

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No.: ICC-01/09-02/11  
Date: 18 September 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 on disclosure of lesser redacted version of victim's application  
relating to Witness 232**

**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  
Ms Adesola Adebeyejo

**Counsel for the Defence**

Mr Steven Kay  
Ms Gillian Higgins

**Legal Representatives of Victims**

Mr Fergal Gaynor

**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(B)** ( the 'Chamber') of the International Criminal Court (the 'Court'), in the case of *The Prosecutor v. Uhuru Muigai Kenyatta*, having regard to Article 68(1) of the Rome Statute ('Statute') and Regulations 23bis and 42 of Regulations of the Court (the 'Regulations'), issues this Decision on disclosure of lesser redacted version of victim's application relating to Witness 232.

1. On 27 August 2013, the Office of the Prosecutor ('Prosecution') filed a request for authorisation to disclose a lesser redacted version of a victim's application relating to Witness 232 to the defence for Mr Kenyatta ('Defence').<sup>1</sup> The proposed lesser redacted version was attached to the request as confidential *ex parte* Annex A.
2. The application in question was submitted by Witness 232, on behalf of a relative, during the pre-trial phase of the proceedings and was classified as *ex parte* Registry and Prosecution only. A redacted form of the application was simultaneously provided to the Defence. The Prosecution now seeks the Chamber's permission to disclose the application to the Defence with lesser redactions.
3. The Prosecution informs the Chamber that, in order to minimise delay in the resolution of this request, it liaised in advance with the Legal Representative of Victims ('Legal Representative') to establish a mutually agreed position on the lesser redacted version of the application.<sup>2</sup> The Prosecution submits that the remaining redactions apply to contact information of the witness and 'innocent third parties'. It cites to the protocol annexed to the Chamber's 'Decision on the protocol establishing a redactions regime' ('Redaction Protocol') by way of justification for these redactions.<sup>3</sup>

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<sup>1</sup> Prosecution's request for authorisation to disclose with lesser redactions victim's application related to Witness 232, ICC-01/09-02/11-797.

<sup>2</sup> ICC-01/09-02/11-797, para. 3.

<sup>3</sup> ICC-01/09-02/11-797, para. 3, referring to ICC-01/09-02/11-495-AnxA-Corr, paras 56 and 58.

4. No responses to the Prosecution's request were filed by the Defence or the Legal Representative.<sup>4</sup>
5. Having regard to the Legal Representative's stated agreement to the disclosure of the lesser redacted application and to the fact that the information now to be disclosed may be material to the defence's preparation for trial, the Chamber considers there is no justification to maintain the earlier redactions vis-à-vis the Defence.
6. As regards the redactions the Prosecution wishes to maintain it appears that, contrary to the submission of the Prosecution, they are not limited to contact information of the witness and third parties but also apply to certain personal or identifying information of the witness and third parties, such as photographs and passport, identity card and bank account numbers.
7. The Chamber notes that although the Redaction Protocol provides for ongoing redactions to the contact information of 'family members of witnesses' and of 'other persons at risk as a result of the activities of the Court',<sup>5</sup> it is silent as to redactions to contact information of witnesses. The Redaction Protocol is similarly silent as to redactions to other personal or identifying information of persons whose identities have been disclosed. Nevertheless, since there is no clear investigative purpose that would be served by the disclosure of this contact and personal information<sup>6</sup> and having regard to the need to protect the privacy of victims and witnesses in accordance with Article 68(1) of the Statute, the Chamber authorises the maintenance of the proposed limited redactions as reflected in Annex A to the request. Should the Defence consider it necessary for the purposes

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<sup>4</sup> Pursuant to the Chamber's direction, responses were due by 6 September 2013. See email from TC V(B) Communications, 29 August 2013, 9:37.

<sup>5</sup> ICC-01/09-02/11-495-AnxA-Corr, paras 56 and 58.

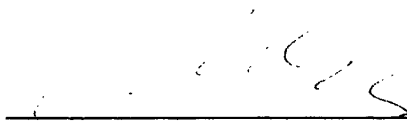
<sup>6</sup> The Chamber notes in particular that according to the Chamber's 'Decision on the protocol concerning the handling of confidential information and contacts with witnesses whom the opposing party intends to call', under normal circumstances contact with a witness can only be made via the calling party. ICC-01/09-02/11-469-Anx, paras 4 – 9.

of its investigation to be provided with information which remains redacted, it can apply for the lifting of the redaction.

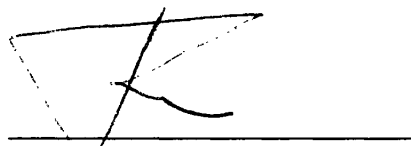
**FOR THE FOREGOING REASONS, THE CHAMBER HEREBY**

**AUTHORISES** the Prosecution to disclose the lesser redacted version of the victim's application relating to Witness 232 as reflected in ICC-01/09-02/11-797-Conf-Exp-AnxA.

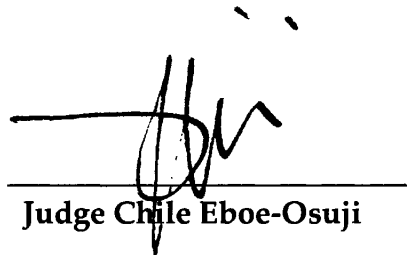
Done in both English and French, the English version being authoritative.



**Judge Kuniko Ozaki, Presiding**



**Judge Robert Fremr**



**Judge Chile Eboe-Osuji**

Dated 18 September 2013

At The Hague, The Netherlands