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No.: ICC-01/09-01/11  
Date: 6 February 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**

**Prosecution observations on issues related to the commencement of trial**

**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**

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**States Representatives**

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**REGISTRY**

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**Registrar**

Silvana Arbia

**Defence Support Section**

**Victims and Witnesses Unit**

Maria Luisa Martinod-Jacome

**Detention Section**

**Victims Participation and Reparations Section**

**Other**

## Introduction

1. In accordance with Trial Chamber V's ("Chamber") order,<sup>1</sup> the Prosecution hereby submits its observations on issues related to the commencement of trial.

### I. Summons conditions

2. The Prosecution considers that at this stage, the conditions in the summons issued by the Pre-Trial Chamber,<sup>2</sup> as subsequently modified,<sup>3</sup> and clarified,<sup>4</sup> by the Single Judge, are adequate for the purpose of trial. The Prosecution reserves the right to request the Chamber under Articles 58 and 64(6)(a) of the Statute and Rule 119(4) of the Rules of Procedure and Evidence for warrants of arrest should the Accused violate their summons conditions, including the requirement of attendance at trial.
3. With respect to summons condition (ii) – "refrain[ing] from corruptly influencing a witness, obstructing or interfering with the attendance of a witness, or tampering with or interfering with the Prosecution's collection of evidence"<sup>5</sup> – the Prosecution has notified the Chamber on several occasions of the systematic attempts by the Accused and their associates to identify and approach those cooperating with the Court's investigation. The relevance of these incidents extends beyond the issue of compliance with the summons conditions – they assist in understanding the unique

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<sup>1</sup> ICC-01/09-01/11-575.

<sup>2</sup> ICC-01/09-01/11-1, pages 23-24

<sup>3</sup> ICC-01/09-01/11-38-Corr, paras 14-16 and page 8 (disposition).

<sup>4</sup> ICC-01/09-01/11-86, paras 14-21 and page 12 (disposition).

<sup>5</sup> ICC-01/09-01/11-1, page 23.

pressures on Prosecution witnesses, which will in turn assist the Chamber in assessing their trial testimony. For these reasons, the Prosecution will continue to bring such incidents to the Chamber's attention, including actions taken under Article 70 of the Statute.

4. With respect to summons condition (iv) – “attend[ing] all required hearings at the International Criminal Court”<sup>6</sup> – the Prosecution suggests that it may be appropriate for the Chamber to invite the Accused to make a public statement at the upcoming status conference regarding their intention to appear for trial.<sup>7</sup>

## II. Practical, financial and/or legal matters regarding the modalities of the Accused's stay in the Host State during trial

5. As the modalities of the Accused's stay on the territory of the Host State during trial are primarily a matter for the Registry, the Prosecution has no submissions to make on this topic.

## III. Other issues

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<sup>6</sup> ICC-01/09-01/11-1, page 23.

<sup>7</sup> For example, recent public statements of Mr. Ruto suggest that he intends to divide his time between attending trial before the Court, and attending to his affairs in Kenya.

See [http://www.standardmedia.co.ke/?articleID=2000076335&story\\_title=Kenya-Politics:%20Ruto:%20Team%20victory%20will%20expose%20flawed%20ICC%20process](http://www.standardmedia.co.ke/?articleID=2000076335&story_title=Kenya-Politics:%20Ruto:%20Team%20victory%20will%20expose%20flawed%20ICC%20process). See also, [http://www.youtube.com/watch?v=rgAWR\\_jknQ8](http://www.youtube.com/watch?v=rgAWR_jknQ8), at 3min 14secs to 4 mins, where Mr. Ruto tells the interviewer, “To the best of my knowledge we will appear in The Hague. And as has happened in the past the case will proceed. We will be required once in a while to be personally present in court, which we will, and the rest of the time conduct our business” (emphasis added).

6. The Prosecution appreciates the Chamber's invitation to raise "any other urgent issue that requires the immediate attention of the Chamber",<sup>8</sup> but has no such issues to raise at this time.



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**Fatou Bensouda, Prosecutor**

Dated this 6<sup>th</sup> of February 2013  
At The Hague, The Netherlands

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<sup>8</sup> ICC-01/09-01/11-575, para 3.