



Original: English

No.: ICC-01/09-02/11
Date: 7 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. FRANCIS KIRIMI MUTHAURA AND UHURU
MUIGAI KENYATTA***

**Public,
with confidential Annexes A, C and public Annex B**

**Prosecution's Submission of the Final Updated Document Containing the
Charges pursuant to Trial Chamber V's "Decision on the content of the
updated document containing the charges", ICC-01/09-02/11-584**

Source: The 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

Fatou Bensouda
Adesola Adeboyejo

Counsel for Francis Kirimi Muthaura

Karim A. Khan QC, Essa Faal, Kennedy Ogetto, Shyamala Alagendra

Counsel for Uhuru Muigai Kenyatta

Steven Kay QC and Gillian Higgins

Legal Representatives of Victims

Fergal Gaynor

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

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Silvana Arbia
Didier Preira, Deputy Registrar

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Victims and Witnesses Unit

Maria Luisa Martinod-Jacome

Detention Section

Victims Participation and Reparations Section

Other

1. In its “Decision on the content of the updated document containing the charges” (“Decision”) issued on 28 December 2012,¹ the Trial Chamber directed the Prosecution to modify the Updated Document Containing the Charges (“Updated DCC”) and Modified Charges Section, in accordance with the guidelines outlined in the Decision and the chart annexed thereto.²
2. Pursuant to the Decision, the Prosecution hereby appends to this filing the following documents: (i) an un-redacted version of the Final Updated DCC, modified in accordance with the Chamber’s Decision (Confidential Annex A), (ii) a public redacted version of the Final Updated DCC that omits the names of certain individuals redacted in the submission of Public Annex C of filing ICC-01/09-02/11-468 (Public Annex B), (iii) a redline version of the un-redacted version of the Final Updated DCC, (confidential Annex C);

Factual allegation of use of guns in Naivasha

3. In the Decision, the Trial Chamber ordered the Prosecution to remove the factual underlying allegation that “6 victims were killed by gunshots” contained in Count 1 (Murder as a crime against humanity) for Naivasha.³ The Trial Chamber found that the Pre-Trial Chamber had rejected that particular allegation at the confirmation of charges stage. Accordingly, in its Final Updated Document Containing the Charges, the Prosecution has removed this specific allegation.
4. However, the Prosecution respectfully informs the Chamber that since the Confirmation Hearing, the Prosecution has obtained additional evidence to substantiate this factual allegation. Accordingly, the

¹ ICC-01/09-02/11-584.

² ICC-01/09-02/11-584-Anx.

³ ICC-01/09-02/11-584, paragraph 75.

Prosecution intends to apply to the Pre-Trial Chamber to include this allegation within the Murder Count 1. If the Pre-Trial Chamber confirms this, the Prosecution will seek leave of the Trial Chamber, pursuant to Article 64(6) (a) and (f), to re-insert the charge. We are alerting the Chamber of this possibility so that the Defence is properly put on notice of it. In the event that the Prosecution does not seek confirmation of this additional fact, moreover, because it is relevant to the intent and plan of the perpetrators in furtherance of the plan, the Prosecution may also seek to lead this evidence during trial.



Fatou Bensouda,
Prosecutor

Dated this 7th of January 2013
At The Hague, The Netherlands