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No.: ICC-01/09-02/11
Date: 17 December 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 Public Annex A**

**Prosecution's Reply to the "Defence's Response to the "Prosecution's
Submission of the Charges against Francis Kirimi Muthaura and Uhuru
Muigai Kenyatta pursuant to Trial Chamber V's Order ICC-01/09-02/11-536""**

Source: The 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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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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**Victims Participation and Reparations
Section**

Other

1. The Prosecution herewith responds to the Defence's objections to the content of the Charges against Francis Kirimi Muthaura and Uhuru Muigai Kenyatta.¹ The Prosecution's full response is found in Annex A to this submission.
2. On 20 November 2012, the Chamber ordered the Prosecution to submit the modified "Charges" section of its charges against Messrs Muthaura and Kenyatta ("Order").² The Chamber allowed 10 days to the Defence to raise any objections to the content of the Prosecution's submission, and granted 5 additional days to the Prosecution to respond to any Defence objections.³
3. On 28 November 2012, the Prosecution filed the Submission of the Charges against Francis Kirimi Muthaura and Uhuru Muigai Kenyatta pursuant to Trial Chamber V's Order ICC-01/09-02/11-536 ("Modified Charges Document").⁴
4. On 10 December 2012, the Defence submitted the Response to the Prosecution's Submission of the Charges against Francis Kirimi Muthaura and Uhuru Muigai Kenyatta pursuant to Trial Chamber V's Order ICC-01/09-02/11-536 ("Response").⁵

Submissions

5. The Prosecution has made its full comments regarding the Defence's objections in the chart that the Defence provided for that purpose,⁶ and only makes two brief observations in the body of this filing.

¹ ICC-01/09-02/11-563, with Public Annex A.

² ICC-01/09-02/11-536.

³ Ibid, p. 10.

⁴ ICC-01/09-02/11-546.

⁵ ICC-01/09-02/11-563.

⁶ ICC-01/09-02/11-563, Annex A.

6. *First*, the Prosecution has, in the Modified Charges Document, followed the order of the Chamber, which directed the Prosecution that any “facts and circumstances added to the Charges section should be *based on the allegations already contained in other sections of the Updated DCC and should retain the original wording of those allegations*” (emphasis added).⁷ The Prosecution did not go outside of the scope of these directions. Should the Chamber order the Prosecution to make changes in the Modified Charges Section, the Prosecution will act accordingly. Moreover, the Chamber’s Order, in the Prosecution’s submission, should not have been used as an opportunity to argue matters that should have been raised at the time of the submission of the Updated Document Containing the Charges.
7. *Second*, to the extent that the Defence Response reiterates arguments from its 11 September 2012 submission,⁸ the Prosecution maintains the position from its submission of 17 September 2012⁹ that the Defence’s 11 September 2012 response was filed improperly and should be stricken from the record and the arguments therein disregarded by the Chamber.



Fatou Bensouda,
Prosecutor

Dated this 17th day of December, 2012
At The Hague, The Netherlands

⁷ ICC-01/09-02/11-536, p. 9.

⁸ “Joint Defence Response to the “Prosecution’s Submission of the Updated Document Containing the Charges pursuant to Order ICC-01/09-02/11-450”, ICC-01/11-02/09-481-Conf, with Confidential Annexes A and B.

⁹ ICC-01/09-02/11-487-Conf.