

**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**

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**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’).<sup>1</sup>
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.<sup>2</sup> 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’.<sup>3</sup> 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’.<sup>4</sup> It therefore requests leave to make submissions to ‘shed light on the negotiation and adoption of the amended Rule 68’ (the ‘Kenyan Government Request’).<sup>5</sup>
3. The Chamber finds it unnecessary to receive responses to the Kenyan Government Request before ruling on it.

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<sup>1</sup> ICC-01/09-01/11-1866-Red.

<sup>2</sup> 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.

<sup>3</sup> ICC-01/09-01/11-1891, paras 2-4.

<sup>4</sup> ICC-01/09-01/11-1891, para. 5.

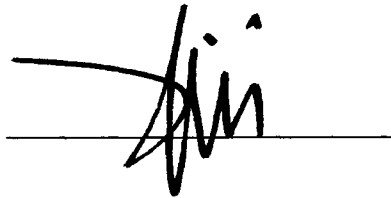
<sup>5</sup> ICC-01/09-01/11-1891, para. 6.

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.

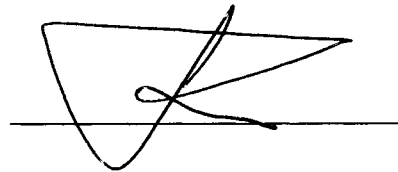
Done in both English and French, the English version being authoritative.

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**Judge Chile Eboe-Osuji, Presiding**

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

**Judge Olga Herrera Carbuca**

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

**Judge Robert Fremr**

Dated 29 May 2015

At The Hague, The Netherlands