



**Original: English**

**No. ICC-01/09-02/11 OA 5**

**Date: 18 May 2015**

**THE APPEALS CHAMBER**

**Before:**

**Judge Silvia Fernández de Gurmendi**

**Judge Sanji Mmasenono Monageng**

**Judge Howard Morrison**

**Judge Piotr Hofmański**

**Judge Bertram Schmitt**

**SITUATION IN THE REPUBLIC OF KENYA**

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

**Public document**

**Decision on the Government of Kenya's request for an extension of time to file its  
response to the observations of the *Amicus Curiae***

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

**The Office of the Prosecutor**  
Ms Fatou Bensouda, Prosecutor  
Ms Helen Brady

**Counsel for the Defence**  
Mr Steven Kay  
Ms Gillian Higgins

**Legal Representative of Victims**  
Mr Fergal Gaynor

**States Representatives**  
Mr Githu Muigai, SC, Attorney General  
of the Republic of Kenya

**REGISTRY**

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**Registrar**  
Mr Herman von Hebel

The Appeals Chamber of the International Criminal Court,

In the appeal of the Prosecutor against the decision of Trial Chamber V(B) entitled “Decision on Prosecution’s application for a finding of non-compliance under Article 87(7) of the Statute” of 3 December 2014 (ICC-01/09-02/11-982),

Having before it “The Government of the Republic of Kenya’s Request for extension of time to file its Response to the ‘*Amicus Curiae* Observations of the Africa Centre for Open Governance pursuant to Rule 103 of the Rules of Procedure and Evidence” of 15 May 2015 (ICC-01/09-02/11-1023),

*Renders* the following

## DECISION

The above-mentioned request is granted. The Government of the Republic of Kenya may file a response to the “*Amicus Curiae* Observations of the Africa Centre for Open Governance pursuant to Rule 103 of the Rules of Procedure and Evidence” of 8 May 2015 (ICC-01/09-02/11-1020) by 16h00 on Friday, 22 May 2015.

## REASONS

### I. PROCEDURAL HISTORY

1. On 30 April 2015, the Appeals Chamber granted the Africa Centre for Open Governance’s request to submit *amicus curiae* observations in the present appeal and, *inter alia*, set the deadline for the filing of responses to those observations to Friday, 15 May 2015.<sup>1</sup>

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<sup>1</sup> [“Order in relation to the Africa Centre for Open Governance’s ‘Request for Leave to Submit \*Amicus Curiae\* Observations Pursuant to Rule 103 of the Rules of Procedure and Evidence’” \(ICC-01/09-02/11-1018 \(OA 5\), p. 3.](#)

2. On 8 May 2015, the Africa Centre for Open Governance filed its *amicus curiae* observations (hereinafter: “*Amicus Curiae* Observations”).<sup>2</sup>

3. On 15 May 2015, the Government of the Republic of Kenya (hereinafter: “Kenya”) filed a request pursuant to regulation 35 of the Regulations of the Court, seeking an extension of the time limit to file its response (hereinafter: “Kenya’s Request”).<sup>3</sup> Kenya submits that it was only notified of the *Amicus Curiae* Observations on 12 May 2015 at 11h15, which does not permit it to “effectively respond to [the *Amicus Curiae* Observations] in the time remaining”.<sup>4</sup>

4. On 15 May 2015, the Prosecutor filed a response, submitting that, while she does not oppose Kenya’s Request,<sup>5</sup> Kenya should not use its response to the *Amicus Curiae* Observations to litigate issues that are outside or exceed the scope of the Prosecutor’s appeal or to repeat arguments already made in its response to the Prosecutor’s appeal.<sup>6</sup>

## II. MERITS

5. Pursuant to regulation 35 (2) of the Regulations of the Court, a Chamber may extend a time limit if “good cause” for such an extension is shown by the applicant.

6. The Appeals Chamber acknowledges that Kenya was again not notified of the *Amicus Curiae* Observations in an appropriately timely manner by the Registrar, but was instead only notified of the *Amicus Curiae* Observations on 12 May 2015. The Appeals Chamber also notes that, while the issue of belated notifications has now been remedied, this solution was not yet in place when Kenya was notified of the *Amicus Curiae* Observations.

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<sup>2</sup> “[Amicus Curiae Observations of the Africa Centre for Open Governance pursuant to Rule 103 of the Rules of Procedure and Evidence](#)”, ICC-01/09-02/11-1020 (OA 5).

<sup>3</sup> “[The Government of the Republic of Kenya’s Request for extension of time to file its Response to the Amicus Curiae Observations of the Africa Centre for Open Governance pursuant to Rule 103 of the Rules of Procedure and Evidence](#)”, ICC-01/09-02/11-1023 (OA 5).

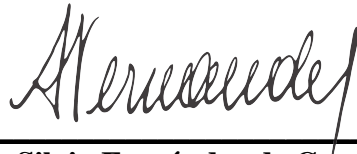
<sup>4</sup> [Kenya’s Request](#), paras 3-4.

<sup>5</sup> “Prosecution response to the Government of Kenya’s request for extension of time to file its response to the “*amicus curiae* observations of the Africa Centre for Open Governance pursuant to Rule 103 of the Rules of Procedure and Evidence””, ICC-01/09-02/11-1027 (OA 5) (hereinafter: “Response”), para. 1.

<sup>6</sup> Response, paras 1-3.

7. Given that the late notification is wholly attributable to the Court and in light of the short period of time between the notification and the relevant deadline, the Appeals Chamber considers that Kenya has shown “good cause” for an extension of time. The Appeals Chamber therefore grants Kenya’s Request and extends the deadline for Kenya to file its response to the *Amicus Curiae* Observations to 16h00 on Friday, 22 May 2015.

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



**Judge Silvia Fernández de Gurmendi**

**Presiding Judge**

Dated this 18th day of May 2015

At The Hague, The Netherlands