

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 26 March 2013

TRIAL CHAMBER V

Before: Judge Kuniko Ozaki, Presiding
Judge Christine Van den Wyngaert
Judge Chile Eboe-Osuji

SITUATION IN THE REPUBLIC OF KENYA

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

Public

Order on submissions regarding the accused's presence at trial via video link

Decision to be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor
Ms Fatou Bensouda

Counsel for William Samoei Ruto
Mr Kioko Kilukumi Musau
Mr David Hooper

Legal Representatives of Victims
Mr Wilfred Nderitu

Counsel for Joshua Arap Sang
Mr Joseph Kipchumba Kigen-Katwa
Mr Silas Chekera
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

Amicus Curiae

REGISTRY

Registrar
Ms Silvana Arbia

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others

Trial Chamber V (“Chamber”) of the International Criminal Court (“Court”), in the case of *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, pursuant to Article 68(3) of the Rome Statute, Regulations 23 *bis*, 24(2) and 28 of the Regulations of the Court (“Regulations”), renders the following Order on submissions regarding the accused’s presence at trial via video link.

Background and submissions

1. On 28 February 2013, the defence for Mr Ruto and the defence for Mr Sang (“Defence”) filed, pursuant to the Chamber’s instructions,¹ “Joint Defence Submissions on Legal Basis for the Accused’s Presence at Trial via Video Link” (“Defence Submissions”).²
2. On 21 March 2013, the Common Legal Representative for Victims (“Legal Representative”) filed under seal the “Request of the Common Legal Representative for Victims to Submit a Response to the Joint Defence Submissions on Legal Basis for the Accused’s Presence at Trial via Video-Link” (“Request”),³ requesting the Chamber to permit the Legal Representative to respond to the Defence Submissions. The response is annexed to the Request (“Response”).⁴ The Legal Representative submits that the Defence’s proposal that the accused be permitted to be present at trial via video link, discussed in the Defence Submissions, is directly related to the interests of the victims as it would diminish the evidentiary value of the testimony to be given and cause delays in the proceedings.⁵ The Legal Representative also

¹ Transcript of hearing, 14 February 2013, ICC-01/09-01/11-T-19-ENG, p. 6, lines 21-24.

² ICC-01/09-01/11-629.

³ ICC-01/09-01/11-657-US-Exp.

⁴ ICC-01/09-01/11-657-US-Exp-Anx.

⁵ ICC-01/09-01/11-657-US-Exp, paras 1, 9-12.

contends that the Request is not prejudicial to or inconsistent with the rights of the accused.⁶

3. The Legal Representative submits that he filed the Request and the Response under seal in order to prevent prejudice to the Defence. The Legal Representative seeks a reclassification of the Response to public if the Request is granted.⁷

Reclassification of the Response

4. The Chamber recalls that according to its “Decision on victims’ representation and participation” the Legal Representative “may file responses to documents but must demonstrate that the subject matter at issue is directly related to the interests of victims. If the Chamber is not convinced of the link to victims’ interests, it will not consider the submission.”⁸ In view of the Legal Representative’s submissions,⁹ the Chamber is satisfied that the issue whether the accused may be present at trial via video link is directly related to the interests of victims. The Chamber will therefore consider the Response.
5. The Chamber notes that there was no need for the Legal Representative to file the Request and the Response under seal. The Chamber sees no risk of potential prejudice to the Defence justifying such classification. When the Legal Representative makes written submissions in the future and is concerned that his submissions may cause prejudice to the Defence, he is directed to consider filing them confidentially, rather than under seal.
6. In view of its conclusion regarding the Response, the Chamber orders its reclassification. The Chamber notes that the Legal Representative does not seek a

⁶ ICC-01/09-01/11-657-US-Exp, para. 5.

⁷ ICC-01/09-01/11-657-US-Exp, para. 7.

⁸ 3 October 2012, ICC-01/09-01/11-460, para. 72.

⁹ See *supra*, para. 2.

similar reclassification with respect to the Request. However, the Chamber considers that there is no basis for the Request to remain under seal and that it should also be reclassified.

Registry's submissions

7. The Chamber considers that practical aspects may be of relevance to the issue of whether the accused may be present at trial via video link. The Chamber may thus be assisted by the Registry's submissions on modalities of a video link, such as the time required to arrange for such a link, a place from which the video link could be made and the reliability of available equipment.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

ORDERS the Registry to reclassify the Request and the Response as public; and

ORDERS the Registry to file, no later than 9 April 2013, submissions on modalities of a video link, as set out in paragraph 7 above.

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



Judge Kuniko Ozaki, Presiding Judge



Judge Christine Van den Wyngaert



Judge Chile Eboe-Osuji

Dated 26 March 2013

At The Hague, The Netherlands