

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/09-02/11
Date: 20 December 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 A**

Prosecution's Communication of the Disclosure of Evidence

Source: 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
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Ogetto and Shyamala Alagendra

Counsel for Uhuru Muigai Kenyatta

Steven Kay QC and Gillian Higgins

Legal Representatives of Victims

Fergal Gaynor

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
Didier Preira, Deputy-Registrar
Victims and Witnesses Unit

Defence Support Section

Detention Section

**Victims Participation and Reparations
Section**

Other

1. In accordance with the Chamber's 26 November 2012 "Order regarding redactions"¹ and its "Decision on the protocol establishing a redaction regime" ("Redactions Protocol"),² the Prosecution herewith submits its communication of the disclosure of incriminatory evidence pursuant to Articles 61(3)(b), 64(3)(c) and 67(1)(a) and (b) of the Rome Statute (the "Statute"). The Prosecution also notifies the Chamber of the disclosure of potentially exculpatory evidence pursuant to Article 67(2) of the Statute, and of material falling within Rule 77 of the Rules of Procedure and Evidence.³
2. On 14 December 2012, the Prosecution disclosed to the Defence a total of 309 items, listed in Confidential Annex A. Of these, 91 items were disclosed without redactions and 218 with redactions.⁴ Apart from the redactions related to witness identity for witnesses for whom delayed disclosure has been sought, the only "non-standard" redactions are those to investigators' names and identifying information. In this regard, the Prosecution respectfully refers the Chamber to the 6 December 2012 "application to vary the 'Decision on the protocol establishing a redaction regime, ICC-01/09-02/11-495' 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".⁵ The disclosed items also contained additional material related to Witness 219. For the redactions related to the identity of this witness, the Prosecution further refers the Chamber to the 13 December 2012 "Prosecution's provision of supplemental material to the corrigendum of confidential ex parte Prosecution and Victims and Witnesses Unit

¹ ICC-01/09-02/11-541.

² ICC-01/09-02/11-495- AnxA-Corr, paras 12-13.

³ *Ibid*

⁴ Out of 218 items, 123 were disclosed with redactions to content and metadata; seven items with redactions to content only; and 89 items with redactions to metadata only.

⁵ ICC-01/09-02/11-558.

Only Annex D to the 'Prosecution Application for delayed disclosure of witness identities' (ICC-01/09-02/11-519-Conf-Exp)".⁶

3. In addition to the 309 items disclosed for the first time on 14 December 2012, the Prosecution re-issued one document – KEN-OTP-0085-0934 – in which some information was previously disclosed inadvertently.



Fatou Bensouda,
Prosecutor

Dated this 20th day of December 2012
At The Hague, The Netherlands

⁶ ICC-01/09-02/11-571-Red