



Original: English

No.: ICC-01/09-02/11  
Date: 5 September 2014

**TRIAL CHAMBER V(B)**

**Before:** Judge Kuniko Ozaki, Presiding Judge  
Judge Robert Fremr  
Judge Geoffrey Henderson

**SITUATION IN THE REPUBLIC OF KENYA**

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

**Public document**

**Prosecution notice regarding the provisional trial date**

**Source:** The Office of the Prosecutor

**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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**REGISTRY**

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Nigel Verrill

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

1. Pursuant to the Chamber's 28 August 2014 order,<sup>1</sup> the Prosecution hereby provides notice that as matters currently stand, it will not be in a position to proceed to trial on 7 October 2014.
2. From an evidentiary standpoint, the situation is the same as when the Prosecution sought an adjournment of the trial date on 19 December 2013 – the available evidence is insufficient to prove Mr Uhuru Kenyatta's alleged criminal responsibility beyond reasonable doubt.<sup>2</sup>
3. In ordinary circumstances, the insufficiency of evidence would cause the Prosecution to withdraw the charges.<sup>3</sup> As previously explained, however, it would be inappropriate for the Prosecution to withdraw the charges at this stage in light of: (i) the Government of Kenya's ("GoK") continuing failure to cooperate fully with the Court's requests for assistance in this case;<sup>4</sup> and (ii) Mr Kenyatta's position as the head of the GoK.<sup>5</sup>
4. In the circumstances, the Prosecution respectfully submits that the trial should be adjourned until the GoK executes the Prosecution's Revised Request for records in full. This position is consistent with the Chamber's 31 March 2014 decision, which adjourned the case "for the specific purpose of providing an opportunity for compliance by the Kenyan Government with the outstanding cooperation request".<sup>6</sup> The Prosecution notes with regret that the full and effective compliance required of the GoK and anticipated by the Chamber has not materialized to date.
5. In the five months since the Prosecution submitted its 8 April 2014 Revised Request, the GoK has produced a total of 73 pages of documentation. Some are

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<sup>1</sup> ICC-01/09-02/11-939, para. 2.

<sup>2</sup> ICC-01/09-02/11-875, para. 15.

<sup>3</sup> See Regulation 60 of the Regulations of the Office of the Prosecutor; *see also* ICC-01/09-02/11-908, para. 81.

<sup>4</sup> This is contrary to the position advanced by the GoK in its 2 September 2014 update. *See* ICC-01/09-02/11-941-Conf-Exp. The Prosecution is filing a separate response to the GoK's 2 September 2014 submission.

<sup>5</sup> *See* ICC-01/09-02/11-892, paras. 12-24; ICC-01/09-02/11-T-27-ENG ET, page 8.

<sup>6</sup> ICC-01/09-02/11-908, para. 2.

not responsive to the Revised Request; even the responsive material is a fraction of the information sought. As the Prosecution's periodic updates demonstrate, the large majority of the material sought in the Revised Request remains outstanding.<sup>7</sup> This is despite the Chamber's 29 July 2014 decision upholding the Revised Request's validity and dismissing the GoK's objections to it.<sup>8</sup>

6. Under the circumstances, it would be inappropriate for the Prosecution to withdraw the charges against Mr Kenyatta before the GoK complies with the Revised Request. *First*, doing so would undermine the purpose of the Chamber's 31 March 2014 decision – to ensure that the GoK fulfills its cooperation obligations to the Court. *Second*, the accused person in this case is the head of a government that has so far failed fully to comply with its obligations to the Court, and, under the Constitution of Kenya, is ultimately responsible for that failure.<sup>9</sup> In these circumstances, the Prosecution respectfully submits that the appropriate course of action is to further adjourn the case until such time as the GoK executes the Revised Request in full as required by the Chamber and in accordance with the Rome Statute.




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Fatou Bensouda,  
Prosecutor

Dated this 5<sup>th</sup> day of September, 2014  
At The Hague, The Netherlands

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<sup>7</sup> See ICC-01/09-02/11-922; ICC-01/09-02/11-927; ICC-01/09-02/11-940-Conf.

<sup>8</sup> ICC-01/09-02/11-937.

<sup>9</sup> See the Constitution of Kenya, section 132(5) ("The President shall ensure that the international obligations of the Republic are fulfilled through the actions of the relevant Cabinet Secretaries").