



Original: English

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

Date: 13 August 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 document**

**Registry observations in relation to the “Order for further observations on where  
the Court shall sit for Trial” (ICC-01/09-02/11-781)**

**Source:** The Registry

Document 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

**Counsel for Uhuru Muigai Kenyatta**

Mr Steven Kay

Ms Gillian Higgins

**Legal Representatives of the Victims**

Mr Fergal Gaynor

**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**

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**REGISTRY**

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**Registrar**

Mr Herman von Hebel

**Counsel Support Section**

**Deputy Registrar**

Mr Didier Preira

**Victims and Witnesses Unit**

Mr Patrick Craig

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

The Registry of the International Criminal Court (the “Court”);

NOTING the “Defence application for a change of place where the Court shall sit for Trial” submitted by the Defence for Francis Kirimi Muthaura on 3 December 2012<sup>1</sup>;

NOTING the “Decision on “Defence Application for a change of place where the Court shall sit for Trial” issued by the Presidency on 21 December 2012<sup>2</sup>;

NOTING the “order requesting observations in relation to the “Defence application for change of place where the Court shall sit for Trial” issued by Trial Chamber V on 17 January 2013<sup>3</sup>;

NOTING the “Registry observations in relation to the “Defence application for change of place where the Court shall sit for Trial” (ICC-01/09-02/11-602), submitted by the Registry on 7 February 2013<sup>4</sup>;

NOTING the “Order for further observations on where the Court shall sit for trial”, rendered by Trial Chamber V (b) on 29 July 2013<sup>5</sup>;

CONSIDERING that “the Chamber directs the [...] Registry to file, no later than 13 august 2013, observations on (1) the propriety of the Chamber considering the matter of the place of the trial on its own, as set out in paragraph 7 above, and (2) the issue

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<sup>1</sup> ICC-01/09-02/11-551

<sup>2</sup> ICC-01/09-02/11-581

<sup>3</sup> ICC-01/09-02/11-602

<sup>4</sup> ICC-01/09-02/11-632

<sup>5</sup> ICC-01/09-02/11-632

whether the opening of trial and/or another appropriate portion of trial shall be held in Kenya or Tanzania”<sup>6</sup>;

TRANSMITS, respectfully, to the Chamber, the following observations;

**A. Observations on the propriety of the Chamber considering the matter of the place of trial on its own**

1. With regards to the first instruction from the Chamber, the Registry submits that, considering its specific position as per article 43 of the Rome Statute, no specific views are presented regarding the propriety of the Chamber considering the matter of the place of trial on its own.

**B. Observations on the issue whether the opening of trial and/or another appropriate portion of trial shall be held in Kenya or Tanzania**

2. The Registry respectfully refers to its previous submission of 7 February 2013 and would like to provide the following relevant (detailed) updates to the Chamber. From the onset, the Registry would like to submit that in terms of preparation, it is feasible to organise “the opening of trial and or/another appropriate portion of trial either in Kenya or Tanzania”:

*Legal issues*

3. Further to the previous submission, the Registry would like to inform the Chamber that the United Republic of Tanzania indicated, through a letter received from the Ministry of Foreign Affairs, [it] “will work to ensure that all legal

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<sup>6</sup> ICC-01/09-02/11-781

requirements related to adding the ICC in the Third Schedule to the Diplomatic and Consular Immunities and Privileges Act are finalized”.

### *Security*

4. The ICC will be dependent on the state cooperation irrespective of the fact whether the hearings take place in Kenya or Tanzania. Both Kenyan and Tanzanian government have assured the Court of their total cooperation with regards to *in situ*.

### *Location and period for in situ trials*

5. Taking into consideration the necessary time required for preparation, the Registry submits that it is possible to organise hearings in both Kenya and Tanzania in the case of the Prosecutor v. Uhuru Muigai Kenyatta.

6. Pending final figures on the costs involved with *in situ* proceedings, the Registry reiterates its suggestion to limiting the proceedings away from the Court to a relatively short period during which the opening statements in the case could be heard and maybe one expert witness be called to testify.

### *Languages*

7. With regards to language requirements, the Registry submits that English and French interpreters will have to travel from the ICC in case the trial takes place in Kenya.

8. English and French interpreters and one Swahili interpreter are available at the ICTR. However, there would still be a need to have ICC staff (team leader and 01 ICC interpreter/booth) present with also an additional Swahili interpreter to be found.

### *Court Management Services*

9. A Court Officer from the ICC will be needed for the hearing irrespective of the fact whether the hearings take place in Kenya or at the International Criminal Tribunal for Rwanda (hereinafter "ICTR"); A Court Usher will not be required either in Nairobi or Arusha;
10. Regarding the court reporters, three English court reporters will be needed either in Kenya or in the ICTR; In both scenarios, French transcripts would be outsourced. As such, there will be no need to have any ICC French court reporters present;
11. One audio-visual assistant is required in Nairobi. Such a function might not be necessary if hearings are held at the ICTR.

### *Financial*

12. Pending the final composition, decision on the exact location, duration of the *in situ* proceedings and the services, if any, to be provided by possible local partners, final and exact calculations can only be provided at a later stage.

### *Public information*

13. In any event, 05 staff members are needed regardless the location of the *in situ* hearings. However, pending the location, staff from either the ICC Field Office Nairobi or the ICTR could be requested to assist.

### *Logistics*

14. Following Registry assessments undertaken, there are no logistical impediments to organising *in situ* proceedings

### *Information technology*

15. Following assessments undertaken by the Registry in the case of the Prosecutor v. William Samoei Ruto and Joshua Arap Sang, the relevant and necessary facilities can be made available or are already available in Kenya and Tanzania (Arusha – ICTR) respectively.

## C. CONCLUSION

### *Feasibility*

16. With regards to the updated observations provided above, the Registry respectfully submits that there are no technical or logistical obstacles regarding any *in situ* case scenario (opening statements and maybe one expert witness) either in Kenya or Tanzania considering the necessary set-up and preparation time required (a minimum of 2 months).

### *Location*

17. Based on the updated observations made above, the Registry respectfully submits that, in the event it is decided to organise “the opening of trial and or/another appropriate portion of trial” in the case of the Prosecutor v. Uhuru Muigai Kenyatta, this can be done either in Kenya or Tanzania.

### *Duration*

18. With regards to the duration of the *in situ* proceedings, the Registry respectfully suggests, in the event it is decided to organize *in situ* proceedings, limiting the proceedings away from the Court to a relatively short period during

which the opening statements in the case could be heard and maybe one expert witness be called to testify.



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For the Registrar  
Didier Preira  
Deputy Registrar

Dated this 13 August 2013

At The Hague in The Netherlands