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

Date: 30 August 2012

TRIAL CHAMBER V

Before: Judge Kuniko Ozaki, Presiding Judge
Judge Christine Van den Wyngaert
Judge Chile Eboe-Osuji

**SITUATION IN THE REPUBLIC OF KENYA
IN THE CASE OF THE PROSECUTOR V. FRANCIS KIRIMI MUTHAURA AND
UHURU MUIGAI KENYATTA**

Public Document

**Victims' Response to the 24 August 2012 Request for Leave to Submit Amicus
Curiae Observations**

Source: Victims' Legal Representative

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

Court to:

The Office of the Prosecutor

Ms. Fatou Bensouda, Prosecutor
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Legal Representative of the Victims

Mr. Morris Anyah

Legal Representatives of the 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 Representative

Amicus Curiae

The Civil Society Organization Network (“CSO Network”)

REGISTRY

Registrar

Ms. Silvana Arbia

Defence Support Section

Deputy Registrar

Mr. Didier Preira

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Ms. Fiona McKay

Other

I. INTRODUCTION

1. On 24 August 2012, the Civil Society Organization Network (“CSO Network”) filed a request for leave to submit observations as *amicus curiae* “on the modalities of victim participation at the trial phase of the proceedings” in this case, pursuant to Rule 103 of the Rules of Procedure and Evidence.¹ An identical request by the CSO Network was filed on the same day in the *Prosecutor v. William Samoei Ruto and Joshua Arap Sang*.²
2. Pursuant to Regulation 24(2) of the Regulations of the Court, the participating victims hereby file this response to the Request for Leave.

II. SUBMISSIONS

3. The participating victims support the Request for Leave and the relief sought through it by the CSO Network. In the victims’ view, an organization like the CSO Network which has actively worked with victims of the post-election violence in Kenya since 2008, informing them of their participatory rights before the Court and engaging in initiatives aimed at seeking justice for victims, has a unique capacity to assist the Chamber by the provision of information that would otherwise not be available to the Chamber, given the size of its organizational network, the continuity of its engagement with victims, and the breadth of its initiatives on behalf of victims. Such information would be relevant and invaluable vis-à-vis the determination of the modalities of victim participation in the trial proceedings.

¹ “Request for Leave to Submit Amicus Curiae observations pursuant to Rule 103 of the Rules of Procedure and Evidence,” ICC-01/09-02/11-470, 24 August 2012 (“Request for Leave”), para. 1.

² “Request for Leave to Submit Amicus Curiae observations pursuant to Rule 103 of the Rules of Procedure and Evidence,” ICC-01/09-01/11-450, 24 August 2012.

4. For purposes of full disclosure, the Legal Representative advises the Chamber that one of his field staff in Kenya is currently a member of the CSO Network.³ In this regard, it should be said that the Legal Representative was never consulted by the CSO Network regarding the filing of the Request for leave, nor did the Legal Representative suggest, contribute to, or otherwise facilitate the filing of the Request for Leave.
5. Indeed, it appears that some of the victims who are the subject of the Request for Leave would come under the scope of those currently represented by the Office of Public Counsel for Victims (OPCV), to the extent that they are victims with applications to participate, but without a self-designated legal representative.⁴ The other category of victims to which the Request for Leave ostensibly implicates are those who fall within the scope of the case, but who have not yet applied for participation or transmitted an application to the Victims Participation and Reparations Section (VPRS). Neither category of victims are currently represented by the Legal Representative.

III. CONCLUSION AND RELIEF REQUESTED

6. The victims respectfully request that the Chamber grant leave to the CSO Network to submit observations as *amicus curiae* on the modalities of victim participation at trial.

³ To ensure the privacy of the Legal Representative's field staff and the continuity on their work in Kenya, the name of the field staff in question is respectfully being withheld.

⁴ "First Decision on Victims' Participation in the Case," ICC-01/09-02/11-23, 30 March 2011, page 13 (ordering that "where no legal representative has been appointed by the victim applying, the OPCV act as legal representative for unrepresented victims until such time a legal representative is chosen by the victim or is appointed by the Chamber."); see also, para. 23.

Respectfully submitted,



Morris Anyah

Victims' Legal Representative

Dated this 30th day of August, 2012

At The Hague, The Netherlands.