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

Date: 19 February 2013

PRE-TRIAL CHAMBER II

Before: Judge Ekaterina Trendafilova, Presiding Judge
Judge Hans-Peter Kaul, Judge
Judge Cuno Tarfusser, Judge

SITUATION IN THE REPUBLIC OF KENYA

**IN THE CASE OF
*THE PROSECUTOR v. FRANCIS KIRIMI MUTHAURA
AND UHURU MUIGAI KENYATTA***

**Public
URGENT**

**Defence Request for an Extension of the Time Limit Specified in the “Request to
File a Confidential Redacted Version of Annex A to the Prosecutor's
Observations”**

Source: Defence for Uhuru Muigai Kenyatta

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

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Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
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Other

I. INTRODUCTION

1. The Defence for Uhuru Kenyatta (“Defence”) requests the Pre-Trial Chamber (“Chamber”) to authorise an extension of the time limit specified in the Single Judge’s “Request to file a Confidential Redacted Version of Annex A to the Prosecutor’s Observations” (“Request”),¹ and to allow the Defence to submit its final observations no later than 16.00 on Friday 22 February.

II. PROCEDURAL HISTORY

2. On 22 January 2013, the Prosecution submitted its “Request to Amend the Final Updated Document Containing the Charges Pursuant to Article 61(9) of the Statute”.²
3. On 29 January 2013, the Single Judge issued her “Decision requesting written observations concerning the Prosecution’s Request to Amend the Final Updated Document Containing the Charges Pursuant to Article 61(9) of the Statute”.³
4. On 7 February 2013, the Defence filed its “Observations on the ‘Prosecution’s Request to Amend the Final Updated Document Containing the Charges Pursuant to Article 61(9) of the Statute’”.⁴
5. On 7 February 2013, the Prosecution filed its “Observations on the conduct of its investigations” (“Prosecution’s Observations”).⁵

¹ The current deadline is specified as Wednesday 20 February, 16.00, ICC-01/09-02/11-644, p.6.

² ICC-01/09-02/11-607-Conf.

³ ICC-01/09-02/11-614.

⁴ ICC-01/09-02/11-634.

⁵ ICC-01/09-02/11-633.

6. On the same date, the Victims' Legal Representative filed his "Observations pursuant to 'Decision Requesting Observations on the Prosecution's Request to Amend the Final Updated Document Containing the Charges Pursuant to Article 61(9) of the Statute'".⁶
7. On 12 February 2013, the Defence responded to the Prosecution's Observations.⁷
8. On 13 February 2013, the Chamber issued the Request, ordering:
 - a. The Prosecutor to file a confidential redacted version of Annex A to the Prosecution's Observations, to be notified to the Defence of the accused, no later than Friday 15 February 2013, 16.00; and
 - b. The Defence to file its final observations no later than Wednesday 20 February 2013, 16.00.⁸
9. On 14 February 2013, the Defence attended a status conference at which Her Honour Judge Osaki of Trial Chamber V ordered, *inter alia*, that the Defence file, by Wednesday 20 February 2013, any additional submissions on the impact upon of the Defence of delayed disclosure by the Prosecution and the extent of Prosecution redactions.⁹
10. At 17.05 on 15 February 2013, the Defence was notified that Annex A to the Prosecution's Observations ("Annex A") had been filed by the Prosecution.¹⁰

⁶ ICC-01/09-02/11-630.

⁷ ICC-01/09-02/11-642.

⁸ ICC-01/09-02/11-644, p.6.

⁹ ICC-01/09-02/11-T-22-ENG ET WT, p.7, lines 2-10.

¹⁰ ICC-01/09-02/11-633-Conf-AnxA-Red.

III. APPLICABLE LAW

11. Regulation 35 of the Regulations of the Court states that “[t]he Chamber may extend or reduce a time limit if good cause is shown and, where appropriate, after having given the participants an opportunity to be heard. After the lapse of a time limit, an extension of time may only be granted if the participant seeking the extension can demonstrate that he or she was unable to file the application within the time limit for reasons outside his or her control.”

IV. SUBMISSIONS

12. The Defence requires a short extension of the deadline until 16.00 on Friday 22 February in order to ensure adequate time to allow the Defence to respond comprehensively to the Prosecution’s observations in Annex A.
13. The Defence informs the Chamber that in order to supplement its submissions at the status conference in respect of delayed disclosure and its impact upon the trial date, it has been necessary to carry out additional detailed statistical analyses in respect of all data relating to the disclosure of witness identities, witness statements and other documentary materials subject to Prosecution redactions. In accordance with the Presiding Judge’s order at the status conference, the Defence is endeavouring to provide Trial Chamber V with an informative and clear illustration of the extent to which the Prosecution’s regime of disclosure and redactions has affected its ability to prepare adequately for trial. The compilation of this data and motion in support is ongoing and will be complete by 16.00 tomorrow. In order for the Defence to provide Trial Chamber V with clear and useful statistics and analyses, it is submitted that an extension of time is required in respect of the Request.

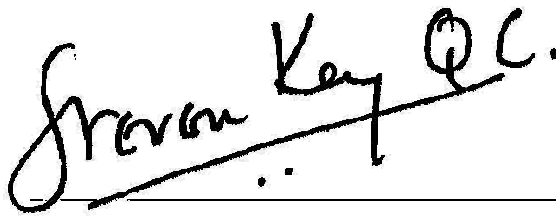
14. Further, the preparation of the statistical analysis has been delayed as a result of technical disclosure issues beyond the control of the Defence. Following the status conference, between Thursday 14 February and Monday 18 February 2013, the Prosecution has disclosed and reissued four sets of materials to the Defence. The materials relate to the expert reports of Herve Maupeu and Lars Bromley, which the Prosecution had been ordered to disclose by 14 February 2013.¹¹ As a result of the substandard quality of the documents and the incorrect metadata disclosed by the Prosecution at 17.30 on 14 February 2013, it has been necessary for members of the Defence team to liaise with the Prosecution in order to obtain fully legible documents. The Prosecution has now reissued all 17 items contained in incriminatory evidence packages 36 and 37. The immediate resolution of these disclosure issues has been necessary in order for the Defence to provide a complete statistical picture of the volume of material disclosed by the Prosecution to Trial Chamber V.
15. In the circumstances, the Defence submits that the aforementioned reasons constitute good cause for permitting an extension of the deadline set out in the Request.

V. RELIEF

16. For the reasons set out above, the Defence respectfully requests the Chamber to authorise an extension of the time limit in the Request, and allow the Defence to submit its final observations no later than Friday 22 February, 16.00.

Respectfully submitted

¹¹ ICC-01/09-02/11-451, para 22.

Steven Kay QC and Gillian Higgins on behalf of Uhuru Kenyatta

Dated this 19 February 2013

At London, England