriculum vitae: KEN-OTP-0093-0922.

Report of P-0542: KEN-OTP-0093-0431; P-0542’s curriculum vitae: KEN-OTP-0107-0538).

² KEN-OTP-0093-1190, KEN-OTP-0093-1191, KEN-OTP-0093-1199, KEN-OTP-0093-1204, KEN-OTP-0095-0050, KEN-OTP-0095-0069, KEN-OTP-0095-0741, KEN-OTP-0095-0743, KEN-OTP-0095-0744, KEN-OTP-0095-0746, KEN-OTP-0095-0738, KEN-OTP-0095-0739, KEN-OTP-0096-0079, KEN-OTP-0096-0083, KEN-OTP-0096-0084, KEN-OTP-0096-0085, KEN-OTP-0100-0175, KEN-OTP-0100-0221, KEN-OTP-0100-0267, KEN-OTP-0100-0274, KEN-OTP-0100-0276, KEN-OTP-0100-0285.

³ KEN-OTP-0093-1302.

⁴ KEN-OTP-0099-0291, transcription of KEN-OTP-0027-0175.

⁵ KEN-OTP-0092-0868.

Submissions

4. The Prosecution makes this application for the sake of completeness of the LOE, which, as an information tool for the Chamber and the parties, should reference all the relevant documents connected to the Prosecution case including its witnesses.

5. With the exception of seven transcripts / translations of audio video materials which should have been included in the version of the LOE filed on 9 January 2013,⁶ and of one UNOSAT map connected to P-0488's testimony⁷, all the documents covered by this application were generated or came in possession of the Prosecution after 9 January 2013, deadline set by the Chamber for the issuance of the list⁸ :
 - the reports of expert witnesses P-0464,⁹ P-0488¹⁰ and P-0542¹¹ were disclosed in accordance with the Chamber's decision "on the schedule leading up to trial" after 9 January 2013;¹²

 - the documents connected to P-0015 relate to his February and March 2013 recantations;¹³

⁶ Cf. annex 1, entries 1 to 7.

⁷ KEN-OTP-0081-1139, disclosed on 16 November 2012.

⁸ ICC-01/09-01/11-440, para. 13.

⁹ KEN-OTP-0093-0871, disclosed on 18 February 2013. The translation of P-464's report (KEN-OTP-0093-1308) was disclosed on 28 February 2013 and P-464's curriculum vitae (KEN-OTP-0093-1148) on 22 February 2013.

¹⁰ The reports of P-0488 (KEN-OTP-0092-0882, KEN-OTP-0092-0917, KEN-OTP-0092-0931 and KEN-OTP-0092-1380) were disclosed on 18 February 2013; the maps KEN-OTP-0092-0957, KEN-OTP-0092-0958, KEN-OTP-0092-1169, KEN-OTP-0092-1401, KEN-OTP-0092-1402, KEN-OTP-0092-1457, KEN-OTP-0092-1512, KEN-OTP-0092-1513, KEN-OTP-0092-1514, KEN-OTP-0092-1515, KEN-OTP-0092-1516, KEN-OTP-0092-1517, KEN-OTP-0092-1518, KEN-OTP-0092-1519, KEN-OTP-0092-1520, KEN-OTP-0092-1521, KEN-OTP-0092-1522, KEN-OTP-0092-1523 and KEN-OTP-0092-1524, connected to P-488's testimony, were disclosed on 18 February 2013 and P-488's curriculum vitae (KEN-OTP-0093-0922) on 10 July 2013.

¹¹ KEN-OTP-0093-0431, disclosed on 18 February 2013. P-0542's *curriculum vitae* (KEN-OTP-0107-0538) was disclosed on 10 July 2013.

¹² ICC-01/09-01/11-440, para. 17.

¹³ These documents are:

- (1) affidavits from P-0015 (KEN-OTP-0093-1199, disclosed on 27 February 2013; KEN-OTP-0095-0741, disclosed on 20 March 2013; KEN-OTP-0095-0743, disclosed on 20 March 2013) and from his relatives (KEN-OTP-0095-0744, KEN-OTP-0095-0746, disclosed on 20 March 2013) sent to the Office of the Prosecutor by lawyer Paul GICHERU;

- the additional prior statement of P-0016,¹⁴ was taken on [REDACTED] 2013 in the context of P-0015's recantation. Basically, in this four page statement, P-0016 confirms that he was never influenced by the Prosecution when giving his statement. It does not touch upon the substance of the charges against the Accused;
- the transcript of P-0019's handwritten statement¹⁵ was finalized after 9 January 2013. This is simply a typed version of the statement, submitted to facilitate the reading of the original handwritten non-ICC statement of the witness;
- the additional prior statement of [REDACTED],¹⁶ taken on [REDACTED] 2013. [REDACTED] reported, *inter alia*, attempts made by SANG to contact him and conversations with his wife, who enquired about his cooperation with the Office of the Prosecutor;
- as indicated in the Prosecution's "*Update on Disclosure and Request for additional time to disclose certain materials*",¹⁷ the transcripts and translations of a number of audio and video materials could only be finalized after the 9 January deadline, on or before 10 June 2013, due to the difficulties created by the need for Kalenjij interpretation.¹⁸ The

- (2) emails and letters from GICHERU to the Office of the Prosecutor and from the Office of the Prosecutor to GICHERU (KEN-OTP-0093-1190, KEN-OTP-0093-1191, KEN-OTP-0093-1204 – 27/02, KEN-OTP-0095-0738 – 20/03, KEN-OTP-0095-0739 – 20/03, KEN-OTP-0096-0083 – 10/06, KEN-OTP-0096-0084 – 10/06;
 - (3) a non-ICC statement made by P-0015 to the medias (KEN-OTP-0096-0079, disclosed on 10 June 2013);
 - (4) the audio recording of a non-ICC statement allegedly from P-0015 in connection with his "recantation" (KEN-OTP-0096-0085, disclosed on 25 July 2013);
 - (5) two one page ICC statements of P-0015 (in one them, KEN-OTP-0095-0069, disclosed on 10 June 2013, P-15 states not being a client of GICHERU; in the other one, KEN-OTP-0095-0050, disclosed on 10 June 2013, he confirms his cooperation with the Office);
 - (6) extraction reports following a forensic analysis of P-0015's phone (KEN-OTP-0100-0267, KEN-OTP-0100-0274, KEN-OTP-0100-0276, and KEN-OTP-0100-0285, disclosed on 28 May 2013);
 - (7) the transcription (KEN-OTP-0100-0221, disclosed on 17 May 2013) and translation (KEN-OTP-0100-0175, disclosed on 10 June 2013) of a statement taken from P-0015 by the investigators of the Office of the Prosecutor on 22 February 2013.

¹⁴ KEN-OTP-0093-1302, disclosed on 17 May 2013.

¹⁵ KEN-OTP-0099-0291, disclosed on 10 June 2013.

¹⁶ KEN-OTP-0092-0868, disclosed on 17 April 2013 and again with less redactions on 25 April and 29 August 2013.

¹⁷ ICC-01/09-01/11-768-Conf.

¹⁸ ICC-01/09-01/11-768-Conf, para. 7.

Chamber granted the Prosecution additional time to finalize and disclose the transcripts and translation of six audio/video materials no later than 16 July 2013.¹⁹ This was done.

6. These documents were all disclosed far in advance before the set date for the start of the trial.²⁰

Relief

7. The Prosecution requests the addition to the LOE of the documents listed above.



Fatou Bensouda, Prosecutor

Dated this 22nd day of June 2016

At The Hague, the Netherlands

¹⁹ ICC-01/09-01/11-807, para. 14.

²⁰ Cf. footnotes 9 to 16 and annex 1.