

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 28 October 2013

**TRIAL CHAMBER V(B)**

**Before:** Judge Kuniko Ozaki, Presiding  
Judge Robert Fremr  
Judge Chile Eboe-Osuji

**SITUATION IN THE REPUBLIC OF KENYA**

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

**Public with Confidential Annex A**

**Defence Submission of Uhuru Kenyatta's Waiver of Right to be Present at Trial**

**Source:** Defence for President 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  
James Stewart  
Benjamin Gumpert

**Counsel for the Defence**

Steven Kay QC  
Gillian Higgins

**Legal Representatives of the Victims**

Fergal Gaynor

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants  
(Participation/Reparation)**

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

**States' Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Herman Von Hebel

**Counsel Support Section**

**Victims and Witnesses Unit**

Patrick Craig

**Detention Section**

**Victims Participation and Reparations Other  
Section**

## I. INTRODUCTION

1. The Defence for Uhuru Kenyatta ('Defence') hereby notifies Trial Chamber V(B) ('Chamber') that, after consultation with Counsel, Mr Kenyatta reviewed and signed the waiver of his right to be present at trial. A copy of the waiver is attached at Annex A and is filed confidentially as it pertains to the waiver of Mr Kenyatta's personal right and contains personal information. The original signed waiver is filed with the Registry concurrently.

## II. PROCEDURAL HISTORY

2. On 3 September 2013, the Defence notified the Chamber that it wished to raise the issue of Mr Kenyatta's conditional excusal from trial at the status conference on 6 September 2013.<sup>1</sup>
3. On 6 September 2013, the Defence made an oral application for Mr Kenyatta's excusal from continuous presence at trial.<sup>2</sup> The Prosecution and Common Legal Representative of the Victims opposed the application.<sup>3</sup>
4. On 23 September 2013, the Defence filed the 'Defence Request for Conditional Excusal from Continuous Presence at Trial.'<sup>4</sup> On 1 October 2013, the Prosecution<sup>5</sup> and Common Legal Representative of the Victims<sup>6</sup> filed submissions opposing the Defence's request.

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<sup>1</sup> Email sent by the Defence to the Chamber on 3 September 2013 at 20h20.

<sup>2</sup> ICC-01/09-02/11-T-26-ENG.

<sup>3</sup> *Ibid.*

<sup>4</sup> ICC-01/09-02/11-809.

<sup>5</sup> ICC-01/09-02/11-818.

<sup>6</sup> ICC-01/09-02/11-819.

5. On 18 October 2013, the Chamber, by majority, partially granted the Defence's request.<sup>7</sup> The Chamber stipulated that: Mr Kenyatta must be physically present in the courtroom for certain specified hearings; Mr Kenyatta's absence must be directed towards the performance of his duties of State; and the Defence must file a waiver of Mr Kenyatta's right to be present at trial with the Registry.

### III. SUBMISSIONS

6. The Defence hereby submits at Confidential Annex A a copy of Mr Kenyatta's waiver of his right to be present at trial.

Respectfully submitted,




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Steven Kay QC and Gillian Higgins

On behalf of Uhuru Muigai Kenyatta

Dated this 28<sup>th</sup> day of October 2013

At London, England

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<sup>7</sup> ICC-01/09-02/11-830.