

Annex

Modifications of the text of the Document Containing the Charges

1. As indicated in the Decision, the Chamber approves those changes which were proposed by one party and not contested by the other. These are not addressed in the chart below. Only the contested modifications are discussed. As all points of disagreement were discussed in the Decision, the chart only directs to the conclusions made in the Decision and specifies how the authorised modifications are to be made. All references in the chart are to the Document Containing the Charges appended as Annex E to the prosecution's submission.¹

Disputes over the content of the Updated DCC

Paragraph/ sentence	Paragraph(s) of the Decision dealing with the point of disagreement	Conclusion
4/2	17-23	The modification proposed by the prosecution is allowed
14/2	47	The modification proposed by the prosecution is allowed
17/1	25	No modification
18	47	No modification
19	47	No modification
20/1	50-52	In carrying out the attacks, the Mungiki and pro-PNU youth killed <u>approximately 150 people, including at least 82 perceived ODM supporters.</u>

¹ ICC-01/09-02/11-468-AnxE.

20/1, 3	47	No modification
21	55	The modification proposed by the prosecution is allowed
22/(2)	37-38	(2) establishing links with <u>Maina Njenga</u> and the Mungiki <u>for the purpose of</u> securing Mungiki support and services for the PNU coalition
22/(3)	40	(3) exercising their authority over the Mungiki obtained <u>by virtue of their agreement with Maina Njenga and the Mungiki</u> to support the PNU coalition;
22/(4)	47	No modification
24/(2)	47	The modification proposed by the prosecution is allowed
24(3)	47	The modification proposed by the prosecution is allowed
29/2	47	No modification
29/3	62-63	No modification
30/2	50-52	As a result, approximately 112 people were killed, <u>including at least 43 perceived ODM supporters</u> , and thousands displaced in or around Nakuru town between 24

		and 27 January 2008.
30/3	50, 52	At least 359 cases of injuries were reported in Nakuru hospitals during this period.
31/1	47, 50-52	- The words "pro-PNU youth" may be retained. - In or around Naivasha town, the Mungiki and pro-PNU youth killed <u>approximately 50 people, including women and children, of whom at least 39 were perceived ODM supporters.</u>
31/3	65	At least four cases of traumatic circumcision were reported during the period notwithstanding the gross under-reporting of <u>this type of violence</u> in Kenya.
33/1	42	The Principal perpetrators, together with Mungiki leaders, <u>including Maina Njenga,</u> and other prominent PNU supporters,
34 ("Principal Perpetrators")	42	No modification
34 (instructions to the Kenya Police)	55	MUTHAURA also issued instructions for the Kenya Police, <u>including through Major General Ali,</u> not to

		interfere with the attacks
36/2-4	28	No modification of the text of para. 36 of the Updated DCC
Sub-heading (ii) of page 12	47	No modification
40/3	47	No modification
42/1	47, 70	No modification of the text of para. 42 of the Updated DCC
43	17-23	No modification
46	17-23	No modification
47/1	45	No modification
47/2	44	The key preparatory meetings include those held in Nairobi on or about 30 December 2007 (at the State House), <u>on or about 3 January 2008 (at the Nairobi Club)</u> , and in early, mid and late January 2008.
47/3	44	No modification
48/2	47	No modification
49/1	47	No modification
49/4	47	No modification
51/3	47	No modification
54/(1)	47	No modification
Title of page 17	47	No modification

55/3	47	No modification
56/2	47	No modification
56/3	47, 69	No modification
57/1	47	No modification
57/4	33	No modification
57/6	47	No modification
58/1-2	47, 57, 69	No modification
59/1	50-52	Throughout the PEV, between 161 and 213 people were killed in Nakuru, including at least 48 people killed during the night of 26 January 2008 alone. <u>Those killed during the PEV included at least 43 perceived ODM supporters.</u>
59/4	50-52	Based on a list of reported deaths compiled by the CIPEV, at least <u>45</u> perceived ODM supporters out of approximately 112 people were killed in Nakuru town between 24 and 27 January.
59/5	47	No modification
60/1	47	No modification
60/2	65	No modification
60/3	50	No modification
Subheading of page 20	47	No modification

63/1	47	No modification
64/2	47	No modification
65/1	47	No modification
66/3	47	No modification
67/1	47	No modification
68/2-3	47, 57	No modification
71/1	50-53	<i>As of 31 January 2008, at least 50 people were killed during the PEV in Naivasha, <u>including at least 39 civilians perceived to be ODM supporters, some of whom were women and children.</u></i> As regards the time frame of the alleged killings, see the chart below.
71/4	75	See the chart below.
71/7	65	No modification
74/1	42	The Principal Perpetrators, together with Mungiki leaders, <u>including Maina Njenga</u> , and other prominent PNU supporters,
75/1	42	The Principal Perpetrators, together with prominent PNU supporters and Mungiki leaders, <u>including Maina Njenga</u>

75/(1)	44, 47	(1) their participation in multiple meetings held by MUTHAURA and KENYATTA among others to activate the Mungiki and pro-PNU youth by placing the organization under a central authority and to coordinate the implementation of the common plan, <u>including the meetings held on or about 26 November 2007 (at State House Nairobi), on or about 30 December 2007 (at State House Nairobi), on or about 3 January 2008 (at the Nairobi Club) and in early, mid and late January 2008;</u>
76/1	55	Change Mr. Ali's title from "Commissioner of Police" to "Major General"
77/3	47	No modification
78/(2)	31, 47, 55	MUTHAURA used his position to instruct the Kenya Police, <u>including through Major General Ali</u> , not to interfere with the work of the Mungiki and pro-PNU youth in the Rift Valley and in the Nairobi slums.
79/(2)	47	No modification
80	47	No modification

80/(2)	44	(2) MUTHAURA and KENYATTA participated in meetings with other members of the common plan to ensure that they understood and espoused the common plan, <u>including the meetings held on or about 26 November 2007 (at State House Nairobi), on or about 30 December 2007 (at State House Nairobi), on or about 3 January 2008 (at the Nairobi Club) and in early, mid and late January 2008;</u>
81/3	47	No modification
82/1	47	No modification
83/1-2	47	No modification
86/(2)	44, 47	(2) held meetings and discussions, <u>including on or about 30 December 2007 (at State House Nairobi), on or about 3 January 2008 (at the Nairobi Club)</u> and in early, mid and late January 2008, to activate the Mungiki and pro-PNU youth and to implement the common plan;
86/(3)	47	No modification
86/2	47, 55	MUTHAURA additionally instructed the Kenya Police, <u>including through Major General Ali</u> , not to

		interfere with the retaliatory attacks, [...]
88/(2)	47	No modification
88/(4)	44	(4) they met or otherwise discussed the implementation of the common plan by sharing information on the planning, organization, logistics and other details of the attacks, <u>including at meetings held on or about 30 December 2007 (at State House Nairobi), on or about 3 January 2008 (at the Nairobi Club) and in early, mid and late January 2008</u>
88/(6)	58	they were aware that the Kenya Police's non-interference with the attacks would significantly contribute to the crimes
89/(3)	44, 47	KENYATTA and MUTHAURA participated in meetings intended to implement the common plan, <u>including those held on or about 30 December 2007 (at State House Nairobi), on or about 3 January 2008 (at the Nairobi Club) and in early, mid and late January 2008</u>
90	47	No modification

Disputes over the Modified Charges Section

2. The chart below does *not* address modifications to those sentences or phrases which were copied from the Updated DCC to the Modified Charges Section and are the subject of the disputes regarding the Updated DCC, unless the defence reiterated its previous objections. Such copied portions of the Updated DCC shall be modified in accordance with the chart above. All references in the chart below are to the Modified Charges Section appended as Annex A to the prosecution's submission of 28 November 2012.²

Paragraph/ sentence	Paragraph(s) of the Decision dealing with the point of disagreement	Conclusion
1(e)	44	Modifications authorised in para. 44 of the Decision and described in the chart above may be made to para. 1(e) to the extent the text comes from one or more of the modified paragraphs of the Updated DCC
1(h)	76	No modification
2(a)	31, 55	Delete "and in the Nairobi slums"
2(b)	72-73	No modification
3(a)	25	No modification
5/3	50, 53	"By about 31 January 2008"

² ICC-01/09-02/11-546-AnxA.

		shall be replaced with "From on or about 27 January to 28 January 2008" The overall number of victims of the alleged killings shall be provided in relation to the adjusted time frame.
5/4	75	Delete "6 killed by gunshots". The other numbers provided in the fourth sentence of para. 5 shall be revised if necessary.
7/2	62	No modification
8/3	66	Delete "sexual violence, including" and "s" in the word "rapes". Modify the allegation to refer only the number of cases of rape.
9	78	More detail should be provided
11/2	80	No modification
12/1	82	Delete "causing severe physical injuries"; move "and" after the words "other inhumane acts"
1(e), 1(f), 3(c), 3(d), 4, 5, 6, 7, 8, 9, 10, 11 and 12	47	No modification