



Original: English

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

Date: 8 May 2013

TRIAL CHAMBER V

Before: Judge Kuniko Ozaki, Presiding
Judge Robert Fremr
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

**Sang Defence Response to Submissions
by the Government of the Republic of Kenya**

Source: Defence for Mr. Joshua Arap Sang

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

The Office of the Prosecutor

Fatou Bensouda, Prosecutor
Cynthia Tai, Trial Lawyer

Counsel for William Ruto

Karim Khan QC, David Hooper QC
Kioko Kilukumi, Shyamala Alagendra

Counsel for Joshua Sang

Joseph Kipchumba Kigen-Katwa
Silas Chekera

Legal Representatives of the Victims

Wilfred Nderitu

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

Paolina Massida

**The Office of Public Counsel for the
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States' Representatives

Githu Muigai, SC Attorney General,
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Amicus Curiae

REGISTRY

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Herman von Hebel

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Didier Daniel Preira

Victims and Witnesses Unit

Patrick Craig

Detention Section

**Victims Participation and Reparations
Section**

Other

1. On 9 April 2013, the Government of the Republic of Kenya filed submissions on the status of the Kenyan Government's continued cooperation with the Court, and in particular with the Office of the Prosecutor.¹ Therein, the Kenyan Government disputed public allegations routinely bandied about by the Prosecutor, to the effect that the Government was not cooperating with the Court and was frustrating the Prosecutor's efforts to do justice.
2. On 24 April 2013, Trial Chamber V accepted the Kenyan Government's Submissions as an amicus curiae filing pursuant to Rule 103(1).² The Chamber further ordered that parties should respond within 14 days, to ensure that cooperation concerns are resolved in an expeditious manner.³
3. The defence for Joshua arap Sang has no reason to doubt the sincerity of the Kenyan Government's Submissions. In particular, the defence accepts that the Kenyan Government has cooperated with the Court to the fullest and has pledged to continue to do so, in accordance with its obligations as a State Party to the Rome Statute. Indeed, despite a recent change in leadership of the country, the Kenyan Government has taken no steps to change its position with respect to the forthcoming trials of the three accused.
4. Furthermore, the defence supports the Kenyan Government's position that any complaints of non-cooperation made by the Prosecutor be made on notice, in order that the Kenyan Government can respond appropriately and be adjudicated by the Chamber rather than by the court of public opinion. The Prosecutor's comments on this subject to date seem nothing more than a public relations attempt to smear the image of the Kenyan Government, or to explain away weaknesses in the Prosecution's own investigations, rather than a genuine attempt to resolve cooperation issues which may have arisen.

¹ *Prosecutor v. Ruto and Sang*, ICC-01/09-01/11-670, Government of Kenya's Submissions on the Status of
² *Prosecutor v Ruto and Sang*, ICC-01/09-01/11-700, Decision on the Government of Kenya's application for leave to file observations pursuant to Rule 103(1) of the Rules of Procedure and Evidence, 24 April 2013 ("Decision"), para. 2.
³ Decision, para. 3.



Joseph Kipchumba Kigen-Katwa
On behalf of Joshua Arap Sang
Dated this 8th Day of May 2013
In Nairobi