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Court

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Date: **02 May 2014**

TRIAL CHAMBER V(B)

Before: **Judge Kuniko Ozaki, Presiding**
Judge Robert Fremr
Judge Geoffrey Henderson

SITUATION IN THE REPUBLIC OF KENYA

IN THE CASE OF
THE PROSECUTOR V. UHURU MUIGAI KENYATTA

Confidential

Victims' submissions on the implementation of the request to freeze assets

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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I. Introduction

1. In accordance with the Trial Chamber's 7 April 2014 'Order for submissions on the implementation of the request to freeze assets' ('Trial Chamber's Order'),[1] and on behalf of the victims in this case, the Legal Representative of Victims ('LRV') respectfully presents these submissions.

II. Procedural background

2. On 5 April 2011, the Pre-Trial Chamber issued an order ('Pre-Trial Chamber's Order') to the Registrar to transmit a request to Kenya for cooperation for the purposes of identifying, tracing and freezing or seizing the property and assets belonging to or under the control of, *inter alios*, the Accused and stressed that, pursuant to Article 87(3) of the Rome Statute, it is essential for the requested State to keep confidential the request for co-operation.[2]
3. On 24 February 2014, the Government of the Republic of Kenya ('Government') informed the Registrar of its interpretation of Article 93(1)(k) of the Statute of the Court ('Statute') and stated that it "declined the execution of the request of the Registry."[3]
4. On 28 February 2014, the Registry, in its fourth report on the execution of the Pre-Trial Chamber's Order, requested the Trial Chamber for guidance in relation to that interpretation.[4]
5. In the Trial Chamber's Order, the Chamber *inter alia* invited the parties and the participants to file submissions on: "(i) the legal issue raised by the Government of Kenya, as quoted in the Registry Report; (ii) whether the Pre-Trial Chamber's Order should be revoked or otherwise modified; and (iii) any other order or relief as may be appropriate in the circumstances, with

[1] ICC-01/09-02/11-910-Conf.
[2] ICC-01/09-02/11-42-Conf , para. 10.
[3] ICC-01/09-02/11-905-Conf , page 5; ICC-01/09-02/11-905-US-Exp-AnxIII, page 2.
[4] ICC-01/09-02/11-905-Conf.

particular regard to the apparent violation of the confidentiality direction of the Pre-Trial Chamber."[5]

III. Confidentiality

6. The LRV submits these observations as a confidential document in accordance with Regulation 23*bis* of the Regulations of the Court, as it is filed in accordance with a confidential order.

IV. Submissions

(i) the legal issue raised by the Government of Kenya, as quoted in the Registry Report

7. The LRV fully supports the submissions of the Prosecution on this issue, as set out in paragraphs 7-17 of the Prosecution Observations of 10 March 2014.[6]

(ii) whether the Pre-Trial Chamber's Order should be revoked or otherwise modified

8. The LRV submits that the Pre-Trial Chamber's Order should not be revoked.
9. The evidence in this case is currently insufficient for the Prosecution to go to trial. The reasons for that include the continuing obstructionism of the Government, which has been under the direct control of the Accused for over a year, and the existence of a climate of fear, which has been fed by the Accused's public expressions of hostility to this Court. The outcome of this cannot be revocation of a request to the Accused's Government to freeze the Accused's assets.
10. The Trial Chamber's decided on 31 March 2014 to adjourn the trial in order to facilitate the provision by Kenya of evidence relevant to this case,[7] evidence

[5] Trial Chamber's Order, page 6.
[6] ICC-01/09-02/11-906-Conf.
[7] ICC-01/09-02/11-908, pp 46-47.

which Kenya has withheld in complete violation of Part 9 of the Statute. Revocation before Kenya has provided the evidence which it is obliged to provide would be premature, inconsistent with the Trial Chamber's decision, and tantamount to rewarding the Accused and his Government for their continued obstruction of the justice process in this case. It would also be a reward for the Government's flagrant contravention of its obligation under Part 9 of the Statute and under the International Crimes Act to enforce the request to freeze assets.

11. If the Accused were not in direct control of a government which has obstructed the process of justice, revocation of the Pre-Trial Chamber's Order might be a correct step to take. Modification of the order to remove the references to the assets of Mr Muthaura and Mr Ali, against whom charges have been withdrawn, is therefore appropriate.

12. In numerous meetings in Kenya, victims have made clear to the LRV their feelings concerning reparations. Many lost family members who were beheaded or burnt or hacked to death. Others were serially raped, some with iron bars or other sharp objects. Some were hacked repeatedly with machetes but survived. Many ran small businesses in Nakuru or Naivasha: small welding or carpentry shops; hairdressing salons; tea houses. As a result of the crimes charged in this case, they fled for their lives. They lost their small businesses, and all the equipment in them. The majority of victims that the LRV has met have received nothing from the Government in compensation, and have struggled to start small businesses where they now live. A minority received small cash sums in 2008 and nothing since.

13. Very many have expressed to the LRV a strong desire that all steps be taken to ensure that they receive some form of compensation for the loss and anguish they have suffered.

14. When issuing the Pre-Trial Chamber's Order, the Single Judge stressed that "the identification, freezing and seizure of property and assets '[...] is

necessary in the best interests of the victims' to guarantee that, in the event of a conviction, 'the said victims may, pursuant to Article 75 of the Statute, obtain reparations for the harm which may have been caused to them.'"[8]

15. The centrality of the interests of the victims to the Court's regime of asset-freezing is reflected in the reference in Article 57(3)(e) of the Statute to "forfeiture, in particular for the ultimate benefit of the victims." It is also reflected in the right of victims, under Rule 99 of the Rules of Procedure and Evidence ('RPE'), to apply for protective measures to be taken under Articles 57(3)(e) and 75(4) of the Statute, to preserve assets for the purpose of reparations.

16. For the victims' interests in this regard to be fully realized, States Parties must act quickly to identify, trace, and freeze assets pending a verdict at the end of trial. As the Single Judge noted, "existing technology may make it possible to place property and assets beyond the Court's reach in a short period of time."[9] Swift action by the relevant States Parties, accompanied by assertive and timely follow-up by the Registrar, is imperative if the Statute's asset-freezing regime is to be effective. Speed and discretion are of the essence. Kenya has provided neither.

17. In its 7 August 2012 'Decision establishing the principles and procedures to be applied to reparations,' the *Lubanga* Trial Chamber, emphasized the importance of state co-operation at the earliest stage:

> Pursuant to article 93(1)(k) of the Statute, States Parties to the Statute should provide assistance to the Court in "the identification, tracing and freezing or seizure of proceeds, property, assets and instrumentalities of crimes for the purpose of eventual forfeiture". *The identification and freezing of any assets of the convicted person are a fundamental element in securing effective reparations*, and pursuant to article 93(1)(k) of the Statute, *State Parties should provide the Court with timely and effective assistance at the earliest possible stage* of the

[8] Pre-Trial Chamber's Order, para. 7, citing ICC-01/05-01/08-9-US-Exp-tENG, para. 7.
[9] Pre-trial Chamber's Order, para. 9.

proceedings. In order for the reparations award to have effect, the ICC requires the cooperation of States Parties and non-states parties, as well as the close cooperation with the DRC local government.[10]

18. In the present case, the Government has failed to take the action available to it under the International Crimes Act 2010 to freeze Mr Kenyatta's assets in Kenya, in accordance with the Pre-Trial Chamber's Order.

19. The Accused's government for three years has done absolutely nothing to vindicate the rights of the Kenyan victims of this case to have assets effectively frozen. It has instead undermined the Court's asset-freezing model by its total failure to comply with the request to freeze assets, and (if the Trial Chamber finds this to have occurred[11]) its deliberate disclosure to the media of that request. It has also belatedly provided a legal excuse for its inaction which finds no support in international or Kenyan law, and failed to consult with the Court in a timely manner regarding its interpretation of the Statute.

20. Under Article 57(3)(e) of the Statute, the Pre-Trial Chamber must have due regard to the "strength of the evidence and the rights of the parties concerned" when issuing a request to freeze assets "in particular for the ultimate benefit of victims."[12] It is clear that the Prosecution has been seriously hampered in its access to critically important evidence in Kenya by the Accused's Government, contrary to Part 9 of the Statute, and that the Government has otherwise acted to obstruct justice. These facts cannot simply go ignored in any assessment of whether to revoke the Pre-Trial Chamber's Order.

21. It is important to briefly recall here the myriad ways in which the Government of Kenya, under the *de facto* and *de jure* control of the Accused,

[10] ICC-01/04-01/06-2904, paras 276-278, emphasis added.
[11] See the discussion in section (iii)(b) below.
[12] Article 57.3 (e): "Where a warrant of arrest or a summons has been issued under article 58, and having due regard to the strength of the evidence and the rights of the parties concerned, as provided for in this Statute and the Rules of Procedure and Evidence, seek the cooperation of States pursuant to article 93, paragraph 1 (k), to take protective measures for the purpose of forfeiture, in particular for the ultimate benefit of victims."

continues to obstruct the process of justice in this case. As far as the LRV is aware:

a) The Government continues without justifiable excuse to block access by this Court to key documents which would almost certainly reveal much truth about crimes committed in Nakuru and Naivasha in January 2008, and the identities of those most responsible.[13]

b) The Government continues without justifiable excuse to fail to take the action available to it to remove the three-year-old 'temporary' order preventing the interview in Kenya by the Prosecution of critically important senior security officials. The Attorney-General, as a named party to that litigation, can under Rules 23 and 25 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013 apply to have the order discharged or set aside. He can also apply to have the order lifted for want of prosecution, under Order 17 of the Civil Procedure Rules 2010. As the Prosecution has previously submitted: "The GoK failed to represent the Court's interests in this litigation and took no meaningful steps to ensure that police interviews took place. As a result, the Prosecution has not been able to access members of the police believed to have relevant information. The GoK's stance on this matter effectively blocked a principal avenue of inquiry into the PEV."[14]

c) The Government continues to engage in a policy of non-prosecution in Kenyan courts of PEV crimes, resulting in total impunity for those most responsible. A genuine domestic justice process would undoubtedly result in the emergence of testimonial and documentary evidence which would assist in identifying what happened and who was responsible, and would

[13] See the 'key documents' referred to by the Prosecution at ICC-01/09-02/11-892-Conf-AnxA, pp 6-7.
[14] *Id*., p. 1.

help to heal the wounds of the many thousands, from different tribes, who were so unfairly targeted. That evidence would also assist the Trial Chamber in its search for the truth in this case. The existence of a policy of non-prosecution is confirmed by:

(i) the 5 February 2014 statement by the Director of Public Prosecutions ('DPP') that not one of the thousands of PEV cases currently before the DPP is "prosecutable," and none will therefore be prosecuted by the International Crimes Division of the High Court ('ICD');[15]

(ii) the fact that the ICD itself remains wholly non-operational, over a year after the Government assured the Trial Chamber that it has been created "for purposes of [...] dealing with the pending 2007/2008 PEV cases that are being pursued by the Director of Public Prosecutions (DPP);"[16] and

(iii) the fact that, over three years after the Government assured the Pre-Trial Chamber that "Kenyan national investigative processes do extend to the highest levels for all possible crimes,"[17] nobody at a high level of responsibility for PEV crimes has been prosecuted for even one PEV crime in Kenya.

d) Instead of working to secure co-operation with this Court, the Accused, as President of Kenya, has engaged in overtly hostile conduct towards it, which, as the Trial Chamber has noted, "has the potential to contribute to an atmosphere adverse to the Prosecution's investigation on the ground, as well as to foster hostility towards victims and witnesses who are cooperating with the Court."[18] The Chamber has noted that "at least three

[15] *PEV Perpetrators Escape Local Courts Justice*, 6 February 2014, *Citizen News*, http://www.citizennews.co.ke/news/2012/local/item/16990-pev-perpetrators-escape-local-courts-justice [2 May 2014].
[16] ICC-01/09-02/11-713, para. 39.
[17] ICC-01/09-02/11-26, para. 32.
[18] ICC-01/09-02/11-908, para. 94.

Prosecution witnesses appear to have withdrawn as a direct result of security concerns".[19]

e) The Government has clearly pursued for three years a policy of obstructionism in respect of the Prosecution's RFA at the heart of the pending Article 87(7) litigation and of the current adjournment of the trial commencement date, which has seriously impacted the progress of the present case.

22. The Prosecution has repeatedly emphasized the serious impact of the Government's non-cooperation. Last year, shortly after Mr Kenyatta took office as President of Kenya, the Prosecution said:

> "[S]ince the beginning of the OTP's investigations in April 2010, the GoK has constructed an outward appearance of cooperation, while failing to execute fully the OTP's most important requests. Indeed, while the GoK has provided some cooperation and has complied with a number of OTP requests, *the most critical documents and records sought by the OTP remain outstanding*, despite the OTP's exhaustive efforts to urge the GoK to furnish these items. The outstanding documents and records that the OTP has requested from the GoK have been pending for periods that range from one to three years. *The individual and cumulative effect of the GoK's actions has been to undermine the investigation in these cases and limit the body of evidence available to the Chamber at trial.*"[20]

23. Since Mr Kenyatta took office as President of Kenya, "there has been a decline in the level of co-operation, which was already inadequate", according to the Prosecution.[21]

24. Therefore, the Prosecution would not be in its current predicament if the Government had not withheld key evidence and obstructed the interview of key figures in Kenya.

25. Further, the Trial Chamber has already adjourned the commencement of trial in order to provide the Government with six months to provide some of that

[19] *Id.*, para. 93.
[20] ICC-01/09-02/11-733-Red, para. 4, emphasis added.
[21] ICC-01/09-02/11-892-Conf-AnxA, p. 8.

key evidence to the Prosecution.[22] Until that evidence has been provided and analysed, it would be premature to withdraw the order to freeze assets, and would be inconsistent with the Trial Chamber's acknowledgement that "there is a possibility that a limited period of adjournment may enable necessary evidence, potentially shedding light on matters central to the charges, to be obtained."[23]

26. If, once all the evidence withheld by the Government in violation of Part 9 of the Statute is provided to the Court and analysed, it emerges that there is no evidence to sustain a conviction, the freezing order can then be lifted.

27. It is to be emphasized that, at present, there is no order to forfeit the assets of the Accused: freezing of a suspect's assets naturally envisages that the assets are returned if charges are not confirmed or if no conviction is subsequently entered.

28. If the Pre-trial Chamber's Order has proved ineffective, that in itself is not a sufficient reason to revoke or to modify it insofar as its very ineffectiveness is a direct result of the Government's failure to implement it. This applies even if it is conceded that the chances that Mr Kenyatta's Government will now seize any Mr Kenyatta's vast assets in Kenya are slim.

29. In summary, it would be wholly inappropriate to reward the Accused for a policy of non-compliance with (a) valid requests from the Prosecution for access to key witnesses and evidence, resulting in part in the weakness of the Prosecution's evidence; and (b) a valid request from the Pre-Trial Chamber to freeze assets, in total violation of part 9 of the Statute.

30. To revoke the Pre-Trial Chamber's Order with no sanction whatsoever would undermine the overall integrity and effectiveness of the asset-freezing model set out in the Statute, and would directly incentivise further non-cooperation in the present case.

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[22] ICC-01/09-02/11-908, p. 46.
[23] *Id.*, para. 96.

(iii) any other order or relief as may be appropriate in the circumstances, with particular regard to the apparent violation of the confidentiality direction of the Pre-Trial Chamber

(a) Finding under Article 87(7) of the Statute and referral to the ASP

31. It is therefore appropriate for the Trial Chamber to make a finding pursuant to Article 87(7) of the Statute, whether or not the Trial Chamber decides to revoke the Pre-Trial Chamber's Order. There are at least two bases for such a finding.

32. First, the Government has failed, without good cause, to take any action whatsoever to freeze or seize any of the Accused's property or assets. It has therefore failed to comply with the request for assistance transmitted by the Registrar, in accordance with the Pre-Trial Chamber's Order, contrary to the provisions of the Statute, thereby preventing the Court from having available to it the assets and property of the Accused in order to guarantee, in the event of a conviction, that the victims of this case may, pursuant to Article 75 of the Statute, obtain reparations for the harm which has been caused to them.

33. Second, the Government delayed, without good cause, for years before it informed the Registrar of a purported legal barrier to compliance: an interpretation of Article 93(1)(k) which is wholly inconsistent with the Statute and with Kenya's own legislation, particularly Sections 106-107 of, and the Second Schedule to, the International Crimes Act 2010. This unjustifiable delay in consulting with the Court is a violation of the obligation of the Government to 'promptly consult with the Court to try to resolve the matter' under Article 93(3) and to consult with the Court 'without delay' under Article 97 of the Statute.

34. The Trial Chamber, in accordance with Articles 64(6) and 87(7) of the Statute and Regulations 108 and 109 of the Regulations of the Court, should therefore

make a finding of non-compliance under Article 87(7) of the Statute and refer the matter to the Assembly of States Parties.

(b) Provision of information in contravention of Pre-Trial Chamber's Order

35. The Trial Chamber has referred to the publication on the website of the Kenyan newspaper *The Star* in January 2013 of information about a request to identify or freeze the assets of the Accused, in apparent contravention of the instruction of the Single Judge to keep the matter confidential, and that the Government appears to have been the source of that information.[24]

36. Part of the article in *The Star* is a quotation from a letter of the Attorney-General:

> "This request cannot be acceded to without a court order and further our interpretation of the law is that Article 75(4) (of the Rome Statute) makes it clear that a request for cooperation in identifying and freezing assets for purposes of reparations (rather than forfeiture) may only take place after a person is convicted," Muigai's letter stated. [...]"Please note that Article 93 of the Rome Statute enjoins states to provide certain forms of cooperation including requests for freezing of assets in accordance with national laws. Accordingly Article 40 of the Kenyan constitution prohibits the arbitrary deprivation of a person's property," the AG said in his letter.[25]

37. The information in this paragraph also appeared in stories published around the same time in *The Standard*,[26] the website of *Capital FM*,[27] and on KTN television news. It appears to be based on a paragraph in a letter[28] from the Attorney-General to the Prosecution dated 11 January 2013. That paragraph is reproduced in its original form below:

[24] Trial Chamber's Order, para. 5.
[25] *Kenya will not freeze assets of ICC four*, 12 January 2013, *The Star*, http://www.the-star.co.ke/news/article-102541/kenya-will-not-freeze-assets-icc-four#sthash.2iTB9iBd.dpuf [2 May 2014].
[26] *AG says no to Uhuru, Ruto asset freeze*, 12 January 2013, *The Standard*, http://www.standardmedia.co.ke/?articleID=2000074830&story_title=Kenya-AG-says-no-to-Uhuru%2C-Ruto-asset-freeze [2 May 2014].
[27] *Freezing of assets for ICC suspects premature – Muigai* , 11 January 2013, *Capital FM*, http://www.capitalfm.co.ke/news/2013/01/freezing-of-assets-for-icc-suspects-premature-muigai/ [2 May 2014].
[28] The Prosecution provided a copy of this correspondence to the Defence and to the LRV prior to the 13 February 2014 status conference in the present case.

2. Request for Freezing Assets

> We have previously severally informed you that this request cannot be acceded to without a Court order and further that our interpretation of the law is that Article 75(4) makes it clear a request for cooperation in identifying and freezing of assets for purposes of reparations (rather than forfeiture) may only take place after a person is convicted. Further Article 77 (2) (b) provides that the Court may order forfeiture of proceeds, assets and property, but only if it is clear that they have been derived from the crime and such a penalty is contingent on the conviction. Please also note that Article 93 of the Rome Statute enjoins States to provide certain forms of cooperation including requests for freezing of assets in accordance with national laws. Accordingly Article 40 of the Kenyan Constitution prohibits the arbitrary deprivation of a person`s property.

38. Indeed, that paragraph of the letter is visible, and parts of it clearly legible, on KTN's television news, broadcast nationwide on 11 January 2013.[29]

39. The information contained in the Attorney-General's letter and published and broadcast on those media clearly refers to an ICC request to freeze assets. This extract above of the leaked letter of the Attorney General can only be referring to the request made by the Registrar in pursuance of the Pre-Trial Chamber's Order, as clarified by its introductory sub-heading: "Request for Freezing Assets".

40. The publications – which are still available on the internet – therefore appear to flagrantly undermine the Single Judge's direction that is essential for the requested State to keep confidential the request to freeze assets.

41. It remains unclear to the LRV whether the Pre-Trial Chamber's Order was itself provided to the Government, or whether the Government was otherwise aware of the confidentiality direction.

42. If the Government was provided with the Pre-Trial Chamber's Order or was otherwise aware of that direction, and nevertheless provided information

[29] *News: AG says no to Uhuru, Ruto asset freeze* 11 January 2013, https://www.youtube.com/watch?v=dWtRYvcuaU8 [2 May 2014]; see in particular the letter which appears at 1:10 to 1:25 of this broadcast.

relating to the existence of an asset-freezing request to the Kenyan media, it would be appropriate to issue a reprimand to the Government.

43. To allow States Parties to violate confidentiality directions of Chambers of this Court without sanction is likely to undermine public confidence in the administration of justice by the Court in this and in other cases.

44. Further, any deliberate leaking of information which is subsequently widely published and broadcast of the existence of an ICC request to freeze assets in respect of named suspects is obviously an efficient way to thoroughly undermine the effectiveness of any measures subsequently taken to freeze those assets. It is contemptuous of the Court's asset-freezing regime.

45. For these reasons, it is vital that the Government clarifies its knowledge of who was responsible for providing the information resulting in the January 2013 publications about the ICC asset-freezing request on *KTN* television news, *The Star*, *The Standard*, and *Capital FM*.

46. On the basis of the information provided by the Government, and any further submissions by the parties and participants, the Trial Chamber should consider the issuance of such sanctions as it deems appropriate, including the issuance of substantial fines under Article 70 of the Statute and Rule 166 of the RPE on those who publish confidential material in knowing violation of an order of this Court.[30]

(c) Provision of information in contravention of Article 87(3)

47. It would also be appropriate for the Government to assist the Trial Chamber in gaining a clear understanding of the circumstances surrounding the repeated publication in the Kenyan press of confidential communications

[30] For a discussion of the freedom of the media to report on matters concerning international criminal courts, and the corporate liability of media companies for contempt of court in international criminal law, *cf*. STL-14-05/I/CJ, paras 14-28 of *In the case against Akhbar Beirut S.A.L. and Ibrahim Mohamed Al Amin*, "Redacted Version of Decision in Proceedings for Contempt with Orders in Lieu of an Indictment", Special Tribunal for Lebanon, dated 31 January 2014 and made public by the Contempt Judge on 24 April 2014.

between the Prosecution and the Government, in apparent violation of Article 87(3) of the Statute.

48. Such publication continues, even after the issuance of the Trial Chamber's order on 7 April 2014, in which the Trial Chamber's expressed serious concerns about the publication of confidential information in Kenya.

49. Last Sunday, 27 April 2014, the front page of the *Sunday Nation*, a Nairobi-based newspaper which is the Sunday version of the *Daily Nation* and is the bestselling Sunday newspaper in East Africa, was dominated by an article headlined "Bensouda probes Uhuru's billions and phone secrets".

50. On page 2 of the hard copy of the newspaper, the *Sunday Nation* made repeated reference to confidential April 2014 correspondence between the GOK and the OTP, in apparent violation of Article 87(3) of the Statute. A more high-profile publication in print in Kenya of ICC-related confidential correspondence would be difficult to imagine.

51. Relevant extracts appear below:

> International Criminal Court prosecutor Fatou Bensouda is demanding extensive details of properties and financial records relating to President Kenyatta. She is seeking the information to bolster her case after a series of disappointments with some witnesses who have either withdrawn or been dropped. The details are contained in confidential correspondence between officers of the Court and the Kenya government. The correspondence took place between April 8 and 11 this year, just over a week after President Kenyatta had lost his bid to terminate the charges against him.
>
> […]
>
> The first letter dated April 8 addressed to Interior and Coordination Cabinet Secretary Joseph ole Lenku wants Kenyan authorities to submit information on all the companies or businesses owned by Mr Kenyatta between June 1, 2007 and December 15, 2010.
>
> The letter by the Head of Investigations Michel De Smedt wants details of such businesses even if the ownership is through third parties such as family members, political associates or business partners.

"The OTP requests the assistance of the competent authorities of the Republic of Kenya, pursuant to Articles 93(1)(i) and 93(1)(l) of the Rome Statute, to provide the information requested hereafter and transmit the relevant documents," the letter states.

The government is required "to identify and provide copies (in an electronic format) of the records relating to companies, businesses, partnerships or trusts in which Uhuru Muigai Kenyatta had an ownership interest, directly or indirectly, whether as a shareholder, director, officer of the company, partner, trustee, beneficiary or otherwise, between June 1, 2007 and December 15, 2010," the letter states.

The court also wants the government to identify all land or real property registered in Mr Kenyatta's name either personally or through third parties which might have been transferred to any other person or entity between June 1, 2007 and December 15, 2010.

REPORT ON VEHICLES USED

In addition, the court wants to know details of all the vehicles Mr Kenyatta owns or regularly used between November 1, 2007 and April 1, 2008.

This means the Court is interested in all the vehicles Mr Kenyatta used in the last two months to the 2007 General Election and during the height of the post-election violence that rocked the country in early 2008.

Such information on vehicles, the letter says, should include usage of any cars belonging to companies associated with Mr Kenyatta during that period.

The letter, which is copied to Attorney General Githu Muigai and Kenya's ambassador in Netherlands Rose Makena Muchiri, further seeks reports, in an electronic format, on payment of Income tax and Value Added Tax (VAT) by Mr Kenyatta and his companies between June 1, 2007 and December 15, 2010.

The prosecution also wants bank statements of current or saving accounts belonging to Mr Kenyatta "personally, or through third parties or by any corporate entities" associated with him six months before the 2007 elections and three years after the elections.

This information should include all transactions Mr Kenyatta may have done at foreign exchange institutions during the period.

That's not all. Ms Bensouda also wants Kenyan authorities to provide her office with details of all those people Mr Kenyatta may have sent money via M-Pesa between June 1, 2007 and December 15, 2010.

"To identify all telephone numbers ascribed to, used by, or associated with Uhuru Muigai Kenyatta and provide copies of complete call data records including calls made and received, SMS or other messages sent and received together with financial details held by the service providers between June 1, 2007 and December 15, 2010."

When done with money matters, Mr Smedt wants Mr Lenku to release any information held by security agencies and the National Intelligence Service on activities of Mr Kenyatta or companies associated with him six months before the 2007 General Election and three years later.

[…]

Mr Muigai wrote to the head of international cooperation section of the ICC Amady Ba on April 10 stating that so far, it seems "it has become difficult" to implement the order due to the complexity of the information needed about Mr Kenyatta's wealth.

Mr Muigai faulted the "depth and breadth" of the ICC request.

He pointed out that the requested details went against an order by the Trial Chamber that required the prosecution to only seek information that remains of specific relevance to the charges.

The AG says Mr Smedt's "Revised Request for Assistance" did not adhere to the principles of specificity, relevance and necessity as directed by the Trial Chamber.

52. It is clear that the *Sunday Nation* has published correspondence between the Prosecution and the Government which the *Sunday Nation* knows to be confidential.

53. Even if such publication, in apparent violation of Article 87(3) of the Statute, is not expressly prohibited by any order of any Chamber, it raises serious concerns. In the current climate in Kenya of enhanced hostility towards the ICC, any publication of confidential ICC-related information in the Kenyan media is unlikely to increase the public's confidence in the ability of the Court

to protect the confidentiality of other information, such as the location and identity of protected witnesses.

Respectfully submitted,

Fergal Gaynor

Common Legal Representative of Victims

Dated 2nd May 2014

At Nairobi, Kenya