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No.: ICC-01/09-01/11
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APPEALS CHAMBER

Before: Judge Sanji Mmasenono Monageng
Judge Silvia Alejandra Fernández De Gurmendi
Judge Christine Van Den Wyngaert
Judge Howard Morrison
Judge Piotr Hofmański

SITUATION IN THE REPUBLIC OF KENYA

IN THE CASE OF

THE PROSECUTOR

v. WILLIAM SAMOEI RUTO AND JOSHUA ARAP SANG

Public

**Prosecution's Response to joint Defence request for extension of page and time
limits**

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

Ms Fatou Bensouda, Prosecutor
Mr James Stewart
Ms Helen Brady

Counsel for William Samoei Ruto

Mr Karim Khan
Mr David Hooper
Ms Shyamala Alagendra

Counsel for Joshua Arap Sang

Mr Joseph Kipchumba Kigen-Katwa
Ms Caroline Buisman

Legal Representatives of Victims

Mr Wilfred Nderitu

The Office of Public Counsel for Victims

Ms Paolina Massidda

States Representatives

REGISTRY

Registrar

Mr Herman von Hebel

Victims and Witnesses Unit

Mr Nigel Verrill

Introduction

1. The Defence for Mr Ruto ("Ruto Defence") has filed a request for the extension of page and time limits¹ to file its appeal against the Trial Chamber's "Decision on the Prosecution's Request for Admission of Prior Recorded Testimony."² The Ruto Defence requests an extension of the page limit for its appeal to a total of 60 pages and the time limit of an additional 21 days.³

2. The Defence for Mr Sang ("Sang Defence") has joined this request (collectively, "Joint Request").⁴

3. Having closely examined the Joint Request in light of the number and scope of the issues for which the Trial Chamber granted leave to appeal,⁵ the Prosecution does not oppose the request in principle, but submits that both the page and time limit extensions (as amended) requested are excessive in the circumstances.

Submissions

4. As regards the time limit, the Prosecution submits that the Chamber should grant the original extension requested, namely an additional 14 day extension, rather than the 21 day extension now sought. This extension would not unduly affect progress of trial proceedings. This is because the Trial Chamber has maintained the schedule for the 'no case to answer' proceedings.⁶ It has considered that "the defence should be able to address, in any 'no case to answer' submissions they make, the evidence before the Chamber both in terms of the current record, and in the alternative, in a situation where the aforementioned materials would not form part

¹ ICC-01/09-01/11-1956-Red, OA10 and an Addendum, ICC-01/09-01/11-1957, both dated 11 September 2015.

² ICC-01/09-01/11-1938-Corr, 19 August 2015.

³ ICC-01/09-01/11-1956-Red OA10, para. 21 (originally requesting an additional 14 days); and Addendum, ICC-01/09-01/11-1957 OA10, para. 4 (requesting an additional 21 days because of the Trial Chamber's rejection of the Defence's application for the modification of the current schedule for the submission of any "no case to answer").

⁴ ICC-01/09-01/11-1958 OA10.

⁵ ICC-01/09-01/11-1953, 10 September 2015.

⁶ ICC-01/09/11-1955, para.5.

of the evidence.”⁷ The Prosecution’s response to the Defence’s ‘no case to answer’ motion would be done the same way.⁸

5. The Prosecution notes that the Ruto Defence has simultaneously filed another request to Trial Chamber V(A) to extend the time period for filing its “no case to answer” motion, this time until 14 days after it has filed its brief in the present appeal.⁹ The Sang Defence has also sought to join this request.¹⁰ These requests are still pending. The Prosecution notes further, that in both the Ruto Defence’s amended request to this Chamber, and its request to the Trial Chamber, it relied on the overlapping timelines to justify its request for an extension.¹¹ However, in neither filing does the Ruto Defence reveal that it has simultaneously sought an extension from the other Chamber. The same applies to the Sang Defence requests filed before this Chamber¹² and the Trial Chamber.¹³ The Prosecution observes that the effect of a 14 day extension is that the Defence would have effectively 25 days to submit their appeal briefs – two and a half times the normal time period permitted. The Prosecution submits that a 14 day extension would be reasonably adequate to file an appeal brief in a matter such as the present. Additionally, even assuming that the Trial Chamber does not grant the Defence request for extension, the effect of granting a 14 day extension to file the appeal brief is that the Defence will have 10 clear days, after filing the “no case to answer” motions, to complete their appeals briefs. However, if the Trial Chamber does grant the request, then the grounds for the present request for extension of time limit fall away.

6. In the interest of fairness, the Chamber should also grant the Prosecution an additional 14 days’ extension to file its response, given that it is required to respond to two appeal briefs.

⁷ ICC-01/09/11-1955, para.5.

⁸ ICC-01/09/11-1955, para.5.

⁹ ICC-01/09-01/11-1959.

¹⁰ ICC-01/09-01/11-1960.

¹¹ ICC-01/09-01/11-1957, para. 3 ; ICC-01/09-01/11-1959, para. 7.

¹² ICC-01/09-01/11-1958 OA10.

¹³ ICC-01/09-01/11-1960.

7. As regards the page extension, the Prosecution submits that the Appeals Chamber should extend the Ruto and Sang Defence's page limit to 40 pages each. Given that the Prosecution will then be responding to Defence combined submissions totalling 80 pages, the Trial Chamber should grant the Prosecution a page limit of 60 pages.

Relief

8. For the reasons above, the Prosecution submits that the Appeals Chamber should partially grant the Joint Request in line with the Prosecution's submissions above, namely that each of the Defence teams and the Prosecution are granted an additional 14 days to file their respective submissions, that the Defence teams each be granted 40 pages in total for their appeal submissions, and that the Prosecution be granted 60 pages in total for its (consolidated) response submissions.



Fatou Bensouda, Prosecutor

Dated this 14th day of September 2015
At The Hague, The Netherlands.