



Original: **English**

No.: ICC-01/09

Date: **15 January 2010**

PRE-TRIAL CHAMBER II

Before: Judge Ekaterina Trendafilova, Presiding Judge
Judge Hans-Peter Kaul
Judge Cuno Tarfusser

SITUATION IN THE REPUBLIC OF KENYA

Public Document

Request for Leave to Respond to the 'Request by Professors Max Hilaire & William A. Cohn to appear as Amicus Curiae'

Source: Office of the Prosecutor

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

The Office of the Prosecutor

Counsel for the Defence

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

1. On 26 November 2009, the Office of the Prosecutor (“OTP”) filed its ‘Request for Authorization of an Investigation pursuant to Article 15’¹ of the Rome Statute (“Prosecution’s Application”).
2. On 11 January 2010, a “Request by Professors Max Hilaire & William A. Cohn to Appear as Amicus Curiae”² (“Request”) was filed.
3. Unless Pre-Trial Chamber II (“PTC II”) decides to reject the request of the *amicus curiae* without the need for further consideration, the Prosecutor hereby requests leave to respond to the Request.³
4. In the event PTC II grants the Prosecutor leave to respond to the Request, the OTP could assist PTC II by providing submissions on, *inter alia*, the following issues:
 - i. Whether the applicants have the right to appear as *amicus* at this pre-investigation stage of the proceedings, where the Statute rather provides for representations by victims.
 - ii. If such a right is accepted, whether the applicants are qualified to act as *amicus curiae* in these proceedings. Specifically,
 - Whether the applicants have demonstrated that they are impartial and that their arguments are representative of a wider view;
 - Whether the applicants have a relevant interest or expertise in the outcome of the proceedings or whether they offer a relevant perspective that would aid the PTC in a proper understanding of the issues.

¹ ICC-01/09-3, 26 November 2009.

² ICC-01/09-8, 11 January 2010.

³ In *Prosecutor v. Al Bashir*, Reasons for “Decision on the Application of 20 July 2009 for Participation under Rule 103 of the Rules of Procedure and Evidence and on the Application of 24 August 2009 for Leave to Reply”, ICC-02/05-01/09-51 OA, 9 November 2009, para. 8, the Appeals Chamber stated that: ‘...under express wording of rule 103(1) of the Rules, the Prosecutor is not entitled to respond to an application under rule 103(1) [to participate as *amicus*]. Therefore, in the future, such responses may not be filed without the leave of the Appeals Chamber.’ See also *Prosecutor v. Bemba*, ICC-01/05-01/08-602, OA2, 9 November 2009, para. 9.

iii. Whether it is appropriate to grant the applicants' request, considering a potential delay in the proceedings and the protection of victims and witnesses.

5. If leave is authorized, the Prosecution will file an expeditious response.



Luis Moreno-Ocampo, Prosecutor

Dated this 15th day of January 2010

At The Hague, The Netherlands