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

Date: **7 April 2011**

PRE-TRIAL CHAMBER II

Before: Judge Ekaterina Trendafilova, Presiding Judge
Judge Hans-Peter Kaul
Judge Cuno Tarfusser

SITUATION IN THE REPUBLIC OF KENYA
IN THE CASE OF THE PROSECUTOR V. FRANCIS KIRIMI MUTHAURA,
UHURU MUIGAI KENYATTA AND MOHAMED HUSSEIN ALI

Public Document

OPCV

Submission on Appointment for Representation of Victims
in the Muthaura et al. Case

Source: Office of Public Counsel for Victims

Document to be notified in accordance with regulation 31 of the *Regulations of the****Court to:*****The Office of the Prosecutor**

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1. On 30 March 2011, Pre-Trial Chamber II issued its “First Decision on Victims’ Participation in the Case” in the case of *The Prosecutor v. William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang* (the “*Ruto et al.* Case”) ordering, *inter alia*, that the Office of Public Counsel for Victims (the “OPCV” or the “Office”) to act as legal representative of unrepresented applicants from the time the victim applicant submits his or her application for participation until a legal representative is chosen by the victim or is appointed by the Chamber.¹ A similar Decision was issued the same day in the case of *The Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali* (the “*Muthaura et al.* Case”).²

2. On 31 March 2011 the Government of Kenya filed an Application pursuant to Article 19 of the Statute challenging the admissibility of the *Ruto et al.* Case and of the *Muthaura et al.* Case (the “Application”) requesting that both cases be declared inadmissible.³

3. On 4 April 2011, the Pre-Trial Chamber issued two decisions in the two cases setting out the modalities for consideration of the Application, ordering, *inter alia*, that the OPCV “represent all those victims who have submitted applications to participate in the proceedings in each case” for the purposes of the inadmissibility proceedings.⁴

¹ See the “First Decision on Victims’ Participation in the Case”, 30 March 2011, No. ICC-01/09-01/11-17, par. 23.

² See the “First Decision on Victims’ Participation in the Case”, 30 March 2011, No. ICC-01/09-02/11-23, par. 23.

³ See the “Application on Behalf of the Government of the Republic of Kenya Pursuant to Article 19 of the ICC Statute”, No. ICC-01/09-01/11-19, 30 March 2011 (*Ruto et al.* Case); “Application on Behalf of the Government of the Republic of Kenya Pursuant to Article 19 of the ICC Statute”, No. ICC-01/09-02/11-26, 30 March 2011 (*Muthaura et al.* Case).

⁴ See the “Decision on the Conduct of Proceedings Following the Application of the Government of Kenya Pursuant to Article 19 of the Rome Statute”, No. ICC-01/09-01/11-31, 4 April 2011 (*Ruto et al.* Case), p. 7; “Decision on the Conduct of Proceedings Following the Application of the Government of Kenya Pursuant to Article 19 of the Rome Statute”, No. ICC-01/09-02/11-40, 4 April 2011 (*Muthaura et al.* Case), p. 7.

4. On 5 April 2011, the Victims Participation and Reparations Section (the “VPRS”), in compliance with the order of the Chamber to transmit to the OPCV the applications for participation from unrepresented applicants, has provided the Office with 4 applications for participation all related to the *Muthaura et al.* Case. No application was received in the *Ruto et al.* Case and the VPRS has confirmed that there are no unrepresented applicants in the said case at this point in time.

5. The Office would like to inform the Pre-Trial Chamber that in its opinion at this point in time no conflict of interests arises from representation of victims in both cases. The cases, based on the information presently available including the Chamber’s decisions to issue summonses, neither share a common crime-base nor common perpetrators. Although the events described in the two cases occurred at the same time in the same general geographic region, the overlap is – at present – insufficient to suggest a real prospect of a conflict of interest. In particular, in relation to the admissibility proceedings, the Office considers that due to the limited nature and purpose of said proceedings, it is unlikely that conflicts of interest will arise.

6. The Office is nevertheless alert to the possibility of real or perceived conflicts of interests that could arise based, in particular, on the views of victim applicants or on subsequent information that may emerge in the course of the fulfillment of its mandate as legal representative.

7. Out of an abundance of caution, and to ensure that no conflict of interest arises that could interfere with the smooth and efficient consideration of the admissibility application, the Principal Counsel has constituted two separate and autonomous legal teams, one for each case. Confidential information will not be shared between the teams. An information management system has been put in place that rigorously segregates access to such information by case. The separate legal teams may ultimately file substantially similar submissions, depending on the views of their respective groups of clients. Further, they anticipate sharing resources to the extent

of their common interest, as would any other party or participant that identifies a common interest with another party or participant in the course of proceedings.

8. The Principal Counsel would also like to underline that – having assessed the resources available to the Office - this arrangement is feasible at this point in time but might have to be reconsidered in the future. Indeed, the Office has limited resources and it is already involved in all situations and cases before the Court, as legal representative and/or in providing legal assistance to external legal representatives.

A handwritten signature in black ink, appearing to read 'Paolina Massidda', with a horizontal line drawn underneath the name.

Paolina Massidda
Principal Counsel

Dated this 7th day of April 2011

At The Hague, The Netherlands