

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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No.: ICC-02/05-03/09
Date: 19 December 2012

THE APPEALS CHAMBER

Before: Judge Erkki Kourula
Judge Sang-Hyun Song
Judge Akua Kuenyehia
Judge Anita Ušacka
Judge Sanji Mmasenono Monageng

SITUATION IN DARFUR, SUDAN

IN THE CASE OF THE PROSECUTOR

v.

ABDALLAH BANDA ABAKAER NOURAIN &

SALEH MOHAMMED JERBOA JAMUS

Public

**Prosecution's Application for Extension of Time Limit in the appeal proceedings
against the Decision on the defence request for a temporary stay of proceedings
(ICC-02/05-03/09-410)**

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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**Unrepresented Applicants for
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Victims and Witnesses Unit

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**Victims Participation and Reparations
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Other

Introduction

1. On 14 December 2012, Trial Chamber IV granted the Defence leave to appeal its decision on the Defence request for a temporary stay of proceedings. The Defence appeal brief shall be filed no later than 27 December 2012. The Prosecution's brief in response shall be filed no later than 10 days after the filing of the Defence's brief.
2. Considering the importance of the subject matter on appeal and the exceptionality of the last week of the year – with two days of public holidays and three days of leave granted by the Presidency – the Prosecution requests that those three days be considered as non-working days. The result would be that the time limit for the Defence to file its brief would expire on 31 December 2012. In the event this request is granted and the Defence files its appeal brief before 31 December, the Prosecution also requests that its time limit to respond still only commences on 31 December 2012.

Procedural Background

3. On 6 January 2012, the Defence filed a request for a temporary stay of proceedings and for an oral hearing ("Defence Request").¹
4. On 30 January 2012 the Prosecution opposed the Defence Request.² On 30 January 2012, the Legal Representatives of Victims also filed submissions opposing the Defence Request.³ After obtaining leave⁴ on 21 February 2012, the Defence filed a reply to the Prosecution's Response.⁵

¹ ICC-02/05-03/09-274.

² ICC-02/05-03/09-286-Red.

³ ICC-02/05-03/09-285.

⁴ ICC-02/05-03/09-294-Red.

⁵ ICC-02/05-03/09-300-Red.

5. On 6 July 2012, the Chamber issued an order scheduling a hearing and status conference.⁶ The hearing and the status conference took place on 11 and 12 July 2012.
6. On 26 October 2012, Trial Chamber IV issued its decision on the Defence Request ("Impugned Decision").⁷
7. On 5 November 2012, the Defence sought leave to appeal the Decision.⁸ On 9 November the Prosecution responded.⁹
8. On 6 December 2012, the Presidency along with the Prosecutor and the Registrar decided to grant all staff members extra days of leave on 24, 27 and 28 December 2012. CMS announced that it would only notify urgent filings on those days.
9. On 14 December 2012 the Trial Chamber granted leave to appeal with respect to one issue encompassing two sub-issues: first, whether the Trial Chamber erred in finding that the Defence had not properly substantiated its request "'with sufficient specificity [...] in light of the information available to it' by 'applying the wrong threshold in terms of specificity'"; and second, whether the Trial Chamber erred "by determining that evidence concerning 'the alleged existence of a violent campaign perpetrated by the GoS against the civilian population in Haskanita and Darfur generally, and the effect the GoS military offensive had on the civilian population in the area' is not relevant to the contested issues and thus failing to consider this evidence in determining whether the Request was properly substantiated".¹⁰

⁶ ICC-02/05-03/09-366.

⁷ ICC-02/05-03/09-410.

⁸ ICC-02/05-03/09-412.

⁹ ICC-02/05-03/09-416.

¹⁰ ICC-02/05-03/09-428, paras.12, 32.

Submissions

10. The Prosecution, being mindful of regulation 19*bis*(2)¹¹ and 35(2)¹² of the Regulations of the Court ("RoC"), requests that the three days of extra leave granted by the Presidency be considered as non-working days for the calculation of the time limits for the parties to file their briefs. The importance of the subject matter under appeal and the exceptionality of the last week of the year constitute good cause justifying this limited extension of time.
11. First, the issue under appeal is particularly significant in that the proceedings may be temporarily stayed as a result of the decision of the Appeals Chamber. Indeed, the Majority of the Trial Chamber noted that "[i]f the Appeals Chamber determines that the Trial Chamber indeed applied a wrong threshold, the defence Request may have to be re-examined with a different threshold [and a]s a result, it may be decided upon differently".¹³
12. Second, the last week of the year – in which the time limit for the Defence to file its brief expires - is unusual in that it falls in the middle of a three week Court recess, there are two days of public holidays (25 and 26 December), and the Presidency granted the staff three extra days of leave (24, 27 and 28 December). These circumstances have a significant impact on the resources available to the parties to prepare their briefs. In a prior case, the Appeals Chamber found appropriate to extend the prescribed time limits in similar

¹¹ "Unless otherwise determined by a Chamber, during the judicial recess [...] time limits shall not be suspended".

¹² "The Chamber may extend or reduce a time limit if good cause is shown and, where appropriate, after having given the parties an opportunity to be heard. [...]".

¹³ ICC-02/05-03/09-428, para.16.

circumstances for a similar short period of time to take these factors into account.¹⁴

13. Hence, in light of the parties' workload and limited resources, the Prosecution respectfully requests that the Appeals Chamber consider the three extra days of leave as non-working days. As a result, in application of regulation 33(1)(d) of the RoC, the Defence would be required to file its brief no later than 31 December 2012 – the first non-working day - and the Prosecution its response by 14 January 2013. The Prosecution also requests that these time limits be maintained for the Prosecution in the event the Defence files its brief before 31 December. The reasons underlying this request equally apply to that scenario.
14. In addition, considering the limited extension of time requested (3 days), granting this Application will not affect the prompt determination of this matter by the Appeals Chamber. On the contrary, the parties will dispose of more time and resources to properly research and fully reason its submissions which, in turn, will facilitate an expeditious resolution of the matter by the Appeals Chamber.
15. The Prosecution submits that the reasons set out above constitute good cause for an extension of time pursuant to regulation 35(2).

¹⁴ ICC-01/04-01/07-115OA, para.6.

Conclusion

16. For all the aforementioned reasons, the Prosecution requests the Appeals Chamber to consider the three days of extra leave granted by the Presidency (24, 27 and 28 of December) to be non-working days for the purposes of calculating the time limits. Further, and in the event that the Defence files its brief before 31 December, the Prosecution also requests that its time limit to respond does not start until 31 December 2012.



Fatou Bensouda

Prosecutor

Dated this 19th day of December 2012

At The Hague, The Netherlands