

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 4 July 2013

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***

Confidential *ex parte* Prosecution and VWU only

Decision on Prosecution application for authorisation to maintain B.1 redactions

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

Counsel for Joshua Arap Sang

Legal Representatives of the Victims

Legal Representatives of the 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

Registrar

Mr Herman von Hebel

Defence Support Section

Victims and Witnesses Unit

Mr Patrick Craig

Detention Section

**Victims Participation and Reparations Other
Section**

Trial Chamber V(A) (the 'Chamber')¹ of the International Criminal Court (the 'Court'), in the case of *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, having regard to Rules 81(4) and 101 of the Rules of Procedure and Evidence (the 'Rules') hereby delivers the following Decision on Prosecution application for authorisation to maintain B.1 redactions ('Decision').

Background and Submissions

1. On 2 May 2013, the Office of the Prosecutor ('Prosecution') filed its 'Prosecution request to maintain B.1 redactions to two documents' ('Request').²
2. Also on 2 May 2013, the Chamber authorised the Prosecution to delay the disclosure of the identity of Witness 534 until 45 days before his testimony but no later than the commencement of the trial ('Delayed Disclosure Decision').³
3. On 27 May 2013, the defence of Mr Ruto ('Defence') filed its response to the Request ('Response').⁴ The defence of Mr Sang did not file a response.
4. In its Request the Prosecution seeks authorisation for redactions to another witness's statement, as well as one of the annexes to this statement, in respect of the identity and identifying information of

¹ Where 'Chamber' is used in this decision it refers to both 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.

² ICC-01/09-01/11-716-Conf-Exp, Prosecution and Victims and Witnesses Unit ('VWU') only, with a confidential *ex parte*, Prosecution VWU only Annex A. A confidential redacted version of the Request was filed on 6 May 2013.

³ Decision on the Prosecution's renewed request for delayed disclosure of identity of Witness 534, ICC-01/09-01/11-718-Conf-Exp, Prosecution and VWU only. A confidential redacted version was filed on the same day.

⁴ Defence Response to the 'Prosecution request to maintain B.1 redactions to two documents', ICC-01/09-01/11-756-Conf.

Witness 534.⁵ The Prosecution submits that the redaction of the requested information is necessary in order to protect the identity of Witness 534.⁶

5. The Defence, in its Response, requests the Chamber to dismiss the Request.⁷ It questions the existence of an objectively justifiable risk,⁸ points out the importance of the redacted information for its investigation⁹ and asks the Prosecution to confirm that the sought redactions pertain to Witness 534.¹⁰

Analysis

6. In its Delayed Disclosure Decision, the Chamber found that there is an objectively justifiable risk to the safety of Witness 534 and that no less restrictive measures than delayed disclosure are available in order to protect the witness and his family.¹¹
7. The Chamber reiterates the facts stated in the Delayed Disclosure Decision¹² and takes note of the information contained in the security update on the witness that is provided every second week.¹³ Considering this information, the Chamber is persuaded that there is an objectively justifiable risk to the witness's safety which cannot be mitigated by

⁵ ICC-01/09-01/11-716-Conf-Red, para. 12.

⁶ ICC-01/09-01/11-716-Conf-Exp, para.12. At the moment of the filing of the Request, the Delayed Disclosure Decision had not yet been rendered and a Prosecution submission to authorise the delayed disclosure of this witness, Witness 534, was thus pending with the Chamber. See Prosecution's Urgent Application for Extension of Time to Disclose the Identity of Witness P-0534, 13 March 2013, ICC-01/09-01/11-648-Conf-Exp, Prosecution and VWU only. A confidential redacted version was filed on 14 March 2013.

⁷ ICC-01/09-01/11-756-Conf, para. 8.

⁸ ICC-01/09-01/11-756-Conf, para. 7.

⁹ ICC-01/09-01/11-756-Conf, para. 6.

¹⁰ ICC-01/09-01/11-756-Conf, para. 4.

¹¹ ICC-01/09-01/11-718-Conf-Red, paras 35 to 38.

¹² ICC-01/09-01/11-718-Conf-Exp, paras 35 to 38.

¹³ Prosecution Submission on the Security Situation of Witness P-0534, 16 May 2013, ICC-01/09-01/11-741-Conf-Exp and Prosecution Further Submission on the Security Situation of Witness P-0534, 30 May 2013, ICC-01/09-01/11-759-Conf-Exp.

measures other than the redaction of the identity and identifying information of the witness from the documents which are the subject of the Request.

8. Having regard to the limited scope of the redactions sought in the Request, the Chamber is of the view that the delayed disclosure of the information in question does not unduly prejudice the Defence and is consistent and necessary with the previous decision of the Chamber granting the delayed disclosure of the identity of Witness 534.
9. In view of the above the Chamber, pursuant to Rule 81(4) of the Rules, authorises the Prosecution to delay the disclosure of the requested information until the identity of Witness 534 is disclosed.
10. However, the Chamber takes note of the Defence's request for confirmation of its assumption that since there is only one witness still subject to delayed disclosure, the information for which redaction is sought pertains to Witness 534.¹⁴
11. The Chamber agrees with the Defence on this point and considers that, due to the fact that the requested redactions were identified as falling under the B.1 category of the redaction protocol¹⁵ and that there remains only one witness whose identity remains to be disclosed to the Defence, there is no reason to withhold the witness's pseudonym from the Defence.
12. However, the Chamber will at this stage issue this Decision as confidential *ex parte*, Prosecution and VWU only, pending further submissions from the Prosecution. Should the Prosecution have compelling reasons for withholding from the Defence the fact that the

¹⁴ ICC-01/09-01/11-756-Conf, para.4.

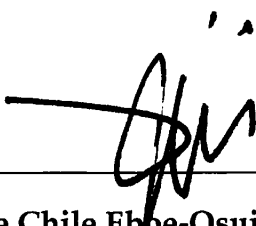
¹⁵ Annex to Decision establishing a redaction regime, 5 October 2013, ICC-01/09-01/11-458-AnxA-Corr, paras 50 to 54.

redacted information pertains to Witness 534, it is to file a submission within three days from the notification of this Decision. Otherwise the Chamber will order this Decision to be reclassified as confidential.


FOR THE FOREGOING REASONS, THE CHAMBER HEREBY:

- **AUTHORISES** the Prosecution to maintain the requested redactions until the identity of Witness 534 is disclosed; and
- **ORDERS** the Prosecution submit in a filing any objection against this Decision being notified to the Defence within three days of notification of this Decision.

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



Judge Chile Eboe-Osuji, Presiding

Judge Olga Herrera Carbuccion

Judge Robert Fremr

Dated this 4 July 2013

At The Hague, The Netherlands