

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original:

No.: ICC-01/09

Date: 30 September 2013

PRE-TRIAL CHAMBER II

Before: Judge Ekaterina Trendafilova, Presiding
Judge Hans-Peter Kaul
Judge Cuno Tarfusser

SITUATION IN THE REPUBLIC OF KENYA

Public

Government of Kenya's Application Pursuant to Rule 103 (1) for Leave to file Observations Pursuant to Rule 103 (1) of the Rules of Procedure and Evidence of the International Criminal Court to file Submissions on the Proposed Motion by Kenya's National Assembly and Senate to Withdraw Kenya from the Rome Statute

Source:

Government of the Republic of Kenya, represented by the Attorney General of Kenya

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

The Office of the Prosecutor

Fatou Bensouda, Prosecutor
James Stewart, Deputy Prosecutor
Anton Steynberg, Senior Trial Lawyer

Counsel for William Ruto

Karim AA Khan QC, David Hooper QC, Essa
Faal, Shyamala Alagendra

Counsel for Joshua Sang

Joseph Kipchumba Kigen-Katwa
Ms. Caroline Buisman

Legal Representatives of the Victims

Mr. Wilfred Nderitu

Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented Applicants
(Participation/Reparation)

The Office of Public Counsel for Victims

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

Herman von Hebel

Counsel Support Section

Deputy Registrar

Didier Daniel Preira

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations Other
Section**

I. Introduction

1. Pursuant to Rule 103(1) of the Rules of Procedure and Evidence (the Rules), the undersigned, being the principal legal advisor to the Republic of Kenya, a State Party to the Rome Statute (the Statute), respectfully seeks the leave of the Trial Chamber to file an *amicus curiae* application, on behalf of the Government of Kenya, and make submissions to the Court in response to the concern raised by the Court regarding the possible impact of the resolutions made by Kenya's National Assembly and Senate (collectively constituting the Parliament), regarding Kenya's withdrawal from the Rome Statute.
2. On 5th September 2013, Kenya's National Assembly voted on a special motion to withdraw Kenya from the Rome Statute. Thereafter, on 10th September 2013, Kenya's Senate likewise approved a motion to withdraw Kenya from the Rome Statute. The *amicus curiae* wishes to address the Trial Chamber on the relevant factual matters in issue and the domestic law of Kenya on the ratification and termination of treaties, namely, the Constitution of Kenya, 2010 and the Treaty Making and Ratification Act, No. 45 of 2012.

II. Request Sought

3. The Government of Kenya respectfully applies to this Court for leave to file its submissions in relation to Kenya's Parliament resolutions on Kenya's withdrawal from the Rome Statute.

Respectfully submitted,

Githu Muigai, SC
Attorney General of the Republic of Kenya

Dated 30th September 2013
At Nairobi, Kenya