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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. WILLIAM SAMOEI RUTO AND JOSHUA ARAP SANG**

Public
with Confidential *Ex parte* Prosecution and VWU Annexes 1 and 2
Prosecution application for non-standard redactions in materials related to P-0015

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

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Introduction

1. The Prosecution hereby requests authorization to redact information in newly registered materials related to P-0015 that would identify Prosecution witnesses for whom it has requested delayed disclosure. This application is made pursuant to Articles 54(3)(f), 64(2) and 68(1) of the Rome Statute ("Statute"), Rules 81(2) and 81(4) of the Rules of Procedure and Evidence ("Rules"), and the Protocol establishing a redaction regime in this case ("Protocol"),¹ set out by the Trial Chamber V ("Chamber").

Procedural History

1. On 27 September 2012, in its Redaction Protocol Decision, the Chamber held, *inter alia*, that (i) any request for a delay in disclosure of witness identities must be addressed on a case-by-case basis, and (ii) the scope of redactions applied to identifying information should not exceed that which is strictly necessary to protect the identity of the witness.²
2. On 17 December 2012, the Prosecution filed its second application requesting a variation of the deadline for certain witnesses, and delayed disclosure for witnesses P-0015, P-0016, P-0032, P-0144, P-0481, P-0495 and P-0524 ("Second Delayed Disclosure Application").³
3. The materials which are the subject of the present application relate to P-0015 (and also implicate P-0016 and P-0028) but were only registered after the Prosecution filed the Second Delayed Disclosure Application so could not be included in that application.

¹ ICC-01/09-01/11-458-AnxA.

² ICC-01/09-01/11-458, para 30.

³ ICC-01/09-01/11-515-Conf-Exp; ICC-01/09-01/11-515-Conf-Red; ICC-01/09-01/11-515-Red2.

Submissions

Legal Basis for redactions

4. Articles 54(3)(f), 64(2) and 68(1) of the Statute, Rule 81(2) and (4), and paragraphs 51-53 of the Redaction Protocol provide the Chamber with the legal basis to authorize the redactions sought in the present application.

Factual basis for delayed disclosure and redactions to identifying information of witnesses

5. The Prosecution hereby incorporates the submissions justifying the delayed disclosure of P-0015 and P-0016's identities set out in the Second Delayed Disclosure Application.⁴

Material for which the Prosecution seeks redactions

6. The materials with highlights indicating the proposed redactions are attached in Annex 1. An explanatory chart is attached in Annex 2. The substance and coherence of the materials, including any information which may be exculpatory or relevant to the preparation of the Defence, is largely unaffected by the proposed redactions. The Defence will still be in a position to assess the information contained therein and prepare its case. Moreover, any difficulty in preparation as a result of the redactions to identifying information will be cured by the lifting of the redactions once the witnesses' identities are disclosed in accordance with the timeline to be determined by the Chamber.

Relief Requested

7. For the foregoing reasons, the Prosecution respectfully requests that the Chamber authorize interim redacted disclosure of the materials as presented in Annex 1 to this application.

⁴ *Ibid*, paras. 23-27.



Fatou Bensouda,
Prosecutor

Dated this 2nd January 2013
At The Hague, The Netherlands