

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/09-01/11**
Date: **04 January 2016**

THE 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

Prosecution's Response to the "Sang Defence's Submission in addition to Appeal against the decision of Trial Chamber V (A) of 19 August entitled "Decision on Prosecution Request for Admission of Prior Recorded Testimony""

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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Amicus Curiae

African Union Commission

REGISTRY

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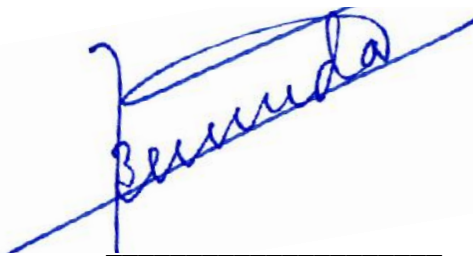
Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations Other
Section**

1. On 5th October 2015, Mr Joshua Sang and Mr William Ruto each filed an appeal against the decision of Trial Chamber V (A) of 19 August 2015 entitled “Decision on Prosecution Request for Admission of Prior Recorded Testimony.”¹ The Prosecution submitted a consolidated response to both appeals on 26 October 2015.²
2. On 17 December 2015, the Sang Defence sought to have a recent statement of the Assembly of State Parties on amended rule 68³ placed into the appeals record and considered by the Appeals Chamber on the basis that it is relevant.⁴ Mr Sang does not identify the procedural basis for adding the ASP Statement to the appeal record, nor does he substantiate its relevance to the appeal.
3. The Prosecutor submits that this ASP Statement is irrelevant, and should not be added to the appeals record. If, however, the Appeals Chamber is of the view that the relevance of the ASP Statement requires further analysis, the Prosecution requests the Chamber to order the Sang Defence to substantiate the procedural and legal bases for its addition to the record and permit the parties and participants to respond accordingly.



Fatou Bensouda, Prosecutor

Word count: 258.⁵

Dated this 4th day of January 2016

At The Hague, The Netherlands

¹ ICC-01/09-01/11-1982-Conf (public redacted version filed on 13 October 2015 - ICC-01/09-01/11-1982-Red); ICC-01/09-01/11-1981-Conf (public redacted version filed on 6 October 2015 - ICC-01/09-01/11-1981-Red).

² ICC-01/09-01/11-1994-Conf (public redacted version filed on 3 November 2015 - ICC-01/09-01/11-1994-Red).

³ Assembly of States Parties to the Rome Statute of the International Criminal Court, Fourteenth Session, The Hague, 18-26 November 2015, Official Records, Volume I (Advance version), ICC-ASP/14/20, para. 61 (“ASP Statement”).

⁴ ICC-01/09-01/11-2006, paras. 6, 7.

⁵ The Prosecution hereby makes the required certification: ICC-01/11-01/11-565 OA6, para. 32.