



Original: English

No.: ICC-01/09-02/11 OA01

Date: 11 August 2011

THE APPEALS CHAMBER

Before: Judge Daniel David Ntanda Nsereko, Presiding Judge
Judge Sang-Hyun Song
Judge Akua Kuenyehia
Judge Anita Ušacka
Judge Erkki Kourula

SITUATION IN THE REPUBLIC OF KENYA

***IN THE CASE OF THE PROSECUTOR v. FRANCIS KIRIMI MUTHAURA,
UHURU MUIGAI KENYATTA AND MOHAMMED HUSSEIN ALI***

Public Document

**Prosecution's Response to the Government of Kenya "Request for an Oral Hearing
Pursuant to Rule 156(3)"**

Source: Office of the Prosecutor

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

The Office of the Prosecutor

Counsel for the Defence

Counsel for Francis Kirimi Muthaura:

Karim A. Khan and Kennedy Ogetto

Counsel for Uhuru Muigai Kenyatta:

Steven Kay QC and Gillian Higgins

Counsel for Mohammed Hussein Ali:

Evans Monari and Gershom Otachi

Bw' omanwa

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

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

Paolina Massidda

States Representatives

Amicus Curiae

Geoffrey Nice

Rodney Dixon

REGISTRY

Registrar

Defence Support Section

Ms Silvana Arbia

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

1. On 3 August 2011 the Government of Kenya (“GoK”) requested an Oral Hearing pursuant to Rule 156(3) in its admissibility appeal.¹ The Chamber solicited the views of the parties and victims participating in the appeal.²
2. The Prosecution acknowledges the value of oral submissions as a general rule to enhance public understanding of the Court’s processes and in particular when it will enable the Chamber to ask questions or seek clarification of facts or complex legal points. That said, the Prosecution takes no position on the GoK’s specific request. While the Prosecution does not agree that the pending issue is complex, ultimately it is for the Chamber to determine whether an oral hearing could assist it in deciding the case.
3. However, the Prosecution requests that, if there is an oral hearing, parties and participants be expressly barred from offering new evidence or making new arguments, which would be inconsistent with the “corrective nature”³ of an appeal as a review of proceedings below and would unfairly prejudice the other parties and participants.



Luis Moreno-Ocampo,
Prosecutor

Dated this 11th day of August 2011

At The Hague, The Netherlands

¹ ICC-01/09-02/11-210OA. The GoK filed its appeal on 20 June 2011 (ICC-01/09-02/11-130-Corr). The Prosecution responded on 12 July (ICC-01/09-02/11-168).

² ICC-01/09-02/11-202.

³ ICC-01/09-02/11-202 OA, para. 12.