

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/09-02/11

Date: 8 October 2013

TRIAL CHAMBER V(B)

Before: Judge Kuniko Ozaki, Presiding Judge
Judge Robert Fremr
Judge Chile Eboe-Osuji

SITUATION IN THE REPUBLIC OF KENYA

**IN THE CASE OF
*THE PROSECUTOR v. UHURU MUIGAI KENYATTA***

Public

**Decision on request by Ms Gesicho 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

Mr James Stewart

Ms Adesola Adeboyejo

Counsel for the Defence

Mr Steven Kay

Ms Gillian Higgins

Legal Representatives for Victims

Mr Fergal Gaynor

Unrepresented Victims

Legal Representatives for Applicants

**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

Mr Herman von Hebel

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others

Ms Moraa Gesicho

Trial Chamber V(B) ('Chamber') of the International Criminal Court ('Court'), in the case of *The Prosecutor v. Uhuru Muigai Kenyatta*, having considered Rule 103 of the Rules of Procedure and Evidence (the 'Rules'), renders the following Decision on request by Ms Gesicho for leave to submit *amicus curiae* observations.

1. On 9 September, Ms Gesicho ('Applicant') filed a request for leave to submit *amicus curiae* observations on the final report of the Commission of Inquiry into Post Election Violence ('CIPEV Report') pursuant to Rule 103 of the Rules.¹ The Applicant recalls that after the 2007 election and the connected violence a Commission of Inquiry into Post Election Violence, also known as the Waki Commission, was appointed. In October 2008, the Waki Commission published its final report, the CIPEV Report. Should the Chamber decide to take the CIPEV Report into consideration, the Applicant proposes to offer her research expertise in its evaluation.²
2. The Applicant states that her academic qualifications - having a degree in philosophy and education - her subsequent teaching experience, her research experience, having conducted her own research as well as reviews and appraisals on various reports and her political activities as a chairperson of a Kenyan party between 2007 and 2012 qualify her as a research expert.³ The Applicant further submits that this research expertise enables her to evaluate the CIPEV Report.⁴ Additionally, she lists criteria she would take into consideration in her analysis.⁵
3. Rule 103(1) of the Rules sets 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

¹ Registry Transmission of document received from Ms Moraa Gesicho, registered on 10 September 2013, ICC-01/09-02/11-802 and ICC-01/09-02/11-802-Anx1. The document was originally filed as *ex parte*, Registry only and pursuant to the Chamber's instruction from 10 September reclassified as public.

² ICC-01/09-02/11-802-Anx1, paras 3, 4 and 9.

³ ICC-01/09-02/11-802-Anx1, para. 16.

⁴ ICC-01/09-02/11-802-Anx1, paras 31-33.

⁵ ICC-01/09-02/11-802-Anx1, paras 17-30.

person to submit, in writing or orally, any observation on any issue that the Chamber deems appropriate’.

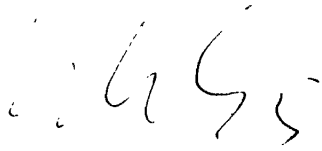
4. The Chamber notes that the Applicant proposes to provide an analysis of one specific publication she considers will be useful as a ‘source of evidence’.⁶ The Chamber recalls Article 69 of the Rome Statute and Rule 63(2) of the Rules, according to which the Chamber may rule on the relevance and admissibility of any evidence. It notes that the CIPEV Report has not been tendered into evidence yet and is therefore not currently part of the record in this case. Furthermore, the parties have not yet had an opportunity to make any submissions regarding its admissibility, relevance or probative value. Indeed, the report may not be tendered or admitted in this case. Even if the document is subsequently tendered or admitted, the Chamber recalls that evaluation of evidence is primarily a function of the Chamber itself. The Chamber does not consider that the Applicant has established that she has specific expertise relevant to the evaluation of the CIPEV Report. Moreover, the Chamber does not consider that the proposed observations of the Applicant would be useful to it in the evaluation of the CIPEV Report. Accordingly, the Chamber does not consider that the proposed observations are desirable for the proper determination of the case.

FOR THE FOREGOING REASON, THE CHAMBER HEREBY

REJECTS the request of the Applicant to file *amicus curiae* observations.

⁶ ICC-01/09-02/11-802-Anx1, para. 3.

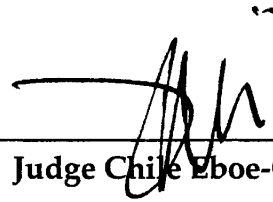
Done in both English and French, the English version being authoritative.



Judge Kuniko Ozaki, Presiding



Judge Robert Fremr



Judge Chile Eboe-Osuji

Dated 8 October 2013

At The Hague, The Netherlands