

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

**Original: English**

**No. ICC-01/09-02/11 OA**

**Date: 21 July 2011**

**THE APPEALS CHAMBER**

**Before:** Judge Daniel David Ntanda Nsereko, Presiding Judge  
Judge Sang-Hyun Song  
Judge Akua Kuenyehia  
Judge Erkki Kourula  
Judge Anita Ušacka

**SITUATION IN THE REPUBLIC OF KENYA**

**IN THE CASE OF THE PROSECUTOR v. FRANCIS KIRIMI MUTHAURA,  
UHURU MUIGAI KENYATTA and MOHAMMED HUSSEIN ALI**

**Public document**

**Order**

**on the filing of observations in relation to the Application on behalf of the Republic of Kenya for Leave to Reply to the "Prosecutions response to the 'Appeal of the Government of Kenya against the Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute'"**

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

**The Office of the Prosecutor**  
Ms Fatou Bensouda, Deputy Prosecutor  
Mr Fabricio Guariglia

**Counsel for Francis Kirimi Muthaura**  
Mr Karim A. A. Khan  
Mr Kennedy Ogeto

**Counsel for Uhuru Muigai Kenyatta**  
Mr Steven Kay  
Ms Gillian Higgins

**Counsel for Mohammed Hussein Ali**  
Mr Gregory Kehoe  
Mr Evans Monari

**States Representatives**  
Mr Geoffrey Nice  
Mr Rodney Dixon

**REGISTRY**

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**Registrar**  
Ms Silvana Arbia



The Appeals Chamber of the International Criminal Court,

In the appeal of the Republic of Kenya against the decision of Pre-Trial Chamber II entitled “Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute” of 30 May 2011 (ICC-01/09-02/11-96),

Having before it the “Application on behalf of the Government of Kenya for Leave to Reply to the ‘Prosecution’s response to the “Appeal of the Government of Kenya against the Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute””, dated 19 July 2011 and registered on 20 July 2011 (ICC-01/09-02/11-180 OA, hereinafter: “Application to Reply”),

Pursuant to regulation 28 of the Regulations of the Court,

Unanimously,

*Issues* the following

## ORDER

The Prosecutor, Mr Muthaura, Mr Kenyatta and Mr Ali shall file on Tuesday 26 July 2011, any observations as to whether the Appeals Chamber should grant or reject the Application to Reply.

## REASONS

1. On 20 June 2011, the Republic of Kenya filed the “Document in Support of the ‘Appeal of the Government of Kenya against the decision on the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19 (2) (b) of the Statute’”<sup>1</sup>

2. On 12 July 2011, the Prosecutor filed the “Prosecution’s response to the ‘Appeal of the Government of Kenya against the Decision on the Application by the

<sup>1</sup> ICC-01/09-02/11-130. A Corrigendum thereto was filed on 21 June 2011, ICC-01/09-02/11-130-Corr.

Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute”<sup>2</sup> (hereinafter: “Response to the Document in Support of the Appeal”).

3. On 20 July 2011, the Republic of Kenya filed the Application to Reply requesting that leave to reply to the Response to the Document in Support of the Appeal be granted until 2 August 2011. In support of its Application to Reply the Republic of Kenya avers that the Response to the Document in Support of the Appeal raises many “fundamental legal, factual and procedural questions” which “cover new ground” and “which holds great importance to the Government of Kenya.”<sup>3</sup> In addition, the Republic of Kenya submits that an opportunity to reply would enable it to respond to any matters raised by the Prosecutor in his response to the observations of the Victims which may serve to supplement the views already expressed<sup>4</sup> and will allow the Republic of Kenya an opportunity “to provide the Appeals Chamber with the most up-to-date information on the investigation into the six Suspects before the Appeals Chamber renders its decision.”<sup>5</sup>

4. In the circumstances, the Appeals Chamber considers it desirable to elicit the views of the parties on this issue. The Appeals Chamber therefore requests the Prosecutor, Mr Muthaura, Mr Kenyatta and Mr Ali to file any observations they may have as to whether the Application to Reply should be granted or rejected

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



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**Judge Anita Ušacka**  
**On behalf of the**  
**Presiding Judge**

Dated this 21<sup>st</sup> day of July 2011

At The Hague, The Netherlands

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<sup>2</sup> ICC-01/09-02/11-168.

<sup>3</sup> Application to Reply, para. 7. a.

<sup>4</sup> Ibid., para. 7.b.

<sup>5</sup> Ibid., para.7.c.