

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No.: ICC-01/09-01/11  
Date: 24 September 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**

**Decision No. 3 on the Conduct of Proceedings  
(Public Redacted Versions of Transcripts of Testimonies Heard in Private  
Session)**

**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 Khan  
Mr David Hooper  
Mr Essa Faal  
Ms Shyamala Alagendra

**Counsel for Joshua Arap Sang**

Mr Joseph Kipchumba Kigen-Katwa

**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 considered Articles 64(2), (6)(c) and (6)(e), 67(1), 68(1) and (2) of the Rome Statute (the 'Statute'), Rule 87 of the Rules of Procedure and Evidence (the 'Rules'), and Regulations 20, 23*bis* and 33 of the Regulations of the Court ('Regulations'), issues the following Decision No. 3 on the Conduct of Proceedings (Public Redacted Versions of Transcripts of Testimonies Heard in Private Session):

## I. BACKGROUND

1. During the hearing on 20 September 2013, the Chamber publicly explained that the testimony of Witness 536 would continue in private session and that a public redacted version of the witness's testimony transcript will be released later so that members of the public may follow the witness's testimony to the extent possible.<sup>1</sup>
2. In that same hearing the Office of the Prosecutor ('Prosecution') estimated that they could propose a public redacted version of the transcripts of the testimony of Witness 536 by Monday, 23 September 2013.<sup>2</sup> The Defence for Mr Ruto ('Ruto Defence') argued that the Prosecution should be able to propose a public redacted version at the end of the day, or at the very latest, the next morning after the testimony.<sup>3</sup> The Prosecution thereafter confirmed that they could propose public redacted versions of transcripts the following day after the testimony.<sup>4</sup>

<sup>1</sup> Transcript of hearing on 20 September 2013, ICC-01/09-01/11-T-34-CONF-ENG ET, page 1, line 25 to page 2, line 9.

<sup>2</sup> ICC-01/09-01/11-T-34-CONF-ENG ET, page 2, lines 16-23.

<sup>3</sup> ICC-01/09-01/11-T-34-CONF-ENG ET, page 3, lines 4-15.

<sup>4</sup> ICC-01/09-01/11-T-34-CONF-ENG ET, page 5, lines 12-21.

3. The Ruto Defence also requested that in addition to public redacted versions of French and English transcripts, a summary in a language that the public of Kenya understands is produced as well as a summary of what transpires in private sessions.<sup>5</sup>
4. The Defence of Mr Sang ('Sang Defence') submitted that the Court should supervise the amount of redactions done by the Prosecution, so that they do not do it on their own in a manner that eventually conceals material that does not cause any prejudice to the witnesses or to their families.<sup>6</sup>
5. The Chamber subsequently concluded that it would be appropriate then for the calling party to make the proposed public redacted version of transcripts and communicate it to opposing parties within 24 hours following the edited version of the confidential transcript having been notified. The Chamber would then make a ruling thereafter.<sup>7</sup>
6. Regarding the time necessary for the parties to respond to proposed redacted versions of transcripts, while the Sang Defence proposed to respond within a time period of 12 hours, the Ruto Defence suggested it could respond by the end of the day.<sup>8</sup>
7. In relation to whether this time period of 24 hours should include weekends and public holidays, while the Ruto Defence and Sang Defence submitted that the 24-hour deadline could fall on a Saturday, when hearings concluded on a Friday, the Prosecution suggested that the deadline should expire on the following work day, that is on the following Monday.<sup>9</sup>

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<sup>5</sup> ICC-01/09-01/11-T-34-CONF-ENG ET, page 7, line 11 to page 8, line 5.

<sup>6</sup> ICC-01/09-01/11-T-34-CONF-ENG ET, page 8, lines 11-17.

<sup>7</sup> ICC-01/09-01/11-T-34-CONF-ENG ET, page 25, line 21 to page 26, line 6.

<sup>8</sup> ICC-01/09-01/11-T-34-CONF-ENG ET, page 26, lines 7-23 and page 27, lines 18-19.

<sup>9</sup> ICC-01/09-01/11-T-34-CONF-ENG ET, page 26, line 25 to page 30, line 21.

## II. ANALYSIS AND CONCLUSION

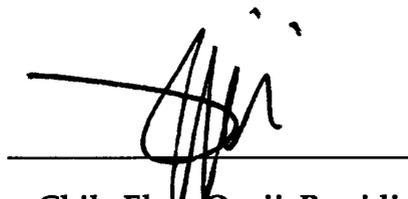
8. The Chamber is mindful that a balance must be struck between, on the one hand, the principle of publicity, provided for in Article 67(1) of the Statute and Regulation 20 of the Regulations of the Court, and, on the other hand, the Chamber's duty 'to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses' and to hold 'any part of the proceedings *in camera*, pursuant to Article 68(1) and (2) of the Statute, and Rule 87 of the Rules.
9. Bearing that in mind, the Chamber hereby issues the following directions:
  - a. Whenever the testimony of a witness is heard in private or closed session, the calling party shall transmit to the parties and the victims' legal representative (where applicable), a proposed public redacted version of the transcript within 24 hours after notification of the edited confidential version of the transcript;
  - b. Thereafter, the parties and the legal representative should make any objections to the proposed redactions no later than 16.00 hours on the second working day following the receipt of the proposal by the party calling the witness; and
  - c. Once the Chamber has ordered the publication of a public redacted version of the relevant transcript pursuant to Regulation 23*bis* of the Regulations of the Court, the calling party shall transmit to the Registry the electronic version of the English and French redacted transcript by 16.00 hours on the second working day following the receipt of the Chamber's authorisation.

10. Whenever the end of the period of time contemplated in this decision falls on a weekend or a public holiday observed by the Court, the end of the period shall be calculated with reference to the next working day of the Court.

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

11. **DIRECTS** the parties and participants to proceed accordingly.

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



**Judge Chile Eboe-Osuji, Presiding Judge**



**Judge Olga Herrera Carbuccion**



**Judge Robert Fremr**

Dated 24 September 2013

At The Hague, The Netherlands