



Original: English

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

Date: 06 November 2014

TRIAL CHAMBER V(B)

Before: Judge Kuniko Ozaki, Presiding Judge
Judge Robert Fremr
Judge Geoffrey Henderson

SITUATION IN THE REPUBLIC OF KENYA

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

Public

**Decision on the application of the National Council of Elders Kenya
to submit *amicus curiae* observations**

Order 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 Benjamin Gumpert

Counsel for Uhuru Muigai Kenyatta

Mr Steven Kay

Ms Gillian Higgins

Legal Representatives of Victims

Mr Fergal Gaynor

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

Mr Herman von Hebel

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others
National Council of Elders of Kenya

Trial Chamber V(B) ('Chamber') of the International Criminal Court ('Court') in the case of *The Prosecutor v. Uhuru Muigai Kenyatta*, having regard to Rule 103(1) of the Rules of Procedure and Evidence ('Rules'), renders the following 'Decision on the application of the National Council of Elders Kenya to submit *amicus curiae* observations'.

I. Procedural history

1. On 10 October 2014, the National Council of Elders Kenya ('Applicant') filed an application for leave to submit *amicus curiae* observations ('Application') pursuant to Rule 103 of the Rules.¹
2. The Applicant submits that its observations 'may assist in guiding the Court to reach a just adjudication' in respect of, *inter alia*, the historical origins of the 2007-2008 conflict, an in-depth understanding of 'the African Justice systems', and the impact of the current proceedings on national healing and on the victims.² The Applicant also requested leave to participate in the status conferences held on 7 and 8 October 2014.³
3. No responses to the Application were received from the parties or participants.

II. Analysis and conclusion of the Chamber

4. Rule 103(1) of the Rules provides a Chamber with discretion to grant leave to a State, organisation or person to submit written or oral observations on any issue

¹ Amicus Curiae Observations of National Council of Elders Kenya pursuant to Rule 103 (1) of the Rules of Procedure and Evidence, 7 October 2014, ICC-01/09-02/11-965. The document is dated 7 October 2014, but was not filed until 10 October 2014.

² Application, ICC-01/09-02/11-965, paras 23-24.

³ Application, ICC-01/09-02/11-965, para. 27.

the Chamber deems appropriate 'if [the Chamber] considers it desirable for the proper determination of the case'.

5. The Chamber considers that the requested intervention by the Applicant is neither necessary nor desirable for the proper determination of the case, including in light of the current stage of the proceedings and specific matters which are before the Chamber for consideration. In the view of the Chamber, the Applicant has not established it would provide any further relevant information beyond that which may be raised and submitted by the parties and participants themselves at any stage of the proceedings.
6. In respect of the request for leave to participate in the status conferences held on 7 and 8 October 2014, as previously ruled upon,⁴ the Chamber considered that due to the nature of the hearings and the specific issues to be discussed, attendance at the status conferences was reserved for parties and participants in the proceedings,⁵ and that, even assuming that the Applicant met the requirements of Rule 103(1) of the Rules, *amici curiae* would not be permitted to attend.

⁴ E-mail from Legal Officer of the Chamber to Registry on 6 October 2014 at 11:14. *See also* Transcript of hearing on 7 October 2014, ICC-01/09-02/11-T-31-ENG ET WT, page 50, lines 6-9.

⁵ The Chamber also specifically invited the Government of the Republic of Kenya to attend the status conference on 7 October 2014 due to the particular subject matter of that hearing (*see* Order vacating trial date of 7 October 2014, convening two status conferences, and addressing other procedural matters, ICC-01/09-02/11-954).

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

REJECTS the Application.

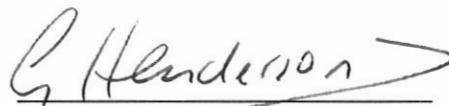
Done in both English and French, the English version being authoritative.



Judge Kuniko Ozaki, Presiding Judge



Judge Robert Fremr



Judge Geoffrey Henderson

Dated 06 November 2014

At The Hague, The Netherlands