

ANNEX III

**Under Seal Ex Parte only available to the
Registry and the Prosecutor**



REPUBLIC OF KENYA

**OFFICE OF THE ATTORNEY-GENERAL
&
DEPARTMENT OF JUSTICE**

AG/SEC/14/209 Vol. V

24 February 2014

The Registrar

International Criminal Court (ICC)

P.O. Box 19519

2500 CM, The Hague

THE NETHERLANDS

**RE: REQUEST FOR CONFIRMATION AND FREEZING OR SEIZURE
OF PROPERTY AND ASSETS**

I refer to your note verbale dated 29 January 2014 and referenced NV/2014/3192/ab/ak which refers to your earlier note verbale dated 19 December 2013 and referenced NV/2013/3154/ab/ak.

In your present note verbale you sought confirmation of whether the property and assets on the 'List of alleged property and assets – Uhuru Muigai Kenyatta', allegedly contained in your note verbale Ref NV/2011/1041/ior/ab/gb/SA dated 8 April 2011, belong to Uhuru Muigai Kenyatta; and whether any of the property and assets set out in the list had been frozen or seized by the authorities of the Republic of Kenya.

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Your request is stated to be predicated on **Articles 87, 93 (1) (k) and 97** of the Rome Statute.

We have considered the legal basis of your request and wish to draw your attention to the specific provision setting out the scope of your requested assistance, that is, **Article 93 (1) (k)** which reads as follows:

- '1. States Parties shall, in accordance with the provisions of this Part and under procedures of national law, comply with requests by the Court to provide the following assistance in relation to investigations or prosecutions:
 - (k) The identification, tracing and freezing or seizure of proceeds, property and assets and instrumentalities of crimes for the purpose of eventual forfeiture, without prejudice to the rights of bona fide third parties;...

The Government of the Republic of Kenya takes the view that **Article 93 (1) (k)** of the Statute can only be properly interpreted to mean, first, that a criminal offence under the jurisdiction of the Court has been proved as against the accused person, after a full trial. Secondly, that the Court has also found that upon the execution of the crime the accused person came into possession or ownership of identified property and assets; and / or that in committing the crime the accused person employed the property and assets identified.

In the present case, these conditions precedent have not been met. Accordingly, the Republic of Kenya is constrained to decline execution of your request.



GITHU MUIGAI
ATTORNEY GENERAL