

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 23 April 2013

TRIAL CHAMBER V

Before: Judge Kuniko Ozaki, Presiding
Judge Christine Van den Wyngaert
Judge Chile Eboe-Osuji

SITUATION IN THE REPUBLIC OF KENYA

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

Public

Public Redacted Version of the Defence 'Request for Permission to Provide Submissions on the Prosecution's 17 April 2013 Disclosure of Material Relating to its Initial Contact with OTP-11' (ICC-01/09-02-11-721-Conf, 18-04-2013)

Source: Defence for Uhuru Muigai Kenyatta

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

The Office of the Prosecutor
 Fatou Bensouda, Prosecutor
 Adesola Adeboyejo, Trial Attorney

Counsel for the Defence
 Steven Kay QC
 Gillian Higgins

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
 (Participation/Reparation)**

**The Office of Public Counsel for
 Victims**

**The Office of Public Counsel for the
 Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar
 Herman Von Hebel
Deputy Registrar
 Didier Daniel Preira

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
 Section**

Other

I. INTRODUCTION

1. The Defence for Uhuru Muigai Kenyatta hereby seeks permission to provide written submissions regarding evidence newly disclosed by the Prosecution on 17 April 2013 concerning OTP-11 that is directly relevant to the subject matter and relief sought in the evidential¹ and legal² submissions filed on 28 March 2013.

II. PROCEDURAL HISTORY

2. On 17 April 2013, at 17.00, the Prosecution disclosed six items of incriminatory evidence and an accompanying letter relating to the Prosecution's initial contact with OTP-11 in 2011.³ Of the six items disclosed, the documents relevant to the current application concern two transcripts of the Prosecution's screening interview with OTP-11 ("screening transcripts"), which took place on [REDACTED] 2011.⁴

III. SUBMISSIONS

3. The Defence seeks the permission of the Trial Chamber to provide written submissions regarding the newly disclosed evidence concerning OTP-11, as crucially, the screening transcripts contain information that the Prosecution was bound to disclose to the Defence under Article 67(2) for the purpose of the Confirmation Hearing. The screening transcripts, disclosed to the Defence for

¹ ICC-01/09-02/11-707-Conf.

² ICC-01/09-02/11-706.

³ KEN-OTP-0093-0280_R01 ; KEN-OTP-0097-0033_R01 ; KEN-OTP-0097-0127_R01; KEN-OTP-0097-0144_R01 ; KEN-OTP-0097-0160_R01 ; KEN-OTP-0097-0184_R01.

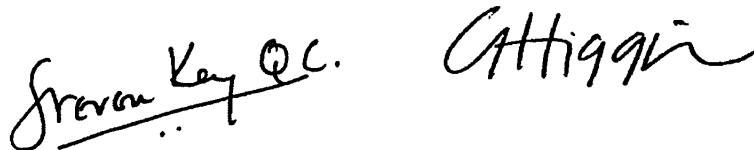
⁴ KEN-OTP-0097-0160_R01 ; KEN-OTP-0097-0184_R01.

the first time on 17 April 2013, go to the current issues before the Trial Chamber. OTP-11 was a witness whose evidence was relied upon by the OTP at the Confirmation Hearing, and is also relied upon in support of its submissions in the current legal arguments before the Trial Chamber.

VI. RELIEF

4. For the reasons set out above, the Defence respectfully requests that the Chamber:
 - a. Grant the Defence permission to provide submissions on the screening transcripts of OTP-11.

Respectfully submitted,



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Steven Kay QC and Gillian Higgins
On behalf of Uhuru Muigai Kenyatta

Dated this 23rd day of April 2013
At London, England