

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **23 April 2015**

**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**

**Corrected version of Prosecution request for an extension of page limit, 22 April  
2015, ICC-01/09-01/11-1864-Conf**

**Source:** Office of the Prosecutor

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

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**For Joshua Arap Sang:**

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**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**

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**The Office of Public Counsel for the  
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**States' Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Mr Herman von Hebel

**Counsel Support Section**

**Deputy Registrar**

**Victims and Witnesses Unit**

Mr Nigel Verrill

**Detention Section**

**Victims Participation and Reparations  
Section**

**Others**

## Introduction

1. Pursuant to regulation 37(2) of the Regulations of the Court ("RoC") the Office of the Prosecutor ("Prosecution") requests an extension of the page limit to not more than 100 pages for its intended application pursuant to rule 68 of the Rules of Procedure and Evidence ("Rules") ("Rule 68 Application"). The application will make detailed legal and factual submissions requesting Trial Chamber V(a) ("Chamber") to admit the prior statements of Witnesses P-0397, P-0495, P-0516, P-0604, P-0637 and P-0789 (collectively "Summoned Witnesses") into the Court record.

## Confidentiality

2. Pursuant to regulation 23*bis* of the RoC, this request is submitted as *confidential* since it refers to confidential matters regarding Prosecution witnesses.

## Submissions

3. Regulation 37(2) of the RoC 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.
4. The Prosecution's Rule 68 Application has two main sections, addressing respectively the legal and factual submissions on the matter. First, the legal submissions are necessarily lengthy and complex as they address the novel issue regarding the scope and application of rule 68 of the Rules – a provision that was quite recently amended by the Assembly of States Parties, which amendments have not been previously litigated at the Court. In this regard the Prosecution will address the complex and contentious question of whether the application of rule 68 - in this case - offends article 51(4) of the Rome Statute ("Statute") concerning retroactivity. The Prosecution must also address the issues of whether the Court could, alternatively, admit the prior statement of

- the summonsed witnesses under articles 69(2) and (4), read with rule 63(2), and whether the prior statements of the summonsed witnesses constitute "prior recorded testimony" as contemplated in rule 68.
5. Second, the factual part is also necessarily lengthy, as it is necessary to provide a thorough analysis of the evidence of 10 witnesses<sup>1</sup> who have been the target of witness interference. This is necessary in order to satisfy the Chamber of the factual prerequisites for the admission of the prior statements under rule 68(2)(c) and (d). Given that the Summonsed Witnesses who have testified before the Chamber have denied any improper interference, the Prosecution deems it essential to provide adequate corroborating evidence regarding the existence and *modus operandi* of the witness interference scheme to support the evidence of interference with those witnesses.
  6. In sum, this is a critical Application (for the Prosecution) concerning a novel and important provision of the Statute which the Prosecution submits necessarily calls for a comprehensive analysis to assist the Chamber to arrive at its conclusion.
  7. The Prosecution therefore requires not more than 100 pages in which to succinctly but adequately argue: (i) that the admission of the prior statements of the summonsed witnesses in this case does not offend article 51(4) of the Statute and (ii) that the conditions precedent to the admission of the prior statements/prior recorded testimony of each of the Summonsed Witnesses under rule 68 have been satisfied. This estimation is based on the actual draft Application which is in its final stages of completion. However, the Prosecution will make every effort to keep the filing as succinct as possible.
  8. The Prosecution submits that the reasons set out above constitute exceptional circumstances as set out in regulation 37(2). The Prosecution acknowledges that,

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<sup>1</sup> Including the six Summonsed Witnesses.

if this relief is granted, the Defence may require a reasonable extension for their responses.

### Relief

9. For the reasons detailed above, the Prosecution requests an extension of the page limit for its intended Rule 68 Application to 100 pages pursuant to regulation 37(2) of the RoC.



Fatou Bensouda, Prosecutor

Dated this 23<sup>rd</sup> day of April

At The Hague, the Netherlands