

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 5 June 2015

TRIAL CHAMBER V(A)

Before: Judge Chile Eboe-Osuji, Presiding Judge
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 Request by Ms Gesicho for Leave
to Submit *Amicus Curiae* Observations**

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 Rut

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

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others

Ms Moraa Gesicho

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* (the ‘Case’), having considered Rule 103 of the Rules of Procedure and Evidence (the ‘Rules’), renders the following ‘Decision on the Request by Ms Gesicho for Leave to Submit *Amicus Curiae* Observations’.

1. On 9 September 2013, Ms Gesicho (the ‘Applicant’) filed a request for leave to submit *amicus curiae* observations on the final report of the Commission of Inquiry into Post Election Violence (the ‘CIPEV Report’) pursuant to Rule 103 of the Rules.¹ The Chamber denied this request on 8 October 2013, finding that, at that time, the CIPEV Report had not been tendered into evidence in the Case and that the parties had not had an opportunity to make submissions regarding its admissibility, relevance or probative value.² The Chamber additionally found that the Applicant had not established that she had specific expertise relevant to the evaluation of the CIPEV Report, and that her proposed observations would not be useful to it in evaluating the CIPEV Report.³
2. On 22 May 2015, Mr Peter Njenga Mwangi filed on behalf of the Applicant, a second request for leave to submit *amicus curiae* observations on the CIPEV Report.⁴ The Applicant again submitted that her academic qualifications and research experience qualify her as a research expert,⁵ and listed criteria she would take into consideration in her analysis.⁶

¹ Registry Transmission of document received from Ms Moraa Gesicho, registered on 10 September 2013, ICC-01/0901/11-920 and ICC-01/09-01/11-920-Anxl. The document was originally filed as *ex parte*, Registry only, and pursuant to the Chamber’s instruction from 10 September 2013 reclassified as public.

² Decision on request by Ms Gesicho for leave to submit *amicus curiae* observations, 8 October 2013, ICC-01/09-01/11-1020, para 4.

³ ICC-01/09-01/11-1020, para 4.

⁴ Request for leave to submit *amicus curiae* submission by Ms Moraa Gesicho, 22 May 2015, ICC-01/09-01/11-1889.

⁵ ICC-01/09-01/11-1889, para. 9.

⁶ ICC-01/09-01/11-1889, paras 10-22.

3. The Chamber recalls that Rule 103(1) of the Rules sets out that ‘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’.
4. The Applicant submits that her previous request was denied due to the CIPEV Report not having being tendered into evidence at the time of her initial request, and that in light of the Chamber having subsequently heard the expert testimony of Professor Hervé Maupeu and having now admitted the CIPEV Report into evidence,⁷ the second request should be granted.⁸ Nevertheless, the Applicant’s submissions as to her expertise and the utility of her analysis are substantially the same as the first request.⁹ The Chamber reiterates its previous decision that the Applicant has not established specific expertise relevant to the evaluation of the CIPEV Report, nor does the Chamber consider her proposed observations more useful now that at the time of its previous decision. Accordingly, the Chamber does not consider that the proposed observations are desirable for the proper determination of the case.

FOR THE FOREGOING REASONS THE CHAMBER HEREBY

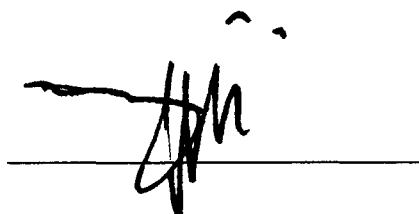
REJECTS the request of the Applicant to file *amicus curiae* observations.

⁷ Decision on the Prosecution’s Application for Admission of Documentary Evidence Related to the Testimony of Witness 13, 4 February 2015, ICC-01/09-01/11-1804, page 11.

⁸ ICC-01/09-01/11-1889, paras 35-36.

⁹ ICC-01/09-01/11-1889, paras 9-22.

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 horizontal line.

Judge Chile Eboe-Osuji, Presiding

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

Judge Olga Herrera Carbuccion

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

Judge Robert Fremr

Dated 5 June 2015

At The Hague, The Netherlands