

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **27 August 2014**

**TRIAL CHAMBER V(A)**

**Before:** Judge Chile Eboe-Osuji, Presiding Judge  
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**

**Prosecution's request for leave to reply to the "Defence Response to Corrected version of 'Prosecution's eighth application pursuant to Regulation 35(2) of the Regulations of the Court'", 21 August 2014, ICC-01/09-01/11-1463"**

**Source:** The 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**

Ms Fatou Bensouda  
Mr James Stewart  
Mr Anton Steynberg

**Counsel for the Defence**

**For William Samoei Ruto:**

Mr Karim Khan  
Mr David Hooper  
Ms Shyamala Alagendra

**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

**Defence Support Section**

**Victims and Witnesses Unit**

Mr Nigel Verrill

**Detention Section**

**Victims Participation and Reparations Section**

**Other**

## Introduction

1. Pursuant to Regulation 24(5) of the Regulations of the Court, the Prosecution seeks leave to reply to the "Defence Response to Corrected version of 'Prosecution's eighth application pursuant to Regulation 35(2) of the Regulations of the Court', 21 August 2014, ICC-01/09-01/11-1463"<sup>1</sup> ("Ruto Defence Response").

## Confidentiality

2. The Prosecution filed this Request as Confidential as it relates to previous filings similarly classified.

## Statement of facts

3. On 22 August 2014, the Prosecution filed its eighth application pursuant to Regulation 35(2) of the Regulations of the Court wherein it requested to add 57 items to its List of Evidence ("Application"). All items pertain to upcoming trial witnesses P-0604 and P-0495.<sup>2</sup>
4. The Defence for Mr Ruto filed a response on 26 August.<sup>3</sup> The Defence for Mr Sang did not file a response by the relevant deadline.

## Submissions

5. A party must show good cause in order for a Chamber to grant leave to reply. This Court has found that "good cause" exists when new and distinct issues of law and fact are raised,<sup>4</sup> when the importance and potential effect of the issues necessitate additional submissions,<sup>5</sup> when the Chamber considers it might benefit from receiving further observations,<sup>6</sup> or when facts have been

---

<sup>1</sup> ICC-01/09-01/11-1466-Conf.

<sup>2</sup> ICC-01/09-01/11-1463-Conf.

<sup>3</sup> Ruto Defence Response.

<sup>4</sup> ICC-01/04-01/10-61, pp. 3-4.

<sup>5</sup> *Ibid.*

<sup>6</sup> ICC-01/09-02/11-679, para. 9.

misrepresented.<sup>7</sup> The Prosecution submits that there is good cause to grant leave to reply to the Ruto Defence Response on the following two issues.

6. Firstly, the Prosecution seeks leave to explain how the Defence for Mr Ruto has mischaracterised and conflated the Prosecution's second and third grounds for requesting the addition of the relevant evidence to its List of Evidence<sup>8</sup> as being an attempt to "use complaints of witnesses as evidence of consciousness of guilt"<sup>9</sup>. Clarifying the basis of the Prosecution's Application (to the extent that it is not already clear from the original filing) will assist the Chamber by avoiding the need to determine issues which are not in fact engaged by the Application.
7. Secondly, the Prosecution seeks leave to explain why the Defence assertion that "The reality is that "the bulk of the materials" were disclosed for the first time in the past 2 weeks" is both exaggerated and misleading.<sup>10</sup> The Prosecution will provide the Chamber with a breakdown of the actual dates of disclosure and the type and volume of the materials disclosed. The Prosecution submits that correcting the Defence misrepresentation will assist the Chamber in determining whether unfair prejudice would be caused to the Accused by granting the Prosecution request.
8. If the Chamber is so minded to grant leave to reply on these two issues, it will do so expediently, by no later than 16:00 on 28 August 2014.

---

<sup>7</sup> ICC-02/05-03/09-294-Red, para. 6(iv).

<sup>8</sup> Namely: "[...] (b) to prove that their interference was part of a wider witness interference scheme in which *other* Prosecution witnesses have been approached; and (c) to assist the Chamber with its overall assessment of evidence and determining matters related to alleged witness corruption", Application, para.3; See also paras.32 and 33.

<sup>9</sup> Ruto Defence Response, paras.3, 10 and 18.

<sup>10</sup> Ruto Defence Response, para.19 and footnote 45.

### Relief requested

9. Pursuant to Regulation 24(5), the Prosecution seeks leave to reply to the Ruto Defence Response on the two issues outlined in paragraphs 6 and 7 above.



---

Fatou Bensouda,  
Prosecutor

Dated this 27<sup>th</sup> day of August 2014  
At The Hague, The Netherlands