

**Cour
Pénale
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**International
Criminal
Court**

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

Date: **2 October 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 Document

Prosecution Response to the Common Legal Representative's "Application to Participate in the Interlocutory Appeal filed by the Prosecution against the Decision on the 'Prosecution's Request to Amend the Updated Document Containing the Charges Pursuant to Article 61(9) of the Statute'"

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 victims represented by the Common Legal Representative ("Victims") seek to participate ("Victims' Request")¹ in the Prosecution appeal² against the "Decision on the Prosecution's Request to Amend the Updated Document Containing the Charges Pursuant to Article 61(9) of the Statute"³ ("Impugned Decision"). The Prosecution does not oppose the Victims' Request.⁴

Submissions

2. This appeal concerns the question as to the criteria that the Pre-Trial Chamber must apply in order to authorize the Prosecution's request to amend the charges pursuant to Article 61(9).⁵ As recognized by the Appeals Chamber, "[v]ictims have an interest that the loss or injury they have suffered, a matter of individual concern, should surface in the proceedings and be brought to light."⁶ Unless the Appeals Chamber reviews the test applied and the criteria considered by the Single Judge of Pre-Trial Chamber II, the accused will not stand at trial for the crimes committed in Eldoret area on 30 and 31 December 2007. As a result, victims affected for the crimes that occurred in those days will not have an opportunity to fully present their views and concerns at trial and will be unable to make a claim for reparations. Thus, the Victims' personal interests are directly affected.⁷ The Appeals Chamber has already

¹ ICC-01/09-01/11-991 OA6.

² ICC-01/09-01/11-956 OA6.

³ ICC-01/09-01/11-859.

⁴ The Prosecution was authorized to respond to the Victims' Request by the Appeals Chamber. See ICC-01/09-01/11-996OA6.

⁵ ICC-01/09-01/11-956 OA6, paras.9-12.

⁶ ICC-01/04-01/06-925 OA8, Separate Opinion of Judge Pikis, para.16.

⁷ The Common Legal Representative takes the same position. See ICC-01/09-01/11-991 paras 21 to 23.

acknowledged that the personal interests of victims are affected in similar cases, such as where a Chamber stays the proceedings or decides not to confirm the charges.⁸

3. Article 68(3) mandates a determination by the Appeals Chamber that the participation of victims is appropriate in the interlocutory appeal under consideration.⁹ The individuals seeking to participate must demonstrate that (i) they are victims in the case or situation out of which the appeal arises;¹⁰ (ii) they have a personal interest that is affected by the issues on appeal; (iii) their participation is appropriate and (iv) the manner of participation is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.¹¹
4. Once victims have been admitted to participate in the situation or case, they do not need to demonstrate again to the Appeals Chamber that they meet the definition of “victim” under Rule 85.¹² In the instant case, the persons on whose behalf the Victims’ Request is submitted have already been recognized as victims.¹³ Further, the requirements (ii) to (iv) referred to above are met.¹⁴

⁸ ICC-01/04-01/06-1453 OA13, par. 9; ICC-01/04-01/06-2556 OA18, para. 9; and ICC-01/04-01/10-509, para. 10.

⁹ ICC-01/04-01/06-824OA7, para.40; ICC-01/04-503OA4OA5OA6, para.36; ICC-01/05-01/08-566OA2, para.14.

¹⁰ ICC-02/05-01/09-48OA, para.10; ICC-01/04-01/06-1335OA OA10, para.40.

¹¹ ICC-01/05-01/08-1597OA7, para.7; ICC-01/04-01/06-1335OA OA10, paras.35, 36; ICC-01/04-500A4OA5 OA6, paras.35,90; ICC-01/04-01/06-1453OA13, para.7; ICC-01/04-01/06-1452OA12, para.7; ICC-02/04-164 OA, para.7; ICC-02/04-01/05-324OA2, para.8; ICC-01/05-01/08-566OA2, para.8. See also ICC-01/04-01/06-824OA7, paras.2,44,46; ICC-01/04-01/06-925OA8, para.23.

¹² ICC-01/04-01/06-824OA7, paras.44, 45; ICC-01/04-503 OA4 OA5 OA6, para.92.

¹³ ICC-01/09-01/11-249 and ICC-01/09-01/11-460 referred to in fns.2 and 6 of the Victims’ Request.

¹⁴ Victims’ Request, paras.21-34.

Conclusion

5. For the reasons set out above, the Prosecution does not object to the participation of the victims in this appeal.
6. The Prosecution requests that the Appeals Chamber (a) order that any victims participating in this appeal file their views and concerns in writing within a defined period; and (b) allows the Prosecution and Defence to respond to those views and concerns with a deadline prescribed by the Chamber.



Fatou Bensouda, Prosecutor

Dated this 2nd day of October 2013
At The Hague, the Netherlands