



## ICC Victims' Rights Legal Update 29 September 2011 – 29 November 2011

**Note:** The summaries below are unofficial summaries of ICC decisions and related pleadings relevant to victims' rights issues. The summary does not purport to be complete. For a more in-depth review, please review the documents hyper-linked in this summary. Any comments on this Legal Update should be directed to Gaëlle Carayon at [gaelle@redress.org](mailto:gaelle@redress.org).

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- ICC Pre-Trial Chamber III authorises the Prosecutor to launch an investigation
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### Situation in the Democratic Republic of Congo (DRC)

#### **Developments in the Lubanga case**

#### **Decision by Registrar to cut back legal aid for the Defence under review**

[Background] On 22 July 2011, the Registrar informed the Defence that, in accordance with the Court's legal aid scheme, all payments to members of the Lubanga defence team, except those to Counsel,

would cease as of the last day of closing arguments.<sup>1</sup> On 30 August 2011, upon request by the Defence, Trial Chamber I (TC I) reversed the Decision.<sup>2</sup> TC1 stressed that, as the document from the ASP spelling out the scheme for legal aid for the defence did not account for sentencing or reparation proceedings, it limited the weight judges were willing to give to the document.

On 5 October 2011, the Registrar requested the Appeals Chamber to review the decision. It argued that the Chamber had not given enough weight to the documents defining the Court's legal aid system and that this had a bearing on her ability to properly discharge her functions in light of budgetary constraints. The Registrar's request for review was rejected by the Appeals Chamber on 21 November 2011.<sup>3</sup>

### **VPRS lacks resources to process 27 applications for participation**

On 3 November 2011, the Victims Participation and Reparations Section (VPRS) asked for guidance from the Chamber on how to proceed with regards to 27 applications for participation which, due to lack of resources, it had not been able to process and file ahead of the closing arguments in the trial. VPRS added that 25 of the applicants also requested reparations, bringing to 74 the total number of requests for reparations received from participating victims.<sup>4</sup>

### **Developments in the Katanga and Ngudjolo case**

#### **The two accused take the stand**

For the first time, defendants took the stand in their own defence before the ICC. From 27 September to 26 October 2011, Germain Katanga answered the parties', the participants' and the Court's questions. Mathieu Ngudjolo's was examined from 27 October to 11 November 2011. The legal representative for child soldier victims questioned the two accused, *inter alia*, about their definition of a "child soldier." 11 November 2011 marked the end of evidence related hearings in the trial.

#### **Security measures requested for victims whose name and link to the ICC were wrongly disclosed**

[Background] On 26 April 2010, Trial Chamber II (TC II) adopted a Protocol concerning the use of the names of protected witnesses in the course of investigations applicable to parties and participants.<sup>5</sup>

On 14 October 2011, Me Nsita informed the Chamber that following the testimony of a defence's witness, it had become apparent that a defence investigator had disclosed information regarding a protected victim. Fearing for the security of this particular victim as well as for the security of all protected victims, Me Nsita requested the Court to remind the Defence of its obligations and to order, as appropriate, additional security measures for the victims.<sup>6</sup>

#### **Relatives to continue the action of two deceased victims**

[Background] On 14 June 2011, TC II requested additional information with regards to two requests from relatives to continue the action of deceased victims.<sup>7</sup>

On 21 October 2011, following the submission of additional information, TC II authorized the persons appointed by the families of deceased victims a/0025/08 and a/0311/09 to represent their interests in the proceedings. TC II also stated that security measures ordered for participating victims who are now deceased also applied to the persons appointed by their families to continue the action.<sup>8</sup>

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<sup>1</sup> Defence Application for a Review of the 22 July 2011 Decision of the Registry on the Legal Assistance Granted to Mr Thomas Lubanga, 19 August 2011, ICC-01/04-01/06-2790-Anx1, <http://www.icc-cpi.int/iccdocs/doc/doc1252162.pdf>

<sup>2</sup> Decision reviewing the Registry's decision on legal assistance for Mr Thomas Lubanga Dyilo pursuant to Regulation 135 of the Regulations of the Registry, 30 August 2011, ICC-01/04-01/06-2800, <http://www.icc-cpi.int/iccdocs/doc/doc1212574.pdf>

<sup>3</sup> Decision on the "Registrar's Submissions under Regulation 24bis of the Regulations of the Court [...]", 21 November 2011, ICC-01/04-01/06-2823, <http://www.icc-cpi.int/iccdocs/doc/doc1273913.pdf>

<sup>4</sup> Request for instructions on victim's applications for participation and reparations received by the Registry, 2 November 2011, ICC-01/04-01/06-2817, <http://www.icc-cpi.int/iccdocs/doc/doc1260260.pdf>

<sup>5</sup> Décision sur le « Protocole régissant les enquêtes concernant les témoins bénéficiant de mesures de protection », 26 April 2010, ICC-01/04-01/07-2047, <http://www.icc-cpi.int/iccdocs/doc/doc863668.pdf>; Protocol on investigations in relation to witnesses benefiting from protective measures, 27 April 2011, ICC-01/04-01/07-1956-Anx1, <http://212.159.242.181/iccdocs/doc/doc840816.pdf>

<sup>6</sup> Requête relative à la situation sécuritaire de la victime [Expurgé] et potentiellement d'autres victimes, 14 October 2011, ICC-01/04-01/07-3179-RED, <http://www.icc-cpi.int/iccdocs/doc/doc1246288.pdf>

<sup>7</sup> Décision relative aux demandes de reprise d'instance formées par les proches des victimes décédées [...], 14 June 2011, ICC-01/04-01/07-3018, <http://212.159.242.180/iccdocs/doc/doc1078962.pdf>. cf Legal update June 2011

<sup>8</sup> Décision relative aux demandes de reprise d'instance formées par les proches des victimes décédées a/0025/08 et a/0311/09, 21 October 2011, ICC-01/04-01/07-3185-Corr, <http://www.icc-cpi.int/iccdocs/doc/doc1270672.pdf>

## Legal representatives of victims request TC II to consider new evidence

On 21 November 2011, referring to the Court's previous position that at the end of the evidence, Legal Representatives of Victims (LRV) would have the possibility to bring to the attention of the Chamber, persons who may be able to give evidence about issues that concern the victims' interests, the legal representative of child soldier victims applied to have the Congolese and Ugandan authorities provide evidence in the trial.<sup>9</sup> On the same day, the legal representative for the main group of victims also requested that the chamber admit a Human Rights Watch report as evidence submitting that the report would provide more information regarding acts that were committed.<sup>10</sup>

## Developments in the Mbarushimana case

### PTC I rejects the Defence's challenge to the jurisdiction of the Court

[Background] On 19 July 2011, the Defence confidentially challenged the jurisdiction of the Court regarding the events that took place in the Kivus.<sup>11</sup>

On 26 October 2011, PTC 1 rejected the Defence's challenge and found that in addition to Ituri, the Kivus also featured as a region of crisis at the time of the DRC Referral. The Chamber also found that there was a link between the events which led to the referral and the charges brought against Mr Mbarushimana.<sup>12</sup>

### The Prosecutor request that counts of pillaging and mutilation be added to the charges

[Background] The confirmation of charges hearing took place between 16 and 21 September 2011 before PTC I.

During its opening statement, the Prosecution requested that two new charges of war crimes be added to the case: pillaging and mutilation.<sup>13</sup> This submission had already been made in the document containing the charges submitted by the Prosecution on 3 August 2011.<sup>14</sup>

On 6 October 2011, Victims' Legal representatives filed their final written observations on the confirmation of charges. M. Kassongo indicated that a causal link between Mr. Mbarushimana's political activities and the crimes he was charged with existed.<sup>15</sup> M. Mabanga requested the Chamber to confirm all charges and to reject the defence's position opposing cumulative charging.<sup>16</sup> On 17 and 21 October 2011, the Prosecution and the defence respectively filed their observations.<sup>17</sup> A decision on the confirmation of charges is expected within 60 days of the hearing's end.

## Situation in the Central African Republic (CAR)

### Developments in the Bemba case

### 264 Victim's applications granted with hundreds more pending

On 30 September 2011, Registry transmitted 212 new victims' applications for participation in the trial to the Chamber, the parties and the participants.<sup>18</sup> On 24 October 2011, the Prosecution and the Defence

<sup>9</sup> Proposition du représentant légal du groupe des victimes enfants soldats quant à la comparution de témoins supplémentaires à citer par la Chambre, 21 November 2011, ICC-01/04-01/07-3206, <http://www.icc-cpi.int/iccdocs/doc/doc1274184.pdf>

<sup>10</sup> Demande d'admettre un rapport de Human Rights Watch en preuve documentaire, 21 November 2011, ICC-01/04-01/07-3205, <http://www.icc-cpi.int/iccdocs/doc/doc1273938.pdf>

<sup>11</sup> Defence Challenge to the Jurisdiction of the Court, 19 July 2011, ICC-01/04-01/10-290, <http://www.icc-cpi.int/iccdocs/doc/doc1122850.pdf>

<sup>12</sup> Decision on the "Defence Challenge to the Jurisdiction of the Court", 26 October 2011, ICC-01/04-01/10-451, <http://www.icc-cpi.int/iccdocs/doc/doc1252321.pdf>

<sup>13</sup> Transcript Mbarushimana's confirmation of charges hearing, 16 September 2011, ICC-01/04-01/10-T-6-RED, <http://www.icc-cpi.int/iccdocs/doc/doc1240120.pdf>

<sup>14</sup> English version of ICC-01/04-01/10-311 Prosecution's document containing the charges and List of Evidence submitted pursuant to Article 61(3) and Rule 121(3), 3 August 2011, ICC-01/04-01/10-330, <http://www.icc-cpi.int/iccdocs/doc/doc1188497.pdf>; Prosecution's document containing the charges submitted pursuant to Article 61(3) of the Statute, 3 August 2011, ICC-01/04-01/10-330-AnxA-Red, <http://212.159.242.181/iccdocs/doc/doc1189569.pdf>

<sup>15</sup> Observations et "conclusions finales" aux fins de confirmation des charges [...] par les 37 victimes [...], 6 October 2011, ICC-01/04-01/10-447, <http://www.icc-cpi.int/iccdocs/doc/doc1242938.pdf>

<sup>16</sup> Observations de victimes autorisées à participer à la procédure au terme de l'audience de confirmation des charges retenues contre M. Callixte Mbarushimana, 6 October 2011, ICC-01/04-01/10-446, <http://www.icc-cpi.int/iccdocs/doc/doc1242852.pdf>

<sup>17</sup> Prosecution's written submissions on the confirmation of charges, 17 October 2011, ICC-01/04-01/10-448-Red, <http://www.icc-cpi.int/iccdocs/doc/doc1246404.pdf>; Defence Written Submissions Pursuant to the Oral Order of Pre-Trial Chamber I of 16 September 2011, 21 October 2011, ICC-01/04-01/10-450, <http://www.icc-cpi.int/iccdocs/doc/doc1250517.pdf>

<sup>18</sup> Thirteenth transmission to the Trial Chamber of applications for participation in the proceedings, 30 September 2011, ICC-01/05-01/08-1806, <http://www.icc-cpi.int/iccdocs/doc/doc1239843.pdf>; Thirteenth transmission to the parties and the legal representatives

submitted their observations, with the Defence opposing them all.<sup>19</sup> Between 21 October 2011 and 18 November 2011, the Registry transmitted a further 821 new applications.<sup>20</sup>

On 25 October 2011 Trial Chamber III ruled on 270 applications which had been pending since 15 July 2011 and granted participating status to 264 applicants. In doing so the Chamber recalled that the name and signature of the intermediary assisting victims in filling in their application forms was not a prerequisite for the completeness of an application.<sup>21</sup>

### **TC III details the procedure for victims to present their views and concerns**

On 21 November 2011 Trial Chamber III (TCIII), endorsing previous jurisprudence of the Appeals Chamber in the *Lubanga case*, held that:

- The Legal representatives of victims could present evidence at trial, and ask that victims he/she represents be heard as witnesses;
- The Legal Representatives may ask for individual victims to present their views and concerns to the Chamber, by way of, for example, unsworn statements.

The Chamber detailed the procedure to be followed by the Legal Representatives if they wish to introduce such demands and invited the LRV to file their written applications by 6 December 2011.<sup>22</sup>

## **Situation in Sudan**

### **Developments in the Banda and Jerbo case**

#### **TC IV authorises 89 victims to participate in the trial**

[Background] On 29 October 2010 PTC I authorized 89 victims to participate during the pre-trial stage of the case. On 16 September 2011, the Registry filed with the Chamber six applications to participate in the proceedings.<sup>23</sup>

On 17 October 2011, Trial Chamber IV (TC IV) ruled that the 89 victims who hold participatory status at the pre-trial stage, would also be authorised to participate in the trial proceedings. In doing so the Chamber recalled previous jurisprudence stating that the analysis of a Pre-Trial Chamber remained valid in principle and did not need to be revisited at subsequent stages of the proceedings unless 1) a victim concerned was authorised to participate solely on the basis of the commission of a crime corresponding to a charge which was not confirmed; or 2) new information has emerged since the original decision authorising the victim to participate in the proceedings.<sup>24</sup>

The Chamber finally ordered that any new application for participation in the trial must be submitted to the VPRS by 13 January 2012.<sup>25</sup>

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of the applicants of redacted versions of applications for participation in the proceedings, 30 September 2011, ICC-01/05-01/08-1807, <http://www.icc-cpi.int/iccdocs/doc/doc1239859.pdf>

<sup>19</sup> Prosecution's Observations on 212 Applications for Victims' Participation in the Proceedings, 24 October 2011, ICC-01/05-01/08-1858, <http://www.icc-cpi.int/iccdocs/doc/doc1251132.pdf>; Observations de la Défense sur les 212 demandes de participation transmises le 30 Septembre 2011, 24 October 2011, ICC-01/05-01/08-1859, <http://www.icc-cpi.int/iccdocs/doc/doc1232184.pdf>

<sup>20</sup> Fourteenth transmission to the Trial Chamber of applications for participation in the proceedings, 21 October 2011, ICC-01/05-01/08-1854, <http://www.icc-cpi.int/iccdocs/doc/doc1250047.pdf>; Fourteenth transmission to the parties and the legal representatives of the applicants of redacted versions of applications for participation in the proceedings, 21 October 2011, ICC-01/05-01/08-1855, <http://www.icc-cpi.int/iccdocs/doc/doc1250292.pdf>; Fifteenth transmission to the Trial Chamber of applications for participation in the proceedings, 4 November 2011, ICC-01/05-01/08-1884, <http://www.icc-cpi.int/iccdocs/doc/doc1261629.pdf>; Fifteenth transmission to the parties and the legal representatives of the applicants of redacted versions of applications for participation in the proceedings, 4 November 2011, ICC-01/05-01/08-1885, <http://www.icc-cpi.int/iccdocs/doc/doc1261630.pdf>; Sixteenth transmission to the parties and the legal representatives of the applicants of redacted versions of applications for participation in the proceedings, 18 November 2011, ICC-01/05-01/08-1923, <http://www.icc-cpi.int/iccdocs/doc/doc1272113.pdf>; Sixteenth transmission to the Trial Chamber of applications for participation in the proceedings, 18 November 2011, ICC-01/05-01/08-1922, <http://www.icc-cpi.int/iccdocs/doc/doc1272112.pdf>

<sup>21</sup> Decision on 270 applications by victims to participate in the proceedings, 25 October 2011, ICC-01/05-01/08-1862, <http://www.icc-cpi.int/iccdocs/doc/doc1251784.pdf>

<sup>22</sup> Order regarding applications by victims to present their views and concerns or to present evidence, 21 November 2011, ICC-01/05-01/08-1935, <http://www.icc-cpi.int/iccdocs/doc/doc1274199.pdf>

<sup>23</sup> Transmission to the Trial Chamber of applications for participation in the proceedings, 16 September 2011, ICC-02/05-03/09-216, <http://www.icc-cpi.int/iccdocs/doc/doc1233621.pdf>; Report on six applications to participate in the proceedings, 16 September 2011, ICC-02/05-03/09-217, <http://www.icc-cpi.int/iccdocs/doc/doc1233631.pdf>; Annex 1 to Report on six applications to participate in the proceedings detailing the approach VPRS takes when assessing victims' applications, 16 September 2011, ICC-02/05-03/09-217-Anx1, <http://www.icc-cpi.int/iccdocs/doc/doc1233633.pdf>

<sup>24</sup> Decision on the treatment of applications for participation, 27 February 2009, ICC-01/04-01/07-933, <http://www.icc-cpi.int/iccdocs/doc/doc707562.pdf>

<sup>25</sup> Decision on the Registry Report on six applications to participate in the proceedings, 17 October 2011, ICC-02/05-03/09-231, <http://www.icc-cpi.int/iccdocs/doc/doc1247465.pdf>; Transmission to the Defence and to the Office of the Prosecutor of six redacted applications for participation in the proceedings, 3 November 2011, ICC-02/05-03/09-244, <http://www.icc-cpi.int/iccdocs/doc/doc1260259.pdf>



## Victims object to appointment of the common legal representative of victims

[Background] On 14 September 2011, the Registry appointed Ms Cissé as common legal representative of victims<sup>26</sup>

On 30 September 2011, the “former” legal representatives of victims from Darfur (on behalf of 2 participating victims as well as 3 victims whose application is pending) requested a review of the Registry’s decision. They argued that the Registry had never consulted the victims regarding this appointment and that the Registry had disregarded the victims’ proposal on common legal representation for no good reason.<sup>27</sup> On 14 October 2011, Ms. Cisse responded confidentially.<sup>28</sup>

The Darfuri Victims were granted the right to respond and submitted on 4 November 2011 that Ms. Cisse had directly challenged their credibility and had shown herself hostile to their interests and concerns. Thus the victims in question requested TC IV to allow their current Legal Representatives to continue representing them.<sup>29</sup>

## Situation in Kenya

### Developments in the Ruto, Kosgey and Sang case.

#### PTC II partially grants victims’ request to access confidential documents

On 20 September 2011 victims requested access to confidential documents filed by the Prosecutor in relation to the evidence in the case. On 21 September 2011, Judge Ekaterina Trendafilova partially granted the victims’ request and asked for the Prosecutor’s observations regarding disclosing the list of evidence on which it had relied at the hearing.<sup>30</sup> On 22 September 2011 the Prosecution opposed the victims’ access to the list.<sup>31</sup>

On 23 September 2011, recalling previous jurisprudence stating that victims’ access to confidential decisions, filings and evidence would be decided on a case by case basis, Single Judge Ekaterina Trendafilova granted them access to the list of evidence.<sup>32</sup>

#### Numerous security issues are raised

During her closing statement on 8 September 2011, Ms. Chana alleged that Kenyan Honourable Charles Keter had intimidated witnesses via the radio, thereby creating tensions in Kenya and a likelihood of violence and further harm to post-election violence victims.<sup>33</sup> The Defence opposed this submission.<sup>34</sup>

On 27 October 2011, OTP also alleged that the Defence of Mr. Ruto had disclosed confidential information concerning the identity of a witness. Despite a finding that the victim’s security had not been endangered, Single Judge Trendafilova ruled that it constituted a breach of the Code of conduct and warned the defence counsel that future violations would lead to a complaint to the Registry.<sup>35</sup>

<sup>26</sup> Notification of appointment of common legal representatives of victims, 14 September 2011, ICC-02/05-03/09-215, <http://www.icc-cpi.int/NR/exeres/14200213-9CDA-4386-BADC-8D9EBCBBA896.htm>; See [VRWG Legal update September 2011](#)

<sup>27</sup> Request of Victims a/1646/10 and a/1647/10 for the Trial Chamber to review the Registry’s “Notification of appointment of common legal representatives of victims” in accordance with Regulation 79(3), 30 September 2011, ICC-02/05-03/09-228, <http://www.icc-cpi.int/iccdocs/doc/doc1240384.pdf>; In doing so the lawyers referred to and annexed the letter the VRWG submitted to the Registry on 17 August 2011 regarding common legal representation.

<sup>28</sup> Observations en réponse à la requête aux fins de réexamen de la proposition de désignation d’une représentation légale commune, 12 October 2011, ICC-02/05-03/09-230, <http://www.icc-cpi.int/NR/exeres/A2B136CA-831C-43D2-A8A7-C4A3DA661090.htm>

<sup>29</sup> Reply to the “Observations en réponse à la requête aux fins de réexamen de la proposition de désignation d’une représentation légale commune” filed on 12 October 2011”, 4 October 2011, ICC-02/05-03/09-246, <http://www.icc-cpi.int/iccdocs/doc/doc1262694.pdf>; Application on behalf of Victims a/1646/10 and a/1647/10 for Leave to Reply to the “Observations en réponse à la requête aux fins de réexamen de la proposition de désignation d’une représentation légale commune” filed on 12 October 2011”, 24 October 2011, ICC-02/05-03/09-238, <http://www.icc-cpi.int/iccdocs/doc/doc1251185.pdf>; Order on the application on behalf of victims a/1646/10 and a/1647/10 for leave to reply, 31 October 2011, ICC-02/05-03/09-242, <http://212.159.242.180/iccdocs/doc/doc1258076.pdf>

<sup>30</sup> Decision on the “Request by the Victims’ Representative for access to confidential materials” and Requesting Observations from the Prosecutor, 21 September 2011, ICC-01/09-01/11-337, <http://www.icc-cpi.int/iccdocs/doc/doc1235394.pdf>

<sup>31</sup> Prosecution’s Observations on the “Request by the Victims’ Representative for access to confidential materials”, 22 September 2011, ICC-01/09-01/11-339, <http://icc-cpi.int/iccdocs/doc/doc1235825.pdf>

<sup>32</sup> Second Decision on the “Request by the Victims’ Representative for access to confidential materials”, 23 September 2011, ICC-01/09-01/11-340, <http://www.icc-cpi.int/iccdocs/doc/doc1236326.pdf>

<sup>33</sup> Transcript Closing Statement of the Legal Representative for Victims, 8 September 2011, ICC-01/09-01/11-T-12-ENG, p27 <http://212.159.242.180/iccdocs/doc/doc1228849.pdf>

<sup>34</sup> Defence Request Regarding Prejudicial Comments Made by Victims’ Legal Representative Sureta Chana during Closing Statement, 30 September 2011, ICC-01/09-01/11-343, <http://www.icc-cpi.int/iccdocs/doc/doc1239554.pdf>

<sup>35</sup> Decision on the “Prosecution’s Urgent Submission Concerning Defence Public Disclosure of Confidential Witness Information, 2 November 2011, ICC-01/09-01/11-362, <http://www.icc-cpi.int/iccdocs/doc/doc1260017.pdf>

Finally, following the security concerns raised by the Legal Representative for Victims during the confirmation of charges hearing in the *Muthaura et Al. Case*, Single Judge Trendafilova ruled that decisions regarding the confirmation of charges in both cases would be issued on the same date.<sup>36</sup>

### **Victims call for additional charges and investigations**

[Background] The confirmation of charges hearing took place between 1 and 8 September 2011.

On 30 September 2011, the Legal Representative of victims (LRV), called for the Chamber to request that OTP consider amending the charges to specify that acts of destruction of property, looting, and the infliction of physical injuries were part of the current charges. She also requested that counts of other inhumane acts in relation to the acts of destruction of property, looting, and the infliction of physical injuries as Crimes against Humanity, be added to the charges.<sup>37</sup> All defendants objected to the request.<sup>38</sup>

On 9 November 2011, the LRV further asked that the Prosecutor be requested to provide further evidence, conduct further investigation or consider amending the charges prior to a trial. Recalling the legal duty of the Court to search for the truth, Ms. Chana expressed victims' concerns that the case presented by the Prosecution did not fully accord with their personal experiences. In particular, victims considered that the Prosecution has not sufficiently investigated involvement by persons higher up in the then ODM party and had failed to submit charges related to the crimes of looting, destruction of property, as well as rape.<sup>39</sup> Kosgey's defence objected to the victims' request.<sup>40</sup>

### **Cumulative Charging in question**

In their final submissions on the confirmation of charge hearing, the Defence for the accused opposed the cumulative charging approach adopted by the OTP.<sup>41</sup> Sang's defence argued that his right to procedural fairness had been fundamentally violated, and that specific material elements of murder and forcible transfer of population were subsumed within the charge of persecution. On 30 September 2011, the Prosecution replied that cumulative charging was appropriate and that when charges are supported by evidence, the choice of counts to prosecute at trial was a discretionary right of the Prosecutor.<sup>42</sup>

**Developments in the Muthaura, Kenyatta and Ali case (developments which occurred in both the Ruto et. Al case and Muthaura et. Al Case are covered under the previous section).**

### **Victims counsel request a recharacterisation of the facts**

[Background] The confirmation of charges hearing took place between 21 September and 5 October 2011. In its final observations on 28 October 2011, the Prosecution, anticipating the defence's objection to its cumulative charging approach, submitted that the evidence establishing the charges of murder, rape, other inhumane acts and deportation or forcible transfer of population, also established the charges of persecution.<sup>43</sup>

<sup>36</sup> Decision on the Issuance of the Decision Pursuant to Article 61(7) of the Rome Statute, 26 October 2011, ICC-01/09-01/11-357, <http://www.icc-cpi.int/iccdocs/doc/doc1253141.pdf>; Transcripts Closing Statement of the Legal Representative for Victims, 5 October 2011, ICC-01/09-02/11-T-15-Red-ENG, p. 27, lines 1-6, <http://www.icc-cpi.int/iccdocs/doc/doc1249709.pdf>

<sup>37</sup> Final written observations of the Victims' Representative in relation to the confirmation of charges hearing, 30 September 2011, ICC-01/09-01/11-344, <http://www.icc-cpi.int/iccdocs/doc/doc1239796.pdf>;

<sup>38</sup> William Samoei Ruto Defence Brief following the Confirmation of the Charges Hearing, 24 October 2011, ICC-01/09-01/11-355, <http://www.icc-cpi.int/iccdocs/doc/doc1251431.pdf>; Joshua Arap Sang Defence Brief following the Confirmation of Charges Hearing, 24 October 2011, ICC-01/09-01/11-354, <http://www.icc-cpi.int/iccdocs/doc/doc1251439.pdf>; Kosgey Written Submissions Following the Hearing on the Confirmation of Charges and Public Annex 1, 24 October 2011, ICC-01/09-01/11-353, <http://www.icc-cpi.int/iccdocs/doc/doc1251362.pdf>

<sup>39</sup> Request by the Victims' Representative for authorisation to make a further written submission on the views and concerns of the victims, 9 November 2011, ICC-01/09-01/11-367, <http://www.icc-cpi.int/iccdocs/doc/doc1264964.pdf>

<sup>40</sup> Kosgey Response to Request by the Victims' Representative for authorisation to make a further written submission on the views and concerns of the victims, 16 November 2011, ICC-01/09-01/11-368, <http://www.icc-cpi.int/iccdocs/doc/doc1269450.pdf>

<sup>41</sup> William Samoei Ruto Defence Brief following the Confirmation of the Charges Hearing, 24 October 2011, ICC-01/09-01/11-355, <http://www.icc-cpi.int/iccdocs/doc/doc1251431.pdf>; Joshua Arap Sang Defence Brief following the Confirmation of Charges Hearing, 24 October 2011, ICC-01/09-01/11-354, <http://www.icc-cpi.int/iccdocs/doc/doc1251439.pdf>; Kosgey Written Submissions Following the Hearing on the Confirmation of Charges and Public Annex 1, 24 October 2011, ICC-01/09-01/11-353, <http://www.icc-cpi.int/iccdocs/doc/doc1251362.pdf>

<sup>42</sup> Prosecution's Written Submissions Following the Hearing on the Confirmation of Charges, 30 September 2011, ICC-01/09-01/11-345, <http://www.icc-cpi.int/iccdocs/doc/doc1240432.pdf>

<sup>43</sup> Prosecution's Written Submissions Following the Hearing on the Confirmation of Charges, 28 October 2011, ICC-01/09-02/11-361, <http://www.icc-cpi.int/iccdocs/doc/doc1257634.pdf>; Defence Submissions on behalf of Uhuru Kenyatta Following the Confirmation of Charges Hearing, 17 November 2011, ICC-01/09-02/11-372, <http://www.icc-cpi.int/iccdocs/doc/doc1270373.pdf>

On 28 October 2011, Mr. Anyah representing the victims in the case, applied to have the legal characterization of the facts amended so as to include destruction and looting of property as underlying acts of the crimes against humanity of persecution and forcible transfer of population.<sup>44</sup>

### **Change in the number of participating victims**

On 28 October 2011, the common legal representative of victims informed the Chamber that the total number of participating victims should be reduced to 229 following the death of 2 victims and the realisation that 3 different pseudonyms related, in fact, to a single victims.<sup>45</sup> On 15 November 2011, Mr. Anyah requested the Chamber to authorize relatives (husband and daughter) to continue the action of the two deceased victims.<sup>46</sup>

### **Victims oppose disclosure of their identities to the Defence**

On 31 October 2011, Mr. Azuma Anyah informed the Chamber that none of the 76 victims he had recently consulted wished to have their identity disclosed to the Defence. He further asked the Chamber to allow him until 5 December 2011 to report on the preferences of the remaining 59 victims.<sup>47</sup>

## **Situation in Ivory Coast**

### **ICC Pre-Trial Chamber III authorises the launch of an investigation in Côte d'Ivoire**

On 3 October 2011, Pre-Trial Chamber III (PTC III), Judge de Gurmendi partially dissenting, authorized the Prosecutor to commence an investigation in Côte d'Ivoire regarding crimes committed since 28 November 2010, including potential future crimes involving the same actors and committed in the context of the same attack or conflict.<sup>48</sup> The Chamber also requested the Prosecutor to provide more information with regards to crimes which might have been committed prior to the 2010 elections. Finally, the Chamber concurred with a Registry's proposal that it should carry out a general-information campaign focussing particularly on affected communities.<sup>49</sup>

On 4 November 2011, the Prosecution submitted further information relating to alleged crimes committed prior to November 2010 by both pro - government and pro - rebel forces, including killings, rape and other forms of sexual violence, child soldier offences, forced displacement and unlawful attacks.<sup>50</sup>

### **OTP granted access to VPRS report on victims' representations**

[Background] On 28 August 2011 the Registry filed a Report on victims' representations in relation to the opening of the investigation. The representations themselves were filed as ex parte annexes.<sup>51</sup> On 4 October 2011, the prosecution requested access to the annexes of the registry's Report arguing that it would affirmatively serve the interests of these victims.<sup>52</sup>

On 17 October 2011, PTC III stating that there was no indication that the purpose of the Report would be defeated if the Prosecutor became aware of its contents, granted the Prosecution's request.<sup>53</sup>

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<sup>44</sup> Victims' Observations in relation to the Confirmation of Charges Hearing, 28 October 2011, ICC-01/09-02/11-360, <http://www2.icc-cpi.int/iccdocs/doc/doc1257572.pdf>

<sup>45</sup> *Ibid.*

<sup>46</sup> Observations in Relation to the Current Number of Participating Victims, 15 November 2011, ICC-01/09-02/11-369, <http://www.icc-cpi.int/iccdocs/doc/doc1268460.pdf>

<sup>47</sup> Notification to the Chamber and Request for Re-Notification by 5 December 2011, 31 October 2011, ICC-01/09-02/11-362, <http://www2.icc-cpi.int/iccdocs/doc/doc1257902.pdf>

<sup>48</sup> Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Republic of Côte d'Ivoire, 03 October 2011, ICC-02/11-14, <http://www.icc-cpi.int/iccdocs/doc/doc1240553.pdf>; Request for authorisation of an investigation pursuant to article 15, 23 June 2011, ICC-02/11-3, <http://www.icc-cpi.int/iccdocs/doc/doc1097345.pdf>; In her partially dissenting opinion Silvia Fernández de Gurmendi pointed out that the reference to "continuing crimes" was unduly restrictive. She also submitted that in her opinion the Chamber didn't need additional information in order to authorize investigation regarding crimes committed since 2002: Judge Fernandez de Gurmendi's separate and partially dissenting opinion [...], 3 October 2011, ICC-02/11-15, <http://www.icc-cpi.int/iccdocs/doc/doc1237651.pdf>

<sup>49</sup> The Registry will hold meetings with victims, victims' groups and the lawyers and associations who are representing them in this process and it will write directly to those victims whose addresses are known.

<sup>50</sup> Prosecution's provision of further information regarding potentially relevant crimes committed between 2002 and 2010, 4 November 2011, ICC-02/11-25, <http://www.icc-cpi.int/iccdocs/doc/doc1261558.pdf>

<sup>51</sup> Report on Victims' Representations, 29 August 2011, ICC-02/11-11-RED, <http://www.icc-cpi.int/iccdocs/doc/doc1223025.pdf>

<sup>52</sup> Prosecution's requests for reclassification of Annexes 1 to 1089 of the Registry's "Report on Victims' Representations", 4 October 2011, ICC-02/11-16, <http://www.icc-cpi.int/iccdocs/doc/doc1242012.pdf>

<sup>53</sup> Decision on Prosecution's request for reclassification of Annexes 1 to 1089 of the Registry's Report on Victims' Representations, 17 October 2011, ICC-02/11-18, <http://www.icc-cpi.int/iccdocs/doc/doc1246506.pdf>