



Original: **English**

No.: ICC-01/09-01/11
Date: **25 January 2013**

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. WILLIAM SAMOEI RUTO and JOSHUA ARAP SANG**

**Public Redacted Version
(with Annexes 1 and 2 confidential, *Ex Parte*, Prosecution and VWU only
and Annex 3 Confidential)**

Prosecution's application for an extension to the deadline set by Decision ICC-01/09-01/11-440 to disclose one additional incriminatory document

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, Prosecutor
Ms. Cynthia Tai, Trial Lawyer

Counsel for the Defence

For William Samoei Ruto:

Mr. Kioko Kilukumi Musau
Mr. David Hooper

For Joshua Arap Sang:

Mr. Joseph Kipchumba Kigen-Katwa
Mr. Joel Kimutai Bosek

Legal Representatives of the Victims

Mr. Wilfred Nderitu

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(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 & Deputy Registrar

Ms. Silvana Arbia, Registrar

Mr. Didier Preira, Deputy Registrar

Defence Support Section

Victims and Witnesses Unit

Ms. Maria Luisa Martinod-Jacome

Detention Section

**Victims Participation and Reparations
Section**

Others

1. The Prosecution hereby requests authorisation from Trial Chamber V (“the Chamber”) to disclose one document as incriminatory evidence after the 9 January 2013 deadline set by the Chamber, for the reasons provided below.
2. The Prosecution will file a corrigendum of its list of evidence (LOE) forthwith once a decision has been taken in respect of the present application. If the new incriminatory evidence, attached as Annex 1,¹ is authorized, it will be added to the LOE. The corrigendum will in any event i) remove some documents that were included but will not be relied upon by the Prosecution and ii) correct clerical errors that do not affect the substance of the LOE.
3. The proposed corrigendum of the unredacted and redacted versions of the LOE are attached hereto as Annexes 2 and 3. The items which are proposed for removal are highlighted in red and the corrections, specified below, are made in track changes.

Confidentiality

4. The present application is filed as confidential as it refers to information which is confidential in nature. A public redacted version will also be filed contemporaneously herewith.

¹ Entry 1522 of the list of evidence.

Submissions

5. Pursuant to the Decision of the Chamber on the “Schedule leading up to trial”,² on 9 January 2013 the Prosecution filed its list of witnesses, its list of evidence to be relied on at trial (“LOE”) and a pre-trial brief.³ The Prosecution also disclosed its incriminatory evidence.

6. A further review by the Prosecution revealed that it had inadvertently failed to disclose one item that it intends to introduce at trial. The document in question, Annex 1, is referred to as KEN-OTP-0088-0922 [REDACTED].

7. The inadvertently omitted evidence [REDACTED]⁴ [REDACTED]. The Prosecution submits that the Defence is not prejudiced by the disclosure at this time of this document given the short two-week delay, its nature, its length, its inclusion in the pre-trial brief, and the fact that Trial is not set to occur until April 10, 2013.

8. Additionally, as noted above, the Prosecution has identified clerical errors in the LOE that do not affect the substance but that bear correcting. The Prosecution intends to issue a corrigendum of the LOE in order to rectify the errors.

² ICC-01/09-01/11-440.

³ ICC-01/09-01/11-540.

⁴ ICC-01/09-01/11-540-Conf-Exp-AnxD, footnote 12 (page 4).

Relief requested

9. In light of the foregoing, the Prosecution respectfully requests authorisation to disclose document KEN-OTP-0088-0922 to the Defense as incriminatory evidence.



Fatou Bensouda, Prosecutor

Dated this 25th day of January 2013
At The Hague, The Netherlands