

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 18 January 2016

**TRIAL CHAMBER V(A)**

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

**SITUATION IN THE REPUBLIC OF KENYA**

**IN THE CASE OF**

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

**Confidential, *ex parte*, Prosecution, Ruto Defence and the Crown Prosecution  
Service of England and Wales only**

**Decision on Prosecution Request for Reclassification of Two Documents**

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**

**Legal Representatives of Victims**

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparation**

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

**States Representatives**

*Amicus Curiae*

**REGISTRY**

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**Registrar**

Mr Herman von Hebel

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Others**

Crown Prosecution Service of England and  
Wales

**Trial Chamber V(A)** (the 'Chamber'<sup>1</sup>) of the International Criminal Court in the case of *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, having regard to Regulation 23 *bis* of the Regulations of the Court ('Regulations'), renders the following 'Decision on Prosecution Request for Reclassification of Two Documents' ('Decision').

1. On 7 May 2013, the defence team for Mr Ruto ('Ruto Defence') provided, in a confidential *ex parte* submission, material to the Chamber which it considered to be relevant to offences against the administration of justice ('Ruto Submission').<sup>2</sup>
2. On 23 May 2013, the Chamber ordered the Ruto Defence to provide the Office of the Prosecutor ('Prosecution') with the information included in the Ruto Submission ('Chamber Order').<sup>3</sup>
3. On 18 June 2015, upon request by the Ruto Defence,<sup>4</sup> the Chamber ordered the Registry to re-classify the Ruto Submission, its annexes and the Chamber Order (together, the 'Material') as confidential *ex parte*, available only to the Ruto Defence, the defence team for Mr Sang ('Sang Defence') and the Prosecution.<sup>5</sup>
4. On 3 November 2015, the Prosecution filed a motion ('Request'), requesting that the Material be made available to the Crown Prosecution Service of England and Wales ('CPS').<sup>6</sup> The Prosecution explains that it conducted

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<sup>1</sup> Where "Chamber" is used in this decision it refers to both the Trial Chamber V in its composition as until 21 May 2013 and to Trial Chamber V(A) as composed by the Presidency's 'Decision constituting Trial Chamber V(a) and Trial Chamber V(b) and referring to them the cases of *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang and The Prosecutor v. Uhuru Muigai Kenyatta*', 21 May 2013, ICC-01/09-01/11-745.

<sup>2</sup> Provision of Information, ICC-01/09-01/11-725-Conf-Exp, available only to the Ruto Defence with four annexes A-D, also confidential *ex parte*, available only to the Ruto Defence.

<sup>3</sup> Order regarding Defence Counsel's 'Provision of Information', ICC-01/09-01/11-752-Conf-Exp, available only to the Ruto Defence.

<sup>4</sup> E-mail to Trial Chamber V(A) Communications on 18 June 2015, at 11:53.

<sup>5</sup> E-mail from legal officer of the Chamber to the Prosecution and the Ruto Defence on 18 June 2015, at 14:51.

<sup>6</sup> Prosecution application for the Chamber to derogate from the confidential status of filing ICC-01/09-01/11-752-Conf-Exp and ICC-01/09-01/11-725-Conf-Exp, ICC-01/09-01/11-1997-Conf-Exp, available only to the Prosecution and the Ruto Defence.

investigations upon receipt of the information provided by the Ruto Defence and ultimately concluded that there was evidence that offences against the administration of justice had been committed but that the competent jurisdiction was a national one.<sup>7</sup> After liaising with the CPS, the Prosecution wishes to furnish the CPS with all relevant documents, including the Material.<sup>8</sup> It proposes a list of conditions in order to protect the confidential status of the Material.<sup>9</sup> Further, the Prosecution requests that the Request and any decision on the Request be made available to the CPS.<sup>10</sup>

5. Pursuant to Regulation 23 *bis* of the Regulations, the Chamber instructs the Registry to make the Material, the Request and this decision available to the CPS. Further, the CPS may make the Material, the Request and this Decision available to third persons or bodies or provide copies to third persons or bodies if considered necessary in the course of its investigations or resulting proceedings. Additionally, the CPS is required to draw the confidential status of the Material, the Request and the Decision to the attention of any third person or body to whom it makes them available. Lastly, should the Material, the Request or this Decision become part of court proceedings, the CPS is required to take all the necessary steps to ensure that they do not become public.

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<sup>7</sup> Request, ICC-01/09-01/11-1997-Conf-Exp, para. 3.

<sup>8</sup> Request, ICC-01/09-01/11-1997-Conf-Exp, para. 4.

<sup>9</sup> Request, ICC-01/09-01/11-1997-Conf-Exp, para. 5.

<sup>10</sup> Request, ICC-01/09-01/11-1997-Conf-Exp, para. 7.

**FOR THE FOREGOING REASONS THE CHAMBER HEREBY**

**DIRECTS** the Registry to re-classify ICC-01/09-01/11-725-Conf-Exp, including its annexes, and ICC-01/09-01/11-752-Conf-Exp as confidential *ex parte*, available only to the Prosecution, the Ruto Defence, the Sang Defence and the Crown Prosecution Service of England and Wales;

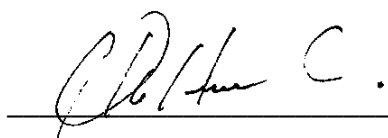
**DIRECTS** the Registry to re-classify ICC-01/09-01/11-1997-Conf-Exp as confidential *ex parte*, available only to the Prosecution, the Ruto Defence and the Crown Prosecution Service of England and Wales; and

**DIRECTS** the Registry to transmit forthwith, in consultation with the Prosecution, ICC-01/09-01/11-725-Conf-Exp and its annexes, ICC-01/09-01/11-752-Conf-Exp, ICC-01/09-01/11-1997-Conf-Exp and this Decision to the Crown Prosecution Service of England and Wales and apprise it of the conditions set out in paragraph 5.

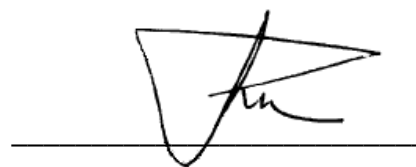
Done in both English and French, the English version being authoritative.



**Judge Chile Eboe-Osuji, Presiding**



**Judge Olga Herrera Carbuccia**



**Judge Robert Fremr**

Dated 18 January 2016

At The Hague, The Netherlands