

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/09-02/11
Date: 13 September 2012

TRIAL CHAMBER V

Before: Judge Kuniko Ozaki, Presiding Judge
Judge Christine Van den Wyngaert
Judge Chile Eboe-Osuji

SITUATION IN THE REPUBLIC OF KENYA

**IN THE CASE OF
THE PROSECUTOR *v.* FRANCIS KIRIMI MUTHAURA
AND
UHURU MUIGAI KENYATTA**

Public

Decision on two requests for leave 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

Counsel for Francis Kirimi Muthaura

Mr Karim Khan, Mr Essa Faal,
Mr Kennedy Ogetto, Ms Shyamala
Alagendra

Counsel for Uhuru Muigai Kenyatta

Mr Steven Kay
Ms Gillian Higgins

Legal Representatives of Victims

Mr Morris Anyah

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Deputy Registrar

Victims and Witnesses Unit

Ms Maria Luisa Martinod-Jacome

Detention Section

**Victims Participation and Reparations
Section**

Others

The Civil Society Organization Network
Kituo Cha Sheria

Trial Chamber V (“Chamber”) of the International Criminal Court in the case of *The Prosecutor v. Francis Kirimi Muthaura and Uhuru Muigai Kenyatta* renders the following Decision on two requests for leave to submit *amicus curiae* observations.

1. On 24 August 2012 the Civil Society Organization Network (“CSO Network”) requested leave to file *amicus curiae* observations pursuant to Rule 103 of the Rules of Procedure and Evidence (“Rules”) on the modalities of victim participation at the trial phase of the proceedings (“Request”).¹
2. On 30 August 2012 the legal representative of victims filed a response supporting the CSO Network’s Request.²
3. On 5 September 2012 Kituo Cha Sheria (Centre for Legal Empowerment) (“Kituo”) requested leave to submit *amicus curiae* observations pursuant to Rule 103 of the Rules.³ Although Kituo has worked with victims who were granted participation rights in the case at the pre-trial stage, it is submitted that the *amicus* observations would not purport to represent the views of those victims but would rather focus on issues related to victims who have not yet applied for or been granted participatory status in the case.⁴ Kituo submits that the three issues it would address are (i) the importance of meaningful participation for victims in Kenya; (ii) the victims’ application process and its timeframe; and (iii) the modalities of victims’ participation and their representation at trial.⁵ In addition Kituo submits that it could consolidate

¹ ICC-01/09-02/11-470 and ICC-01/09-02/11-470-Conf-Exp-Anx1.

² Victims’ Response to the 24 August 2012 Request for Leave to Submit Amicus Curiae Observations, 30 August 2012, ICC-01/09-02/11-472.

³ Request for Leave to Submit Amicus Curiae observations pursuant to Rule 103 of the Rules of Procedure and Evidence, 5 September 2012, notified on 6 September 2012, ICC-01/09-02/11-480.

⁴ ICC-01/09-02/11-480, para. 27.

⁵ ICC-01/09-02/11-480, para. 21.

its *amicus* observations with those of the CSO Network to the extent that the issues raised are similar.⁶

4. Rule 103(1) of the Rules set 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”.
5. The Chamber has already received from the Registry a “Draft Protocol on the application process for victim participation and reparations at the Trial stage”,⁷ in response to which the Registry was informed that no further proposals concerning this issue would be required.⁸ As regards the current requests, the Chamber does not consider that the submissions of the CSO Network and Kituo would assist at this stage with the proper determination of issues related to the victims’ application process and the modalities of their participation.

FOR THE FOREGOING REASON, THE CHAMBER HEREBY

REJECTS the requests of the two organisations to file *amicus curiae* briefs.

⁶ ICC-01/09-02/11-480, para. 26.

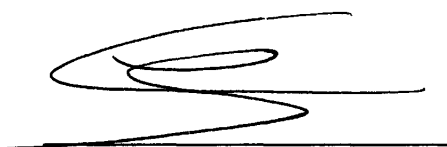
⁷ 20 July 2012, ICC-01/09-02/11-454-Conf-Exp and five confidential *ex parte* annexes.

⁸ Email communication from Trial Chamber V Communications to the Registry on 25 July 2012 at 11:15.

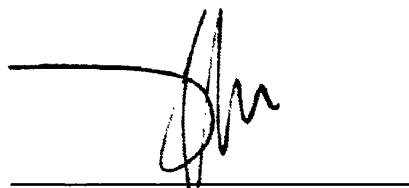
Done in both English and French, the English version being authoritative.



Judge Kuniko Ozaki, Presiding Judge



Judge Christine Van den Wyngaert



Judge Chile Eboe-Osuji

Dated this 13 September 2012

At The Hague, The Netherlands