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

Date: 19 February 2013

TRIAL CHAMBER V

Before: Judge Kuniko Ozaki, Presiding
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

**Joint Defence Request for an Order
for the Prosecution to Serve Expert Report of Mr. Maupeu in a Language
that Mr. Ruto and Mr. Sang Fully Understand and Speak**

Source: Defence for Mr. William Samoei Ruto
Defence for Mr. Joshua Arap Sang

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

Fatou Bensouda, Prosecutor
Cynthia Tai, Trial Lawyer

Counsel for William Ruto

David Hooper QC
Kioko Kilukumi Musau

Counsel for Joshua Sang

Joseph Kipchumba Kigen-Katwa
Silas Chekera

Legal Representatives of the Victims

Wilfred Nderitu

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

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Silvana Arbia

Counsel Support Section

Deputy Registrar

Didier Daniel Preira

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

1. The defence for Mr. William Samoei Ruto and the defence for Mr. Joshua Arap Sang (the “defence”) hereby request an order for the prosecution to serve the expert report of Mr. Herve Maupeu in a language that Mr. Ruto and Mr. Sang fully understand and speak in accordance with Article 67(f) of the Rome Statute.¹
2. On 14 February 2013, the prosecution disclosed the expert report of Mr. Herve Maupeu.² This was the final date for such disclosure.³ The 39-page report is in in French. The prosecution has provided no translation despite knowing that the parties and the accused do not speak French.
3. In previous filings, the defence objected to the prosecution’s choice of Mr. Maupeu as an expert witness on the basis that, *inter alia*, the majority of his academic research and publications, as well as his intended expert report for the Court, were in French.⁴ The defence forewarned the prosecution that the choice of Mr. Maupeu would be unfair to the defence because of the language barrier and that it could cause additional delay.
4. At the very minimum, the prosecution should have ensured that the report was prepared in sufficient time for it to have been translated into English by the final date for disclosure. The defence do not consider the serving of a document in a

¹ Article 67(f): In the determination of any charge, the accused shall be entitled to a public hearing, having regard to the provisions of this Statute, to a fair hearing conducted impartially, and to the following minimum guarantees, in full equality: to have, free of cost, the assistance of a competent interpreter and such translations as are necessary to meet the requirements of fairness, if any of the proceedings or documents presented to the Court are not in a language which the accused fully understands and speaks.

² The report was re-disclosed on 18 February 2013 with ERN KEN-OTP-0093-0871.

³ *Prosecutor v. Ruto and Sang*, ICC-01/09-01/11-440, Decision on the schedule leading up to trial, 9 July 2012, para. 16 (“Disclosure of the reports of any expert witness who will be called during the prosecution case should be **completed** by 14 February 2013”).

⁴ *Prosecutor v. Ruto and Sang*, ICC-01/09-01/11-501, Joint Defence Response to Prosecution’s Updated Report on Joint Instruction of Experts, 10 December 2012, para. 8 (“In respect of Mr Maupeu, the defence also expressed surprise that, given all the parties and counsel for the defence are Anglogophone, a francophone expert was chosen by the prosecution. Of course, French is one of the languages of the court, but not, unfortunately, the language of any of the accused or their counsel. Not only did this cause considerable difficulty for the defence in evaluating his expertise, but it may lead to further difficulties in the future – delays caused by translations, for instance. The majority of his work is in French and no translation of the articles has been provided by the prosecution. The defence notes that Mr. Maupeu has now stated that he prefers to present his report and to testify in French. **The defence will require an English translation of his report, hopefully at the same time the report is served.**”)

language that the prosecutor knows the accused do not understand to be an effective filing.⁵

5. The defence requests the Chamber to order that the prosecution ensure that the report is translated into a language that the accused understands and speaks (ie, English). Further, that the Chamber deem that effective disclosure of the report not be effected until this translation is served.⁶



David Hooper, QC
On behalf of William Samoei Ruto
Dated this 19th day of February 2013
In London



Joseph Kipchumba Kigen-Katwa
On behalf of Joshua Arap Sang
Dated this 19th day of February 2013
In Nairobi

⁵ In *Katanga & Ngudjolo*, the Trial Chamber determined that transcripts and their translations formed an integral part of the same piece of evidence, and that when one part was missing, the evidence was not deemed to be complete. The Chamber consequently found that until the necessary translation was done, the OTP had not complied with its disclosure obligations with respect to incriminating evidence. ICC-01/04-01/07-1260, 27 July 2009, para. 13.

⁶ In *Lubanga*, where the accused understood French but not English, the Trial Chamber considered that it would be a breach of Article 67(f) for the date of notification of the Judgement to run from the time the defence was served with the English version of the Judgement. The Chamber accordingly determined that the date of notification would run from the date the accused received the Judgement in a language he understood. ICC-01/04-01/06-2834, Decision on the translation of the Article 74 Decision and related issues, 15 December 2011, paras. 22 to 24.