

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **5 May 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**

**Urgent Prosecution Request for Extension of Time to Respond to any Applications for Leave to Appeal the “Decision on Prosecutor’s Application for Witness Summonses and resulting Request for State Party Cooperation”**

**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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**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations Section Other**

## Introduction

1. The Trial Chamber has ordered the Government of Kenya to file by 12 May 2014<sup>1</sup> any application it wishes to make concerning a recent decision of the Trial Chamber.<sup>2</sup> This order was made without hearing submissions from “the parties”.<sup>3</sup> Given this new deadline, and in the interests of fairness and judicial economy, the Prosecution urgently requests an extension of time to file a consolidated response to any applications for leave to appeal, including any submission by the Government of Kenya.

## Procedural Background

2. On 17 April 2014, the Trial Chamber, by majority, decided to summons eight witnesses to testify, and requested the Government of Kenya (“GoK”) to ensure the witnesses’ presence.<sup>4</sup> The GoK was expressly requested to use all means available under the laws of Kenya, including such compulsory measures as may be necessary.

3. On 2 May 2014, the Trial Chamber set a deadline for the GoK to file any application regarding the Decision,<sup>5</sup> “either as to their own leave to appeal or, alternatively, as to leave to join as *amicus curiae* to any other request for leave to appeal”.<sup>6</sup> The Trial Chamber made no determination on the merits that the GoK has standing to appeal the Decision under Article 82(1)(d) nor did it accept any submissions filed for the purpose of Rule 103(1).<sup>7</sup>

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<sup>1</sup> ICC-01/09-01/11-1287 (“Order”), paras.7-8.

<sup>2</sup> ICC-01/09-01/11-1274-Corr2 (“Decision”).

<sup>3</sup> Order, para.2. *But see* ICC-01/09-01/11-1284 (“Prosecution Response”), para.5 (“the term [‘parties’] should mean only the Prosecution and the Defence”).

<sup>4</sup> Decision, Disposition. *See also* ICC-01/09-01/11-1274-Anx.

<sup>5</sup> *See* ICC-01/09-01/11-1277, paras.7-8, 11 (purporting to request a variation of the deadline under Rule 155(1)). However, since the GoK is not a party, it is not subject to any deadline under Rule 155(1).

<sup>6</sup> Order, para.8.

<sup>7</sup> Order, para.8 (emphasising that the order setting a deadline is “without prejudice to the Chamber’s decision [...] on any such application to be made” by the GoK). *See also* Prosecution Response (the GoK has no standing for the purpose of Article 82(1)(d) and the test under Rule 103(1) is not met by the GoK’s proposed submissions).

## Submissions

### **The Trial Chamber should vary the time limit for the Prosecution response to any applications for leave to appeal**

4. Under Regulation 35, “[t]he Chamber may extend [...] a time limit if good cause is shown”. Good cause exists to vary the time limit for the Prosecution response to any applications for leave to appeal the Decision, including any submission filed by the GoK, in the interests of fairness and judicial economy. This application is made on an urgent basis, given the short deadlines which would otherwise apply.<sup>8</sup>

5. As a deadline for its consolidated response, the Prosecution requests that the Trial Chamber set a date no earlier than the applicable time limit under Regulations 33 and 65(3) for a response to any application for leave to appeal filed by the GoK — namely, 16 May 2014.<sup>9</sup>

6. The Trial Chamber should grant the extension of time requested in the interest of judicial economy. The Trial Chamber may receive as many as three submissions seeking leave to appeal the Decision, or supporting such an application. The Prosecution proposes to file a single consolidated response to these filings, whether made under Article 82(1)(d) or Rule 103(1). This simplified filing process will promote a fair and expeditious hearing of the issues between the parties (and any intervener). It will assist the Trial Chamber in analysing any disputed issues in their full context, rather than fragmented across multiple separate filings.

7. The requested extension of time will also help ensure equality of arms between the parties (and any intervener). Without such an extension, the 12 May 2014 deadline set in the Trial Chamber’s Order will give the GoK—which is not a party<sup>10</sup>—an undue advantage by giving it advance notice not only of any

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<sup>8</sup> See below, para.7.

<sup>9</sup> Should the GoK elect to file any submission under Rule 103(1), the Trial Chamber would in any event be obliged to set a deadline for responses by the Prosecution and Defence under Rule 103(2).

<sup>10</sup> See Prosecution Response, *especially* paras.6-10.

applications filed by the Defence (due on 5 May 2014<sup>11</sup>) *but also* the response filed by the Prosecution (due on 9 May 2014<sup>12</sup>).

### Relief Sought

8. For the reasons set out above, the Prosecution requests that the Trial Chamber set a deadline no earlier than 16 May 2014 for it to file a consolidated response to any applications for leave to appeal the Decision, including any submissions of the GoK.



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Fatou Bensouda, Prosecutor

Dated this 5<sup>th</sup> day of May 2014

At The Hague, The Netherlands

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<sup>11</sup> See Rule 155(1). By e-mail to the parties of 23 April 2014, the Trial Chamber ordered that the parties would be deemed notified of the Decision upon notification of the dissenting opinion of Judge Herrera Carbuccia, which occurred on 29 April 2014.

<sup>12</sup> See Regulations 33, 65(3).