

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/09-02/11

Date: 04 August 2011

PRE-TRIAL CHAMBER II

Before: Judge Ekaterina Trendafilova, Single Judge

SITUATION IN THE REPUBLIC OF KENYA

IN THE CASE OF

***THE PROSECUTOR v. FRANCIS KIRIMI MUTHAURA, UHURU MUIGAI
KENYATTA AND MOHAMMED HUSSEIN ALI***

Public

**Submissions on the Decision on the Defence Requests in Relation to Victims'
Applications for Participation in the Present Case**

Source: Registry

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

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Legal Representatives of the Applicants

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Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

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REGISTRY

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Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Ms Fiona McKay

Other

The Registrar of the International Criminal Court ("the Court");

NOTING article 68(3) of the Rome Statute, rule 89(1) of the Rules of Procedure and Evidence, and regulations 24 *bis* and 86(5) of the Regulations of the Court;

NOTING the Decision on the Prosecutor's Application for Summons to Appear for Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali;¹

NOTING the Decision Designating a Single Judge;²

NOTING the First Decision on Victims' Participation in the Case (the "First Decision");³

NOTING the First transmission to the Pre-Trial Chamber of applications to participate in the proceedings;⁴

NOTING the Second transmission to the Pre-Trial Chamber of applications to participate in the proceedings;⁵

NOTING the Decision on the Defence Requests in Relation to the Victims' Applications for Participation in the Present Case, ordering the Registry to transmit to the Prosecutor the unredacted version of all the victims' applications for participation received in the present case;⁶

CONSIDERING that the Registry has transmitted to the Chamber 249 applications in the present case⁷, and 394 applications in the case of *The Prosecutor v. William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang*, (the "*Ruto et al. Case*")⁸ and

¹ ICC-01/09-02/11-1.

² ICC-01/09-02/11-9.

³ ICC-01/09-02/11-23.

⁴ ICC-01/09-02/11-97.

⁵ ICC-01/09-02/11-199.

⁶ ICC-01/09-02/11-164.

⁷ ICC-01/09-02/11-97; ICC-01/09-02/11-199.

⁸ ICC-01/09-01/11-91, ICC-01/09-01/11-141, ICC-01/09-01/11-170.

that it has received a further approximately 2600 applications for participation relating to the situation in the Republic of Kenya;

CONSIDERING that the Registry has reclassified all unredacted applications transmitted in the present case as well as those transmitted the *Muthaura et al. Case* as “confidential *ex parte* available only to the Registry and the Office of the Prosecutor”;

CONSIDERING that the Registry faces resource constraints which will substantially limit its ability to transmit to the Prosecutor the remaining applications received before the confirmation hearings scheduled in this case and the *Muthaura et al. Case*;

TRANSMITS to the Chamber the following observations regarding the limitations on the Registry’s ability to comply with the Single Judge’s order.

1. In two transmissions made on 31 May 2011 and 28 July 2011 respectively, the Registry transmitted to the Chamber 249 applications for participation in the proceedings which appear to be linked to the present case.⁹ In addition, 394 applications for participation have been transmitted to the Chamber in the *Ruto et al. Case*.¹⁰ A further approximately 2600 applications have been received by the Registry in relation to the Situation in the Republic of Kenya which have not yet been transmitted to the Chamber, and most of which are thought to be incomplete.
2. The Registry recalls the decision made by the Single Judge on 8 July 2011 ordering the Registry to transmit to the Prosecutor unredacted versions of “all the victims’ applications for participation received in the present case.”¹¹ The Registry has taken steps since the decision to comply with the Chamber’s order and has so far reclassified all 643 applications filed in the present case and the *Ruto et al. Case* as

⁹ ICC-01/09-02/11-97; ICC-01/09-02/11-199.

¹⁰ ICC-01/09-01/11-91, ICC-01/09-01/11-141, ICC-01/09-01/11-170.

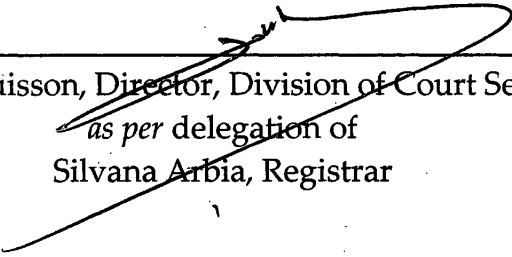
¹¹ ICC-01/09-02/11-169.

"confidential *ex parte* available only to the Registry and the Office of the Prosecutor."

3. The Registry notes the email sent by the Chamber to the Registry of 3 August 2011, emphasizing the Chamber's expectation that the remaining applications received, but which have not yet been transmitted to the Chamber under rule 89(1), will also be provided to the Prosecutor.¹² The Registry regrets that, due to resource constraints, it is not yet in a position to do so.
4. The Registry notes that numerous steps are required to be taken by the Victims Participation and Reparations Section (the "VPRS") prior to the transmission of applications to the Prosecutor. As a first step, legal staff would be required to assess all applications not already transmitted to the Chamber in order to determine whether they are linked to the present case or the *Ruto et al. Case*. For those applications identified as linked to one of the cases the following additional steps would be required prior to transmission: matching documents which have become detached, un-stapling forms, stamping with reference numbers, scanning, reviewing scans, the employment of quality controls, recording tracking data regarding applications to be transmitted, and the preparation of cover filings. In addition the VPRS has numerous other tasks which must be performed using its limited resources in respect of this and other proceedings, include, *inter alia*: scanning applications relating to other cases before the Court, searching for duplicates, matching indigence forms and supplementary information with the applications to which they relate, carrying out data entry of information contained in application forms, marking and applying redactions, and requests for translation. The need to continue with these tasks means that the Registry would not be in a position to work full-time on the preparation of transmissions to the Prosecution.
5. The Registry apologises to the Chamber for not having complied to date, with the Chamber's decision to its full extent. Also, the Registry regrets to inform the

¹² Email sent by Associate Legal Officer, PTCII to Associate Legal Officer, Court Management Section.

Chamber that it will not be in a position to fully comply with the Single's Judge's order before the Confirmation of Charges hearing set in the present case for 21 September 2011. The Registry will however endeavour to prepare and transmit as many applications as possible before that time.



Marc Dubuisson, Director, Division of Court Services
as per delegation of
Silvana Arbia, Registrar

Dated this 04 August 2011

At The Hague, The Netherlands