

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/09-02/11

Date: 10 January 2013

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
Adesola Adeboyejo

Counsel for Francis Kirimi Muthaura

Karim A. Khan QC, Essa Faal, Kennedy
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 the 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 4 January 2013, the Prosecution disclosed to the Defence a total of 63 items, listed in Confidential Annex A. Of these, 39 items were disclosed without redactions and 24 with redactions.⁴ The only "non-standard" redactions are those to investigators' names and identifying information, the temporary redaction of which was authorized in the Chamber's "Decision on prosecution application to vary the Redaction Protocol and to redact investigators' identifying information".⁵
3. The Prosecution also wishes to inform the Chamber that eleven of the items disclosed on 4 January 2013 are audio files containing conversations in Kikuyu. Translations and transcriptions are in progress and will be disclosed when complete. The Prosecution has provided a brief explanation of their content to the Defence. Lastly, the Prosecution informs the Chamber that one item⁶ has been disclosed inadvertently. The Prosecution has contacted the Defence teams and requested for

¹ ICC-01/09-02/11-541.

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

³ *Ibid.*

⁴ Out of 24 items, nine were disclosed with redactions to content and metadata; one item with redactions to content only; and 14 items with redactions to metadata only.

⁵ ICC-01/09-02/11-579.

⁶ KEN-OTP-0089-0134.

the necessary steps to be taken on 5 January 2013. Both teams have confirmed that they have accommodated the Prosecution's request.⁷



Fatou Bensouda,
Prosecutor

Dated this 10th day of January 2013
At The Hague, The Netherlands

⁷ *Inter partes* communication was conducted by way of e-mail.