

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No.: ICC-01/09-02/11  
Date: 9 December 2013

**TRIAL CHAMBER V(B)**

**Before:** Judge Kuniko Ozaki, Presiding Judge  
Judge Robert Fremr  
Judge Chile Eboe-Osuji

**SITUATION IN THE REPUBLIC OF KENYA**

**IN THE CASE OF  
*THE PROSECUTOR v. UHURU MUIGAI KENYATTA***

**Public**

**Decision requesting observations from the Government of Kenya**

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

**The Office of the Prosecutor**

Ms Fatou Bensouda

Mr James Stewart

Mr Benjamin Gumpert

**Counsel for Uhuru Muigai Kenyatta**

Mr Steven Kay

Ms Gillian Higgins

**Legal Representatives of Victims**

Mr Fergal Gaynor

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparation**

**The Office of Public Counsel for  
Victims**

Ms Paolina Massidda

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

**States Representatives**

Mr Githu Muigai, SC, Attorney General  
of the Republic of Kenya

*Amicus Curiae*

**REGISTRY**

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**Registrar**

Mr Herman von Hebel

**Deputy Registrar**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Others**

**Trial Chamber V(B)** ('Chamber') of the International Criminal Court ('Court') in the case of *The Prosecutor v. Uhuru Muigai Kenyatta*, pursuant to Article 87(7) of the Rome Statute ('Statute') and Regulation 109 of the Regulations of the Court ('Regulations'), renders the following Decision requesting observations from the Government of Kenya.

## **I. Procedural history and submissions**

1. On 29 November 2013, the Office of the Prosecutor ('Prosecution') filed the confidential *ex parte*, Prosecution and Government of the Republic of Kenya ('Kenyan Government') only, 'Prosecution application for a finding of non-compliance pursuant to Article 87(7) of the Statute against the Government of Kenya' ('Application').<sup>1</sup>
2. In the Application, the Prosecution states that it had sent to the Kenyan Government a request for assistance<sup>2</sup> containing, *inter alia*, a request for financial and other information specifically identified in paragraphs 9 to 11 thereof ('Records Request').
3. The Prosecution submits that it has taken all possible measures to secure the Kenyan Government's compliance with the Records Request,<sup>3</sup> and that the Kenyan Government has failed to fulfil such request.<sup>4</sup> It also submits that the Kenyan Government has waived confidentiality for the communications related to the Records Request.<sup>5</sup> Accordingly, the Prosecution requests the Chamber to (i) find that the Kenyan Government has failed to comply with the Records Request under Article

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<sup>1</sup> Application, ICC-01/09-02/11-866-Conf-Exp. A public redacted version was filed on 2 December 2013, ICC-01/09-02/11-866-Red.

<sup>2</sup> OTP/KEN/KEN-45/TL-JCCD-sm, attached as Annex A to the Application.

<sup>3</sup> Application, ICC-01/09-02/11-866-Red, para. 22.

<sup>4</sup> Application, ICC-01/09-02/11-866-Red, paras 23-28.

<sup>5</sup> Application, ICC-01/09-02/11-866-Red, para. 5.

87(7) of the Statute; (ii) refer the matter to the Assembly of States Parties ('Assembly'); and (iii) reclassify the Application as public. <sup>6</sup>

## **II. Analysis**

4. Pursuant to Article 87(7) of the Statute, the Chamber may make a finding of non-compliance and refer the matter to the Assembly where a State Party fails to comply with a request for cooperation by the Court.
5. The Chamber notes that, in accordance with Regulation 109(3) of the Regulations, it 'shall hear from the requested State' before making any finding pursuant to Article 87(7) of the Statute. The Chamber therefore considers it appropriate to invite observations from the Kenyan Government on the Application, including on the ripeness of an Article 87(7) application and the status of cooperation with the relevant request(s).

### **FOR THE FOREGOING REASONS, THE CHAMBER HEREBY**

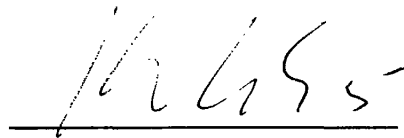
**INVITES** the competent authorities of the Republic of Kenya to submit their observations on the Application, if any, no later than 8 January 2014; and

**DIRECTS** the Registry to submit its observations on the Application, specifically on any relevant communications with the Kenyan Government, no later than 8 January 2014.

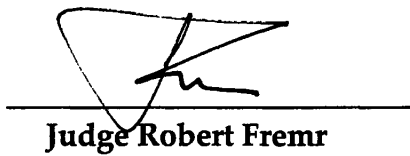
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<sup>6</sup> Application, ICC-01/09-02/11-866-Red, para. 31.

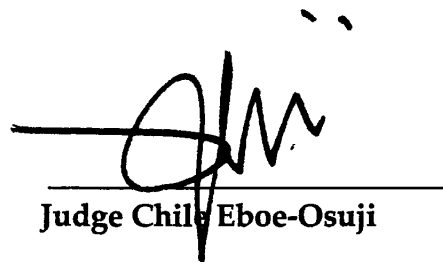
Done in both English and French, the English version being authoritative.



**Judge Kuniko Ozaki, Presiding Judge**



**Judge Robert Fremr**



**Judge Chilo Eboe-Osuji**

Dated this 9 December 2013

At The Hague, The Netherlands