

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 1 October 2015

APPEALS CHAMBER

Before: Judge Piotr Hofmański, Presiding Judge
Judge Silvia Fernández De Gurmendi
Judge Christine Van Den Wyngaert
Judge Howard Morrison
Judge Péter Kovács

SITUATION IN THE REPUBLIC OF KENYA

IN THE CASE OF

THE PROSECUTOR v.
WILLIAM SAMOEI RUTO AND JOSHUA ARAP SANG

Public

Defence response to “The Government of the Republic of Kenya’s Request for Leave pursuant to Rule 103(1) of the ICC Rules of Procedure and Evidence to join as *Amicus Curiae* and make Observations in the Appeal, by the Ruto and Sang Defence Teams, of the ‘Decision on Prosecution Request for Admission of Prior Recorded Testimony’”

Source: Defence for Mr. William Samoei Ruto

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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Ms. Helen Brady

Counsel for William Samoei Ruto

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Legal Representatives of the Victims

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Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

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Victims**

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Amicus Curiae

REGISTRY

Registrar

Mr. Herman von Hebel

Counsel Support Section

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. Introduction

1. In its decision of 29 September 2015,¹ the Appeals Chamber found that it was appropriate to allow the defence for Mr. William Samoei Ruto ("Defence") to respond to the request of the Government of Kenya ("GoK")² to file *amicus curiae* observations pursuant to Rule 103(1) of the Rules of Procedure and Evidence ("Rules") on the first issue certified for appeal by the Trial Chamber in the *Public Redacted Version of Decision on the Defence's Applications for Leave to Appeal the "Decision on Prosecution Request for Admission of Prior Recorded Testimony"* ("Decision").³
2. The Defence hereby indicates that it supports the GoK Request.

II. Submissions

3. In the Decision, the Defence was granted leave to appeal the corrigendum to the *Decision on Prosecution Request for Admission of Prior Recorded Testimony*.⁴ This appeal will involve the interpretation of amended Rule 68 of the Rules and its applicability to the present case because the first issue certified is in the following terms:

*Whether the amended Rule 68 of the Rules can be applied in this case without offending Articles 24(2) and 51(4) of the Statute.*⁵

4. Rule 68 of the Rules was amended by the Assembly of States Parties ("ASP") at its 12th Session on 27 November 2013.⁶ As articulated in the GoK Request, the GoK actively participated in the negotiation and adoption of amended

¹ ICC-01/09-01/11-1975.

² ICC-01/09-01/11-1972 ("GoK Request").

³ ICC-01/09-01/11-1953-Red-Corr.

⁴ ICC-01/09-01/11-1938-Conf-Corr; ICC-01/09-01/11-1938-Red-Corr.

⁵ ICC-01/09-01/11-1953-Red-Corr, para. 20(i).

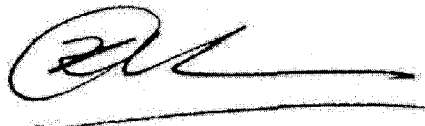
⁶ Resolution ICC-ASP/12/Res.7.

Rule 68 at this Session.⁷ Accordingly, the Defence submits that the GoK will be able to provide information regarding what transpired at the ASP in relation to the application of amended Rule 68 in this case. As required by Rule 103(1) of the Rules, submissions on these matters are "*desirable for the proper determination of the case*" because they will assist in understanding the context in which the ASP adopted the amended Rule and in determining the scope of application of the amended Rule.

III. Relief Requested

5. For the reasons set out above, the Defence submits that the Appeals Chamber should grant the GoK Request.

Respectfully submitted,



Karim A.A. Khan QC
Lead Counsel for Mr. William Samoei Ruto

Dated this 1st Day of October 2015
At The Hague, Netherlands

⁷ GoK Request, para. 7.