

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 8 October 2013

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 Request of the Government of Kenya to Submit
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

Mr Githu Muigai, SC
Attorney General, Republic of Kenya

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Deputy Registrar

Victims and Witnesses Unit

Mr Patrick Craig

Detention Section

**Victims Participation and Reparations
Section**

Others

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

1. During the hearing on 17 September 2013, the Chamber notified the parties and participants that it wished to receive oral submissions, the following day, on these questions:
 - Is it a fact that the Parliament of Kenya debated and adopted resolutions that may have any relevance to this case? If so, what? If so, when? If so, why?¹
 - If it is the case that the Parliament of Kenya had adopted any such resolutions, what effect should that development have, either alone or together with any other national or communative factor, and evidence of any such communative factor must also be provided, in the assessment of witness protection measures in the courtroom?² and
 - Does such a factor override the need for individualised assessment of each witness for purposes of witness protection measures in the courtroom?³
2. On 18 September 2013, the parties and participants made submissions on the questions posed by the Chamber.⁴
3. On 20 September 2013, the Defence for Mr Ruto filed an Addendum to its submissions.⁵

¹ Transcript of hearing on 17 September 2013, ICC-01/09-01/11-T-29-Red-ENG, page 3, lines 6-7.

² ICC-01/09-01/11-T-29-Red-ENG, page 3, lines 8-12.

³ ICC-01/09-01/11-T-29-Red-ENG, page 3, lines 13-15.

⁴ Transcript of hearing on 18 September 2013, ICC-01/09-01/11-T-32-Red-ENG, page 5, line 4 – page 11, line 12; page 11, line 15- page 25, line 7; page 25, line 10- page 39, line 15; page 39, line 17 – page 43, line 2; page 43, line 6 – page 45, line 20; page 46, line 12 – page 47, line 22.

4. On 1 October 2013, the Registry transmitted to the Chamber the 'Government of Kenya's Application Pursuant to Rule 103 (l) for Leave to file Observations Pursuant to Rule 103 (1) of the Rules of Procedure and Evidence of the International Criminal Court to file Submissions on the Proposed Motion by Kenya's National Assembly and Senate to Withdraw Kenya from the Rome Statute' (the 'Application').⁶ The Registry informed the Chamber that, while an earlier version of the Application was filed before the Pre-Trial Chamber,⁷ the Government of Kenya indicated that it intended the document to be addressed to this Chamber. The Registry appends the email communication from the Government of Kenya requesting that the document be filed with the Chamber.⁸
5. The Chamber is satisfied that it is properly seized of the Application.
6. In the Application, a representative of the Government of Kenya requests the Chamber's leave to file an *amicus curiae* application, on behalf of the Government, and make submissions to the Court in response to the 'concern raised by the Court regarding the possible impact of the resolutions made by Kenya's National Assembly and Senate [...] regarding Kenya's withdrawal from the Rome Statute'.⁹
7. Rule 103(1) of the Rules provides 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'.
8. The Chamber notes that, as indicated above, it is currently considering the issue of the impact of the debate and resolutions of the Kenyan Parliament regarding Kenya's status as a State Party to the Rome Statute on the safety, physical and

⁵ ICC-01/09-01/11-961.

⁶ ICC-01/09-01/11-1006-Anx2, annexed to the 'Registry transmission of a document submitted by the Republic of Kenya', ICC-01/09-01/11- 1006.

⁷ 30 September 2013, ICC-01/09-121.

⁸ ICC-01/09-01/11-1006-Conf-Exp-Anx1.

⁹ ICC-01/09-01/11-1006-Anx2, para. 1.

psychological well-being of witnesses testifying in the present case. Submissions from the Government of Kenya on these resolutions may be of assistance to the Chamber. It considers such submissions to be desirable for the proper determination of the issues under consideration by the Chamber.

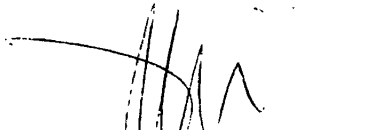
FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

GRANTS the Application;

INVITES the Government of Kenya to file its written submissions no later than 16 October 2013 at 16:00; and

DIRECTS the parties and participants to file their responses to such submissions no later than 18 October 2013 at 16:00.

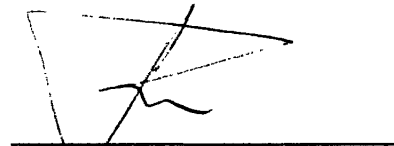
Done in both English and French, the version being authoritative.



Judge Chile Eboe-Osuji
(Presiding)



Judge Olga Herrera Carbuccion



Judge Robert Fremr

Dated 8 October 2013

At The Hague, The Netherlands

No. ICC-01/09-01/11

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8 October 2013