

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/09-01/11**
Date: **24 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 tenth 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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Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

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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 tenth application pursuant to Regulation 35(2) of the Regulations of the Court ("Tenth Application")¹ is in the same terms as its eighth² and ninth³ applications save that it seeks to add 38 items relating to P-0323 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 three recent decisions issued by the Trial Chamber permitting the Prosecution to add 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 Tenth Application.

Classification

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

¹ ICC-01/09-01/11-1532-Conf, 22 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. This filing was supplemented by the following two filings: (i) 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; and (ii) 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.

³ Prosecution's ninth application pursuant to Regulation 35(2) of the Regulations of the Court, 12 September 2014, ICC-01/09-01/11-1511-Conf.

⁴ Tenth 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"); and Decision on the Prosecution's Ninth Application for Addition of Documents to Its List of Evidence, 19 September 2014, ICC-01/09-01/11-1527-Conf ("Decision on Ninth Application").

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") and Decision on Ninth Application, para. 19.

Requested Relief

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

Respectfully submitted,



Karim A.A. Khan QC

Lead Counsel for Mr. William Samoei Ruto

Dated this 24th Day of September 2014
At The Hague, Netherlands