

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 1 July 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 Document**

**Decision on the "OPCV's Request for Leave to Respond to 'Defence Observations  
on 4 Applications for Victim Participation in the Proceedings'"**

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**  
Paolina Massidda

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

**States Representatives**

**Amicus Curiae**

**Other**

## **REGISTRY**

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**Registrar & Deputy Registrar**  
Silvana Arbia, Registrar  
Didier Preira, Deputy Registrar

**Defence Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

**Judge Ekaterina Trendafilova**, acting as Single Judge on behalf of Pre-Trial Chamber II (the “Chamber”) of the International Criminal Court (the “Court”)<sup>1</sup> renders this decision on the “Request for Leave to Respond to ‘Defence Observations on 4 Applications for Victim Participation in the Proceedings’” (the “Request”).<sup>2</sup>

1. On 30 March 2011, the Single Judge issued the “First Decision on Victims’ Participation in the Case”,<sup>3</sup> wherein the framework for processing victims’ applications in this case has been established. The Single Judge, *inter alia*, decided that: (i) the parties shall provide their observations to the victims’ applications, if they so wish, within a time limit of two weeks upon notification thereof; and (ii) appointed the Office of Public Counsel for Victims (the “OPCV”) as legal representative of the otherwise unrepresented applicants until a legal representative is chosen by the victim or is appointed by the Chamber.

2. On 30 May 2011, the Chamber received four unredacted applications for participation in the present case.<sup>4</sup> On the same date, the Registrar transmitted the redacted versions of those applications to the parties and to the OPCV as the applicants’ legal representative.<sup>5</sup>

3. On 13 June 2011, the Defence for Francis Kirimi Muthaura and Mohammed Hussein Ali jointly filed the “Defence Observations on 4 Applications for Victim Participation in the Proceedings” (the “Defence Observations”).<sup>6</sup>

4. On 17 June 2011, the OPCV filed the Request, whereby it seeks leave to respond to the Defence Observations “on a schedule and in a form that the Chamber deems appropriate”.<sup>7</sup> The OPCV asserts that a response in this sense “may assist

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

<sup>2</sup> ICC-01/09-02/11-129-Conf.

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

<sup>4</sup> ICC-01/09-02/11-97 and annexes attached thereto.

<sup>5</sup> ICC-01/09-02/11-98 and annexes attached thereto.

<sup>6</sup> ICC-01/09-02/11-115-Conf.

<sup>7</sup> Request, para. 17.

deliberations on a matter that vitally affects [the four applicants'] personal interests".<sup>8</sup>

5. The Single Judge notes article 68(3) of the Rome Statute (the "Statute"), rule 89(1) of the Rules of Procedure and Evidence (the "Rules"), and regulation 24(2) of the Regulations of the Court (the "Regulations").

6. At the outset, the Single Judge notes that, within the context of the proceedings leading to the Chamber's ruling on victims' applications for participation as established by rule 89 of the Rules, only the Prosecutor and the Defence are entitled to submit observations on the applications transmitted by the Registry to the Chamber. No reference is made in any provision to the submission by the applicants' legal representatives of a response to the observations provided by the parties in accordance with rule 89(1) of the Rules.

7. Consequently, the Single Judge considers that, in the absence of any specific provision addressing the possibility for the applicants' legal representatives to respond to the observations submitted by the parties on the victims' applications for participation, the general regime of responses as set out by regulation 24 of the Regulations applies. In this regard, the Single Judge recalls the wording of regulation 24(2) of the Regulations which provides that, subject to any order of the Chamber, victims and their legal representatives may file a response to any document "when they are permitted to participate in the proceedings in accordance with article 68, paragraph 3, and rule 89, sub-rule 1".

8. Taking into consideration that, at this stage, a decision as to whether the four applicants are to be recognized as victims and should be allowed to participate in the proceedings is yet to be taken, the Single Judge concludes that their legal representative is not permitted to submit any response to documents filed by the parties in accordance with regulation 24(2) of the Regulations. The Request advanced by the OPCV is thus to be rejected.

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<sup>8</sup> *Ibid.*, para. 1.

**FOR THESE REASONS, THE SINGLE JUDGE HEREBY**

**REJECTS** the Request.

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



**Judge Ekaterina Trendafilova**  
**Single Judge**

Dated this Friday, 1 July 2011

At The Hague, The Netherlands