

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 25 April 2013

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***

Public

**Public Redacted Version of "Defence Request for Status Conference", submitted
on 16 April 2013**

Source: Defence for Mr. William Samoei Ruto

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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(Participation/Reparation)

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**Victims Participation and Reparations
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Other

I. INTRODUCTION

1. The Defence hereby submits a request for the holding of a status conference pursuant to Rule 132(2) of the Rules of Procedure and Evidence. On 15 April 2013, the Prosecution filed its "[REDACTED]" ("Prosecution Application"),¹ in which it requested, *inter alia*, [REDACTED]. The Prosecution concluded its application by requesting [REDACTED].
2. The Defence has no objection should the Trial Chamber consider it necessary or useful [REDACTED]. The Defence submits, [REDACTED] status conference where the Prosecution Application and other important matters can be discussed. This will best assist the Trial Chamber when determining matters relevant to the continued viability and appropriateness of the trial commencement date currently set. In addition, it will allow the parties to make submissions on various important issues that are relevant to the fairness of the trial in this case and which, when considered together, could also be relevant to the Prosecution application falling for consideration. It will also give the Trial Chamber the opportunity to assess whether the Defence should be afforded the opportunity to respond *inter partes* to any submissions raised by the Prosecution [REDACTED].

II. SUBMISSIONS

3. As matters currently stand, trial is due to start on 28 May 2013. It is clear that the application by the Prosecution, purporting to relate as it does to "[REDACTED]",² implicates Defence rights [REDACTED]. This in turn is directly relevant to a variety of issues including the continued viability of the 28 May 2013 trial commencement date. Whilst Regulation 34(b) of the

¹ [REDACTED].

² Prosecution Application, para. 27.

Regulations of the Court allows the Defence 21 days to respond to the Prosecution Application, the Defence is of the view that it will be more effective to make submissions on these matters in a status conference. This will best allow the Trial Chamber to make a fully reasoned decision on the merits of the Prosecution Application, the impact of the application and other matters that the Defence proposes to raise on the appropriateness of the current commencement date of the trial.

4. In addition to the issues raised in the Prosecution Application, the Defence requests leave to propose additional critical items to the agenda of the requested status conference. These include :

- (i) the propriety of the Prosecution's [REDACTED] investigations [REDACTED] after the confirmation hearing and whether or not this is in fact justified;
- (ii) the impact of the Prosecution's oft repeated allegations of witness intimidation, bribery and witness interference on the fairness of proceedings and the fair trial rights of Mr. William Ruto;
- (iii) the impact and consequences of the Prosecution's stated intent to use such evidence as "consciousness of guilt" against Mr. William Ruto;
- (iv) the rights of the Defence to receive full disclosure sufficiently prior to the commencement of trial to render effective Mr. William Ruto's right to "adequate time and facilities" for the preparation of his defence pursuant to Article 67 of the Statute;
- (v) [REDACTED];
- (vi) [REDACTED].

5. The Defence deprecates in the strongest possible terms the [REDACTED] proclivity of the Prosecutor to cry foul and seek to excuse evidential failings

and blame it on misconduct elsewhere. If this prosecutorial strategy were to continue unabated, it would severely prejudice the rights of Mr. Ruto to such an extent that a fair trial will be rendered impossible. The Defence, with the greatest of respect, cautions the Trial Chamber from allowing a trial to commence and then proceed in circumstances in which the Prosecutor is allowed to obscure a weak and false case at every turn, by the ritual incantation of "[REDACTED]".³ The Defence submits that the proper and principled course of conduct is to [REDACTED].

6. [REDACTED] a fair trial will not be possible and the Defence will find itself at every turn fighting the phantom of witness intimidation and interference and the unwarranted suggestion that it is behind any untoward or improper behaviour. This will result in the Defence and the Chamber being forced to focus, not on allegations of post-election violence in Kenya, but on collateral issues that have the potential to unnecessarily and improperly dominate this case to the prejudice of the Defence and the proper mandate of the Court.
7. The Defence further requests that an *ex parte* Defence Only segment of the status conference be ordered to follow the requested *inter partes* segment, which will allow the Defence to address the Chamber on critical defence investigative issues that are also directly relevant to the viability of the 28 May 2013 trial commencement date.

III. Confidentiality of filing

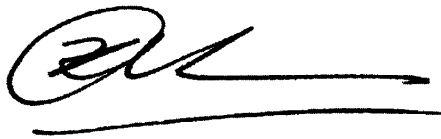
8. This request is submitted confidentially as it refers to and discusses a filing that has been classified as confidential.

³ [REDACTED].

IV. RELIEF REQUESTED

9. For the Reasons detailed above, the Defence prays that the Trial Chamber schedule the requested status conference including an *ex parte* Defence only session to follow the *inter partes* session.

Respectfully submitted,



Karim A.A. Khan QC
Lead Counsel for H.E. William Samoei Ruto
Deputy President of the Republic of Kenya

Dated this 25th day of April 2013
At Nairobi, Kenya