



Original: **English**

No.: ICC-01/09-02/11

Date: **3 July 2012**

TRIAL CHAMBER V

Before: Judge Kuniko Ozaki, Presiding Judge
Judge Christine Van den Wyngaert
Judge Chile Eboe-Osuji

SITUATION IN THE REPUBLIC OF KENYA

**IN THE CASE OF
THE PROSECUTOR V. FRANCIS KIRIMI MUTHAURA AND UHURU
MUIGAI KENYATTA**

**Public
with Confidential Annex 1 and Confidential, *Ex parte* Prosecution only
Annex 2**

Joint Prosecution/ Defence Submission on Redactions

Source: The Office of the Prosecutor

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

The Office of the Prosecutor

Fatou Bensouda
Adesola Adeboyejo

Counsel for Francis Kirimi Muthaura

Karim A. Khan QC, Essa Faal, Kennedy Ogetto and Shyamala Alagendra

Counsel for Uhuru Muigai Kenyatta

Steven Kay QC and Gillian Higgins

Legal Representatives of Victims

Morris Anyah

Legal Representatives of Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

The Office of Public Counsel for Victims

The Office of Public Counsel for the Defence

States Representatives

Amicus Curiae

REGISTRY

Registrar

Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Maria Luisa Martinod-Jacome

Detention Section

Victims Participation and Reparations Section

Other

Background

1. On 14 May 2012, the Trial Chamber issued an “Order scheduling a status conference”, in which it requested the parties, amongst others, to make submissions on redactions.¹
2. On 23 May 2012, the Prosecution e-mailed the Defence teams to inquire whether it would be possible to agree on the implementation of a simplified, *inter partes*, disclosure / redaction regime.
3. On 26 May 2012, the Defence of Mr Kenyatta agreed to the proposal. On 27 May 2012, the Defence of Mr Muthaura also agreed and provided a set of pre-defined redaction categories to be implemented.
4. On 28 May 2012, the Prosecution informed the Chamber of the agreement and provided more details on the proposal.²
5. At the Status Conference held on 12 June 2012, the Trial Chamber ordered the parties and Registry “to liaise in order to find a common ground, if there is any, with a view to creating a draft redaction proposal to be submitted for the Chamber’s review by 3 July”.³
6. The parties exchanged e-mails and on 28 June 2012 the Prosecution submitted a proposal to the Defence teams.
7. On 2 July 2012 the Defence team of Ambassador Muthaura commented on the proposal (Annex 1). The same day, the Defence for Mr. Kenyatta provided input on the proposal layered on the Muthaura proposal. Since there is still some disagreement between the Prosecution and the

¹ICC-01/09-02/11-422, page 4.

²ICC-01/09-02/11-428, paras.19-23.

³ ICC-01/09-02/11-T-18- ENG CT, p. 29, lines 14-16.

Muthaura Defence in respect of some of the proposed categories, justifications or time-lines, the Prosecution submits the proposal to the Chamber for adjudication.

Confidential *Ex Parte* Annexes

8. Attached as confidential *ex parte* Annex 1 is the Prosecution's original proposal to the Defence updated to include Defence language and proposals to which the Prosecution also agrees. Additionally, it includes references to case-law in support of the redaction categories, justifications and time-lines. It also incorporates comments from the two parties on aspects that are a source of disagreement between the parties. The Prosecution submits that such *inter partes* discussions are best addressed in a confidential annex until the Chamber issues a final decision on the proposal.

9. In addition to the references and comments in Annex 1, Annex 2 also includes decisions cited and excerpts from case law in support of the redaction categories. However, because of the *ex parte* nature of these decisions and excerpts, and because of the lack of public or redacted versions, the case-law cited cannot be provided to the Defence and is provided only to the Chamber.

Request

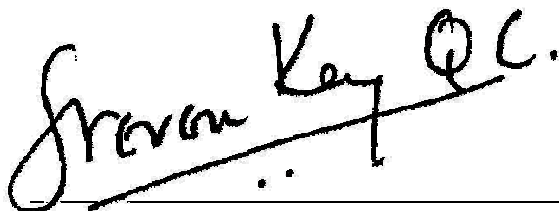
10. The parties request the Chamber's ruling on the proposal.



Fatou Bensouda,
Prosecutor



Karim Khan QC, Lead Counsel, Muthaura Defence



Stephen Kay QC, Lead Counsel, Kenyatta Defence

Dated this 3rd day of July, 2012
At The Hague, The Netherlands