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No.: **ICC-01/09-02/11**
Date: **29 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 Document

Public Redacted version of the "Victims' Response to "Defence Application for a Permanent Stay of the Proceedings due to Abuse of Process"

Source: **Common Legal Representative of Victims**

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

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I. Introduction

1. On behalf of the victims in this case, the Legal Representative of Victims ("Legal Representative") respectfully requests the Trial Chamber to deny the "Defence Application for a Permanent Stay of the Proceedings due to Abuse of Process", filed on 10 October 2013 ("Application").[1] The Legal Representative submits in summary that:
    a. The Application is made in the context of a multi-faceted campaign by the Accused, supported by his Government, to avoid trial.
    b. A permanent stay of the proceedings due to abuse of process is to be used in very exceptional circumstances, and is an unsuitable remedy for dealing with offences against the administration of justice.
    c. A pre-trial evidential hearing is not envisaged in the Court's regulatory structure, is unnecessary, and might dissuade key witnesses from testifying at trial.
    d. Tools are available within the trial process to deal fairly with the matters raised in the Application.
    e. Repeatedly litigating the credibility of key prosecution witnesses before trial has even begun is neither appropriate nor necessary.
    f. The trial is the proper forum in which to test prosecution evidence and to present evidence in support of the Accused.
    g. The Defence should not be rewarded for employing yet another delaying tactic.

II. The subject matter is directly linked to the victims' interests.

2. The Trial Chamber has ruled: "[I]n accordance with Regulation 24(2) of the Regulations, the Chamber finds that the Common Legal Representative may file responses to documents but must first demonstrate that the subject matter at issue is directly related to the interests of victims."[2]

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[1] ICC-01/09-02/11-822-Conf, 10 October 2013.
[2] ICC-01/09-02/11-498, 3 October 2012, para. 71.

3. The subject matter of the Application is directly related to the interests of the victims. A decision to permanently stay the proceedings would totally extinguish the rights of the victims in this case. It is difficult to conceive of an application which, if granted, would more profoundly affect the victims' interests.

4. Should the Defence's request for a pre-trial evidential hearing be granted, the commencement of trial will be postponed by several months. The crimes alleged in this case took place almost six years ago. To further postpone the commencement of trial would delay the realization of the victims' right to know the truth of the crimes committed against them; to have those responsible for those crimes held accountable; and to receive just reparation for the harm they have suffered.[3]

III. Procedural background

5. On 10 October 2013, the Defence filed the confidential "Defence Application for a Permanent Stay of the Proceedings due to Abuse of Process". It filed a public redacted version on the same day.[4]

IV. Confidentiality

6. This submission is filed confidentially in accordance with Regulation 23*bis*(2) of the Regulations of the Court, as it responds to an application from the Defence which was designated "confidential". The Common Legal Representative will file a public redacted version of this response in due course.

[3] *Cf.* ICC-01/04-01/06-1119, 18 January 2008, para. 98; ICC-01/04-01/07-474, 13 May 2008, para. 32; ICC-01/04-503 OA4 OA5 OA6, 30 June 2008, para. 97.
[4] ICC-01/09-02/11-822-Conf , 10 October 2013; ICC-01/09-02/11-822-Red, 10 October 2013.

V. Submissions

a. The Application is made in the context of a multi-faceted campaign by the Accused, supported by his Government, to avoid trial.

7. To grant the Application would be to deny to the victims of the serious crimes alleged the justice they deserve, and would be odious and repugnant to the administration of justice.

8. As the Trial Chamber will be aware, the Accused's campaign to escape trial has entered a new and more intense phase as the scheduled trial start date approaches. International efforts to support that campaign include an address by the Accused on 12 October 2013, two days after the Defence filed the Application, in which he described the Court to the African Union as "[a] painfully farcical pantomime" and as "the toy of declining imperial powers". The Accused also asserted that "we only get bias and race-hunting at the ICC."[5] The most recent manifestation of the campaign is the submission of an Article 16 request on 22 October 2013 to the United Nations Security Council.[6]

9. It is difficult to escape the inference that the Accused has filed the Application at this late stage as part of an energetic, multi-faceted effort before this Trial Chamber, the United Nations Security Council, the African Union, and the Assembly of States Parties, to prevent this trial from starting, and thereby to deny to the victims of the horrific crimes alleged in this case the justice they deserve.

b. An abuse of process application should only be granted on an exceptional basis, and is not an appropriate remedy for offences against the administration of justice.

[5] "Uhuru blasts US, UK in AU speech", New Vision, 12 October 2013, http://bit.ly/19I8QJC [25 October 2013].
[6] The Article 16 issue was introduced to the Security Council by the African Union ("AU") in a letter dated 12 October 2013. The AU letter was a result of the Extraordinary Summit of the AU and the "Decision on Africa's relationship with the International Criminal Court (ICC)" made during the summit. The Government of Kenya forwarded the AU letter to the Security Council on 22 October 2013, which was then circulated by the President of the Security Council as document S/2013/624.

10. An abuse of process application should only be granted on an exceptional basis. It is a measure of last resort, to be adopted where all other possible measures have been exhausted.

11. The abuse of process doctrine is ordinarily concerned with serious prosecutorial misconduct or with serious breaches of the rights of an accused by state authorities. Citing a New Zealand Court of Appeal decision, the Appeals Chamber in *Lubanga* noted that the focus of the doctrine "is on the misuse of the court process by those responsible for law enforcement".[7]

12. The remedy is extreme and [redacted]. A procedure for dealing with such allegations is provided in Article 70 of the Statute and Rules 162-169 of the Rules of Procedure and Evidence.

13. The criteria to be applied when seized of an abuse of process application were identified by the Appeals Chamber in *Lubanga* and are the following: first, whether it would be "odious" or "repugnant" to the administration of justice to allow the proceedings to continue; or second, whether the Accused's rights have been breached to the extent that a fair trial has been rendered impossible.[8]

14. Even where the action complained of can be directly attributed to the prosecution or a State (which is not the case here), there is a high threshold to be reached before a permanent stay may be granted.[9] The Appeals Chamber in *Lubanga* held that:

> Not every example of suggested prosecutorial misconduct will lead to a permanent stay of the proceedings; instead, this is a matter of fact and degree, given that the Chamber has to decide whether it would be "repugnant" or "odious" to the administration of justice to allow the case to continue. For instance, a stay of proceedings may well be the appropriate remedy if actions by the Prosecutor threaten basic human rights, the foundations of a fair trial or the rule of law. Clear examples of situations where a stay may be necessary include the material mistreatment of the accused in order to obtain evidence (e.g. by use of torture) or the nondisclosure of significant exculpatory evidence.

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7 ICC-01/04-01/06-772, 14 December 2006, para. 29; citing *Moevao v. Dept. of Labour* [1980] 1 NZLR 464.

8 ICC-01/04-01/06-2690-Red2, 8 March 2011, para. 166.

9 In *Environment Agency v Stanford* [1998] COD 373, DC, Lord Bingham LCJ said: "The jurisdiction to stay, as has been repeatedly explained, is one to be exercised with the greatest caution ... The question of whether or not to prosecute is for the prosecutor. Most of the points relied on in support of an argument of abuse are more profitably relied on as mitigation."

> Furthermore, the Chamber must weigh the nature of the alleged abuse of process against the fact that only the most serious crimes of concern for the international community as a whole fall under the jurisdiction of the Court.[10]

15. The Appeals Chamber has also emphasized that to stay the proceedings is a truly drastic remedy:

> A stay of proceedings is a drastic remedy. It brings proceedings to a halt, potentially frustrating the objective of the trial of delivering justice in a particular case as well as affecting the broader purposes expressed in the preamble to the Rome Statute. It is an exceptional remedy.[11]

16. The Appeals Chamber also said: "[T]his undoubtedly drastic remedy is to be reserved strictly for those cases that necessitate, on careful analysis, taking the extreme and exceptional step of terminating the proceedings (as opposed to adopting some lesser remedy)."[12]

17. The Appeals Chamber has emphasized that the extreme measure of ordering a stay of the proceedings should be avoided where a less drastic measure will bring about the same result:

> Recourse to sanctions enables a Trial Chamber, using the tools available within the trial process itself, to cure the underlying obstacles to a fair trial, thereby allowing the trial to proceed speedily to a conclusion on its merits. Doing so, rather than resorting to the significantly more drastic remedy of a stay of proceedings, is in the interests, not only of the victims and of the international community as a whole who wish to see justice done, but also of the accused, who is potentially left in limbo, awaiting a decision on the merits of the case against him by the International Criminal Court or another court.[13]

Further, Trial Chamber V in the present case cited with approval the Trial Chamber decision in *Banda & Jerbo*, which held that to "conceive of a stay of proceedings" as an appropriate remedy for any difficulties encountered in accessing information or facilities during trial preparation "would run contrary to the responsibility of trial judges to relieve unfairness as part of the trial process."[14] Similarly, the Trial Chamber in the present case should deal

[10] ICC-01/04-01/06-2690-Red2, 8 March 2011, para. 195.
[11] ICC-01/04-01/06-2582, 10 October 2010, para. 55.
[12] ICC-01/04-01/06-2690-Red2, 8 March 2011, para. 168.
[13] ICC-01/04-01/06-2582, 10 October 2010, paras 60-61.
[14] ICC-01/09-02/11-728, 26 April 2013, para 78; citing ICC-02/05-03/09-410, 26 October 2012, para 79.

with the allegations raised in the Application using the tools available within the trial process and within Article 70 of the Statute.

c. A pre-trial evidential hearing is not envisaged in the Court's regulatory structure, is unnecessary, and might dissuade key witnesses from testifying at trial.

18. There is no provision anywhere in the regulatory structure of the Court for a pre-trial evidentiary hearing, other than the confirmation hearing. The Defence does not clarify how a pre-trial hearing – which would essentially involve allegations of intimidation and bribery – would be different to Article 70 proceedings, nor does it make any submissions as to the standard of proof to be employed.

19. The Defence's previous major effort to erect a time-consuming obstacle to the start of trial – its request to have this case returned to the confirmation stage – has been fully considered and denied.[15] The Defence should not be allowed to achieve the same result by a different route.

20. As with the Defence's request to have this case remitted to the confirmation stage, the request for the holding of a pre-trial evidentiary hearing would no doubt require detailed written submissions by the parties and consideration of those submissions by the Chamber. Considerable delay would the inevitable, and no doubt intentional, result.

21. Further, a pre-trial hearing might well dissuade key witnesses from testifying at trial. The Defence submits: "An evidential hearing on abuse of process would require the calling of live witnesses, including: OTP-118[redacted], OTP-11, and OTP-12".[16] The Defence suggests in essence that three important prosecution [redacted] witnesses should be called to testify in a pre-trial evidentiary hearing, at which they would be no doubt rigorously cross-examined about their alleged participation in offences against the administration of justice, but not about the crimes alleged in this case. The

[15] ICC-01/09-02/11-728, 26 April 2013.
[16] Application, para. 2.

witnesses would then be sent away from The Hague and expected to return to testify against the Accused at a later date. The risk that those [redacted] would not return to testify if exposed to such an experience is considerable.

22. The risk of withdrawal of key witnesses is already serious. The Kenyan media has heavily publicised the withdrawal of prosecution witnesses in this case[17] and in the *Ruto & Sang* case.[18] The *Ruto & Sang* trial has also seen widely-publicised efforts to reveal the identity of a protected witness during the proceedings.

d. Tools are available within the trial process to deal fairly with the matters raised in the Application.

23. The fairest procedure, as submitted further below, would be for OTP-118, OTP-11 and OTP-12 to provide to the Trial Chamber, at trial, their evidence about the crimes alleged and the Accused's participation in those crimes, and for them to be cross-examined by the Defence in respect of the matters set out in the Application.

24. This would be consistent with Appeals Chamber's guidance, cited above, to use "the tools available within the trial process"[19] to the extent possible.

25. The bulk of the Application concerns allegations by [redacted] witnesses of misconduct by other [redacted] witnesses. [redacted] evidence should be treated with caution. As the Pre-Trial Chamber in *Banda & Jerbo* has observed in a statement later cited in *Mbarushimana*, when examining the statements of [redacted] witnesses, "the Chamber will be mindful of the risks that attach to the evidence of [redacted] witnesses and will therefore

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[17] Among the dozens of news stories in the Kenyan media emphasising the withdrawal of witnesses in this case are: "Three Witnesses Pull Out of Kenyatta's ICC Case", Citizen News, 18 July 2013, http://bit.ly/1blh877 [25 October 2013]; and "Two International Criminal Court witnesses withdraw from Uhuru Kenyatta's case", Standard Digital, 18 July 2013, http://bit.ly/13lNuNw [25 October 2013].

[18] *E.g.* "Another ICC Ruto witness withdraws", The Star, 5 September 2013, http://bit.ly/15C0cvH [25 October 2013]; "Four more witnesses against Ruto withdraw", East Africa Standard, 16 September 2013, http://bit.ly/1fZAhkN [25 October 2013]; "Two more witnesses withdraw from Ruto Hague case", Capital News, 1 September 2013, http://bit.ly/1frP4A3 [25 October 2013]; "How witnesses exit hit Bensouda case", Daily Nation, 14 September 2013, http://bit.ly/191ityW [25 October 2013].

[19] ICC-01/04-01/06-2582, 8 October 2010, paras 60-61.

treat such evidence with caution."[20] This reflects the inherent complexity of the evidence of [redacted] witnesses.[21]

26. Given the complexity of [redacted] evidence, it would be appropriate to deal with the matters raised in the Application when the witnesses give evidence relevant to the crimes alleged in this case, and the Accused's involvement in those crimes. During cross-examination, the Defence will be able to explore with those witnesses the matters raised in the Application. Similarly, the Defence should call during the defence phase of the trial the [redacted] witnesses whom it wishes to call to testify at a pre-trial evidential hearing (i.e. [redacted].[22] They can then be cross-examined as to the consistency and credibility of their evidence.

27. In respect of the prosecution intermediary, the Trial Chamber retains the discretion to order the Prosecutor to call him to give testimony at trial regarding the criticisms levelled against him in the Application. The Trial Chamber in *Lubanga*, faced with evidence that two intermediaries may have misused their positions in varying ways, decided to order the Prosecutor to call the two intermediaries during the trial:

> The Chamber is of the view, in light of the extensive allegations made against Intermediaries 316 (REDACTED) and 321 (REDACTED), that it is in the interests of a fair trial for these two individuals to be called to deal with the suggestions that they attempted to persuade one or more individuals to give false evidence. Their testimony before the Court is likely to assist the Chamber in resolving, first, the criticisms that have been levelled against them; second, some of the extensive conflicts in the evidence that have emerged during the trial; and, third, the possible contacts between intermediaries.[23]

28. Having heard the evidence of these witnesses, in the context of all other evidence at trial, the Trial Chamber will be well-placed position to determine

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[20] ICC-02/05-03/09-121-Corr-Red, 7 March 2011, para. 42; cited in ICC-01/04-01/10-465-Red, 16 December 2011, para. 50.

[21] [redacted].

[22] Application, para. 2.

[23] ICC-01/04-01/06-2434-Red2, 31 May 2010, para. 141.

whether, and against whom, Article 70 proceedings should be initiated. Article 70 proceedings should not generally be instituted against key witnesses, whether for the prosecution or for the Defence, at the trial proper, until they have testified, as to do so would frustrate the Chamber in its core purpose of uncovering the truth about the crimes charged. Further, having observed each relevant witness while he or she gives evidence, including the witness's responses to allegations of bribery or intimidation, and having had an opportunity thereby to assess his or her truthfulness generally, the Trial Chamber will be far better equipped to decide whether to institute Article 70 proceedings against the witness.

29. This in-trial remedy to the allegations raised in the Application is consistent with the approach taken by the Trial Chamber in *Banda & Jerbo*: "[T]he better approach is for the case to go to trial. If need be, the defendant's complaint will be kept in mind in the course of the trial. At trial, the Chamber, the parties and the participants will be in a position to better assess the evidence adduced to see whether the complaints about fair trial are founded."[24]

30. This approach is also consistent with the practice of the *ad hoc* tribunals. At the Special Court for Sierra Leone, a Trial Chamber decided that Defence allegations of prosecution interference in the administration of justice, and witness credibility, were issues to be decided upon in judgment, when the totality of the evidence and cross-examination by the Defence could be taken into consideration.[25]

31. At the International Criminal Tribunal for Rwanda, a Trial Chamber denied a motion by an accused to have the charges against him dismissed on the ground that a prosecution witness had received excessive witness expense payments. The Trial Chamber recognised that "an unfortunate side-effect of the necessary practice of providing benefits to witnesses who agree to testify for the Prosecution may be that their testimony is sometimes influenced to some degree by such payments", but ordered that "[t]he credibility issues that

[24] ICC-02/05-03/09-410, 26 October 2012, paras 159-160.
[25] SCSL-03-01-T-1118, 12 November 2010, paras 40, 134, 141 and 148.

may be raised by the nature of these payments and benefits will be an integral part of the Chamber's assessment of the weight to be accorded to [the witness's] testimony in light of all other relevant factors and other evidence, at the end of the trial."[26]

32. A Trial Chamber at the International Criminal Tribunal for the former Yugoslavia postponed consideration of a request by the Accused to commence contempt proceedings against a number of prosecutorial staff in relation to allegations he made that they had interfered with certain witnesses. The Trial Chamber said: "…a challenge to the admissibility of any evidence should be dealt with during the trial, and, particularly, through the examination and cross-examination of" the witnesses in question.[27]

e. Repeatedly litigating the credibility of key prosecution witnesses before trial has even begun is neither appropriate nor necessary.

33. The Application makes a series of claims about OTP-11 and OTP-12 which go directly to their reliability and credibility as witnesses.[28]

34. The vigour with which the Defence has attacked the credibility of OTP-11 and OTP-12 before they have even testified is matched only by the energy with which the Accused has attempted to stop this trial before it has even begun.

35. The Defence has attacked the credibility of their evidence on three previous occasions: in the confirmation process;[29] in seeking leave to appeal the confirmation decision;[30] and in seeking to have the present case sent back to the confirmation stage.[31] The Application amounts to the fourth round of attacks on the credibility of those two key prosecution witnesses, who have yet to testify *viva voce* before any judges of this Court.

36. The Pre-Trial Chamber twice considered and rejected detailed defence

[26] ICTR-98-44-T, "Decision on Joseph Nzirorera's 'Motion to Dismiss for Abuse of Process: Payments to Prosecution Witnesses' and 'Requete de Mathieu Ngirumpatse en retrait de l'acte d'accusation'" 27 October 2008, para. 7.
[27] IT-03-67-PT, "Order regarding Mr Seselj's Motion for Contempt proceedings", 15 May 2007, page 2.
[28] Application, paras 1-2, 18-23, 63-70, 81 and 85.
[29] ICC-01/09- 02/11-382-Red, 23 January 2012, paras 93-100.
[30] ICC- 01/09-02/11-406, 9 March 2012, para. 74.
[31] ICC-01/09-02/11-681-Red, 8 March 2013.

arguments relating to the credibility of OTP-11 and OTP-12: in its confirmation decision[32] and in denying leave to appeal that decision.[33] Trial Chamber V resisted the call to re-examine the Pre-trial Chamber's assessment of their credibility: "The Chamber is not the proper body to decide on a reconsideration of the evidence and credibility assessments as performed by the Pre-Trial Chamber".[34]

37. As the Defence is surely aware, it is unnecessary to litigate repeatedly the credibility of prosecution witnesses before the trial has even started. As Trial Chamber V reminded the Defence, "the Defence will have adequate opportunity, during the trial, to challenge the credibility of Prosecution witnesses and the strength of its case as a whole".[35]

f. The trial is the proper forum in which to test prosecution evidence and to present evidence in support of the Accused.

38. The forum in which to attack the credibility of OTP-11 and OTP-12 (as well as OTP-118 and all other prosecution witnesses), and to present evidence relevant to the Defence case, is therefore the trial itself.

39. After each of those witnesses have been questioned by the prosecution, the Defence will have the opportunity to put to them any relevant matters raised in the Application, as well as any relevant documents, mobile telephone data or intercepted conversations in support of the Defence case.

40. During the defence phase of trial, the Defence can call the [redacted] witnesses it has relied upon in the Application, who can give evidence relevant to the Defence case and who may be cross-examined on that evidence. For instance, the prosecution might wish to cross-examine the witness who claims: [redacted], and [redacted][36] or the witness who claims [redacted].[37]

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[32] ICC-01/09- 02/11-382-Red, 23 January 2012, paras. 93-100.
[33] ICC- 01/09-02/11-406, 9 March 2012, para. 74.
[34] ICC-01/09-02/11-728, 26 April 2013, para. 100.
[35] *Idem*, para. 110.
[36] *Cf.* the witness statement which appears as Annex A.5.iv to the Application, pages 11 and 13.
[37] *Cf.* the witness statement which appears as Annex A.5.iii to the Application, page 7.

41. During the defence phase, the Defence will also have an opportunity to call Dr Olsson, the forensic witness upon whose analysis the Application often relies, and he can then be cross-examined as to: (a) the instructions provided to him; (b) the sources on which he relied; (c) the methodology he employed; (d) his qualifications to give expert evidence; and (e) the validity of his conclusions.

42. The Defence will also be able to submit, during the defence phase, other documentary evidence relevant to the defence case.

g. The Defence should not be rewarded for employing yet another delaying tactic.

43. The core of the Application deals with conversations recorded on [redacted] and provided to the Defence in August 2013.[38] The timing of the Application and its voluminous annexes, accompanied by a suggestion for a pre-trial evidentiary process which could not possibly be completed in less than several months, is consistent with a long line of Defence attempts to delay the commencement of trial, or to terminate these proceedings.[39] Filing such a voluminous application – which essentially concerns allegations of witness intimidation rather than anything else – so close to the scheduled trial commencement date is consistent with the Defence strategy of delay.

44. The Defence might have been encouraged in its continued reliance on this strategy by one of the reasons provided by Trial Chamber V in ordering a delay of trial in March 2013: the need to consider and to rule upon voluminously detailed requests by the Kenyatta Defence and the Muthaura Defence to have this case remitted to the Pre-Trial Chamber.[40]

[38] Application, pages 14-24.

[39] *Cf.*, Defence filings ICC-01/09-02/11-707-Corr-Red, 3 April 2013; ICC-01/09-02/11-706, 28 March 2013; ICC-01/09-02/11-682, 8 March 2013; ICC-01/09-02/11-681-Red, 8 March 2013; ICC-01/09-02/11-658, 21 February 2013; and ICC-01/09-02/11-622, 5 February 2013.

[40] "Considering that on their face the defence applications requesting referral back to the Pre-Trial Chamber raise very serious issues that must be resolved before the trial can proceed and which may not be resolved before 11 April 2013, and considering also the defence submissions relating to the impact of delayed disclosure, which the Chamber must resolve, the Chamber hereby vacates the trial commencement date of 11 April 2013 pending the resolution of these matters. Without prejudice to the Chamber's determination of the issues raised by the defence applications and related filings, and in order to ensure sufficient time for their resolution, the Chamber

45. This strategy of filing bulky requests shortly prior to the scheduled trial start date should not be allowed by the Trial Chamber to stand. To do so would merely encourage parties in this and in other trials before the Court to file further very extensive applications of little merit in order to buy time by forcing the Trial Chamber to set aside enough time to consider and rule upon the applications.

46. The crimes were committed almost six years ago. The Accused was committed for trial 21 months ago. The victims should not have to wait any longer for justice.

VI. Conclusion

47. The Trial Chamber should proceed to trial as soon as possible. It should use the tools available within the trial process to allow the Defence to explore the allegations made in the Application, and deal with any credible evidence of offences against the administration of justice in accordance with the statutory structure of Rule 70 and Rules 162-169 of the Rules of Procedure and Evidence.

48. Despite numerous promises, the victims of this case have been denied true justice in Kenya: the current total of prosecutions of mid-level and high-level persons for PEV crimes in Kenya remains at zero. The victims in Kenya see no sign of any genuine effort to prosecute before the Kenyan courts any of those responsible for the crimes committed against them. Rather, they see the Accused and his Government making an enormous effort at the highest international levels to bring the present trial – which is their only hope of justice – to an end. To grant the Application would truly be "repugnant and odious to the administration of justice." [41]

provisionally sets the new date for the commencement of trial as 9 July 2013." ICC-01/09-02/11-677, 7 March 2013, para. 10.

[41] ICC-01/04-01/06-2690-Red2, 7 March 2011, para. 166.

VII. Relief

49. For the foregoing reasons, the Legal Representative respectfully submits that the Application should be denied.

Respectfully submitted,

Fergal Gaynor
Common Legal Representative of Victims

Dated this 29th October 2013

At Nairobi, Kenya