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

Date: **22 April 2014**

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**

Public

Prosecution's Response to "Defence request for extension of time limit"

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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1. The Prosecution objects to the request by the Defence of William Samoei Ruto (“Request”)¹ to extend the time limit to file an application for leave to appeal the “Decision on Prosecutor’s Application for Witnesses Summonses and resulting Request for State Party Cooperation” (“Decision”)² until five days after notification of Judge Herrera Carbuccion’s Dissenting Opinion.

2. Regulation 35, the legal provision invoked by the Defence in support of its Request, permits a Chamber to “extend or reduce any time limit as prescribed in [...] the Regulations [of the Court] or as ordered by the Chamber”.³ This provision does not provide the Chamber with the power to extend the time limit for an application for leave to appeal, which is prescribed in Rule 155(1) of the Rules of Procedure and Evidence.⁴ The Request should therefore be rejected *in limine*.

3. However, even if the matter is considered on the merits, the Defence has not provided sufficient support for its Request. In particular, the Defence’s argument that additional time is required because the Dissenting Opinion of Judge Herrera Carbuccion has not yet been rendered and her dissent “will likely inform the Defence’s decision on leave to appeal including the formulation of the issue(s) on which to seek leave”⁵ lacks merit. The Decision sets out all the relevant issues concerning which the Defence may seek leave to appeal. The Dissenting Opinion may offer an alternative perspective on these issues; however, it will neither extend the scope of the Decision nor alter its foundation. Likewise, the potential arguments as to why the relevant issues do or do not meet the criteria for leave to appeal under Article 82(1)(d) will not change as a result of the Dissenting Opinion.

4. The argument that “the Decision engages complex, novel and not uncontroversial legal issues”⁶ does also not warrant an extension of the five-day time

¹ ICC-01/09-01/11-1275.

² ICC-01/09-01/11-1274.

³ Regulation 35(1).

⁴ ICC-02/11-01/11-189 OA, para.5: “the Appeals Chamber notes that regulation 35 of the Regulations of the Court provides only for the extension of time limits ordered by a Chamber or prescribed in the Regulations of the Court.”

⁵ Request, para.3.

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limit under Rule 155(1). In the present case, due to a number of official holidays, the Defence's application for leave to appeal the Decision is not due until 29 April 2014.⁷ Thus, the Defence will have had a total of 12 days to analyse all issues arising from the Decision and to complete the application.

5. On the basis of the above, the Prosecution submits that the Request should be rejected.



Fatou Bensouda, Prosecutor

Dated this 22nd day of April 2014

At The Hague, the Netherlands

⁷ See Regulation 33(1). The date of notification of the Decision was 17 April 2014.