

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No: ICC-01/09-02/11

Date: 14 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 response to the “Victims’ request for access to confidential filings and evidence”

Source: The Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the Regulations of the Court to:

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Introduction

1. The Prosecution hereby responds to the Common Legal Representative (“CLR”)’s 23 May 2013 “request for access to confidential filings and evidence” (“Request”).¹

Submissions

2. Eleven of the 21 documents cited in paragraphs 12 and 13 of the Request are Defence submissions.² While the Prosecution has no objection to these documents being provided to the CLR, the Defence is best placed to advise the Chamber on whether there is any reason this should not occur.³
3. The remaining ten documents were filed by the Prosecution.⁴ The Prosecution has no objection to these filings being notified to the CLR. Further, and pursuant to the CLR’s request,⁵ the Prosecution has reviewed the case docket and determined that there are several additional Prosecution filings that were filed since the Chamber’s 3 October 2012 decision, which were not notified to the CLR.⁶ The Prosecution has no objection to these filings being notified to the CLR.
4. The Prosecution documents (and relevant annexes) that may be notified to the CLR are:
 - ICC-01/09-02/11-726-Conf and ICC-01/09-02/11-726-Conf-AnxA;
 - ICC-01/09-02/11-722-Conf;

¹ ICC-01/09-02/11-742.

² ICC-01/09-02/11-723-Red, ICC-01/09-02/11-721-Red, ICC-01/09-02/11-719-Red, ICC-01/09-02/11-717-Red, ICC-01/09-02/11-707-Corr-Red, ICC-01/09-02/11-681-Red, ICC-01/09-02/11-678-Red, ICC-01/09-02/11-656-Red, ICC-01/09-02/11-628-Red, ICC-01/09-02/11-617-Red and ICC-01/09-02/11-481-Red.

³ The Prosecution notes that ICC-01/09-02/11-678-Red, ICC-01/09-02/11-656-Red, ICC-01/09-02/11-628-Red and ICC-01/09-02/11-617-Red are Muthaura Defence filings, and ICC-01/09-02/11-481-Red is a joint Defence filing.

⁴ ICC-01/09-02/11-726-Red, ICC-01/09-02/11-722-Red, ICC-01/09-02/11-708-Red, CC-01/09-02/11-664-Red2, ICC-01/09-02/11-621-Red2, ICC-01/09-02/11-607-Red, ICC-01/09-02/11-571-Red, ICC-01/09-02/11-562-Red2, ICC-01/09-02/11-519-Red and ICC-01/09-02/11-468-AnxD-Red and confidential Annex A and B.

⁵ ICC-01/09-02/11-742, paras 14 and 16(1).

⁶ With the exception of ICC-01/09-02/11-515, these documents relate to procedural matters such as redactions and reclassification requests.

- ICC-01/09-02/11-708-Conf;
- ICC-01/09-02/11-664-Conf-Exp;
- ICC-01/09-02/11-649-Conf;
- ICC-01/09-02/11-621-Conf-Exp;
- ICC-01/09-02/11-607-Conf, ICC-01/09-02/11-607-Conf-AnxA, ICC-01/09-02/11-607-Conf-AnxB, ICC-01/09-02/11-607-Conf-AnxC and ICC-01/09-02/11-607-Conf-AnxD;
- ICC-01/09-02/11-599-Conf, ICC-01/09-02/11-599-Conf-AnxA-Red and ICC-01/09-02/11-599-Conf-AnxB-Red;
- ICC-01/09-02/11-592-Conf;
- ICC-01/09-02/11-571-Conf-Exp and ICC-01/09-02/11-571-Conf-AnxA-Red;
- ICC-01/09-02/11-570-Conf;
- ICC-01/09-02/11-562-Conf-Red, ICC-01/09-02/11-562-Conf-AnxC-Red, ICC-01/09-02/11-562-Conf-AnxD-Red, ICC-01/09-02/11-562-Conf-AnxE-Red, ICC-01/09-02/11-562-Conf-AnxF-Red, ICC-01/09-02/11-562-Conf-AnxG-Red, ICC-01/09-02/11-562-Conf-AnxH-Red and ICC-01/09-02/11-562-Conf-AnxI-Red;
- ICC-01/09-02/11-547-Conf;
- ICC-01/09-02/11-539-Conf;
- ICC-01/09-02/11-525-Conf;
- ICC-01/09-02/11-519-Conf-Red2, ICC-01/09-02/11-519-Conf-AnxC-Corr-Red, ICC-01/09-02/11-519-Conf-AnxD-Corr-Red, ICC-01/09-02/11-519-Conf-AnxE-Corr-Red, ICC-01/09-02/11-519-Conf-AnxF-Corr-Red and ICC-01/09-02/11-519-Conf-AnxG-Corr-Red;
- ICC-01/09-02/11-515-Conf;
- ICC-01/09-02/11-510-Conf-Red;
- ICC-01/09-02/11-504-Conf;
- ICC-01/09-02/11-502-Conf;
- ICC-01/09-02/11-500-Conf-Red; and
- ICC-01/09-02/11-468-Conf-AnxA and ICC-01/09-02/11-468-Conf-AnxB.⁷

5. While certain of the above are responses to Defence submissions, the Prosecution sees no impediment to the CLR being granted access to them.

6. Of the above, ICC-01/09-02/11-664-Conf-Exp, ICC-01/09-02/11-621-Conf-Exp and ICC-01/09-02/11-571-Conf-Exp were classified "*ex parte*" because they contained

⁷ The CLR has no need of ICC-01/09-02/11-468-AnxD-Red, which he requests in paragraph 13 of the Request, because it is a public redacted version of ICC-01/09-02/11-468-Conf-AnxB.

information that may have led to the identification of Prosecution witnesses for whom the Chamber had authorised delayed disclosure. Since the identities of all Prosecution witnesses have now been disclosed, the Prosecution requests the Chamber re-classify these three documents “confidential” pursuant to Regulation 23bis(3), and grant access to the Defence and CLR.

Conclusion

7. The Prosecution has no objection to the CLR being granted access to the documents listed above in paragraph 4.
8. Further, the Prosecution informs the Chamber that there is no longer a basis for ICC-01/09-02/11-664-Conf-Exp, ICC-01/09-02/11-621-Conf-Exp and ICC-01/09-02/11-571-Conf-Exp to remain “*ex parte*”, and requests the Chamber: (i) re-classify these documents “confidential” pursuant to Regulation 23bis(3); and (ii) grant access to the Defence and CLR.



Fatou Bensouda,
Prosecutor

Dated this 14th day of June 2013
At The Hague, The Netherlands