

PARTIALLY DISSENTING OPINION OF JUDGE KUNIKO OZAKI

1. I fully concur with the Majority that the Status Conference constitutes a critical juncture in the proceedings, and that the matters to be discussed directly impact the interests of the accused, of victims and of witnesses. For that reason I agree that the attendance of the accused is required. I also concur with the majority that the Defence's submission regarding the accused's engagement having been planned prior to the convening of the Status Conference is unpersuasive.
2. Regarding the applicability of Rules 134 *bis* and *quater* to the current circumstance, I note that these rules are exceptions to Article 63(1) of the Statute, which provides for the obligation of the accused to be 'present during the trial'. This relation is apparent both from the language of the rules themselves and the background to their adoption, in the immediate wake of the judgment of the Appeals Chamber on the appropriate interpretation of Article 63(1) of the Statute.¹ In my view, the interpretation of the Appeals Chamber supports a plain reading which applies the Article 63(1) obligation of presence to the phase of proceedings after the commencement of the actual trial on the merits. I note in that regard the Appeals Chamber's emphasis on the evidentiary aspects of the proceedings, including the participation of victims and witnesses, as underlying the obligation of presence.² Therefore, in my view, Rules 134 *bis* and *quater* of the Rules are not applicable in the current circumstances.
3. Nonetheless, and entirely without prejudice to my position on the interpretation of those rules more generally, I consider that certain of the factors identified in them may constitute valid considerations for the exercise of the Chamber's

¹ Judgment on the appeal of the Prosecutor against the decision of Trial Chamber V(a) of 18 June 2013 entitled 'Decision on Mr Ruto's Request for Excusal from Continuous Presence at Trial', 25 October 2013, ICC-01/09-01/11-1066 ('Excusal Judgment').

² See e.g. Excusal Judgment, ICC-01/09-01/11-1066, para. 49.

discretion in requiring the presence of the accused at the Status Conference. In particular, I note the necessity of having due regard to the subject matter of the specific hearings in question. As noted above, it is for that reason that I concur with the Majority that the attendance of the accused is required on this occasion.

4. However, in my view, the role of the accused during a status conference is different from that during the trial. I consider that the matters to be discussed, although of fundamental importance, pertain to the procedural direction of the proceedings, rather than to evidentiary issues for which the physical presence of the accused may be of particular benefit. I therefore consider that there are factors weighing in favour of permitting the accused's attendance at the Status Conference to be effected by way of video-link as an alternative to physical presence. Moreover, I note that Regulation 30 of the Regulations of the Court makes specific provision for the holding of status conferences, *inter alia*, by way of 'audio- or video-link technology'. This is a procedure that has been previously utilised by the Chamber,³ and in my view, if requested in sufficient time to enable necessary arrangements to be made, could have been an appropriate alternative in this instance.
5. For those reasons, I would have directed that the attendance of the accused at the Status Conference may take place either in person or by way of video-link.



Judge Kuniko Ozaki, Presiding Judge

³ ICC-01/09-02/11-620.