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

Date: 5 June 2014

THE APPEALS CHAMBER

Before: Judge Akua Kuenyehia, Presiding Judge
 Judge Sang-Hyun Song
 Judge Sanji Mmasenono Monageng
 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

**Defence response to the “Government of the Republic of Kenya’s Request to File
 Amicus Submissions in the Appeal against the Decision on Prosecutor’s
 Application for Witness Summonses and resulting Request for State Party
 Cooperation”**

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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Unrepresented Victims

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(Participation/Reparation)**

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Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. Introduction

1. The defence for Mr. William Samoei Ruto (“Defence”) submits that the Appeals Chamber should grant the request of the Government of Kenya (“GoK”) to file *amicus curiae* observations on the second issue (“GoK Request”)¹ in the appeal of Mr. Ruto and Mr. Sang against the *Decision on Prosecutor’s Application for Witness Summonses and resulting Request for State Party Cooperation* (“Decision”).²

II. Submissions

2. In this appeal, the second issue certified is in the following terms:

*Whether the Government of Kenya, a State party to the Rome Statute, is under an obligation to cooperate with the Court to serve summonses and assist in compelling the appearance of witnesses subject to a subpoena.*³

3. The issue will clearly involve, *inter alia*, a consideration of Kenyan domestic law and also an analysis of a States Party’s obligations under the Statute. As required under Rule 103 of the Rules of Procedure and Evidence, the Defence submits that the GoK’s submissions on these matters are “*desirable for the proper determination of the case*”.
4. The Defence also notes the GoK’s statement that “*it does not want its amicus observations to delay the process*” and, therefore, “*suggests that it be given five days from the date of the filing of the Defence appeals to file its own observations.*”⁴ Given that it appears that the involvement of the GoK will not lengthen these appeal proceedings, the Defence submits the GoK Request should be granted.

¹ ICC-01/09-01/11-1333.

² ICC-01/09-01/11-1274-Corr2.

³ ICC-01/09-01/11-1313, para. 40.

⁴ GoK Request, para. 7.

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 5th Day of June 2014
At The Hague, Netherlands