

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 6 May 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**

**Defence response to “Urgent Prosecution Request for Extension of Time to Respond to any Applications for Leave to Appeal the ‘Decision on Prosecutor’s Application for Witness Summonses and resulting Request for State Party Cooperation’”**

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

**Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:**

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**Unrepresented Applicants  
(Participation/Reparation)**

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Victims**

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**The Office of Public Counsel for the  
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**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. The defence for Mr. William Samoei Ruto ("Defence") respectfully requests that the Trial Chamber reject the *Urgent Prosecution Request for Extension of Time to Respond to any Applications for Leave to Appeal the "Decision on Prosecutor's Application for Witness Summonses and resulting Request for State Party Cooperation"* ("Request")<sup>1</sup> because the Prosecution fails to establish good cause as required under Regulation 35(2) of the Regulations of the Court. Simply put, the Request is an improper means for the Prosecution to be accorded more time to respond to the defence teams' requests for leave to appeal.

## II. Submissions

2. The Defence submits that the Request can be swiftly dealt and should be rejected for the following three reasons.
3. *First*, no extension of time is warranted because the Prosecution has already filed extensive submissions arguing that: (i) the Government of Kenya ("GoK") is not a "party" to proceedings for the purposes of seeking leave to appeal under Article 82(1)(d) of the Rome Statute; and (ii) the GoK should not be permitted to file *amicus curiae* submissions under Rule 103(1) of the Rules of Procedure and Evidence.<sup>2</sup> The only discrete matter which the Prosecution has not addressed is the GoK's proposed submissions on "*any issues which it deems fit for leave to appeal*".<sup>3</sup> Therefore, the Prosecution's submission that "*a single consolidated response*" is required to avoid "*fragmented...multiple separate filings*"<sup>4</sup> is without foundation because the Prosecution has already made some of its arguments in a separate filing.

<sup>1</sup> ICC-01/09-01/11-1290, 5 May 2014.

<sup>2</sup> Prosecution's Response to the Government of the Republic of Kenya's Request for an Extension of Time and/or Leave to Appeal the Decision on Prosecutor's Application for Witness Summonses and resulting Request for State Party Cooperation, Icc-01/09-01/11-1284, 2 May 2014.

<sup>3</sup> The Government of the Republic of Kenya's Request for an Extension of Time and/or Leave to Seek Leave to Appeal the Decision on Prosecutor's Application for Witness Summonses and resulting Request for State Party Cooperation, ICC-01/09-01/11-1277, 25 April 2014 ("**GoK Application**").

<sup>4</sup> Request, para. 6.

4. *Second*, what appears to be reasonably in issue, are two further filings by the Prosecution rather than three. The current deadline for responding to the two defence teams' applications for leave to appeal is 9 May 2014. A consolidated response can be filed to the defence teams' applications by the Prosecution on that date.<sup>5</sup> Thereafter, all that would remain outstanding from the Prosecution's perspective in respect of this particular litigation would be the Prosecution's limited response (see paragraph 3 above) to any application filed by the GoK on 12 May 2014. Given that each application, whether from the defence teams or the GoK, is standalone, advancing its own legal arguments and proposed individual issues for appeal, there is no real advantage provided (or needed) in addressing all the applications in one response. Even if, *arguendo*, there is any overlap between the arguments the Prosecution wishes to make in response to any of the applications (e.g. in respect of the applicable law), this can be dealt with easily by way of cross-reference.<sup>6</sup> Thus, any benefit in terms of promoting a "*fair and expeditious hearing*" offered by granting the Request,<sup>7</sup> appears minimal as compared to the windfall provided to the Prosecution in terms of extra time to respond to the defence teams' applications.
  
5. *Third*, the Prosecution's concern that the GoK will be given "*an undue advantage by giving it advance notice not only of any applications filed by the Defence...but also the response filed by the Prosecution*" is without merit. As noted above, the GoK already has "*advance notice*" of part of the Prosecution's arguments regarding its proposed participation in the leave to appeal stage. Further, the reality is that any purported advantage vis-à-vis arguments on appeal issues that will be given to the GoK will only arise if the GoK seeks to raise issues which are exactly the same as those advanced by either or both of defence teams. This is unlikely

<sup>5</sup> No request for an extension of the page limit has been made so it is assumed that the Prosecution anticipates being able to deal with all Defence arguments within one filing.

<sup>6</sup> See, e.g., the Prosecution's approach to submissions on protective measures which cross-refer to prior submissions – ICC-01/09-01/11-1223-Conf-Red, para 11 citing to ICC-01/09-01/11-1044-Conf-Exp, paras. 7-9.

<sup>7</sup> Request, para. 6.

given that it appears the primary focus of the GoK will be on the domestic implications of the *Decision on Prosecutor's Application for Witness Summonses and resulting Request for State Party Cooperation*,<sup>8</sup> in particular "*whether national law prohibits the relief sought by the Prosecution*".<sup>9</sup> Plus the Prosecution's argument is disingenuous because it seeks the "*undue advantage*" of being given an additional week to respond to the separate arguments made by the defence.

### III. Relief requested

6. For the reasons set out above, the Defence respectfully requests that the Trial Chamber reject the Request.

Respectfully submitted,




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

Dated this 6<sup>th</sup> Day of May 2014  
At The Hague, the Netherlands

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<sup>8</sup> ICC-01/09-01/11-1274-Corr2.

<sup>9</sup> GoK Application, para. 10.