

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

**Prosecution 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: Office of the Prosecutor

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

The Office of the Prosecutor

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The Republic of Kenya

REGISTRY

Registrar

Mr. Herman von Hebel

1. On 3 June 2014, the Government of the Republic of Kenya (“GoK”) sought leave from the Appeals Chamber to submit observations pursuant to Rule 103 (“Request”)¹ in the appeals 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

2. The Prosecution does not object to the Request.

3. According to the Request, the GoK will confine their observations to the Second Issue on which leave to appeal was granted.³ Since the Second Issue involves the question of whether the GoK is obliged to cooperate with the Court to serve summonses and assist in compelling the appearance of witnesses subject to a subpoena,⁴ the Prosecution submits that it is desirable for the proper determination of these appeals to grant the GoK leave to submit observations.

4. In addition, the Prosecution does not object to the GoK’s suggestion that its response to the appeals of Mr Ruto and Mr Sang pursuant to Regulation 65(5) should also include its response to the GoK’s submissions under Rule 103(2).⁵ However, this course will have implications for the time the Prosecution will need to properly consider and address the submissions set out in the three different filings. In particular, since the Prosecution will need to analyse and address the GoK’s additional submissions at the same time as responding to the two appeals, the Prosecution submits that this provides further good cause for it to be granted an extension of the time limit in which to file its overall response to the Defence appeals (and the submissions filed by the GoK) by 23 June 2014.⁶ In addition, pursuant to

¹ ICC-01/09-01/11-1333 OA7 OA8.

² ICC-01/09-01/11-1274-Corr2.

³ Request, para.2.

⁴ ICC-01/09-01/11-1313, para.40.

⁵ Request, para.77.

⁶ ICC-01/09-01/11-1328 OA7 OA8, para.4.

Regulation 37(2), the Prosecution requests an extension of the page limit of an additional 15 pages to that already granted by the Appeals Chamber⁷ for its overall response, making the combined total of 60 pages to respond to the two Defence appeals and the GoK's observations.

5. Finally, the Prosecution submits that the Defence should be required to respond to the GoK's submissions on the same day as the Prosecution (23 June, if the extension of time is granted) so that the Defence responds to the GoK's observations rather than using it as a means to reply to the Prosecution's response.



Fatou Bensouda, Prosecutor

Dated this 5th day of June 2014

At The Hague, The Netherlands

⁷ ICC-01/09-01/11-1335 OA7 OA8.