

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/09-02/11**
Date: **30 October 2013**

TRIAL CHAMBER V(B)

Before: Judge Kuniko Ozaki, Presiding
Judge Robert Fremr
Judge Chile Eboe-Osuji

SITUATION IN THE REPUBLIC OF KENYA

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

Public

Victims' Response to the public redacted version of the "Defence Application to Vacate the 12 November 2013 Date for the Commencement of Trial"

Source: Common Legal Representative of Victims

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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Legal Representatives of Victims

Mr Fergal Gaynor

Legal Representatives of Applicants

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Victims and Witnesses Unit

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**Victims Participation and Reparations
Section**

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Other

I. Introduction

1. On behalf of the victims in this case, the Legal Representative of Victims (“Legal Representative”) sets forth his response to the “Defence Application to Vacate the 12 November 2013 Date for the Commencement of Trial”, filed on 25 October 2013 (“Application”).¹

II. The subject matter is directly linked to the victims’ interests.

2. The Trial Chamber has ruled: “[I]n accordance with Regulation 24(2) of the Regulations, the Chamber finds that the Common Legal Representative may file responses to documents but must first demonstrate that the subject matter at issue is directly related to the interests of victims.”²
3. The subject matter of the Application is directly related to the interests of the victims. Any further delay in the commencement of trial would delay the realization of the victims’ right to know the truth of the crimes committed against them; to have those responsible for those crimes held accountable; and to receive just reparation for the harm they have suffered.³

III. Procedural background

4. On 25 October 2013, the Defence filed the Application.
5. On 30 October 2013, the Prosecution responded, “not opposing the Application, save in that the new date for the commencement of the trial should be fixed as Monday 3 February 2014” (“Prosecution Response”).⁴

IV. Reason for late filing

6. As a courtesy, the Prosecution communicated to the Legal Representative the broad nature of its likely response to the Application some days prior to filing

¹ ICC-01/09-02/11-835-Red, 25 October 2013.

² ICC-01/09-02/11-498, 3 October 2012, para. 71.

³ Cf. ICC-01/04-01/06-1119, 18 January 2008, para. 98; ICC-01/04-01/07-474, 13 May 2008, para. 32; ICC-01/04-503 OA4 OA5 OA6, 30 June 2008, para. 97.

⁴ ICC-01/09-02/11-842-Red, 30 October 2013.

the Prosecution Response. The Legal Representative appreciates and welcomes communications from the parties of this kind.

7. In the interest of providing an informed response to the Trial Chamber, in light of the Prosecution's position, the Legal Representative has waited until the filing of the Prosecution Response before filing this response. This response has been filed on the morning after the expiry of the limit communicated by the Trial Chamber to the parties and to the Legal Representative. In these circumstances, the Legal Representative invites the Trial Chamber to accept this response as validly filed pursuant to Regulation 35(2) of the Regulations of the Court.

V. Submissions

8. The Application itself is without merit, and largely contains arguments which should have been contained within the 50-page limit of the "Defence Application for a Permanent Stay of the Proceedings due to Abuse of Process", filed on 10 October 2013 ("Stay Application").⁵ The Application represents an effort to avoid the page limit ordered by the Chamber.
9. The suggestion in the Application that the Trial Chamber postpone the start of trial in order to deal with the merits of the Stay Application is itself yet another confirmation of the extraordinary extent to which the Defence has pursued a strategy of delay in this case. The strategy of filing bulky requests shortly prior to the scheduled trial start date must not be rewarded. To do so would merely encourage parties before the Court to file extensive applications of little merit in order to buy time by forcing the Trial Chamber to set aside enough time to consider and rule upon the applications.
10. However, in light of the Prosecutor's position on the Application, the Legal Representative will not further address the content of the Application.

⁵ ICC-01/09-02/11-822-Conf, 10 October 2013.

11. Delay in the conduct of these proceedings is an issue of deep concern to the victims, and many victims have repeatedly and forcefully communicated to the Legal Representative their total opposition to any further delay.
12. The decision by the Prosecutor not to oppose a postponement of the trial start date until February 2014, therefore, is likely to be met with deep disappointment and frustration by the victims of this case. The Prosecutor's decision comes after two previous postponements in the start date of trial. Nearly six years have passed since the horrors of the post-election violence. Over three and a half years have passed since the Prosecutor was authorized to open an investigation in Kenya. Over two and a half years have passed since Mr Kenyatta was first summoned to appear at The Hague. And over 21 months have passed since he was committed for trial. The victims have already waited far too long for justice.
13. It is highly regrettable that questions of witness scheduling, whatever their reason, have led to the present situation, which appears likely to result in further delay in bringing justice to the victims.
14. On behalf of the many women who were raped, the families of those killed with such shocking and senseless brutality, the children who suffer until this day from the horrors they experienced in Naivasha and Nakuru in January 2008, and above all on behalf of the elderly and infirm victims who will pass away before this trial has concluded, it is imperative that all involved in this case – including the Prosecutor and the Accused – redouble our commitment to deliver justice without further delay.
15. Despite numerous promises, the victims have been denied true justice in Kenya: the current total of prosecutions of mid-level and high-level persons for PEV crimes in Kenya remains at zero. The victims see no sign of any genuine effort to prosecute before the Kenyan courts any of those responsible for the crimes committed against them, nor to provide them with just compensation for all that they have lost. Thousands of victims live in circumstances of abject poverty in the Nyanza and Western regions of Kenya, largely forgotten by the Government of Kenya, which deploys almost no

resources to assist them. Without adequate access to education for their children or medical help to relieve the suffering they still experience as a result of the crimes charged in this case, they instead see the Accused deploying huge state resources at the highest international levels to bring his trial – which is their only hope of justice – to an end.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Fergal Gaynor', with a stylized, cursive script.

Fergal Gaynor
Common Legal Representative of Victims

Dated this 30th October 2013

At Nairobi, Kenya