

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 7 July 2014

TRIAL CHAMBER V(A)

Before: Judge, Chile Eboe-Osuji, Presiding
Judge Olga Herrera Carbuca
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 on the Classification of Items Admitted Pursuant to Decision on the
Prosecution's Request for Admission of Documentary Evidence**

Order 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

Ms Caroline Buisman

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

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

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 Articles 64(2), 64(6)(c), 64(7), 67(1) and 68 the Rome Statute (the 'Statute'), Rule 137(2) of the Rules of Procedure and Evidence and Regulation 23bis of the Regulations of the Court, issues the following 'Order on the Classification of Items Admitted Pursuant to Decision on the Prosecution's Request for Admission of Documentary Evidence'.

I. Procedural History

1. On 10 June 2014, the Chamber issued its Decision on the Prosecution's Request for Admission of Documentary Evidence (the 'Decision')¹, wherein it admitted into evidence 26 items². Noting that the parties had not made submissions on the appropriate level of confidentiality of the items to be admitted, the Chamber relied upon the confidentiality status as indicated in E-Court and directed the parties to make submissions in this respect, if any, within two days of the date of the Decision.³
2. On 12 June 2014, submissions were received from the defence team for Mr Ruto (the 'Ruto Defence'),⁴ the Office of the Prosecutor (the 'Prosecution')⁵ and the defence team for Mr Sang (the 'Sang Defence', and together with the Ruto Defence the 'Defence').⁶

¹ ICC-01/09-01/11-1353.

² The Chamber admitted 28 items but notes that two of them (KEN-OTP-0011-0196 and KEN-OTP-0011-0640) were actually already admitted.

³ ICC-01/09-01/11-1353, para. 89.

⁴ Defence submissions on the level of confidentiality of documents admitted pursuant to Decision ICC-01/06-01/11-1353, 12 June 2014, ICC-01/09-01/11-1360.

⁵ Prosecution's submissions on the level of confidentiality of documents admitted pursuant to Decision ICC-01/06-01/11-1353, 12 June 2014, ICC-01/09-01/11-1361.

⁶ Sang Defence submissions on the level of confidentiality of documents admitted pursuant to Decision ICC-01/06-01/11-1353, 12 June 2014, ICC-01/09-01/11-1362.

3. On 23 June 2014, the Registry submitted a report in which it informed the Chamber about the implementation of the Decision, in particular about the EVD-T numbers assigned to the items admitted into evidence and their level of confidentiality.⁷

II. Submissions and Analysis

4. The Ruto Defence submits that KEN-OTP-0003-0419, an official press release of the Commission of Inquiry into Post-Election Violence explaining its role and function, should be designated as public rather than confidential. It notes that the document was prepared for the media and, thus, general dissemination in the public domain.⁸ The Sang Defence endorses this submission⁹ and the Prosecution does not oppose.¹⁰ Noting that the document does not appear to contain any confidential information, the Chamber grants the request and reclassifies KEN-OTP-0003-0419 as public.
5. Further, the Sang Defence submits that eight medical reports¹¹ could be classified as public, subject to redaction of names and other personal identifying features. It submits that these reports offer an overview of the types of injuries and number of fatalities that occurred during the Post-Election Violence ('PEV') and that the public has therefore an interest in accessing such information.¹² The Prosecution considers that, except for KEN-OTP-0003-0419, all the remaining items admitted

⁷ Registrar's Report on the Implementation of the Decision ICC-01/09-01/11-1353, ICC-01/09-01/11-1389, 23 June 2014.

⁸ ICC-01/09-01/11-1360, para. 2.

⁹ ICC-01/09-01/11-1362, para. 1.

¹⁰ ICC-01/09-01/11-1362, para. 2.

¹¹ KEN-OTP-0006-1021; KEN-OTP-0011-0026; KEN-OTP-0011-0127; KEN-OTP-0011-0196; KEN-OTP-0011-0640; KEN-OTP-0006-1057; KEN-OTP-0121-3490; KEN-OTP-0006-1059.

¹² ICC-01/06-01/11-1362, para. 2.

are confidential in nature and contain information, *inter alia*, of a private and/or security-related nature.¹³

6. Preliminarily, the Chamber notes that the Prosecution filed its submission on the same day than the Sang Defence and therefore did not specifically address the Sang Defence proposal relating to these eight items.
7. The Chamber notes that these reports provide certain information such as the number of people injured or killed during the PEV, the number of people admitted to hospital, their ethnicity, the region in which they were injured or killed and the nature of the injuries they suffered.
8. KEN-OTP-0011-0026 is a report called 'Verification of Data/Information on Post Election Violence', issued by the ministry of medical services. The Chamber notes that although the document has a 'confidential' stamp, it contains no personal identifying information of any kind. Therefore, the Chamber orders that it is reclassified as public in E-Court.
9. However, the 7 other reports (KEN-OTP-0006-1021; KEN-OTP-0011-0127; KEN-OTP-0011-0196; KEN-OTP-0011-0640; KEN-OTP-0006-1057; KEN-OTP-0121-3490 and KEN-OTP-0006-1059) contain the names of victims, as well as, in some cases, potentially identifying information with regard to their health status.¹⁴ Three of them contain the names and signatures of their author¹⁵ and one includes the address, telegram and telephone numbers of the author.¹⁶
10. The Chamber recalls the general principle of publicity in this Court's proceedings which can be derived from Articles 67(1) and 64(7) of the Statute. Considering the

¹³ ICC-01/09-01/11-1361, para. 3.

¹⁴ KEN-OTP-0006-1021; KEN-OTP-0011-0127; KEN-OTP-0011-0196; KEN-OTP-0011-0640 and KEN-OTP-0006-1059.

¹⁵ KEN-OTP-0011-0127; KEN-OTP-0121-3490 and KEN-OTP-0006-1057.

¹⁶ KEN-OTP-0011-0127.

nature and content of the abovementioned documents, the Chamber is of the view that such information should be made public.

11. However, bearing in mind its obligation to protect the dignity and privacy of witnesses, victims or other persons who might be at risk as a result of the activities of the Court, and noting that the reports contain a number of names and identifying features,¹⁷ the Chamber deems it necessary to allow the Prosecution to specifically review the confidentiality level of the items mentioned in paragraph 9. Therefore, the Chamber directs the Prosecution to prepare public redacted versions and to upload them to E-Court.
12. Finally, as identified by the Defence,¹⁸ the Chamber notes that items KEN-OTP-0011-0196 and KEN-OTP-0011-0640 have already been admitted into evidence as, respectively, EVD-T-OTP-00016 and EVD-T-OTP-00060. Therefore no new evidence numbers need to be assigned to these two items.

¹⁷ Moreover, the Chamber notes that the Prosecution had not been given the opportunity to specifically address the request of the Sang Defence.

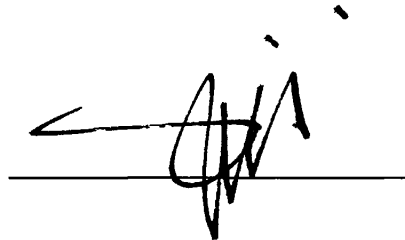
¹⁸ ICC-01/09-01/11-1360, para. 3; ICC-01/06-01/11-1362, paras 2(iv) and 2(v).

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

ORDERS the Registry to reclassify the items KEN-OTP-0003-0419 and KEN-OTP-0011-0026 as public in E-Court; and

DIRECTS the Prosecution to prepare Public Redacted Version of KEN-OTP-0006-1021; KEN-OTP-0011-0127; KEN-OTP-0011-0196 (EVD-T-OTP-00016); KEN-OTP-0011-0640 (EVD-T-OTP-00060); KEN-OTP-0006-1057; KEN-OTP-0121-3490 and KEN-OTP-0006-1059 and to upload them to E-Court.

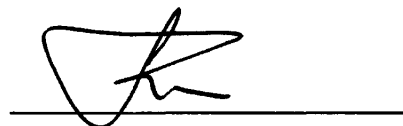
Done in both English and French, the English version being authoritative.



Judge Chile Eboe-Osuji, Presiding Judge



Judge Olga Herrera Carbuca



Judge Robert Fremr

Dated 7 July 2014

At The Hague, The Netherlands