



# Questions and answers

## *Questions and Answers on the decision dated 31 March 2014 re-scheduling the Kenyatta trial commencement date*



### What did the Chamber decide regarding the Kenyatta case?

On 31 March 2014, Trial Chamber V(b) of the International Criminal Court (ICC) re-scheduled the commencement date of the trial in the case against Uhuru Kenyatta to the 7 October 2014. The purpose of the adjournment is to provide the Government of Kenya with a further, time-limited opportunity to provide the Prosecution with access to certain records, which the Prosecution had previously requested on the basis that the records are relevant to a central allegation to the case. In so doing, the Chamber rejected the Defence request to terminate the proceedings in this case as well as the Prosecution request to indefinitely suspend the proceedings pending compliance by the Kenyan Government with its cooperation obligations.

### Is this decision final?

Either party may submit a request to Trial Chamber V(b) seeking leave to appeal the decision of 31 March 2014 pursuant to Article 82(1)(d) of the Rome Statute. If such request is submitted, the Judges of Trial Chamber V(b) will make a decision on the authorisation to appeal in due course.

### Why did the Chamber reject the requests to indefinitely suspend or to terminate the proceedings?

To make this decision, the Chamber considered thoroughly all of the submissions received and balanced several factors, giving particular consideration to the impact any further adjournment might have on the rights of the accused.

The Chamber found that there were a number of factors which, in ordinary circumstances, would lead to the conclusion that no further adjournment should be granted at this stage. However, the Chamber also found there to be certain unique circumstances, outside the Prosecution's control, which have contributed to a loss of evidence in this case. The Chamber highlighted that the Prosecution had acknowledged difficulties with the body of evidence upon which it relies. The Chamber considered that these difficulties are clearly the result of multiple interacting factors which include the difficulties faced by the Prosecution in securing the cooperation of the Kenyan Government, which prevented access to the financial records of the accused, as well as unprecedented security concerns relating to victims and witnesses.

The Chamber stressed that the ICC is fundamentally dependent on the cooperation of States Parties, and a failure to provide such cooperation in the context of judicial proceedings affects the efficiency of the Court. Bearing in mind the crucial importance of States Parties' co-operation, the Chamber considered it appropriate to take all reasonable judicial measures to facilitate such cooperation in furtherance of the truth-seeking function of the Court, and to ensure that there is an opportunity for the Kenyan Government to comply with its obligations.



Mindful of these unique circumstances, and taking into consideration the interests of victims in seeking truth and accountability, the Chamber considered that it is appropriate to grant a strictly limited opportunity to pursue outstanding investigations for a fixed duration with close oversight by the Chamber.

### **Did the Chamber find that Kenya violated its obligation to cooperate with the Court?**

The Chamber deferred the making of any finding on Kenya's cooperation. The Chamber directed the Prosecutor to submit, within two weeks, to the Kenyan authorities a revised request to produce financial and other records relating to Mr Kenyatta. The Chamber also directed the Prosecution and the Kenyan Government to engage in cooperation and consultations without delay regarding the revised request.

### **What are the next steps?**

The Kenyan Government is directed by the ICC Chamber to promptly review the Prosecutor's request to produce records relating to Mr Kenyatta and to notify the Prosecution, within two weeks, of any problem which may impede or prevent its execution. In respect of all other requested items, the Kenyan Government was directed to immediately take steps to comply with the request and provide the information. The Judges stressed that, in the event of genuine and irreconcilable differences between the Prosecution and the Kenyan Government, or any matter otherwise requiring resolution, the Chamber is to be promptly seized of the matter at issue.

The Kenyan Government and the Prosecution were directed to update the Chamber on the status of the revised request's execution on 30 April 2014 with further updates due every two months thereafter. A status conference is scheduled on 9 July 2014 in order for the Prosecution and the Kenyan Government to provide an update to the Chamber on the status of the execution of this request.

### **Is the ICC now confident that Kenyan Government will cooperate?**

As a State Party to the Rome Statute, Kenya has the obligation to cooperate with the ICC. The Chamber deferred making a finding of non-cooperation at present to ensure that there is an opportunity for the Kenyan Government to comply with its obligations. If the Chamber finds that there is non-compliance by the Kenyan authorities, it may refer the matter to the Assembly of States Parties to adopt any appropriate measures and for ultimate consideration.