

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/09-02/11
Date: 14 September 2012

TRIAL CHAMBER V

Before: Judge Kuniko Ozaki, Presiding
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

**Redacted Defence Request for Redactions in Prosecution Filing ICC-01/09-02/11-
468-AnxD**

Source: Defence for Uhuru Muigai Kenyatta

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

The Office of the Prosecutor

Ms. Fatou Bensouda, Prosecutor

Ms. Adesola Adeboyejo, Trial Attorney

Counsel for the Defence

Counsel for Francis Kirmi Muthaura

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

Counsel for Uhuru Muigai Kenyatta

Steven Kay QC and Gillian Higgins

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented

(Participation/Reparation)

Applicants

**The Office of Public Counsel for
Victims**

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

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Ms. Silvana Arbia, Registrar

Deputy Registrar

Mr. Didier Daniel Preira, Deputy
Registrar

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. INTRODUCTION

1. In accordance with Trial Chamber V's (the "Chamber") order to submit reasoned requests for additional redactions to ICC-01/09-02/11-468-AnxD (the "Public Annex"), the Defence submits the following request.

II. PROCEDURAL HISTORY

2. On 24 August 2012, the Prosecution filed a public redacted annex of the *inter se* communications between the Defence Teams for Mr. Uhuru Kenyatta and Ambassador Francis Muthaura.¹
3. On 27 August 2012, the Chamber temporarily reclassified the Public Annex as confidential. On 30 August 2012, the Defence for Mr. Uhuru Kenyatta (the "Defence") filed a request to have the Public Annex permanently reclassified as confidential.² On 5 September 2012, the Prosecution filed its response to the Defence request.³
4. On 12 September 2012, the Chamber rejected the Defence request to reclassify the Public Annex, but it granted the Defence and Prosecution seven days in which to file a reasoned response in order to identify material within the Public Annex, filing ICC-01/09-02/11-471-Conf or filing ICC-01/09-02/11-477-Conf that should be withheld from the public.⁴

¹ ICC-01/09-02/11-468-AnxD.

² ICC-01/09-02/11-471-Conf.

³ ICC-01/09-02/11-477-Conf.

⁴ ICC-01/09-02/11-481.

III. SUBMISSIONS

6. The Defence submits that filing ICC-01/09-02/11-471-Conf does not require any redactions and may be made available to the public in accordance with the Chamber's order.
7. In respect of the Public Annex, the Defence requests that the name [REDACTED] and the phrase [REDACTED] be redacted.⁵ The Defence notes that Pre-Trial Chamber II redacted these names from the Confirmation of Charges Decision.⁶ The Defence submits that Pre-Trial Chamber II made these redactions for reasons of privacy and witness security.⁷ To this date, there has been no order from Pre-Trial Chamber II or the Chamber lifting these redactions.
8. These redactions are also consistent with the approach applied by the Prosecution in the Updated Document Containing the Charges⁸ and the Public Annex.⁹
9. For the reasons above, the Defence requests the Chamber to order the aforementioned proposed redactions to the Public Annex.

⁵ ICC-01/09-02/11-468-AnxD at pages 108, 109, 120 and 121.

⁶ ICC-01/09-02/11-382-Red at para 342; [REDACTED]

⁷ [REDACTED] during the Confirmation of Charges Hearing. [REDACTED] at the Confirmation of Charges Hearing.

⁸ Compare ICC-01/09-02/11-468-Conf-AnxA with ICC-01/09-02/11-468-AnxC at paras 50, 52 and 55.

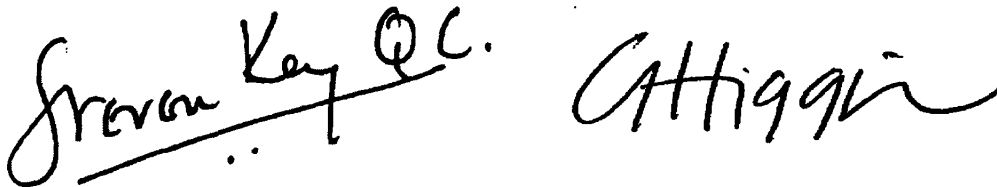
⁹ Compare ICC-01/09-02/11-468-Conf-AnxB with ICC-01/09-02/11-468-AnxD at para 50, fn. 131; para 52, fn. 137; para 52, fn. 138 and para 55, fn. 150.

IV. RELIEF

10. The Defence requests:

- a. that the name [REDACTED] and the phrase [REDACTED]
[REDACTED] be redacted in the Public Annex
and
- b. that, in accordance with the Chamber's order, Defence filing ICC-01/09-02/11-471-Conf be reclassified as public.

Respectfully submitted,

The image shows two handwritten signatures in black ink. The signature on the left is 'Steven Kay QC.' with a horizontal line drawn underneath it. The signature on the right is 'Gilligan' in a cursive script.

.....
Steven Kay QC and Gillian Higgins
On behalf of Uhuru Muigai Kenyatta

Dated this 14th day of September 2012

At London, England