

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/09-02/11
Date: 12 September 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***

PUBLIC

**Defence Request for Leave to Reply to the 'Victims' response to Prosecution
notice regarding the provisional trial date' (ICC-01/09-02/11-946)**

Source: Defence for Uhuru Muigai Kenyatta

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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Legal Representatives of the Victims

Fergal Gaynor

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

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

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Herman Von Hebel

Counsel Support Section

Victims and Witnesses Unit

Nigel Verrill

Detention Section

**Victims Participation and Reparations Other
Section**

I. INTRODUCTION

1. The Defence for Uhuru Kenyatta ('Defence') hereby requests leave, under Regulation 25(4) of the Regulations of the Court, to reply to the 'Victims' response to Prosecution notice regarding the provisional trial date' ('Victims' Response').¹

II. PROCEDURAL HISTORY

2. On 5 September 2014, pursuant to the Chamber's order of 28 August 2014,² the Prosecution submitted the 'Prosecution notice regarding the provisional trial date' ('Prosecution Notice'), in which it requested that the trial be adjourned until the Government of Kenya execute the Prosecution's request for records in full.³
3. On 10 September 2014, the Defence submitted the 'Defence Response to "Prosecution notice regarding the provisional trial date" (ICC-01/09-02/11-944) and Request to Terminate the Case against Mr Kenyatta.'⁴
4. On the same date, the Victims' Representative submitted the 'Victims' Response,' in which, *inter alia*, he directly accused Mr Kenyatta of serious crimes against the administration of justice as well as violating his summons conditions.⁵
5. On 11 September 2014, the Victims' Representative filed the 'Victims' request for leave to reply to the "Defence response to the Prosecution notice regarding the provisional trial date and request to terminate the case against Mr Kenyatta."'⁶ In this request, the Victims' Representative indicated that he intends to 'clarify' the bases, some of which he

¹ ICC-01/09-02/11-946.

² ICC-01/09-02/11-939, para. 2.

³ ICC-01/09-02/11-944.

⁴ ICC-01/09-02/11-945.

⁵ ICC-01/09-02/11-946.

⁶ ICC-01/09-02/11-947.

acknowledges were matters of inference, for the earlier public assertions with which the Defence was concerned.

III. LAW

6. Under Regulation 24(4) of the Regulations of the Court, the leave of the Chamber is required to reply to a document itself filed as a response.
7. Leave to reply has previously been granted by the Chamber where the relevant response has raised 'new issues of law and fact' not addressed in the originating document,⁷ the requesting party has shown 'good cause' for the leave to reply,⁸ or further submissions 'may benefit' the Chamber.⁹

IV. SUBMISSIONS

8. The Defence submits that good cause exists for the granting of leave to permit the Defence to reply to the Victims' Response given the serious allegations made by the Victims' Representative regarding the conduct of the Accused, to which the Defence ought to be afforded the opportunity to respond.
9. The Victims' Response raises new issues of law and fact that go beyond those raised in the Prosecution Notice, and which have not previously been addressed by the Defence, namely that:
 - (i) The Government's interference with the collection of evidence is consistent with a campaign by the Accused to bring his case to an end;

⁷ ICC-01/09-02/11-891, para. 5.

⁸ See, for example: ICC-01/05-01/08-294, para. 3.

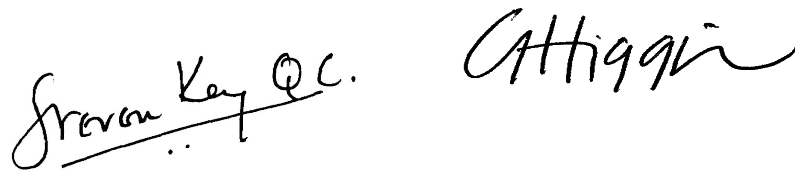
⁹ ICC-01/05-01/08-2995, para. 6; ICC-01/09-02/11-679, para. 9; ICC-01/09-02/11-891, para. 5.

- (ii) The Accused is responsible for the Government's obstruction of justice and for its noncompliance with the Trial Chamber's directions;
 - (iii) The Accused is liable for interference with the collection of evidence; and
 - (iv) The Accused should be warned of his liability for arrest for violation of the summons conditions and Article 70.
10. In addition to seeking permission to address these specific issues raised by the Victims' Representative, the Defence also seeks permission to address the fundamental matter of the appropriate role and remit of the Victims' Representative in proceedings before the Court. The Defence seeks leave to reply on this issue as the inappropriateness of the conduct of the Victims' Representative affects and underpins the entirety of the specific allegations he makes in the course of the Victims' Response.
11. Furthermore, the Defence submits that the Chamber may benefit from receiving further observations on these issues, as they concern the fundamental matter of the conduct and appropriate mandate of the Victims' Representative. These matters have not been judicially considered by this Court to date and their resolution will likely be of assistance to the parties and the Court in the conduct of future cases.

V. RELIEF

12. For the reasons set out herein, the Defence respectfully requests the Chamber to grant leave to reply to the Victims' Response on those issues raised in paragraphs 9 and 10.

Respectfully submitted,

The image shows two handwritten signatures in black ink. On the left is 'Steven Kay QC.' with a horizontal line drawn under the name. On the right is 'G Higgins' in a cursive script.

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Steven Kay QC and Gillian Higgins

On behalf of Uhuru Muigai Kenyatta

Dated this 12th day of September 2014

At London, England