

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/09-02/11
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.* FRANCIS KIRIMI MUTHAURA
AND
UHURU MUIGAI KENYATTA**

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

Counsel for Joshua Arap Sang

Mr Steven Kay
Ms Gillian Higgins

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. Francis Kirimi Muthaura and Uhuru Muigai Kenyatta*, 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.¹
2. In the Request, the KHRC sets out its mission statement² 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.³ The KHRC requests leave to submit an *amicus curiae* brief, which would consist of the submissions made in the Request.⁴ Furthermore, it requests "[a]ny other orders and or directions under Regulation 31 of the Regulations of The court".⁵

II. Analysis and Conclusions of the Chamber

3. 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".⁶ The Appeals Chamber has clarified that the respective

¹ ICC-01/09-02/11-594-Conf.

² ICC-01/09-01/11-594-Conf, paras 4-7.

³ ICC-01/09-01/11-594-Conf, paras 8-50.

⁴ ICC-01/09-01/11-594-Conf, p. 12.

⁵ ICC-01/09-01/11-594-Conf, p. 12.

⁶ 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,

Chamber should take into consideration whether the proposed submission of observations may assist it in making said determination.⁷

4. 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.
5. 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.

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.

⁷ ICC-01/04-01/06-1289, para. 8.

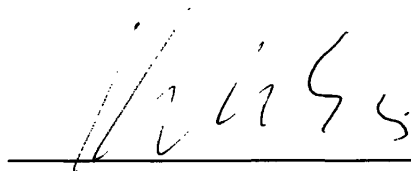
FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

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.

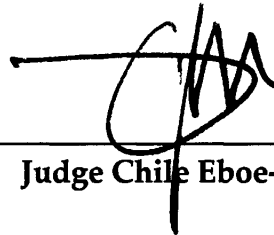
Done in both English and French, the English version being authoritative.



Judge Kuniko Ozaki, Presiding



Judge Christine Van den Wyngaert



Judge Chile Eboe-Osuji

Dated 1 February 2013

At The Hague, The Netherlands