

Annex 1

Public

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 06/09/ 2013

THE APPEALS CHAMBER

Before: Judge Sang-Hyun Song, Presiding
Judge Sanji Mmasenono Monageng
Judge Akua Kuenyehia
Judge Erkki Kourula
Judge Anita Ušacka

SITUATION IN THE REPUBLIC OF KENYA

**IN THE CASE OF
THE PROSECUTOR v.
WILLIAM SAMOEI RUTO AND JOSHUA ARAP SANG**

Public

**Application on behalf of a State which is not a State Party to the Rome Statute to file an
[Amicus Curiae] Brief on the Prosecution's appeal against the "Decision on Mr Ruto's
Request for Excusal from Continuous Presence at Trial"**

**Source: BUSINGYE Johnston
Minister of Justice and Attorney General
RWANDA**

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

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**Victims Participation and Reparations Other
Section**

I. Introduction

1. Pursuant to Rule 103(1) of the Rules of Procedure and Evidence ("Rules"), the undersigned State, not being a State Party to the Rome Statute ("Statute"), respectfully seeks the leave of the Appeals Chamber to file an *amicus curiae* brief in the appeal submitted by the Prosecution concerning the interpretation of Article 63 of the Statute, namely the *Prosecution's appeal against the "Decision on Mr Ruto's Request for Excusal from Continuous Presence at Trial"* ("Appeal").¹

II. Background

2. On 17 April 2013, the defence for the Deputy President of Kenya, Mr. William Ruto, filed the *Defence Request pursuant to Article 63(1) of the Rome Statute* ("Waiver Request"),² wherein the defence requested that the Deputy President be permitted to waive his right to be present at trial.³ The defence proposed that the Deputy President be permitted to attend the opening and closing of trial, judgement and any and all hearings at which His Excellency's attendance is expressly requested by the Trial Chamber and any other sessions that the Deputy President chooses to attend.⁴
3. On 18 June 2013, the Majority of Trial Chamber V(A) granted, within the limits of certain conditions, Mr. Ruto's request to not be continuously present in court during his trial ("Decision").⁵
4. The Prosecution was given permission to appeal the Decision on 18 July 2013⁶ and filed the Appeal on 29 July 2013. The defence filed its response on 9 August 2013 wherein it argues that the Majority did not commit any error of law in the Decision ("Appeal Response Brief").⁷ Both the Prosecution and the defence raise legal as well as policy arguments regarding the proper interpretation of Article 63(1) in the appeal filings.

¹ ICC-01/09-01/11-831.

² ICC-01/09-01/11-685.

³ Waiver Request, para. 1.

⁴ Waiver Request, para. 1.

⁵ ICC-01/09-01/11-777.

⁶ ICC-01/09-01/11-817.

⁷ ICC-01/09-01/11 - [XXX]

III. Argument

5. As the Appeals Chamber is aware, there has been considerable debate, both at the domestic and international level, about whether non-State Parties such as Rwanda need to sign the Statute. Concerns about whether such a move would prove to be in the national interest were raised and continue to be raised. The undersigned State notes the submissions made by the Prosecution in the Appeal regarding the “floodgates” problem, the fact that “the Prosecution focuses its investigations on persons who bear the greatest responsibility for the most serious crimes under the Statute” and that it is “foreseeable that future accused will hold functions that may make the Majority’s test applicable to them.”⁸ The undersigned State also notes the submissions made by the defence in the Appeal Response Brief that “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 who cooperate with the court.”⁹ Accordingly, it would appear that the proper interpretation of Article 63 of the Statute is germane to the current discussion on whether or not to become a State Party.
6. In these circumstances, the undersigned State wishes to provide submissions to inform the Appeals Chamber of its views regarding the proper interpretation of Article 63. The undersigned State believes its submissions will assist in the proper determination of the issue and provide a unique view point.
7. The undersigned State advises that, if leave is granted pursuant to Rule 103(1), the *amicus curiae* brief will address the importance of according the right a broad interpretation in order to expand the writ of the Court and to enhance its effectiveness. The brief will also consider the competing rights and obligations which will converge when those who occupy high office become the subject of proceedings at the Court.

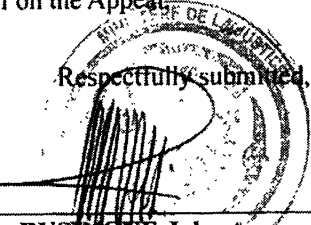
⁸ Appeal, paras. 37-38.

⁹ Appeal Response Brief, para. 37.

Relief Requested

For the reasons submitted above, the undersigned State respectfully requests that it be granted leave to file an amicus curiae brief on the Appeal.

Respectfully submitted,



BUSINGYE Johnston
Minister of Justice and Attorney General
RWANDA

Dated this 06th September 2013
At Kigali