

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

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

Date: 16 August 2013

**PRE-TRIAL CHAMBER II**

**Before: Judge Ekaterina Trendafilova, Single Judge**

**SITUATION IN THE REPUBLIC OF KENYA  
IN THE CASE OF THE PROSECUTOR V. WILLIAM SAMOEI RUTO AND  
JOSHUA ARAP SANG**

**Public**

**Decision on the "Prosecution's Request to Amend the Updated Document  
Containing the Charges Pursuant to Article 61(9) of the Statute"**

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

**The Office of the Prosecutor**  
Fatou Bensouda, Prosecutor  
James Stewart, Deputy Prosecutor

**Counsel for William Samoei Ruto**  
Karim A. A. Khan  
David Hooper  
Essa Faal  
Shyamala Alagendra

**Counsel for Joshua Arap Sang**  
Joseph Kipchumba Kigen-Katwa  
Silas Chekera

**Legal Representatives of the Victims**  
Wilfred Nderitu

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparation**

**The Office of Public Counsel for  
Victims**  
Paolina Massidda

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

**States Representatives**

**Amicus Curiae**

**Other**

## **REGISTRY**

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**Registrar & Deputy Registrar**  
Herman von Hebel, Registrar  
Didier Preira, Deputy Registrar

**Defence Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

Judge Ekaterina Trendafilova, acting as Single Judge on behalf of Pre-Trial Chamber II (the “Chamber”)<sup>1</sup> of the International Criminal Court (the “Court”) issues this decision on the “Prosecution’s Request to Amend the Updated Document Containing the Charges Pursuant to Article 61(9) of the Statute” (the “Request” or the “Prosecutor’s Request”).<sup>2</sup>

1. The present decision is classified as public even though it makes reference to the Request which is classified as confidential. However, the Single Judge considers that the references made in the present decision are required by the principle of publicity and judicial reasoning. Moreover, those references are not inconsistent with the nature of the documents referred to as they have been kept to a minimum.

## I. PROCEDURAL HISTORY

2. On 23 January 2012, the Chamber issued, by majority, its “Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute” (the “Confirmation of Charges Decision”),<sup>3</sup> in which, *inter alia*, it confirmed the charges presented against William Samoei Ruto (“Mr. Ruto”) and Joshua Arap Sang (“Mr. Sang”) to the extent specified in the decision,<sup>4</sup> and committed the two accused persons to trial on the charges as confirmed.<sup>5</sup> With regard to the temporal framework of the crimes allegedly committed in the greater Eldoret area, the Chamber confirmed the charges against the two accused for crimes committed “between 1 January 2008 and 4 January 2008”.<sup>6</sup>

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<sup>1</sup> Pre-Trial Chamber II, “Decision Designating a Single Judge”, 21 March 2011, ICC-01/09-01/11-6.

<sup>2</sup> ICC-01/09-01/11-824-Conf and its confidential Annex A and confidential *ex parte* Annexes B-M.

<sup>3</sup> Pre-Trial Chamber II, ICC-01/09-01/11-373.

<sup>4</sup> Pre-Trial Chamber II, ICC-01/09-01/11-373, paras 349, 367, p. 138.

<sup>5</sup> Pre-Trial Chamber II, ICC-01/09-01/11-373, p. 138.

<sup>6</sup> Pre-Trial Chamber II, ICC-01/09-01/11-373, paras 349, 367.

3. On 29 March 2012, Trial Chamber V was seized of the case against Mr. Ruto and Mr. Sang.<sup>7</sup>
4. On 21 August 2012, the Prosecutor submitted the "Prosecution's Updated Document Containing the Charges pursuant to the Trial Chamber's Order (ICC-01/09-01/11-439)" (the "Updated DCC"), alleging that the crimes committed in the greater Eldoret area began on or about 30 December 2007.<sup>8</sup>
5. On 28 December 2012, Trial Chamber V ordered the Prosecutor to amend the Updated DCC in order to reflect the limited temporal scope of the charges confirmed by this Chamber in respect of the crimes allegedly committed in the greater Eldoret area, namely "between 1 January 2008 and 4 January 2008".<sup>9</sup>
6. On 7 January 2013, the Prosecutor re-submitted the Updated DCC in conformity with the order of Trial Chamber V.<sup>10</sup>
7. On 21 May 2013, the Presidency constituted Trial Chamber V(a) and assigned to it the case against Mr. Ruto and Mr. Sang.<sup>11</sup>
8. On 3 June 2013, Trial Chamber V(a) set the date for the start of the trial for 10 September 2013.<sup>12</sup>
9. On 22 July 2013, the Chamber received the Request.<sup>13</sup>
10. On 2 August 2013, the Defence of Mr. Ruto filed the "Defence Response to 'Prosecution's Request to Amend the Updated Document Containing the Charges Pursuant to Article 61(9) of the Statute'".<sup>14</sup>

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<sup>7</sup> Presidency, "Decision constituting Trial Chamber V(a) and referring to it the case of The Prosecutor v. William Samoei Ruto and Joshua Arap Sang", ICC-01/09-01/11-406.

<sup>8</sup> ICC-01/09-01/11-448.

<sup>9</sup> Trial Chamber V, "Decision on the content of the updated document containing the charges", ICC-01/09-01/11-522, para. 29.

<sup>10</sup> ICC-01/09-01/11-533-AnxA-Corr.

<sup>11</sup> Presidency, "Decision constituting Trial Chamber V(a) and Trial Chamber V(b) and referring to them the cases of *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang* and *The Prosecutor v. Uhuru Muigai Kenyatta*", ICC-01/09-01/11-745.

<sup>12</sup> Trial Chamber V(a), "Decision on prosecution requests to add witnesses and evidence and defence requests to reschedule the trial start date", ICC-01/09-01/11-762, p. 35.

<sup>13</sup> ICC-01/09-01/11-824-Conf.

<sup>14</sup> ICC-01/09-01/11-836-Conf.

11. On 13 August 2013, the Chamber received the “Sang Defence Response to Prosecution’s Request to Amend the Updated Document Containing the Charges Pursuant to Article 61(9) of the Statute”.<sup>15</sup>

## II. APPLICABLE LAW

12. The Single Judge notes articles 61(9) and 67 of the Rome Statute (the “Statute”), rule 128 of the Rules of Procedure and Evidence (the “Rules”) and regulation 23 *bis* of the Regulations of the Court.

## III. THE PROSECUTOR’S SUBMISSION

13. In her Request, the Prosecutor seeks the Chamber’s permission, pursuant to article 61(9) of the Statute and rule 128 of the Rules, “to amend the charges for the limited purpose of extending the temporal scope of the crimes alleged in Counts 1 to 6 in the greater Eldoret area from ‘1 January to 4 January 2008’ to ‘30 December 2007 to 4 January 2008’”.<sup>16</sup> As such, the final Updated DCC will include “the slightly wider temporal scope in all counts for crimes alleged in the greater Eldoret area”, namely 30 and 31 December 2007.<sup>17</sup>

14. The Prosecutor contends that the Defence has been put on notice of the Prosecutor’s intention to prove that crimes in the greater Eldoret area began on or about 30 December 2007 since at least the confirmation of charges hearing.<sup>18</sup> The Prosecutor has maintained this position up until Trial Chamber V ordered the re-submission of the Updated DCC reflecting the temporal scope as confirmed in the Confirmation of Charges Decision.<sup>19</sup>

15. In addition, the Prosecutor submits that since the confirmation of charges hearing she has obtained evidence from twelve witnesses who allege that crimes were committed in the greater Eldoret area – namely in Kimumu, Langas, Yamumbi and Huruma – “soon after the announcement of the

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<sup>15</sup> ICC-01/09-01/11-853-Conf.

<sup>16</sup> ICC-01/09-01/11-824-Conf, para. 1. See also para. 17.

<sup>17</sup> ICC-01/09-01/11-824-Conf, para. 15.

<sup>18</sup> ICC-01/09-01/11-824-Conf, para. 19.

<sup>19</sup> ICC-01/09-01/11-824-Conf, para. 19.

presidential election results on 30 December 2007”.<sup>20</sup> According to the Prosecutor, the Defence has been provided with the statements of these twelve witnesses between 30 November 2012 and 9 January 2013.<sup>21</sup>

16. In light of the foregoing, the Prosecutor submits that the prejudice to the Defence in its preparation for the trial should be negligible, while the Prosecutor would suffer a “monumental” prejudice should the Request be denied. Such denial would exclude a “significant portion of the Prosecution’s case because of a minor, correctible detail, despite the overwhelming evidence now available”.<sup>22</sup>

#### IV. THE DEFENCE RESPONSES

17. In its response, the Defence of Mr. Ruto requests the Chamber to:

27. [...] determine that [...] [the Chamber] is not competent to decide upon the Request at this stage of the proceedings.

28. Further or in the alternative, [...] exercise its discretion and deny the Prosecution permission to amend the charges at this stage of proceedings.<sup>23</sup>

18. With regard to the first part of the request put forward by the Defence of Mr. Ruto, the Defence contends that the jurisprudence of the Court is inconsistent as to the meaning of the expression “before the trial has begun” and argues that article 61(9) of the Statute should be interpreted so as to contemplate amending the charges, as confirmed, prior to the Trial Chamber being constituted and assigned with the case.<sup>24</sup> Accordingly, the Chamber is allegedly not competent to entertain the Request at this stage of the proceedings.<sup>25</sup>

19. As for the second part of its request, the Defence of Mr. Ruto contends that the Prosecutor’s Request should be denied as it has been tardily made or is

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<sup>20</sup> ICC-01/09-01/11-824-Conf, para. 10.

<sup>21</sup> ICC-01/09-01/11-824-Conf, para. 19 and footnote 2.

<sup>22</sup> ICC-01/09-01/11-824-Conf, paras 19-20.

<sup>23</sup> ICC-01/09-01/11-836-Conf, paras 27 and 28.

<sup>24</sup> ICC-01/09-01/11-836-Conf, para. 14.

<sup>25</sup> ICC-01/09-01/11-836-Conf, para. 27.

otherwise prejudicial to the fundamental rights of Mr. Ruto to fair and expeditious proceedings and adequate time to prepare his defence.<sup>26</sup>

20. In this respect, the Defence of Mr. Ruto submits that the proposed amendment is far from insignificant, as contended by the Prosecutor, because it would extend the temporal scope of the charges by 50%.<sup>27</sup> The Defence further submits that the Prosecutor failed to establish any good cause or to provide any explanation for her delayed Request, considering that the evidence collected on the alleged crimes committed in the greater Eldoret area on or about 30 and 31 December 2007 has been in the hands of the Prosecutor for many months.<sup>28</sup>

21. In the view of the Defence of Mr. Ruto, granting the Request at this stage of the proceedings would impel the Defence from being ready to effectively represent Mr. Ruto given the upcoming commencement of the trial as currently set.<sup>29</sup> Further, this would require additional time to conduct Defence investigation, thus negatively impacting on Mr. Ruto's right to expeditious proceedings, as enshrined in article 67(1)(c) of the Statute.<sup>30</sup>

22. The Defence of Mr. Sang submits that the Prosecutor's "justification for seeking to amend the DCC at this stage is wholly lacking in merit and does not provide reasons as to why the evidence was unknown or unavailable or could not have been collected until after confirmation".<sup>31</sup> The Defence adds that all the incidents mentioned in the newly collected evidence of the Prosecutor would need to be analysed and investigated prior to the trial.<sup>32</sup>

23. Moreover, the Defence of Mr. Sang submits that it has not focused its investigative activities "on allegations which, though contained in witness statements, have not been part of the case against the accused as defined by the

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<sup>26</sup> ICC-01/09-01/11-836-Conf, para. 15.

<sup>27</sup> ICC-01/09-01/11-836-Conf, para. 19.

<sup>28</sup> ICC-01/09-01/11-836-Conf, paras 21-22.

<sup>29</sup> ICC-01/09-01/11-836-Conf, para. 23.

<sup>30</sup> ICC-01/09-01/11-836-Conf, para. 26.

<sup>31</sup> ICC-01/09-01/11-853-Conf, para. 8.

<sup>32</sup> ICC-01/09-01/11-853-Conf, para. 9.

judges".<sup>33</sup> In light of the foregoing, the Defence of Mr. Sang requests the Chamber to reject the Prosecutor's Request.<sup>34</sup>

## V. DETERMINATION BY THE SINGLE JUDGE

### *Preliminary Remarks*

24. Before entertaining the merits of the Prosecutor's Request, the Single Judge considers it indispensable to make some preliminary remarks. The Single Judge recalls that pursuant to article 61(7) of the Statute, the Pre-Trial Chamber shall determine, on the basis of the confirmation of charges hearing, whether there is sufficient evidence to establish substantial grounds to believe that the suspect committed each of the crimes charged. Based on its determination, the Pre-Trial Chamber shall:

- (a) Confirm those charges in relation to which it has determined that there is sufficient evidence, and commit the person to a Trial Chamber for trial on the charges as confirmed;
- (b) Decline to confirm those charges to which it has determined that there is insufficient evidence; [...]

25. The purpose of the confirmation decision is to demarcate the subject-matter of the case and thus, to design the legal and factual framework for the subsequent trial proceedings. In the Confirmation of Charges Decision, the Chamber confirmed the charges with respect to the period of 1-4 January 2008, in accordance with the letter of article 61(7) of the Statute, and committed the accused persons to trial based on the sufficiency of evidence presented for said period in the charges brought by the Prosecutor.

26. The Prosecutor filed her first Updated DCC before Trial Chamber V on 21 August 2012, with reference to a period of time declined by this Chamber in the Confirmation of Charges Decision for lack of sufficient evidence namely, that the crimes in the greater Eldoret area began "on or about 30 December 2007". The Prosecutor persistently followed the same approach when she re-filed on

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<sup>33</sup> ICC-01/09-01/11-853-Conf, para. 10.

<sup>34</sup> ICC-01/09-01/11-853-Conf, para. 12.



28 November 2012 another Updated DCC, including the period denied by the Chamber in the Confirmation of Charges Decision. The Prosecutor finally complied with the Trial Chamber's order in her filing of 7 January 2013 and amended the Updated DCC to adhere to the findings of this Chamber in the Confirmation of Charges Decision. However, on 25 February 2013, she again re-inserted in the "Updated Pre-Trial Brief"<sup>35</sup> the language to the effect that the temporal scope of the case was broadened to include the period not confirmed by the Chamber. By so doing, the Prosecutor showed persistent disregard for the Court's procedural regime envisaged by its founders, more specifically, those parts of the statutory documents which determine the structure of the proceedings, the functions of the pre-trial and trial chambers as well as the role and the procedural standing of the Prosecutor.

#### *Merits*

27. Turning to the merits, the Single Judge recalls that the Defence of Mr. Ruto put forward two alternative requests. Given that the first part of the Defence's request challenges the competence of the Chamber to rule on the Prosecutor's Request, the Single Judge deems it essential to start with this part of the Defence submission.

28. In this respect, the Single Judge recalls that previously, on 21 March 2013, she entertained, on behalf of the Chamber, a request submitted by the Prosecutor to this Chamber under article 61(9) of the Statute in the case of the *Prosecutor v. Uhuru Muigai Kenyatta* (the "Kenyatta Case");<sup>36</sup> that request was lodged after the constitution of Trial Chamber V to which that case had been assigned. Notably, this request was submitted in the course of preparation for the actual commencement of the trial before said Trial Chamber.

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<sup>35</sup> ICC-01/09-01/11-824-Conf.

<sup>36</sup> Pre-Trial Chamber II, "Corrigendum to 'Decision on the *Prosecution's Request to Amend the Final Updated Document Containing the Charges Pursuant to Article 61(9) of the Statute*', 21 March 2013, ICC-01/09-02/11-700-Corr, para. 21 (the "21 March 2013 Decision").

29. In the context of the present Request, the Single Judge considers that the Prosecutor's Request has been made "before the trial has [actually] begun" in accordance with article 61(9) of the Statute, and therefore, she is competent to entertain it on the merits.

30. In relation to the second part of the Defence's request, which is actually the subject-matter of the Prosecutor's Request, i.e., whether to grant or deny the Prosecutor's Request for amending the temporal scope of the charges, the Single Judge recalls article 61(9) of the Statute which stipulates:

9. After the charges are confirmed and before the trial has begun, the Prosecutor may, with the permission of the Pre-Trial Chamber and after notice to the accused, amend the charges. If the Prosecutor seeks to add additional charges or to substitute more serious charges, a hearing under this article to confirm those charges must be held. After commencement of the trial, the Prosecutor may, with the permission of the Trial Chamber, withdraw the charges.

31. In this regard, the Single Judge recalls her previous finding that the wording of article 61(9) of the Statute allows the Prosecutor to request permission to amend the charges up until the actual commencement of the trial, provided that a request to this effect is properly "supported and justified".<sup>37</sup> The Chamber's permission is a *conditio sine qua non* for any amendment of the charges at this stage, as dictated by the Statute.<sup>38</sup> This statutory requirement suggests that the Prosecutor should not benefit from an unfettered right to resort to article 61(9) of the Statute at her ease, particularly, if such permission will negatively affect other competing interests, such as the fairness and expeditiousness of the proceedings, which would result in causing prejudice to the rights of the accused.

32. Indeed, in the 21 March 2013 Decision in the context of the Kenyatta Case, the Single Judge made clear that granting permission pursuant to article 61(9) of the Statute to amend the charges confirmed "entails consideration of the Prosecutor's Request and an evaluation of *other* relevant information [...]".<sup>39</sup>

<sup>37</sup> Pre-Trial Chamber II, ICC-01/09-02/11-700-Corr, para. 21.

<sup>38</sup> Pre-Trial Chamber II, ICC-01/09-02/11-700-Corr, para. 19.

<sup>39</sup> Pre-Trial Chamber II, ICC-01/09-02/11-700-Corr, para. 21.

Thus, in arriving at a proper and balanced decision on the Request, the Single Judge shall take into consideration “[the] diverse factors affecting the case *sub judice*”.<sup>40</sup>

33. In the Request, the Prosecutor seeks to amend the charges confirmed against Mr. Ruto and Mr. Sang in respect of the crimes committed in the greater Eldoret area by extending the temporal scope for these crimes in adding the dates 30 and 31 December 2007 to all charges confirmed by this Chamber.

34. The Single Judge is cognizant that the Prosecutor is not barred, under the legal framework of the Court, from continuing her investigation post confirmation of charges when needed for her case and for the principal goal of determining the truth. This power is inherent in the Prosecutor’s discretion to conduct her investigation, as provided by the legal texts of the Court. However, the exercise of such discretion should be diligent and professional and should also not lead to abuse.

35. A brief review of the procedural history of the two cases arising from the Kenya situation reveals lack of efficiency and due diligence on the part of the Prosecutor in handling the said Request. Trial Chamber V, which was simultaneously seized of the two cases emanating from the Kenya situation, namely the present case against Mr. Ruto and Mr. Sang as well as the Kenyatta Case, issued on 28 December 2012 two decisions in the two cases concerning the content of the updated documents containing the charges.<sup>41</sup> With respect to the Kenyatta Case, Trial Chamber V, *inter alia*, rejected a factual allegation put forward by the Prosecutor in her updated document containing the charges on the ground that the Pre-Trial Chamber’s conclusion “should [...] be viewed as a rejection of that particular allegation [...] and thus, the Prosecution should not

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<sup>40</sup> Pre-Trial Chamber II, “Corrigendum to ‘Decision on the *Prosecution’s Request to Amend the Final Updated Document Containing the Charges Pursuant to Article 61(9) of the Statute*’”, 21 March 2013, ICC-01/09-02/11-700-Corr, para. 22.

<sup>41</sup> Trial Chamber V, “Decision on the content of the updated document containing the charges”, ICC-01/09-01/11-522; *id.*, “Decision on the content of the updated document containing the charges”, ICC-01/09-02/11-584.

include the allegation that gunshots were the cause of some of the alleged killings in Naivasha”.<sup>42</sup>

36. Within less than a month, on 22 January 2013, the Prosecutor filed her request seeking permission from this Chamber to amend the charges against Uhuru Muigai Kenyatta pursuant to article 61(9) of the Statute. Accordingly, a decision was taken on behalf of this Chamber<sup>43</sup> in due course and much in advance to the date scheduled for the commencement of the trial in that case. This also ensured the fairness of the proceedings, their expeditiousness and respect for the rights of the accused to receive a proper trial.

37. Regrettably, this was not the path followed by the Prosecutor in the present case. Similar to the approach taken in the Kenyatta Case, Trial Chamber V issued another decision on the content of the updated document containing the charges on 28 December 2012 in the present case against Mr. Ruto and Mr. Sang. In this decision Trial Chamber V disagreed with the Prosecutor’s position that the “temporal scope set out in the Confirmation Decision is not binding”,<sup>44</sup> and found that this Chamber “specifically declined to confirm part of the charges in relation to the temporal scope of the crimes”.<sup>45</sup> Accordingly, Trial Chamber V directed the Prosecutor “to ensure that the charges described in the Updated DCC reflect the limited temporal scope for each crime and location as specified in the Confirmation Decision”.<sup>46</sup> However, instead of approaching the Chamber right after the issuance of the Trial Chamber V’s decision, as she did in the Kenyatta Case, the Prosecutor refrained from submitting her Request for almost seven months as of the date of issuance of the Trial Chamber’s said decision. This was notwithstanding the fact that the new evidence (the twelve

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<sup>42</sup> Trial Chamber V, ICC-01/09-02/11-584, paras 74-75.

<sup>43</sup>Pre-Trial Chamber II, “Corrigendum to ‘Decision on the *Prosecution’s Request to Amend the Final Updated Document Containing the Charges Pursuant to Article 61(9) of the Statute*’”, 21 March 2013, ICC-01/09-02/11-700-Corr.

<sup>44</sup> Trial Chamber V, ICC-01/09-01/11-522, para. 28.

<sup>45</sup> Trial Chamber V, ICC-01/09-01/11-522, para. 29.

<sup>46</sup> Trial Chamber V, ICC-01/09-01/11-522, para. 29.

witness statements) were already in the Prosecutor's possession in the course of 2012 and prior to 9 January 2013.<sup>47</sup>

38. The Single Judge understands that each case might have its own particularities and circumstances, which might prompt certain delays. However, the Prosecutor fails to provide the Chamber with any justification or valid reasons for such procedural conduct and excessive delays as outlined above. This is a compelling reason for the Single Judge not to accept the Prosecutor's argument that rejecting the requested amendment would cause a "monumental" prejudice to her case. If this were indeed the case, the Prosecutor should have seized the Chamber much earlier, at a minimum when she learned about the new date for the start of the actual trial (10 September 2013) and not only few weeks before its commencement.

39. In this context, the Single Judge equally cannot agree with the Prosecutor's argument that the rights of the Defence will not be prejudiced as a result of granting permission for the proposed amendment at this stage, as the Defence was arguably put on notice since the start of the case.

40. The Single Judge wishes to make clear that one cannot assume that the Defence is currently in a fair position to prepare its case on the basis of facts and charges related to particular dates which were explicitly rejected by this Chamber in the Confirmation of Charges Decision. Parties and participants in a case are expected to prepare on the basis of the charges as confirmed which shape the subject-matter of the case, and thus, to take into consideration the evidence that is only relevant to the charges confirmed. Thus, the Prosecutor's argument that the Defence was on notice of these additional dates cannot be sustained, especially considering that this Chamber and, subsequently, Trial Chamber V made clear to the Prosecutor in its decision of 28 December 2012 that the trial would commence and be conducted on the basis of the charges as

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<sup>47</sup> ICC-01/09-01/11-824-Conf, para. 19 and its annexes.

confirmed in the Confirmation of Charges Decision or amended in accordance with the legal documents of the Court.

41. In conclusion, if one compares the Prosecutor's follow up in this case concerning her request for the amendment of the charges and the time-frame taken to seize this Chamber, with the manner in which the Prosecutor handled a similar request in the Kenyatta Case, the lack of diligence, organization and efficiency on the part of the Prosecutor in the present case becomes evident. If such procedural performance were to be tolerated, this would taint the fairness and expeditiousness of the entire proceedings.

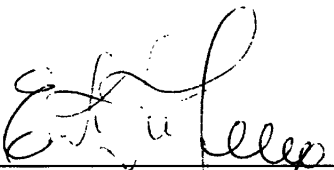
42. It follows that authorizing an amendment of the charges in the absence of any justification as to the belated nature of the Prosecutor's Request on an issue that has been crucial since the confirmation of charges hearing would result in an unfair burden for the Defence, which would require much time to conduct its investigation on the extended temporal scope of the charges in the greater Eldoret area. This course of action would unduly compromise the rights of the accused persons to be informed promptly of the nature, cause and content of the charges, to have adequate time and facilities for the preparation of their defence and to be tried without undue delay, as provided in articles 67(1)(a) to (c) of the Statute. In light of the foregoing, the Single Judge cannot but reject the Prosecutor's Request.

**FOR THESE REASONS, THE SINGLE JUDGE HEREBY**

**a) rejects** the Request; and

**b) orders** the Registry to reclassify as public document ICC-01/09-01/11-824-Conf without its annexes.

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



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**Judge Ekaterina Trendafilova**  
**Single Judge**

Dated this Friday, 16 August 2013

At The Hague, The Netherlands