

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/09

Date: 10 December 2009

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

**Order to the Victims Participation and Reparations Section Concerning Victims'
Representations Pursuant to Article 15(3) of the Statute**

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

The Office of the Prosecutor

Luis Moreno-Ocampo, Prosecutor
Fatou Bensouda, Deputy Prosecutor

Counsel for the Defence

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

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

States Representatives

Amicus Curiae

REGISTRY

Registrar & Deputy Registrar

Silvana Arbia, Registrar
Didier Preira, Deputy-Registrar

Defence Support Section

Victims and Witnesses Unit

Maria Luisa Martinod-Jacome

Detention Section

**Victims Participation and Reparations
Section**

Fiona McKay

Other

THE JUDGES OF PRE-TRIAL CHAMBER II (the “Chamber”) of the International Criminal Court render this order concerning the issue of victims’ representations pursuant to article 15(3) of the Rome Statute (the “Statute”).

1. On 6 November 2009, the Presidency issued the “Decision assigning the situation in the Republic of Kenya to Pre-Trial Chamber II”.¹

2. On 26 November 2009, the Prosecutor filed the “Request for authorisation of an investigation pursuant to Article 15” in which he requested the Chamber to “authorise the commencement of an investigation into the situation in the Republic of Kenya in relation to the post-election violence of 2007-2008” (the “Prosecutor’s Request”).²

3. The Chamber notes article 15(3) of the Statute, rules 16, 50(3), 50(4) and 85 of the Rules of Procedure and Evidence (the “Rules”), and regulation 50(1) of the Regulations of the Court (the “Regulations”).

4. The Chamber also notes that in the Prosecutor’s Request, it is stated that “victims or their legal representatives” were notified on 23 November 2009 in accordance with rule 50 of the Rules, of the Prosecutor’s intention to request authorization to commence an investigation into the situation in the Republic of Kenya.³ The Prosecutor has chosen to notify them “by general means through a widely publicized notification”, as he determined that direct contact “would pose a danger to the integrity of a future investigation or to the life or well-being of victims and witnesses”.⁴

¹ Presidency, ICC-01/09-1.

² ICC-01/09-3.

³ ICC-01/09-3, para. 112.

⁴ ICC-01/09-3, para. 112.

5. The Chamber further notes that according to article 15(3) of the Statute in conjunction with rule 50(3) of the Rules and regulation 50(1) of the Regulations, in response to the notification provided by the Prosecutor, victims “may make representations in writing” to the Chamber within 30 days following the date of their notification, which took place on 23 November 2009.

6. The Chamber considers that one of its fundamental functions is to ensure the proper conduct of the proceedings throughout the pre-trial process. In particular, pursuant to rule 50(4) of the Rules, the Chamber may decide “on the procedure to be followed” with respect to any issue related to the Prosecutor’s Request, including victims’ representations. Thus, it is essential to organize the procedure of receiving, if any, victims’ representations in accordance with article 15(3) of the Statute and rule 50(3) of the Rules.

7. The Chamber notes that article 15(3) of the Statute and rule 50(3) of the Rules use the term “victims” as defined in rule 85 of the Rules. Accordingly, it is the Chamber’s view that representations made in accordance with article 15(3) of the Statute and rule 50(3) of the Rules must be confined to those who qualify as “victims” within the meaning of this rule, bearing in mind the specific nature of the article 15 proceedings. As the Appeals Chamber stated, “[t]he location of rule 85 in the Rules is indicative of a general provision relating to victims, applicable to various stages of the proceedings (...) [and that] the object and purpose [of this rule] is to define who are victims”.⁵

8. The Chamber thus considers that for the purpose of representations at this stage and given the limited scope of article 15 proceedings, the conditions set out in rule 85 of the Rules should be assessed on the basis of the intrinsic coherence of the information given by the victim(s).

⁵ Appeals Chamber, “Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I’s Decision on Victims’ Participation of 18 January 2008”, ICC-01/04-01/06-1432, paras 57-58.

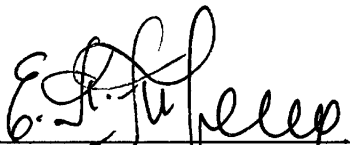
9. The Chamber is duty bound to ensure that proceedings are carried out in an expeditious manner. Being mindful that victims' representations at this particular stage is a procedure of limited scope, which is merely confined to the Prosecutor's request for authorization of an investigation, the Chamber finds it appropriate to request the Victims Participation and Reparations Section (the "VPRS") to: (1) identify, to the extent possible, the community leaders of the affected groups to act on behalf of those victims who may wish to make representations (collective representation); (2) receive victims' representations (collective and/or individual); (3) conduct an assessment, in accordance with paragraph 8 of this order, whether the conditions set out in rule 85 of the Rules have been met; and (4) summarize victims' representations into one consolidated report with the original representations annexed thereto.

10. The Chamber wishes to emphasize that the VPRS should clarify in all activities and contacts with community leaders of affected groups or victims as referred to in paragraph 9 the purely voluntary nature of such possible representations in the context of article 15(3) of the Statute, i.e. whether they wish to express their position on a possible investigation or not.

FOR THESE REASONS, THE CHAMBER HEREBY

- a) orders** the VPRS to implement the procedure outlined in paragraph 9 of this order and to submit, by Monday 21 December 2009, a report outlining the steps undertaken with respect to victims' representations;
- b) orders** that all victims' communications received by the Court in relation to this procedure be submitted directly to VPRS.

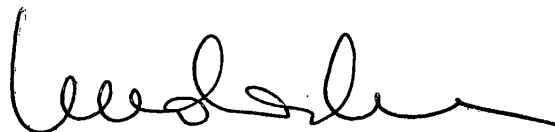
Done in both English and French, the English version being authoritative.



Judge Ekaterina Trendafilova
Presiding Judge



Judge Hans-Peter Kaul
Judge



Judge Cuno Tarfusser
Judge

Dated this Thursday, 10 December 2009

At The Hague, The Netherlands