

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/09-02/11

Date: 16 December 2014

TRIAL CHAMBER V(B)

Before: Judge Kuniko Ozaki, Presiding
Judge Robert Fremr
Judge Geoffrey Henderson

SITUATION IN THE REPUBLIC OF KENYA

**IN THE CASE OF
*THE PROSECUTOR v. UHURU MUIGAI KENYATTA***

PUBLIC

**Defence Request for Extension of the Page Limit for the
Response by the Defence to the Pre-Trial Brief**

Source: Defence for Uhuru Muigai Kenyatta

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

(Participation/Reparation)

Applicants

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I. INTRODUCTION

1. The Defence for Uhuru Muigai Kenyatta ('Defence') hereby requests an extension of the standard 20-page limit to allow it to respond to the publication of the 'Second updated Prosecution pre-trial brief' ('pre-trial brief').¹

II. PROCEDURAL HISTORY

2. On 26 August 2013, the Prosecution submitted its pre-trial brief following several adjustments to accommodate changes to its case.² This document is 82 pages long.
3. On 29 August 2013, the Defence wrote to the Prosecution to express its concern at the publication of the pre-trial brief.³
4. On 29 October 2014, the Legal Representative for Victims' ('LRV') requested the Chamber to order the Prosecution to file a public redacted version of its pre-trial brief ('LRV's Request').⁴
5. On 11 November 2014, in response to the LRV's Request, the Prosecution 'reiterate[d] its position as submitted at the 9 July 2014 status conference, that the public redacted version of the PTB has been prepared.'⁵ The Prosecution explained that it had previously refrained from submitting it due to objections raised by the Defence,⁶ and stated that it was ready to file a public redacted version should that be so ordered by the Chamber.
6. On 14 November 2014, the Defence opposed the LRV's Request on the basis that the publication of the pre-trial brief 'would serve only to proliferate

¹ ICC-01/09-02/11-796-Conf-AnxA.

² ICC-01/09-02/11-796 and ICC-01/09-02/11-796-Conf-AnxA.

³ Produced by the Prosecution at ICC-01/09-02/11-973-Conf-AnxA.

⁴ ICC-01/09-02/11-970.

⁵ ICC-01/09-02/11-973, para. 5.

⁶ Referring to the letter from the Defence dated 29 August 2013, annexed at ICC-01/09-02/11-973-Conf-AnxA.

untruths and further obfuscate and frustrate future endeavours to learn the truth.’⁷

7. On 2 December 2014, the LRV replied to the Defence response, in which he dismissed the Defence objections on the basis that there can be no justification for ‘withholding from the public a non-vexatious filing merely to prevent what the accused considers to be embarrassment or damage to his reputation.’⁸
8. On 11 December 2014, the Chamber issued its ‘Decision on request of the Legal Representative of Victims for a public redacted version of the pre-trial brief,’ in which it ordered the Prosecution to file a public redacted version of the pre-trial brief.⁹

III. APPLICABLE LAW

9. Under Regulation 37(2) of the Regulations of the Court, the Chamber may grant an extension of the standard page limit in exceptional circumstances.

IV. SUBMISSIONS

10. Given the nature, scope and seriousness of the allegations contained in the current 82-page pre-trial brief, the Defence seeks leave to exceed the 20-page limit prescribed by Regulation 37(1) of the Regulations of the Court to file its response.
11. The Defence considers it is necessary and in the interests of fairness that the allegations put forward in the pre-trial brief are addressed in its response in sufficient detail in order that it may fully challenge the allegations contained

⁷ ICC-01/09-02/11-975, para. 1.

⁸ ICC-01/09-02/11-980, para. 14.

⁹ ICC-01/09-02/11-988.

therein, the strength of which have been publicly misrepresented by the Prosecutor in the proceedings.¹⁰

12. The Defence submits that as the pre-trial brief to be filed by the Prosecution exceeds the prescribed page limit for filings of 20 pages, and as there is a clear need to enable the Defence to respond appropriately and sufficiently to the complex and voluminous factual allegations contained therein, the Defence request satisfies the exceptional circumstance requirement of Regulation 37(2) of the Regulations of the Court.
13. The Defence submits that it would be appropriate in the circumstances to allow an equivalent number of pages for the response and therefore requests leave to file a document not exceeding the length of the unredacted pre-trial brief.
14. This request has been made at this stage before the pre-trial brief has been filed in order to enable the Defence to make best use of the available time to prepare the response.

V. RELIEF

15. The Defence requests the Chamber to grant the request for an extension of the page limit in respect of its response to the pre-trial brief, such that it will not exceed the number of pages as filed by the Prosecution.

¹⁰ See, for example, the Prosecution's assertions at the 8 October 2014 Status Conference: ICC-01/09-02/11-T-32-ENG, p. 35, lines 6-12; ICC-01/09-02/11-T-32-ENG, p. 36, line 21.

Respectfully submitted,

Handwritten signature of Steven Kay QC.Handwritten signature of Gillian Higgins.

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Steven Kay QC and Gillian Higgins

On behalf of Uhuru Muigai Kenyatta

Dated this 16th day of December 2014

At London, England