

Annex 1

Public

[REDACTED]

From: Trial Chamber III Communications
Sent: 30 March 2022 14:36
To: OTP KEN art70 [REDACTED]; D32 Gicheru Defence team; Associate Legal Officer-Court Officer
Cc: Trial Chamber III Communications
Subject: Decision on Submitted Materials for P-0516
Attachments: Defence List of items for submission into evidence - P-0516; Gicheru - P-0516 submission of evidence (OTP).msg; RE Defence List of items for submission into evidence - P-0516.msg; RE Gicheru - P-0516 submission of evidence (OTP).msg

[REDACTED]

Dear Counsel and Registry,

The Defence requests to recognise 14 items as formally submitted (Email from the Defence, 22 March 2022, at 17:47). The Prosecution requests that 3 items are recognised as formally submitted (Email from the Prosecution, 22 March 2022, 18:13).

The Prosecution submitted a response to the Email of the Defence (Email from the Prosecution, 25 March 2022, at 9:59), objecting to two items submitted by the Defence.

The Defence submitted a response to the Email of the Prosecution (Email from the Defence, 25 March 2022, 10:39), stating that it has no objections to the items submitted by the Prosecution.

First the Chamber notes that there are no objections to the items submitted by the Prosecution.

Further, all items put forward for submission by the Prosecution have been discussed in one form or another during the witness's testimony. Accordingly, the Chamber recognises all items put forward by the Prosecution as formally submitted.

Items 1-4, 6-9 and 11-14 of the Defence list

With regard to the items put forward by the Defence, the Chamber notes that items 1-4, 6-9 and 11-14 are all prior recorded testimonies. As previously explained, such items must be introduced in accordance with Rule 68 of the Rules of Procedure and Evidence. The Chamber does not recognise these items as formally submitted.

Item 5 of the Defence list (KEN-OTP-0141-0026)

The Prosecution objects to the recognition of KEN-OTP-0141-0026. It argues that the item does not concern the witness and that P-0516 'could not have confirmed any of the actual content'.

The Chamber notes that during the question of P-0516, the Defence did not actually show the witness the item in question ('You don't have to look at it.' ICC-01/09-01/20-T-064-Conf-Eng, p. 15, line 24; repeated on p. 16, line 1). The examining counsel wanted to put to the witness how he initially made contact with the ICC and the witness answered that question.

Accordingly, in the current instance, the Defence is trying to submit the item in accordance with the procedure for 'items of evidence used during a hearing' (see, Directions on the Conduct of the Proceedings, ICC-01/09-01/20-189, para. 17 (i)) without having shown the item to the witness. As explained in previous decisions on submitted evidence, this is not the applicable avenue.

For the reasons above, the Chamber does not recognise item 5 of the Defence's list as formally submitted.

Item 10 of the Defence List (KEN-OTP-0157-2598)

The Prosecution objects to the submission of KEN-OTP-0157-2598, arguing that it is not related to P-0516 and that the witness did not confirm any of its content.

The Chamber notes that the item in question is a conversation between two Prosecution witnesses who, amongst others, talk about P-0516. The Defence read part of the document to the witness and questioned him about the content and the inferences the Defence draws from it (ICC-01/09-01/20-Conf-Eng p. p. 4, line 7 – p.5, line 19). The Chamber finds that – after having discussed the item with the witness – the fact that the witness did not provide a substantive comment on the matter does not bar the Defence from requesting that the item be recognised as formally submitted. The Prosecution raises aspects which concern the assessment of the evidence which, as previously explained, will be done at a later point in time.

Accordingly, the Chamber recognises item 10 of the Defence list as formally submitted.

In summary, for P-0516, the Chamber recognises all items requested by the Prosecution and item 10 requested by the Defence as formally submitted.

The Registry is directed to proceed in accordance with paragraph 17(iv) of the Directions on the Conduct of the Proceedings, 7 October 2021, ICC-01/09-01/20-189.

Kind regards,
Trial Chamber III

[REDACTED]

From: [REDACTED]
Sent: 22 March 2022 18:13
To: Trial Chamber III Communications; Trial Chamber III Legal Officers; D32 Gicheru Defence team
Cc: OTP KEN art70 [REDACTED]
Subject: Gicheru - P-0516 submission of evidence (OTP)

Importance: High

Dear Trial Chamber III,
Dear Counsel,

Please find below a list of items for witness P-0516 the Prosecution seeks to formally submit into evidence as per paragraph 17 (i) of the Directions on the Conduct of the Proceedings (ICC-01/09-01/20-189). These items were relied upon and referred to by both parties during the testimony of this witness and by the witness himself. They have now been registered and assigned ERN numbers and will be disclosed and released in e-court as a matter of priority.

Items of evidence for submission: P-0516

1. KEN-OTP-0160-1731(PIL – English version)
2. KEN-OTP-0160-1736 (PIL – Swahili version)
3. KEN-OTP-0160-1727 (List of Materials referred to during P-0516's testimony)

Kind regards,

[REDACTED]
On behalf of the Prosecution

From: Mascetti, Daria [REDACTED]
Sent: 25 March 2022 10:39
To: [REDACTED] Trial Chamber III Communications; Trial Chamber III Legal Officers; D32 Gicheru Defence team
Cc: OTP KEN art70 [REDACTED]
Subject: RE: Gicheru - P-0516 submission of evidence (OTP)

Dear Trial Chamber III,
Dear Prosecution,

On behalf of Mr. Karnavas, the Defence informs that it has no objections to the Prosecution's list of items for P-0516 to be submitted into evidence.

Sincerely yours,
Daria

From: [REDACTED]
Sent: 22 March 2022 18:13
To: Trial Chamber III Communications <TrialChamberIIICommunications [REDACTED]>; Trial Chamber III Legal Officers <TrialChamberIIILegalOfficers [REDACTED]>; D32 Gicheru Defence team <D32GicheruDefenceteam [REDACTED]>
Cc: OTP KEN art70 [REDACTED]
Subject: Gicheru - P-0516 submission of evidence (OTP)
Importance: High

Dear Trial Chamber III,
Dear Counsel,

Please find below a list of items for witness P-0516 the Prosecution seeks to formally submit into evidence as per paragraph 17 (i) of the Directions on the Conduct of the Proceedings (ICC-01/09-01/20-189). These items were relied upon and referred to by both parties during the testimony of this witness and by the witness himself. They have now been registered and assigned ERN numbers and will be disclosed and released in e-court as a matter of priority.

Items of evidence for submission: P-0516

1. KEN-OTP-0160-1731(PIL – English version)
2. KEN-OTP-0160-1736 (PIL – Swahili version)
3. KEN-OTP-0160-1727 (List of Materials referred to during P-0516's testimony)

Kind regards,
[REDACTED]

On behalf of the Prosecution

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From: [REDACTED]
Sent: 25 March 2022 09:59
To: Amann-Lasnier, Victoria; Trial Chamber III Communications; OTP KEN art70 [REDACTED]
Cc: D32 Gicheru Defence team; [REDACTED]; Associate Legal Officer-Court Officer
Subject: RE: Defence List of items for submission into evidence - P-0516

Dear Trial Chamber III,
 Your Honour,

The Prosecution objects to the submission of the following two items:

- Item 5 / KEN-OTP-0141-0026: This is an Investigator Report concerning [REDACTED]. While P-0516 confirmed that he was introduced to the OTP [REDACTED], he was not asked to and could not have confirmed any of the actual content of that [REDACTED].
- Item 10 / KEN-OTP-0157-2598: This an [REDACTED] communication between two other OTP witnesses [REDACTED]. P-0516 did not confirm any of its content.

Accordingly, the Prosecution submits that the Defence has not laid the foundation for the submission of these two documents through this particular witness.

The Prosecution does not otherwise object to the submission of the rest of the items sought to be formally admitted by the Defence for Witness P-0516.

Kind regards,

[REDACTED]
 On behalf of the Prosecution

From: Amann-Lasnier, Victoria [REDACTED]
Sent: 22 March 2022 17:47
To: Trial Chamber III Communications <TrialChamberIIICommunications [REDACTED]>; OTP KEN art70 [REDACTED]
Cc: D32 Gicheru Defence team <D32GicheruDefenceteam [REDACTED]>; Associate Legal Officer-Court Officer <AssociateLegalOfficer-CourtOfficer [REDACTED]>
Subject: Defence List of items for submission into evidence - P-0516

Dear Honorable Single Judge of Trial Chamber III,
 Dear Prosecution,

On behalf of Mr. Karnavas, please find enclosed the List of items the Defence formally requests to be submitted into evidence for Witness P-0516 in accordance with paragraph 17 of the Directions (ICC-01/09-01/20-189).

Sincerely yours,
 Victoria Amann-Lasnier

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[REDACTED]

From: Amann-Lasnier, Victoria
Sent: 22 March 2022 17:47
To: Trial Chamber III Communications; OTP KEN art70 [REDACTED]
Cc: D32 Gicheru Defence team; [REDACTED]; Associate Legal Officer-Court Officer
Subject: Defence List of items for submission into evidence - P-0516
Attachments: 220322 - Defence List of Evidence.pdf

Dear Honorable Single Judge of Trial Chamber III,
Dear Prosecution,

On behalf of Mr. Karnavas, please find enclosed the List of items the Defence formally requests to be submitted into evidence for Witness P-0516 in accordance with paragraph 17 of the Directions (ICC-01/09-01/20-189).

Sincerely yours,
Victoria Amann-Lasnier

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ICC-01/09-01/20

THE PROSECUTOR v. PAUL GICHERU

List of items the Defence formally requests to be admitted into evidence for Witness P-0516

	ERN Number	Title	Type	Date	Relevant excerpt if necessary	Admission into evidence
1.	T-004	Transcript of Testimony in <i>Ruto and Sang</i>	Transcript	24/9/2014		Yes
2.	T-005	Transcript of Testimony in <i>Ruto and Sang</i>	Transcript	25/9/2014		Yes
3.	T-006	Transcript of Testimony in <i>Ruto and Sang</i>	Transcript	26/9/2014		Yes
4.	KEN-OTP-0087-0031	Witness Statement	ICC Statement - General	██████ 2012		Yes
5.	KEN-OTP-0141-0026	INVESTIGATION REPORT / ████████████████████ ████████████████████	ICC Investigation notes / report / correspondence	██████ 2012		Yes

6.	KEN-OTP-0150-0684	Transcript of Interview / KEN-OTP-P-0516 Witness Interview Day 3/7 / KEN-OTP-0149-0839 - Track 1	ICC Statement - ICC transcribed statement	█1/2015	p. 0691 to p. 0696; p. 0700	Yes
7.	KEN-OTP-0150-0706	Transcript of Interview / KEN-OTP-P-0516 Witness Interview Day 3/7 / KEN-OTP-0149-0839 - Track 2	ICC Statement - ICC transcribed statement	█1/2015	p. 0708; p. 0714; p. 0717	Yes
8.	KEN-OTP-0150-0734	Transcript of Interview / KEN-OTP-P-0516 Witness Interview Day 3/7 / KEN-OTP-0149-0839 - Track 4	ICC Statement - ICC transcribed statement	█1/2015	p. 0735 to p. 0736; p. 0749	Yes
9.	KEN-OTP-0150-0837	Transcript of Interview / KEN-OTP-P-0516 Witness Interview Day 5/7 / KEN-OTP-0149-0841 - Track 4	ICC Statement - ICC transcribed statement	█1/2015	p. 0853 to p. 0854; p. 0855	Yes
10.	KEN-OTP-0157-2598	Translation / Transcript of Audio/Video Material / 966b6056-f716-048f-a890-aab70bc8c4c8.wav	Translation - ENG	█	p. 2600	Yes
11.	KEN-OTP-0160-0078	Transcript of Interview / Witness Interview Audio Recordings / KEN-OTP-0160-0008 - Track 2	ICC Statement - ICC transcribed statement	█1/2021	p. 0097; p. 0103	Yes
12.	KEN-OTP-0160-0107	Transcript of Interview / Witness Interview Audio Recordings / KEN-OTP-0160-0008 - Track 3	ICC Statement - ICC transcribed statement	█1/2021	p. 0119 to p. 0120	Yes
13.	KEN-OTP-0160-0149	Transcript of Interview / Witness Interview Audio Recordings / KEN-OTP-0160-0009 - Track 1	ICC Statement - ICC transcribed statement	█1/2021	p. 0178	Yes

14.	KEN-OTP-0160-0188	Transcript of Interview / Witness Interview Audio Recordings / KEN-OTP-0160-0009 - Track 2	ICC Statement - ICC transcribed statement	█1/2021	p. 0193 to p. 0194	Yes
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