

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

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

Date: 25 July 2011

PRE-TRIAL CHAMBER II

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

SITUATION IN THE REPUBLIC OF KENYA

**IN THE CASE OF *THE PROSECUTOR v. WILLIAM SAMOEI RUTO, HENRY
KIPRONO KOSGEY AND JOSHUA ARAP SANG***

Confidential

**Prosecution's Observations on 230 Applications for Victims' Participation in the
Proceedings**

Source: Office of the Prosecutor

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

The Prosecution of the Prosecutor

Mr. Luis Moreno-Ocampo, Prosecutor
Ms. Fatou Bensouda, Deputy Prosecutor

Counsel for the Defence

Mr. Kioko Kilukumi Musau, Mr. Joseph Kipchumba Kigen-Katawa, Mr. David Hooper QC, Mr. Kithure Kindiki, Mr. George Odinga Oraro, Mr. Julius Kipkosgei Kemboy, Mr. Allan Kosgey, Mr. Joel Kimutai Bosek and Mr. Philemon K.B. Koech

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Prosecution of Public Counsel for
Victims**

Ms. Paolina Massidda

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

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Ms. Silvana Arbia

Deputy Registrar

Mr. Didier Preira

Defence Support Section

Victims and Witnesses Unit

Ms Maria Luisa Matinod-Jacome

Detention Section

**Victims Participation and Reparations
Section**

Ms. Fiona McKay

Other

Introduction

1. Pursuant to Rule 89(1) of the Rules of Procedure and Evidence and the “First Decision on Victims’ Participation in the Case”,¹ the Prosecution submits the following observations on 230 applications for participation in the pre-trial proceedings in the present case.
2. For the reasons detailed below, the Prosecution supports the Single Judge granting authorisation to the following 151 applicants, pursuant to Article 68(3) of the Statute, to participate as victims in the above-mentioned proceedings: a/0063/10, a/0143/10, a/0145/10, a/0237/10, a/0266/10, a/0379/10, a/0574/10, a/0580/10, a/0595/10, a/2085/10, a/8224/11, a/8260/11, a/8269/11, a/8645/11, a/8646/11, a/8647/11, a/8648/11, a/8649/11, a/8650/11, a/8651/11, a/8652/11, a/8653/11, a/8654/11, a/8655/11, a/8657/11, a/8658/11, a/8659/11, a/8661/11, a/8663/11, a/8664/11, a/8666/11, a/8709/11, a/8710/11, a/8711/11, a/8712/11, a/8713/11, a/8714/11, a/8715/11, a/8716/11, a/8717/11, a/8718/11, a/8719/11, a/8720/11, a/8721/11, a/8723/11, a/8724/11, a/8728/11, a/8729/11, a/8730/11, a/8732/11, a/8733/11, a/8734/11, a/8735/11, a/8737/11, a/8738/11, a/8739/11, a/8741/11, a/8743/11, a/8746/11, a/8747/11, a/8749/11, a/8750/11, a/8758/11, a/8767/11, a/8770/11, a/8775/11, a/8777/11, a/8779/11, a/8781/11, a/8782/11, a/8783/11, a/8827/11, a/8835/11, a/8836/11, a/8837/11, a/8846/11, a/8849/11, a/8851/11, a/8856/11, a/8857/11, a/8859/11, a/8861/11, a/8867/11, a/8868/11, a/8869/11, a/8873/11, a/8874/11, a/8895/11, a/8896/11, a/8897/11, a/8899/11, a/8900/11, a/8901/11, a/8902/11, a/8903/11, a/8904/11, a/8905/11, a/8906/11, a/8908/11, a/8909/11, a/8910/11, a/8911/11, a/8912/11, a/8914/11, a/8916/11, a/8917/11, a/8918/11, a/8920/11, a/8921/11, a/8922/11, a/8923/11, a/8924/11, a/8925/11, a/8933/11, a/8936/11, a/8938/11, a/8939/11, a/8940/11, a/8941/11, a/8942/11, a/8943/11, a/8945/11, a/8946/11, a/8947/11, a/8951/11, a/8952/11, a/8954/11, a/8957/11, a/8960/11, a/8961/11, a/8962/11, a/8964/11, a/8967/11, a/8980/11, a/8982/11, a/8983/11, a/8985/11, a/8986/11, a/8987/11, a/8988/11, a/8989/11, a/8990/11, a/8994/11, a/8997/11, a/8998/11, a/8999/11, a/9000/11, a/9001/11, a/9003/11, a/9005/11, a/9010/11.

¹ ICC-01/09-01/11-17, First Decision on Victims' Participation in the Case, 30 March 2011.

3. The Prosecution submits that the following 47 Applicants should be requested to provide further information or documentation proving their identity: a/8742/11, a/8744/11, a/8849/11, a/8919/11, a/8996/11, a/9006/11, a/9007/11, a/9012/11, a/9013/11, a/9015/11, a/9016/11, a/9017/11, a/9018/11, a/9020/11, a/9021/11, a/9022/11, a/9023/11, a/9024/11, a/9025/11, a/9026/11, a/9027/11, a/9028/11, a/9029/11, a/9030/11, a/9031/11, a/9032/11, a/9033/11, a/9034/11, a/9035/11, a/9036/11, a/9037/11, a/9038/11, a/9039/11, a/9040/11, a/9041/11, a/9042/11, a/9043/11, a/9044/11, a/9045/11, a/9046/11, a/9047/11, a/9048/11, a/9051/11, a/9052/11, a/9053/11, a/9054/11 and a/9055/11.
4. The Prosecution submits that redactions applied to the applications submitted by the following 32 Applicants make it difficult to determine whether they meet all the requirements for participation: a/0372/10, a/8246/11, a/8722/11, a/8725/11, a/8727/11, a/8731/11, a/8736/11, a/8745/11, a/8751/11, a/8771/11, a/8773/11, a/8774/11, a/8776/11, a/8778/11, a/8780/11, a/8784/11, a/8785/11, a/8841/11, a/8842/11, a/8845/11, a/8850/11, a/8855/11, a/8872/11, a/8950/11, a/8955/11, a/8959/11, a/8966/11, a/8991/11, a/9004/11, a/9009/11, a/9011/11 and a/9019/11. The Prosecution does not object to the Single Judge determining that non-redacted versions of the applications satisfy the requirements or requesting additional information.

Background

5. On 30 March 2011, the Single Judge ordered the Registry to transmit redacted applications for participation as victims in the present case to the Prosecution and the Defence, and invited the parties to submit their observations thereto within two weeks of notification thereof.²
6. On 8 July 2011, the Registry provided the parties and legal representatives with 230 redacted applications.³
7. All 230 Applicants are natural persons.

² ICC-01/09-01/11-17, para. 22.

³ ICC-01/09-01/11-171, Third transmission to the parties and legal representatives of redacted applications to participate in the proceedings (with 230 redacted applications provided to the parties and legal representatives as confidential ex parte annexes to ICC-01/09-01/11-170), 8 July 2011.

Request for Confidentiality

8. Pursuant to Regulation 23*bis* of the Regulations of the Court, the Prosecution requests the Single Judge to receive these observations confidentially as they refer herein to information contained in applications for victim participation that were transmitted to the parties under the same classification.

Legal criteria for victim participation in the proceedings

9. The Prosecution incorporates by reference its submissions on the legal criteria for victim participation which it set out in its previous filing.⁴

Factual analysis of the applications

10. The Prosecution submits that the 151 Applicants listed in paragraph 2 meet all of the requirements under Article 68(3) of the Statute for participation in the pre-trial proceedings of this case.
11. The Prosecution suggests that 47 applicants be requested to submit further information clarifying deficiencies in order to process their application for victim participation status. Applicants a/9006/11, a/9007/11, a/9012/11, a/9013/11, a/9015/11, a/9016/11, a/9017/11, a/9018/11, a/9019/11, a/9020/11, a/9021/11, a/9022/11, a/9023/11, a/9024/11, a/9025/11, a/9026/11, a/9027/11, a/9028/11, a/9029/11, a/9030/11, a/9031/11, a/9032/11, a/9033/11, a/9034/11, a/9035/11, a/9036/11, a/9037/11, a/9038/11, a/9039/11, a/9040/11, a/9041/11, a/9042/11, a/9043/11, a/9044/11, a/9045/11, a/9046/11, a/9047/11, a/9048/11, a/9049/11, a/9051/11, a/9052/11, a/9053/11, a/9054/11 and a/9055/11 do not provide sufficient information concerning the circumstances in which they suffered harm. Applicant a/8742/11 indicates a birth year on his application different from the birth year on his attached identity card. Applicant a/8744/11 does not explain why she relies on a substitute form of identity.⁵ Applicant a/8996/11 indicates that he is

⁴ ICC-01/09-01/11-178-Conf, Prosecution's Observations on 105 Applications for Victims' Participation in the Proceedings, 11 July 2011, paras. 10-22.

⁵ As required by the Single Judge in ICC-01/09-01/11-17, para. 9.

not applying on his own behalf, yet did not complete the portions of the application required of such applicants.

12. The applications submitted by Applicants a/0372/10, a/8246/11, a/8722/11, a/8725/11, a/8727/11, a/8731/11, a/8736/11, a/8745/11, a/8751/11, a/8771/11, a/8773/11, a/8774/11, a/8776/11, a/8778/11, a/8780/11, a/8784/11, a/8785/11, a/8841/11, a/8842/11, a/8845/11, a/8850/11, a/8855/11, a/8872/11, a/8950/11, a/8955/11, a/8959/11, a/8966/11, a/8991/11, a/9004/11, a/9009/11, a/9011/11, a/9019/11 contain redactions which make it difficult to determine the location where the crime occurred which resulted in the harm they claim to have suffered. The non-redacted portions of the applications appear to meet the requirements for participation in these proceedings. The Prosecution submits that if the redacted information reveals locations connected to the present case, the applicants should be granted victim participation status. The Prosecution defers to the Single Judge, on the basis of information provided in the un-redacted applications, to make a determination as to whether there is a sufficient link between the harm alleged by the applicants and the charges in the present case, or to request additional information.

Conclusion

13. The Prosecution submits that the 151 Applicants referred to in paragraph 2 meet all the requirements under Article 68(3) of the Statute to participate as victims in the pre-trial proceedings in this case.
14. The Prosecution submits that 47 Applicants identified in paragraphs 3 and 12 should be requested to provide further information or documentation.
15. The applications of 32 Applicants referred to in paragraphs 4 and 13 contain redactions which do not allow the Prosecution to assess whether or not these Applicants meet the requirements to be granted victim participation status. The Prosecution defers to the Single Judge to make a determination, on the basis of the un-redacted applications, as to whether there is a sufficient link between the harm

alleged by the applicants and the charges in the present case, or to request additional information.



Luis Moreno-Ocampo,

Prosecutor

Dated this 25th Day of July 2011

At The Hague, The Netherlands