



Original: English

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

Date: 12 December 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

Joint Defence Response to Prosecution's application to vary the "Decision on the protocol establishing a redaction regime, ICC-01/09-01/11-458" to allow redaction of investigators' names from relevant material, and to allow consideration of this Application without requiring provision of redacted copies of that material to the Defence

Source: Defence for Mr. William Samoei Ruto
Defence for Mr. Joshua Arap Sang

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

The Office of the Prosecutor

Fatou Bensouda, Prosecutor
Cynthia Tai, Trial Lawyer

Counsel for William Ruto

David Hooper QC
Kioko Kilukumi Musau

Counsel for Joshua Sang

Joseph Kipchumba Kigen-Katwa
Philemon K.B. Koech, Joel Kimutai Bosek

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(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

Counsel Support Section

Deputy Registrar

Didier Daniel Preira

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

1. In its Application,¹ the prosecution requests a modification of the procedure established in paragraph 7 of the Redactions Protocol² operational in this case. The prosecution further requests permission to apply for redactions to investigators' identities without also providing to the defence the relevant witness materials, such as the statement or interview transcripts, that reflects the proposed redactions. The prosecution also seeks to redact investigators' names from all disclosable material, and requests authorization to redact identifying information of prosecution investigators operating in the field from all materials to be disclosed between now and 9 January 2013.³
2. The Chamber ordered this issue to be determined on an expedited basis.⁴
3. With two caveats, the defence does not object to the prosecution's Application.
4. Firstly, the defence does not accept the prosecution's assessment of the alleged security risk with respect to investigators and witnesses,⁵ should the defence be disclosed the identity of prosecution investigators in the field. The defence are officers of the court and understand their obligations with respect to confidentiality and ensuring the integrity of investigations.
5. Secondly, the defence requests that, in lieu of ordering the disclosure of the investigators' identities, the Chamber require the prosecution to provide the defence with a list of witness interviews in which pseudonyms or letter codes are used to identify Prosecution investigators and witnesses whose identities have not yet been disclosed. The prosecution has indicated that it has no objection to

¹ *Prosecutor v. Ruto and Sang*, ICC-01/09-01/11-498, Prosecution's application to vary the "Decision on the protocol establishing a redaction regime, ICC-01/09-01/11-458" to allow redaction of investigators' names from relevant material, and to allow consideration of this Application without requiring provision of redacted copies of that material to the Defence, 6 December 2012 ("Application"). See also, ICC-01/09-01/11-477-Conf-Red, Confidential redacted version of the First Prosecution application for the authorisation of non-standard redactions pursuant to Decision ICC-01/09-01/11-458 and Annex A, 27 November 2012 ("First Prosecution Application") and ICC-01/09-01/11-488, Second Prosecution application for the authorization of non-standard redactions pursuant to Decision ICC-01/09-01/11-458, 28 November 2012.

² *Prosecutor v. Ruto and Sang*, ICC-01/09-01/11-458-AnxA, Decision on the protocol establishing a redaction regime, 27 September 2012.

³ Application, paras. 11 and 12.

⁴ Email dated 7 December 2012, from the Trial Chamber Legal Officer to defence Counsel, stating that the Chamber directed the defense to file any response to prosecution filing ICC-01/09-01/11-498 by 12 December 2012.

⁵ See prosecution arguments at paras. 7-11 of First Prosecution Application.

providing this and has acknowledged that such “a referencing tool would enable the Defence to determine which witnesses have been interviewed by the same investigators and to voice any concerns the defence may have regarding the manner in which the interviews have been conducted”.⁶ The defence further requests the Chamber to require the prosecution to add those pseudonyms at the appropriate places when the interviews are finally disclosed to the defence.



David Hooper, QC
On behalf of William Samoei Ruto
Dated this 12th day of December 2012
In The Hague



Joseph Kipchumba Kigen-Katwa
On behalf of Joshua Arap Sang
Dated this 12th day of December 2012
In Nairobi

⁶ First Prosecution Application, para. 15.