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

Date: 10 June 2013

TRIAL CHAMBER V(b)

Before: Judge Kuniko Ozaki, Presiding Judge
Judge Robert Fremr
Judge Chile Eboe-Osuji

SITUATION IN THE REPUBLIC OF KENYA

***IN THE CASE OF
THE PROSECUTOR V. UHURU MUIGAI KENYATTA***

Public

Prosecution request for reclassification

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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Legal Representatives of Victims

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Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
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Defence Support Section

Victims and Witnesses Unit

Patrick Craig

Detention Section

**Victims Participation and Reparations
Section**

Other

1. Pursuant to Regulation 23bis(1) and (3) of the Regulations of the Court, the Prosecution hereby requests the Chamber to reclassify as “confidential” the following documents initially designated by the Prosecution as “confidential, *ex parte*”: (i) list of trial witnesses;¹ (ii) list of trial evidence;² (iii) summaries of matters on which trial witnesses are expected to testify;³ and (iv) initial (9 January 2013) and updated (6 May 2013) versions of the Prosecution pre-trial brief.⁴

Submissions

2. On 9 January 2013, the Prosecution filed its witness list, evidence list, witness summaries and pre-trial brief. These documents were designated “confidential, *ex parte*” because they contained identifying information regarding witnesses for whom the Chamber had granted delayed disclosure, and other information for which delayed disclosure had been authorised. The Prosecution filed confidential redacted versions on 10 January 2013, which were made available to the Defence and Common Legal Representative.⁵
3. The Prosecution filed its updated pre-trial brief on 6 May 2013.⁶ The unredacted version was designated “confidential, *ex parte*” because it contained information that could identify witnesses for whom the Chamber had authorized delayed disclosure. The Prosecution filed a confidential redacted version on 7 May 2013, which was made available to the Defence and Common Legal Representative.⁷

¹ ICC-01/09-02/11-596-Conf-Exp-AnxA.

² ICC-01/09-02/11-596-Conf-Exp-AnxB.

³ ICC-01/09-02/11-596-Conf-Exp-AnxC.

⁴ ICC-01/09-02/11-596-Conf-Exp-AnxD-Corr; ICC-01/09-02/11-732-Conf-Exp-AnxB.

⁵ ICC-01/09-02/11-596-Conf-Red-AnxA; ICC-01/09-02/11-596-Conf-Red-AnxB; ICC-01/09-02/11-596-Conf-Red-AnxC; ICC-01/09-02/11-596-Conf-AnxD-Red-Corr.

⁶ ICC-01/09-02/11-732-Conf-Exp-AnxB.

⁷ ICC-01/09-02/11-732-Conf-AnxB-Red.

4. On 7 June 2013, the Victims and Witnesses Unit notified the Prosecution that the identities of the remaining four delayed disclosure witnesses could be disclosed. On the same day, the Prosecution disclosed the identities to the Defence by letter. Unredacted versions of the witnesses' materials will be disclosed to the Defence on 12 June 2013, once the technical process required to lift the identity-related redactions is finalised.
5. Because the identities of all Prosecution witnesses have now been disclosed, it is no longer necessary for the unredacted versions of the Prosecution's witness list, witness summaries, list of evidence and pre-trial brief to be designated "*ex parte*". These documents should, however, remain confidential to ensure the effectiveness of in-court protective measures for witnesses, if sought by the Prosecution and granted by the Chamber. The Prosecution will file a public redacted version of its updated pre-trial brief in due course.

Request for relief

6. The Prosecution respectfully requests the Chamber to order the reclassification of the following documents from “confidential, *ex parte*” to “confidential”:

- ICC-01/09-02/11-596-Conf-Exp-AnxA;
- ICC-01/09-02/11-596-Conf-Exp-AnxB;
- ICC-01/09-02/11-596-Conf-Exp-AnxC;
- ICC-01/09-02/11-596-Conf-Exp-AnxD-Corr; and
- ICC-01/09-02/11-732-Conf-Exp-AnxB.



Fatou Bensouda,
Prosecutor

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