

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 14 October 2014

Date of public redacted version: 11 December 2017

TRIAL CHAMBER V(A)

Before: Judge, Chile Eboe-Osuji, Presiding
Judge Olga Herrera Carbuccia
Judge Robert Fremr

SITUATION IN THE REPUBLIC OF KENYA

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

**Public redacted version of
Decision on Prosecution's Second Submission of Schedule of Evidence of
Summoned Witnesses**

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*, having regard to Articles 64(6)(b), 86, 93, 99(1) of the Rome Statute, Rule 65 of the Rules of Procedure and Evidence and Regulation 73 of the Regulations of the Court, issues this 'Decision on Prosecution's Second Submission of Schedule of Evidence of Summoned Witnesses'.

I. Procedural history and submissions

1. On 17 April 2014, the Chamber ordered the appearance of eight prosecution witnesses by way of summonses ('Summons Decision').¹
2. On 7 October 2014, the Prosecution proposed the following schedule ('Tentative Schedule') for the court session that is to take place from 17 November 2014 to 12 December 2014 ('Submission' and 'November-December Session'):²
 - (i) [REDACTED] – Estimate of four-five days. 17 November to 21 November.
 - (ii) [REDACTED] – Estimate of six days. 21 November to 28 November.
 - (iii) [REDACTED] – Estimate of four-five days. 28 November to 4 December.
 - (iv) [REDACTED] – Estimate of six to seven days. 4 December to 12 December.
3. Further, the Prosecution indicated that [REDACTED] and [REDACTED] are now prepared to testify voluntarily.³ Additionally, it informs the Chamber that the defence teams of Mr Ruto and Mr Sang (together, the 'Defence') have been asked for their views on the proposed schedule. Both teams indicated that the allocated

¹ Decision on Prosecutor's Application for Witness Summonses and resulting Request for State Party Cooperation, 17 April 2014, ICC-01/09-01/11-1274-Corr2.

² Prosecution's second Submission of Schedule of testimony of Summoned Witnesses, ICC-01/09-01/11-1597-Conf.

³ Submission, ICC-01/09-01/11-1597-Conf, para. 2.

time per witness seems insufficient.⁴ The defence for Mr Sang stressed that it expects half of the estimated time to be reserved for cross-examination.⁵

4. On 9 October 2014, the Appeals Chamber confirmed the Summons Decision.⁶

II. Discussion

5. The Chamber notes that three out of the four witnesses listed in the Tentative Schedule are subject to the Summons Decision.⁷ However, the Prosecution has indicated that [REDACTED] and [REDACTED] are now willing to testify voluntarily. Although the Chamber has no reason to question the Prosecution's assurance of the witnesses' willingness to testify, it considers that the Chamber's orders in the Summons Decision will not be modified.⁸ This consideration is without prejudice to the voluntary appearance of the summonsed witnesses.

6. The Chamber recalls the guidance provided in its previous 'Decision on Prosecution's Submission of Schedule of Evidence of Summonsed Witnesses',⁹ which is applicable to the appearance of [REDACTED]:

- (i) The Registry is directed to implement the Chamber's direction to it in the Summons Decision¹⁰ on the basis of the Tentative Schedule and any other necessary practicalities, including, as may be required,

⁴ Submission, ICC-01/09-01/11-1597-Conf, para. 6.

⁵ ICC-01/09-01/11-1597-Conf-AnxA.

⁶ Appeals Chamber, Judgment on the appeals of William Samoei Ruto and Mr Joshua Arap Sang against the decision of Trial Chamber V (A) of 17 April 2014 entitled "Decision on Prosecutor's Application for Witness Summonses and resulting Request for State Party Cooperation", 9 October 2014, ICC-01/09-01/11-1598 (OA 7 OA 8).

⁷ [REDACTED].

⁸ Summons Decision, ICC-01/09-01/11-1274-Corr2, page 78.

⁹ 18 July 2014, ICC-01/09-01/11-1442-Conf ('First Decision on Schedule of Witnesses'), para. 8.

¹⁰ Summons Decision, ICC-01/09-01/11-1274-Corr2, page 78 ('**DIRECTS** the Registry to prepare and transmit, in consultation with the Prosecutor, the necessary subpoenas to the concerned witnesses (with or without the assistance of the Government of Kenya) as well as the necessary cooperation request to the relevant authorities of the Republic of Kenya in accordance with articles 93(l)(d), 93(1)(1), 96 and 99(1) of the Statute, in accordance with this decision').

facilitating the arrangements specified in sub-paragraphs (ii) and (iii) below;

- (ii) The Victims and Witnesses Unit (the 'VWU') is to conduct its familiarisation and assessment work to the extent possible; and
- (iii) In consultation with the Prosecution, the Registry should make arrangements so that duty counsel can be appointed on short notice should the need for one arise.¹¹

7. As [REDACTED] is not subject to a summons, the Chamber considers that no guidance from it is necessary with respect to scheduling his appearance before the Court.

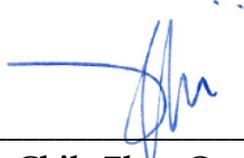
8. In respect of the concerns raised by the Defence, the Chamber notes that the dates indicated in the Tentative Schedule are for scheduling purposes only and can be adapted if need arises.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

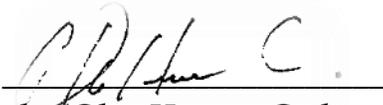
DIRECTS the Registry, Prosecution and VWU to proceed in accordance with paragraph 6 of the present decision.

¹¹ First Decision on Schedule of Witnesses, ICC-01/09-01/11-1442-Conf, para. 8.

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



Judge Chile Eboe-Osuji, Presiding



Judge Olga Herrera Carbuccia



Judge Robert Fremr

Dated 14 October 2014

At The Hague, The Netherlands