

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 4 October 2013

THE APPEALS CHAMBER

Before: Judge Sang-Hyun Song, Presiding
Judge Sanji Mmasenono Monageng
Judge Akua Kuenyehia
Judge Erkki Kourula
Judge Anita Ušacka

SITUATION IN THE REPUBLIC OF KENYA

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

Public

Defence response to the Prosecution's request pursuant to Regulation 28(2)

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

Ms. Fatou Bensouda

Mr. James Stewart

Counsel for William Ruto

Mr. Karim A.A. Khan QC, Mr. David

Hooper QC, Mr. Essa Faal

Ms. Shyamala Alagendra

Counsel for Joshua 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

Registrar

Mr. Herman von Hebel

Counsel Support Section

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations Other
Section**

I. Submissions

1. The defence for Mr. William Samoei Ruto ("Defence") opposes the *Prosecution's request pursuant to Regulation 28(2)* ("Request").¹
2. The Defence respectfully submits that Regulation 28(2) of the Regulations of the Court is not a mechanism to be used by parties to remedy deficient filings. The plain wording of the Regulation shows that its purpose is to permit the Appeals Chamber to receive further submissions from participants on "specific issues in their written and oral submissions". Such "specific issues" should not be the "proper appraisal of the relationship between the issue certified for Appeal and the submissions made by the Appellant".² This issue is not something which could not have been anticipated. Nor is it a novel issue which might benefit from further elucidation and discussion. Rather, it is a fundamental issue which should be properly addressed in the Appeal itself. To find otherwise, is tantamount to permitting the Prosecution to file two appeal briefs.
3. The Prosecution asserts that the Defence's argument that the Prosecution did not "expressly identify the Issue actually certified for appeal or focus its arguments on the same" and "jettison[ed] the Issue certified for appeal in favour of one it considers more convenient"³ is a "serious mischaracterization".⁴ If this truly is the case, then the Appeals Chamber will be able readily to determine this from a simple review of the appeal brief. It should not require additional submissions.
4. For the above reasons, the Defence respectfully requests that the Appeals Chamber reject the Request.

¹ ICC-01/09-01/11-1010.

² Request, para. 7.

³ Request, para. 4 citing to ICC-01/09-01/11-999 OA6, para. 19.

⁴ Request, para. 5.

Respectfully submitted,

A handwritten signature in black ink, consisting of a stylized 'K' followed by a horizontal line.

Karim A.A. Khan QC
Lead Counsel for Mr. William Samoei Ruto

Dated this 4th Day of October 2013
At The Hague, the Netherlands