

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 5 July 2012

TRIAL CHAMBER V

Before: Judge Kuniko Ozaki, Presiding
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**

URGENT

Public

Order for the prosecution to file an updated document containing the charges

Decision to be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

Ms Fatou Bensouda

Counsel for William Samoei Ruto

Mr Kioko Kilukumi Musau

Mr David Hooper

Counsel for Joshua Arap Sang

Mr Joseph Kipchumba Kigen-Katwa

Mr Joel Kimutai Bosek

Legal Representatives of Victims

Ms Sureta Chana

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

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

States Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others

This Order is issued pursuant to Articles 61, 64, 67 and 74 of the Rome Statute (“Statute”), Rule 121(3) of the Rules of Procedure and Evidence (“Rules”) and Regulation 52 of the Regulations of the Court (“Regulations”).

Background

1. The Office of the Prosecutor (“prosecution”) filed its original document containing the charges (“DCC”) and list of evidence on 1 August 2011.¹ The prosecution submitted its amended document containing the charges (“Amended DCC”) on 15 August 2011.² The Amended DCC included: three counts against William Samoei Ruto and Henry Kiprono Kosgey for commission as indirect co-perpetrators under Article 25(3)(a) of the Statute of the crimes against humanity of murder, deportation or forcible transfer of population and persecution under Article 7(1)(a), (d) and (h) of the Statute; and three counts against Joshua Arap Sang for contribution within the meaning of Article 25(3)(d) of the Statute to the crimes against humanity of murder, deportation or forcible transfer of population and persecution under Article 7(1)(a), (d) and (h).³
2. On 23 January 2012, Pre-Trial Chamber II confirmed the charges against Mr Ruto and Mr Sang⁴ but declined to confirm the charges against Mr Kosgey.⁵

¹ Prosecution’s Document Containing the Charges and List of Evidence submitted pursuant to Article 61(3) and Rule 121(3), ICC-01/09-01/11-242 (notified on 2 August 2011).

² Prosecution’s Amended Document Containing the Charges and List of Evidence submitted pursuant to Article 61(3) and Rules 121(3), (4) and (5), ICC-01/09-01/11-261.

³ ICC-01/09-01/11-261-AnxA.

⁴ The Pre-Trial Chamber limited the temporal scope from what was originally charged, see Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute, ICC-01/09-01/11-373, paragraphs 349 and 367.

⁵ ICC-01/09-01/11-373.

3. On 11 June 2012, during the first status conference before Trial Chamber V (“the Chamber”), the Chamber heard the submissions of the prosecution and both defence teams on the issue of a post-confirmation DCC.⁶ During the course of these submissions, defence counsel for both accused requested that the prosecution provide an updated document reflecting the charges as confirmed.⁷ For its part, the prosecution indicated that it would require one month in order to provide an updated DCC.⁸

Relevant legal provisions and jurisprudence

4. Article 67(1)(a) of the Statute provides that the accused is entitled “[t]o be informed promptly and in detail of the nature, cause and content” of the charges against him. In the context of the confirmation of charges proceedings, Rule 121(3) of the Rules sets out that the Prosecutor must provide the accused with a “detailed description of the charges”. Regulation 52 further specifies that the document containing the charges must contain, *inter alia*, “[a] statement of the facts, including the time and place of the alleged crimes, which provides a sufficient legal and factual basis to bring the person or persons to trial”.
5. Article 64(8)(a) requires that, at the commencement of the trial, the Trial Chamber shall “have read to the accused the charges previously confirmed by the Pre-Trial Chamber”, “satisfy itself that the accused understands the nature of the charges” and “afford him or her the opportunity to make an admission of guilt [...] or to plead not guilty.” Finally, Article 74(2) sets out that the Trial Chamber’s decision on the guilt or innocence of the accused “shall not exceed the facts and circumstances described in the charges and any amendments to the charges.”

⁶ ICC-01/09-01/11-T-15-ENG, page 31, line 2 to page 34, line 22.

⁷ ICC-01/09-01/11-T-15-ENG, page 31, line 8 to page 33, line 15.

⁸ ICC-01/09-01/11-T-15-ENG, page 34, lines 18 – 22.

6. It has been the practice of other Trial Chambers of this Court to instruct the prosecution to provide a post-confirmation DCC.⁹ In this regard, Trial Chamber I found that an updated DCC was required “to ensure that there is complete understanding of the ‘statement of facts’ underlying the charges confirmed.”¹⁰ Trial Chamber III similarly found that a DCC was “critical” on the ground that the Confirmation Decision did not provide a readily accessible statement of the facts underlying each charge.¹¹

7. In the present case, the Chamber is persuaded that an updated post-confirmation DCC will assist in providing a readily accessible statement of the facts underlying each charge. Accordingly, on the basis of Article 64(2), the Chamber directs the prosecution to provide the defence with a draft updated DCC by 6 August 2012. Thereafter, both parties are to liaise *inter se* with a view to resolving any areas of disagreement as to the whether the draft updated DCC properly reflects the Confirmation Decision.

8. In preparing its updated DCC, the prosecution is to clearly indicate the material facts and circumstances underlying the charges as confirmed. In this connection, the prosecution should have particular regard for the entitlement of the accused to be informed of “the facts and circumstances in terms of times and locations and also, as far as possible, the precise numbers and identities of the victims and the means employed to commit the crimes.”¹²

⁹ Order for the prosecution to file an amended document containing the charges, 9 December 2008, ICC-01/04-01/06-1548; Decision on the defence application for corrections to the Document Containing the Charges and for the prosecution to file a Second Amended Document Containing the Charges, 20 July 2010 (notified on 21 July 2010), ICC-01/05-01/08-836. See also the decision of Trial Chamber II directing the prosecution to prepare a summary of the charges, Decision on the Filing of a Summary of the Charges by the Prosecutor, ICC-01/04-01/07-1547-tENG, 21 October 2009 (notified on 29 October 2009).

¹⁰ ICC-01/04-01/06-1548, paragraphs 12 and 13.

¹¹ ICC-01/05-01/08-836, paragraph 30.

¹² See ICC-01/04-01/07-1547-tENG, paragraph 31.

9. The updated DCC is to contain references to the relevant paragraphs of the Confirmation Decision. The document should not include any facts explicitly rejected by the Pre-Trial Chamber in the Confirmation Decision.

10. Following its consultation with the defence, the prosecution is directed to file its updated DCC with the Chamber by 21 August 2012. Any points of disagreement that could not be resolved during *inter partes* consultations are to be raised in the form of a jointly submitted prosecution-defence annex to the updated DCC.

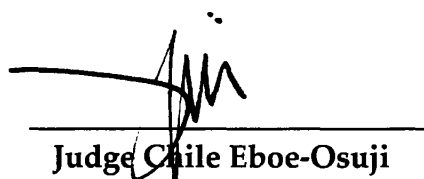
Done in both English and French, the English version being authoritative.



Judge Kuniko Ozaki, Presiding



Judge Christine Van den Wyngaert



Judge Chile Eboe-Osuji

Dated this 5 July 2012

At The Hague, The Netherlands