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No.: ICC-02/05-01/09
Date: 28 February 2018

THE APPEALS CHAMBER

Before: Judge Silvia Fernández de Gurmendi
Judge Sanji Mmasenono Monageng
Judge Christine Van den Wyngaert
Judge Howard Morrison
Judge Piotr Hofmański

SITUATION IN DARFUR, SUDAN

**IN THE CASE OF
*THE PROSECUTOR v. OMAR HASSAN AHMAD AL BASHIR***

Public

**Prosecution Response to the Kingdom of Jordan's Application for an Extension of
the Page 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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Introduction

1. The Kingdom of Jordan's appeal will address some key questions for this Court concerning, among others, the legal effects of UN Security Council referrals under article 13(b) of the Rome Statute, and the nature and extent of any obligations upon States to accord immunity to Mr Al Bashir—a Head of State and fugitive from arrest on suspicion of genocide, crimes against humanity, and war crimes committed in Sudan. In recent years, a succession of States, notably including the Kingdom of Jordan and certain other States Parties to the Statute, have failed to take action with regard to the two pending arrest warrants issued by this Court concerning Mr Al Bashir. A proper disposition of this appeal will thus help to promote legal certainty not only for the States immediately concerned, but also for the international community as a whole.

2. In this context, the Prosecution agrees that the circumstances of this interlocutory appeal meet the requirements of regulation 37(2) of the Regulations of the Court, although it disagrees as to the scale of the requested extension. In such circumstances, the Prosecution also submits that a proportionate extension of time under regulation 35 is warranted for filing its response brief.

Submissions

3. The Prosecution does not oppose the Kingdom of Jordan's request for an extension of pages for its appeal brief,¹ provided that the Appeals Chamber also grants consequent extensions (both of pages and time) for the Prosecution. However, the Prosecution submits that a 150% increase in pages (20 pages to 50 pages) is excessive, and suggests instead a more modest extension of 50% (20 pages to 30 pages). In such circumstances, the Prosecution seeks an additional 7 day extension of time to file its response brief (from 10 days to 17 days).

A. Exceptional circumstances justify a limited extension of pages for all the Parties

4. Regulation 37(1) and (2) provide that the page limit of 20 pages, applicable to the Kingdom of Jordan's appeal brief and the Prosecution's response thereto, may be extended in "exceptional circumstances".²

¹ ICC-02/05-01/09-321 ("Request"), para. 11.

² Cf. Request, paras. 6-7, 10.

5. The Prosecution agrees with the Kingdom of Jordan that the issues which will be raised in this appeal have not yet been addressed by the Appeals Chamber, and that the resulting judgment is likely to be of interest not only to the particular States concerned but more widely throughout the international community.³ It also agrees that the issues certified for appeal raise matters of some legal complexity.⁴ The Prosecution therefore joins the Kingdom of Jordan in concluding that exceptional circumstances exist within the meaning of regulation 37(2).⁵

6. However, given all the circumstances, the Prosecution considers that the 150% extension requested by the Kingdom of Jordan (20 pages to 50 pages) exceeds what is adequate and sufficient.⁶ Instead, a more modest increase of 50% (20 pages to 30 pages) should suffice.

7. In any event, to the extent the Appeals Chamber agrees that the Kingdom of Jordan is justified in filing an appeal brief of extended length, it should grant the Prosecution an equivalent extension of pages for its response brief.

B. There is good cause, consequently, to grant the Prosecution a modest extension of time for its response brief

8. Regulation 35(2) provides that the Appeals Chamber may extend a time limit if “good cause” is shown. Under regulations 24 and 34(b) the Prosecution must currently file its response brief on 16 March 2018, 10 days after the Kingdom of Jordan files its appeal brief on 5 March 2018.

9. If the Appeals Chamber agrees that exceptional circumstances exist to grant a modest extension of pages for the Kingdom of Jordan’s appeal brief, the Prosecution submits that good cause exists to grant an extension of time for the filing of its response brief.

10. This is chiefly because the volume of legal argument which the Prosecution will be required to address will necessarily increase—and in circumstances, moreover, where the

³ Request, paras. 8-9.

⁴ Request, paras. 8, 10.

⁵ See also Request, paras. 7, 10.

⁶ See e.g. ICC-01/05-01/13-2161 A A2 A3 A4 A5 (“CAR Article 70 Extension Decision”), para. 13.

Appeals Chamber has agreed that such arguments will likely be “exceptionally” complex in nature. The Appeals Chamber has previously recognised that such work takes time.⁷

11. Accordingly, if the Appeals Chamber agrees that the Kingdom of Jordan should receive the 50% extension of pages proposed by the Prosecution (20 pages to 30 pages), the Prosecution submits that good cause exists to grant a consequent extension of 7 days for the filing of its response brief. Its response will then be due on 23 March 2018, rather than 16 March 2018.⁸

Conclusion

12. For all the reasons above, therefore, the Prosecution agrees that the Appeals Chamber should grant the Kingdom of Jordan’s request for an extension of pages for its appeal brief, to the extent that:

- i. the Kingdom of Jordan is granted an extension of 10 additional pages for its appeal brief, to a maximum of 30 pages;
- ii. the same extension is granted to the Prosecution for its response brief; and
- iii. the Prosecution is granted at least 7 additional days to file its response brief, so that it is due on 23 March 2018, or later if more proportionate to the extension of pages granted.



Fatou Bensouda, Prosecutor

Dated this 28th day of February 2018⁹

At The Hague, The Netherlands

⁷ See e.g. CAR Article 70 Extension Decision, para. 12.

⁸ Alternatively, if the Appeals Chamber considers that the full extension of pages requested by the Kingdom of Jordan is merited, the Prosecution consequently submits that good cause will be established for a greater extension of time, in due proportion. In such circumstances, the Prosecution requests a total extension of time of 14 days, so that its response brief is due on 3 April 2018 (taking into account official holidays of the Court).

⁹ This submission complies with regulation 36, as amended on 6 December 2016: ICC-01/11-01/11-565 OA6, para. 32.