

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/09-01/11
Date: 12 September 2013

APPEALS CHAMBER

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

Prosecution's consolidated response to the requests for leave to submit *amici curiae* observations in the Prosecution's appeal against the Trial Chamber V(a)'s "Decision on Mr Ruto's Request for Excusal from Continuous Presence at Trial"

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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Submissions

1. On 10 and 11 September 2013, the United Republic of Tanzania,¹ the Republic of Rwanda,² the Republic of Burundi,³ the State of Eritrea⁴ and the Republic of Uganda⁵ requested leave to submit *amici curiae* observations in the appeal of the Prosecution against the decision of Trial Chamber V(a) entitled “Decision on Mr Ruto’s Request for Excusal from Continuous Presence at Trial”.⁶
2. The Prosecution notes that the current issue on appeal is narrow and purely legal, namely: the correctness of Trial Chamber V(a)’s interpretation of Article 63(1) that permits the absence of the accused from most of the trial. Therefore, arguments related to the potential impact of the Appeals Chamber’s ruling on the ratification of the Rome Statute⁷ or State cooperation with the Court⁸ have no identifiable bearing on the matters *sub judice*. The Prosecution further notes that, and in order to assist the Chamber in its determination of the issue on appeal, any observation under Rule 103 (2) should avoid the repetition of submissions already provided by the parties.⁹
3. However, the Prosecution defers to the Appeals Chamber’s discretion as to whether submissions from the above listed State authorities would assist it in the determination of the matters *sub judice*. If leave is granted, the Prosecution will respond to the observations as provided by Rule 103(2).

¹ ICC-01/09-01/11-918-Anxl OA5.

² ICC-01/09-01/11-921-Anxl OA5.

³ ICC-01/09-01/11-924-Anxl OA5.

⁴ ICC-01/09-01/11-926-Anxl OA5.

⁵ ICC- 01/09-01/11-928-Anxl OA5.

⁶ ICC-01/09-01/11-777. On 29 July 2013 the Prosecution filed its appeal brief: ICC-01/09-01/11-831OA5.

⁷ ICC-01/09-01/11-921-Anxl OA5, para.5.

⁸ ICC-01/09-01/11-918-Anxl OA, para.5; ICC-01/09-01/11-924-Anxl OA5, para.5; ICC- 01/09-01/11-928-Anxl OA5, para.5 ; ICC- 01/09-01/11-928-Anxl OA5, para.5.

⁹ ICC-01/05-01/08-602 OA2, para. 11.



Fatou Bensouda, Prosecutor

Dated this 12th day of September 2013

At The Hague, the Netherlands