

**Cour  
Pénale  
Internationale**

**International  
Criminal  
Court**



Original: **English**

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

Date: **11 June 2014**

**THE APPEALS CHAMBER**

**Before:** Judge Akua Kuenyehia, Presiding Judge  
Judge Sang-Hyun Song  
Judge Sanji Mmasenono Monageng  
Judge Erkki Kourula  
Judge Anita Ušacka

**SITUATION IN THE REPUBLIC OF KENYA**

*IN THE CASE OF*

*THE PROSECUTOR*

*v. WILLIAM SAMOEI RUTO AND JOSHUA ARAP SANG*

**Public**

**Prosecution Request to Respond to Mr Sang's Response to Mr Ruto's Request for  
Suspensive Effect**

**Source:** Office of the Prosecutor

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

**The Office of the Prosecutor**

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The Republic of Kenya

**REGISTRY**

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**Registrar**

Mr. Herman von Hebel

1. On 5 June 2014, the Defence of Mr Ruto (“the Ruto Defence”) and the Defence of Mr Sang (“the Sang Defence”) filed appeals<sup>1</sup> against the “Decision on Prosecutor’s Application for Witness Summonses and resulting Request for State Party Cooperation” (“Decision”).<sup>2</sup> The Ruto Defence requests, among other things, that the Appeals Chamber suspend implementation of parts of the Decision (“Request for Suspensive Effect”).<sup>3</sup>

2. On 6 June 2014, the Appeals Chamber ordered that Mr Sang and the Prosecutor may respond to the Request for Suspensive Effect.<sup>4</sup> Mr Sang and the Prosecution both filed their respective responses on 10 June 2014.<sup>5</sup>

3. The Prosecution seeks leave from the Appeals Chamber to respond to Mr Sang’s Response. Although the submissions of the Sang Defence are labelled as a response to Mr Ruto’s Request for Suspensive Effect, they go well beyond addressing the arguments advanced by Mr Ruto’s Defence. In fact, Mr Sang’s Response raises a number of new issues and effectively amounts to an additional and separate request for suspensive effect of the Decision. For instance, the Sang Defence submits that immediate implementation of the Decision would (a) be contrary to the Court’s obligation to protect the security and psychological well-being of witnesses pursuant to Article 68(1);<sup>6</sup> (b) have significant financial implications for Kenya and for the Court and create a significant workload for the Defence;<sup>7</sup> (c) the hearing of the evidence of the eight witnesses may improperly impact on the minds of the judges and lead to a possible miscarriage of justice;<sup>8</sup> and (d) the potential admission of evidence in spite of a ruling by the Appeals Chamber overturning the Decision could

<sup>1</sup> ICC-01/09-01/11-1345 OA8 (“Mr Ruto’s Appeal”); ICC-01/09-01/11-1344 OA7 (“Mr Sang’s Appeal”).

<sup>2</sup> ICC-01/09-01/11-1274-Corr2.

<sup>3</sup> Mr Ruto’s Appeal, paras.50-54.

<sup>4</sup> ICC-01/09-01/11-1348 OA7 OA8.

<sup>5</sup> ICC-01/09-01/11-1354 OA7 OA8 (“Mr Sang’s Response”); ICC-01/09-01/11-1355 OA8 (“Prosecution’s Response”).

<sup>6</sup> Mr Sang’s Response, paras.6-7.

<sup>7</sup> Mr Sang’s Response, para.8.

<sup>8</sup> Mr Sang’s Response, para.9.

have serious implications on the fairness of the proceedings *vis-à-vis* the accused and the summoned witnesses.<sup>9</sup> The Prosecution has not had an opportunity to respond to these additional arguments when responding to Mr Ruto's Request for Suspensive Effect.

4. Under these circumstances, the Prosecution should have a right to respond to Mr Sang's Response pursuant to Regulation 24(1). However, because it is labelled as a "response" - although it does not respond to a Prosecution filing - out of an abundance of caution the Prosecution seeks leave to respond to it. If leave is granted, the Prosecution will not repeat submissions that it has already made in its response to Mr Ruto's Request for Suspensive Effect, but will rather confine itself to the new arguments raised in Mr Sang's Response.



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Fatou Bensouda, Prosecutor

Dated this 11<sup>th</sup> day of June 2014

At The Hague, The Netherlands

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<sup>9</sup> Mr Sang's Response, para.10.