

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **3 July 2013**

TRIAL CHAMBER V

Before:

**Judge Chile Eboe-Osuji, Presiding
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

Public

Submissions of the Common Legal Representative for Victims Pursuant to the “Order Requesting Submissions on the Conduct of the Proceedings” Issued on 19 June 2013

Source: Wilfred Nderitu, Common Legal Representative for Victims

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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Cynthia Tai

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For Joshua arap Sang

Joseph Kipchumba Kigen-Katwa

Silas Chekera

Legal Representatives of Victims

Wilfred Nderitu

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

Orchlon Narantsetseg

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

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Herman von Hebel

Defence Support Section

Deputy Registrar

Didier Daniel Preira

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Fiona McKay

Other

I. INTRODUCTION AND LEGAL BASIS FOR THE FILING

1. The Common Legal Representative for Victims (“the CLR”) provides the following information and submissions to the Trial Chamber V(A) (“the Trial Chamber”), pursuant to the Order requesting submissions on the conduct of the proceedings¹ issued on 19th June 2013 (“the Order”):

II. CORE OF THE SUBMISSIONS

2. In response to paragraph 2 (i) of the Order, the CLR informs the Trial Chamber that he intends to make an Opening Statement at the commencement of the trial, and estimates that 4 hours (on the outside) shall be sufficient for this. The CLR further intends, with leave of the Trial Chamber, to screen a short video and/or to display photographs during the Opening Statement and hereby requests that the Registry to make available audiovisual equipment for that purpose.
3. In relation to paragraph 2(v) of the Order, the CLR submits that he considers it important for the parties to file submissions of “no case to answer” requesting dismissal of one or more counts at the conclusion of the Prosecution’s case. This is in keeping with established practice in many jurisdictions throughout the world, and is consistent with the right to a fair trial. In addition to this, the practice is a requirement in criminal law and procedure in Kenya and is therefore a procedure that participating victims are likely to be aware of, or familiar with. The CLR also submits that the making of a reasoned ruling at the end of the Prosecution’s case is a procedure adopted by international *ad hoc* criminal tribunals such as the United Nations International Criminal Tribunal for Rwanda.
4. The CLR further submits that the victims are interested in the outcome of the trial which, either way, will affect their personal interests and it is desirable that they are constantly made aware of all relevant developments in the case that may affect their interests in the case. The filing of submissions of “no case to answer” is consistent with the need to keep victims apprised of developments in the case as aforesaid, and will further help to manage victims’ expectations, based on the evidence that shall have been adduced by the close of the Prosecution’s case.

¹ ICC-01/09-01/11-778

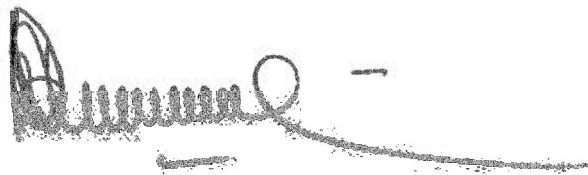
5. Finally on this issue, the CLR submits that requiring submissions of “no case to answer” is in keeping with the principle that justice should be administered in public, and that this includes not only the public delivery of rulings, but the provision to the public of a reasonable basis or justification for a decision having been made in a particular manner.
6. With regard to paragraph 2(viii) of the Order, the CLR provides the following views:
 - a. As to the order in which witnesses should be questioned: The CLR wishes to question Prosecution witnesses after the Prosecutor has completed her examination of the witness in chief, but before the Defence has cross-examined the witness concerned. The CLR would wish to reexamine any Prosecution witness before the Prosecutor conducts her reexamination of the witness;
 - b. As to the timing and manner in which the CLR should request authorization from the Chamber in order to question a witness or present evidence at trial: With the exception of a few witnesses who he wishes to question in person, the CLR generally intends to question witnesses through the designated officer of the Office of the Public Counsel for Victims, in accordance with the Decision on Victims’ Representation and Participation² of 3rd October 2012. The CLR shall seek leave for personal questioning of witnesses on a case-by-case basis. The CLR is also evaluating the need for presentation of evidence and hereby notifies the Trial Chamber of the possibility of seeking leave in this regard in due course.
 - c. Regarding the procedure for the use of material during questioning: the CLR submits that due notice (preferably at least seven days’ notice) of the intention to use any material be given by the party or participant intending to use such material, and requests the Trial Chamber to make provision for this in the directions to be made. In addition to this, the CLR proposes that in keeping with the best evidence rule, original documents or material be provided in evidence, with a translation in accordance with Regulation 39.1 of the Regulations of the Court;
 - d. As to the procedure for admission of material tendered through witnesses as evidence in the case (including assignment of evidence numbers): the CLR

² ICC-01/09-01/11-460

proposes that material tendered through witnesses as evidence be disclosed at the earliest opportunity and that the same be admissible without the need of calling the maker, save where the opposite party or a participant gives seeks and obtains leave of the Trial Chamber for the maker of the material in question to be called;

- e. Regarding other procedures for admission of other material as evidence in the case (other than through witnesses), the CLR submits that the same procedure as in paragraph d., above should obtain;
- f. As to whether recourse should be had to Rule 68 of the Rules (admission of prior recorded testimony) and the procedure to be followed, the CLR submits that this procedure be adopted only in exceptional circumstances. Apart from the circumstances allowed in Rule 68, the exceptional circumstances should relate to the death of the witness whose testimony was previously recorded, or the inability to find him, or his inability to give evidence or to procure his attendance at all or only at great delay or expense.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'Wilfred Nderitu', with a long horizontal flourish extending to the right.

WILFRED NDERITU
Common Legal Representative for Victims

Dated this 3rd day of July 2013
At Nairobi, Kenya