



Original: English

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

Date: 8 January 2014

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

With two confidential annexes

**Registry's report pursuant to the "Decision requesting observations from the
Government of Kenya" dated 9 December 2013**

Source: Registry

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

The Office of the Prosecutor

Ms Fatou Bensouda
Mr James Stewart
Mr Benjamin Gumpert

Counsel for the Defence

Mr Steven Kay
Ms Gillian Higgins

Legal Representatives of Victims

Mr Fergal Gaynor

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

Ms Paolina Massidda

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

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

The Registrar of the International Criminal Court (the “Court”):

NOTING the *“Prosecution application for a finding of non-compliance pursuant to Article 87(7) against the Government of Kenya”* (the “Application”) dated 29 November 2013;¹

NOTING the *“Decision requesting observations from the Government of Kenya”* (the “Decision”) dated 9 December 2013 issued by Trial Chamber V(B) (the “Chamber”);²

NOTING article 87(1)(a) of the Rome Statute (the “Statute”), rule 176(2) of the Rules of Procedure and Evidence (the “Rules”) and regulation 23 *bis* of the Regulations of the Court;

CONSIDERING that in the Decision the Chamber invited the competent authorities of the Republic of Kenya to submit their observations on the Application, if any, no later than 8 January 2014;³

CONSIDERING that in the Decision the Chamber directed the Registry to submit its observations on the Application, specifically on any relevant communication with the Kenyan Government, no later than 8 January 2014;⁴

CONSIDERING that the names of the Registry staff appear in both annexes and thus the two annexes attached to the present report are submitted as confidential;

REPORTS respectfully to the Chamber as follows:

¹ ICC-01/09-02/11-866-Conf-Exp.

² ICC-01/09-02/11-870.

³ ICC-01/09-02/11-870, page 4.

⁴ *Ibid.*

I. Invitation to the Kenyan Government to submit its observations on the Application

1. On 3 December 2013 the Registry transmitted to the competent Kenyan authorities the Prosecution's Application as well as its annexes A to M and the redacted version of the Application.⁵
2. On 9 December 2013 the Registry transmitted to the competent Kenyan authorities the Decision of the Chamber.
3. On 7 January 2014 the Registry received a note verbale dated 7 January 2014 from the Kenyan authorities transmitting the *"Response of the Government of the Republic of Kenya pursuant to Trial Chamber V(B) 'Decision requesting observations from the Government of Kenya's on the Prosecution's Application for a finding of Non-Compliance Pursuant to Article 87 (7) Against the Government of Kenya'"* (the "Response").⁶ The Response is dated 20 December 2013 and as stated in the note verbale from the Kenyan authorities, the Response was *"fashioned on the 20th December 2013 under the hand of Professor Githu Muigai, FCI Arb, SC, The Attorney-General of the Republic of Kenya"*. The Registry hereby transmits to the Chamber the Response transmitted *via* a note verbale of the Kenyan authorities received by the Registry on 7 January 2014.

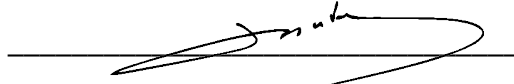
II. Registry's observations on the Application

4. The Registry would like to inform the Chamber that the request for assistance referred to in the Application was transmitted by the Prosecution to the Kenyan government pursuant to article 54 of the Statute rather than by the Registry. Therefore, the Registry has never engaged in the communication with the Kenyan

⁵ Annex 1 attached hereto.

⁶ Annex 2 attached hereto.

government in relation to the said request. The Registry has thus no observations on the Application.

A handwritten signature in black ink, appearing to read 'M. Dubuisson', is written over a horizontal line.

Marc Dubuisson, Director Division of Court Services

per delegation of

Mr Herman von Hebel, Registrar

Dated this 8 January 2014

At The Hague, The Netherlands