

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 31 July 2015

**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*

**PUBLIC**

**Public redacted version of  
“Prosecution’s Response to the Defence’s Provision of Information relevant to  
Ruto Defence Request for Sanctions (ICC-01/09-01/11-1425-Conf-Corr)”, 24  
September 2014, ICC-01/09-01-1544**

**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**

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**

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**Registrar**

Mr Herman von Hebel

**Counsel Support Section**

**Deputy Registrar**

**Victims and Witnesses Unit**

Mr Nigel Verrill

**Detention Section**

**Victims Participation and Reparations Section**

**Other**

## Background

1. On 10 July 2014, the Defence for Mr William Ruto (“Defence”) filed its “Provision of Information [REDACTED] and Request for Sanctions against the Prosecutor and/or OTP Staff Members” (“Defence Application”).<sup>1</sup>
2. On 25 July 2014, the Office of the Prosecutor (“Prosecution”) submitted its response to the Defence Application (“Prosecution Response”).<sup>2</sup>
3. On 22 September 2014, the Defence for Mr William Ruto requested that the Trial Chamber V(a) (“Chamber”) take into consideration additional submissions in regards to its previous Application (“Defence Request”).<sup>3</sup>

## Confidentiality

4. Pursuant to Regulation 23bis(1) of the Regulations of the Court the Prosecution submits this filing on a “Confidential” basis given that it refers to confidential matters regarding [REDACTED].

## Submissions

5. The Prosecution submits that the Defence Request should be dismissed as it is based on the erroneous premise that the Prosecution’s comments regarding why [REDACTED] made on 22 September 2014<sup>4</sup> contradict what was earlier stated by the Prosecution on this same matter on [REDACTED].<sup>5</sup>

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<sup>1</sup> ICC-01/09-01/11-1425-Corr.

<sup>2</sup> ICC-01/09-01/11-1446-Conf-Red.

<sup>3</sup> ICC-01/09-01/11-1529-Conf.

<sup>4</sup> ICC-01/09-01/11-T-141-CONF-ENG ET, p.40, l.23 - p.41, l.5.

<sup>5</sup> ICC-01/09-04/11-1446-Conf-Red.

6. At the outset, it should be noted that Mr Steynberg prefaced his remarks by the caveat that he noted that the Court was in public session. Clearly, therefore, the explanation that followed was provided in a guarded manner. Furthermore, it will be noted from the record that Mr Steynberg was on the point of providing further details, when the Chamber intervened and his response was cut short.

7. The Prosecution submits that in these circumstances, no inferences can be drawn as to any apparent contradictions between this guarded and incomplete statement and Mr Garcia's previous explanation, as supplemented in the Prosecution Response. The Prosecution notes that the Defence made no attempt to clarify Mr Steynberg's remarks, either contemporaneously or *inter partes*, before filing the Defence Request.

8. As set out in the Prosecution Response, [REDACTED]<sup>6</sup> [REDACTED].

9. Against this background, it is clear that Mr Steynberg in his statement on 22 September was merely stating the obvious: given [REDACTED] and resigned itself to that fact. The Prosecution was certainly not changing its stance on this issue as one is the logical consequence of the other. The respective statements are certainly not irreconcilable, as suggested in the Defence Response.

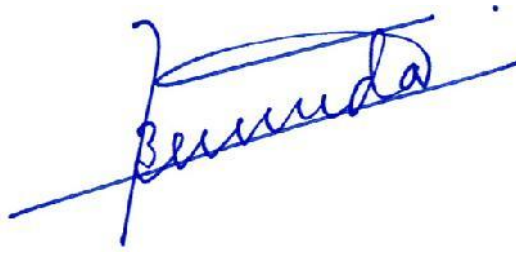
10. The Prosecution deprecates this hasty and unfounded Request, which merely serves to further muddy the waters. The Prosecution submits that if any conduct is worthy of the Chamber's sanction, it is the conduct of the Ruto Defence in this matter.

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<sup>6</sup> [REDACTED].

## Relief

11. Given the foregoing the Prosecution requests that the Chamber dismiss the Defence Request and reiterates that the main Defence Application should similarly be dismissed.



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**Fatou Bensouda, Prosecutor**

Dated this 31<sup>st</sup> day of July 2015

At The Hague, The Netherlands