

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 24 April 2013

TRIAL CHAMBER V

Before: Judge Kuniko Ozaki, Presiding Judge
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

**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**

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

The Office of the Prosecutor

Ms Fatou Bensouda

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

SC 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 (“Chamber”) of the International Criminal Court (“Court”), in the case of *The Prosecutor v. Uhuru Muigai Kenyatta*, pursuant to Rule 103 of the Rules of Procedure and Evidence (“Rules”) and Regulation 34(1) of the Regulations of the Court (“Regulations”), issues this Decision on the Government of Kenya's application for leave to file observations pursuant to Rule 103 of the Rules of Procedure and Evidence.

1. On 8 April 2013, the Government of the Republic of Kenya (“Government of Kenya”) 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” (“Application”).¹ In the Application, the Government of Kenya describes its position on issues related to cooperation with the Court, concluding its submissions as follows (emphasis in original):

46. The Kenyan Government hereby informs the Honourable Trial Chamber that it is available to make submissions on issues of cooperation, if required. Additionally, the Kenyan Government respectfully requests that an order be issued to the parties and participants in the Kenya Situation requiring that applications or complaints of non-cooperation by the Kenyan Government be made **on notice**, in order that the Kenyan Government is apprised of the complaint and given the opportunity to respond.

47. In the event that the Trial Chamber determines that the Government of Kenya must apply pursuant under Rule 103 of the Rules, the Kenyan Government hereby respectfully applies for leave to file observations with the Chamber pursuant to Rule 103(1) of the Rules on the history and status of its cooperation with the Prosecution and Court, as well as on the specific allegations made by the Prosecution in filing ICC-01/09-02/11-683-Red. If leave is granted pursuant to Rule 103(1), the Kenyan Government respectfully requests that its substantive submissions in this filing on the matter of cooperation be treated as its written observations for the purposes of Rule 103.²

2. Considering that the Government of Kenya is not a party to or participant in the current proceedings, the Chamber determines that leave is required pursuant to Rule 103(1) of the Rules in order for it to file submissions. Rule

¹ ICC-01/09-02/11-713.

² Application, ICC-01/09-02/11-713, paras 46-47.

103(1) of the Rules provides that “[a]t any stage of the proceedings, a Chamber may, if it considers it desirable for the proper determination of the case, invite or grant leave to a State [...] to submit, in writing or orally, any observation on any issue that the Chamber deems appropriate”. Given the desirability of fully understanding the status of cooperation between organs of the Court and the Government of Kenya, the Chamber considers it appropriate to grant leave to the Government of Kenya to file observations on this issue and, further, to accept the submissions in the Application as these observations.

3. The Chamber also confirms that, in accordance with Rule 103(2) of the Rules,³ the Office of the Prosecutor and the defence team of Mr Kenyatta will be entitled to respond to the submissions made in the Application. The Chamber also considers that the Legal Representative of Victims should be given an opportunity to respond. Due to the need to ensure that any outstanding cooperation concerns are addressed in an expeditious manner, the Chamber considers it appropriate, in accordance with Regulation 34(1) of the Regulations, to set a shortened timeframe of 14 days for submission of any such responses.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

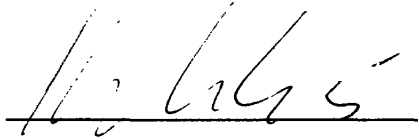
GRANTS the Government of Kenya leave, pursuant to Rule 103(1) of the Rules, to submit observations on issues related to its cooperation with the Court;

ACCEPTS the submissions in the Application as these observations; and

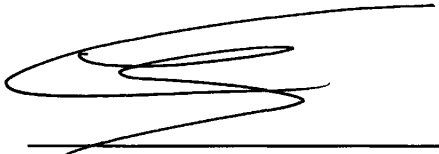
DIRECTS the parties and participants to submit any response to the Government of Kenya’s observations within 14 days of notification of the present decision.

³ “The Prosecutor and the defence shall have the opportunity to respond to the observations submitted under sub-rule 1”.

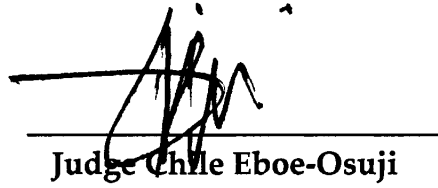
Done in both English and French, the English version being authoritative.



Judge Kuniko Ozaki, Presiding



Judge Christine Van den Wyngaert



Judge Chile Eboe-Osuji

Dated this 24 April 2013

At The Hague, The Netherlands