

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 17 February 2015

**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 Request for Issuance of a Summons for Witness 727 of 17  
February 2015**

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**

[REDACTED]

*Amicus Curiae*

**REGISTRY**

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**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 'ICC' or 'Court'), in the case of *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, having regard to Articles 64(6)(b), 68, 69, 86, 88, 93, 96 and 99(1) of the Rome Statute (the 'Statute') and Rules 67, 74 and 87 of the Rules of Procedure and Evidence (the 'Rules'), renders this 'Decision on Prosecution Request for Issuance of a Summons for Witness 727'.<sup>1</sup>

## I. Procedural history and submissions

1. Witness 727 [REDACTED]. He was relocated to the [REDACTED] for the purpose of testifying in this case as a witness for the Office of the Prosecutor (the 'Prosecution'). Having thus been relocated, the witness has, at various times, either refused to testify at all or placed conditions on his testimony.<sup>2</sup>
2. On 17 December 2014, the Prosecution filed a request to issue a summons for Witness 727 (the 'Request').<sup>3</sup> The Prosecution requested the Chamber to: (i) issue a summons under Article 64(6)(b) of the Statute for Witness 727 to testify before this Chamber via video-link from a remote location in [REDACTED]; (ii) request the cooperation of [REDACTED] under Article 93(1)(b) of the Statute to serve and execute the summons, by compulsive means if necessary and, in order for [REDACTED] to submit informed observations on the Request, to (iii) authorise the notification of all confidential filings and transcripts relevant to this issue to [REDACTED].<sup>4</sup>

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<sup>1</sup> [REDACTED].

<sup>2</sup> See Prosecution's Communication of Information from Witness P-0019 and Request for a Status Conference, 9 December 2014, ICC-01/09-01/11-1745-Conf (with three confidential annexes). These conditions included asking: (i) to testify entirely *in camera*; (ii) to be represented by a specific national lawyer and (iii) to not be asked to reveal the content of privileged communications in court. The witness confirmed that he would not testify unless his national counsel represented him, even after the Chamber ordered that a different lawyer must be appointed as duty counsel. [REDACTED]; Decision on Appointment of Duty Counsel for a Witness, 12 January 2015, ICC-01/09-01/11-1775-Conf (public redacted version filed 14 January 2015).

<sup>3</sup> [REDACTED].

<sup>4</sup> [REDACTED].

3. The Prosecution submitted that Witness 727: (i) is [REDACTED] witness for the Prosecution; (ii) has testimony that is necessary for the determination of the truth; and (iii) has ceased cooperating with the Prosecution 'without valid reason, or alternatively placed unreasonable pre-conditions on such cooperation'.<sup>5</sup>
4. The Request followed an extended discussion on the possibility of Witness 727 being compelled to testify through the facilitation of a [REDACTED].<sup>6</sup>
5. On 18 December 2014, the defence teams for Mr Ruto (the 'Ruto Defence')<sup>7</sup> and Mr Sang (the 'Sang Defence')<sup>8</sup> responded to the Request.
6. On 9 January 2015, the Chamber indicated by email that the Prosecution was authorised to liaise with the Registry for notification of the relevant confidential filings and transcripts to the [REDACTED].<sup>9</sup>
7. On 12 January 2015, the Prosecution, after consulting with the Ruto and Sang Defence (collectively, the 'Defence'),<sup>10</sup> proposed a tentative schedule with Witness 727's testimony commencing [REDACTED].<sup>11</sup> The Prosecution also informed the Chamber that the [REDACTED] highlighted to it that, depending on the terms of the Chamber's decision, there might be '[c]ertain potential legal obstacles' to hearing Witness 727's testimony.<sup>12</sup>
8. On 15 January 2015, the Chamber scheduled a status conference to discuss these potential legal obstacles.<sup>13</sup> The views of the [REDACTED], and the participants as

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<sup>5</sup> [REDACTED].

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

<sup>7</sup> [REDACTED].

<sup>8</sup> [REDACTED].

<sup>9</sup> Email from a Legal Officer of the Chamber to the Prosecution, 9 January 2015 at 11:11.

<sup>10</sup> This consultation was directed by the Chamber. Email from a Legal Officer of the Chamber to the Prosecution, 8 January 2015 at 16:43.

<sup>11</sup> Email from the Prosecution to the Chamber and the participants, 12 January 2015 at 19:29. [REDACTED].

<sup>12</sup> Email from the Prosecution to the Chamber and the participants, 12 January 2015 at 19:29.

<sup>13</sup> Order Scheduling a Status Conference Regarding Request for Issuance of a Summons for Witness 727, 15 January 2015, ICC-01/09-01/11-1781-Conf.

appropriate, were sought as to the legal and/or practical implications of proceeding in one of the following four ways:

- (i) Witness 727 is summonsed to testify before this Chamber [REDACTED] ('Option 1');
- (ii) Witness 727 is summonsed to testify before this Chamber by video-link at a remote location in [REDACTED] ('Option 2');
- (iii) [REDACTED]; or
- (iv) [REDACTED].

9. On 20 January 2015, the [REDACTED] sent communication to the Court declining the invitation to attend the status conference, but indicating their intention to submit instead written submissions before the hearing.<sup>14</sup> These submissions, corresponding to each of the four options indicated above, were received on 21 January 2015.<sup>15</sup> As regards Option 1, the [REDACTED] submitted that the necessary legal basis required for this measure cannot be found in either the Statute or the [REDACTED] implementing legislation.<sup>16</sup> The [REDACTED] described how the procedure in Option 2 could be implemented as follows:

[REDACTED].<sup>17</sup>

- 10. On 22 January 2015, a status conference was held in the presence of the participants (the 'Status Conference').<sup>18</sup>
- 11. At the Status Conference, while all the participants were of the view that Witness 727 should be summonsed to appear before the Court, they disagreed as to whether to proceed along the lines of Option 1 or Option 2.

<sup>14</sup> [REDACTED].

<sup>15</sup> ICC-01/09-01/11-1788-Conf-AnxIII.

<sup>16</sup> ICC-01/09-01/11-1788-Conf-AnxIII, page 3.

<sup>17</sup> [REDACTED].

<sup>18</sup> Transcript of Hearing, 22 January 2015, ICC-01/09-01/11-T-184-CONF-ENG.

12. The Prosecution urged Option 2 as a practical matter, despite [REDACTED].<sup>19</sup> The Prosecution submitted that the obstacles identified by the [REDACTED] for Option 1 may need to be addressed by legislative amendments. These obstacles could not be removed in sufficient time to hear Witness 727's evidence without causing a substantial delay to the proceedings.<sup>20</sup> The Prosecution argued that, unlike the procedure for summoning witnesses in Kenya, the [REDACTED] had provided a workable alternative which does not unfairly prejudice the accused or Prosecution.<sup>21</sup>
13. Both Defence teams argued for Option 1.<sup>22</sup> The Ruto Defence argued that the adopted procedure should 'insofar as possible' permit Witness 727 to testify before this Chamber. The Ruto Defence submitted that there is no bar to proceeding under Option 1, and that the [REDACTED] arguments about legal prohibitions and obstacles were similar to the Government of Kenya's arguments rejected by the Appeals Chamber's judgment regarding summonsed witnesses.<sup>23</sup> The Ruto Defence submitted that Option 2 is fraught with legal difficulties, and that the [REDACTED] role during the hearing is 'far from clear'.<sup>24</sup>
14. The Sang Defence fully endorsed the Ruto Defence's observations.<sup>25</sup> The Sang Defence also argued that prejudice is caused by adopting Option 2 over Option 1 because video-link makes cross-examination and the Chamber's credibility determination more difficult.<sup>26</sup>
15. The Legal Representative for Victims (the 'LRV') also supported Option 1, submitting that this procedure would be 'to all intents and purposes the same as

<sup>19</sup> Status Conference, ICC-01/09-01/11-T-184-CONF-ENG, page 4 lines 1-4.

<sup>20</sup> Status Conference, ICC-01/09-01/11-T-184-CONF-ENG, page 5 line 20 to page 6 line 1, page 24 line 24 to page 25 line 23.

<sup>21</sup> Status Conference, ICC-01/09-01/11-T-184-CONF-ENG, page 22 line 22 to page 23 line 4.

<sup>22</sup> Status Conference, ICC-01/09-01/11-T-184-CONF-ENG, page 9 line 21 to page 10 line 5, page 18 lines 17-18.

<sup>23</sup> Status Conference, ICC-01/09-01/11-T-184-CONF-ENG, page 10 lines 6-14.

<sup>24</sup> Status Conference, ICC-01/09-01/11-T-184-CONF-ENG, page 12 lines 3-12.

<sup>25</sup> Status Conference, ICC-01/09-01/11-T-184-CONF-ENG, page 18 lines 17-18.

<sup>26</sup> Status Conference, ICC-01/09-01/11-T-184-CONF-ENG, page 19 lines 8-12.

what the Kenyan authorities were subjected to' and expressing concern over the [REDACTED] role under Option 2.<sup>27</sup>

16. In view of the concerns and questions raised during the status conference, the Chamber directed the Registry and the Prosecution (in consultation with the Defence) to confer further with the [REDACTED], for purposes of providing any further clarification that was possible in the circumstances.<sup>28</sup>
17. On 28 January 2015, the Registry sent a *note verbale* to the [REDACTED] with requests for further clarification concerning their submissions regarding Option 2.<sup>29</sup>
18. On 10 February 2015, the [REDACTED] filed the requested clarification (the 'Clarification'),<sup>30</sup> submitting that:

- (i) [REDACTED].<sup>31</sup>
- (ii) [REDACTED].<sup>32</sup>
- (iii) [REDACTED].<sup>33</sup>
- (iv) [REDACTED].<sup>34</sup>
- (v) [REDACTED].<sup>35</sup>
- (vi) [REDACTED].<sup>36</sup>
- (vii) [REDACTED].<sup>37</sup> [REDACTED].<sup>38</sup> [REDACTED].<sup>39</sup>

<sup>27</sup> Status Conference, ICC-01/09-01/11-T-184-CONF-ENG, page 20 line 18 to page 21 line 25.

<sup>28</sup> Status Conference, ICC-01/09-01/11-T-184-CONF-ENG, page 27 line 22 to page 28 line 13.

<sup>29</sup> [REDACTED].

<sup>30</sup> [REDACTED].

<sup>31</sup> Clarification, ICC-01/09-01/11-1814-Conf-Anx2, page 3.

<sup>32</sup> Clarification, ICC-01/09-01/11-1814-Conf-Anx2, pages 4, 8.

<sup>33</sup> Clarification, ICC-01/09-01/11-1814-Conf-Anx2, page 4.

<sup>34</sup> See Clarification, ICC-01/09-01/11-1814-Conf-Anx2, page 4.

<sup>35</sup> Clarification, ICC-01/09-01/11-1814-Conf-Anx2, page 4.

<sup>36</sup> Clarification, ICC-01/09-01/11-1814-Conf-Anx2, page 5.

<sup>37</sup> Clarification, ICC-01/09-01/11-1814-Conf-Anx2, page 7.

<sup>38</sup> Clarification, ICC-01/09-01/11-1814-Conf-Anx2, page 7.

(viii) [REDACTED].<sup>40</sup>

(ix) [REDACTED].<sup>41</sup>

(x) [REDACTED].<sup>42</sup>

## II. Analysis and conclusions

### A. Applicable law

19. The Appeals Chamber, in its judgment of 9 October 2014 (the ‘Summons Judgment’),<sup>43</sup> held that: (i) Article 64(6)(b) of the Statute<sup>44</sup> gives a Trial Chamber the power to compel witnesses to appear before it, thereby creating a legal obligation for the individuals concerned<sup>45</sup> and, (ii) under Article 93(1)(b) of the Statute,<sup>46</sup> the Court may request a State Party to compel witnesses to appear before the Court sitting *in situ* in the State Party’s territory or by way of video-link.<sup>47</sup> As a matter of international procedural law applicable at the ICC, that decision settles the question whether the Rome Statute contemplates a procedure [REDACTED]. And the arguments of the [REDACTED] are rejected to the extent of their inconsistency. [REDACTED].

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<sup>39</sup> Clarification, ICC-01/09-01/11-1814-Conf-Anx2, pages 6-7.

<sup>40</sup> Clarification, ICC-01/09-01/11-1814-Conf-Anx2, page 8.

<sup>41</sup> Clarification, ICC-01/09-01/11-1814-Conf-Anx2, page 9.

<sup>42</sup> Clarification, ICC-01/09-01/11-1814-Conf-Anx2, page 3.

<sup>43</sup> 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 [Appeals Chamber].

<sup>44</sup> Article 64(6)(b) provides: ‘[i]n performing its functions prior to trial or during the course of a trial, the Trial Chamber may, as necessary: [...] (b) Require the attendance and testimony of witnesses and production of documents and other evidence by obtaining, if necessary, the assistance of States as provided in this Statute’.

<sup>45</sup> Summons Judgment, ICC-01/09-01/11-1598, para. 107.

<sup>46</sup> Article 93(1)(b) provides: ‘States Parties shall, in accordance with the provisions of this Part and under procedures of national law, comply with requests by the Court to provide the following assistance in relation to investigations or prosecutions: [...] (b) The taking of evidence, including testimony under oath, and the production of evidence, including expert opinions and reports necessary to the Court’.

<sup>47</sup> Summons Judgment, ICC-01/09-01/11-1598, para. 132.



20. As with any other cooperation request, a request to summons a witness must sufficiently satisfy thresholds of: (i) relevance, (ii) specificity and (iii) necessity.<sup>48</sup> In evaluating necessity in this context, the Chamber considered both whether: (i) the witness's anticipated testimony is potentially necessary for the determination of the truth and (ii) a summons, as a compulsory measure, is necessary to obtain the testimony of the witness.<sup>49</sup>

### **B. Preliminary issues**

21. As a preliminary issue, the Chamber recalls its direction to notify the [REDACTED] of the confidential filings and transcripts relevant to summoning Witness 727.<sup>50</sup> That pre-existing ruling dispenses of the third part of the Prosecution's requested relief.

22. Additionally, the Chamber notes that the participants have presented a variety of arguments as the discussion on how to hear Witness 727's testimony evolved. The Chamber understands the parties' submissions at the Status Conference to most accurately reflect their current positions on the issues surrounding Witness 727's testimony. The Chamber will therefore not consider earlier submissions or relief sought which deviate from the arguments presented at the Status Conference.

### **C. Discussion**

23. The Chamber notes that the parties do not contest that the requirements for summoning Witness 727 are met.<sup>51</sup> The Chamber is satisfied that the relief sought in the Request meets the requirements for issuing a summons.

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<sup>48</sup> See Public redacted version of Decision on Prosecutor's Second Supplementary Request to Summon a Witness, 19 June 2014, ICC-01/09-01/11-1377-Red, para. 16 (confidential version notified same day); 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, para. 181.

<sup>49</sup> ICC-01/09-01/11-1377-Red, para. 16; ICC-01/09-01/11-1274-Corr2, para. 181.

<sup>50</sup> Email from a Legal Officer of the Chamber to the Prosecution, 9 January 2015 at 11:11.

<sup>51</sup> [REDACTED].

24. As to the manner in which Witness 727 shall testify, the Chamber considers that it would greatly assist in its evaluation of Witness 727's testimony for him to appear before this Chamber. For the reasons below, the Chamber is satisfied with proceeding by way of Option 2, namely to summons Witness 727 to testify by video-link in the manner proposed and clarified by the [REDACTED].
25. The Chamber notes that Witness 727 is one of very few outstanding witnesses in the Prosecution's case. In the interest of furthering expeditious proceedings, the Chamber considers that the most expedient course (without undue prejudicial effect on proper administration of justice or the law) is to grant the relief as set out by the Prosecution and agreed to by the [REDACTED]. In that respect, the Chamber also notes that video-link has been the means by which all other summonsed witnesses have testified in the case [REDACTED].
26. The Chamber is satisfied that the Clarification makes proceeding under Option 2 sufficiently satisfying to enable forward movement in the circumstances. In particular, the [REDACTED] have clarified that the [REDACTED] under Option 2.<sup>52</sup> The Chamber retains full control over the proceedings, subject only to any limited intervention the [REDACTED], which will be done, if so required, in direct consultation with the Chamber.
27. It may be observed, as a practical matter, that contrary to the Defence and LRV's concerns, proceeding under Option 2 is not significantly different from the procedure applied to the other summonsed witnesses. In this case, all witnesses appearing pursuant to a summons have testified before the Chamber by video-link in the country where the summons was served. Option 2 involves hearing Witness 727's testimony under these same conditions. [REDACTED].<sup>53</sup>

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<sup>52</sup> See Clarification, ICC-01/09-01/11-1814-Conf-Anx2, page 5.

<sup>53</sup> See Status Conference, ICC-01/09-01/11-T-184-CONF-ENG, page 16, lines 7-19.

28. The Chamber is not persuaded by any suggestion to the effect that to accept Option 2 at the insistence of the arguments of the [REDACTED] as to their difficulties with Option 1 is to treat the [REDACTED] differently than the Kenyan authorities. It is recalled that the Kenyan Attorney General had insisted in his arguments before the Chamber that the Kenyan authorities could not compel witnesses to testify before the Court under any circumstances.<sup>54</sup> The Chamber was not persuaded by this argument, and its conclusions have now been upheld on appeal. By contrast, the [REDACTED] have not made such an argument and have proposed a viable option under the Statute and [REDACTED] in the manner of proceeding according to Option 2.
29. The Chamber is mindful of the Prosecution submission that the consequences of the Summons Judgment may well require the [REDACTED] to amend its national law to provide a legal basis to compel witness testimony [REDACTED].<sup>55</sup> The Chamber encourages States Parties to update their national laws in accordance with the Summons Judgment. [REDACTED].
30. Nevertheless, the Chamber does not consider it necessary, in the meantime, to wait for any legislative amendments when Option 2 is available, if that is to be the result of insisting upon Option 1. The Summons Judgment does not mandate any particular method for compelling witness testimony. The Appeals Chamber's conclusions **permit** the Chamber to compel witnesses to appear *in situ* in the State Party's territory, but they do not **preclude** hearing compelled testimony by video-link when it is also possible to present evidence directly before the Chamber. [REDACTED].

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<sup>54</sup> The Government of the Republic of Kenya's Submissions on the Prosecution's Request under Article 64(6)(b) and Article 93 to Summon Witnesses', 10 February 2014, ICC-01/09-01/11-1184, para. 5. *See also*: Transcript of hearing on 14 February 2014, ICC-01/09-01/11-T-86-Red-ENG, page 49, lines 18-21, page 58, lines 11-12, page 117, line 14 to page 118, line 24.

<sup>55</sup> In accordance with Article 88 of the Statute, States Parties must ensure that there are procedures available under their national law to comply with Article 93(1)(b) requests. In this respect, Article 93(1)(b) requests are materially different from cooperation requests under Article 93(1)(l) of the Statute, which only obligate requested States to provide 'other types of assistance **which is not prohibited by the law of the requested State**, with a view to facilitating the investigation and prosecution of crimes within the jurisdiction of the Court' (emphasis added).

31. The Chamber also considers that proceeding under Option 2, relative to Option 1, does not cause any undue prejudice. The Defence is entitled to ask the same questions to Witness 727 irrespective of whether he appears pursuant to Option 1 or Option 2. Just as with every other video-link witness, the Chamber will ensure full respect for the Defence's rights during Witness 727's testimony. The Chamber also has every expectation that it will be able to assess Witness 727's credibility via the video-link, no differently than any other witness in this case who has testified in that manner.

#### **D. Guidance for implementing the summons**

32. The Chamber notes that it has previously given guidance for implementing past summons decisions after their issuance.<sup>56</sup> The Chamber will not issue a separate decision giving guidance for this witness, electing to give this guidance in the present decision.
33. The Chamber directs the Registry to implement the present decision in accordance with the guidance below and any other necessary practicalities that fall within the purview of the Registry to manage as part of its proper functions. As soon as feasible after the issuance of this decision, the Prosecution (as the calling party) and Registry are also to meet with the relevant [REDACTED] for the purpose of discussing further modalities for hearing Witness 727's testimony as indicated in paragraph 18(x) above.
34. The Chamber emphasises at the outset that, to the fullest extent possible, this witness should testify pursuant to the same arrangements which have applied to the other summonsed witnesses in the case. This is without prejudice to measures the [REDACTED] is required to take in accordance with [REDACTED].

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<sup>56</sup> Decision on Prosecution's Second Submission of Schedule of Evidence of Summonsed Witnesses, 14 October 2014, ICC-01/09-01/11-1605-Conf, para. 6; Decision on Prosecution's Submission of Schedule of Evidence of Summonsed Witnesses, 18 July 2014, ICC-01/09-01/11-1442-Conf, para. 8.

### 1. *Witness security information*

35. As to the information pertaining to security risks for this witness and his family, the Chamber notes that it provided every previously summonsed witness in this case with protective measures and assurances against self-incrimination.<sup>57</sup> The adopted protective measures have included at least the following: (i) face distortion, (ii) voice distortion, (iii) use of a pseudonym and (iv) limited private sessions relating to testimony that could identify the witness or be potentially self-incriminating.<sup>58</sup> The Chamber decides these matters on the witness's first day of testimony, pursuant to Article 68(1) of the Statute and Rules 74 and 87 of the Rules, after receiving input from the parties, participants and the Court's Victims and Witnesses Unit (the 'VWU').<sup>59</sup>

36. To the extent it would assist the [REDACTED] responsibilities, and pursuant to Rule 17(2)(vi) of the Rules, the Registry, via the VWU, is to provide, in the manner and form they consider most appropriate, the relevant information in its possession pertaining to the usual risk assessments and measures (including security, health and psychological) applicable to Witness 727 and his family. The Registry is to liaise with the [REDACTED] as necessary regarding the witness's security arrangements.

### 2. *Solemn undertaking*

37. Witness 727 is to undertake to testify truthfully, pursuant to Article 69(1) of the Statute and Rule 66 of the Rules, once his testimony has been handed over to the Chamber. Taking a second oath pursuant to [REDACTED] is not necessary unless specifically required by [REDACTED].

<sup>57</sup> See generally Rules 74 and 87 of the Rules.

<sup>58</sup> E.g. Transcript of Hearing, 19 January 2015, ICC-01/09-01/11-T-180-CONF-ENG ET, page 6 lines 7-10, page 13 lines 2-13 (Witness 743).

<sup>59</sup> Article 68(1) provides, in relevant part, that '[t]he Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses'.

### *3. Presence of national counsel*

38. The Chamber has decided to exclude [REDACTED] (Witness 727's national counsel) from the video-link hearing; as such, he has no legal standing to represent the witness in ICC proceedings. The Registry will appoint duty counsel to represent Witness 727 during his testimony, as directed by the Chamber in its decision of 12 January 2015<sup>60</sup> for which leave to appeal was dismissed.<sup>61</sup> The Registry is to notify the confidential version of both these decisions to the [REDACTED].

### *4. Witness familiarisation*

39. In consultation with [REDACTED], the VWU is to conduct its familiarisation and assessment work to the extent possible.

### *5. Anticipated start of testimony*

40. In view of the time required to make sufficient arrangements with the [REDACTED], the parties, participants and the Registry are to proceed on the basis that Witness 727 will appear before this Chamber and commence testifying [REDACTED] on 23 March 2015. This date is without prejudice to the [REDACTED] setting an earlier date to deal with any preliminary matter under the [REDACTED].

**FOR THE FOREGOING REASONS, THE CHAMBER HEREBY**

**GRANTS** the relief sought in the Request;

**REQUIRES** the appearance of Witness 727 to testify before this Chamber by video-link [REDACTED], in accordance with paragraphs 33-40 of the present decision;

<sup>60</sup> ICC-01/09-01/11-1775-Conf.

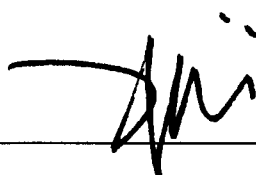
<sup>61</sup> Decision on the "Request for Leave to Appeal the 'Decision on Appointment of Duty Counsel for a Witness' (ICC-01/09-01/11-1775-Conf)", 12 February 2015, ICC-01/09-01/11-1816-Conf.

**REQUESTS** the assistance of [REDACTED] to ensure the appearance of Witness 727, using all means available under domestic law: (i) to communicate the Chamber's requirement of attendance; (ii) to facilitate, by way of compulsory measures as necessary, the appearance of Witness 727 for testimony by video-link before the Chamber and (iii) to make appropriate arrangements for the security of Witness 727, insofar as possible in consultation with the VWU, until he appears and completes his testimony before the Chamber;

**DIRECTS** the Registry to prepare and transmit, in consultation with the Prosecution, the necessary summons to Witness 727 (with or without the assistance of [REDACTED]) as well as the necessary cooperation request to the relevant [REDACTED] in accordance with Articles 93(1)(b), 96 and 99(1) of the Statute; and

**DIRECTS** the Registry to file an update on the execution of Witness 727's summons and the modalities of his testimony by 16:00 on 6 March 2015.

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



**Judge Chile Eboe-Osuji**  
(Presiding)



**Judge Olga Herrera Carbuccion**



**Judge Robert Fremr**

Dated 17 February 2015

At The Hague, The Netherlands