

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 24 July 2013

**TRIAL CHAMBER V(A)**

**Before:** Judge, Chile Eboe-Osuji, Presiding  
Judge Olga Herrera Carbuccion  
Judge Robert Fremr

**SITUATION IN THE REPUBLIC OF KENYA**

**IN THE CASE OF**

***THE PROSECUTOR v. WILLIAM SAMOEI RUTO and JOSHUA ARAP SANG***

**Public**

**Order authorising disclosure of lesser redacted versions of victims' applications**

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

**The Office of the Prosecutor**

Ms Fatou Bensouda  
Mr James Stewart  
Mr Anton Steynberg

**Counsel for William Samoei Ruto**

Mr Karim A. A. Khan  
Mr David Hooper  
Mr Kioko Kilukumi Musau  
Ms Shyamala Alagendra

**Counsel for Joshua Arap Sang**

Mr Joseph Kipchumba Kigen-Katwa  
Mr Silas Chekera

**Legal Representatives of Victims**

Mr Wilfred Nderitu

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparation**

**The Office of Public Counsel for  
Victims**

Ms Paolina Massidda

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

**States Representatives**

*Amicus Curiae*

**REGISTRY**

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**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(A)** ( the 'Chamber') of the International Criminal Court (the 'Court'), in the case of *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, having regard to Regulations 23bis and 42 of Regulations of the Court (the 'Regulations'), issues this Order authorising disclosure of lesser redacted versions of victims' applications.

## **I. Procedural history and submissions**

1. On 5 July 2013, the Office of the Prosecutor ('Prosecution') filed a request for authorization to disclose with lesser redactions five victims' applications relating to five witnesses that the Prosecution intends to call at trial.<sup>1</sup> The Prosecution indicates that this application is made pursuant to an *inter partes* request from the defence for Mr Sang ("Sang Defence"), which the Prosecution does not object to.<sup>2</sup> These applications were previously disclosed to the defence teams for Mr Ruto and Mr Sang ("Defence") with redactions consistent with those applied by the Registry in the redacted versions of the annexes to the submissions transmitting victims' applications before Pre-Trial Chamber II.<sup>3</sup> The Prosecution further informs that in order to minimise delay in the resolution of this application, it has liaised in advance with the Legal Representative of Victims ('Legal Representative') , so as to establish a mutually agreed position on the lesser redacted versions of these victims' applications.<sup>4</sup> The Prosecution indicates that it intends to disclose the five applications with limited redactions applied to contact information of witnesses and third parties, in accordance with the Chamber's

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<sup>1</sup> Prosecution application to disclose lesser redacted versions of five victims' application forms, ICC-01/09-01/11-801.

<sup>2</sup> ICC-01/09-01/11-801, para 2.

<sup>3</sup> ICC-01/09-01/11-801, para. 3.

<sup>4</sup> ICC-01/09-01/11-801, para. 6.

Decision on the protocol establishing a redactions regime and annexed Protocol ('Redaction Protocol').<sup>5</sup>

2. On 16 July 2013, the Sang Defence filed its response, stating that it supports the application.<sup>6</sup> In addition, the Sang Defence submits that these victims' application forms should have been disclosed by the Prosecution as 'prior statements' under Rule 76 of the Rules of Procedure and Evidence (the 'Rules').<sup>7</sup> The Sang Defence further requests that the Chamber makes a finding that the Prosecution is in breach of its obligations under Rules 76 of the Rules and that the Prosecution is to desist from any similar future breach (the 'Additional Request').<sup>8</sup>
3. On that same day, upon the Chamber's instructions,<sup>9</sup> the Victims and Witnesses Unit (the 'VWU') indicated that it did not have any comments to the proposed lifting of redactions proposed by the Prosecution.<sup>10</sup>

## II. Analysis

4. On 18 July 2013, the Chamber informed the parties and participants that the Prosecution and the Legal Representative could file a reply to the Additional Request made by the Sang Defence no later than 12 August 2013, pursuant to Regulation 34 of the Regulations.<sup>11</sup> Accordingly, the Chamber will deal with this Additional Request in due course.
5. As an initial matter, the Chamber observes that redactions which the Prosecution requests to be lifted have been identified by the Sang Defence as 'material to its

<sup>5</sup> ICC-01/09-01/11-801, para. 3, referring to paragraphs 56 and 59 of the protocol annexed to the Decision on the protocol establishing a redactions regime, ICC-01/09-01/11-458-AnxA-Corr.

<sup>6</sup> Sang Defence Response to the Prosecution Application to Disclose Lesser Redacted Versions of Five Victims' Application Forms, ICC-01/09-01/11-815, para. 2.

<sup>7</sup> ICC-01/09-01/11-815, paras 3-5.

<sup>8</sup> ICC-01/09-01/11-815, paras 6-7.

<sup>9</sup> E-mail from Trial Chamber V(A) Communications of 18 July 2013 at 09.12.

<sup>10</sup> E-mail from the VWU to Trial Chamber V(A) Communications of 18 July 2013 at 16.40.

<sup>11</sup> E-mail from Trial Chamber V(A) Communications of 18 July 2013 at 09.12.

preparation for trial'. Moreover, the Chamber notes that the Prosecution, the Legal Representative and the VWU do not oppose the lifting of these redactions.<sup>12</sup> Consequently, the Chamber considers there is no justification to maintain these redactions vis-à-vis the Defence.

6. As regards the limited redactions the Prosecution wishes to maintain, the Chamber is of the view that, although the Redaction Protocol provides for ongoing redactions to the contact information of 'other persons at risk as a result of the activities of the Court',<sup>13</sup> it is silent as to redactions to the contact information of witnesses. Nevertheless, since there is no suggestion that the contact information of these five witnesses is relevant to any aspect of the present case,<sup>14</sup> the Chamber authorises the Prosecution's request to maintain certain limited redactions to the contact information of the witnesses and other third parties.

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<sup>12</sup> ICC-01/09-01/11-801, paras 6-7.

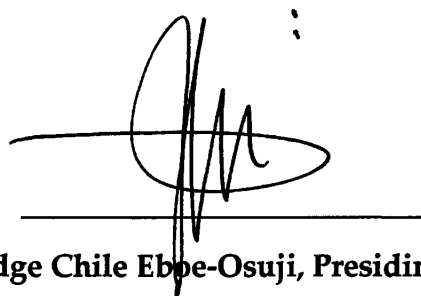
<sup>13</sup> ICC-01/09-01/11-458-AnxA-Corr, at paragraph 56. states: For family members whose identifying information is redacted in order to protect the witness (for whom there are no security reasons justifying ongoing redaction), redactions shall be lifted when the identity of the witness is disclosed. Family members whose identifying information is redacted on the basis of their own security will be considered as "other persons at risk" (Category B.3) and the corresponding regime will be applied. Consequently, with respect to individuals identified in material disclosed by the prosecution, such information shall be disclosed 60 days prior to trial. With respect to individuals identified in material disclosed by the defence, redactions shall be lifted in accordance with the Chamber's future directions regarding defence disclosure. Redactions to identifying information in relation to minor children shall be ongoing.

<sup>14</sup> The Chamber notes that the 'Protocol on the handling of confidential information and contacts with witnesses whom the opposing party intends to call' makes it clear that contacts with witnesses of another party should be facilitated by the calling party. See decision of 24 August 2012, ICC-01/09-01/11-449-Anx, paras 4 – 9.

**FOR THE FOREGOING REASONS, THE CHAMBER HEREBY**

**AUTHORISES** the Prosecution to disclose lesser redacted versions of the victims' applications related to Witnesses 378, 405, 409, 410, and 487.

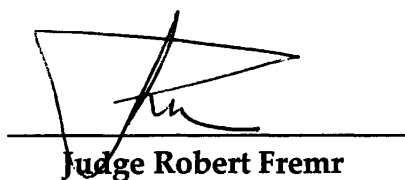
Done in both English and French, the English version being authoritative.

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**Judge Chile Ebbe-Osuji, Presiding Judge**

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**Judge Olga Herrera Carbuccion**

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**Judge Robert Fremr**

Dated 24 July 2013

At The Hague, The Netherlands