

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/09-02/11
Date: 26 November 2014

TRIAL CHAMBER V(B)

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

SITUATION IN THE REPUBLIC OF KENYA

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

Public

Decision on request of the Legal Representative of Victims for leave to reply

Decision 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 Uhuru Muigai Kenyatta

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

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others

Trial Chamber V(B) ('Chamber') of the International Criminal Court, in the case of *The Prosecutor v. Uhuru Muigai Kenyatta*, pursuant to Regulations 24 and 34 of the Regulations of the Court ('Regulations'), renders the following 'Decision on request of the Legal Representative of Victims for leave to reply'.

1. On 29 October 2014, the Legal Representative of Victims ('LRV') filed the 'Victims' request for reclassification' ('Request'),¹ in which it seeks the Chamber: (i) to reclassify as public certain filings identified in the Request;² and (ii) to order the Office of the Prosecutor ('Prosecution') to file a public redacted version of its second updated pre-trial brief ('PTB').³
2. On 11 November 2014, the Prosecution filed its response, stating, *inter alia*, that it does not oppose the Request.⁴
3. On 14 November 2014, the defence team for Mr Kenyatta ('Defence') filed its response, requesting that the Chamber reject the part of the Request relating to the filing of a public redacted version of the PTB.⁵
4. On 18 November 2014, the LRV filed the 'Victims' request for leave to reply to the "Defence response to Victims' request for reclassification" ('Request for Leave to Reply').⁶ Therein, the LRV requests leave, pursuant to Regulation 24 of the Regulations, to make further submissions on the following five Defence arguments:

¹ ICC-01/09-02/11-970-Conf. A public redacted version was filed on the same day (ICC-01/09-02/11-970-Red).

² Request, ICC-01/09-02/11-970-Red, paras 6-11.

³ Request, ICC-01/09-02/11-970-Red, paras 12-27. *See also* ICC-01/09-02/11-970-Conf-Anx.

⁴ Prosecution's response to the Defence's and the Common Legal Representative's requests for reclassification, ICC-01/09-02/11-973, paras 5-6.

⁵ Defence Response to Victims' Request for Reclassification dated 29 October 2014, ICC-01/09-02/11-975, para. 31.

⁶ ICC-01/09-02/11-976.

- (i) that the LRV is requesting the filing of a public redacted version of the PTB in order to 'create adverse publicity for the Accused', and has, *inter alia*, thereby exceeded his mandate;
 - (ii) that there is no provision in the Rome Statute or the Rules of Procedure and Evidence that requires the public distribution of the PTB;
 - (iii) 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';
 - (iv) that due to the 'low likelihood of trial', the PTB ought not be made public because 'the Defence will be unable to test the Prosecution's evidence at trial, nor call its own evidence'; and
 - (v) the Defence's failure to provide justification for maintaining the confidentiality of particular parts of the PTB, and its failure therefore 'to comply with the principles of necessity and proportionality'.⁷
5. The Chamber notes the submission of the LRV that such reply, if permitted by the Chamber, could be filed within four days of leave being granted to do so.⁸
 6. Pursuant to Regulation 24(5) of the Regulations, a participant may only reply to a response with the leave of the Chamber. The Chamber considers that the Request for Leave to Reply identifies some new issues of law and fact on which it may benefit from receiving further observations; namely, those relevant to issues (ii) and (v) outlined above. In the circumstances, the Chamber is not persuaded that submissions on the remainder of the issues would be of assistance to it.
 7. The Chamber therefore partially grants the Request for Leave to Reply.

⁷ Request for Leave to Reply, ICC-01/09-02/11-976, para. 2.

⁸ Request for Leave to Reply, ICC-01/09-02/11-976, para. 3.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

GRANTS the Victims' Request for Leave to Reply in relation to issues (ii) and (v) outlined in paragraph 4 above;

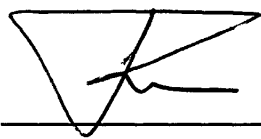
REJECTS the Victims' Request for Leave to Reply in relation to issues (i), (iii) and (iv) outlined in paragraph 4 above; and

DIRECTS the LRV to file its reply by 2 December 2014.

Done in both English and French, the English version being authoritative.



Judge Kuniko Ozaki, Presiding Judge



Judge Robert Fremr



Judge Geoffrey Henderson

Dated this 26 November 2014

At The Hague, The Netherlands