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No.: **ICC-01/09-02/11**
Date: **16 August 2011**

PRE-TRIAL CHAMBER II

Before: Judge Ekaterina Trendafilova, Single Judge

SITUATION IN THE REPUBLIC OF KENYA

IN THE CASE OF

THE PROSECUTOR

***v. FRANCIS KIRIMI MUTHAURA, UHURU MUIGAI KENYATTA and
MOHAMMED HUSSEIN ALI***

**PUBLIC
URGENT**

**Defence Request for extension of page limit pursuant to Regulation 37(2) of the
Regulations of the Court**

Sources: Defence Team of Ambassador Francis Kirimi Muthaura

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
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**Victims Participation and Reparations
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Other

I. Introduction

1. Pursuant to Regulation 37(2) of the Regulations of the Court (“Regulations”), the Defence of Ambassador Muthaura (“Defence”) respectfully requests an extension of the page limit of 20 pages for its “Defence Observations on 245 Applications for Victim Participation in the Proceedings” (“Observations”) which is to be filed on 16 August 2011. The Defence submits that exceptional circumstances exist justifying the grant of extension of page limit in order for it to exercise its right to reply to the applications for participation in the proceedings of victims pursuant to Rule 89(1) of the Rules of Procedure and Evidence (“Rules”).
2. The Defence intends to submit an Annex 1 attached to the Observations, which contains factual and legal, and therefore substantive, submissions, namely specific observations on each individual victim application. The Defence chose to include these specific observations in an annex due to considerations of clarity and organisation in order to assist the Single Judge in the determination of the applications.

II. Exceptional Circumstances Justifying Extension of Page Limit

(A) The Defence Is Entitled to Reply to the Application of Each Victim

3. On 28 July 2011, the Registry provided the Defence with 245 redacted applications for participation by filing the “Second Transmission to the parties and legal representatives of redacted applications to participate in the proceedings.”¹

4. The Defence notes that Rule 89(1) reads:

In order to present their views and concerns, victims shall make written application to the Registrar, who shall transmit the application to the relevant Chamber. Subject to the provisions of the Statute, in particular article 68, paragraph 1, the Registrar shall provide a copy of the application to the

¹ ICC-01/09-02/11-200

Prosecutor and the defence, who shall be entitled to reply within a time limit to be set by the Chamber. Subject to the provisions of sub-rule 2, the Chamber shall then specify the proceedings and manner in which participation is considered appropriate, which may include making opening and closing statements.
(emphasis added)

5. Clearly, this Rule provides for the right of the Defence to reply to each application individually.
6. However, Regulation 37(1) of the Regulations limits the page number of documents filed with the Registry to 20 pages. According to Regulation 37(2), only in exceptional circumstances an extension of the page limit may be granted by a Chamber at the request of a party.
7. The Defence submits that the extremely high number of applications, namely 245, constitutes such exceptional circumstances since the Defence is entitled according to the Rules to reply to each application. It is simply not possible for the Defence to reply in a substantive manner to each application, including proceeding to a factual analysis and review, within 20 pages.
8. As things stand, the Defence observations regarding each application are contained in a 64 pages analytical table, which the Defence intends to submit to the Single Judge as Annex 1 to its Observations. As noted above, for the sake of clarity and for organisation purposes the Defence chose to attach this document as an annex to the Observations. The latter contain legal submissions and general factual observations and do not exceed the page limit set out in Regulation 37(1).
9. Since Annex 1 contains legal and factual submissions, it has to be counted, pursuant to Regulation 36(2), in calculating the page limit set out in Regulation 37(1).

10. Therefore, the Defence requests that the page limit for the Observations is extended to include Annex 1, which is 64 pages long and averaging less than 300 words per page.

(B) Request for Expedited Consideration

11. The Defence respectfully requests an expedited consideration of the matter by the Single Judge, given that a substantive reply is ordered to be filed by today Tuesday, 16 August 2011. The Defence notes that due to this time limit, it will proceed to file in time the Observations and annexes, including Annex 1.

Relief Requested

12. For all the above-mentioned reasons, the Defence respectfully requests an extension of page limit from 20 to a maximum of 84 pages, including an Annex 1 with substantive submissions, and an expedited consideration of this Request.

Respectfully Submitted,



Mr. Karim A. A. Khan QC
Lead Counsel

Dated this 16th Day of August 2011
At Nairobi, Kenya