

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/09-02/11
Date: 14 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**

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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Unrepresented Victims

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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 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"). 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 ("Rules").³
2. On 11 February 2013, the Prosecution disclosed to the Defence a total of 263 items, listed in Confidential Annex A. Of these, 169 items, including two audio files,⁴ were re-disclosed with redactions applied to the identifying information of family members of witnesses (Category B.2) and of "other persons at risk as a result of the activities of the Court" and their family members (Category B.3) now lifted.⁵ Pursuant to the Redactions Protocol, the Prosecution has maintained redactions to the contact information of the family members of witnesses and other third parties,⁶ as well as the information identifying the minor children,⁷ in some of the re-disclosed material.
3. The Prosecution has maintained redactions, in 29 items, to the identifying information of certain individuals "on the basis of exceptional circumstances", in

¹ ICC-01/09-02/11-541.

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

³ *Ibid.*

⁴ These audio files were disclosed on 4 and 9 January 2013. See ICC-01/09-02/11-597 and ICC-01/09-02/11-637.

⁵ ICC-01/09-02/11-495-AnxA-Corr, paras 55-58.

⁶ ICC-01/09-02/11-495-AnxA-Corr, para 58.

⁷ ICC-01/09-02/11-495-AnxA-Corr, para 56.

accordance with paragraph 27 of the Redactions Protocol.⁸ The Prosecution respectfully refers the Chamber to the two applications made in this regard.⁹

4. The Prosecution also disclosed to the Defence the identities of two witnesses, including an ICCPP witness in compliance with the Chamber's "Decision on the schedule leading up to trial",¹⁰ and re-disclosed the relevant witness material with the redactions previously applied to the identities of these witnesses under Category B.1¹¹ lifted.
5. Further, the Prosecution disclosed 37 audio files related to Witness 12, for which the Chamber had authorised temporary non-disclosure.¹²
6. Finally, the Prosecution re-issued the metadata in 31 previously disclosed items, lifting the redactions previously applied to the identity of an ICCPP witness (Category B.1) and an identified third party (Category B.3).



Fatou Bensouda,
Prosecutor

Dated this 14th of February 2013
At The Hague, The Netherlands

⁸ ICC-01/09-02/11-495, para. 27.

⁹ ICC-01/09-02/11-636-Conf-Red and ICC-01/09-02/11-638-Conf-Red.

¹⁰ ICC-01/09-02/11-451, para 21.

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

¹² The Prosecution notes that similar to the audio files disclosed on 4 January 2013 (see ICC-01/09-02/11-597, para 3), the 37 audio files also contain conversations in Kikuyu.