

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 10 July 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

Confidential

Order for Clarification on Mode of Examination of Witnesses 19 and 28

Decision 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 Khan
Mr David Hooper
Mr Essa Faal
Ms Shyamala Alagendra

Counsel for Joshua Arap Sang

Mr Joseph Kipchumba Kigen-Katwa
Ms Caroline Buisman

Legal Representatives of Victims

Mr Wilfred Nderitu

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

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Others

Trial Chamber V(A) (the 'Chamber') of the International Criminal Court (the 'Court'), in the case of *The Prosecutor v William Samoei Ruto and Joshua Arap Sang*, pursuant to Article 93 of the Rome Statute (the 'Statute'), Regulations 28 and 34 of the Regulations of the Court, issues this 'Order for Clarification on Mode of Examination of Witnesses 19 and 28'.

1. On 18 June 2014, the Office of the Prosecutor ('Prosecution') filed the 'Prosecution's request for observations on the mode of testimony of witnesses P-0019 and P-0028, and related relief' (the 'Request'),¹ in which it submits that it has requested the assistance of the authorities of a certain state to secure the testimony of Witnesses 19 and 28 (the 'depositions') for the purpose of subsequently introducing their evidence before the Chamber.² The Prosecution requests, *inter alia*, that the Chamber order the parties and participants to submit their observations on the procedure for the depositions of Witnesses 19 and 28, and that the Chamber subsequently rule on the appropriate conduct of the depositions.³
2. On 20 June 2014, the Chamber directed the Victims and Witnesses Unit ('VWU') to make observations on an aspect of the relief sought by the Prosecution.⁴
3. On 24 June 2014, the VWU filed its observations pursuant to the Chamber's direction.⁵
4. On 27 June 2014, the Prosecution filed the 'Prosecution's Response to the VWU's "Observations on Disclosure of Information regarding Witnesses 19 and 28"', and

¹ ICC-01/09-01/11-1372-Conf-Exp, with confidential *ex parte* Annexes A-D. A confidential redacted version was filed as ICC-01/09-01/11-1372-Conf-Red.

² Request, ICC-01/09-01/11-1372-Conf-Red, para. 1.

³ Request, ICC-01/09-01/11-1372-Conf-Red, paras 3-4, 35.

⁴ Order for Observations on Disclosure of Information regarding Witnesses 19 and 28, ICC-01/09-01/11-1379-Conf-Exp.

⁵ Victims and Witnesses Unit's Observations on Disclosure of Information regarding Witnesses 19 and 28, ICC-01/09-01/11-1393-Conf-Exp.

provision of additional information on mode of testimony' ('Prosecution Response'),⁶ in which the Prosecution submits, *inter alia*, that the competent authorities confirmed that, once Witnesses 19 and 28 have been summonsed to appear, it will be possible for them to testify directly before the Chamber, either *in situ*, which is preferred by the Prosecution, or, in the alternative, by video-link.⁷ The Prosecution continues to seek an order of the Chamber for observations of the parties and participants on the procedure proposed by the Prosecution in the Request, as supplemented by the Prosecution Response, including the appropriate conduct of proceedings.⁸

5. The Chamber notes that it is unclear whether, in view of the new information set out in the Prosecution Response, the Prosecution intends to continue seeking the competent authorities' assistance in the conduct of depositions, under Article 93(1)(b) of the Statute, or, rather, seek the issuance of a request for the assistance of the authorities in ensuring the appearance of Witnesses 19 and 28 before the Court pursuant to Article 93(1)(d) and (l) of the Statute. The Chamber, therefore, considers it appropriate, before ruling on the Request and the additional relief sought in the Prosecution Response, to seek clarification from the Prosecution on its intended course of action.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

DIRECTS the Prosecution to file, no later than 14 July 2014, submissions on the assistance it intends to seek from the competent authorities and, in particular, on whether it intends to maintain its request for assistance under Article 93(1)(b) of the

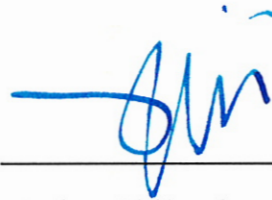
⁶ ICC-01/09-01/11-1411-Conf-Exp. A confidential redacted version was filed as ICC-01/09-01/11-1411-Conf-Red.

⁷ Prosecution Response, ICC-01/09-01/11-1411-Conf-Red, paras 9-11.

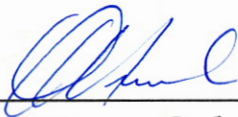
⁸ Prosecution Response, ICC-01/09-01/11-1411-Conf-Red, para. 13.

Statute and whether it intends to seek the issuance of a request for assistance under Article 93(1)(d) and (l) of the Statute.

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



Judge Chile Eboe-Osuji
(Presiding)



Judge Olga Herrera Carbuccion



Judge Robert Fremr

Dated 10 July 2014

At The Hague, The Netherlands