

**Public redacted version of
ICC-01/09-02/11-940-Conf-AnxF**



Cour
Pénale
Internationale

International
Criminal
Court

Le Bureau du Procureur
The Office of the Prosecutor

Hon. Professor Githu Muigai
Attorney General
Attorney General's Chambers
P.O. Box 40112-00100
Nairobi
Kenya

Ref.: OTP/KEN/KEN-84i/JCCD-bgsm

Date: 27 August 2014

Dear Attorney General,

Thank you for the documents that you conveyed to the Office of the Prosecutor (OTP), under cover of your 22 August 2014 letter (your reference: AG/SEC/14/209/4 Vol. II). In this context, I wish to recall the OTP's previous letters of 23 July 2014 (our reference: OTP/KEN/KEN-84f/JCCD-bgsm), 31 July 2014 (our reference: OTP/KEN/KEN-84g/JCCD-sm), and 20 August 2014 (our reference: OTP/KEN/KEN-84h/JCCD-bgsm), regarding implementation of the OTP's 8 April 2014 Revised Request for assistance (our reference: OTP/KEN/KEN-84/ID-bgsm).

Clarification in relation to our proposed meeting

I wish to clear up an apparent misunderstanding with respect to our anticipated meeting. Your 22 August 2014 letter references a 7 August 2014 e-mail from your office to [REDACTED] as well as telephone conversations we had. Those communications did not relate to the OTP's Revised Request for records in the Kenyatta case, but to a different matter.

The 7 August 2014 email from your office to [REDACTED] was a follow up to [REDACTED] 11 July 2014 meeting with [REDACTED] in relation to [REDACTED]. The April 2014 Revised Request was never part of those discussions. [REDACTED] sent [REDACTED] an email on 18 July 2014, following their telephone conversation that day, in which she requested from [REDACTED] a written agenda for a proposed meeting with you. In response, I sent you a letter dated 22 July 2014 (OTP/KEN/KEN-87a/JCCD-kc), requesting a meeting in relation to "cooperation on [REDACTED]". The Revised Request was not among the issues to be discussed in that meeting.

The Revised Request has always been a subject of separate and distinct meetings and correspondence between us. You will recall that I wrote to you under separate cover regarding the Revised Request on 23 July 2014, 31 July 2014, and 20 August 2014.

Materials Annexed to your 22 August 2014 letter

Let me turn now to the status of implementation of the OTP's April 2014 Revised Records Request. We are grateful to the competent authorities of the Republic of Kenya for the documents conveyed to us on 22 August 2014. However, I wish to convey my regret that four-and-a-half months after the Revised Request was issued, a substantial amount of information responsive to this Request remains outstanding.

We refer in particular to the information and clarifications sought in my 3 July 2014 letter. With the exception of the letter received from the National Intelligence Service, none of the information sought in that 3 July 2014 letter has been provided.

We are particularly concerned that the information sought in my 3 July 2014 letter regarding Mr Kenyatta's bank accounts (pp. 4-5) has not been provided. Such information should not be difficult to obtain, and yet we have received no explanation for the delay. The OTP reiterates its request that the outstanding information regarding Mr Kenyatta's bank accounts be provided as soon as possible. Similarly, the OTP reiterates its request for meetings with representatives from the banks that provided records. You will recall our earlier agreement, of which we informed the Chamber, that the Government of Kenya would take good faith measures to ensure that such meetings would be concluded no later than 8 August 2014.¹

Additionally, we offer the following observations, which we hope will assist the Government of Kenya as it proceeds to provide the materials that remain outstanding from the Revised Request:

Company records

Thank you for [REDACTED] 19 August 2014 memorandum, which responds to the question posed in my 3 July 2014 letter regarding the factors that prevent a search in the Companies Registry using an individual's name as the search term.

¹ See ICC-01/09-02/11-930, para 10.

Given the apparent difficulties in searching the Companies Registry using an individual's name, it is particularly important that we receive Mr Kenyatta's full tax returns for the relevant period, as sought in para. 17(3) of the Revised Request. As explained in my 3 July 2014 letter, the tax returns could identify the corporate entities in which Mr Kenyatta had holdings and received dividends or other revenue.² Indeed, the Chamber emphasised the utility of Mr Kenyatta's tax returns for this purpose in its 29 July 2014 decision.³

We also note the Chamber's observation that it is appropriate for the Government of Kenya to examine the "declarations of interests which public office holders may be required to make" to determine whether they shed light on any corporate entities in which Mr Kenyatta may have held an interest at the relevant time.⁴ We trust that this examination is being undertaken, and look forward to receiving the results. We would, of course, also welcome any other suggestions the Government of Kenya may have for identifying any corporate entities in which Mr Kenyatta may have held an interest at the relevant time.

Vehicle records

Thank you for [REDACTED] 21 August 2004 letter explaining that the National Transport and Safety Authority:

... has no mechanism in place by which it can identify any vehicle(s) regularly used by an individual or by corporate entities belonging or associated to any particular individual.⁵

We accept that the identification of corporate entities associated with or owned by Mr Kenyatta is work in progress. Once progress has been made on this front and any such corporate entities are identified by name, we hope that the National Transport and Safety Authority will be able to conduct searches using the names of any such corporate entities.

Telephone records

Thank you for the 14 and 18 August 2014 letters from Safaricom and Airtel. The letters do not, however, respond to the queries raised in pages 6-7 of my 3 July 2014 letter. We would be grateful to receive answers to those queries at your earliest convenience.

² See Reference number: OTP/KEN/KEN-84d/JCCD-sm, page 3.

³ ICC-01/09-02/11-937, para 14.

⁴ ICC-01/09-02/11-937, para 14.

⁵ [REDACTED]

National Intelligence Service records

Thank you for [REDACTED] 20 August 2014 letter.⁶ It answers the query raised on page 7 of my 3 July 2014 letter, and we have no further questions on this topic at this point.

In sum, the Chamber's 29 July 2014 decision makes it clear that the Bench expects the Revised Request to be executed as quickly as possible.⁷ The OTP shares this goal, and looks forward to receiving the outstanding information sought in the Revised Request without delay. If it would assist, we remain willing to meet with you at your earliest convenience to discuss full implementation of the Revised Request.

Yours sincerely,



Phakiso Mochochoko

Director

Jurisdiction, Complementarity and Cooperation Division

Cc:

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[REDACTED]

⁶ [REDACTED]

⁷ See ICC-01/09-02/11-937, para 47.