

# **Annex 1**

## **public**



NO. **162/2013**

THE HAGUE,

The Embassy of the Federal Republic of Nigeria presents its compliments to the Registry of the International Criminal Court in The Hague and has the honour to transmit, attached hereto, the application of the Federal Republic of Nigeria to file *Amicus Curiae* briefs on the Prosecution's Appeal against the "Decisions on the Mr. Ruto's request for excusal from Continuous Presence at trial".

It would be appreciated if the Registry could notify all relevant parties and offices of Nigeria's application, in accordance with the regulations of the Court.

The Embassy of the Federal Republic of Nigeria avails itself of this opportunity to renew to the Registry of the International Criminal Court the assurances of its highest consideration.

**The Hague, 18 September 2013**

**Registry of the International Criminal Court  
Maanweg, 174  
2516 AB, The Hague  
The Netherlands**



**Court  
Penale  
Internationale**

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**International  
Criminal  
Court**

**Original English**

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

**Date: 17/09/2013**

**THE APPEALS CHAMBERS**

**Before:**                 **Judges Sang-Hyun Song, Presiding**  
                               **Judge Sanji Mmasengano Monageng**  
                               **Judge Akua Kuenyehia**  
                               **Judge Erkki Kourula**  
                               **Judge Anita Usaoka**

**SITUATION IN THE REPUBLIC OF KENYA**

**IN THE CASE OF**

**THE PROSECUTOR v.**

**WILLIAM SAMOEI RUTO AND JOSHUA ARAP SANG**

**Public**

Application of the Federal Republic of Nigeria to file Amicus curiae  
 briefs on the Prosecution's appeal against the "Decision on Mr.  
 Ruto's request for excusal from Continuous Presence at trial"

**Source:                 FEDERAL REPUBLIC OF NIGERIA**

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

**1/5**

**17/09/13**

Documents to be notified in accordance with Regulations of the  
Court to:

The Office of the Prosecutor  
Fatou Bensouda, Prosecutor  
James Stewart, Deputy Prosecutor  
Anton Steynberg, Senior Trial Lawyer

Counsel for William Ruto  
Kerim AA Khan QC, David Hooper QC,  
Essa Faal, Shyamala Alagendra

Legal Representatives of the victims

Legal Representatives of the Applicant

Unrepresented Victims

Unrepresented Applicants  
(Participation/reparation)

The Office of Public Counsel for  
Victims

The office of Public Counsel for the  
Defence

Paolina Massidda

States' Representatives

Amicus Curiae  
(FEDERAL REPUBLIC OF NIGERIA)

## **REGISTRY**

Registrar  
Herman Von Hebel

Counsel Support Section

Deputy Registrar  
Didier Daniel Preira

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations  
Section

Other

i. Introduction

1. The Prosecution's appeal against the "decision on Mr. Ruto's Request for Excusal from Continuous Presence at Trial" ("Appeal") is currently before the Appeals Chamber.
2. Pursuant to rule 103(1) of the Rules of Procedure and Evidence ("Rules"), the undersigned States, who are also States Parties to the Rome Statute, hereby request the Appeals chambers to grant them leave to file an amicus curiae brief on the Appeal as it will, it is respectfully submitted, be of assistance for the determination of the relevant issues in the Appeal.

ii. Submissions

3. Prior to the consideration given to the issue in the "Decision on Mr. Ruto's Request for Excusal from Continuous Presence at Trial" and accompanying dissent, Article 63 of the statute, titled "Trial in the presence of the accused", had not been judicially considered by any Chamber of this Court in any detail before. The Appeal, therefore, raises for the first time before the Appeals Chamber the parameters of this article before this Court. Specifically, can such a right be waived by an accused acting in compliance with, rather than in defiance of, the Court's jurisdiction? Alternatively, is a trial Chamber entitled to excuse an accused from his or her duty of being personally present during most of the trial in circumstances where the accused is present through counsel and is fully cooperating with the Court.
4. In the unprecedented circumstances of this case and in addition to fair trial rights issues the Appeal implicitly raises the issue of State cooperation. According to the defence, granting the request would bolster the effectiveness of the Court by demonstrating that the Court's framework can accommodate a flexible and pragmatic approach to surrendering to its jurisdiction and to participating in proceedings by those occupying high office that cooperate with the Court. This is an extremely important issue and one which, it is submitted, merits submissions being received by the

Court from representatives of parties directly interested that is States such submissions will assist the Appeals Chamber by providing information from a perspective which is not otherwise available to it.

5. If leave is granted by the Appeal Chamber the Amicus curiae brief will be directed towards how Article 63 should be approached. The brief will address the importance of according the article a broad and flexible interpretation one which encourages State cooperation in the widest possible set of circumstances and without jeopardizing the constitutional responsibilities of leaders. The brief will also consider the balance to be struck between those subject to the Court's jurisdiction but who also occupy high office. The brief will observe that, in certain circumstances, the rights of the accused, the rights of the victims and the rights of other interested constituencies such as voters in democratic States, can all be accommodated in an effective and meaningful fashion within the Court's framework and without any negative impact on the Court's aims.

Relief Requested

For the reasons submitted above, the undersigned State respectfully request that they be granted leave to file amicus/ amici curiae brief on the Appeal

Respectfully submitted

**FEDERAL REPUBLIC OF NIGERIA**

Dated this 17<sup>th</sup> Day of September 2013