

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 30 May 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 granting the Government of Kenya leave to reply

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 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

Mr Githu Muigai, Attorney General,
Republic of Kenya

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others

Trial Chamber V(B) (“Chamber”)¹ of the International Criminal Court , in the case of *The Prosecutor v. Uhuru Muigai Kenyatta*, pursuant to Regulations 24(5) and 34 of the Regulations of the Court (“Regulations”), issues the following Decision granting the Government of Kenya leave to reply (“Decision”).

1. On 8 April 2013, the Government of the Republic of Kenya (“Kenyan Government”) filed the “Government of Kenya’s Submissions on the Status of Cooperation with the International Criminal Court, or, in the alternative, Application for Leave to file Observations pursuant to Rule 103 (1) of the Rules of Procedure and Evidence”.²
2. On 24 April 2013, the Chamber granted the Kenyan Government’s request to submit observations pursuant to Rule 103(1) of the Rules of Procedure and Evidence and accepted the submissions in the application as those observations.³ In the same decision, the Chamber directed the parties and participants to submit any response to the Government of Kenya’s observations within 14 days.⁴
3. The Common Legal Representative for Victims (“CLR”) filed his response on 6 May 2013 (“CLR Response”).⁵ The Office of the Prosecutor filed its response on 8 May 2013 (“Prosecution Response”).⁶ The defence team for Mr Kenyatta did not file a response.

¹ Where “Chamber” is used in this decision it refers to both the Trial Chamber V in its composition as until 21 May 2013 and to Trial Chamber V(B) as composed by the Presidency’s Decision constituting Trial Chamber V(a) and Trial Chamber V(b) and referring to them the cases of *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang and The Prosecutor v. Uhuru Muigai Kenyatta*, 21 May 2013, ICC-01/09-02/11-739.

² ICC-01/09-02/11-713.

³ Decision on the Government of Kenya’s application for leave to file observations pursuant to Rule 103(1) of the Rules of Procedure and Evidence, ICC-01/09-02/11-725.

⁴ ICC-01/09-02/11-725, para. 3.

⁵ Victim’s Response to the Government of Kenya’s Submissions on the Status of Cooperation with the International Criminal Court, ICC-01/09-02/11-731.

⁶ Prosecution Response to the “Government of Kenya’s Submissions on the Status of Cooperation with the International Criminal Court, or, in the alternative, Application for Leave to file Observations pursuant to Rule 103(1) of the Rules of Procedure and Evidence” (ICC-01/09-02/11-713), ICC-01/09-02/11-733-Conf-Exp. A public redacted version was filed on 10 May 2013.

4. On 24 May 2013, the Registry transmitted to the Chamber a request from the Kenyan Government seeking firstly, leave to reply the Prosecution Response and, secondly, in the event leave is granted, an extension of the time limit specified in Regulation 34(c) of the Regulations to allow the reply to be filed within ten days of notification of the Trial Chamber's decision ("Request").⁷
5. The Kenyan Government requests leave to reply to six specific matters addressed in the Prosecution Response which, in its view, constitute "misrepresentations of facts".⁸
6. Pursuant to Regulation 24(5) of the Regulations, "Participants may only reply to a response with the leave of the Chamber, unless otherwise provided in these Regulations." Pursuant to Regulation 34, a reply is ordinarily to be filed, subject to leave being granted, within 10 days of notification of the relevant response. However this time frame may be altered by the Chamber.
7. The Chamber notes that although the Request was submitted after the expiration of the 10 day time limit set out in Regulation 34(c) of the Regulations, the Chamber is exceptionally prepared to accept the Request given that the Kenyan Government is neither a party nor a participant to the proceedings and, as such, may not be fully aware of the applicable deadlines. The Chamber further notes that the Kenyan Government foreshadowed in the Request that it would also be seeking leave to reply to the CLRV Response.⁹ To date, no such request has been filed with the Chamber and it is accordingly not ruled upon in this Decision.

⁷ Registry Transmission of a document received from the Government of the Republic of Kenya, represented by the Attorney General of Kenya, ICC-01/09-02/11-743 and Annex 1. The Request was filed as a public document. On 27 May 2013, the Registry transmitted a confidential *ex-parte*, Kenyan Government and Prosecution only, version of the Request to the Chamber. ICC-01/09-02/11-745-Conf-Exp and Annex 1.

⁸ ICC-01/09-02/11-743-Anx1, para. 9.

⁹ ICC-01/09-02/11-743-Anx1, para. 21; ICC-01/09-02/11-745-Conf-Exp-Anx1, para. 24.

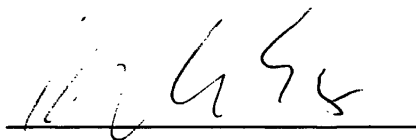
8. With respect to the merits of the Request, the Chamber recalls that it is not presently seized of any application for a ruling in respect of the Kenyan Government's compliance with its obligations under Part 9 of the Rome Statute. Notwithstanding, in the interests of completeness of the judicial record, the Chamber grants the Kenyan Government leave to file a reply in respect of the six points identified in the Request .

For the foregoing reasons, the Chamber hereby:

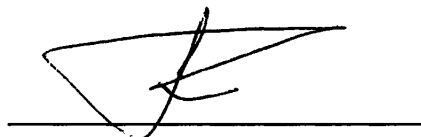
GRANTS the Kenyan Government leave to file a reply to the Prosecution's Response in accordance with paragraph 8 of the present Decision;

DIRECTS the Government of Kenya to file its reply within 10 days of notification of this Decision.

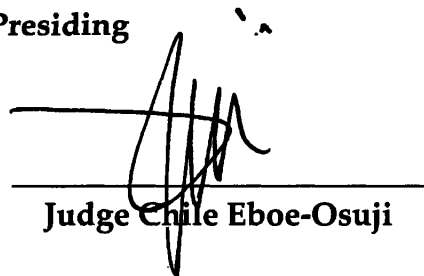
Done in both English and French, the English version being authoritative.



Judge Kuniko Ozaki, Presiding



Judge Robert Fremr



Judge Chile Eboe-Osuji

Dated 30 May 2013

At The Hague, The Netherlands