

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

No.: ICC-01/09-01/11
Date: 17 September 2014

TRIAL CHAMBER V(A)

Before: Judge Chile Eboe-Osuji, Presiding
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

**Defence response to the "Prosecution's ninth application pursuant to Regulation
35(2) of the Regulations of the Court"**

Sources: Defence for Mr. William Samoei Ruto

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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Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

Ms. Paolina Massida

**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

Detention Section

**Victims Participation and Reparations
Section**

Other

1. The *Prosecution's ninth application pursuant to Regulation 35(2) of the Regulations of the Court* ("Ninth Application")¹ is in the same terms as its eighth application² (as supplemented by two further filings)³ save that it seeks to add 45 items relating to P-0516 and P-0524 to its List of Evidence.⁴
2. The defence for Mr. William Samoei Ruto ("Defence") maintains its previously stated opposition to the purposes for which the Prosecution intends to use the items and its concerns regarding the timing and tone of the various Prosecution applications and the prejudice caused by the volume of material being added to the List of Evidence at this stage in proceedings.⁵ However, the Defence is also mindful and respectful of the two recent decisions issued by the Trial Chamber permitting the Prosecution to add, in total, 91 items to the Prosecution's List of Evidence,⁶ and finding that "any admissibility discussion will come at a later time".⁷ In light of these previous decisions, the Defence does not oppose the Ninth Application.

Classification

3. This response is filed confidentially pursuant to Regulation 23bis(2) of the Regulations of the Court.

¹ ICC-01/09-01/11-1511-Conf, 12 September 2014.

² Corrected version of "Prosecution's eighth application pursuant to Regulation 35(2) of the Regulations of the Court", 21 August 2014, ICC-01/09-01/11-1463-Conf, 22 August 2014, ICC-01/09-01/11-1463-Conf-Corr.

³ Addendum to Prosecution's Corrected Version of Prosecution's eighth application pursuant to Regulation 35(2) of the Regulations of the Court", 21 August 2014, ICC-01/09-01/11-1463-Conf, 29 August 2014, ICC-1474-Conf-Red; Prosecution's supplementary request to its eighth Application pursuant to Regulation 35(2) of the Regulations of the Court", 11 September 2014, ICC-01/09-01/11-1510-Conf.

⁴ Application, para. 1.

⁵ Defence response to Corrected version of "Prosecution's eighth application pursuant to Regulation 35(2) of the Regulations of the Court, 26 August 2014, ICC-01/09-01/11-1466-Conf; Defence Response to "Prosecution's Supplementary Request to its Eighth Application pursuant to Regulation 35(2) of the Regulations of the Court", 15 September 2014, ICC-01/09-01/11-1513-Conf.

⁶ Decision on the Prosecution's Application for Addition of Documents to its List of Evidence, 3 September 2014, ICC-01/09-01/11-1485-Conf ("Decision"); ICC-01/09-01/11-T-137-CONF-ENG ET 16-09-2014, p. 14, line 1 to p. 18, line 4 ("Oral Ruling).

⁷ Decision, para. 38. *See also* Oral Ruling, p. 18, lines 1-3 ("However, the Chamber emphasises that this ruling concerns only the admission of these 11 items to the Prosecution's list of evidence and not their potential use at trial or admission into evidence").

Requested Relief

4. For the reasons set out above, the Defence does not oppose the Ninth Application.

Respectfully submitted,



Karim A.A. Khan QC
Lead Counsel for Mr. William Samoei Ruto

Dated this 17th Day of September 2014
At The Hague, Netherlands