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

Date: 7 March 2013

TRIAL CHAMBER V

Before: Judge Kuniko Ozaki, Presiding
Judge Christine Van den Wyngaert
Judge Chile Eboe-Osuji

SITUATION IN THE REPUBLIC OF KENYA

IN THE CASE OF

***THE PROSECUTOR v.
WILLIAM SAMOEI RUTO AND JOSHUA ARAP SANG***

Public

**Joint Defence Request for an Extension of time Regarding the 8 March 2013
Deadline for the Second Joint Prosecution-Defence Submission on Agreed Facts**

Source: Defence for Mr. William Samoei Ruto
Defence for Mr. Joshua Arap Sang

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

The Office of the Prosecutor

Fatou Bensouda, Prosecutor
Cynthia Tai, Trial Lawyer

Counsel for William Ruto

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Kioko Kilukumi Musau

Counsel for Joshua Sang

Joseph Kipchumba Kigen-Katwa
Silas Chekera

Legal Representatives of the Victims

Wilfred Nderitu

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Silvana Arbia

Counsel Support Section

Deputy Registrar

Didier Daniel Preira

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. INTRODUCTION

1. The defence hereby jointly notifies the Trial Chamber that the 8 March 2013 deadline for a “second joint submission on agreed facts” set by the Chamber in the “Decision on the schedule leading up to trial”¹ cannot be reasonably complied with due to a number of reasons outlined in this filing.
2. In the Decision, the Chamber instructed the prosecution and the defence teams for both accused to liaise with a view to reaching agreement on facts as well as the authenticity of evidence. Further, any party unable to agree to a proposed stipulation should reflect the reasons and indicate the factual basis for this disagreement in an annex to the joint filing.²
3. On Friday 1 March 2013 at 19:00, the Prosecution sent a document containing proposed facts in which the defence is to agree to the authenticity of 184 documents. Further, on Monday 4 March 2013 at 17:11, the prosecution sent another document containing 24 proposed substantive facts.

II. SUBMISSIONS

4. The defence submits that the prosecution has not provided it with sufficient time to conduct a meaningful evaluation of the 184 documents and 24 substantive facts. The defence has shown good faith by considering and liaising with the prosecution on some of the proposed facts, but with the time frame provided, it is unreasonable to expect a thorough consideration of all the proposed documents and facts.
5. Further, it is to be noted that the proposed facts were sent to the defence at 19:00 on Friday 1 March and 17:11 on Monday 4 March. The times and dates are of great importance as they coincide with the date of the elections in Kenya. All the defence team members in Kenya and the clients had already left the capital ahead of time to vote in their respective constituencies.

¹ ICC-01/09-01/11-440

² ICC-01/09-01/11-440, para 18

6. This, coupled with the fact that the country at election time is at a complete shutdown, has not given the defence any time to hold a substantive review of the proposed facts.
7. The Defence submits that these represent good cause and reasons outside the Defence's control to depart from the Court's time limit, as provided in Regulation 35(2) of the Regulations of the Court.

III. RELIEF REQUESTED

7. For these reasons, the defence hereby respectfully requests for a one week extension, pursuant to Regulation 35 of the Regulations of the Court. This will give it enough time to review and in turn liaise with the prosecution and thereafter jointly submit the agreed facts as set out in the Chamber's decision.



David Hooper, QC
On behalf of William Samoei Ruto
Dated this 7th day of March 2013
In London



Joseph Kipchumba Kigen-Katwa
On behalf of Joshua Arap Sang
Dated this 7th Day of March 2013
In Nairobi