



Original: English

No.: ICC-01/09-02/11  
Date: 18 November 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**

**Victims' request for leave to reply to the  
'Defence response to Victims' request for reclassification'**

**Source:** Legal Representative of Victims

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

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**Amicus Curiae**

**REGISTRY**

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**Registrar**

Mr Herman von Hebel

**Counsel Support Section**

**Deputy Registrar**

**Detention Section**

**Victims and Witnesses Unit**

**Victims Participation and Reparations  
Section**

**Other**

## **I. Introduction**

1. Pursuant to Regulation 24 of the Regulations of the Court ('Regulations'), and on behalf of the victims of this case, the Legal Representative for Victims ('LRV') respectfully requests leave to reply to the 'Defence Response to Victims' Request for Reclassification dated 29 October 2014',<sup>1</sup> filed on 14 November 2014 ('Response').

## **II. Issues to which the LRV wishes to reply**

2. The LRV submits that the Trial Chamber would 'benefit from receiving further observations',<sup>2</sup> on certain arguments raised by the Defence, and stands ready to provide concise submissions on the following, if the Chamber so desires:
  - a. The accuracy of the assertions that (i) 'the LRV is motivated in this application to create adverse publicity for the Accused';<sup>3</sup> and (ii) by requesting the filing of a public redacted version of the Prosecution's pre-trial brief ('PTB'), 'the LRV has exceeded his mandate'<sup>4</sup> and is making 'inappropriate use of ICC procedures'<sup>5</sup>;
  - b. The validity of the Defence's argument that '[t]here is no provision in the Statute or the Rules of Procedure and Evidence that requires the public distribution of the PTB',<sup>6</sup> given that the Statute, Rules of Procedure and Evidence, and Regulations provide a presumption that written submissions to a Chamber by parties and participants will be filed publicly, not confidentially;

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<sup>1</sup> ICC-01/09-02/11-975.

<sup>2</sup> ICC-01/09-02/11-530, para 5 (granting leave to reply where the Chamber concluded that it 'may benefit from receiving further observations').

<sup>3</sup> Response, para.3.

<sup>4</sup> Response, para.19.

<sup>5</sup> Response, para.19.

<sup>6</sup> Response, para.13.

- c. The validity of the Defence argument that ‘by informing witnesses and the public of the Prosecution case, publication of the PTB would preclude any remaining possibility of the proper administration of justice’,<sup>7</sup> given that (i) public versions of PTBs at the ICTY and ICTR are customarily filed publicly months before trial, without undermining the administration of justice; (ii) the principal elements of the case against the Accused are already in the public domain, due to the publication of the document containing the charges; (iii) the Statute envisages that the confirmation of charges process takes place in public prior to trial; and (iv) the Statute also envisages the issuance of a public confirmation of charges decision prior to trial;
- d. The validity of the Accused’s complaint that, due to the low likelihood of trial, ‘the Defence will be unable to test the Prosecution’s evidence at trial, nor call its own evidence’<sup>8</sup> given that (i) the absence of trial is precisely the result sought by the Accused; and (ii) there very likely would have been enough evidence to proceed to trial were it not for the fact that the Court has been unlawfully deprived of key telephone and financial data of central relevance to the Accused’s liability by a government under the Accused’s control;
- e. The Defence’s failure to identify and provide reasoned justification for maintaining the confidentiality of specific parts of the PTB and its failure therefore to comply with the principles of necessity and proportionality.

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<sup>7</sup> Response, para.26.

<sup>8</sup> Response, para.22.

### III. Relief requested

3. For the foregoing reasons, the Victims' Representative respectfully requests the Chamber to:

- a. grant leave to reply on the issues identified in paragraph 2;
- b. vary the time limit specified in Regulation 34(c) of the Regulations so that the reply is to be filed within 4 days of notification of the decision to grant leave .

Respectfully submitted,



Fergal Gaynor  
Common Legal Representative of Victims

Dated this 18<sup>th</sup> day of November 2014

At Montpellier, France