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

Date: 3 October 2013

TRIAL CHAMBER V(B)

Before: Judge Kuniko Ozaki, Presiding
Judge Robert Fremr
Judge Chile Eboe-Osuji

SITUATION IN THE REPUBLIC OF KENYA

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

Public redacted version of Filing No. ICC-01/09-02/11-795-Conf

Victims' request for leave to reply to the "Defence response to the 'Victims' application relating to possible disclosure of confidential information'"

Source: Common Legal Representative for Victims

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

The Office of the Prosecutor

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Ms Adesola Adeboyejo

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Unrepresented Victims

**Unrepresented Applicants for
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Mr Patrick Craig

**Victims Participation and Reparations
Section**

Ms Fiona McKay

Other

I. Introduction

1. On behalf of the victims of this case, the Legal Representative respectfully requests, pursuant to Regulation 24 of the Regulations of the Court ("Regulations"), leave to reply to the confidential "Defence Response to the 'Victims' application relating to the possible disclosure of confidential information'", filed on 20 August 2013 ("Response").¹
2. This request is classified "confidential" in accordance to Regulation 23 *bis* (2) of the Regulations as it responds to a confidential request by the Defence. The Legal Representative has no objection to the entirety of the filings on this issue being made public by the Trial Chamber.

II. Issues to which the Legal Representative wishes to reply

3. The Legal Representative clarifies that he has no doubt whatsoever of the professional integrity of any counsel acting for the Defence in this case, and he is not inviting the Trial Chamber to entertain any such doubt.
4. Nevertheless, he submits that the Trial Chamber would be assisted by a brief and concise reply on the following issues which are raised by the Response:
 - a. If the Defence discloses to a third party [REDACTED], whether this gives rise to a violation (however technical or unintentional that violation might arguably be) of Article 8(4) of the Code of Professional Conduct for Counsel and of paragraph 20 of the Protocol of 24 August 2012.
 - b. Whether counsel for the Defence were given a proper opportunity to address the matter raised by the Victims' Representative before it was put in the public domain,² given that (i) the Legal Representative repeatedly and urgently emailed the Defence on the matter, to no avail; (ii) the Defence had previously failed to respond to all written communication from the Legal Representative; and (iii) the Defence has been working

¹ Defence Response to the "Victims' application relating to possible disclosure of confidential information", ICC-01/09-02/11-793, 20 August 2013 ("Response").

² Response, para. 18.

during the judicial recess, making two written filings dated 12 August 2013.

- c. The relevance of the Defence's ongoing failure publicly to retract its statement to the Kenyan media that the High Court application was confidential *inter alia* to protect the identities of victims in the present case (inviting the inference that such identities had been disclosed to the High Court), and its failure to assess the distress and anxiety that this would cause within the victim community.
- d. The validity of the Defence arguments that: (i) "The public filing of the Victims' Application on the sole basis of unverified, partial and misleading news reports can only have led to increased tensions regarding the nature of the investigations being conducted in the present case";³ and (ii) [REDACTED],⁴ given that the Defence's 'confidential' application to the High Court of Kenya was prominently publicized on the Defence's own websites, with links inviting the reader to consult news stories which the Defence now says are "unverified, partial and misleading".⁵

Respectfully submitted,



Fergal Gaynor
Common Legal Representative of Victims

Dated this 3rd day of October 2013

At Nairobi, Kenya

³ Response, para. 18.

⁴ Response, para. 19.

⁵ The relevant public web pages, which were on the websites of the "International Criminal Law Bureau" and "9 Bedford Row International", as well as their associated Facebook pages, have recently been taken down from the internet. PDF versions of two of the relevant web pages have been preserved by the Legal Representative.