

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 19 June 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

**Defence response to the “Victims’ request for access to
confidential filings and evidence”**

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

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Legal Representatives of the Victims

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Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
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Victims and Witnesses Unit

Patrick Craig

Detention Section

Victims Participation and Reparations Section

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Other

I. INTRODUCTION

1. The Defence hereby responds to the Victims' Common Legal Representative's ("Victims' Representative") 23 May 2013 'Request for access to confidential filings and evidence' ("Request").¹ In his Request, the Victims' Representative cited the failure of the Prosecution and Defence to notify him of the unredacted versions of 21 documents "where it appears that the redacted parts might be relevant to the personal interests of the victims".²
2. Ten of the 21 documents cited by the Victims' Representative were filed by the Prosecution. In its 14 June 2013 'Prosecution response to the "Victims' request for access to confidential filings and evidence"', the Prosecution indicated that it has no objection to the notification of these ten documents to the Victims' Representative.³
3. Four of the 21 documents were filed by the Defence for Francis Muthaura,⁴ and the remaining seven by the Defence for Uhuru Kenyatta ("Defence").⁵ The Defence notes that the Prosecution has no objection to the notification of any of these documents to the Victims' Representative, but that it considers the Defence to be best placed to advise the Chamber as to whether there is any reason why the documents should not be disclosed.⁶

¹ ICC-01/09-02/11-742.

² ICC-01/09-02/11-742, para. 12.

³ ICC-01/09-02/11-761.

⁴ ICC-01/09-02/11-617, with confidential and *ex parte* Annex B; ICC-01/09-02/11-628, with confidential Annexes A-D; ICC-01/09-02/11-656, with confidential Annexes A1, E, and F; and ICC-01/09-02/11-678, with confidential Annexes A-E, and G.

⁵ ICC-01/09-02/11-481, with confidential Annexes A and B; ICC-01/09-02/11-681; ICC-01/09-02/11-707; ICC-01/09-02/11-717, with confidential Annexes A-E; ICC-01/09-02/11-719, with confidential Annexes A-E; ICC-01/09-02/11-721; ICC-01/09-02/11-723, with confidential Annex A.

⁶ ICC-01/09-02/11-761, para. 2.

II. SUBMISSIONS

(A) Documents filed by the Defence for Uhuru Kenyatta

4. The Defence has no objection to the notification to the Victims' Representative of the following seven documents and their attendant annexes:

- ICC-01/09-02/11-481, with confidential Annexes A and B
- ICC-01/09-02/11-681
- ICC-01/09-02/11-707
- ICC-01/09-02/11-717, with confidential Annexes A-E
- ICC-01/09-02/11-719, with confidential Annexes A-E
- ICC-01/09-02/11-721
- ICC-01/09-02/11-723, with confidential Annex A

(B) Documents filed by the Defence for Francis Muthaura

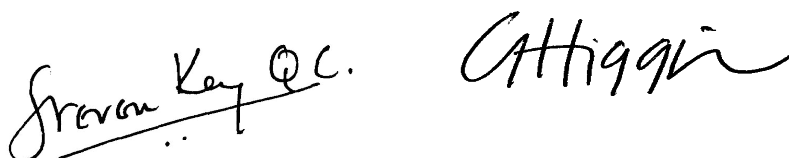
5. The Defence lacks sufficient standing to authorise the disclosure of confidential material on behalf of another party, even where that party is no longer a participant in the proceedings. However, the Defence has no material objection to the notification of the four documents requested. Further, the Defence suggests that since the charges against Mr Muthaura have now been withdrawn, his 'Application for Sanctions pursuant to Article 70 of the Statute against an OTP staff member and request for steps to be taken to ensure the protection of defence witnesses' is no longer a live issue.⁷

⁷ ICC-01/09-02/11-617.

III. CONCLUSION

6. The Defence has no objection to the Victims' Representative being granted access to the documents listed above at paragraph 4.

Respectfully submitted,

The image shows two handwritten signatures in black ink. On the left, the signature reads 'Steven Kay QC.' with a horizontal line drawn underneath. On the right, the signature is 'G Higgins' in a cursive script.

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

Dated this 19th day of June 2013

At London, England