

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 11 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

Decision reclassifying five documents

Decision to be notified, in accordance with regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

Ms Fatou Bensouda

Ms Adesola Abedoyejo

Counsel for Uhuru Muigai Kenyatta

Mr Steven Kay

Ms Gillian Higgins

Legal Representatives of Victims

Mr Fergal Gaynor

Unrepresented Victims

Legal Representatives of Applicants

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

Ms Paolina Massida

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

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Deputy Registrar

Victims and Witnesses Unit

Mr Patrick Craig

Detention Section

**Victims Participation and Reparations
Section**

Others

Trial Chamber V(B) (“Chamber”) of the International Criminal Court (“Court”), in the case of *The Prosecutor v. Uhuru Muigai Kenyatta*, pursuant to Regulation 23 *bis*(3) of the Regulations of the Court (“Regulations”), issues the following Decision reclassifying five documents.

1. On 9 January 2013 the Office of the Prosecutor (“Prosecution”) submitted its witness list,¹ evidence list,² witness summaries,³ and pre-trial brief⁴. Since these documents contained identifying information of witnesses for whom the Chamber had granted delayed disclosure, they were filed as confidential *ex-parte*, Prosecution and Victims and Witnesses Unit (“VWU”) only, documents.⁵ Confidential redacted versions, available to the defence for Mr Kenyatta (“Defence”) and the Common Legal Representative for Victims (“CLRV”), were filed on 10 January 2013.⁶
2. On 6 May 2013 the Prosecution submitted its updated pre-trial brief.⁷ For the same reason set out in the previous paragraph, this document was also filed on a confidential *ex-parte*, Prosecution and VWU only, basis.⁸ A confidential redacted version available to the Defence and CLRV, was filed on 7 May 2013.⁹

¹ Annex A to Prosecution’s Provision of materials pursuant to Decision ICC-01/09-02/11-451, ICC-01/09-02/11-596-Conf-Exp-AnxA.

² Annex B to Prosecution’s Provision of materials pursuant to Decision ICC-01/09-02/11-451, ICC-01/09-02/11-596-Conf-Exp-AnxB.

³ Annex C to Prosecution’s Provision of materials pursuant to Decision ICC-01/09-02/11-451 ICC-01/09-02/11-596-Conf-Exp-AnxC.

⁴ Corrigendum to Annex D to Prosecution’s Provision of materials pursuant to Decision ICC-01/09-02/11-451, ICC-01/09-02/11-596-Conf-Exp-AnxD-Corr.

⁵ Prosecution’s Provision of materials pursuant to Decision ICC-01/09-02/11-452, ICC-01/09-02/11-596, paras 2, 5, 7 and 14.

⁶ ICC-01/09-02/11-596-Conf- AnxA-Red; ICC-01/09-02/11-596-Conf- AnxB-Red; ICC-01/09-02/11-596-Conf- AnxC-Red; ICC-01/09-02/11-596-Conf-AnxD-Red-Corr.

⁷ Annex B to Prosecution submission of the Second Updated Document Containing the Charges and the updated Pre-Trial Brief, ICC-01/09-02/11-732-Conf-Exp-AnxB. A confidential redacted version was filed on 7 May 2013.

⁸ Prosecution submission of the Second Updated Document Containing the Charges and the updated Pre-Trial Brief, ICC-01/09-02/11-732, para. 3.

⁹ ICC-01/09-02/11-732-Conf-AnxB-Red.

3. On 10 June 2013 the Prosecution filed the "Prosecution Request for Reclassification" informing the Chamber that the identities of all remaining delayed disclosure witnesses had been disclosed to the Defence.¹⁰ On the basis of such development, the Prosecution requests the Chamber to reclassify, pursuant to Regulation 23 *bis*(1) and (3) of the Regulations, the confidential *ex-parte* versions of the witness list,¹¹ evidence list,¹² witness summaries,¹³ and pre-trial brief¹⁴ as confidential documents.
4. Considering that the identities of the remaining four delayed disclosure witnesses have been disclosed, the Chamber finds that it is no longer justified for the unredacted versions of the aforementioned documents to be designated "confidential *ex-parte*".

For the foregoing reasons, the Chamber hereby:

GRANTS the Prosecution's request; and

DIRECTS the Registry to reclassify the following documents as "confidential", available to the Defence and CLRV:

- 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.

Done in both English and French, the English version being authoritative.

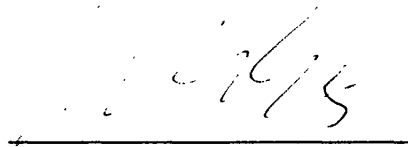
¹⁰ ICC-01/09-02/11-753, para. 4.

¹¹ ICC-01/09-02/11-596-Conf-Exp-AnxA.

¹² ICC-01/09-02/11-596-Conf-Exp-AnxB.

¹³ ICC-01/09-02/11-596-Conf-Exp-AnxC.

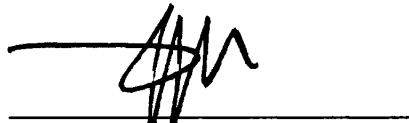
¹⁴ ICC-01/09-02/11-596-Conf-Exp-AnxD-Corr and ICC-01/09-02/11-732-Conf-Exp-AnxB.



Judge Kuniko Ozaki, Presiding,



Judge Robert Fremr



Judge Chile Eboe-Osuji

Dated 11 June 2013

At The Hague, The Netherlands