



Original: **English**

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

Date: **9 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**

**With annexes A, B, C, and D - Confidential, *ex parte*, only available to the Office of  
the Prosecutor and VWU**

**Prosecution's provision of materials pursuant to Decision ICC-01/09-01/11-440**

**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**

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Ms. Cynthia Tai, Trial Lawyer

**Counsel for the Defence**

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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**

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**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. Pursuant to the Chamber's 9 July 2012 Decision on the schedule leading up to trial,<sup>1</sup> the Prosecution hereby submits its (i) list of witnesses to be relied upon at trial; (ii) summaries of the main facts on which each witness is expected to testify; (iii) list of evidence to be relied upon at trial; and (iv) pre-trial brief.
2. Confidential *ex parte* Annex A contains the Prosecution's witness list.<sup>2</sup> The Prosecution has indicated the expected duration of each witness's questioning by the Prosecution.<sup>3</sup> Annex A is designated confidential *ex parte* because it contains the names of witnesses for whom the Chamber has granted delayed disclosure, or for whom an application is pending.
3. In terms of the expected duration of the Prosecution's case,<sup>4</sup> the Prosecution estimates that it will require approximately 826 hours of court time. This estimate includes the time projected for (i) the Prosecution's questioning of its 43 fact witnesses (totaling approximately 383 hours); (ii) the Prosecution's questioning of the three proposed experts (currently estimated at approximately no more than 30 hours in total); and (iii) the time projected for Defence questioning of the Prosecution's fact and expert witnesses (totaling approximately 413 hours). To estimate the time needed for questioning by the Defence, the Prosecution has proceeded on the basis that the Defence will use the same amount of time projected for Prosecution questioning. The 826 hour estimate does not include time that the Chamber may grant to the Office of Public Counsel for Victims or the common legal representative to question Prosecution witnesses, or time that the Chamber may use to question witnesses.
4. A confidential redacted version of the Prosecution's witness list is filed to ensure the effectiveness of in-court protective measures for witnesses, if sought by the Prosecution and granted by the Chamber.

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<sup>1</sup> ICC-01/09-01/11-440..

<sup>2</sup> ICC-01/09-01/11-440, para 13.

<sup>3</sup> ICC-01/09-01/11-440, para 13.

<sup>4</sup> ICC-01/09-01/11-440, para 13.

5. Confidential *ex parte* Annex B contains summaries of the main facts on which each witness is expected to testify.<sup>5</sup> It is designated confidential *ex parte* because it contains information that may lead to the identification of witnesses for whom the Chamber has granted delayed disclosure, or for whom an application is pending.
6. A confidential redacted version of the witness summaries will be filed contemporaneously to ensure the effectiveness of in-court protective measures, if sought by the Prosecution and granted by the Chamber.
7. Confidential *ex parte* Annex C contains the Prosecution's list of evidence to be relied upon at trial.<sup>6</sup> It is designated confidential *ex parte* because it contains information that may lead to the identification of witnesses for whom the Chamber has granted delayed disclosure or for whom an application is pending. The list contains 1529 items, and is divided into two parts. The first part contains witness statements and related material (such as annexes to witness statements) and contains 1115 items. The second part contains all other documentary evidence and audio/video material and comprises 414 items. For each item, the Prosecution has listed the ERN and title, and, for materials related to witnesses, the witness to which the material relates.
8. A confidential redacted version of the list of evidence will be filed contemporaneously to ensure the effectiveness of in-court protective measures, if sought by the Prosecution and granted by the Chamber.
9. The Prosecution hereby gives notice to the Chamber that in future, it may seek leave to amend the list of witnesses and/or the list of evidence pursuant to the requirements of Regulation 35(2) of the Regulations of the Court if it obtains certain materials that it seeks to tender into evidence or succeeds in securing

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<sup>5</sup> ICC-01/09-01/11-440, para 13.

<sup>6</sup> ICC-01/09-01/11-440, para 13.

cooperation of certain witnesses that it has identified that it wishes to interview. These materials and/or persons are the subject of certain governmental and/or institutional restrictions for which the Prosecution has requested cooperation from a number of states pursuant to their co-operation obligations under Part 9 of the Statute, but which have not yet been received.

10. Pursuant to Regulation 35(2), the Chamber may extend a time limit if good cause is shown, and after the time limit has expired, the extension may be granted if the participant seeking the extension can demonstrate that he or she was unable to file the application within the time limit for reasons outside of his or her control.

11. The aforementioned governmental and/or institutional restrictions are currently preventing the Prosecution from taking the statements from the identified individuals and gauging their willingness and/or ability to testify for the Prosecution, or from gaining free access to the materials it may wish to tender into evidence, and as such constitute "good cause" within the meaning of Regulation 35(2). The Prosecution has already approached several State Parties, including the Government of Kenya, in order to gain access to such individuals and materials. Discussions regarding the terms and conditions of such access are still ongoing, and for that reason the Prosecution is at this stage unable to file Regulation 35 applications with respect to specific materials and/or individuals. However, the Prosecution is in a position to pinpoint the following groups of materials or individuals that it may wish to add to its lists of evidence and witnesses at a later stage:

- Certain categories of individuals needing specific governmental authorization to gain access to them.
- Certain individuals who are journalists who produced video material that the Prosecution wishes to tender into evidence during its case, for whom approval is required from their institutions;

- Certain materials, including medical and financial records, requested from the Kenyan government.

12. The Prosecution may also address the Chamber, when and if necessary, pursuant to Articles 93(1)(l) and 64(6)(b) of the Rome Statute, to obtain a request to one or more States Parties to provide assistance with respect to facilitating access to the above mentioned persons and materials or requiring witnesses' attendance before the Court.

13. Confidential *ex parte* Annex D contains the Prosecution's pre-trial brief.<sup>7</sup> It is designated confidential *ex parte* because it contains information that may lead to the identification of witnesses for whom the Chamber has granted delayed disclosure, or for whom an application is pending. Many of the citations in the brief are to pages/paragraphs of the witnesses' pre-trial interviews. These pinpoint citations are provided for ease of reference, and are merely indicative of the testimony the Prosecution anticipates from its witnesses at trial. The pre-trial brief is intended as a summary of the Prosecution's trial evidence; it is not necessarily exhaustive, and the evidence at trial may differ from the summary presented. For the same reason, the Prosecution has not necessarily cited to all of the evidence contained in its list of evidence, but has endeavoured to include some of the main evidence on point for each allegation.<sup>8</sup>

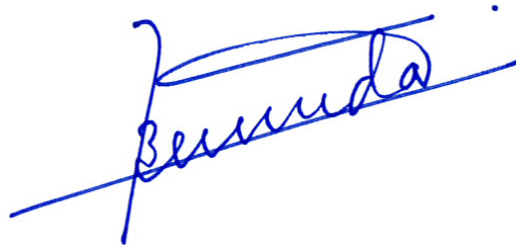
A confidential redacted version of the pre-trial brief will be filed contemporaneously.<sup>9</sup> The Prosecution has endeavoured to draft the pre-trial brief in order to minimise the need for redactions and to ensure that the Defence is provided with maximum notice regarding the nature of the Prosecution's case.

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<sup>7</sup> ICC-01/09-01/11-440, para 15.

<sup>8</sup> The Pre-Trial brief contains the evidence provided by witnesses P-24 and P-376 pending a decision of the Chamber in regards to their applications.

<sup>9</sup> The Prosecution shall file a public redacted version of the pre-trial brief in due course.



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Fatou Bensouda,  
Prosecutor

Dated this 9<sup>th</sup> day of January 2013  
At The Hague, The Netherlands