

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/09-01/11
Date: 23 September 2013

APPEALS CHAMBER

Before: Judge Sang-Hyun Song, Presiding Judge
Judge Sanji Mmasenono Monageng
Judge Akua Kuenyehia
Judge Erkki Kouroula
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 Consolidated Response to additional requests for leave to submit
amicus curiae observations in the Prosecution appeal against the “Decision on Mr.
Ruto’s Request for Excusal from Continuous Presence at Trial”**

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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Submissions

1. On 19 September 2013, the Federal Democratic Republic of Ethiopia¹ and the Federal Republic of Nigeria² (“States”) requested leave to submit *amicus curiae* observations (“Requests”) in the Prosecution’s appeal (“Appeal”)³ against Trial Chamber V(a)’s “Decision on Mr Ruto’s Request for Excusal from Continuous Presence at Trial”.⁴

2. As noted in the Prosecution’s response to prior similar requests in these proceedings,⁵ contrary to the Requests, the appeal does not “implicitly raise [] the issue of State cooperation”,⁶ nor will it be resolved by policy arguments advocating increased ratification of the Rome Statute.⁷ The issue on appeal is narrow and purely legal: the correctness of Trial Chamber V(a)’s interpretation of Article 63(1) to excuse Mr Ruto from continual presence at his trial.⁸ As the Prosecution argued in its Appeal, Article 63 is “exhaustively dealt with”⁹ in the Statute’s text, which precludes the Chamber from referring to other sources of law or to policy dictates to assist in its analysis.¹⁰

3. The Prosecution further notes that the States’ proposed submissions are likely to mirror those filed on 18 September 2013 by the United Republic of Tanzania, Republic of Rwanda, Republic of Burundi, State of Eritrea and Republic of Uganda in these proceedings.¹¹ The Appeals Chamber has held that in order to the assist the Appeals Chamber in its determination, any observations under

¹ ICC-01/09-01/11-951-Anx1.

² ICC-01/09-01/11-952-Anx1.

³ ICC-01/09-01/11-831.

⁴ ICC-01/09-01/11-777.

⁵ ICC-01/09-01/11-934.

⁶ ICC-01/09-01/11-951-Anx1, para. 4; ICC-01/09-01/11-952-Anx1, para. 4.

⁷ ICC-01/09-01/11-951-Anx1, para. 4; ICC-01/09-01/11-952-Anx1, para. 4.

⁸ See Judge Anita Usacka’s dissenting opinion to the recent grant of leave to five countries to submit *amicus curiae* observations in the present appeal, wherein she confirmed that “[t]he present appeal raises questions of an entirely legal nature related to the scope and function of article 63 of the Statute”, ICC-01/09-01/11-942-Anx, para.4.

⁹ ICC-01/09-01/11-831, para. 32, citing to ICC-01/04-01/06-772 OA 4, para. 34.

¹⁰ See also Article 21(a) of the Statute (“The Court shall apply [i]n the first place, this Statute”).

¹¹ ICC-01/09-01/11-948.

Rule 103(2) should avoid the repetition of submissions “already provided by the parties and participants”.¹² As the Requests are identical or substantially similar to prior requests,¹³ the Appeals Chamber can reasonably envision that the proposed submissions will duplicate the recently received Observations. In addition, the Prosecution notes that there is an apparent need to move the current proceedings forward, and avoid any unnecessary delays.

4. Nevertheless, and in line with its earlier position,¹⁴ the Prosecution defers to the Appeals Chamber’s discretion as to whether the States’ proposed submissions would assist it in the determination of the matters *sub judice*. If leave is granted, the Prosecution will respond to the observations as provided by Rule 103(2).

Conclusion

5. For the above reasons, the Prosecution requests the Appeals Chamber to dismiss the Requests.



Fatou Bensouda, Prosecutor

Dated this 23rd day of September 2013
At The Hague, The Netherlands

¹² ICC-01/05-01/08-602 OA2, para. 11.

¹³ ICC-01/09-01/11-918-Anx1, ICC-01/09-01/11-921-Anx1, ICC-01/09-01/11-924-Anx1, ICC-01/09-01/11-926-Anx1, ICC-01/09-01/11-928-Anx1.

¹⁴ ICC-01/09-01/11-934.