

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 29 May 2015

TRIAL CHAMBER V(A)

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

SITUATION IN THE REPUBLIC OF KENYA

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

Public

Decision on the Government of the Republic of Kenya's Request to File *Amicus Curiae* Observations

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

The Office of the Prosecutor

Ms Fatou Bensouda
Mr James Stewart
Mr Anton Steynberg

Counsel for William Samoei Ruto

Mr Karim Khan
Mr David Hooper
Mr Essa Faal
Ms Shyamala Alagendra

Counsel for Joshua Arap Sang

Mr Joseph Kipchumba Kigen-Katwa
Ms Caroline Buisman

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

Government of the Republic of Kenya

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others

Trial Chamber V(A) (the ‘Chamber’) of the International Criminal Court in the case of *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, having regard to Rule 103 of the Rules of Procedure and Evidence (the ‘Rules’), renders the following ‘Decision on the Government of the Republic of Kenya’s Request to File *Amicus Curiae* Observations’.

1. On 21 May 2015, the Office of the Prosecutor (the ‘Prosecution’) filed a ‘Public redacted version of the “Prosecution’s request for the admission of prior recorded testimony of [REDACTED] witnesses”, 29 April 2015, ICC-01/09-01/11-1866-Conf + Annexes’ (the ‘Prosecution’s Request’).¹
2. On 27 May 2015, the Government of the Republic of Kenya (the ‘Kenyan Government’) filed a request for leave to submit *amicus curiae* observations on the Prosecution’s Request.² The Kenyan Government submits that it was ‘actively involved in negotiations on the amendment of Rule 68’, where ‘it made known its concerns over the implication of the amendment [...] over the on going cases before the ICC, including the cases in the situation in Kenya’.³ The Kenyan Government states that ‘it would be useful for the Chamber to hear from it on the negotiation process [...] in order for the Chamber to be informed of the intention of the Assembly’.⁴ It therefore requests leave to make submissions to ‘shed light on the negotiation and adoption of the amended Rule 68’ (the ‘Kenyan Government Request’).⁵
3. The Chamber finds it unnecessary to receive responses to the Kenyan Government Request before ruling on it.

¹ ICC-01/09-01/11-1866-Red.

² 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’, ICC-01/09-01/11-1891.

³ ICC-01/09-01/11-1891, paras 2-4.

⁴ ICC-01/09-01/11-1891, para. 5.

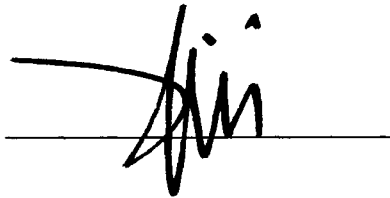
⁵ ICC-01/09-01/11-1891, para. 6.

4. The Chamber considers that the observations from the Kenyan Government as regards its participation in the negotiation process of the amended Rule 68 of the Rules are neither necessary nor appropriate for the Chamber's judicial determination on this matter, namely the legal interpretation and application of Rule 68 of the Rules.

FOR THE FOREGOING REASONS THE CHAMBER HEREBY

REJECTS the Kenyan Government Request.

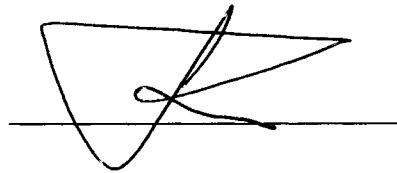
Done in both English and French, the English version being authoritative.

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke, positioned above a solid horizontal line.

Judge Chile Eboe-Osuji, Presiding

A handwritten signature in black ink, featuring a large, stylized 'O' and a long horizontal stroke, positioned above a solid horizontal line.

Judge Olga Herrera Carbuca

A handwritten signature in black ink, featuring a large, stylized 'R' and a long horizontal stroke, positioned above a solid horizontal line.

Judge Robert Fremr

Dated 29 May 2015

At The Hague, The Netherlands