

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 12 August 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's Observations Pursuant to Trial Chamber V(b)'s "Order for Further
Observations on Where the Court Shall Sit for Trial"**

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

Fatou Bensouda, Prosecutor

Adesola Adeboyejo, Trial Attorney

Counsel for the Defence

Steven Kay QC

Gillian Higgins

Legal Representatives of the Victims

Fergal Gaynor

Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented

(Participation/Reparation)

Applicants

The Office of Public Counsel for the Victims

The Office of Public Counsel for the Defence

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Herman Von Hebel

Counsel Support Section

Deputy Registrar

Didier Daniel Preira

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Other

I. INTRODUCTION

1. The Defence for President Uhuru Kenyatta hereby provides its observations pursuant to Trial Chamber V(b)'s ("Chamber") "Order for further observations on where the Court shall sit for trial".¹

II. OBSERVATIONS

(A) The Propriety of the Chamber Considering the Matter of the Place for Trial

2. The Defence has no objection to the Chamber considering the matter of the place of trial *proprio motu* and issuing a recommendation to the Presidency irrespective of the fact that Mr Muthaura is no longer an accused.
3. The Defence submits that the Rome Statute ("Statute") and the Rules of Procedure and Evidence ("Rules") empower the Chamber to rule on the issue *proprio motu*. Article 3(1) provides that the seat of the Court "shall be established at The Hague in the Netherlands ('the host State')." Article 3(3) provides, however, that the Court "may sit elsewhere, whenever it considers it desirable, as provided in this Statute." Pursuant to Article 62 of the Statute, the place of the trial shall be the seat of the Court, unless otherwise decided. Rule 100(1) of the Rules confirms that "where the Court considers that it would be in the interests of justice, it may decide to sit in a State other than the host State."
4. The Statute and the Rules empower the Chamber to rule on any relevant matter² or any issue concerning the conduct of the proceedings.³

¹ ICC-01/09-02/11-781.

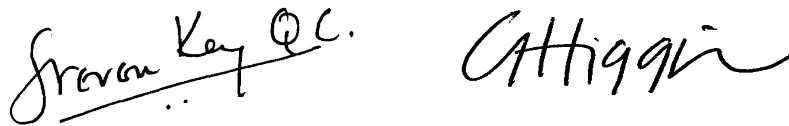
² Article 64(6)(f).

³ Rule 134.

(B) Whether the Opening of Trial and/or Another Appropriate Portion of Trial Shall Be Held in Kenya or Tanzania

5. The Defence does not object to the Chamber holding the opening of the trial or another appropriate portion of the trial in Kenya or Tanzania.
6. The Defence also notes that on 7 February 2013, neither the Registry⁴ nor the Prosecution⁵ objected in principle to the Chamber holding appropriate portions of the trial in Kenya and/or Tanzania.

Respectfully submitted,



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Steven Kay QC and Gillian Higgins

On behalf of Uhuru Muigai Kenyatta

Dated this 12th day of August 2013

At London, England

⁴ ICC-01/09-02/11-632.

⁵ ICC-01/09-02/11-631.