

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 22 June 2016

**TRIAL CHAMBER V(A)**

**Before:** Judge Chile Eboe-Osuji, Presiding Judge  
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  
With Confidential Annex A**

**Public redacted version of "Prosecution's Communication of the Disclosure of Evidence", 13 September 2013, ICC-01/09-01/11-940-Conf**

**Source:** Office of the Prosecutor

**Document 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 the Defence**

**For William Samoei Ruto:**

Mr Karim Khan  
Mr David Hooper  
Ms Shyamala Alagendra

**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**

**Deputy Registrar**

Mr Didier Preira

**Victims and Witnesses Unit**

Mr Patrick Craig

**Detention Section**

**Victims Participation and Reparations Section**

**Other**

1. In keeping with prior practice to keep the Chamber informed of the execution of its disclosure obligations, and in accordance with the Chamber's "Order regarding redactions"<sup>1</sup>, the Prosecution herewith submits its communication to the Defence of materials pursuant to Rule 77 of the Rules of Procedure and Evidence ("the Rules").
2. On 13 September 2013, the Prosecution disclosed 58 items, as spelled out in the list attached as Confidential Annex A<sup>2</sup>. The items that were disclosed are prior statements (plus related annexes) of trial witness [REDACTED] that were obtained from [REDACTED] 2013,<sup>3</sup> [REDACTED] 2013<sup>4</sup> and [REDACTED] 2013<sup>5</sup> in the context of ongoing proceedings pursuant to Article 70 of the Rome Statute ("Statute") and currently pending before Pre-Trial Chamber II ("PTC II"). The statements relate to ongoing attempts by one Walter BARASA to bribe [REDACTED] to withdraw as a Prosecution witness.
3. Further interviews took place on discrete occasions between [REDACTED] 2013 to record further contacts between [REDACTED] and BARASA. Information provided by [REDACTED] has been recorded in a draft statement, however, this has not yet been confirmed or signed by [REDACTED]. Thus, the contents of this interview have been disclosed in the form of an investigator's report.<sup>6</sup>
4. However, the existence of the proceedings to which the statements pertain, and all the documents related thereto, were classified as "Under Seal" by PTC II. Earlier today (13 September 2013), the Single Judge in PTC II authorized the lifting of the judicial seal and the disclosure of the documents in question,

---

<sup>1</sup> ICC-01/09-01/11-482.

<sup>2</sup> Annex A is classified as Confidential due to the confidential nature of the materials disclosed.

<sup>3</sup> KEN-OTP-0103-2693.

<sup>4</sup> KEN-OTP-0111-0188.

<sup>5</sup> KEN-OTP-0111-0201.

<sup>6</sup> KEN-OTP-0112-0693

subject to redaction.<sup>7</sup> Accordingly, the Prosecution is only now in a position to disclose them to the Defence.

5. The redactions applied by the Single Judge are pursuant to Rules 81(2) and 81(4). The 81(2) redactions relate to the investigative techniques used by the Prosecution in its on-going Article 70 investigations and the 81(4) redactions relate to contact details and [REDACTED]. These redactions are accordingly consistent with ongoing redactions A.1, A.2, A.4, A.7, B.1 and B.5 redactions authorized by this Chamber in the Redaction Protocol.<sup>8</sup>
6. The Prosecution stresses that the statements do not relate to any matters underlying the charges in this case but rather relate to a separate investigation pertaining to different criminal events. Further, nothing in these statements qualifies as Article 67(2) information related to this case or affecting the credibility of the witness. To the extent that the statements touch upon a subject that the Defence may wish to canvas at trial (conduct of Prosecution intermediaries), the Prosecution notes that in the context of the instant statements the alleged criminal conduct is directed squarely against the Prosecution, not the accused. Thus, the Rule 77 materiality of the statements is also doubtful. Nonetheless, the Prosecution has decided to disclose them under Rule 77 out of an abundance of caution.
7. The Prosecution also stresses that, due to the unavoidable late disclosure of this information, it will not seek to lead [REDACTED] on this evidence unless the Defence elicits details thereof in cross-examination, or requests a substantial adjournment to prepare.
8. Additionally, the Prosecution has disclosed:

---

<sup>7</sup> [REDACTED].

<sup>8</sup> ICC-01/09-01/11-458 plus Annex.

- a. Receipts of payments to witnesses<sup>9</sup> (as per disposition paragraph (b) of the Chamber's decision on disclosure of information related to prosecution intermediaries<sup>10</sup>);
  - b. A schedule detailing contacts between [REDACTED] and a Prosecution intermediary (as per disposition paragraph (a) of the Chamber's Decision<sup>11</sup>).
  - c. One additional miscellaneous item disclosed pursuant to Rule 77.
9. The Prosecution has classified this filing as "Confidential" because it discusses disclosure of documents that are of a confidential nature as well as on-going investigative activities currently being undertaken by the Prosecution pursuant to Article 70 of the Statute. A public redacted version will be filed shortly.



---

Fatou Bensouda, Prosecutor

Dated this 22nd day of June 2016

At The Hague, The Netherlands

---

<sup>9</sup> The Prosecution notes that it has applied redactions to information within the receipts which would reveal the location of witness interviews and witness accommodation as per the Redaction Protocol. This includes, necessarily, redactions to the currencies and to the amounts, as such information can be used to identify locations of where the Prosecution conducts its investigations in the region.

<sup>10</sup> ICC-01/09-01/11-904-Conf ('the Decision'). This is despite the fact that the Prosecution has sought leave to appeal this decision.

<sup>11</sup> *Ibid.*