



ICC Victims' Rights Legal Update

22 August 2011 – 29 September 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 Gaele Carayon at gaelle@redress.org.

Situation in the Democratic Republic of Congo (DRC)

Developments in the Lubanga case

- Parties and participants deliver their closing statements in the Lubanga case

Developments in the Katanga and Ngudjolo case

- Parties file observations regarding judicial site visit to Bogoro

Developments in the Mbarushimana case

- PTC I rejects the defence request for disclosure of information relating to alleged victims of sexual violence
- Mr Ghislain Mabanga to represent victims' whose counsel is struck of the ICC list of counsel
- Victims oppose the Defence's challenge to the jurisdiction of the Court
- 2 victims granted participatory status

Situation in the Central African Republic (CAR)

Developments in the Bemba case

- TC III rejects Bemba Gombo's request for interim release
- 2830 additional victims' applications expected to be filed in the case
- TC III authorizes victims' counsels to question insider witness

Situation in Sudan

Developments in the Banda and Jerbo case

- Registry appoints Helen Cisse as common legal representative of victims

Situation in Kenya

Developments in the Ruto, Kosgey and Sang case

- Victims' request for reconsideration of the Appointment of Common Legal Representative is rejected
- PTC II allows legal representative of victims to file submissions on the scope of the charges
- Defence challenges the jurisdiction of the Court

Developments in the Muthaura, Kenyatta and Ali case

- 233 victims recognised as participants in the confirmation of charges hearing
- Victims' oppose disclosure of their identities to the defence
- No general right to access confidential documents for victims

Situation in Ivory Coast

- Registry submits its report on Victims' representations received in the situation in Côte d'Ivoire

Situation in the Democratic Republic of Congo (DRC)

Developments in the Lubanga case

Parties and participants deliver their closing statements in the *Lubanga case*

The closing statements of the Office of the Prosecutor, Legal Representatives of victims and the Defense were held on 25th and 26 August 2011.¹ Calling for a conviction of the accused, victims' representatives

¹ Transcript *Lubanga case*, 25 August 2011, ICC-01/04-01/06-T-356, <http://www.icc-cpi.int/iccdocs/doc/doc1210316.pdf>; Transcript *Lubanga case*, 26 August 2011, ICC-01/04-01/06-T-357, <http://www.icc-cpi.int/iccdocs/doc/doc1211991.pdf>

stressed the proactive contribution of victims to the trial, recalling *inter alia* their failed attempt to have the facts of the case recharacterised so as to include sexual slavery and cruel and inhuman treatment. They also underlined that the ultimate goal of victims was the search for the truth and their wish to have their voices heard.²

Developments in the Katanga and Ngudjolo case

Parties file observations regarding judicial site visit to Bogoro

On 9 July 2010, Trial Chamber II (TC II) invited observations from the parties on a possible site visit to Bogoro village in Eastern Democratic Republic of Congo (DRC).³ On 29 November 2010, TC II stated that it would undertake such a visit at a later stage in the proceedings.⁴ On 26 August 2011, TC II requested observations on whether parties and participants still thought a site visit was warranted.⁵

On 12 September 2011, the Prosecution argued that this visit was no longer necessary considering the evidence that had been tendered at trial.⁶ On 12 September 2011, the Defence submitted its observations in favour of such a visit, giving details regarding locations, timeline and potential organisation of the visit.⁷

Developments in the Mbarushimana case

PTC I rejects the defence request for disclosure of information relating to alleged victims of sexual violence

On 12 August 2011, the defence requested that the Prosecutor disclose information in relation to victims of sexual violence.⁸ The Defence requested *inter alia* all psycho-social materials emanating from victims of sexual violence which would be produced at the confirmation hearing in order to contest the credibility of these witnesses. This was rejected on 23 August 2011 by Single Judge Monageng who considered the defence's request inappropriate.⁹ On 29 August 2011, the Defence sought leave to appeal the decision.¹⁰

Mr Ghislain Mabanga to represent victims' whose counsel is struck of the ICC list of counsel

On 19 August 2011, the Registrar informed the Chamber that Mr Diakiese, who was representing 30 victims in the case, had been struck off the list of counsel of the International Criminal Court (ICC), following a disciplinary proceeding in DRC.¹¹ As a result, on 9 September 2011, Single Judge Tarfusser appointed Mr Mabanga as the legal representative of the 30 participating victims formerly represented by Me Diakiese.¹²

Victims oppose the Defence's challenge to the jurisdiction of the Court

[Background] On 19 July 2011, the Defence confidentially challenged the jurisdiction of the Court.¹³ On 16 August 2011 the Chamber invited the DRC and "victims who have communicated with the Court" to submit their observations on the Defence's Jurisdiction Challenge.¹⁴

² Closing statements in the Lubanga case, what the victims had to say, Nisma Bounakhla, 21 September 2011, <http://www.vrwg.org/home/home/post/26-closing-statements-in-the-lubanga-case-what-the-victims-had-to-say/>

³ Transcript Katanga & Ngudjolo case ,9 July 2010, ICC-01/04-01/07-T-168-ENG, pages 36-38, <http://www.icc-cpi.int/iccdocs/doc/doc906781.pdf>

⁴ Transcript Katanga & Ngudjolo case, 29 November 2011, ICC-01/04-01/07-T-224-RED, page 45, <http://www.icc-cpi.int/iccdocs/doc/doc986491.pdf>

⁵ Order Inviting the Parties and Participants to Make Observations Regarding a Judicial Site Visit, 26 August 2011, ICC-01/04-01/07-3131, <http://www.icc-cpi.int/iccdocs/doc/doc1210331.pdf>

⁶ Prosecution's Observations Regarding a Judicial Site Visit, 12 September 2011, ICC-01/04-01/07-3142, <http://www.icc-cpi.int/iccdocs/doc/doc1230793.pdf>

⁷ Observations de la Défense de Mathieu Ngudjolo [...], 12 September 2011, ICC-01/04-01/07-3141, <http://www.icc-cpi.int/iccdocs/doc/doc1230734.pdf>

⁸ Defence request for disclosure of information related to the alleged victims of sexual violence, 26 August 2011, ICC-01/04-01/10-358-RED, <http://www.icc-cpi.int/iccdocs/doc/doc1210354.pdf>

⁹ Decision on the "Defence request for disclosure of information related to the alleged victims of sexual violence", 23 August 2011, ICC-01/04-01/10-386, <http://www.icc-cpi.int/iccdocs/doc/doc1208644.pdf>

¹⁰ Defence Application for Leave to Appeal [...], 29 August 2011, ICC-01/04-01/10-390, <http://www.icc-cpi.int/iccdocs/doc/doc1212239.pdf> ; On 2 September 2011 the Prosecution opposed the Defence request, Prosecution's Response to the Defence "Application[...]", 02 September 2011, ICC-01/04-01/10-394 , <http://www.icc-cpi.int/iccdocs/doc/doc1225080.pdf>

¹¹ Enregistrement dans le dossier de la lettre du Bâtonnier National de la RDC [...] et la décision du Greffier procédant à la radiation de Maître Diakiese [...], 19 August 2011, ICC-01/04-01/10-385, <http://www.icc-cpi.int/iccdocs/doc/doc1208016.pdf>; Report on the legal representation of participating victims, 16 August 2011, ICC-01/04-01/10-379, <http://www.icc-cpi.int/iccdocs/doc/doc1204175.pdf>

¹² Decision on the representation of participating victims [...], 09 September 2011, ICC-01/04-01/10-409, <http://www.icc-cpi.int/iccdocs/doc/doc1229943.pdf>. A similar situation arose in the Lubanga case: Enregistrement dans le dossier de la lettre du Bâtonnier National de la RDC [...] et la décision du Greffier procédant à la radiation de Maître Herve Diakiese de la liste de conseils, 22 August 2011, ICC-01/04-01/06-2791, <http://212.159.242.180/iccdocs/doc/doc1208028.pdf>

¹³ Defence Challenge to the Jurisdiction of the Court" , 19 July 2011, ICC-01/04-01/10-290

On 12 September 2011, observations by victims participating in the case as well as victims who had communicated with the court were filed requesting the Chamber to dismiss the Defence's challenge.¹⁵ They stressed *inter alia* that the late filing of the jurisdiction challenge constituted a failure of due diligence and that the content of the referral by the DRC had never been envisaged to serve as a limitation to the Court's jurisdiction. The Office of Public Counsel for Victims' (OPCV) also stressed victims' doubts regarding the DRC's capacity to prosecute perpetrators and their views that an independent international court was necessary.¹⁶

2 victims granted participatory status

On 23 September 2011, Single Judge Monageng granted participatory status in pre-trial proceedings of the case to two applicants.¹⁷ This brings the number of participating victims to 132.

Situation in the Central African Republic (CAR)

Developments in the Bemba case

TC III rejects Bemba's request for interim release

On 24 August 2011, the defence requested Mr. Bemba's provisional release, in order to allow him to travel to the DRC to obtain a voting card and register as a candidate for the upcoming presidential and parliamentary elections.¹⁸ On 29 August 2011, victims' legal representatives and OPCV opposed the release.¹⁹ Each argued that there were no changed circumstances that would justify granting the provisional release.

On 6 September 2011, Trial Chamber III (TC III) rejected the request and ruled that the accused's undertaking didn't warrant a conditional release as circumstances had not changed.²⁰

2830 additional victims' applications expected to be filed in the case

[Background] On 21 July 2011, TC III ruled on 401 applications by victims to participate in the proceedings and set 16 September 2011 as the final deadline for the submission to the Registry of any new victims' applications for participation in the trial proceedings.²¹

On 17 August 2011, the Chamber instructed the Victims Participation and Reparations Section (VPRS) to provide an estimate regarding the number of new applications expected to be submitted to the Chamber.²² On 26 August 2011 VPRS informed the Chamber that as many as 2830 applications were expected to be filed. It proposed to file these applications on a rolling basis between 9 September 2011

¹⁴ Decision requesting observations on the "Defence Challenge to the Jurisdiction of the Court" ICC-01/04-01/10-377 , 16 August 2011, <http://www.icc-cpi.int/iccdocs/doc/doc1204089.pdf>

¹⁵ Observations on behalf of victims on the Defence Challenge to the Jurisdiction of the Court, 12 September 2011, ICC-01/04-01/10-417-RED, <http://212.159.242.180/iccdocs/doc/doc1230975.pdf>; Observations de victimes autorisées à participer à la procédure sur l' « Exception d'incompétence de la Cour soulevée par la Défense », 12 septembre 2011, ICC-01/04-01/10-290-tFRA, <http://www.icc-cpi.int/iccdocs/doc/doc1230728.pdf>; Observations sur l'exception d'incompétence de la Cour soulevée par la Défense 12 septembre 2011 ICC-01/04-01/10-290, ICC-01/04-01/10-411, , <http://www.icc-cpi.int/iccdocs/doc/doc1230657.pdf>

¹⁶ Annexe 1 - Observations on behalf of victims on the Defence Challenge to the Jurisdiction of the Court (ICC-01/04-01/10-417), 13 September 2011, ICC-01/04-01/10-417-Anx1-Red, <http://www.icc-cpi.int/iccdocs/doc/doc1230977.pdf>

¹⁷ Decision on the applications for participation of victim applicants a/2176/11 and a/2195/11, 23 September 2011, ICC-01/04-01/10-441, <http://www.icc-cpi.int/iccdocs/doc/doc1236485.pdf>

¹⁸ Application for the interim release of Mr Jean-Pierre Bemba Gombo [...], 26 August 2011, ICC-01/05-01/08-1639-Conf-tENG (referred to in Public Redacted Version of the Decision on the "Demande de mise en liberté provisoire de M. Jean-Pierre Bemba Gombo afin d'accomplir ses devoirs civiques en République Démocratique du Congo" of 2 September 2011, 06 September 2011, ICC-01/05-01/08-1691-RED, <http://www.icc-cpi.int/iccdocs/doc/doc1227087.pdf>)

¹⁹ Observations on the "Demande de mise en liberté provisoire de M. Jean-Pierre Bemba Gombo afin d'accomplir ses devoirs civiques en République Démocratique du Congo", 29 August 2011, ICC-01/05-01/08-1659, <http://www.icc-cpi.int/iccdocs/doc/doc1212240.pdf>; Prosecution's Response to the Defence "Demande de mise en liberté provisoire [...]", 29 August 2011, ICC-01/05-01/08-1661-RED, <http://www.icc-cpi.int/iccdocs/doc/doc1230961.pdf>; Observations de la Représentante légale de victimes relatives à la demande de mise en liberté provisoire de Jean-Pierre Bemba [...], 29 August 2011 (notified on 30 August 2011) , ICC-01/05-01/08-1670, <http://www.icc-cpi.int/iccdocs/doc/doc1212586.pdf>; Observations de Maître Zarambaud Assingambi, sur la demande de mise en liberté provisoire de M. Jean-Pierre Bemba [...], en date du 24 août 2011, 05 septembre 2011, ICC-01/05-01/08-1660-RED, <http://www.icc-cpi.int/iccdocs/doc/doc1227374.pdf>

²⁰ Public Redacted Version of the Decision on the "Demande de mise en liberté provisoire de M. Jean-Pierre Bemba Gombo afin d'accomplir ses devoirs civiques en République Démocratique du Congo" of 2 September 2011, 06 September 2011, ICC-01/05-01/08-1691-RED, <http://www.icc-cpi.int/iccdocs/doc/doc1227087.pdf>

²¹ Corrigendum to the Decision on 401 applications by victims to participate in the proceedings and setting a final deadline for the submission of new victims' applications to the Registry, ICC-01/05-01/08-1590-Corr, 10 July 2011

²² Email of 17 August 2011 from the Assistant Legal Officer, Trial Division, to the Chief of the Victims Representation and Participation Section (referred to in Decision setting a timeline for the filing of observations on pending victims' applications, 09 September 2011, ICC-01/05-01/08-1726, page 3 <http://www.icc-cpi.int/iccdocs/doc/doc1229914.pdf>)

and 13 January 2012, in nine sets of 200 to 350 applications.²³ On 2 September 2011, the Chamber approved the proposed timeline and required that parties submit observations on the forthcoming sets of victims' applications within 21 days of notification.²⁴

TC III authorizes Victims' counsels to question insider witness

On 26 May and 29 August 2011, victims' legal representatives submitted applications to question Witness 33.²⁵ The defence urged the Chamber to limit the questioning of the legal representatives, arguing that the forthcoming witnesses were mainly "insider witnesses" who were "collectively unlikely to be able to give evidence which impacts upon the personal interests of the victims".²⁶ The prosecution however argued that the testimony of insider witnesses related to the accused's superior responsibility, thus were relevant to victims' interests.²⁷

On 9 September 2011, TC III granted the legal representatives' applications with some restrictions. The chamber also indicated that observations on, or objections to, applications by legal representatives to question witnesses were to be submitted at least four days before the relevant witness was scheduled to testify; and replies to those observations were to be filed at least two days before the witness was scheduled to testify.²⁸

Situation in Sudan

Developments in the Banda and Jerbo case

Registry appoints Helen Cisse as common legal representative of victims

[Background] On 21 April 2011, the Chamber ordered the Registry to start consultations with victims, with a view to appointing a common legal representative.²⁹ The Registry indicated on 5 August 2011 that it had not been able to consult victims, requested additional time and suggested a new approach on the appointment of common legal representation.³⁰ This approach was opposed by counsels already representing victims leading to various filings on the issue from victims' counsels and the Registry.³¹

On 6 September 2011, the Chamber, without referring to the various filings, ordered the Registry to appoint a common legal representative as per Rule 90(3).³² On 14 September 2011, the Registry

²³ Email of 26 August 2011 from the Chief of the Victims Representation and Participation Section to the Assistant Legal Officer, Trial Division (referred to in Decision setting a timeline for the filing of observations on pending victims' applications, 09 September 2011, ICC-01/05-01/08-1726, page 4 <http://www.icc-cpi.int/iccdocs/doc/doc1229914.pdf>)

²⁴ Email of 2 September 2011 from the Assistant Legal Officer, Trial Division, to the Chief of the Victims ; Decision setting a timeline for the filing of observations on pending victims' applications, 09 September 2011, ICC-01/05-01/08-1726, <http://www.icc-cpi.int/iccdocs/doc/doc1229914.pdf>

²⁵ Requête du Représentant légal de victimes afin d'être autorisé à interroger le témoin W33, 26 May 2011, ICC- 01/05-01/08-1458-Conf; Requête de la Représentante légale de victimes afin d'être autorisée à interroger le témoin 33, 29 August 2011, ICC-01/05-01/08-1669-Conf. (referred to in Decision (i) ruling on legal representatives' applications [...] and (ii) setting a schedule for the filing of submissions in relation to future applications to question witnesses, 09 September 2011, ICC-01/05-01/08-1729

²⁶ Defence Response to the application of the Legal Representative of Victims [...] to question witness 0033, 1 September 2011, ICC-01/05-01/08-1679-Conf; Defence Response to the "Requête de la Représentante légale de victimes afin d'être autorisée a [sic] interroger le témoin 33" of 29 August 2011, 7 September 2011, ICC-01/05-01/08-1716 Conf (referred to in Decision (i) ruling on legal representatives' applications to question Witness 33 and (ii) setting a schedule for the filing of submissions in relation to future applications to question witnesses, 09 September 2011, ICC-01/05-01/08-1729

²⁷ Prosecution's Observations on the "Defence Response [...]", 7 September 2011, ICC- 01/05-01/08-1712-Conf; Prosecution's Observations on the "Defence Response [...]", ICC-01/05-01/08-1721-Conf. (referred to in Decision (i) ruling on legal representatives' applications to question Witness 33 and (ii) setting a schedule for the filing of submissions in relation to future applications to question witnesses, 09 September 2011, ICC-01/05-01/08-1729

²⁸ Decision (i) ruling on legal representatives' applications to question Witness 33 and (ii) setting a schedule for the filing of submissions in relation to future applications to question witnesses, 09 September 2011, ICC-01/05-01/08-1729, <http://icc-cpi.int/iccdocs/doc/doc1230428.pdf>

²⁹ Order instructing the Registry to start consultations on the organisation of common legal representation, 21 April 2011, ICC-02/05-03/09-138, <http://www.icc-cpi.int/iccdocs/doc/doc1056932.pdf>.

³⁰ Report on the organization of common legal representation, 5 August 2011, ICC-02/05-03/09-187, <http://www.icc-cpi.int/iccdocs/doc/doc1190082.pdf>

³¹ On 18 July 2011, all but one of the victims' current legal representatives requested that three groups of victims be created, to be represented by three common legal representatives. The proposal was opposed on 5 August 2011 by the Registry. This was in turn opposed by the victims' legal representatives on 22 August 2011. On 25 August 2011, the Registry submitted to the Chamber that victims had been unable to chose a common legal representative and made a recommendation to the Chamber in that regard. Joint Observations of Victims' Legal Representatives on Common Legal Representation, 18 July 2011, ICC-02/05-03/09-182, <http://www.icc-cpi.int/iccdocs/doc/doc1122027.pdf>; Report on the organization of common legal representation, 5 August 2011, ICC-02/05-03/09-187, <http://www.icc-cpi.int/iccdocs/doc/doc1190082.pdf>; Joint Victims' Observations on the Registry "Report on the organisation of common legal representation" and Request for the Joint Agreement on Common Legal Representation to be adopted pursuant to the Trial Chamber's Order, 22 August 2011, ICC-02/05-03/09-200, <http://www.icc-cpi.int/iccdocs/doc/doc1208173.pdf>; Proposal for the common legal representation of victims, 25 August 2011, ICC-02/05-03/09-203, <http://www.icc-cpi.int/iccdocs/doc/doc1210346.pdf>

³² Order inviting the Registrar to appoint a common legal representative, 06 September 2011, ICC-02/05-03/09-209, <http://www.icc-cpi.int/iccdocs/doc/doc1227378.pdf>

informed the Chamber that it had appointed Mrs Helene Cisse as principal counsel and Mr Jens Dieckmann as associate counsel to represent the 89 victims currently participating in the case.³³

Situation in Kenya

Developments in the Ruto, Kosgey and Sang case.

Victims' request for a review of the Appointment of Common Legal Representative is rejected

[Background] On 5 August 2011, Pre Trial Chamber II (PTC II) appointed Ms. Sureta Chana as the common legal representative of all victims admitted to participate in the case.³⁴ On 31 August 2011, 4 victims requested the Chamber to reconsider the appointment of Ms. Chana.³⁵ On 2 September 2011, the Registry expressed serious doubts about the accuracy of the victims' filing.³⁶

On 9 September 2011, Single Judge Trendafilova rejected the victims' request, stressing that she had based her original decision on the information provided by the Registry as the relevant neutral organ of the Court. She also added that there was no right to request a "reconsideration" of the Chamber's decision on common legal representation taken under Regulation 80(1).³⁷

PTC II allows legal representative of victims to file submissions on the scope of the charges

On 15 August 2011, the legal representative of victims requested to make submissions *inter alia* on whether acts of destruction and/or burning of property should be recognised in the charges and on whether, at a confirmation of charges hearing, the Pre-Trial Chamber had the power to add a charge, or to clarify that a charge includes acts in addition to those specified by the Prosecutor.³⁸ On 19 August 2011, Single Judge Ekaterina Trendafilova had rejected the request as being premature.³⁹

On 16 September 2011, following the confirmation of charges hearing, which took place from 1 to 12 September 2011, the legal representative of victims renewed her request.⁴⁰ On 22 September, Single Judge Trendafilova granted the request and directed Ms. Chana to include such observations in her final written submissions due on 30 September 2011.⁴¹

Defence challenges the jurisdiction of the Court

[Background] On 6 June 2011, the government of Kenya appealed a decision of 30 May 2011 which found the case admissible. The Government of Kenya argued that the decision was vitiated by factual, procedural and legal errors.⁴² On 30 August 2011, the Appeals Chamber, Judge Usacka dissenting, confirmed that the case was admissible.⁴³

³³ 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>

³⁴ Decision on Victims' Participation at the Confirmation of Charges Hearing and in the Related Proceedings, 05 August 2011, ICC-01/09-01/11-249, <http://www.icc-cpi.int/iccdocs/doc/doc1190486.pdf>

³⁵ Motion from Victims a/0041/10, a/0045/10, a/0051/10 and a/0056/10 requesting the Pre-Trial Chamber to Reconsider the Appointment of Common Legal Representative Sureta CHANA for All Victims, 31 August 2011, ICC-01/09-01/11-314, <http://www.icc-cpi.int/iccdocs/doc/doc1224652.pdf>

³⁶ Submission of information relating to the former Legal Representatives' Motion, 02 September 2011, ICC-01/09-01/11-320, <http://www.icc-cpi.int/iccdocs/doc/doc1225969.pdf>

³⁷ Decision on the "Motion from Victims a/0041/10, a/0045/10, a/0051/10 and a/0056/10 [...]", 09 September 2011, ICC-01/09-01/11-330, <http://www.icc-cpi.int/iccdocs/doc/doc1229684.pdf>

³⁸ Request by the Victims' Representative for authorisation by the Chamber to make written submissions on specific issues of law and/or fact, 15 August 2011, ICC-01/09-01/11-263, <http://www.icc-cpi.int/NR/exeres/2C843A80-5FBD-45AC-8063-DC6C2E7ADE24.htm>

³⁹ Decision on the "Request by the Victims' Representative for authorization by the Chamber to make written submissions on specific issues of law and/or fact", 19 August 2011, ICC-01/09-01/11-274, <http://www.icc-cpi.int/iccdocs/doc/doc1207106.pdf>

⁴⁰ Renewed Request by the Victims' Representative for authorisation by the Chamber to make written submissions in specific issues of law and/or fact, 16 September 2011, ICC-01/09-01/11-333, <http://www.icc-cpi.int/iccdocs/doc/doc1233717.pdf>

⁴¹ Decision on the "Renewed Request by the Victims' Representative for authorisation by the Chamber to make submissions on specific issues of law and/or fact", 22 September 2011, ICC-01/09-01/11-338, <http://www.icc-cpi.int/iccdocs/doc/doc1235754.pdf>

⁴² Appeal of the Government of Kenya against the "Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute", 6 June 2011, ICC-01/09-01/11-109, <http://www.icc-cpi.int/iccdocs/doc/doc1084702.pdf>, Document in Support of the "Appeal [...]", 20 June 2011, ICC-01/09-01/11-135, <http://www.icc-cpi.int/iccdocs/doc/doc1095597.pdf>

⁴³ Judgment on the appeal of the Republic of Kenya against the decision of Pre-Trial Chamber II of 30 May 2011, 30 August 2011, ICC-01/09-01/11-307, <http://www.icc-cpi.int/iccdocs/doc/doc1223118.pdf>; Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case [...], 30 May 2011, ICC-01/09-01/11-101, <http://www.icc-cpi.int/iccdocs/doc/doc1078822.pdf>; Judge Anita USacka argued that Pre-Trial Chamber had not completely accounted for the sovereign rights of Kenya and the principle of complementarity, Judgment on the appeal of the Republic of Kenya against the decision of Pre-Trial Chamber H of 30 May 2011, Dissenting Opinion of Judge Anita USacka, 20 September 2011, ICC-01/09-01/11-336, <http://www.icc-cpi.int/iccdocs/doc/doc1234872.pdf>

On 30 August 2011 Mr. Ruto, Mr. Kosgey and Mr. Sang challenged the jurisdiction of the Court arguing that the Prosecution had failed to establish an 'organizational policy' behind the crimes charged.⁴⁴ In their observations, the Victims' representative argued that rather than being a challenge to the court's jurisdiction the defence motions went to the merits of the case and should be rejected.⁴⁵

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).

233 victims recognised as participants in the confirmation of charges hearing

On 26 August 2011, Single Judge Trendafilova admitted 233 victims as participants at the confirmation of charges hearing and related proceedings, while rejecting 16 applications. The Single Judge appointed Mr. Morris Azuma Anyah as common legal representative of victims admitted as participants.⁴⁶

The Single Judge also ruled that deceased victims couldn't be granted, through an application made by their relatives, participatory status in the proceedings. However, she stressed that the said relatives could request to participate as indirect victims, for the harm suffered as a result of the death of the said person.

Victims' oppose disclosure of their identities to the defence

When granting participatory status to 233 victims in the case, Single Judge Trendafilova requested that their legal representative inform the Chamber as to whether they wished to lift their anonymity towards the defence.⁴⁷ On 12 September 2011, Mr. Azuma Anyah informed the Chamber that none of the clients he had been able to consult wished to have their identity disclosed to the Defense. He further requested additional time to report on the preferences of the clients he was yet to meet asking that *status quo ante* be maintained and non-disclosure be presumed unless otherwise indicated.⁴⁸

No general right to access confidential documents for victims

On 9 September 2011, Mr. Azuma Anyah requested "access to all *inter partes* confidential material filed in the record of the case".⁴⁹ On 13 September 2011, the Prosecutor and the Defence teams opposed the request.⁵⁰

On 14 September 2011, Single Judge Trendafilova rejected the victims' request stressing that there was no general right to access confidential *inter partes* documents for victims.⁵¹ She stressed that determining whether or not specific rights were to be granted to victims ought to be performed on a case-by-case basis, upon specific and motivated request by their legal representative.

Situation in Ivory Coast

Registry submits its report on Victims' representations received in the situation in Côte d'Ivoire

[Background] On 17 June 2011, the Prosecution invited victims of the post-election violence in Côte d'Ivoire to submit by 17 July 2011, observations regarding the opening of an investigation.

On 29 August 2011, as requested by the Chamber, the Registry submitted its report on the observations received.⁵² Applying a lower standard of proof than the test ordinarily adopted when dealing with

⁴⁴ Defence Challenge to Jurisdiction, 30 August 2011, ICC-01/09-01/11, <http://www.icc-cpi.int/iccdocs/doc/doc1221843.pdf>; Application in behalf of Henry Kiprono Kosgey pursuant to article 19 of the ICC statute, 30 August 2011, ICC-01/09-01/11-306, <http://www.icc-cpi.int/iccdocs/doc/doc1221878.pdf>

⁴⁵ Observations of the Victims' Representative on the Defence challenges to jurisdiction, 16 September 2011 ICC-01/09-01/11-332, , <http://www.icc-cpi.int/iccdocs/doc/doc1233706.pdf>

⁴⁶ Decision on Victims' Participation at the Confirmation of Charges Hearing and in the Related Proceedings, 26 August 2011, ICC-01/09-02/11-267, <http://www.icc-cpi.int/iccdocs/doc/doc1211737.pdf>; Background: [Victims' Rights Working Group, ICC Victims' Rights Legal Update, 4th July- 22 August 2011](#)

⁴⁷ Decision on Victims' Participation at the Confirmation of Charges Hearing and in the Related Proceedings, 26 August 2011, ICC-01/09-02/11-267, <http://www.icc-cpi.int/iccdocs/doc/doc1211737.pdf>

⁴⁸ Notification to the Chamber and Request for Re-Notification by 31 October 2011, 12 September 2011, ICC-01/09-02/11-314, <http://www.icc-cpi.int/iccdocs/doc/doc1230437.pdf>

⁴⁹ Request for Access to Confidential Inter Partes Material, 09 September 2011, ICC- 01/09-02/11-310, <http://icc-cpi.be/0.biz/iccdocs/doc/doc1228825.pdf>

⁵⁰ 'Response to The Single Judge's "Decision Requesting Observations"', 13 September 2011, ICC-01/09-02/11-319-Corr, <http://www.icc-cpi.int/iccdocs/doc/doc1231305.pdf>; Defence Observations in Response to the "Decision Requesting Observations", 13 September 2011, ICC-01/09-02/11-320, <http://www.icc-cpi.int/iccdocs/doc/doc1231184.pdf>; Prosecution's Response to the Victims' Legal Representative's Requests for Access to Confidential Inter Partes Material, 13 September 2011, ICC-01/09-02/11-322, <http://www.icc-cpi.int/iccdocs/doc/doc1231340.pdf>; Defence Observations on Legal Representative's "Request [...]", 13 September 2011, ICC-01/09-02/11-323 <http://www.icc-cpi.int/iccdocs/doc/doc1231350.pdf>.

⁵¹ Decision on the Request for Access to Confidential inter Partes Material, 14 September 2011, ICC-01/09-02/11-326, <http://www.icc-cpi.int/iccdocs/doc/doc1231630.pdf>

⁵² Order to the Victims Participation and Reparations Section Concerning Victims' Representations Pursuant to Article 15(3) of the Statute, 6 July 2011, ICC-02/11-6, <http://www.icc-cpi.int/iccdocs/doc/doc1106693.pdf>

applications for participation in proceedings, the Registry considered that information submitted by a victim needed not be supported by additional proof of its veracity, but would be judged on the basis of its internal consistency as established by practice.⁵³ By the 20 July 2011 deadline, the Registry had received a total of 1038 Communications, 679 of which were complete.

The report further set out the characteristics and views of those victims and stressed that while very few victims expressly provided views on the question of a possible ICC investigation in Cote d'Ivoire, none expressly rejected the idea. In some cases, victims expressed a general desire for justice to be done, requesting that the perpetrators be punished and/or asking for reparations for the harm suffered as a result of the alleged crimes.⁵⁴

⁵³ Annex A: Registry methodology for conducting prima facie rule 85 assessments, 29 August 2011, ICC-02/11-11-AnxA-Red, <http://www.icc-cpi.int/iccdocs/doc/doc1223114.pdf>

⁵⁴ Report on Victims' Representations, 29 August 2011, ICC-02/11-11-RED, <http://www.icc-cpi.int/iccdocs/doc/doc1223025.pdf>