

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

No.: ICC-01/09-02/11

Date: 24 August 2012

TRIAL CHAMBER V

Before: Judge Kuniko Ozaki, Presiding Judge
Judge Christine Van den Wyngaert
Judge Chile Eboe-Osuji

SITUATION IN THE REPUBLIC OF KENYA

***IN THE CASE OF
THE PROSECUTOR V. FRANCIS KIRIMI MUTHAURA AND UHURU MUIGAI
KENYATTA***

**Public,
with Confidential Annexes A and B and Public Annexes C-E**

**Prosecution's Submission of the Updated Document Containing the Charges pursuant
to Order ICC-01/09-02/11-450**

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

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Morris Anyah

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
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Other

1. In the “Order for the Prosecution to file an updated document containing the charges” (“Order”) issued on 5 July 2012,¹ the Trial Chamber directed the Prosecution to file an updated, post-confirmation hearing document containing the charges (“Updated DCC”) after consultation with the Defence.² The Trial Chamber specified that the Updated DCC should contain references to the relevant paragraphs of the Confirmation Decision and should not include any facts explicitly rejected by the Pre-Trial Chamber in the Confirmation Decision.³

2. Pursuant to the Order and after consultation with the Defence, the Prosecution hereby appends to this filing the following documents: (i) an unredacted version of the Updated DCC, with references to the relevant paragraphs of the Confirmation Decision (Confidential Annex A);⁴ (ii) an unredacted version of a chart explaining the issues that remain in dispute between the parties, including the parties’ submissions on each issue (Confidential Annex B); (iii) a public redacted version of the Updated DCC that omits the names of certain individuals identified by name in the DCC, whose identities the Pre-Trial Chamber redacted in the Confirmation Decision (Public Annex C); (iv) a public redacted version of the chart explaining the issues that remain in dispute, which omits the names of certain individuals identified by name in the DCC whose identities the Pre-Trial Chamber redacted in the Confirmation Decision (Public Annex D); (v) a redline version of the Updated DCC,

¹ ICC-01/09-02/11-450.

² ICC-01/09-02/11-450, paras 8-11. On 21 August 2012, the Chamber granted an extension of the filing deadline until 24 August 2012. *See* ICC-01/09-02/11-467.

³ ICC-01/09-02/11-450, para 10.

⁴ ICC-01/09-02/11-450, para 10.

which compares the former DCC dated 2 September 2011⁵ against the public redacted version of the Updated DCC (Public Annex E).

3. In accordance with the Order, Annex B contains submissions from both the Prosecution and Defence.⁶ As is apparent from the document, numerous areas of disagreement remain. In accordance with the Order, the Prosecution provided the Defence with the draft of the Updated DCC on 6 August 2012. The Defence provided the Prosecution with initial observations on 17 August 2012. On 21 August 2012, the Defence provided revised observations, including substantive additions to those provided on 17 August 2012. On 22 August 2012, the Prosecution responded to the Defence's revised observations, providing proposals on the areas for which it appeared that agreed resolution may be possible. The Prosecution proposals are included in Annex B in italicized text, under the column "Prosecution Comment". In light of the 24 August 2012 filing deadline, the Prosecution requested the Defence to send its comments on the proposals by 16:00 on 23 August 2012. In response to a Prosecution inquiry on the evening of 23 August, the Defence advised that it would not provide further input on the Prosecution's proposals before the filing deadline, and agreed to the joint annex being filed with the Defence's observations to date. In light of the above, the Prosecution is prepared to submit further arguments regarding the areas of disagreement should the Chamber deem it necessary.

4. Finally, the Prosecution hereby seeks an extension of the page limit for the annexes to this filing, pursuant to Regulation 37 of the Regulations of the Court. The Prosecution submits that an extension is warranted due to the detailed nature of the

⁵ ICC-01/09-02/11-280-AnxA.

⁶ ICC-01/09-02/11-450, para 11.

Updated DCC and the fact that the joint annex contains the arguments of both parties.



Fatou Bensouda

Prosecutor

Dated this 24th day of August 2012

At The Hague, The Netherlands