

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 13 June 2011

PRE-TRIAL CHAMBER II

Before: Judge Ekaterina Trendafilova, Single Judge

**SITUATION IN THE REPUBLIC OF KENYA
IN THE CASE OF THE PROSECUTOR V. FRANCIS KIRIMI MUTHAURA,
UHURU MUIGAI KENYATTA AND MOHAMMED HUSSEIN ALI**

Public

**Decision on the "Request for leave to submit Amicus Curiae observations
pursuant to Rule 103 of the Rules of Procedure and Evidence"**

Decision to be notified, in accordance with regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

Luis Moreno-Ocampo, Prosecutor
Fatou Bensouda, Deputy Prosecutor

Counsel for Francis Kirimi Muthaura

Karim Khan and Kennedy Ogetto

Counsel for Uhuru Muigai Kenyatta

Steven Kay and Gillian Higgins

Counsel for Mohammed Hussein Ali

Evans Monari, John Philpot and
Gershom Otachi Bw'omanwa

Legal Representatives of the Victims

Legal Representatives of the 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

Non c'è pace senza giustizia - No Peace
Without Justice

REGISTRY

Registrar & Deputy Registrar

Silvana Arbia, Registrar
Didier Preira, Deputy Registrar

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Judge Ekaterina Trendafilova, acting as Single Judge on behalf of Pre-Trial Chamber II (the “Chamber”)¹ of the International Criminal Court (the “Court”) hereby renders the decision on the “Request for leave to submit Amicus Curiae observations pursuant to Rule 103 of the Rules of Procedure and Evidence” (the “Application”), submitted by Non c’e’ pace senza giustizia - No Peace Without Justice (the “Applicant”).²

1. On 31 March 2010, the Chamber, by majority, issued its decision authorizing the Prosecutor to commence an investigation into the situation in the Republic of Kenya.³

2. On 8 March 2011, the Chamber, by majority, decided to summon Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali to appear before the Court on Thursday, 7 April 2011.⁴ On 18 March 2011, the Chamber issued a decision setting Friday, 8 April 2011 as the new date for the initial appearance hearing.⁵

3. On 8 April 2011, during the initial appearance hearing, the Chamber set 21 September 2011 as the date for the commencement of the confirmation of charges hearing.⁶

4. On 3 June 2011, the Chamber issued its decision whereby it requested the Prosecutor and the Defence to submit, by Monday 13 June 2011, their observations on the desirability and feasibility of conducting the confirmation of charges hearing on the territory of the Republic of Kenya, and appointed the Office of Public Counsel

¹ Pre-Trial Chamber II, “Decision Designating a Single Judge”, ICC-01/09-02/11-9.

² ICC-01/09-02/11-112.

³ Pre-Trial Chamber II, “Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya”, ICC-01/09-19-Corr.

⁴ Pre-Trial Chamber II, “Decision on the Prosecutor’s Application for Summonses to Appear for Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali”, ICC-01/09-02/11-1.

⁵ Pre-Trial Chamber II, “Decision Setting a New Date for the Initial Appearance”, ICC-01/09-02/11-8.

⁶ ICC-01/09-02/11-T-1-ENG, p. 14, lines 11-13.

for Victims to submit, by the same date, observations on behalf of victims who applied for participation.⁷

5. On 10 June 2011, the Chamber received the Application, wherein it is requested “that the Chamber grant leave to submit observations, *amicus curiae*, and order that a proposed brief be timely filed in the present matter pursuant to rule 103.”⁸ The Applicant submits that the proposed *amicus curiae* brief is desirable for the proper determination of the case because it will address the interests of justice, victims’ participation and the “impact of the ICC’s work on victims and affected communities” in the context of *in situ* proceedings.⁹ The Applicant further submits to the Chamber that it is an “independent non-governmental organization” which “works with civil society, victims and affected communities in each situation currently before the Court, with a particular focus on promoting the ICC’s responsiveness to justice needs on the ground and maximizing the ICC’s impact on its stakeholders in-country.”¹⁰ Finally, the Applicant avers that it has been “conducting extensive research on the impact of the presence of international courts and tribunals in the countries where the crimes were committed” and that it has, as a result of such work, “particular insight into the impact of international criminal justice proceedings on victims and affected communities.”¹¹

6. The Single Judge notes rule 103(1) of the Rules of Procedure and Evidence, pursuant to which the Chamber may, at any stage of the proceedings, “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”.

⁷ Pre-Trial Chamber II, “Decision Requesting Observations on the Place of Proceedings for the Purposes of the Confirmation of Charges Hearing”, ICC-01/09-02/11-102.

⁸ ICC-01/09-02/11-112, para. 19.

⁹ ICC-01/09-02/11-112, paras 11-14.

¹⁰ ICC-01/09-02/11-112, para. 15.

¹¹ ICC-01/09-02/11-112, para. 17.

7. This Chamber has already stated that it will resort, at its discretion, to *amicus curiae* observations only on an exceptional basis, when it is of the view that such observations providing specific expertise are needed.¹²

8. In the present instance, the Chamber is in the process of assessing, in line with articles 3(1) to (3) and 4(2) of the Statute and rule 100 of the Rules, the desirability and feasibility of conducting the confirmation of charges hearing on the territory of the Republic of Kenya. For this purpose, the Chamber has already requested observations on the matter from the parties and on behalf of the victims, which is sufficient for the purposes of rule 100 of the Rules. Under these circumstances, the Single Judge is of the view that receiving observations from the Applicant on the issues proposed in the Application is not desirable for the determination of the case. The Application must therefore be rejected.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

rejects the Application.

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



Judge Ekaterina Trendafilova
Single Judge

¹² Pre-Trial Chamber II, "Decision on the 'Request by Ms. Moraa Gesicho to Appear as Amicus Curiae'", ICC-01/09-02/11-54, para. 15; Pre-Trial Chamber II, "Decision on the 'Request for leave to submit Amicus Curiae Observations on behalf of the Kenyan Section of the International Commission of Jurists Pursuant to Rule 103 of the Rules of Procedure and Evidence'", ICC-01/09-02/11-87, para. 8; 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, para. 8.

Dated this Monday, 13 June 2011

At The Hague, The Netherlands