

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/09-02/11
Date: 8 February 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 and B**

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

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Legal Representatives of Victims

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Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States Representatives

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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 submits its communication of the disclosure of incriminatory evidence pursuant to Article 61(3)(b), 64(3)(c) and 67(1)(a) and (b) of the Rome Statute ("Statute"), 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 ("Rules").³
2. On 9 January 2013, the Prosecution disclosed to the Defence a total of 235 items, listed in Confidential Annex A. Of these, 103 items were disclosed without redactions and 132 with redactions.⁴ "Non-standard" redactions to investigators' names and identifying information were made pursuant to the Chamber's "Decision on prosecution application to vary the Redaction Protocol and to redact investigators' identifying information".⁵ On the same day, the Prosecution re-classified, as incriminating evidence, 86 items that were previously disclosed pursuant to its obligations under Article 67(2) of the Statute and Rule 77 of the Rules, and re-issued the metadata accordingly. These items are listed in Confidential Annex B.
3. The Prosecution also notes that some of the disclosed items contain redactions made under the category B.1.,⁶ relating to the witnesses for whom the Chamber has authorised temporary non-disclosure of identities.

¹ ICC-01/09-02/11-541.

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

³ *Ibid.*

⁴ Of 235 items, 69 were disclosed with redactions to content and metadata, 50 items with redactions to content only and 13 items with redactions to metadata only.

⁵ ICC-01/09-02/11-579.

⁶ See ICC-01/09-02/11-495-AnxA-Corr, paras 50-54.

4. Finally, in compliance with the Chamber's Decision, the Prosecution re-disclosed Witness 4's statement with redactions to his country of residence lifted.



Fatou Bensouda,
Prosecutor

Dated this 8th of February 2013
At The Hague, The Netherlands