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Date: **11 August 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. FRANCIS KIRIMI MUTHAURA, UHURU MUIGAI
KENYATTA AND MOHAMMED HUSSEIN ALI

Public

Prosecution's Observations on 245 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:

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Unrepresented Victims

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(Participation/Reparation)**

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Introduction

1. Pursuant to Rule 89(1) of the Rules of Procedure and Evidence (“Rules”) and the Single Judge’s First Decision on Victims’ Participation in the Case (“the Decision”),¹ the Prosecution submits the following observations on 245 applications for participation in the proceedings in the case of *The Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali*.
2. For the reasons detailed below, the Prosecution supports the Single Judge granting authorisation to participate as victims in the above-mentioned proceedings, pursuant to article 68(3) of the Statute, to the following 222 Applicants: a/0642/10, /1203/10, a/8445/11, a/8447/11, a/8448/11, a/8451/11, a/8452/11, a/8454/11, a/8457/11, a/8484/11, a/8490/11, a/8495/11, a/8501/11, a/8502/11, a/8503/11, a/8505/11, a/8506/11, a/8507/11, a/8509/11, a/8510/11, a/8521/11, a/8531/11, a/8532/11, a/8533/11, a/8534/11, a/8535/11, a/8536/11, a/8537/11, a/8538/11, a/8546/11, a/8547/11, a/8549/11, a/8550/11, a/8578/11, a/8580/11, a/8583/11, a/8590/11, a/8606/11, a/8609/11, a/8610/11, a/8611/11, a/8612/11, a/8613/11, a/8614/11, a/8615/11, a/8617/11, a/8618/11, a/8619/11, a/8621/11, a/8622/11, a/8624/11, a/8626/11, a/8669/11, a/8670/11, a/8671/11, a/8672/11, a/8674/11, a/8687/11, a/8688/11, a/8689/11, a/8691/11, a/8692/11, a/8693/11, a/8694/11, a/8701/11, a/8787/11, a/8791/11, a/8792/11, a/8793/11, a/8794/11, a/8795/11, a/8796/11, a/8799/11, a/9060/11, a/9061/11, a/9062/11, a/9064/11, a/9065/11, a/9066/11, a/9067/11, a/9068/11, a/9069/11, a/9070/11, a/9072/11, a/9073/11, a/9074/11, a/9075/11, a/9076/11, a/9080/11, a/9081/11, a/9082/11, a/9083/11, a/9084/11, a/9085/11, a/9086/11, a/9087/11, a/9088/11, a/9089/11, a/9090/11, a/9096/11, a/9097/11, a/9098/11, a/9101/11, a/9103/11, a/9105/11, a/9106/11, a/9107/11, a/9108/11, a/9110/11, a/9111/11, a/9136/11, a/9138/11, a/9139/11, a/9140/11, a/9141/11, a/9143/11, a/9144/11, a/9145/11, a/9153/11, a/9184/11, a/9185/11, a/9186/11, a/9187/11, a/9189/11, a/9192/11, a/9193/11, a/9194/11, a/9208/11, a/9209/11, a/9210/11, a/9211/11, a/9212/11, a/9213/11, a/9214/11, a/9215/11, a/9216/11, a/9217/11, a/9218/11, a/9219/11, a/9220/11, a/9221/11, a/9222/11, a/9223/11, a/9224/11, a/9227/11, a/9228/11, a/9229/11, a/9230/11, a/9236/11, a/9248/11, a/9249/11, a/9250/11, a/9251/11, a/9252/11,

¹ ICC-01/09-02/11-23.

a/9253/11, a/9254/11, a/9255/11, a/9256/11, a/9257/11, a/9258/11, a/9268/11, a/9275/11, a/9276/11, a/9277/11, a/9279/11, a/9280/11, a/9283/11, a/9284/11, a/9285/11, a/9286/11, a/9287/11, a/9288/11, a/9289/11, a/9290/11, a/9293/11, a/9294/11, a/9295/11, a/9297/11, a/9298/11, a/9299/11, a/9300/11, a/9301/11, a/9302/11, a/9306/11, a/9309/11, a/9311/11, a/9316/11, a/9322/11, a/9326/11, a/9329/11, a/9330/11, a/9331/11, a/9334/11, a/9335/11, a/9337/11, a/9338/11, a/9342/11, a/9352/11, a/9364/11, a/9365/11, a/9370/11, a/9371/11, a/9372/11, a/9373/11, a/9374/11, a/9378/11, a/9379/11, a/9380/11, a/9382/11, a/9383/11, a/9387/11, a/9388/11, a/9389/11, a/9391/11, a/9392/11, a/9393/11, a/9396/11, a/9398/11, a/9399/11, a/9404/11, a/9406/11 and a/9407/11.

3. The Prosecution submits that the following 23 Applicants should be requested to provide further information or documentation proving their identity: a/8455/11, a/8483/11, a/8508/11, a/8530/11, a/8542/11, a/8579/11, a/8591/11, a/8616/11, a/8620/11, a/8673/11, a/8800/11, a/9059/11, a/9071/11, a/9104/11, a/9109/11, a/9137/11, a/9191/11, a/9265/11, a/9266/11, a/9390/11, a/9394/11, a/9397/11 and a/9408/11.

Background

4. On 8 July 2011, The Single Judge in her “Decision on the Defence Requests in Relation to the Victims’ Applications for Participation in the Present Case” ordered the Registry to transmit to the Prosecutor the unredacted versions of all the victims’ applications.²
5. On 28 July 2011, the Registry provided the Prosecution with 245 unredacted applications.³
6. The Prosecution submits that all 245 Applicants are natural persons.

Legal criteria for victim participation in the proceedings

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

² ICC-01/09-02/11-164.

³ ICC-01/09-02/11-199.

Factual analysis of the applications

The applicants who prima facie meet the necessary requirements for victim participation

8. The Prosecution submits that the 222 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.

The applicants whose applications require further clarification

9. The Prosecution suggests that 23 Applicants should be requested to submit further information clarifying deficiencies in order to process their applications for victim participation status.
10. Applicants a/8620/11 and a/8800/11 do not provide sufficient information concerning the circumstances in which they suffered harm and claim to have lost all belongings but do not further claim to have suffered that injury due to a crime charged.⁵
11. Applicants a/8455/11, a/8508/11, a/8530/11, a/8579/11, a/8591/11, a/8673/11,⁶ a/9059/11, a/9071/11, a/9104/11, a/9109/11, a/9137/11 and a/9191/11 do not provide sufficient proof to establish their identity and/or do not explain why they rely on a substitute form of identification.⁷
12. Applicants a/8483/11 and a/8542/11 indicate a birth year on their applications different from the birth year on their attached identity cards.⁸
13. Applicant a/9397/11 does not state who assisted her in completing her application form, a fact that is to be assumed, given that English is not included among her spoken languages.⁹

⁴ ICC-01/09-02/11-126, paras. 7-13.

⁵ ICC-01/09-02/11-23, para. 6 and ICC-01/09-01/11, para. 57.

⁶ The Applicant a/8673/11 provides the identity card which expired on 13 March 1989.

⁷ As required by the Single Judge in ICC-01/09-02/11-23, para. 9.

⁸ ICC-01/09-01/11-249, paras. 19 and 59(ii).

⁹ As required by the Single Judge in ICC-01/09-01/11-249, para. 30.

14. Applicants a/9265/11, a/9266/11, a/9394/11 and a/9408/11 do not specify the date of the crimes, which is required as the personal harm they allege would need to have occurred during the relevant time period, i.e., between 24 and 31 January 2008.¹⁰
15. Applicant a/9390/11 indicates that she is not applying on her own behalf, but fails to provide information on the person applying on her behalf. Furthermore, she does not provide sufficient proof of her identification.¹¹
16. Applicant a/8616/1 applies as an indirect victim, however, she does not provide the proof of the identity of the direct victim as well as the link between them.¹²

Conclusion

17. The Prosecution submits that the 222 Applicants meet all the requirements under Article 68(3) of the Statute to participate as victims in the pre-trial proceedings in this case and therefore, should be granted status to participate.
18. The Prosecution further submits that 23 Applicants should be requested to provide further information or documentation in order to assess whether or not their applications should be granted.



Luis Moreno-Ocampo,
Prosecutor

Dated this 11th day of August 2011
At The Hague, The Netherlands

¹⁰ ICC-01/09-02/11-23, para. 6.

¹¹ ICC-01/09-01/11-249, paras. 41-43 and 59.

¹² ICC-01/09-01/11-249, para. 55 and ICC-01/04-01/06-1813, para. 49.