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No.: ICC-01/09-02/11
Date: 29 October 2013

TRIAL CHAMBER V(B)

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

**SITUATION IN THE REPUBLIC OF KENYA
IN THE CASE OF
*THE PROSECUTOR V. UHURU MUIGAI KENYATTA***

Public Document

Victims' Response to "Prosecution's Motion for Reconsideration of the 'Decision on Defence Request for Conditional Excusal from Continuous Presence at Trial' and in the alternative, Application for Leave to Appeal"

Source: Common Legal Representative of Victims

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

Ms Fatou Bensouda
 Mr Benjamin Gumpert
 Ms Adesola Adeboyejo

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
 Ms Caroline Walter

**The Office of Public Counsel for the
Defence****States Representative****Amicus Curiae****REGISTRY****Registrar**

Mr Herman von Hebel

Counsel Support Section**Deputy Registrar****Detention Section****Victims and Witnesses Unit**

Mr Patrick Craig

**Victims Participation and Reparations
Section**

Ms Fiona McKay

Other

I. Introduction

1. The Legal Representative for Victims hereby submits his response to the Prosecution's Motion for Reconsideration of the 'Decision on the Defence Request for Conditional Excusal from Continuous Presence at Trial' and in the alternative, Application for Leave to Appeal" ("Motion").

II. Procedural Background

2. On 18 October 2013, Trial Chamber V(B), by majority, issued the "Decision on Defence Request for Conditional Excusal from Continuous Presence at Trial" ("*Kenyatta* Decision").¹ It granted the Defence's request, allowing Mr Kenyatta to be absent from substantially all of the trial.² The *Kenyatta* Decision "fully adopted" the reasoning set out by Trial Chamber V(A) in a corresponding decision in the *Ruto and Sang* trial ("*Ruto* Decision").³
3. On 25 October 2013, the Appeals Chamber rendered its judgment in the Prosecution's appeal against the *Ruto* Decision.⁴ It found that the Trial Chamber did not properly exercise its discretion in excusing Mr Ruto from substantially all of his trial, and reversed the *Ruto* Decision.
4. On 28 October 2013, the Prosecution filed the "Prosecution's Motion for Reconsideration of the 'Decision on Defence Request for Conditional Excusal from Continuous Presence at Trial' and in the alternative, Application for Leave to Appeal" ("Motion").

¹ ICC-01/09-02/11-830.

² *Kenyatta* Decision, paras.4-5.

³ ICC-01/09-01/11-777, para 67.

⁴ ICC-01/09-01/11-1066 OA5.

III. Relief

5. The Legal Representative of the victims in this case supports the Motion in its entirety for the reasons set out therein.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Fergal Gaynor', with a stylized flourish at the end.

Fergal Gaynor
Common Legal Representative of victims

Dated this 29th day of October 2013

At Nairobi, Kenya