

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **18 April 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. WILLIAM SAMOEI RUTO AND
JOSHUA ARAP SANG***

Confidential

With confidential *ex parte*, Prosecution only Annex A

**Prosecution Application for Redactions to Further Screening Notes of Trial
Witnesses to Be Disclosed to the Defence**

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. On 2 April 2013, the Defence filed its Joint Defence Request to Be Provided with Full, Non-Redacted Screening Notes¹ ("Defence request") wherein it requested the Chamber to order the Prosecution to disclose all screening notes in the Prosecution's possession (in a full un-redacted format), and not just those screening notes which contain either possible Article 67(2) ("PEXO") or Rule 77 material.
2. On 11 April 2013, the Prosecution submitted its Response to the Defence request² ("Prosecution response") wherein it undertook, *inter alia*, to disclose to the Defence the screening notes of all witnesses whom the Prosecution intends to call for trial ("trial witnesses") in their full original form, with the application of limited and strictly necessary redactions.³

Confidentiality

3. This filing is submitted on a confidential basis, as it contains information of a confidential nature the disclosure of which could pose a risk to witnesses and individuals at risk due to the activities of the Court. Furthermore, the attached Annex A is submitted on a confidential *ex parte*, Prosecution only, basis as it contains the content of the redactions sought.

Submissions

4. The Prosecution, within its response, made an application for authorization to apply redactions to the certain appended screening notes, where the content contained identifying information of family members of Prosecution witnesses (Rule 81(4) – category B.2), and/or of innocent third parties and

¹ ICC-01/09-01/11-666-Conf-Exp.

² ICC-01/09-01/11-677-Conf.

³ *Ibid.*, paragraph 8.

other persons at risk on account of the activities of the Court (Rule 81(4) – category B.3).

5. The said screening notes were those of trial witnesses which had been assessed as containing either possible PEXO or Rule 77 material. The Prosecution undertook in its response⁴ to submit, within a week, a further application containing the screening notes of those trial witnesses assessed as not containing either PEXO or Rule 77, but which nonetheless required the application of limited and necessary redactions.
6. The Prosecution hereby appends to this application confidential, *ex parte* (Prosecution only) Annex A comprising screening notes of these trial witnesses for the inspection of the Chamber as well as tables outlining the redactions sought. The B.2 and B.3 redactions sought, highlighted in purple, are strictly necessary, and of no relevance to the Defence, and do not hinder the comprehension of the material.
7. In addition, the Prosecution has applied certain limited redactions which do not require the authorization of the Chamber to: locations of interview (highlighted in green), identifying information of leads and sources (also highlighted in green) and internal work product within the screening notes (highlighted in yellow), including any subjective opinions or conclusions of Prosecution investigators recorded in the screening notes, and information related to the Prosecution's objectives and techniques of investigation.⁵ The Prosecution has also applied redactions to the names of Prosecution investigators⁶ (highlighted in blue). These redactions can also be inspected by the Chamber *in camera* along with the proposed highlights in Annex A. Courtesy copies of these screening notes, with the redactions sought in

⁴ Paragraph 8.

⁵ See ICC-01/04-01/06-2656-Conf, para. 17(iii) to 17(vi).

⁶ The Prosecution notes that redactions to the names of certain investigators have previously been granted by the Chamber in ICC-01/09-01/11-518.

place, will be provided to the Defence so they may obtain advance notice of the content. Furthermore, the Prosecution will shortly effect disclosure formally to the Defence of those screening notes contained in this filing and in the Prosecution's response of 11 April which do not contain any B.2 or B.3 redactions.

Relief Requested

8. For the foregoing reasons, the Prosecution requests the Chamber to authorize the ongoing category B.2 and B.3 redactions to the content of the screening notes of trial witnesses as outlined in Annex A.



Fatou Bensouda,
Prosecutor

Dated this 18th day of April, 2013
At The Hague, The Netherlands