

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 28 June 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

Decision on the Registrar's "Request for instructions on the processing of victims' applications"

Decision 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 Francis Kirimi Muthaura

Karim Khan and Kennedy Ogetto

Counsel for Uhuru Muigai Kenyatta

Steven Kay and Gillian Higgins

Counsel for Mohammed Hussein Ali

Evans Monari, John Philpot and
Gershom Otachi Bw'omanwa

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

Other

REGISTRY

Registrar & Deputy Registrar

Silvana Arbia, Registrar
Didier Preira, Deputy Registrar

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Fiona McKay

Other

Judge Ekaterina Trendafilova, acting as Single Judge on behalf of Pre-Trial Chamber II (the “Chamber”)¹ of the International Criminal Court (the “Court”) renders this decision on the Registrar’s “Request for instructions on the processing of victims’ applications” (the “Request”).²

1. On 30 March 2011, the Single Judge issued the “First Decision on Victims’ Participation in the Case” (the “First Decision”),³ wherein the framework for processing victims’ applications in this case has been established. In paragraph 18 of the said decision, the Single Judge held that:

[I]t is the responsibility of the VPRS to ensure that all applications are filled in with pertinent information and completely and, in case of missing information, request, pursuant to regulation 86(4) of the Regulations, such information or documentation within two weeks after receipt of the application. If those requests prove to be unsuccessful within a reasonable period of time, the Registrar shall submit those applications to the Chamber for the Single Judge’s consideration.⁴

2. In addition, the Single Judge stated that “the VPRS submit complete applications for participation in the present case to the Single Judge as soon as practicable and no later than Friday, 8 July 2011”.⁵

3. On 24 June 2011, the Registrar filed its Request, in which it informs the Chamber that the Registry received “approximately 550 applications for participation and/or reparations which appear [...] to be related to the present case”.⁶ The Registrar highlights that, in light of the limited resources available to the Victims Participation and Reparation Section (the “VPRS”) and considering that the VPRS shall also transmit to the Chamber, within the same deadline, the victims’ applications related to the case of the *Prosecutor v. William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang*, it will be possible to “redact and provide individual reports on no more

¹ Pre-Trial Chamber II, “Decision Designating a Single Judge”, ICC-01/09-02/11-9.

² ICC-01/09-02/11-134.

³ Pre-Trial Chamber II, “First Decision on Victims’ Participation in the Case”, ICC-01/09-02/11-23.

⁴ Pre-Trial Chamber II, “First Decision on Victims’ Participation in the Case”, ICC-01/09-02/11-23, para. 18.

⁵ Pre-Trial Chamber II, “First Decision on Victims’ Participation in the Case”, ICC-01/09-02/11-23, p. 13.

⁶ ICC-01/09-02/11-134, para. 1.

than 400 complete applications by the deadline of 8 July set down in the First Decision".⁷

4. On the basis of the foregoing, the Registrar requests the Chamber to give instructions as to "whether to process all applications irrespective of completeness, or to prioritize applications assessed as complete".⁸ Furthermore, the Registrar requests that the deadline for the transmission of applications for participation in the present case be extended to 28 July 2011, taking into consideration not only the abovementioned difficulties faced by the VPRS but also the fact that the confirmation of charges hearing in the present case is scheduled to commence 20 days after the companion case.⁹

5. The Single Judge notes Rule 89(1), (4) of the Rules of Procedure and Evidence (the "Rules") and Regulations 35 and 86(4) of the Regulations of the Court (the "Regulations").

6. The Single Judge will firstly address the request for instructions as to whether or not the Registrar should file all applications, even when a request for additional information or documentation pursuant to regulation 86(4) of the Regulations proves to be unsuccessful, as stipulated in the First Decision. In this regard, the Single Judge first of all observes that the First Decision was taken *in abstracto*, with a view to instructing the VPRS in carrying out its task, by establishing the general framework governing victims' participation in the present case.¹⁰

7. Furthermore, the Single Judge recalls that the VPRS is entrusted with the task of processing victims' applications for participation and reparation in situations and cases currently pending before the Court. In this respect, the Single Judge observes that the same deadline of 8 July 2011 applies to both the present case and the case of

⁷ ICC-01/09-02/11-134, para. 2.

⁸ ICC-01/09-02/11-134, para. 4.

⁹ ICC-01/09-02/11-134, para. 3 and 6.

¹⁰ Pre-Trial Chamber II, "First Decision on Victims' Participation in the Case", ICC-01/09-02/11-23, p. 3.

the *Prosecutor v. William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang*,¹¹ in which the number of applications received so far by the Registry is 1800.¹² This brings the total number of victims' applications in the two cases, to be transmitted to the Chamber by 8 July 2011, up to 2350, bearing in mind that this is a provisional estimate pending expiration of the said deadline.

8. Accordingly, the Single Judge is of the view that the approach taken in the First Decision is to be attuned to the change of circumstances as presented by the Registrar. The Single Judge notes rule 89(4) of the Rules, which states that:

Where there are a number of applications, the Chamber may consider the applications in such a manner as to ensure the effectiveness of the proceedings and may issue one decision.

9. Taking into account the information submitted by the Registrar, in particular the 2350 victims' applications to be processed in the two cases within the established deadline, and considering the responsibility of the Chamber to effectively organize the management of victims' applications as envisaged in rule 89(4) of the Rules, the Single Judge believes that it is appropriate to instruct the VPRS that only complete applications be transmitted to the Chamber for its consideration.

10. However, the Single Judges expects the VPRS to act expeditiously and without delay and to request, pursuant to regulation 86(4) of the Regulations, supplementary information as the case may be, so as to ensure that as many complete applications as possible are transmitted to the Chamber within the deadline. In the view of the Single Judge, such approach will enable the Chamber to manage victims' applications in an effective manner without prejudicing the expeditiousness of the proceedings.

11. With regard to the request that the deadline for the transmission of applications for participation in the present case, as established in the First Decision, be extended to 28 July 2011, the Single Judge recalls regulation 35(2) of the Regulations, which

¹¹ Pre-Trial Chamber II, "First Decision on Victims' Participation in the Case", ICC-01/09-01/11-17, p. 13.

¹² ICC-01/09-01/11-144, para. 1.

states that “[t]he Chamber may extend or reduce a time limit if good cause is shown and, where appropriate, after having given the participants an opportunity to be heard”.

12. The Single Judge considers that the Registrar has shown good cause, in that the substantial number of victims’ applications received in the two cases and the consequent workload to which the VPRS is being subject, make it unrealistic to fulfill the deadline originally established in the First Decision. The deadline for the transmission of applications for participation in the present case is thus extended to Thursday 28 July 2011.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY DECIDES THAT

- a) the VPRS submit only complete applications for participation in the present case to the Chamber while requesting supplementary information regarding incomplete applications as specified in paragraph 10 of the present decision;
- b) the deadline to submit complete applications for participation in the present case is extended to **Thursday, 28 July 2011**;

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



Judge Ekaterina Trendafilova
Single Judge

Dated this Tuesday, 28 June 2011

At The Hague, The Netherlands