

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/09-01/11
Date: 29 January 2014

TRIAL CHAMBER V (A)

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

SITUATION IN THE REPUBLIC OF KENYA

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

Public

**Decision on status conference and additional submissions related to
'Prosecution's request under article 64(6)(b) and article 93 to summon
witnesses'**

Decision 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 William Samoei Ruto

Mr Karim Khan

Mr David Hooper

Ms Shyamala Alagendra

Counsel for Joshua Arap Sang

Mr Joseph Kipchumba Kigen-Katwa

Ms Caroline Buisman

Legal Representatives of Victims

Mr Wilfred Nderitu

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

The Office of Public Counsel for Victims

Ms Paolina Massidda

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

States Representatives

Mr Githu Muigai, SC

Attorney General, Republic of Kenya

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Deputy Registrar

Detention Section

Victims and Witnesses Unit

Others

**Victims Participation and Reparations
Section**

Trial Chamber V(A) (the 'Chamber') of the International Criminal Court in the case of *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, pursuant to Rules 103 and 132(2) of the Rules of Procedure and Evidence (the 'Rules'), Regulations 23 *bis*, 24(5), 31, 34(b) and 35(2) of the Regulations of the Court (the 'Regulations'), renders the following 'Decision on status conference and additional submissions related to "Prosecution's request under article 64(6)(b) and article 93 to summon witnesses"'.

I. Procedural history and submissions

1. On 28 November 2013, the Office of the Prosecutor ('Prosecution') filed the 'Prosecution's request under article 64(6)(b) and article 93 to summon witnesses'.¹ On 5 December 2013, a corrected and amended version of this filing was notified (the 'Summons Request').²
2. On 8 January 2014,³ responses were filed by the defence teams for Mr Ruto⁴ and Mr Sang⁵ (collectively, the 'Defence'). The Defence is of the view that observations from the Government of the Republic of Kenya (the 'Government of Kenya') on the relief sought in the Summons Request would be of assistance to the Chamber.⁶

¹ ICC-01/09-01/11-1120-Conf-Exp (with eight confidential annexes). The first confidential redacted version of this filing was notified on 28 November 2013 (ICC-01/09-01/11-1120-Conf-Red), with a corrigendum filed on 2 December 2013 (ICC-01/09-01/11-1120-Conf-Red-Corr). The first public redacted version of this filing was notified on 29 November 2013 (ICC-01/09-01/11-1120-Red2). The page limit for this filing was extended to 39 pages at the request of the Prosecution. Decision on the Prosecution's request for extension of the page limit, 20 November 2013, ICC-01/09-01/11-1106-Conf, *ruling on* Prosecution request for an extension of page limit, 18 November 2013, ICC-01/09-01/11-1103-Conf.

² ICC-01/09-01/11-1120-Red2-Corr (second corrigendum of confidential redacted version filed same day).

³ Pursuant to the Chamber's direction, responses were due by this date. Email communication from Legal Officer of the Trial Chamber, 9 December 2013, at 12:37.

⁴ Public redacted version of "Defence response to the corrected and amended version of 'Prosecution's request under article 64(6)(b) and article 93 to summon witnesses'", 8 January 2014, ICC-01/09-01/11-1136-Red2 (with two confidential annexes and two confidential *ex parte* annexes).

⁵ Sang Defence Response to the Prosecution's Request under Article 64(6)(b) and Article 93 to Summon Witnesses, 8 January 2014, ICC-01/09-01/11-1138-Red. The page limit for this filing was extended to 39 pages at the request of the Sang Defence. Decision on the Sang Defence request for an extension of the page limit, 7 January 2014, ICC-01/09-01/11-1134, *ruling on* Sang Defence request for an extension of the page limit, 2 January 2014, ICC-01/09-01/11-1131.

⁶ ICC-01/09-01/11-1136-Red2, para. 38(a), ICC-01/09-01/11-1138-Red, para. 3.

3. On 16 January 2014, the Prosecution filed a request for leave to reply to the Defence responses (the 'Reply Request').⁷ The Prosecution argues that good cause exists for a reply because: (i) the Defence responses raise new and distinct issues of law and fact that exceed the reach of the original application⁸ and (ii) the Defence responses misrepresent important facts, the correction of which will benefit the Chamber prior to issuing its ruling.⁹ The Prosecution requests leave to file a reply and to vary the time limits for the filing of any responses to the Reply Request and, if leave is granted, for the reply itself.¹⁰
4. On 17 January 2014, the Defence responded that the Reply Request should be rejected.¹¹ The Defence argues that: (i) all the legal arguments raised by the Defence in response should reasonably have been anticipated by the Prosecution¹² and (ii) that sufficient information has been given to the Chamber for it to assess the factual matters identified in the Reply Request.¹³

II. Status conference and additional submissions

A. Status conference

5. Pursuant to Rule 132(2) of the Rules, and as discussed previously with the parties and participants,¹⁴ the Chamber confirms that it will hold a public status conference to discuss all matters related to the Summons Request.

⁷ Prosecution request for leave to reply to the RUTO Defence's 8 January 2014 and the SANG Defence's 8 January 2014 response to the prosecution's request under Article 64(6)(b) and Article 93 to summon witnesses and variation of time limits under Regulation 35(2), 16 January 2014, ICC-01/09-01/11-1148-Conf.

⁸ Reply Request, ICC-01/09-01/11-1148-Conf, paras 2, 5-6, 8-10.

⁹ Reply Request, ICC-01/09-01/11-1148-Conf, paras 2, 6, 11.

¹⁰ Reply Request, ICC-01/09-01/11-1148-Conf, paras 14-15.

¹¹ Joint Defence response to the "Prosecution request for leave to reply to the Ruto Defence's 8 January 2014 and the Sang Defence's 8 January 2014 response to the Prosecution's request under Article 64(6)(b) and Article 93 to summon witnesses and variation of time limits under Regulation 35(2)", 17 January 2014, ICC-01/09-01/11-1149.

¹² ICC-01/09-01/11-1149, paras 2, 4-10.

¹³ ICC-01/09-01/11-1149, paras 2, 12.

¹⁴ Transcript of Hearing, 24 January 2014, ICC-01/09-01/11-T-80-CONF-ENG, page 3 line 23 to page 4 line 23.

B. Reply Request

6. Given the issues of law and fact raised by the present litigation, the Chamber considers that it would be benefitted by additional written submissions from the Prosecution. Pursuant to Regulation 24(5) of the Regulations, the Prosecution is granted leave to file a reply. Given this determination and the fact that the Defence responded to the Reply Request, the Chamber dismisses the request for variation of the time limit for responses as moot.
7. The Chamber also notes that the Prosecution submits that the Reply Request may be reclassified as 'public' as soon as public versions of the responses to the Summons Request have been notified.¹⁵ As the public versions of these documents were already filed at the time the Reply Request was filed, the Chamber, pursuant to Regulation 23 *bis* of the Regulations, orders the Registry to reclassify the Reply Request as 'public'.

C. Submission pursuant to Rule 103(1) of the Rules

8. Despite granting the Prosecution leave to file a reply, the Chamber is not persuaded that it requires submissions from the Prosecution as to whether the Government of the Kenya should be invited to file observations prior to ruling on the Summons Request. By relying upon Article 93(1)(l) of the Statute, the Prosecution has made Kenyan national law an important component of the present litigation. The Chamber considers that it would be of assistance prior to ruling to hear from the Government of Kenya on whether or not the relief sought by the Prosecution is prohibited by national law. Pursuant to Rule 103(1) of the Rules, the Chamber invites the Government of Kenya to submit written observations on the relief sought in the Summons Request.

¹⁵ Reply Request, ICC-01/09-01/11-1148-Conf, para. 3.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

CONVENES a public status conference on 14 February 2014 at 09:30 to discuss all matters related to the Summons Request, in the presence of the Prosecution, Defence, Legal Representative of Victims and, if they wish to attend, representatives of the Government of Kenya;

PARTIALLY GRANTS the relief sought in the Reply Request, granting the Prosecution leave to file a reply by 12 February 2014;

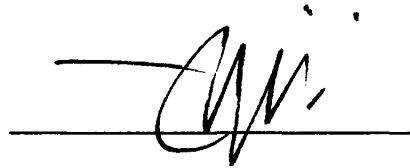
DISMISSES the remainder of the relief sought in the Reply Request as moot;

ORDERS the Registry to promptly notify the Government of Kenya of the Summons Request (ICC-01/09-01/11-1120-Red2-Corr) and the corresponding Defence responses (ICC-01/09-01/11-1136-Red2 and ICC-01/09-01/11-1138-Red);

INVITES the Government of Kenya to file written submissions in accordance with paragraph 8 of the present decision by 12 February 2014; and

ORDERS, pursuant to Rule 103(2) of the Rules and Regulation 34(b) of the Regulations, that any responses to the observations filed by the Government of Kenya are to be given at the 14 February 2014 status conference.

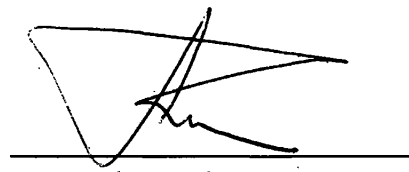
Done in both English and French, the English version being authoritative.

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Judge Chile Eboe-Osuji, Presiding

A handwritten signature in black ink, appearing to be 'Olga Herrera Carbuccion', written over a horizontal line.

Judge Olga Herrera Carbuccion

A handwritten signature in black ink, appearing to be 'Robert Fremr', written over a horizontal line.

Judge Robert Fremr

Dated 29 January 2014

At The Hague, The Netherlands