

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/09-02/11
Date: 15 November 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 granting the application by Kituo Cha Sheria for leave to submit
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

Ms Adesola Adeboyejo

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**

Ms Paolina Massida

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

States Representatives

Amicus Curiae

Kituo Cha Sheria

REGISTRY

Registrar

Ms Silvana Arbia

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Ms Fiona McKay

Others

Trial Chamber V (“Trial Chamber” or “Chamber”) of the International Criminal Court (“Court”), in the case of *The Prosecutor v. Francis Kirimi Muthaura and Uhuru Muigai Kenyatta* (“Muthaura and Kenyatta case”), pursuant to Rule 103 of the Rules of Procedure and Evidence (“Rules”) and Regulations 24(1) and 34 of the Regulations of the Court (“Regulations”), issues the following Decision granting the application by Kituo Cha Sheria for leave to submit observations.

I. Overview and procedural background

1. On 3 October 2012, the Chamber issued the “Decision on victims’ representation and participation” in the Muthaura and Kenyatta case (“Victims’ Decision”).¹ The Victims’ Decision establishes the procedure to be applied to the participation of victims and provides that victims shall be represented by a common legal representative (“CLR”) acting in coordination with the Office of Public Counsel for victims (“OPCV”). The Victims’ Decision delineates the roles of the CLR and OPCV. It clarifies that the CLR will have “primary responsibility for being the point of contact for the victims ... to formulate their views and concerns and to appear on their behalf at critical junctures of the trial.”² The OPCV is to act “as the interface between the [CLR] and the Chamber in day-to-day proceedings.”³ In the Victims’ Decision, the Chamber instructed “the Registry and the OPCV to consult and to submit a joint proposal on the division of responsibilities and effective functioning of the common legal representation system”.⁴

¹ ICC-01/09-02/11-498.

² ICC-01/09-02/11-498, para. 41.

³ ICC-01/09-02/11-498, para. 42.

⁴ ICC-01/09-02/11-498, page 33.

2. On 17 October 2012, the OPCV and the Registry each filed a "Proposal on the Division of Responsibilities and Effective Functioning of the Common Legal Representation System".⁵
3. On 30 October 2012, Kituo Cha Sheria (Centre for Legal Empowerment) ("Kituo") applied to the Chamber for leave to submit *amicus curiae* observations in relation to the modalities of implementation of the system for victims' participation and representation established by the Chamber in the Victims' Decision.⁶
4. On 5 November 2012, the Registry submitted its recommendation for the position of common legal representative of victims pursuant to the Victims' Decision.⁷
5. The submission of observations by *amicus curiae* before this Court is premised on Rule 103(1) of the Rules, which provides that "[a]t any stage of proceedings, 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."
6. In the present case, the Chamber considers that Kituo's observations may assist the Registry, VPRS, OPCV and CLR in ensuring the effective implementation of the envisaged system of common legal representation which marks a departure from the practice of previous trial chambers of this Court.
7. The Chamber notes that Kituo is a non-governmental human rights organization operating in Kenya.⁸ "Shortly after the 2007/2008 post election violence ("PEV"),

⁵ OPCV's Proposal on the Division of Responsibilities and Effective Functioning of the Common Legal Representation System, 17 October 2012, ICC-01/09-02/11-507; Registry's Proposal on the Division of Responsibilities and Effective Functioning of the Common Legal Representation System, 17 October 2012, ICC-01/09-02/11-508.

⁶ Application by Kituo Cha Sheria for Leave to Submit Observations pursuant to Rule 103 of the Rules of Procedure and Evidence, 30 October 2012, ICC-01/09-02/11-514-Corr.

⁷ Recommendation for the position of Common Legal Representative of victims, 5 November 2012, ICC-01/09-02/11-517.

⁸ ICC-01/09-02/11-514-Corr, paras 11 and 13.

Kituo designed a project aimed at facilitating effective community participation in the Truth Justice and Reconciliation Process in Kenya, as well as victims' participation in the ICC process. As part of the aforementioned project, Kituo is currently undertaking outreach to 2007/2008 PEV victims with the aim of promoting victim participation in the ICC process."⁹ Kituo is in contact with victims who appear to be within the scope of the Muthaura and Kenyatta case and it is "conducting awareness sessions on victims' participation in ICC proceedings".¹⁰ Given its specialised knowledge and experience, the Chamber considers that Kituo is an appropriate organization to submit observations as *amicus curiae* in relation to the implementation of the system of victims' representation and participation.

8. The Chamber observes, however, that some of the issues which Kituo seeks to address in its proposed *amicus curiae* observations extend beyond the modalities of implementation of the Victims' Decision. It notes that Kituo seeks to address, amongst other issues, the actual appointment of the CLR and criteria for his or her selection.¹¹ Given that the Chamber has already determined its criteria for selection of the CLR and received the recommendation of the Registry on the appointment, and given the need for the CLR to be appointed and begin work expeditiously, the Chamber concludes that it would not be of assistance to receive *amicus curiae* submissions on this particular question.
9. Finally, the Chamber confirms that in accordance with Rule 103(2) the prosecution and defence will be entitled to respond to Kituo's future observations. Due to the need to ensure effective representation of victims without unnecessary delay, the

⁹ ICC-01/09-02/11-514-Corr, para. 11.

¹⁰ ICC-01/09-02/11-514-Corr, paras 14-15.

¹¹ ICC-01/09-02/11-514-Corr, para. 22(i) and (ii).

Chamber considers it appropriate, in accordance with Regulation 34(1) to set a shortened timeframe of 14 days for submission of any such responses.

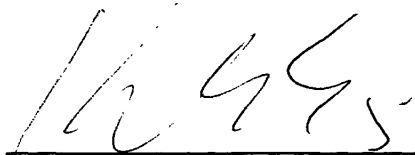
For the foregoing reasons, the Chamber hereby:

DETERMINES that, pursuant to Rule 103(1) of the Rules, Kituo is authorised to submit observations on issues related to the implementation of the system of victim representation and participation subject to paragraph 8 of this Decision;

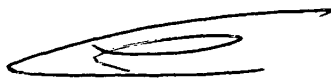
DIRECTS Kituo to submit its observations within 5 days of notification of this Decision; and

DIRECTS the parties to submit any response to Kituo's observations within 14 days of notification of those observations.

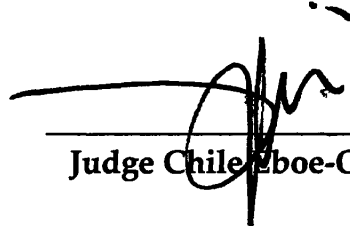
Done in both English and French, the English version being authoritative.



Judge Kuniko Ozaki, Presiding



Judge Christine Van den Wyngaert



Judge Chile Eboue-Osuji

Dated 15 November 2012

At The Hague, The Netherlands