

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 26 August 2015

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

**Order inviting further submissions on the Prosecution's application for a
finding of non-compliance under Article 87(7) of the Statute**

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

Mr Githu Muigai, Attorney General
of the Republic of Kenya

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

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*, having regard to Article 64(6)(f) of the Rome Statute ('Statute') and Regulations 28 and 109(3) of the Regulations of the Court, issues the following 'Order inviting further submissions on the Prosecution's application for a finding of non-compliance under Article 87(7) of the Statute'.

1. On 3 December 2014, the Chamber rendered its 'Decision on Prosecution's application for a finding of non-compliance under Article 87(7) of the Statute' ('Decision'),¹ in which it rejected an Office of the Prosecutor ('Prosecution') application for a finding of non-compliance under Article 87(7) of the Statute against the Government of the Republic of Kenya ('Kenyan Government') ('Application').²
2. On 9 December 2014, the Prosecution filed a request for leave to appeal the Decision,³ which was granted by the Chamber on 9 March 2015.⁴
3. On 19 August 2015, the Appeals Chamber reversed the Decision on certain grounds and remanded it to the Chamber to 'determine whether Kenya has failed to comply with a cooperation request that has prevented the Court from exercising its functions and powers under the Statute and decide, if that is the case, whether or not to refer the matter to the [Assembly of States Parties]' ('Appeals Judgment').⁵

¹ ICC-01/09-02/11-982.

² Prosecution's application for a finding of non-compliance under Article 87(7) of the Statute against the Government of Kenya, 29 November 2013, ICC-01/09-02/11-866-Conf-Exp. A public redacted version was filed on 2 December 2013 (ICC-01/09-02/11-866-Red).

³ Prosecution's application for leave to appeal the 'Decision on Prosecution's application for a finding of non-compliance under Article 87(7) of the Statute', ICC-01/09-02/11-985.

⁴ Decision on the Prosecution's request for leave to appeal, ICC-01/09-02/11-1004.

⁵ Judgment on the Prosecutor's appeal against Trial Chamber V(B)'s "Decision on Prosecution's application for a finding of non-compliance under Article 87(7) of the Statute", ICC-01/09-02/11-1032 OA5, *see especially* paras 90-91 and 94.

4. In light of the additional guidance provided in the Appeals Judgment regarding the factors to be assessed in making the relevant determinations,⁶ the Chamber considers it appropriate to invite the parties and participants to provide further focused submissions on those aspects. The Chamber notes, however, that it has previously received extensive submissions from each of the parties and participants on the Application,⁷ and these should not be repeated in any further submissions being made. Rather, the further submissions should be confined solely to consideration of the factors identified by the Appeals Chamber as they relate to the Application.

FOR THE FOREGOING REASONS THE CHAMBER HEREBY

DIRECTS the Prosecution to file any additional submissions it may have, in accordance with the guidance provided at paragraph 4 above, not later than 14 September 2015; and

DIRECTS the Kenyan Government, Legal Representative of Victims and defence team for Mr Kenyatta, to file any further submissions they may have, in accordance with the guidance provided at paragraph 4 above, including any responses to the Prosecution's submissions, not later than 15 October 2015.

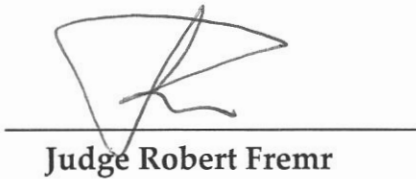
⁶ See especially Judgment, ICC-01/09-02/11-1032, paras 95-96.

⁷ See Decision, ICC-01/09-02/11-982, summarising the relevant procedural background and submissions previously received.

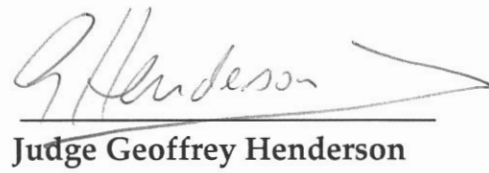
Done in both English and French, the English version being authoritative.



Judge Kuniko Ozaki, Presiding Judge



Judge Robert Fremr



Judge Geoffrey Henderson

Date 26 August 2015

At The Hague, The Netherlands