



Original: English

No.: ICC-01/09-01/11  
Date: 14 January 2014

**TRIAL CHAMBER V(A)**

**Before:** Judge Chile Eboe-Osuji, Presiding  
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***

**Public**

**Addendum to “Defence Request pursuant to Article 63(1) of the Rome Statute and Rule 134<sup>quater</sup> of the Rules of Procedure and Evidence to excuse Mr. William Samoei Ruto from attendance at trial”**

**Sources:** 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  
Mr. Anton Steynberg

**Counsel for William Samoei Ruto**

Mr. Karim A. A. Khan QC  
Mr. David Hooper QC  
Mr. Essa Faal  
Ms. Shyamala Alagendra

**Counsel 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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**Registrar**

Mr. Herman von Hebel

**Counsel Support Section**

**Deputy Registrar**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

## **I. Introduction**

1. On 16 December 2013, the defence for Mr. William Samoei Ruto (“Defence”) filed a request pursuant to Article 63(1) of the Rome Statute (“Statute”) and Rule 134*quater* of the Rules of Procedure and Evidence (“Rules”) that the Trial Chamber excuse Mr. Ruto from presence at his trial due to his extraordinary obligations at the highest national level (“Request”).<sup>1</sup>
2. Today, the Defence has been advised that the President of Kenya will be travelling to Angola today to attend the 5<sup>th</sup> Ordinary Summit of the International Conference on the Great Lakes Region (“Great Lakes Region Summit”) and is scheduled to return to Kenya on Thursday, 16 January 2014. It is understood that Regional Leaders will take the opportunity to discuss security issues in the Democratic Republic of Congo, the Central African Republic (“CAR”) and the Republic of South Sudan (“South Sudan”) at this summit. Given the recent developments in the CAR and also the on-going conflict in South Sudan, it has been accepted that the President of Kenya should attend in order to continue with the regional peace efforts to resolve these crises.
3. This development is clearly relevant to the pending Request and, therefore, the Defence respectfully provides the following additional submissions.

## **II. Submissions**

4. Since December last year, the CAR has been riven by armed clashes resulting in an unknown number of killings and thousands of civilians being displaced. In addition, despite calls for a ceasefire and peace talks, serious fighting is currently taking place between government troops and rebels in South Sudan. Intense regional and international peace efforts are on-going to deal with both these crises. Unsurprisingly, the situations in the CAR and South Sudan will be discussed at the Great Lakes Region Summit. In order to be part of these crucial

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<sup>1</sup> ICC-01/09-01/11-1124.

discussions, the President of Kenya will travel to Angola today, returning on Thursday, 16 January 2014. During this period, Mr. Ruto, as Deputy President, will be required to “*deputise for the President in the execution of the President’s functions*”<sup>2</sup> as well as perform his own constitutional duties.<sup>3</sup>

5. The Defence submits that the President’s travel to attend the Great Lakes Region Summit is a further example of the situation which the Assembly of States Parties (“ASP”) sought to address through its enactment of Rule 134*quater*. When individuals who are “*mandated to fulfil extraordinary public duties at the highest national level*” are also “*subject to...summons[es] to appear*” before this Court, then their duties will frequently require them to request to be excused from attending trial proceedings. However, the ASP did not intend the Trial Chambers of this Court (or, indeed, the parties and participants who must prepare and respond to the requests) to expend valuable resources and time analysing and parsing whether actual specific activities of such accused constitute an “*extraordinary duty*” – responding to a terrorist attack versus meeting with foreign dignitaries versus “*opening new roads*”<sup>4</sup> – but, instead, whether the mandated duties of the office as a whole are “*extraordinary*”.
6. Accordingly, Rule 134*quater* does not necessitate case by case requests<sup>5</sup> but instead permits “*a State to have the benefit of the services and dedicated attention of an accused individual mandated to fulfil extraordinary public duties at the highest national level, while at the same time ensuring that the accused’s criminal case before this Court proceeds in an efficient, expeditious and fair manner*”.<sup>6</sup>

<sup>2</sup> The 2010 Constitution of Kenya, Article 147(1). A copy of the Constitution is available at: <http://www.kenyaembassy.com/pdfs/The%20Constitution%20of%20Kenya.pdf>.

<sup>3</sup> As the Trial Chamber is aware, the President and Deputy President are not permitted to be out of the country at the same time.

<sup>4</sup> ICC-01/09-01/11-1135, para. 41.

<sup>5</sup> This is in comparison to Rule 134*ter*(3) which states that “the Trial Chamber shall rule on the request on a case-by-case basis”. No reference to “case-by-case” is made in Rule 134*quater*.

<sup>6</sup> Request, para. 42.

7. The Defence advises that it is prepared to make additional submissions on this matter and respond to any specific questions from the Bench at the scheduled status conference on 15 January 2014.

### III. Relief requested

8. For the reasons set out above, the Defence respectfully requests that the Trial Chamber render an oral decision, with reasons to follow if necessary, on the Request at the status conference on 15 January 2014.
9. If the Trial Chamber determines that it is either not appropriate to render a decision on the Request at the status conference or rejects the Request, the Defence requests that the Trial Chamber excuse Mr. Ruto from attending his trial on Thursday 16 January and Friday 17 January 2014 pursuant to Article 63(1) of the Statute and Rule 134<sup>quater</sup> of the Rules.

Respectfully submitted,



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

Dated this 14th Day of January 2014  
At The Hague, Netherlands