

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/09-01/11
Date: 23 September 2013

TRIAL CHAMBER V(A)

Before: Judge Chile Eboe-Osuji, Presiding Judge
Judge Olga Herrera Carbuccion
Judge Robert Fremr

SITUATION IN THE REPUBLIC OF KENYA

**IN THE CASE OF
THE PROSECUTOR v. WILLIAM SAMOEI RUTO and JOSHUA ARAP SANG**

Confidential

**Prosecution's Request for Leave to Reply to the "Sang Defence Response to
Prosecution Application pursuant to Regulation 35(2) for Addition of Documents
to the List of Evidence"**

Source: 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

Ms. Fatou Bensouda

Mr. James Stewart

Mr. Anton Steynberg

Counsel for the Defence

For William Samoei Ruto:

Mr. Karim Khan

Mr. David Hooper

Ms. Shyamala Alagendra

For Joshua Arap Sang:

Mr. Joseph Kipchumba Kigen-Katwa

Ms. Caroline Buisman

Legal Representatives of the Victims

Mr. Wilfred Nderitu

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

Ms. Paolina Massidda

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

States' Representatives

Amicus Curiae

REGISTRY

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Mr. Herman von Hebel

Counsel Support Section

Deputy Registrar

Mr. Didier Preira

Victims and Witnesses Unit

Mr. Patrick Craig

Detention Section

**Victims Participation and Reparations
Section**

Others

1. Pursuant to Regulation 24(5) of the Regulations of the Court ('Regulations'), the Prosecution seeks leave to reply to the "Sang Defence Response to Prosecution Application pursuant to Regulation 35(2) for Addition of Documents to the List of Evidence".¹
2. Pursuant to Regulation 23*bis*, the present filing is submitted as *confidential* given that it responds to a filing designated as such.
3. On 6 September 2013, the Prosecution filed an application pursuant to Regulation 35(2) to add *inter alia* 53 transcripts/translations of audio-video materials to its List of Evidence.² On 18 September 2013, the Sang Defence responded to the Prosecution's application, opposing the addition of these transcripts/translations and contending that the Prosecution had backtracked on previous undertakings.³
4. As regards three of the transcripts/translations included in its application,⁴ the Prosecution informs Trial Chamber V(a) ('Chamber') and the parties and participants that these were included in error. The Prosecution will no longer seek the inclusion of these three items on its List of Evidence.
5. As regards the remaining 50 items, the Prosecution submits that the Sang Defence has either misunderstood, or misinterpreted, the Prosecution's previous submissions and undertaking relating to these items.⁵ Unless a reply is permitted, the Chamber may render a ruling on an incorrect understanding of the facts.
6. For the reasons set out above the Prosecution requests authorization from the Chamber for leave to reply to the Sang Defence's response.

¹ ICC-01/09-01/11-949-Conf.

² "Prosecution application pursuant to Regulation 35(2) for addition of documents to the list of evidence": ICC-01/09-01/11-915-Conf.

³ ICC-01/09-01/11-949-Conf, paras. 12-13.

⁴ ICC-01/09-01/11-915-Conf-Anx1, items 43-45.

⁵ Contained within the "Prosecution's Update on Disclosure and request for additional time to disclose certain materials": ICC-01/09-01/11-768-Conf.

7. Should the Chamber grant leave, the Prosecution undertakes to file a reply within five days of the notification of the Chamber's decision.



Fatou Bensouda, Prosecutor

Dated this 23rd day of September 2013

At The Hague, the Netherlands