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

Date: **2 June 2014**

THE APPEALS CHAMBER

Before: Judge Akua Kuenyehia, Presiding Judge
Judge Sang-Hyun Song
Judge Sanji Mmasenono Monageng
Judge Erkki Kourula
Judge Anita Ušacka

SITUATION IN THE REPUBLIC OF KENYA

IN THE CASE OF

THE PROSECUTOR

v. WILLIAM SAMOEI RUTO AND JOSHUA ARAP SANG

Public

Prosecution Response to the Defence Requests for an Extension of the Page Limit for the Defence Appeals against the “Decision on Prosecutor’s Application for Witness Summonses and resulting Request for State Party Cooperation” and Prosecution Request for an Extension of the Page Limit and the 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. By way of an urgent application registered on 30 May 2014, the Sang Defence requested an extension of the page limit from 20 to 40 pages for its appeal against the Trial Chamber's Decision on Prosecutor's Application for Witness Summonses and resulting Request for State Party Co-operation.¹ On the same day, the Ruto Defence joined the Sang Defence Request and sought an identical extension of the page limit for its appeal.² Both Defence teams argue that exceptional circumstances justify the extension, because of the novelty and complexity of the two issues certified for appeal.³
2. The Prosecution does not oppose the Defence Requests,⁴ but submits that 30 pages are sufficient for each of the two Defence teams to make comprehensive and detailed submissions in relation to the two issues for which it was granted leave to appeal. The Appeals Chamber has previously recognised both novelty and complexity of the issues on appeal as exceptional circumstances warranting extensions of the page limit of the filings.⁵
3. For these same exceptional circumstances, the Prosecution seeks an extension of the page limit to file its consolidated response to the two Defence appeals.⁶ As the Prosecution will effectively be responding to two separate appeals at one time, it seeks an extension of the page limit to the combined total number of pages granted to the Defence for the purposes of filing their respective appeals.

¹ ICC-01/09-01/11-1274-Corr2 ("Decision"). By decision ICC-01/09-01/11-1313, the Trial Chamber granted leave to appeal its Decision. See also ICC-01/09-01/11-1320 ("Sang Defence Request"), paras.1-2.

² ICC-01/09-01/11-1322 ("Ruto Defence Request"), paras.1,2,6; collectively the "Defence Requests".

³ Sang Defence Request, paras.2, 10-15; Ruto Defence Request, paras.2, 4-6.

⁴ The Prosecution files this response, pursuant to the Appeals Chamber's Order dated 30 May 2014, directing it to file its response by 2 pm on 2 June 2014. ICC-01/09-01/11-1325, p.3.

⁵ See ICC-01/04-01/07-3334, paras. 4-7; ICC-01/04-01/06-2946, para.5; ICC-02/11-01/11-471, para.7; ICC-01/04-01/06-2532, para.6. See Regulations 37(2) of the Regulations of the Court.

⁶ Notably, the Sang Defence does not oppose a similar extension of the page limit to the Prosecution, as "the same novel, important and complex legal issues confront both parties to the proceedings." See Sang Defence Request, para.14.

4. The Prosecution further requests an extension of the time limit by five days to file its consolidated response to the two appeals.⁷ Regulation 35(2) of the Regulations of the Court provides for extensions of the time limits, if good cause is shown.⁸ The Appeals Chamber has found that the importance and complex nature of the issues justifies extensions of the time limit.⁹ Here, the complexity of the issues on appeal and the need to simultaneously and comprehensively address the arguments raised by both the Sang Defence and the Ruto Defence in up to 80 pages of arguments (if the requested extension is granted) constitutes good cause for such an extension of the time limit. While there was some overlap in their issues identified for appeal, both Defence teams appear to have different approaches and arguments to demonstrate the alleged errors in the Decision,¹⁰ and will therefore need to be taken into account in the consolidated response.

Relief sought

5. For the reasons set out above, the Prosecution
- a. Does not oppose the Defence Requests for an extension of the page limit;
 - b. Requests an extension of the page limit for its consolidated response to a combined total number of pages granted to the two Defence teams for their respective appeals; and

⁷ As per Regulation 65(4) of the Regulations of the Court, the Prosecution Response is due on Monday 16 June 2014. The Prosecution notes the Appeals Chamber's reminder that requests should not be made in a party's response to a filing. See ICC-01/05-01/08-962 OA3, para.30. In the circumstances of this case, however, the Prosecution submits both its requests for extensions of page limit and time limits together, pursuant to the Appeals Chamber's Order of 30 May 2014 and in the interests of judicial economy. These requests are interlinked, because of the possible extension of the page limit to the two Defence teams and the Prosecution's decision to file a consolidated response.

⁸ See ICC-01/05-01/08-631-Red OA2, para. 34, ICC-01/05-01/08-827 OA3, para. 6; ICC-02/11-01/11-189 OA, para. 4.

⁹ ICC-01/04-01/06-190, paras.4-5. See also ICC-01/04-01/06-129 OA2, para. 7 (Separate Opinion of Judge Pikis), stating "[g]ood cause should be founded on the facts relevant to or interwoven with the presentation and articulation of the grounds and reasons in support of the appeal."

¹⁰ See for example, ICC-01/09-01/11-1291, para.6 and ICC-01/09-01/11-1293, para.3.

- c. Requests an extension of the time limit to file its consolidated response, by 5 days, i.e., until Monday 23 June 2014.



Fatou Bensouda, Prosecutor

Dated this 2nd day of June 2014

At The Hague, The Netherlands