



Original:

No.: ICC-01/09-01/11

Date: 27 May 2015

TRIAL CHAMBER V(A)

Before: Judge Chile Eboe-Osuji, Presiding Judge
Judge Olga Herrera Carbuca
Judge Robert Fremr

SITUATION IN THE REPUBLIC OF KENYA

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

Public

**The Government of the Republic of Kenya's Request for Leave to file *amicus curiae*
Observations on 'Public redacted version of "Prosecution's request for the admission of
prior recorded testimony of [REDACTED] witnesses", 29 April 2015, ICC-01/09-01/11-1866-
Conf + Annexes'**

Source:

Government of the Republic of Kenya, represented by the Attorney General of Kenya

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

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Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

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Amicus curiae

REGISTRY

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Victims and Witnesses Unit

Mr. Nigel Verrill

Detention Section

Other

**Victims Participation and Reparations
Section**

I. INTRODUCTION

1. The Government of the Republic of Kenya humbly requests Trial Chamber V(B) ('the Chamber') for leave to submit *amicus curiae* observations, pursuant to **Rule 103(1)** of the ICC Rules of Procedure and Evidence ('the Rules'), on the '*Public redacted version of "Prosecution's request for the admission of prior recorded testimony of [REDACTED] witnesses", 29 April 2015, ICC-01/09-01/11-1866-Conf + Annexes*'¹ ('Prosecution's request for the admission of prior recorded testimony').

II. SUBMISSIONS

2. The Government of the Republic of Kenya participated in the Twelfth Session of the Assembly of States Parties in The Hague, The Netherlands; and was actively involved in negotiations on the amendment of **Rule 68** of the ICC Rules which culminated in the consensual adoption of the amended **Rule 68** of the Rules.²
3. The Government of the Republic of Kenya submits that during the negotiations on the amendment of **Rule 68** of the Rules, it made known its concerns over the implication of the amendment of **Rule 68** over the on going cases before the ICC, including the cases in the situation in Kenya.
4. The Government of the Republic of Kenya submits that during the negotiations, in which the Government actively participated in, some forms of understanding were reached by the Assembly on the implication of the amendment of **Rule 68** on the on going cases before the ICC.
5. The Government of the Republic of Kenya submits that it would be useful for the Chamber to hear from it on the negotiation process on the amendment of **Rule 68**, which reveals important relevant events that will benefit the Chamber. The Government of the Republic of Kenya would like to share the important insights on this process with the Chamber, in order for the Chamber to be informed of the intention of the Assembly in consensually adopting **Rule**

¹ (Public) ICC-01/09-01/11-1866-Red, 21 May 2015.

² Resolution ICC-ASP/12/Res.7, *Amendments to the Rules of Procedure and Evidence*.

68; especially in relation to the proceedings that had commenced prior to the adoption of **Rule 68**.

III. RELIEF REQUESTED

6. The Government of the Republic of Kenya prays that the Chamber grants it leave in order for it to shed light on the negotiation and adoption of the amended **Rule 68**. This is important for the proper determination of the issue before the Chamber of the Prosecution's request for the admission of prior recorded testimony.

Respectfully submitted,



Githu Muigai, SC
Attorney General of the Republic of Kenya

Dated 27 May 2015
At Nairobi, Kenya