

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 8 January 2016

TRIAL CHAMBER V(A)

Before: Judge Chile Eboe-Osuji, Presiding Judge
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
With Confidential Annexes A and B**

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
Mr James Stewart
Mr Anton Steynberg

Counsel for the Defence

For William Samoei Ruto:

Mr Karim Khan
Mr David Hooper
Ms Shyamala Alagendra

For Joshua Arap Sang:

Mr Joseph Kipchumba Kigen-Katwa
Ms Caroline Buisman

Legal Representatives of Victims

Mr Wilfred Nderitu

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
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

Mr Herman von Hebel

Counsel Support Section

Deputy Registrar

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Other

Introduction

1. On 15 December 2015, instructions for the Status Conference on the No Case to Answer Motions¹ were emailed to the Parties and Participants, on behalf of the Presiding Judge of Trial Chamber V(A) (the “Instructions”).²
2. The Instructions required, *inter alia*, that two days before the Status Conference, the Parties and the Participants file and exchange a book of extracts of the evidence to which they intend to refer during the Status Conference (the “Book of Extracts”). Accordingly, the Office of the Prosecutor (the “Prosecution”) now provides, in Confidential Annex A, an index to the Book of Extracts (the “Index”) and in Confidential Annex B, the Book of Extracts.

Compliance with the Instructions

3. As instructed, the Prosecution has only included in the Book of Extracts information relevant to the topics identified in part I of the Instructions and has endeavoured to include only the relevant pages, as instructed in part III. However, it was often necessary to include some extra pages of witness transcripts in order to provide the necessary context (e.g. date, time, place, persons present etc.). Since particular items of evidence frequently provide support for more than one issue identified in the Instructions, and in order to avoid unnecessary repetition, the Prosecution considered it most efficient to group the various extracts by source. Accordingly, the Book of Extracts is organised per witness (in ascending order of witness code), followed by a few selected items of documentary evidence (in ascending order of ERN number). A table of contents is also provided to assist the location of particular witnesses or documents.

¹ ICC-01/09-01/11-1990-Conf (“Ruto NCTA Motion”), ICC-01/09-01/11-1991-Conf (“Sang NCTA Motion”), ICC-01/09-01/11-2000-Conf (“Prosecution’s NCTA Response”) and ICC-01/09-01/11-2005-Conf (“Common Legal Representative for Victims’ Joint Reply”)(together, the “No Case to Answer Motions”).

² Email from TrialChamberV-ACommunications to the Parties and Participants dated 15 December 2015 at 14:01.

4. The purpose of the Index is to assist the Chamber, the Parties and Participants to link the items of evidence contained in the Book of Extracts to the issue (or issues) that they are intended to establish. The Index has been organised according to the categorisation of evidence set out in paragraph 2 of part I of the Instructions. Additionally, the Index provides information on the origin of such evidence and the location of references to this evidence in the Prosecution's NCTA Response.

5. The Prosecution understands that the purpose of the Book of Extracts is to facilitate and focus the oral submissions and to provide additional assistance to the Chamber in its assessment of the sufficiency of the evidence submitted. However, the Prosecution relies on the totality of the evidence presented and in particular on the evidence identified and analysed in the Prosecution's NCTA Response.

Confidentiality

6. Annexes A and B are filed as "confidential", since much of the evidence referred to therein was given in private session pursuant to protective measures authorised by the Chamber, or is contained in documents classified as confidential.³

7. For the same reason, the Prosecution observes that it will be very difficult, if not impossible, to present coherent oral submissions in public session on the evidence pointing to conviction or acquittal, especially given the instruction that during their oral submissions, the Parties and Participants should read out the actual passages relied upon. Apart from the disruptions and time taken to transition back and forth repeatedly between public and private sessions, the Prosecution submits that in the thrust and parry of oral argument, it may be extremely challenging for the Parties and Participants to keep track of the confidentiality classifications of the variety of evidence to which they will need to refer *ex tempore*.

³ Such as the witness statements of the compelled witnesses that were admitted under rule 68(2)(d) of the Rules of Procedure and Evidence.

8. In these circumstances, the Prosecution respectfully suggests that in the interests of efficiency and to avoid inadvertent publication of confidential information, all submissions on, and quotations from, the evidence of protected witnesses are conducted in private session.⁴



Fatou Bensouda, Prosecutor

Dated this 8th day of January 2016

At The Hague, The Netherlands

⁴ The Prosecution notes that the extensive No Case to Answer Motions filed by the Parties and Participants include reference to supporting evidence, and (with the exception of the Common Legal Representative for Victims' Joint Reply) public redacted versions of these submissions are available. The public therefore already has full access to the arguments raised by the Prosecution and the Defence and the non-confidential supporting evidence.