UNITED NATIONS DISPUTE TRIBUNAL

Case No.:	UNDT/NBI/2011/072
Order No.:	155 (NBI/2011)
Date:	19 December 2011
Original:	English

Before: Judge Vinod Boolell

Registry: Nairobi

Registrar: Jean-Pelé Fomété

HENDRIKS

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER ON RESPONDENT'S APPLICATION FOR EXTENSION OF TIME TO FILE THE RESPONDENT'S REPLY

Counsel for the Applicant:
Bart Willemsen, OSLA
Seth Levine, OSLA

Counsel for the Respondent:
Steven Dietrich, Nairobi Appeals Unit, ALS/OHRM
Elizabeth Gall, Nairobi Appeals Unit, ALS/OHRM

1. The Applicant filed an Application with the United Nations Dispute Tribunal (UNDT) which was served upon the Respondent on 16 November 2011. In accordance with art. 10 of the Rules of Procedure of the UNDT, the deadline for the Respondent's Reply was 16 December 2011.

2. On 9 December 2011, the Respondent filed an Application for Extension of Time in which he argued that the issues contested by the Applicant were still under consideration by the United Nations Claims Board (UNCB) and the Local Claims Review Board (LCRB) of the United Nations Stabilization Mission in Haiti ("MINUSTAH"). As such, the Respondent states that it is not yet possible to identify precisely the differences between the Parties, and indeed, that it may be that an informal resolution of the Applicant's claim is reached in due course.

3. In the circumstances, the Respondent requests an extension of time of two months—that is, until 16 February 2012—in which to file his Reply, if any.

4. The Respondent indicates that the Applicant does not oppose the Application. Indeed, the Respondent's Application was served on the Applicant who did not file a response.

5. Article 35 of the Rules of Procedure of the Tribunal provides that "[s]ubject to article 8.3 of the statute of the Dispute Tribunal, the President, or the judge or panel hearing a case, may shorten or extend a time limit fixed by the rules of procedure or waive any rule when the interests of justice so require".

6. Article 8.3 of the Dispute Tribunal's Statute provides that:

> The Dispute Tribunal may decide in writing, upon written request by the *applicant*, to suspend or waive the deadlines for a limited period of time and only in exceptional cases. The Dispute Tribunal shall not

> suspend or waive the deadlines for management evaluation. [Emphasis added]

7. In the present case, it is not the Applicant who applies to the Tribunal for an extension of time for filing his Application. Article 8.3 and its requirement that the case be exceptional, does not therefore apply in the present circumstance.

8. There is no specific provision in the Statute relating to requests by the Respondent for waiver or extension. The only rule that can appropriately apply in such a case is, therefore, art. 35 alone and unhindered by the 'exceptional case' requirement of art. 8.3 of the Statute. The discretion accorded to the Tribunal under art. 35 is, however, to be exercised cautiously, notwithstanding that it is not necessary to determine that a case is exceptional in order for an extension to be granted.

9. The question then is whether it is in the interests of justice to permit the requested extension of two months? It appears to the Tribunal that it is. The Tribunal does not approve of unnecessary litigation. If this matter may be resolved informally, that is to be encouraged. Furthermore, if the extension allows the UNCB and the LCRB the opportunity to conclude their assessment of the claim, thereby clarifying the issues—should any be outstanding—in the case, the matter will proceed all the more efficiently for it.

10. The final, but by no means least important, consideration is of course that the Applicant makes no objection to the Respondent's request, and will therefore suffer no prejudice as a result.

11. In the hope that an informal resolution of this matter may be reached, the Tribunal is mindful to grant the Application.

IT IS ORDERED THAT:

12. The Respondent's request for an extension of time in which to file his Reply is granted.

13. The Respondent is to file his Reply, if any, by **Monday, 16 February 2012.**

(Signed)

Judge Vinod Boolell

Dated this 19th day of December 2011

Entered in the Register on this 19th day of December 2011

(Signed)

Jean-Pelé Fomété, Registrar, UNDT, Nairobi