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

Date: 1 October 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

Second Prosecution submission on the conduct of the proceedings

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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Other

Submissions

1. The Prosecution hereby submits further observations on the anticipated conduct of the proceedings, pursuant to Rule 134 and the Chamber's 3 July 2013 "Order requesting submissions on the conduct of the proceedings".¹

I. Rebuttal and sur-rebuttal.

2. The Prosecution submits that it should be permitted to adduce evidence to reply to a Defence case, at its conclusion, in order to refute, explain or counteract evidence which (i) the Prosecution could not have reasonably anticipated and (ii) is related to a significant issue in the case.² The Defence should be permitted to offer evidence in response to the Prosecution's rebuttal if it addresses new matters raised in the rebuttal.

II. Notice under Regulation 55(2) of the Regulations of the Court.

3. The Prosecution re-iterates its position, advanced at the 6 September 2013 status conference, that the Chamber should provide "notice [...] to the Defence before the start of the trial [...] under Regulation 55(2)".³



Fatou Bensouda,
Prosecutor

Dated this 1st day of October, 2013
At The Hague, The Netherlands

¹ ICC-01/09-02/11-769, para. 4.

² See ICC-01/04-01/07-2398, citing, among others, *Prosecutor v. Fatmir Limaj, Haradin Bala, Isak Musliu*, Decision on Prosecution's Motion to Admit Rebuttal Statements via Rule 92bis, Case no. IT-03-66-T, Trial Chamber II, 7 July 2005, p. 2, para. 6; *R. v. Krause*, [1986] 2 S.C.R. 466, para. 16 (Supreme Court of Canada); *Peals v. Terre Haute Police Department*, 535 F.3d 621, 630 (7th Cir. (U.S.) 2008); *Prosecutor v. Halilovic*, Decision on Prosecution Motion to Call Rebuttal Evidence, Case No. IT-01-48-T, 21 July 2005, p. 3.

³ ICC-01/09-02/11-T-26-ENG, p. 13, l. 13-15.