

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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

Date: 18 November 2013

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 request for an extension of page limit

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

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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 the Victims

Mr. Wilfred Nderitu

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(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

Counsel Support Section

Deputy Registrar

Victims and Witnesses Unit

Mr. Patrick Craig

Detention Section

**Victims Participation and Reparations
Section**

Others

1. Pursuant to Regulation 37(2) of the Regulations of the Court ("Regulations") the Prosecution requests an extension of the page limit to 39 pages for an application which it intends to submit imminently ("intended application"). The intended application will make detailed legal and factual submissions requesting Trial Chamber V(a) ("Chamber") to issue a request to the Government of Kenya ("Kenya") to summon certain witnesses located in Kenya to give evidence and, if necessary, produce them before the Chamber either in person or via video-link.
2. Regulation 37(2) of the Regulations provides that the Chamber may, at the request of a participant, extend the page limit in exceptional circumstances. The Prosecution submits the exceptional circumstances outlined below justify the extension of the page limit.
3. First, the legal submissions are necessarily lengthy as they address complex and novel questions of law, uncharted at the ICC, concerning the Chamber's authority under article 64(6)(b) to "require the attendance and testimony of witnesses", under article 93(1)(d) to request Kenya to serve a summons on a witness, and under article 93(1)(l) to request Kenya if necessary to execute and enforce that summons. Furthermore, additional legal submissions are required concerning the domestic legal framework in Kenya and the interaction of the Kenyan implementing legislation and the Rome Statute. Though these legal issues have not previously been litigated at the Court, the precedent that may be set would likely have a lasting impact on the future jurisprudence and practice of the Court, well past the lifetime of the Kenya situation.
4. The Prosecution requires 20 pages in which to succinctly but adequately argue: (i) the existence of the legal authority of the Chamber under the Rome Statute to issue such a request to the Government of Kenya; and (ii) the legal authority in the domestic Kenyan legislation which would permit Kenya to comply and cooperate with the request, including the modalities thereof.

5. Additionally, the Prosecution will address the concomitant factual submissions related to no fewer than seven key witnesses for whom summons are required. These involve factual arguments as to: the importance of these witnesses to the Prosecution's ability to present its case; the exhaustion of all other efforts to ensure the attendance and cooperation of these witnesses; individual explanations of the circumstances surrounding the non-cooperation of these witnesses, and hence, the necessity of the relief; and the importance of the testimonies of these witnesses to the Chamber, so that it may fully determine the truth regarding the post-election violence and the individual criminal responsibility of the Accused. The Prosecution requires 19 pages in which to make these factual submissions.
6. Finally, the intended application comprises submissions relating to multiple witnesses which could potentially be dealt with by way of separate and sequential applications. However, the Prosecution submits that given the inter-linkage of the questions of fact and law in the relief requested, it would be more efficient and expedient to address these in a single filing. Accordingly, the Prosecution requests a page extension that would enable a filing of 39 pages in total, inclusive of the cover and notification pages.
7. The Prosecution acknowledges that, if this relief is granted, the Defence may require a reasonable extension for their responses.
8. The Prosecution submits that the reasons set out above constitute exceptional circumstances as set out in Regulation 37(2).



Fatou Bensouda, Prosecutor

Dated this 18th day of November 2013

At The Hague, the Netherlands