

Confidential

Annex C



**Cour
Pénale
Internationale**
**International
Criminal
Court**

Le Bureau du Procureur
The Office of the Prosecutor

Hon. Professor Githu Muigai
Attorney General
Attorney General's Chambers
P.O. Box 40112-00100
Nairobi
Kenya

Réf.: OTP/KEN/KEN-84g/JCCD-sm

Date: 31 July 2014

Dear Attorney General,

I write in relation to Trial Chamber V(b)'s 29 July 2014 decision in the *Kenyatta* case.¹ I had hoped to discuss this matter with you during our meeting scheduled for 30 July, but since the meeting did not take place, I am sending this letter.

As you will be aware, the Chamber's decision ruled upon the scope of the OTP's Revised Request for records² and addressed the disagreements between the OTP and the Government of Kenya regarding the request. In sum, the Chamber's decision held that the Revised Request "conforms with the requirements of relevance, specificity and necessity" required under Part 9 of the Statute.³ Helpfully, the decision clarified that the time period specified in the Records Request is proper, as is the request for records of corporate entities in which Mr Kenyatta has or had an interest.⁴ As you will recall, these were the areas on which the OTP and the Government of Kenya were unable to agree during our recent discussions. Now that the Chamber has resolved the disputed issues, we are hopeful that we will be able to work together to move matters forward.

It is apparent from the decision that the Chamber expects the OTP and the Government of Kenya to take the necessary steps to execute the Revised Request as quickly as possible, including by utilising compulsory measures to ensure that the entirety of the requested records are identified and made available.⁵ We share this goal and are ready to work with the Government of Kenya to

¹ ICC-01/09-02/11-937.

² Reference number: OTP/KEN/KEN-84c/JCCD-sm.

³ ICC-01/09-02/11-937, page 22.

⁴ ICC-01/09-02/11-937, paras 35-40.

⁵ ICC-01/09-02/11-937, para 47.

this end. If it would be helpful to set up meetings at the operational level to progress the Records Request, our staff are available to meet with you or your representatives at your convenience. In particular, we are open to discussing ways to address any practical hurdles that might delay the implementation of the Revised Request, such as searching paper records, which the Government of Kenya previously raised. We note that the Chamber's decision offers helpful suggestions with respect to obtaining company and land records,⁶ and we would be happy to discuss these, along with other suggestions the Government of Kenya may have.

As we have expressed previously, the OTP's goal is to ensure that a proper, forensic analysis of the relevant records is undertaken, so that the Chamber can take any findings into account when considering the future of the *Kenyatta* case. We stand willing to work with the Government of Kenya to this end and are available to consult with you or your representatives at your convenience.

Yours sincerely,



Phakiso Mochochoko

Director

Jurisdiction, Complementarity and Cooperation Division

Cc:

- Hon. Joseph Ole Lenku, Secretary for Interior and Coordination of National Government
- H.E. Ms Rose Makena Muchiri, Ambassador Extraordinary and Plenipotentiary of the Republic of Kenya to the Kingdom of The Netherlands

⁶ ICC-01/09-02/11-937, paras 41-42.