

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/09-01/11
Date: 26 November 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. WILLIAM SAMOEI RUTO and JOSHUA ARAP SANG***

Public

Order regarding redactions

Decision to be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor
Ms Fatou Bensouda

Counsel for William Samoei Ruto
Mr Kioko Kilukumi Musau
Mr David Hooper

Legal Representatives of Victims

Counsel for Joshua Arap Sang
Mr Joseph Kipchumba Kigen-Katwa
Mr Joel Kimutai Bosek
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
Ms Silvana Arbia

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others

Trial Chamber V (“Trial Chamber” or “Chamber”) of the International Criminal Court (“Court”), in the case of *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, pursuant to Articles 64, 67(2) and 68(1) of the Rome Statute, Rules 76, 77, 81, 84, and 87 of the Rules of Procedure and Evidence and Regulations 24, 34 and 35 of the Regulations of the Court (“Regulations”), issues this Order regarding applications for non-standard redactions.

I. Background

1. On 27 September 2012, the Chamber issued its Decision on the protocol establishing a redaction regime, which annexed a protocol setting out a streamlined procedure for the application of redactions to materials subject to disclosure (“Redaction Protocol”).¹ The Redaction Protocol directed that any application for delayed disclosure of witness identities, that is beyond the final 9 January 2013 disclosure deadline, should be filed with the Chamber by 5 November 2012.² It further set out a procedure for other redactions falling outside a pre-approved category (“non-standard redactions”).³ According to this procedure, the party wishing to apply non-standard redactions to material subject to disclosure has to file an application with the Chamber justifying the proposed redactions. The disclosing party must simultaneously disclose the materials, with the proposed redactions in place, to the receiving party and provide a redacted version of its application to the receiving party to enable that party to submit its observations on the application within 21 days. The Redaction Protocol directed that any applications for non-standard redactions should be filed no later than 27 November 2012.⁴

¹ ICC-01/09-01/11-458 and its Annex ICC-01/09-01/11-458-AnxA-Corr.

² ICC-01/09-01/11-458-AnxA-Corr, para. 51.

³ ICC-01/09-01/11-458-AnxA-Corr, paras 7-8.

⁴ ICC-01/09-01/11-458-AnxA-Corr, para. 3.

2. On 5 November 2012, the Office of the Prosecutor ("Prosecution") filed an application for the delayed disclosure of the identities of nine witnesses and authorisation for redactions to corresponding witness statements or transcripts ("Delayed Disclosure Application").⁵ The witness statements and transcripts ("Witness Materials") containing the proposed redactions were included as annexes to the Delayed Disclosure Application.⁶ The proposed redactions to the Witness Materials include a variety of pre-approved and non-standard redactions in addition to redactions to witness identifying information.
3. On 8 November 2012, the Prosecution's public redacted version of the Delayed Disclosure Application, without annexes, was notified.⁷ Pursuant to Regulations 24 and 34(b) of the Regulations, the defence response to the Delayed Disclosure Application would fall due on 29 November 2012.
4. On 23 November 2012, the Prosecution filed a confidential *ex parte*, Prosecution and VWU Only, update to its Delayed Disclosure Application whereby it withdrew its request for disclosure of one witness's identify on the grounds that the witness was no longer expected to testify at trial ("Delayed Disclosure Update").⁸
5. Also on 23 November 2012, the Prosecution requested, by email, a one day extension of the 27 November 2012 time limit for submission of applications for non-standard redactions ("Request for Extension").⁹ Due to the urgency of the

⁵ Prosecution's application for delayed disclosure of the identities of certain witnesses and authorization of redactions pursuant to Decision ICC-01/09-01/11-458, 5 November 2012, ICC-01/09-01/11-468-Conf-Exp with confidential *ex parte*, Prosecution and VWU only, Annexes 1-9 (notified 6 November 2012).

⁶ Annexes 1B,2B,3B,4B,5B,6B,7B,8B,9B to ICC-01/09-01/11-468-Conf-Exp.

⁷ Public Redacted Version of the 5 November 2012 'Prosecution's application for delayed disclosure of the identities of certain witnesses and authorization of redactions pursuant to Decision ICC-01/09-01/11-458,' 7 November 2012, ICC-01/09-01/11-468-Red (notified 8 November 2012).

⁸ Prosecution's update regarding Prosecution submission ICC-01/09-01/11-468-Conf-Exp, 23 November 2012, ICC-01/09-01/11-480-Conf-Exp.

⁹ Email from prosecution to Trial Chamber V Communications, 23 November 2012 at 3.44pm. The initial email request did not copy members of the defence teams. In response to a request from the Chamber, the email was resent at 6.57pm and copied to relevant members of the defence teams.

matter, the Request for Extension was exceptionally accepted by the Chamber without a formal filing being made. In support of the Request for Extension, the Prosecution noted that the regular offices of the Court would be exceptionally closed on 24 November 2012 and that the Prosecution had not been able to secure alternative office space.

6. In this Order the Chamber rules on the Request for Extension and addresses, *proprio motu*, the disclosure of both the Witness Materials and a redacted version of the Delayed Disclosure Update to the defence.

II. Analysis and conclusions

7. With respect to the Request for Extension, the Chamber notes that it is limited in nature and considers that the Prosecution has shown good cause within the meaning of Regulation 35 of the Regulations. The Chamber accordingly extends the time limit for submission of applications for non-standard redactions to 28 November 2012.
8. With respect to the Witness Materials, the Chamber notes that, as at the date of this Order, they do not appear to have been disclosed, in redacted form, to the defence. As the Witness Materials contain both pre-approved and other non-standard redactions, in addition to redactions to witness identifying information, the Chamber considers that they should be disclosed to the defence forthwith, pending the Chamber's ruling on the Delayed Disclosure Application. Such disclosure accords with the procedure set out in the Redaction Protocol for pre-approved and other non-standard redactions and will enable the defence to submit more meaningful observations on the Delayed Disclosure Application and the scope of the proposed redactions.

9. With respect to the Delayed Disclosure Update, the Chamber notes that, as at the date of this Order, a redacted version has not been made available to the defence. As the information contained in the Delayed Disclosure Update is of relevance to the defence, in particular for the purposes of preparing its response to the Delayed Disclosure Application, the Chamber considers that a redacted version should be provided.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

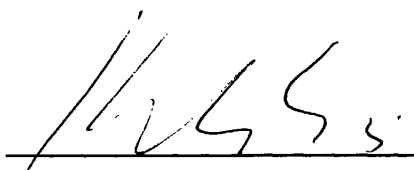
GRANTS the Request for Extension;

DIRECTS the Prosecution to disclose the Witness Materials, in redacted form, to the defence by no later than 30 November 2012;

DIRECTS the Prosecution, to the extent it has not already been done, to file a redacted version of the Delayed Disclosure Update by no later than 27 November 2012; and

EXTENDS the deadline for the defence to respond to the Delayed Disclosure Application until 7 December 2012.

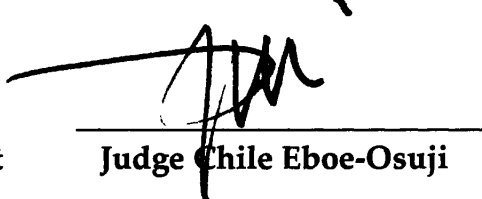
Done in both English and French, the English version being authoritative.



Judge Kuniko Ozaki, Presiding,



Judge Christine Van den Wyngaert



Judge Chile Eboe-Osuji

Dated 26 November 2012

At The Hague, The Netherlands