

Annex 1

Public

09 Sep 2013 18:06

HP LASERJET FAX

p. 1

EMBASSY OF THE REPUBLIC OF UGANDA
AND PERMANENT MISSION TO THE EUROPEAN UNION

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THE REPUBLIC OF UGANDA

Avenue de Tervuren 317
1150 Brussels
Belgium

REF: B/INT.15

9th September 2013

The Registrar
International Criminal Court,
Mr. Herman Von Hebel
The Hague
The Netherlands

I have the honour to forward to the ICC the application of the Uganda Government to file [Amicus Curiae] [Amici Curiae] Briefs on the "Defence Request pursuant to Article 63 (1) of the Rome Statute" dated 9th September 2013.

This application is in reference to the situation in the Republic of Kenya which is before Trial Chamber V in the case of The Prosecutor Vs William Samoei Ruto and Joshua Arap Sang.

Please accept, Hon. Registrar, the assurances of my highest consideration.

A handwritten signature in black ink, appearing to read 'Mirjam Blaak Sow'.

Mirjam Blaak Sow
AMBASSADOR

Encl.

EMBASSY OF THE REPUBLIC OF UGANDA
AND PERMANENT MISSION TO THE EUROPEAN UNION

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THE REPUBLIC OF UGANDA

Avenue de Leysen 31
 1150 Brussels
 Belgium

REF: B/INT.15

11th September 2013

The Registrar
 International Criminal Court,
 Mr. Herman Von Hebel
The Hague
 The Netherlands

Following our letter dated 9th September 2013 regarding the application of the Uganda Government to file [Amicus Curiae] [Amici Curiae] Briefs on the "Defence Request pursuant to Article 63 (1) of the Rome Statute" dated 9th September 2013, I have to make a formal rectification.

Our letter requested you to refer the application related to the situation in the Republic of Kenya to the Trial Chamber V. However, I am requesting you to register the Uganda Application before the Appeals Chamber in reference to the situation in the Republic of Kenya in the case of The Prosecutor Vs William Samoei Ruto and Joshua Arap Sang.

Please accept, Hon. Registrar, the assurances of my highest consideration.

Mirjam Blaak Sow
AMBASSADOR

Encl.

9 September 2013

TRIAL CHAMBER V

Before: Judge Kuniko Ozaki, Presiding
Judge Christine Van den Wyngaert
Judge Chile Eboe-Osuji

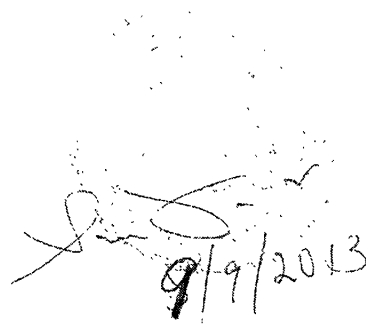
SITUATION IN THE REPUBLIC OF KENYA

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

Public

Application of UGANDA GOVERNMENT to file [*Amicus Curiae*][*Amici Curiae*] Briefs on the
"Defence Request pursuant to Article 63(1) of the Rome Statute"

Source: UGANDA GOVERNMENT

A handwritten signature in black ink, followed by the date 9/9/2013.

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

Court to:

The Office of the Prosecutor
Fatou Bensouda, Prosecutor
Cynthia Tai, Trial Lawyer

Counsel for William Ruto
Karim AA Khan QC, David Hooper QC,
Kioko Kilukumi, Shyamala Alagendra

Counsel for Joshua Sang
Joseph Kipchumba Kigen-Katwa
Silas Chekera

Legal Representatives of the Victims
Mr. Wilfred Nderitu

Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented Applicants
(Participation/Reparation)

The Office of the Public Counsel for Victims
Ms. Paolina Massidda

The Office of Public Counsel for the Defence

States' Representatives

Amicus Curiae
UGANDA GOVERNMENT

REGISTRY

Registrar
Mr. Herman von Hebel

Counsel Support Section

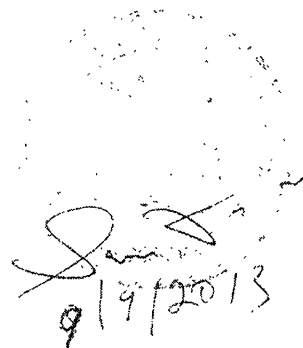
Deputy Registrar
Didier Daniel Preira

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Other



9/9/2013

I. Introduction

1. On 17 April 2013 the Defence team for Mr William Samoei Ruto ("Defence") filed the "Defence Request pursuant to Article 63(1) of the Rome Statute" ("Request").¹ The Defence's primary request in this filing is that the Trial Chamber grants Mr Ruto's waiver of his right to be present at trial and conducts the trial without requiring Mr Ruto's attendance throughout the duration of proceedings.² The Defence proposes that Mr Ruto be permitted to attend the opening and closing of trial, judgement and any and all hearings at which his attendance is expressly requested by the Trial Chamber and any other sessions Mr Ruto may choose to attend.³
2. Pursuant to Rule 103(1) of the Rules of Procedure and Evidence ("Rules"), the undersigned State, who are also State Parties to the Rome Statute, hereby request the Trial Chamber to grant them leave to file an *amicus/amici curiae* brief on the Request as it will, it is respectfully submitted, be of assistance for the determination of the relevant issues in the Request.⁴

II. Submissions

3. Article 63 of the Statute, titled "Trial in the presence of the accused", has not been judicially considered by any Chamber of this Court in any detail before. The Request, therefore, raises for the first time the extent of the right enshrined in this article before this Court. Specifically, can such a right be waived by an accused acting in compliance with, rather than in defiance of, the Court's jurisdiction? Further, how should the terms "present" and "presence" be interpreted?

¹ ICC-01/09-01/11-685.

² Request, para. 1.

³ Request, para. 1.

⁴ Rule 103(1) of the Rules provides "At any stage of the proceedings, a Chamber may, if it considers it desirable for the proper determination of the case, invite or grant leave to a State, organization or person to submit, in writing or orally, any observation on any issue that the Chamber deems appropriate."

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4. In the unprecedented circumstances of this case, and in addition to fair trial right issues, the Request raises the issue of State cooperation. According to the Defence, "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."⁵ This is an extremely important issue and one which, it is submitted, merits submissions being received by the Court from representatives of parties directly interested, that is States. Such submissions will assist the Trial Chamber by providing information from a perspective which is not otherwise available to it.
5. If leave is granted by the Trial Chamber, the *amicus/amici curiae* brief will be directed towards how the right enshrined in Article 63 should be approached. The brief will address the importance of according the right an expansive interpretation – one which encourages State cooperation in the widest possible set of circumstances and without jeopardizing the constitutional responsibilities of leaders. The brief will also consider the balance to be struck between those subject to the Court's jurisdiction but who also occupy high office. The brief will observe that, in certain circumstances, the rights of the accused, the rights of victims, and the rights of other interested constituencies such as voters in democratic States, can all be accommodated in an effective and meaningful fashion within the Court's framework and without any negative impact on the Court's aims.

Relief Requested

For the reasons submitted above, the undersigned States respectfully request that they be granted leave to file an *amicus/amici curiae* brief on the Request

⁵ Request, para. 2.

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9/9/2013

Respectfully submitted



Sam K. Kutesa



**MINISTER OF FOREIGN AFFAIRS
OF THE REPUBLIC OF UGANDA**

Dated this 9th Day of September 2013