



Original: **English**

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

Date: **15 March 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 public Annex A and confidential annex B

**Second Joint Submission by the Prosecution and the Defence as to Agreed Facts
and the Authenticity of Evidence**

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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For Joshua Arap Sang:

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Mr. Wilfred Nderitu

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
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States' Representatives

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**Victims Participation and Reparations
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Others

1. In the “Decision on the schedule leading up to trial” (“Decision”) issued on 9 July 2012,¹ Trial Chamber V (“Trial Chamber”) directed the Prosecution and the Defence teams (jointly, the “Parties”) to liaise with a view to reaching agreement about non-contentious issues and to file the first joint submission on agreed facts by 3 September 2012.²
2. The Trial Chamber also directed the Parties to liaise with a view to reaching agreement on facts as well as the authenticity of evidence, and to file a second joint submission by 8 March 2013.³ Upon request from the Defence,⁴ the Chamber extended the deadline to 15 March 2013.⁵
3. Further discussions between the Parties have resulted in agreements being reached on some of the facts contained in appended Annex A, and on the authenticity of some of the items of the evidence as set out in appended Annex B.
4. Annex B is confidential as it contains reference to documents that are themselves confidential.
5. During the discussions, the Defence noted a discrepancy between the versions of two reports included in the Prosecution’s LOE,⁶ and those published on the internet, referred to in the Prosecution’s proposal.⁷ The Defence indicated its willingness to agree to the authenticity of the complete versions. The Prosecution, with the Defence’s agreement, therefore requests the Chamber to authorise the addition to the LOE of the complete versions of

¹ ICC-01/09-01/11- 440.

² ICC-01/09-01/11- 440, para. 10. The “First Joint Submission by the Prosecution and the Defence as to Agreed Facts and Certain Materials contained in the Prosecution’s List of Evidence” was duly filed on 3 September 2012: ICC-01/09-01/11- 451.

³ ICC-01/09-01/11- 440, para. 18.

⁴ ICC-01/09-01/11-650.

⁵ ICC-01/09-01/11-639.

⁶ KEN-OTP-0001-1115: “Report of the Independent Review Commission on the General Elections held in Kenya on 27 December 2007” and KEN-OTP-0001-1527: “Women paid the price”.

⁷ See <http://aceproject.org/regions-en/countries-and-territories/KE/reports/independent-review-commission-on-the-general> and <http://www.creawkenya.org/creaw-publications/women-paid-the-price.html> respectively.

these two reports, registered under ERNs KEN-OTP-0095-0502 and KEN-OTP-0038-0866, and to remove the superseded versions.

6. The Parties will continue to meet and confer regarding those facts that remain in dispute. Should any further agreements be reached, these will be communicated to the Chamber at the earliest opportunity.



Fatou Bensouda, Prosecutor

Dated this 15th day of March 2013

At The Hague, The Netherlands