



ICC Victims' Rights Legal Update 11 November – 15 December 2010

Note: this is not a comprehensive summary; it only relates to key developments impacting on victims' rights within the ICC's jurisdiction between 11 November and 15 December 2010.

Situation in Democratic Republic of Congo (DRC)

Developments in the DRC Situation

- OTP supports victims' applications for participation in the DRC Situation

Developments in the Lubanga case

- OPCV requests authorization to tender evidence
- 15 new victims' applications for participation still pending

Developments in the Katanga and Ngudjolo case

- Decision on the modalities of communications between victims and the parties
- Defence of Germain Katanga will open on 21 March 2011 following victims' testimony

Situation in Central African Republic (CAR)

Developments in the CAR Situation

- Victims' participation in the CAR Situation to follow the framework adopted in the Kenya situation

Developments in the Bemba case

- Me Douzima and Me Zarambaud are appointed common legal representatives
- TC III grants participating status of victim to 624 applicants
- The Protocol on witness' preparation and familiarization is adopted
- Appeals Chamber requests a review of the decision to maintain Bemba in detention
- Unrepresented Victims' Applicants to be represented at the Court by OPCV
- TC III rules on witness questioning by Victims' Legal Representatives
- The parties submit their observations on applications for victim participation

Situation in Darfur, Sudan

Developments in the Banda and Jerbo case

- Victims legal representatives make opening statements at the confirmation of charges hearing, in the absence of the suspects
- OTP objects to the representation of victims by two lawyers based on conflict of interest

Situation in Kenya

Developments in the Kenya situation

- The Prosecutor requests summons to appear for six individuals in the Kenya Situation

Situation in DRC

Developments in the DRC situation

OTP supports victims' applications for participation in the DRC Situation

On 29 November and 7 December 2010, the Prosecution submitted its observations on 13 new applications for victim participation which were submitted confidentially in the DRC Situation in June, requesting that victim status be granted to 11 of the 13 applicants.¹ OTP argued that they had provided sufficient evidence to be

¹ Application for Victims participation, 30 June 2010, ICC-01/04-565-Conf. On 25 August 2010, Single Judge Monageng ordered that unredacted copies of the application be transmitted to the Prosecution and the Office of Public Counsel for the Defence (OPCD) for their

recognized as victims in the DRC situation. This appears to depart from OTP's previous position against victims' participation at the situation stage.² It also raises questions regarding consistency with a new line of jurisprudence in the Kenya and CAR Situations on the ability of victims only to participate in specific proceedings in the Situation as opposed to being granted a general status of participants in the Situation.³ In this regard, a large number of applications for participation in the DRC Situation remain pending.⁴

Developments in the Lubanga case

15 new victims' applications for participation still pending

On 5 November 2010, the victims' Legal Representative opposed the Defence's observations on 15 new victim applications that had been filed in the case in June.⁵ The Legal representative for victims recalled the Chamber's previous jurisprudence on victims' need to only demonstrate *prima facie* that they had suffered a crime under the Court's jurisdiction in order to participate in proceedings.⁶ He also mentioned that the time elapsed since the events explained some of the discrepancies in their applications. A decision is awaited.

OPCV requests authorization to tender evidence

[Background]: On 8 November 2010 the Defence confidentially requested that information regarding the voting cards of 3 victims be admitted as evidence so that they could be examined.⁷ The Defence had previously argued that Prosecution witnesses had falsified evidence and lied during their testimony.

On 29 November 2010, the Office of Public Counsel for Victims (OPCV) sought to tender written statements from the 3 victims, clarifying the circumstances in which their voting cards were issued.⁸ OPCV argued that the statements could help establish the truth and would also be relevant in light of an eventual application for abuse of process. On 1 December 2010, the Defence opposed this request arguing that the said documents were written statements shaped by the legal representative, which affects their reliability.⁹ The Defence also objected that it had not had the opportunity to cross examine those witnesses on the said evidence as provided for under article 67(1)(e).

Developments in the Katanga and Ngudjolo case

Decision on the modalities of communications between victims and the parties

[Background] On 17 December 2009, the Chamber invited the parties and participants to agree on the modalities of communication between victims represented and the parties. On 17 June 2010, the legal representatives of victims submitted a draft protocol however parties and participants were unable to agree.¹⁰

observations; Prosecution's Observations on 12 Applications for Victim Participation in the Situation in the Democratic Republic of the Congo, 29 November 2010, ICC-01/04-585-Red, <http://www.icc-cpi.int/iccdocs/doc/doc973842.pdf>; Prosecution's observations on one additional Application for Victim Participation in the Situation in the Democratic Republic of the Congo, 7 December 2010, ICC-01/04-588-Red, <http://www.icc-cpi.int/iccdocs/doc/doc980782.pdf>

² See Prosecution's Observations on the Victims' Applications [...] for Victim Participation in the Situation in Uganda, 30 March 2009, ICC-02/04-187, where OTP stated "A victim's right to participate arises only in a judicial proceeding that affects the victims' personal interests; an investigation or a situation does not qualify, thus there is no right to participate in the present situation." <http://www.icc-cpi.int/iccdocs/doc/doc654696.pdf>; similar approach was adopted in the Darfur Situation, Prosecution's Reply under Rule 89(1) to the Applications for Participation of Applicants a/0011/06, a/0012/06, a/0013/06, a/0014/06 and a/0015/06 in the Situation in Darfur, the Sudan, 8 June 2007, ICC-02/05-81, <http://www.icc-cpi.int/iccdocs/doc/doc284266.PDF>

³ See below entry on CAR Situation : *Victims' participation in the CAR Situation to follow the framework adopted in the Kenya situation*, p3; See also Decision on Victims' Participation in Proceedings Related to the Situation in the Republic of Kenya, 3 November 2010, ICC-01/09-24, <http://www.icc-cpi.int/iccdocs/doc/doc962483.pdf>; Decision on Victims' Participation in Proceedings Related to the Situation in the Central African Republic, 11 November 2010, ICC-01/05-31, <http://www.icc-cpi.int/iccdocs/doc/doc966114.pdf>.

⁴ As at 30 September 2010, 1,057 victims' applications for participation in the DRC Situation had been received, many of whom have not been assessed by the Chamber.

⁵ Transmission to the parties of fifteen new victims' applications for participation, 29 June 2010, ICC-01/04-01/06-2509, <http://www.icc-cpi.int/iccdocs/doc/doc902619.pdf>. Both the Prosecution and the Defence submitted observations confidentially, the Defence arguing that the applications were incomplete and imprecise, and questioning the extent of redactions.

⁶ See « Réplique aux observations de la Défense sur les 15 demandes de participation des victimes », 5 November 2010, ICC-01/04-01/06-2603, <http://www.icc-cpi.int/iccdocs/doc/doc963148.pdf>.

⁷ See Troisième requête de la Défense aux fins de dépôt de documents» (« Third application for the admission of documents »), No. ICC-01/04-01/06-2604-Conf, 8 November 2010, para. 55.

⁸ Application for leave to tender into evidence material from the "bar table, 29 November 2010, ICC-01/04-01/06-2647, <http://www.icc-cpi.int/iccdocs/doc/doc973637.pdf>; Under the Court's jurisprudence, Victims under certain circumstance can tender evidence to assist the Chamber in its determination of the truth, see Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I's Decision on Victims' Participation of 18 January 2008", 11 July 2008, ICC-01/04-01/06-1443, <http://www.icc-cpi.int/iccdocs/doc/doc529076.PDF>.

⁹ See « Réponse de la Défense à la requête du BCPV », 1 December 2010, ICC-01/04-01/06-2652, <http://www.icc-cpi.int/iccdocs/doc/doc974691.pdf>;

¹⁰ See « Dépôt d'un projet de Protocole relatif aux modalités de contact entre des victimes représentées et les parties », 17 June 2010, ICC-01/04-01/07-2202 et ICC-01/04-01/07- 2202-Corr., <http://www.icc-cpi.int/iccdocs/doc/doc896479.pdf>.

On 23 November 2010, Trial Chamber II (TC II) ruled on the modalities of communications between victims and the parties and stated that:¹¹

- A party wishing to contact a participating victim shall notify his/her legal representative.
- The victim will be able to decide on whether to be assisted by his or her legal representative.
- The interview can take place only if the victim has been duly informed and has given his/her consent.
- Should the victim request/authorize his/her legal representative to attend, he will behave in a way that would neither influence the responses of his/her client nor obstruct the manifestation of the truth.
- There is no obligation for the party interviewing the victim to communicate a copy of the statement or any other document established during the interview to the legal representative. In cases where the legal representative does not attend the interview, he will have to ask his/her client directly. The victim will have the choice whether to communicate that information or not.

Defence of Germain Katanga will open on 21 March 2011 following victims' testimony

On 1 December 2010, TC II announced that the Defence case of Germain Katanga, followed by that of Mathieu Ngudjolo, would open on 21 March 2011.¹² TC II also stated that the four victims who had been granted the right to present evidence would appear before the Court, starting on 21 February 2011.¹³ On 6 December 2010, the Defence of Mathieu Ngudjolo requested the Chamber to reconsider the proposed timeline, arguing that it would need six weeks after the end of the 4 victims' testimony to adequately prepare its defence.¹⁴

Situation in Central African Republic (CAR)

Developments in the CAR situation

Victims' participation in the CAR Situation to follow the framework adopted in the Kenya situation

[Background] On 3 November 2010, Pre-Trial Chamber II (PTC II) set a framework for victim participation in proceedings in the Kenya Situation.¹⁵ The Chamber stated that victims may participate in proceedings related to the situation stage but stressed that participation may only take place when an issue arises which may require judicial determination. It outlined three different hypotheses which may lead it to assess the merits of victims' applications at the stage of a situation.¹⁶ PTCII also stated that unless victims explicitly indicated their wish to participate in the proceedings, VPRS should consider their applications for reparations alone. The VPRS would have 60 days to assess whether an application is complete.

On 11 November 2010, Single Judge Hans Peter Kaul responsible for victims' issues in relation to proceedings of the CAR situation ruled that PTC II's decision in the Kenya Situation equally applied in the context of the situation in CAR.¹⁷ Thus, a victim wishing to participate in this situation shall demonstrate that he/she has suffered harm as a result of a crime falling under the jurisdiction of the Court, which allegedly occurred on the territory of the Central African Republic as of 1 July 2002.

Developments in the Bemba case

Me Douzima and Me Zarambaud are appointed common legal representatives of victims

[Background] On 10 November 2010, Trial Chamber III (TC III) ordered the Registry to designate two common legal representatives from the Central African Republic to represent the totality of the victims who will be allowed to participate in the case.¹⁸

¹¹ Décision relative aux modalités de contact entre des victimes représentées et les parties, 23 November 2010, ICC-01/04-01/07-2571, <http://www.icc-cpi.int/iccdocs/doc/doc970864.pdf>.

¹² See "Ordonnance portant calendrier de la comparution des témoins a/0381/09, a/0018/09, a/0191/08 et pan/0363/09 et de l'ouverture de la cause de la Défense de Germain Katanga," 1 December 2010, ICC-01/04-01/07-2602, <http://www.icc-cpi.int/iccdocs/doc/doc974650.pdf>.

¹³ Décision aux fins d'autorisation de comparution des victimes a/0381/09, a/0018/09, a/0191/08 et pan/0363/09 agissant au nom de a/0363/09 », 9 November 2010, ICC-01/04/01/07-2517.

¹⁴ Requête de la Défense de M. Ngudjolo, 6 December 2010, ICC-01/04-01/07-2618, <http://www.icc-cpi.int/iccdocs/doc/doc976262.pdf>.

¹⁵ Decision on Victims' Participation in Proceedings Related to the Situation in the Republic of Kenya, 3 November 2010, ICC-01/09-24, <http://www.icc-cpi.int/iccdocs/doc/doc962483.pdf>.

¹⁶ Namely: the Chamber is seized of a request that is not submitted by victims (i.e. a motion filed by the Prosecution or Defense); the Chamber decides to act *proprio motu* (seeking the views of victims on an issue); the Chamber is seized of a request emanating from victims applicants or victims who have been recognised as victims participating in the proceedings. See Legal Update 9 Oct – 10 Nov 2010, http://www.vrwg.org/legal%20update/Legal_Update_October_2010.pdf.

¹⁷ Decision on Victims' Participation in Proceedings Related to the Situation in the Central African Republic, 11 November 2010, ICC-01/05-31, <http://www.icc-cpi.int/iccdocs/doc/doc966114.pdf>.

¹⁸ Decision on common legal representation, ICC-01/04-01/08-1005, 10 November 2010, <http://www.icc-cpi.int/iccdocs/doc/doc965368.pdf>.

On 16 November 2010, Ms Marie Edith Douzima Lawson, who has already been representing victims in the pre-trial phase of the proceedings, was appointed representative for Victims' Groups B, C and D (victims whose applications relate to alleged crimes committed outside Bangui).¹⁹ Mr Assingambi Zarambaud will represent Victims' Group A (victims whose applications relate to alleged crimes committed in, or around, Bangui).

TC III grants participating status of victim to 624 applicants

On 18 November 2010, the Chamber granted participating status to 624 victim applicants, rejected 15 applications and deferred its decision on another 133 applications until further information is submitted.²⁰ Any victims wishing to participate in person during the trial proceedings shall apply in writing no later than 5 January 2011.

With regards to the assessment of victims' applications, the Chamber stated *inter alia* that:

- vaccination and medical cards would not be accepted as proof of identity;²¹
- there simply needs to be sufficient evidence to establish *prima facie* that the applicant is a victim under Rule 85(a) of the Rules at this stage;
- with regards to applications submitted on behalf of a deceased victim, sufficient information will have to be provided as to the identity of, and the kinship between, the dead victim and the applicant;
- nothing requires victims to personally fill in the application form. Only if there are indications of misunderstanding or that there is a doubt as to the extent of the intermediary's involvement, will the Chamber reject the application or defer its decision;
- as torture, temporary detainment, assault, humiliation or degrading treatment were not included in the charges, victims applications based only on these harms should be rejected;
- as many victims of rape are reluctant to discuss the crimes suffered in explicit terms in their applications, where it can be inferred on a *prima facie* basis that the applicant was a victim of rape, allegations of "sexual violence" will be treated as referring to acts of rape.

The Protocol on witness' preparation and familiarization is adopted

On 18 November 2010, TC III adopted a protocol submitted by the Victims and Witnesses Unit (VWU) on witness familiarisation aimed at assisting witnesses prior to and during the trial.²² TCIII stated that familiarization will not be provided to all victims but only to "victims appearing before the Court to testify". TC III followed previous approaches with regards to witness familiarization including the right to re-read previous statements ahead of testimony. It also endorsed other Chamber's jurisprudence on the prohibition of proofing of witnesses for trial by the parties.²³ The chamber also requested VWU to redraft parts referring to witnesses being "handed over" or "retained" to reflect the necessary respect due to witnesses appearing before the Court.

Appeals Chamber requests a review of the decision to maintain Bemba in detention

[Background] On 28 July 2010, TC III rejected the Defence's request to release Bemba and confirmed his detention.²⁴ The Defence appealed on the grounds that TC III's decision was based on prior decisions alone without proper examination of new facts.²⁵

On 19 November 2010, the Appeals Chamber agreed with the Defence, stating that TC III had inappropriately restricted itself to only assessing the alleged new circumstances presented by Mr Bemba.²⁶ However, it concluded that until, and subject to further review by the Trial Chamber, Mr Bemba shall remain in detention.

¹⁹ Notification of designation of common legal representatives, 16 November 2010, ICC-01/05-01/08-1012, <http://www.icc-cpi.int/iccdocs/doc/doc967812.pdf>.

²⁰ Decision on 772 applications by victims to participate in the proceedings, 18 November 2010, ICC-01/05-01/08-1017, <http://www.icc-cpi.int/iccdocs/doc/doc969148.pdf>.

²¹ However it would accept electoral cards; baptism cards; certificats de frequentation scolaire and student cards; attestations d'état civil signed and stamped by the Chef de quartier, certificats de residence, refugee cards and police statements for loss of identity documents

²² Decision on the Unified Protocol on the practices used to prepare and familiarise witnesses for giving testimony at trial, 18 November 2010, ICC-01/05-01/08-1016, <http://www.icc-cpi.int/iccdocs/doc/doc969083.pdf>; see the "Victims and Witnesses Unit's Unified Protocol on the practices used to prepare and familiarise witnesses for giving testimony at trial", 22 October 2010, ICC-01/05-01/08-972, <http://www.icc-cpi.int/iccdocs/doc/doc957501.pdf>.

²³ See "Partly Dissenting Opinion of Judge Kuniko Ozaki on the Decision on the Unified Protocol, 24 November 2010, ICC-01/05-01/08-1039, <http://www.icc-cpi.int/iccdocs/doc/doc971477.pdf>.

²⁴ Decision on the review of the detention of Mr Jean-Pierre Bemba Gombo, 28 July 2010, ICC-01/05-01/08-843, <http://www.icc-cpi.int/iccdocs/doc/doc914784.pdf>.

²⁵ Acte d'Appel de la Défense contre la décision de la Chambre de Première Instance III du 28 Juillet 2010, 29 July 2010, ICC-01/05-01/08-844, <http://www.icc-cpi.int/iccdocs/doc/doc915322.pdf>; Mémoire à l'Appui de l' Acte d'Appel de la Défense, 4 August 2010, ICC-01/05-01/08-847, <http://www.icc-cpi.int/iccdocs/doc/doc918933.pdf>.

Unrepresented Victims' Applicants to be represented at the Court by OPCV

[Background] Over a thousand victims' applications were submitted ahead of the start of the Bemba trial. On 18 November 2010, the Chamber granted 624 applications by victims to participate in the proceedings covering the six first sets of victims' applications transmitted by the Registry. The seventh and eighth sets of applications are still awaiting a decision.

On 11 November 2010, the Prosecution requested the Chamber to grant victims' status to 216 of the remaining applicants.²⁷ On 26 November 2010 and 8 December 2010, the Defence submitted its observations.²⁸ It stressed the tardy transmission of these applications, the redactions concerning the date and place of the alleged events, the non-disclosure of the Applicants' identity to the OTP and to the Defence and the vagueness of the allegations. The Defence further requested that, when the applicant does not oppose it, the Prosecutor receive the applications in unredacted format, so that OTP can review them and fulfil its duty to investigate and disclose to the Defence *all exculpatory materials*. [emphasis added] A decision is awaited.

On 19 November 2010, TC III ruled that victim applicants who are still awaiting a decision on their applications would be represented at the commencement of the trial.²⁹ The Chamber authorized OPCV to make opening statements on their behalf. TC III highlighted that such opening statements would not be considered evidence for the purposes of the trial and further underlined that applicants' representation at this stage does not extend to the right to put questions to witnesses. These applicants will be represented by OPCV until a decision is made on their application to participate, at which point they will be represented by one of the two common legal representatives.

TC III rules on witness questioning by Victims' Legal Representatives

On 19 November 2010, the Chamber recalled that legal representatives wishing to question witnesses should set out, at least seven days before the witness is scheduled to testify, the nature and detail of their proposed questions to witnesses in a discrete application.³⁰ Legal representatives are expected to question witnesses only to the extent relevant to the victims' interests therefore limiting the scope of examination to questions that have the purpose of clarifying the witness' evidence and to elicit additional facts (notwithstanding their relevance to the guilt or innocence of the accused). The said decision also provided that parties "may" rather than "shall" contest the credibility of a witness during testimony. According to the Prosecutor who sought to appeal the decision on 29 November, this could see witness's credibility doubted without the witness having an opportunity to respond to allegations.³¹

Situation in Darfur, Sudan

Developments in the Jerbo and Benda case

Victims' legal representatives make opening statements at the confirmation of charges hearing, in the absence of the suspects

[Background] On 22 October 2010, Pre Trial Chamber III (PTC III) postponed the confirmation hearing to 8 December 2010. Defence counsel for both accused subsequently filed a request to waive their right of attendance.³² On 17 November 2010, PTC III ruled that new information received was now sufficient for it to be satisfied that the suspects were fully aware of their rights under article 67 of the Statute. Thus, on 8 December 2010, the confirmation of charges hearing took place in the absence of the suspects.³³

²⁶ Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III of 28 July 2010, 19 November 2010, ICC-01/05-01/08-1019, <http://www.icc-cpi.int/iccdocs/doc/doc969582.pdf>.

²⁷ Prosecution's Observations on 280 Applications for Victims' Participation in the Proceedings, 11 November 2010, ICC-01/05-01/08-1006, <http://www.icc-cpi.int/iccdocs/doc/doc966398.pdf>.

²⁸ Defence Observations on the Seventh Transmission of applications for participation in the proceedings, 26 November 2010, ICC-01/05-01/08-1053, <http://www.icc-cpi.int/iccdocs/doc/doc972882.pdf>; « Observations de la Défense sur les 280 demandes de participation à la procédure en qualité de victimes », 8 December 2010, ICC-01/05-01/08-1082, <http://www.icc-cpi.int/iccdocs/doc/doc981106.pdf>

²⁹ Decision on the legal representation of victim applicants at trial, 19 November 2010, ICC-01/05-01/08-1020, <http://www.icc-cpi.int/iccdocs/doc/doc969799.pdf>.

³⁰ Decision on Directions for the Conduct of the Proceedings, 19 November 2010, ICC-01/05-01/08-1023, <http://www.icc-cpi.int/iccdocs/doc/doc969802.pdf>; see also Decision on the participation of victims in the trial and on 86 applications by victims to participate in the proceedings, 12 July 2010, ICC-01/05-01/08-807-Corr, <http://www.icc-cpi.int/iccdocs/doc/doc907219.pdf>; and Decision on common legal representation of victims for the purpose of trial, Supra Note 18.

³¹ Prosecution's Request for Leave to Appeal the Trial Chamber's Decision on Directions for the Conduct of the Proceedings, 29 November 2010, ICC-01/05-01/08-1060, <http://www.icc-cpi.int/iccdocs/doc/doc973859.pdf>.

³² Decision postponing the confirmation hearing and setting a deadline for the submission of the suspects' written request to waive their right to attend the confirmation hearing, 22 October 2010, ICC-02/05-03/09-81, <http://www.icc-cpi.int/iccdocs/doc/doc956512.pdf>

³³ Decision on issues related to the hearing on the confirmation of charges, 17 November 2010, ICC-02/05-03/09-103, <http://www.icc-cpi.int/iccdocs/doc/doc968043.pdf>.

On 19 October 2010, OTP and the Defence had filed a joint submission on agreed facts for the purposes of the confirmation hearing.³⁴ The submission suggested that the Chamber confine the interventions of the victims' representatives to written observations or submissions, given the extremely limited oral submissions of the Parties. On 11 and 12 November 2010, the Legal Representatives of Victims responded, underlining the right for victims to make oral and or written observations or submissions before the Chamber.³⁵

On 17 November 2010, PTC III reiterated that it found it "appropriate, within the meaning of article 68(3) of the Statute and rule 89(1), that victims' legal representatives be entitled to present their views and concerns at the confirmation hearing, by way of oral submissions".³⁶ The Judges further found that this finding applies true in respect of all legal representatives of victims authorized to participate at the confirmation hearing, regardless of whether they have specifically requested the Chamber's leave to make oral submissions.

OTP objects to the representation of victims by two lawyers based on conflict of interest

On 6 December 2010, the Prosecution objected to the representations of victims a/1646/10 and a/1647/10 by Messrs Geoffrey Nice and Rodney Dixon.³⁷ OTP argued that the counsel had a conflict of interest, as they also represent the Sudan International Defence Group (SIDG) and the Sudan Workers Trade Unions Federation (SWTUF), two groups that are alleged proxies for the Sudanese government. On 8 December 2010, the Judges found that no concrete evidence had been brought in that respect and therefore rejected the request regarding termination of representation by Messrs Nice and Dixon.

Situation in Kenya

Developments in the Kenya situation

The Prosecutor requests summons to appear for six individuals in the Kenya Situation

On 15 December 2010, the Prosecutor announced the names of six individuals targeted by two applications for summonses to appear before the Court.³⁸ The two applications cover three individuals each and focus on the two main political parties involved in the election process at the time, namely the Orange Democratic Movement (ODM) and the Party of National Unity (PNU).

The first case relates to individuals associated with the ODM :

- Henry Kosgey, current Minister for industrialisation and Chairman of the ODM;
- Joshua Arap Sang, "Kass FM" radio executive, a private radio company;
- William Ruto who used to be the education Minister since 2008 but was suspended by President Kibaki on corruption charges. He is currently a deputy leader of the ODM.

They allegedly planned and organised crimes against supporters of the PNU

The second case relates to individuals associated with the PNU:

- Uhuru Kenyatta, current Deputy Prime Minister and Finance Minister. He allegedly mobilised a local militia, the Mungiki, to attack supporters of the ODM.
- Francis Kirimi Muthaura, current Secretary to the Cabinet. He allegedly authorised the police to use excessive force against ODM supporters.
- Mohammed Hussein Ali, Chief Executive of Postal Corporation of Kenya. He was the Police Chief during the violence. He is allegedly responsible for excessive use of force in response to the violence.

There is no time-limit within which the Chamber must decide on the Prosecutor's applications for summonses to appear against the six persons.

³⁴ Joint submission by the OTP and the Defence as to agreed facts and submissions regarding modalities for the conduct of the Confirmation hearing, 19 October 2010, ICC-02/05-03/09-80, <http://www.icc-cpi.int/iccdocs/doc/doc955335.pdf>.

³⁵ See « Observations sur la requête conjointe du Bureau du Procureur et de la Défense concernant l'Accord sur les faits et sur les modalités de déroulement de l'Audience de Confirmation des Charges », 11 November 2010, ICC-02/05-03/09-97, <http://www.icc-cpi.int/iccdocs/doc/doc966726.pdf>; Legal Representative's Observation on the Joint Submission, 12 November 2010, ICC-02/05-03/09-100, <http://www.icc-cpi.int/iccdocs/doc/doc967744.pdf>; Observations on behalf of Victims a/1647/10 and a/1648/10, 12 November 2010, ICC-02/05-03/09-96, <http://www.icc-cpi.int/iccdocs/doc/doc966702.pdf>.

³⁶ Decision on Victims' Participation at the Hearing on the Confirmation of the Charges, 29 October 2010, ICC-02/05-03/09-89, <http://www.icc-cpi.int/iccdocs/doc/doc959401.pdf>.

³⁷ Prosecution Objection to the Continued Representation of Victims a/1646/10 and a/1647/10 by Messrs Geoffrey Nice and Rodney Dixon, 6 December 2010, ICC-02/05-03/09-110, <http://www.icc-cpi.int/iccdocs/doc/doc976286.pdf>.

³⁸ Prosecutor's Application Pursuant to Article 58 as to Ruto, Kiprono Kosgey and Arap Sang, 15 December 2010, ICC-01/09-30-Red, <http://www.icc-cpi.int/iccdocs/doc/doc985613.pdf>; Prosecutor's Application Pursuant to Article 58 as to Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali, 15 December 2010, ICC-01/09-31-Red, <http://www.icc-cpi.int/iccdocs/doc/doc985621.pdf>.