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No.: ICC-01/09-02/11

Date: **25 June 2012**

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. FRANCIS KIRIMI MUTHAURA AND UHURU
MUIGAI KENYATTA***

Public

**Joint Submission of the Prosecution and the Kenyatta Defence Regarding the
Defence Request for a Summary of the Presentation of Evidence and an In-
Depth Analysis Chart for the Trial Stage**

Source: The Office of the Prosecutor and Defence for Uhuru
Muigai Kenyatta

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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Procedural history

1. At the status conference held on 12 June 2012, the Chamber requested the parties to consult on the possible elements of a “summary of Prosecution evidence” and “in-depth analysis chart” (“IDAC”) and to report to the Chamber in 10 days’ time.¹
2. The parties have consulted as instructed. Agreement has been reached as to the summary of the presentation of evidence (“Pre-Trial Brief”). With respect to the IDAC, agreement has been reached between the Prosecution and the Kenyatta Defence, but not with the Muthaura Defence.

Pre-Trial Brief

3. The Prosecution has agreed to the Defence teams’ requests for a Pre-Trial Brief.² As requested by the Defence, the Pre-Trial Brief will include “references to witnesses it intends to call and the other evidence it intends to rely upon, and . . . explain how the evidence relates to the Charges”.³ The Prosecution will file its Pre-Trial Brief at the Chamber’s convenience, after the close of pre-trial disclosure.⁴
4. The parties have not discussed whether, if the Defence decides to present evidence in this case, the Defence should be required to file a document akin to the Prosecution’s Pre-Trial Brief. The parties suggest that this issue

¹ ICC-01/09-02/11-T-18-ENG ET CT, page 51, line 3 to page 52, line 1.

² ICC-01/09-02/11-T-18-ENG ET CT, page 38, lines 14-15.

³ ICC-01/09-02/11-427, para 35; *see also* ICC-01/09-02/11-429, para 23.

⁴ ICC-01/09-02/11-T-18-ENG ET CT, page 38, lines 14-23.

should be addressed as appropriate at the conclusion of the Prosecution case.

In-depth analysis chart

5. For the reasons explained at the 12 June 2012, status conference, the Prosecution objects to providing an IDAC at the trial stage.⁵ However, should the Chamber order the provision of an IDAC or a similar chart, the Prosecution has proposed to the Defence a chart that would contain the following information:

- Fact upon which the Prosecution seeks to rely;
- Paragraph(s) of the Pre-Trial Brief in which the fact is referenced;
- Source (ERN);
- Title of source;
- Page within source (ERN);
- Paragraph/line within page;
- Type of document;
- Witness code of witness to whom the document relates (based on the "related to witness" field);
- Date of the item; and
- Element(s) of crime(s) to which the fact relates, in general terms.

⁵ ICC-01/09-02/11-T-18-ENG ET CT, page 38, line 24 to page 42, line 21.

6. The Kenyatta Defence has agreed to this format.

7. The Muthauara Defence has not agreed to the proposed format, and has requested that in addition to the fields listed above, the Prosecution should also include text excerpts from the relevant documents. The Prosecution objects to providing excerpts for the reasons explained at the 12 June 2012 status conference.⁶

8. With respect to timing, the Muthauara Defence has requested that the IDAC be provided concurrently with the updated Document Containing the Charges ("DCC"), which the Prosecution has agreed to file at the Chamber's convenience.⁷ The Prosecution objects to providing an IDAC on this timetable. As explained at the 12 June 2012 status conference, any IDAC should be due only after the completion of pre-trial disclosure.⁸ An earlier deadline would require the Prosecution to refer in the IDAC to materials that have not yet been disclosed, which is illogical.

9. Finally, the Muthaura Defence has suggested that the Prosecution provide an "interim IDAC", which would accompany the updated DCC and be updated once pre-trial disclosure is complete. The Prosecution objects to this suggestion. As explained at the 12 June 2012 status conference, producing an IDAC is a burdensome and time-consuming task, which, in the Prosecution's view, outweighs the limited utility of the document at the trial stage.⁹ If the Chamber decides to order the production of an IDAC at all, it

⁶ ICC-01/09-02/11-T-18-ENG ET CT, page 41, line 24 page 42, line 20.

⁷ ICC-01/09-02/11-T-18-ENG ET CT, page 38, lines 11-13; page 42, line 24 to page 43, line 5.

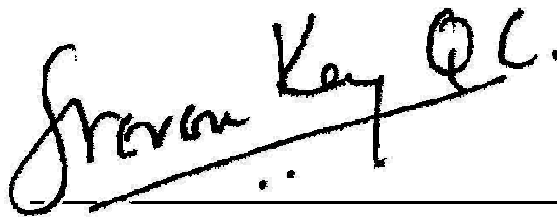
⁸ ICC-01/09-02/11-T-18-ENG ET CT, page 41, lines 20-23.

⁹ ICC-01/09-02/11-T-18-ENG ET CT, page 40, line 40, line 17 to page 41, line 17.

should be a one-off chart, and not subject to multiple revisions. In the Prosecution's view, this approach will not prejudice the Defence because the updated DCC will provide an adequate roadmap of the Prosecution's case in the period before the Pre-Trial Brief and any IDAC are filed.



Fatou Bensouda,
Prosecutor



Steven Kay QC
Counsel for Uhuru Kenyatta

Dated this 25th day of June, 2012
At The Hague, The Netherlands