



Original: English

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

Date: 1 February 2012

**PRE-TRIAL CHAMBER II**

**Before:** Judge Ekaterina Trendafilova, Presiding Judge  
Judge Hans-Peter Kaul  
Judge Cuno Tarfusser

**SITUATION IN THE REPUBLIC OF KENYA**

**IN THE CASE OF**  
*THE PROSECUTOR v. WILLIAM SAMOEI RUTO,*  
*HENRY KIPRONO KOSGEY AND JOSHUA ARAP SANG*

**Public**

**Defence Response to Prosecution's Application to Submit  
a Consolidated Response to Ruto and Sang's Applications for  
Leave to Appeal the Decision on the Confirmation of Charges**

**Source:** Defence for Mr. William Samoei Ruto

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**

Luis Moreno-Ocampo, Prosecutor  
Fatou Bensouda, Deputy Prosecutor

**Counsel for William Ruto**

Kioko Kilukumi Musau, David Hooper  
QC, and Joseph Kipchumba Kigen-Katwa

**Counsel for Henry Kosgey**

George Odinga Oraro, Julius Kemboy  
and Allan Kosgey

**Counsel for Joshua Sang**

Joseph Kipchumba Kigen-Katwa, Joel  
Kimutai Bosek and Philemon K.B. Koech

**Legal Representatives of the Victims**

Sureta Chana

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants  
(Participation/Reparation)**

**The Office of Public Counsel for  
Victims**

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

**States' Representatives**

**Amicus Curiae**

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**REGISTRY**

**Registrar**

Ms. Silvana Arbia

**Counsel Support Section**

**Deputy Registrar**

Mr. Didier Daniel Pereira

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

1. Following the confirmation of charges hearing, the Defence for Mr. William Samoei Ruto and the Defence for Mr. Joshua Arap Sang filed separate written briefs.<sup>1</sup>
2. The Pre-Trial Chamber issued its *Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute* on 23 January 2012 (“Decision”),<sup>2</sup> wherein it made separate legal and factual findings with respect to Mr. Ruto and to Mr. Sang.
3. Thereafter, the Ruto Defence and the Sang Defence filed separate requests, of 20 pages each, for leave to appeal issues arising from that Decision.<sup>3</sup>
4. The Prosecution now requests permission to file a consolidated response to the Ruto and Sang leave to appeal requests.<sup>4</sup> Furthermore, the Prosecution requests an extension of the page limit, so that it can have 40 pages to address the issues raised by the leave to appeal requests. The Prosecution suggests that one 40 page response is equivalent to two 20 page responses.<sup>5</sup>
5. The Defence for Mr. Ruto and the Defence for Mr. Sang oppose the request for consolidation and more especially the request for the extension of the page limit.
6. Regulation 37 of the Regulations of the Court, pursuant to which the Prosecution makes its request, only allows the Chamber to extend the page limit in “exceptional circumstances”.
7. The Defence submits that the Prosecution has not shown exceptional circumstances. It has simply stated a preference as to how it would like to respond. Furthermore, to grant the Prosecution the use of 40 pages to address the issues raised in the leave to appeal requests would result in the Prosecution having an undue advantage over the Defence. The Defence teams complied with the usual 20 page limit for filings and had to use valuable space to set out the procedural history and applicable law sections in each, as well as to repeat arguments where there were issues in common arising from the Decision. Had the

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<sup>1</sup> ICC-01/09-01/11-354 (Sang) and ICC-01/09-01/11-355 (Ruto).

<sup>2</sup> ICC-01/09-01/11-373.

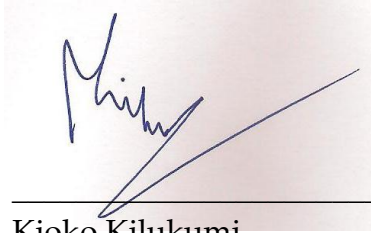
<sup>3</sup> ICC-01/09-01/11-376 (Sang) and ICC-01/09-01/11-377 (Ruto).

<sup>4</sup> ICC-01/09-01/11-379.

<sup>5</sup> This is despite the fact, *inter alia*, that in two 20 page responses four pages are wasted on cover pages, whereas in one 40 page response only two pages would be used on cover pages, leaving the additional two pages for substantive matters.

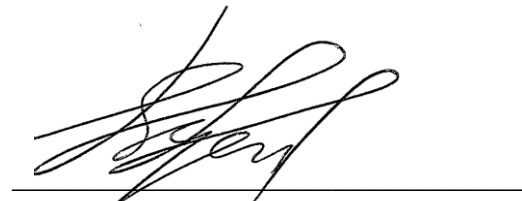
Defence teams had the luxury of 40 combined pages, it could have sought leave to appeal on additional issues or provided further support for its arguments.

8. The Prosecution should not be allowed to prejudice the fairness of the proceedings by having extra pages to respond by way of a consolidated response.



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Kioko Kilukumi  
On behalf of Mr. William Samoei Ruto  
Dated this 1<sup>st</sup> day of February 2012  
In Nairobi Kenya



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Joseph Kipchumba Kigen-Katwa  
On behalf of Mr. Joshua Arap Sang  
Dated this 1<sup>st</sup> day of February 2012  
In Nairobi Kenya