

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 25 September 2014

**TRIAL CHAMBER V(B)**

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

**SITUATION IN THE REPUBLIC OF KENYA**

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

**URGENT  
PUBLIC**

**Defence Request for Excusal from Attendance pursuant to Rule 134 *quater*  
or to Adjourn the Status Conference Scheduled for 8 October 2014 and  
Permit Mr Kenyatta to Attend on a Rescheduled Date by Means of Video-  
link pursuant to Rule 134 *bis***

**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  
James Stewart  
Benjamin Gumpert QC  
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**Counsel for the Defence**

Steven Kay QC  
Gillian Higgins

**Legal Representatives of the Victims**

Fergal Gaynor

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants  
(Participation/Reparation)**

**The Office of Public Counsel for  
Victims**

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

**States' Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Herman Von Hebel

**Counsel Support Section**

**Victims and Witnesses Unit**

Nigel Verrill

**Detention Section**

**Victims Participation and Reparations  
Section Other**

## I. INTRODUCTION

1. The Defence for Uhuru Muigai Kenyatta ('Defence') hereby requests Trial Chamber V(B) ('Chamber') to excuse his attendance at the Status Conference scheduled for 8 October 2014 pursuant to Rule 134 *quater* of the Rules of Procedure and Evidence; or, in the alternative, to adjourn the hearing to a later date, and permit Mr Kenyatta to attend the Status Conference via video-link pursuant to Rule 134 *bis*.
2. This request is submitted urgently due to the imminence of the scheduled Status Conference.

## II. SUBMISSIONS

### *(i) Request to Excuse Attendance at the Status Conference*

3. In his capacity as President of Kenya and also chairman of the Heads of State of the East African Community, Mr Kenyatta is due to attend the Northern Corridor Infrastructure Summit in Kampala, Uganda on the 8th October 2014. This meeting is attended by the regional Heads of State and is of great importance and significance. The meeting deals with economic development and regional security issues. A rescheduling of this meeting is not feasible due to the commitments of the various Heads of State who will be participating. The meeting was arranged prior to the order of the Chamber convening a Status Conference on 8 October 2014 at which Mr Kenyatta's presence is required.<sup>1</sup>

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<sup>1</sup> ICC-01/09-02/19-954, para. 12.

4. On 9 October 2014, Mr Kenyatta is scheduled to attend the 52nd Independence Day of the Republic of Uganda that will also be taking place in Kampala.
5. It is respectfully submitted that these are commitments within the meaning and intent of Rule 134 *quater*, as they are extraordinary public duties at the highest national level.
6. It is important to Kenya's national interests that Mr Kenyatta as Head of State represents his people effectively at the meeting on the 8 October 2014, and is present to show their support for an important neighbouring state on the day of celebration on 9 October 2014.
7. In view of Mr Kenyatta's position as President of Kenya and chairman of the Heads of State of the East African Community, and the need for his attendance at these important regional events, the Defence respectfully requests the Chamber to excuse his attendance at the Status Conference set for 8 October 2014.
8. Mr Kenyatta explicitly waives his right of attendance and will be represented by his legal team, which has full conduct and authority over his case. In view of the nature of his duties that day and the fact that Mr Kenyatta will be in Kampala, it would not be appropriate for the Defence to submit an alternative form of presence at the proceedings in the form of the video-link pursuant to Rule 134 *bis*.

*(ii) Request to Adjourn 8 October 2014 Status Conference*

9. In the alternative, if the Chamber is unwilling to permit the excusal of Mr Kenyatta's attendance, the Defence respectfully requests that the Status Conference be rescheduled to a later date convenient to all parties.

10. In support of this submission, the Defence incorporates by reference the grounds set out at paragraphs 3-4 above.
11. The commitments of Mr Kenyatta in respect of these events are necessary as they are extraordinary public duties at the highest national level requiring his attendance as Head of State. They are duties that it is important for him to perform as they involve the Heads of State of the region: (a) meeting to discuss important matters of vital national interest; and (b) being present together to affirm their support and commitment to a fellow state on the most important day of national celebration within its calendar. It is in the national interest of Kenya that its Head of State is participating on behalf of the citizens of Kenya at these events.

*(iii) Request for Permission to Attend Rescheduled Status Conference  
via Video-Link pursuant to Rule 134 bis*

12. The Defence requests permission for Mr Kenyatta to attend a rescheduled Status Conference, if it be so ordered, pursuant to Rule 134 *bis* which permits the presence of an accused by video-link having due regard to the subject matter of the hearing. This mode of participation has previously been permitted by the Chamber as a means of attendance in the proceedings.<sup>2</sup>
13. In the circumstances, the Defence submits that attendance at a rescheduled Status Conference by video-link would allow Mr Kenyatta to perform his extraordinary public duties as President of Kenya to the greatest extent possible while causing the least inconvenience to the Court. Physical attendance by Mr Kenyatta in The Hague would entail

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<sup>2</sup> ICC-01/09-02/11-620.

2-3 days travel time which would significantly impact upon his ongoing duties as Head of State and Chairman of the East African Community at a time of significant and important challenges nationally and internationally which require his constant attention.

14. Furthermore, the Defence submits that the nature of the hearing is not one that would require him to take part in the proceedings in any significant manner, such as the giving of testimony.
15. Mr Kenyatta is content that the presence of his legal team in the courtroom will ensure the discharge of his instructions appropriately and adequately.



### **III. RELIEF**

16. For the reasons set out herein, the Defence respectfully requests the Chamber to:
  - (i) Permit Mr Kenyatta not to attend the Status Conference scheduled for 8 October 2014 and allow his representation to take place through his counsel.

Or, in the alternative, to:

- (ii) Adjourn the Status Conference to a later date; and
- (iii) Permit Mr Kenyatta to attend via video-link on the date of a rescheduled Status Conference, such date to be fixed after consultation with the parties.

Respectfully submitted,

  
Steven Kay QC.      

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Steven Kay QC and Gillian Higgins

On behalf of Uhuru Muigai Kenyatta

Dated this 25<sup>th</sup> day of September 2014

At London, England