

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No.: ICC-01/09-01/11  
Date: 13 December 2012

**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**

**Decision on the request to present views and concerns of victims on their legal  
representation at the trial phase**

**Decision to be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:**

**The Office of the Prosecutor**

Ms Fatou Bensouda

**Counsel for William Samoei Ruto**

Mr Kioko Kilukumi Musau

Mr David Hooper

**Counsel for Joshua Arap Sang**

Mr Joseph Kipchumba Kigen-Katwa

Mr Joel Kimutai Bosek

**Legal Representatives of Victims**

Mr Wilfred Nderitu

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparation**

**The Office of Public Counsel for  
Victims**

Ms Paolina Massidda

**The Office of Public Counsel for the  
Defence**

**States Representatives**

*Amicus Curiae*

**REGISTRY**

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**Registrar**

Ms Silvana Arbia

**Deputy Registrar**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Others**

Ms Sureta Chana

Trial Chamber V (“Chamber”) of the International Criminal Court in the case of *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang* (“Ruto and Sang case”), after considering Article 68(3) of the Statute and Rule 103(1) of the Rules of Procedure and Evidence (“Rules”), renders the following Decision on the request to present views and concerns of victims on their legal representation at the trial phase.

1. On 3 October 2012, the Chamber issued the “Decision on victims’ representation and participation” in the Ruto and Sang case (“Victims Decision”).<sup>1</sup>
2. On 5 November 2012, the Registry submitted its recommendation for the position of common legal representative of victims pursuant to the Victims Decision.<sup>2</sup>
3. On 6 November 2012, Ms Sureta Chana, the then legal representative of victims in the proceedings, filed her “Request to present views and concerns of victims on their legal representation at the trial phase” (“Request”).<sup>3</sup> In the Request, Ms Chana requests for the Trial Chamber to permit the victims to present their views and concerns on the issue of “the legal representation of the victims during the trial phase of the proceedings”.<sup>4</sup>
4. In her submission, Ms Chana highlights that matters which arise for consideration include: (i) the “dual system of participation, *i.e.* participation through a common legal representative and direct individual participation”,<sup>5</sup> (ii) the “preference that the common legal representative be based in Kenya”,<sup>6</sup> (iii) whether “the proposed system of legal representation for the trial phase sufficiently addresses [victims’]

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<sup>1</sup> ICC-01/09-01/11-460.

<sup>2</sup> Recommendation for the position of Common Legal Representative of victims, 5 November 2012, ICC-01/09-01/11-467.

<sup>3</sup> ICC-01/09-01/11-469.

<sup>4</sup> ICC-01/09-01/11-469, para. 25.

<sup>5</sup> ICC-01/09-01/11-469, para. 16(a).

<sup>6</sup> ICC-01/09-01/11-469, para. 16(b).

security concerns”,<sup>7</sup> (iv) the “division of responsibilities between OPCV and the common legal representative, and [the issue of] the means by which victims can effectively ensure that the submissions made on their behalf in the proceedings accurately reflect their views”<sup>8</sup> and (v) “the seniority and experience of the lawyer who would represent the victims in the proceedings on a daily basis”.<sup>9</sup>

5. On 23 November 2012, the Chamber by Majority, Judge Eboe-Osuji dissenting, decided to appoint Mr Wilfred Nderitu as the new CLR in the case.<sup>10</sup>
6. Given the subject matter identified in the Request which Ms Chana wishes to expand upon, the Chamber considers that the Request is largely an attempt to ultimately persuade the Chamber to reconsider matters which it has already examined in the Victims Decision. While the Chamber acknowledges that it may reconsider past decisions when they are “manifestly unsound and their consequences are manifestly unsatisfactory”,<sup>11</sup> Ms Chana does not persuade the Chamber that the Victims Decision was manifestly unsound or created manifestly unsatisfactory consequences. As such, the Request must be rejected.
7. Notwithstanding the foregoing, the Chamber is aware that Ms Chana has acquired a unique perspective on the victims’ views and concerns in this trial. Accordingly, the Chamber invites Ms Chana to file an application under Rule 103 of the Rules if she believes that an *amicus curiae* submission would be desirable for the Chamber’s implementation of the system of victim representation and participation outlined in the Victims Decision.

<sup>7</sup> ICC-01/09-01/11-469, para. 16(c).

<sup>8</sup> ICC-01/09-01/11-469, para. 16(d).

<sup>9</sup> ICC-01/09-01/11-469, para. 16(e).

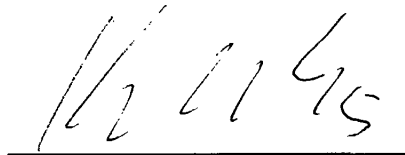
<sup>10</sup> Decision appointing a common legal representative of victims, 23 November 2012, ICC-01/09-01/11-479.

<sup>11</sup> Decision on the defence request to reconsider the “Order on numbering of evidence” of 12 May 2010, 30 March 2011, ICC-01/04-01/06-2705, para. 18.

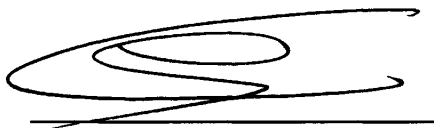
**FOR THE FOREGOING REASONS, THE CHAMBER HEREBY**

**REJECTS** the Request.

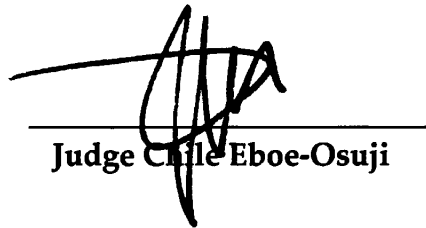
Done in both English and French, the English version being authoritative.



**Judge Kuniko Ozaki, Presiding**



**Judge Christine Van den Wyngaert**



**Judge Chile Eboe-Osuji**

Dated 13 December 2012

At The Hague, The Netherlands