

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No.: ICC-01/09-01/11  
Date: 1 February 2013

**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 Kenya Human Rights Commission's request to file an *amicus curiae* brief**

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 Silas Chekera

**Legal Representatives of Victims**

**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**

Ms Silvana Arbia

**Deputy Registrar**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Others**  
Kenya Human Rights Commission

Trial Chamber V (“Chamber”) of the International Criminal Court (“Court”) in the case of *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, pursuant to Rule 103(1) of the Rules of Procedure and Evidence (“Rules”) and Regulation 23 *bis* of the Regulations of the Court (“Regulations”), renders the following Decision on the Kenya Human Rights Commission’s request to file an *amicus curiae* brief.

## I. Procedural History and Submissions

1. On 8 January 2013, the Kenya Human Rights Commission (“KHRC”) filed a confidential “Request for leave to present a brief in the capacity of *amicus curiae* pursuant to rule 103(1) of the rules of procedure and evidence (“Request”), with annexes.<sup>1</sup>
2. In the Request, the KHRC sets out its mission statement<sup>2</sup> and then proceeds by giving its views on i) disclosure of the identity of witnesses; ii) the effects such disclosure potentially could have on the witnesses concerned; and iii) the law related to the protection of witnesses before the Court.<sup>3</sup> The KHRC requests leave to submit an *amicus curiae* brief, which would consist of the submissions made in the Request.<sup>4</sup> Furthermore, it requests “[a]ny other orders and or directions under Regulation 31 of the Regulations of The court”.<sup>5</sup>
3. On 16 January 2013, the defence teams for Mr Ruto and for Mr Sang (together “Defence”) filed, confidentially, a joint response (“Response”) asking the Chamber to dismiss the Request and, in addition, requesting that the Defence Response and the Request be reclassified as public.<sup>6</sup>

<sup>1</sup> ICC-01/09-01/11-534-Conf.

<sup>2</sup> ICC-01/09-01/11-534-Conf, paras 4-7.

<sup>3</sup> ICC-01/09-01/11-534-Conf, paras 8-50.

<sup>4</sup> ICC-01/09-01/11-534-Conf, p. 13.

<sup>5</sup> ICC-01/09-01/11-534-Conf, p. 13.

<sup>6</sup> ICC-01/09-01/11-553-Conf.

## II. Analysis and Conclusions of the Chamber

4. According to Rule 103(1) of the Rules, the Chamber has the discretion to grant leave to an organisation to submit observations “if it considers it desirable for the proper determination of the case”.<sup>7</sup> The Appeals Chamber has clarified that the respective Chamber should take into consideration whether the proposed submission of observations may assist it in making said determination.<sup>8</sup>
5. The Chamber is well aware of the general risks that witnesses in an international criminal trial may face, and of the law related to witness protection. Moreover, the appropriate bodies of the Court to inform the Chamber on the individualised risks for witnesses that are being called, the Office of the Prosecutor and Victims and Witnesses Unit (“VWU”), have done so already or have been ordered to do so. Therefore, the Chamber finds that the submissions that the KHRC wishes to make would not provide any information beyond that which it has already received, or could obtain, from the Office of the Prosecutor and the VWU. The submissions would thus not assist the Chamber in the proper determination of the case.
6. Despite being required to do so pursuant to Regulation 23 *bis* of the Regulations, the KHRC has failed to provide any basis for classifying its filing as confidential. The Chamber finds that there is no reason for the Request and the Response to remain confidential.

---

<sup>7</sup> See also Appeals Chamber, “Decision on ‘Motion for Leave to File Proposed Amicus Curiae Submission of the International Criminal Bar Pursuant to Rule 103 of the Rules of Procedure and Evidence’”, ICC-01/04-01/06-1289, para. 8; and Trial Chamber II, “Decision on an *Amicus Curiae* application and on the “*Requête tendant à obtenir présentations des témoins DRC-D02-P-0236, DRC-02-P-0228 aux autorités néerlandais aux fins d’asile*” (articles 68 and 93(7) of the Statute)”, ICC-01/04-01/07-3003-tENG, para. 53.

<sup>8</sup> ICC-01/04-01/06-1289, para. 8.

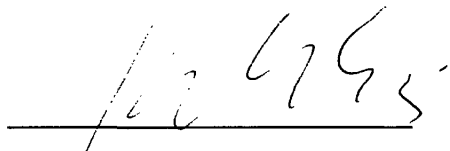
**FOR THE FOREGOING REASONS, THE CHAMBER HEREBY**

**REJECTS** the relief sought in the Request;

**GRANTS** the Defence's request to reclassify the Request and Response as public; and

**ORDERS** the Registry to reclassify the Request and Response as public.

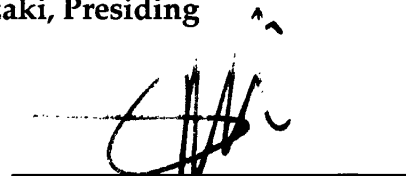
Done in both English and French, the English version being authoritative.



\_\_\_\_\_  
**Judge Kuniko Ozaki, Presiding**



\_\_\_\_\_  
**Judge Christine Van den Wyngaert**



\_\_\_\_\_  
**Judge Chile Eboe-Osuji**

Dated 1 February 2013

At The Hague, The Netherlands