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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. WILLIAM SAMOEI RUTO, HENRY KIPRONO KOSGEY
AND JOSHUA ARAP SANG

Public Document

Renewed Request by the Victims' Representative for authorisation by the Chamber to make written submissions on specific issues of law and/or fact

Source: Victims' Representative

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

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Introduction

1. The Single Judge's "Decision on Victims' Participation at the Confirmation of Charges Hearing and in the Related Proceedings" of 5 August 2011 (the "5 August 2011 Decision") appointed a common legal representative of all the victims admitted to participate by that decision (the "victims' representative").¹
2. On 15 August 2011, prior to the commencement of the confirmation of charges hearing, the victims' representative filed a document entitled "Request by the Victims' Representative for authorisation by the Chamber to make written submissions on specific issues of law and/or fact" (the "15 August 2011 request").²
3. On 19 August 2011, the Single Judge issued a "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'" (the "19 August 2011 decision").³ That decision rejected the 15 August 2011 request.
4. As foreshadowed in the victims' representative's closing statement at the confirmation of charges hearing on 8 September 2011,⁴ a renewed request is hereby presented by the victims' representative for authorisation by the Chamber to make written submissions on specific issues of law and/or fact. The issues of law and/or fact are similar to those with which the 15 August 2011 request was concerned. However, the present request is modified, to take account of the Single Judge's observations in the 19 August 2011 decision.
5. At paragraph 9 of the 19 August 2011 decision, the Single Judge said:

... Considering that the confirmation hearing in the present case is yet to take place, the Single Judge is of the view that the Request

¹ ICC-01/09-01/11-249.

² ICC-01/09-01/11-263.

³ ICC-01/09-01/11-274.

⁴ Transcript, 8 September 2011, page 32, lines 18-24.

advanced by the legal representative of victims is premature at this moment of time and shall, accordingly, be rejected.

6. The confirmation of charges oral hearing having now concluded, it is submitted that the current request is not premature in the way that the 15 August 2011 request was found to be.

7. Paragraph 10 of the 19 August 2011 decision further stated:

It is however to be clarified that the present decision is rooted on procedural grounds in light of the Court's legal system as established by the applicable law. It is therefore without prejudice for the Chamber to consider, at the appropriate stage, the arguments advanced by the legal representative of victims with respect to the possible legal characterization of acts of destruction and/or burning of property, infliction of injuries and looting.

8. The present request is submitted in the light of this statement of the Single Judge.

The issue affecting the victims' personal interests

9. The issue of concern to the victims is set out in the 15 August 2011 request, and was referred to in the opening and closing statements of the victims' representative at the oral confirmation of charges hearing.⁵ Unnecessary repetition of what has already been said will be avoided.
10. The 15 August 2011 request was an application by the victims' representative to make written submissions on the following specific issues of law and/or fact:
 - a. Whether acts of destruction and/or burning of property, infliction of injuries and looting can amount to the crime against humanity of persecution (article 7(1)(h) of the Statute).

⁵ Transcript, 1 September 2011, p 83 line 20 to p 85 line 6; Transcript, 8 September 2011, p 29 line 18 to p 34 line 8.

- b. Whether acts of destruction and/or burning of property, infliction of injuries and looting can amount to the crime against humanity of other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or mental or physical health (article 7(1)(k) of the Statute).
- c. Whether, at a confirmation of charges hearing under article 61 of the Statute, the Pre-Trial Chamber has the power, on its own motion or on the motion of a party or at the request of a victim's representative:
 - i. to confirm a charge additional to the charges specified by the Prosecutor where there is sufficient evidence to support the additional charge;
 - ii. when confirming a charge that has been specified by the Prosecutor, to confirm or clarify that the charge includes acts in addition to those specified by the Prosecutor as being included in the charge;
 - iii. to order, direct, request or invite the Prosecutor to add additional charges, or to include additional acts within the scope of an existing charge.
- d. Whether, if the Pre-Trial Chamber has powers referred to in c. above, such powers should be exercised in the circumstances of this case.

11. The reasons for making the 15 August 2011 request were in brief as follows. Virtually all of the 327 victims represented by the victims' representative have indicated that they have suffered loss as a result of destruction of property. References to the evidence of destruction of property had been referred to both in the Pre-Trial Chamber's 8 March 2001 decision to summons the three Suspects to appear before the Court,⁶ and in the annex to the Prosecution's "Charges Document".⁷ Nevertheless, neither that decision of the Pre-Trial

⁶ "Decision on the Prosecutor's Application for Summons to Appear for William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang", 8 March 2011, ICC-01/09-01/11-01, at paras 17, 18, 19, 31, 42 and 46.

⁷ Annex to the "Prosecution's Document Containing the Charges and List of Evidence submitted pursuant to Article 61(3) and Rule 121(3)", ICC-01/09-01/11-242-AnxA at paras 26(6), 31, 37, 39, 41, 44,

Chamber, nor the annex to the Charges Document, makes clear that the destruction and burning of property is an aspect of the charge of persecution under article 7(1)(h) of the Statute.

12. In the course of the confirmation of charges hearing, statements were made repeatedly about the widespread acts of destruction of property (both homes and businesses) and looting, and statements were also made about the infliction of injuries.
13. The fact that such widespread acts occurred has not been disputed by the Defence. Indeed, Defence counsel for Mr Ruto stated expressly that: "Properties were destroyed. It is an acknowledged fact."⁸ A witness called by the Defence for Mr Ruto, Mr Cheramboss, confirmed, when it was put to him, that "It was" the case that "the nature of the crimes to the ordinary civilians in the Rift Valley province" "typically consisted of burning of houses, looting, and the population having to flee from their homes".⁹ (He also said that "of course this is knowledge", when it was put to him that those who had been forced to flee from their homes were still living in camps and unable to return to their home areas.¹⁰) Another witness called by the Ruto defence, Mr Murei, said "Yes. They lost their properties" in response to the question whether in his neighbourhood in Sugoi any properties were destroyed belonging to other communities.¹¹
14. More significant, however, is the fact that allegations of acts of burning and destruction of property and looting feature so prominently and centrally in the *Prosecution case*. The concern of the victims is that despite the fact that allegations of acts of destruction and/or burning of property, infliction of

74, 75, 79, 81, 85, 88, 89, 94, 101. See now the corresponding paragraphs of the "Prosecution's Amended Document Containing the Charges and List of Evidence submitted pursuant to Article 61(3) and Rule 121(3), (4) and (5)" of 15 August 2011, ICC-01/09-01/11-261-AnxA (the "Amended Charges Document").

⁸ Transcript, 1 September 2011, p 86, lines 21-22.

⁹ Transcript, 3 September 2011, p 41 lines 5-9.

¹⁰ Transcript, 3 September 2011, p 41 lines 20-23. Mr Cheramboss went on to suggest at p 41 line 23 to p 42 line 5 that they may not have returned to their homes for "personal reasons".

¹¹ Transcript, 3 September 2011, p 76 lines 23-25.

injuries and looting form such a central part of the Prosecution case, the Prosecution has omitted expressly to include such acts in the specific counts set out in the document containing the charges (that is, the six counts presently set out in Part VII of the Amended Charges Document).

15. Further references to such acts made by the Prosecution at the confirmation of charges hearing include the following:

1 September 2011 (Mr Moreno Ocampo)

... they proceed to loot and burn down houses and business that had been previously identify as belonging to PNU supporters. As a consequence, they were systematically displacing hundreds of thousands of persons away from their homes.¹²

They systematically inflicted fear, killing, looted, burned, or otherwise destroyed their property.¹³

The result was devastating. Uasin Gishu and Nandi Districts suffered the largest share of the victims during this period of time. It resulted in approximately 230 deaths, injuries to over 1.000 people in these two districts alone.¹⁴

Once there, they looted and burned and destroyed businesses, and as a result, hundreds to thousands of PNU supporters fled for shelter.¹⁵

2 September 2011 (Ms Tai)

The method that was used by this network was to inflict fear and to systematically destroy homes and property, leaving their targets with no alternative but to permanently relocate. As best stated by Witness 0004, Ruto said that those people who did not support the ODM or think like them should pack their things and leave the Rift Valley.¹⁶

Similarly in Turbo, Witness 0004 describes how Ruto's subordinates defined their targets. "These people, they moved with their attackers and that they helped identify Kikuyu homes

¹² Transcript, 1 September, p 67 lines 6 to 9.

¹³ Transcript, 1 September, p 69 line 25 to p 70 line 2.

¹⁴ Transcript, 1 September, p 70 lines 3-6.

¹⁵ Transcript, 1 September, p 70 lines 11-13.

¹⁶ Transcript, 2 September, p 9 lines 5-9.

and property. The Kikuyu houses were burned because the Kalenjin wanted to evict them." 00239 at 0098, paragraph 91.¹⁷

2 September 2011 (Ms Corrie)

The next slide shows the reported injuries by district. As you can see, in the Uasin Gishu and Nandi Districts, over 1.000 people were injured during the violence.¹⁸

This displacement involved massive property destruction. It was reported that in the Uasin Gishu District alone approximately 52.000 homes were destroyed. The highest number of houses destroyed in any single location in Kenya during the post-election violence. Again, these sources are addressed in upcoming presentations.¹⁹

In the greater Eldoret area, network perpetrators committed similar crimes. They destroyed the homes and property of perceived PNU supporters giving them no alternative but to flee.²⁰

In the course of the attacks, they routinely burned the homes, businesses and property of perceived PNU supporters and killed some of them. They regularly used fuel, supplied by the network, to burn properties. They also erected roadblocks around the target locations, attacking and sometimes killing perceived PNU supporters trying to escape.²¹

2 September 2011 (Ms Renton)

Various locations in the greater Eldoret area were attacked and roadblocks were erected on all major roads. Network perpetrators used petrol to burn homes and businesses, attacked perceived PNU supporters with machetes, and shot those trying to escape with arrows.²²

In Kapsabet, immediately following the announcement of the presidential election results, network perpetrators started attacking, looting, burning homes and businesses, and attempted to attack perceived PNU supporters seeking refuge at a local police station. No less than three people died.

Finally, network perpetrators attacked Nandi Hills with arrows and petrol bombs, looting and burning the homes and businesses

¹⁷ Transcript, 2 September, p 19 lines 10-14.

¹⁸ Transcript, 2 September, p 25 lines 11-13.

¹⁹ Transcript, 2 September, p 25 line 23 to p 26 line 2.

²⁰ Transcript, 2 September, p 26 lines 9-11.

²¹ Transcript, 2 September, p 28 lines 11-15.

²² Transcript, 2 September, p 33 lines 9-12.

of perceived PNU supporters, and erecting roadblocks to prevent them from escaping.²³

Another witness, Prosecution Witness 0004, gives evidence that he heard youths, who had attended a network meeting the day before, had attacked the Eldoret towns of Langas and Huruma and had burnt houses and killed perceived PNU supporters, including with bows and arrows.²⁴

Two days later, this same witness met about 20 "warriors" returning from Eldoret. They told him that when they arrived in Huruma they broke into the Kikuyu houses, took them out and hacked them to death, and then burnt their houses. The ones who tried to escape were shot by arrows.²⁵

At a later meeting in December, the same witness told the Prosecution that Ruto told the perpetrators to kill PNU supporters, destroy their property and displace them from the Kalenjin land. Ruto promised that he would pay perpetrators for every PNU supporter that they killed and every house that they destroyed.²⁶

This witness confirmed that because of Sang's statement on the radio, a number of network perpetrators, himself included, went to Turbo to kill perceived PNU supporters and destroy their homes. The source for this is EVD-PT-OTP-00763 at page 0271, and at EVD-PT-OTP-00791 at pages 0041 through 0046.²⁷

Prosecution witnesses 0002 and 0008 also give evidence that Ruto provided network perpetrators with cylinders containing gas and said that they were to be used in places where you find Kikuyu people, including to, and I quote, "burn the big houses belonging to the Kikuyus." The citation for this is EVD-PT-OTP-00552 at pages 0851 to 0863, and also EVD-PT-OTP-00555 at pages 0929 to 0934, and finally, also EVD-PT-OTP-00222 at pages 0142 through 0144.²⁸

2 September 2011 (Ms Corrie)

In the greater Eldoret area, perceived PNU supporters were chased away, were left with no alternative but to flee and relocate following the destruction of their homes and property. As one attacker told Human Rights Watch, the attackers were "urged to

²³ Transcript, 2 September, p 35 lines 13-21.

²⁴ Transcript, 2 September, p 36 lines 12-15.

²⁵ Transcript, 2 September, p 36 lines 21-25.

²⁶ Transcript, 2 September, p 39 lines 7-11.

²⁷ Transcript, 2 September, p 39 lines 18-23.

²⁸ Transcript, 2 September, p 40 lines 19-25.

drive all Kikuyu out of Eldoret town." The source for this is EVD-PT-OTP-00002 at pages 0290 through 0291.²⁹

As to Kiambaa, prior to the attack on the 1st of January, 2008, the Kenya Assemblies of God Church at Kiambaa was a location to which people had fled from other locations, seeking safety from the attacks. As attackers descended on Kiambaa village and burned the homes of perceived PNU supporters and the church at Kiambaa, hundreds of Kiambaa residents fled to the area and relocated to safer places, including IDP camps.³⁰

..., in each location, network perpetrators destroyed the homes and businesses of PNU supporters. According to the CIPEV final report, 52,000 homes were destroyed in Uasin Gishu District alone.³¹

Network perpetrators typically destroyed homes and businesses by burning them. Prosecution Witness 0002 also describes that the perpetrators destroyed food supplies "so they had nothing to eat." The source for this is EVD-PT-OTP-00222 at page 0148, paragraph 118.

The attacks, murders and destruction caused PNU supporters to flee to safety. They also prevented PNU supporters from returning to their homes, because they were now without shelter, livelihood or sustenance.³²

The evidence also establishes that Ruto and Kosgey equipped network perpetrators with the tools necessary execute the forced displacement of perceived PNU supporters, including weapons and fuel to destroy PNU supporters' homes and businesses.³³

Moreover, most evidence describes their forced displacement of the perceived PNU supporters as their removal from their homes, workplaces and business locations, and that the destroyed houses and other properties were owned by or belonged to the victims who were evicted. For example, prior to the violence, Kikuyus had owned farms in the Kiambaa village since the 1960s. The source for this is EVD-PT-OTP-00001 at page 0073, which is a public source, and EVD-PT-OTP-0031 throughout.³⁴

²⁹ Transcript, 2 September, p 45 lines 17-23.

³⁰ Transcript, 2 September, p 46 lines 6-12.

³¹ Transcript, 2 September, p 47 lines 23-25.

³² Transcript, 2 September, p 48 lines 2-10.

³³ Transcript, 2 September, p 49 line 25 to p 50 line 3.

³⁴ Transcript, 2 September, p 51 lines 9-16.

2 September 2011 (Ms Renton)

The Prosecution submits that in the execution of those crimes, that is, by killing persons that they perceived to be supporters of the PNU political party, by destroying their property, and by forcibly expelling them from their homes, network perpetrators severely deprived these people of their fundamental rights, contrary to international law.³⁵

Finally, the evidence indicates that during the execution of the attacks, members of the network followed through on the plans and instructions given by Ruto and Kosgey, Sang and others, and specifically attacked the preselected towns, physically targeting perceived PNU supporters and destroying their homes and businesses.³⁶

2 September 2011 (Ms Corrie)

This witness indicates that Sang used the term "the work" to mean to evict and kill the perceived PNU supporters, steal their livestock, and destroy their homes and other belongings.³⁷

2 September 2011 (Ms Tai)

..., Ruto gave instructions to these direct perpetrators as to whom they had to kill, who they had to displace, and whose property it was that they had to destroy. And fifth, Ruto established a rewarding mechanism promising fixed amounts of money to be paid upon the successful murder of PNU supporters or the destruction of their property.³⁸

One Prosecution witness tells us, from the perspective as a direct perpetrator, that they had no choice, really. Those who had come to Turbo came to kill the Kikuyu and destroy their homes. "If we had not gone there, they would have turned on us. So we had to participate in the war." The reference for that is EVD-00763 at 0271, paragraphs 94 and 95.³⁹

They paid them, they promised them rewards for murdering civilians, they promised them rewards for destroying homes, they promised them rewards for burning down people's homes, and

³⁵ Transcript, 2 September, p 53 lines 21-25.

³⁶ Transcript, 2 September, p 56 lines 19-23.

³⁷ Transcript, 2 September, p 66 lines 21-24.

³⁸ Transcript, 2 September, p 84 lines 2-7.

³⁹ Transcript, 2 September, p 87 line 20 to p 88 line 1.

then they instilled a fear of punishment should there be noncompliance with their instructions.⁴⁰

Through oral and written submissions, Ruto had given instructions to perpetrators to carry out murders, displacement, and destruction of property against the supporters and you, too, have heard many examples supporting this element. That will not be repeated here.⁴¹

One witness tells us: "How does Ruto know that somebody killed, or that somebody else killed somebody else, or if property was destroyed." He tells us, referring back to the structure, "Well, it's because we had a co-ordinator structure, and that they were supervising the war." So they clearly knew. That can be found at EVD-00552 at 0851 through 0855, lines 24 to 180 respectively.⁴²

16. As is stated in the 15 August 2011 request at paragraph 13:

In circumstances where virtually the entirety of such a large number of victims in a case have suffered loss as a result of destruction and/or burning of property, and have specifically indicated an intention to seek reparations for such loss, and in circumstances where the evidence relied on in support of the charges clearly includes evidence of destruction and/or burning of property, it must be a matter of most serious concern that destruction and/or burning of property has not been clearly included in the charges proposed to be brought by the Prosecutor.

17. Paragraph 14 of the 15 August 2011 request further stated that:

The concerns are not necessarily confined to the failure clearly to include destruction and/or burning of property. The Charges Document Annex also refers for instance to evidence of infliction of injuries and looting, yet these acts are also not clearly included in the proposed charges. [Footnote omitted].

18. At the confirmation of charges hearing, the victims' representative submitted that:

My submission will be that this provision of Article 61 of the Statute [Article 61(7)(c)(ii)], the word "different" includes the sense of "additional." Thus under this provision, the Chamber can request the Prosecutor to amend the charge to include additional charges or to include additional criminal conduct within an existing charge.

⁴⁰ Transcript, 2 September, p 88 lines 17-20.

⁴¹ Transcript, 2 September, p 89 line 24 to p 90 line 2.

⁴² Transcript, 2 September, p 91 lines 10-16.

My submission will be that this is a compelling case for the Chamber to exercise that power. There is apparently no issue at all that there was widespread destruction and looting of property. Almost all of my 327 victims suffered from it. They will be seeking reparations for these acts, and destruction and looting of property and injury is thus of such central importance to the case that it -- that it is, in my respectful submission, difficult to see any basis upon which it could be justifiably be ignored. Judicial efficiency and the aim of avoiding an undue multiplicity of charges is hardly a justification in circumstances where there is no dispute that such acts occurred.⁴³

19. The victims do not take the position that acts of destruction or burning of property, or looting, or of infliction of injuries, are at present necessarily excluded from the charges as presently formulated. However, it is of the utmost concern to victims that such acts are presently not clearly and expressly included within the charges.

Proposed submissions of the victims' representative

20. If the victims' representative is granted authorisation by the Chamber to make written submissions on specific issues of law and/or fact, the submissions that the victims' representative would make at this stage are as follows.

21. In the 19 August 2011 Decision, the Single Judge decided that:

- a. the Chamber is not vested with the authority to modify the charges brought by the Prosecutor against the Suspects (at paragraph 7);
- b. the Chamber does not have the power either to confirm a charge that is not specified by the Prosecutor or to "clarify that the charge includes acts in addition to those specified by the Prosecutor as being included in the charge"(at paragraph 7);

but that

⁴³ Transcript, 8 September, p 33 lines 11-25.

- c. article 61(7)(c)(ii) of the Statute permits the Chamber, on the basis of the confirmation of charges hearing, to adjourn the hearing and request the Prosecutor to consider "[a]mending a charge because the evidence submitted appears to establish a different crime within the jurisdiction of the Court" (at paragraph 8).

22. It is submitted that in Article 61(7)(c)(ii) of the Statute, the word "different" includes the sense of "additional." Thus under this provision, the Chamber can request the Prosecutor to amend the charge to include additional charges, or to include additional criminal conduct within an existing charge (see paragraph 18 above). It is submitted that an example of this interpretation can be seen in the *Lubanga* case. In that case, the Prosecution's document containing the charges referred only to the crime of conscripting or enlisting child soldiers when committed in *internal* armed conflict (Article 8(2)(e)(vii) of the Statute). The Pre-Trial Chamber considered that the armed conflict might be characterised as international, and requested the Prosecutor to amend the charges to add a further charge based on Article 8(2)(b)(xxvi) of the Statute.⁴⁴ The Pre-Trial Chamber then proceeded to confirm the charges *both* under Article 8(2)(b)(xxvi) *and* Article 8(2)(e)(vii) of the Statute.⁴⁵

23. Burning and destruction of property, and looting, and the infliction of physical injuries, are clearly acts that could amount to the crime against humanity of persecution (article 7(1)(h) of the Statute), or the crime against humanity of other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or mental or physical health (article 7(1)(k) of the Statute), if the elements of those crimes are otherwise met. On the case as alleged by the Prosecution, these acts were, within the meaning of Article 7(1)(h) of the Statute, committed "in connection with" the other alleged

⁴⁴ ICC-01/04-01/06-803-tEN, *Prosecutor v Thomas Lubanga Dyilo*, "Decision on the confirmation of charges", Pre-Trial Chamber I, 29 January 2007 (the "Lubanga Confirmation of Charges Decision", paras 200-204).

⁴⁵ *Lubanga Confirmation of Charges Decision*, pp 156-157.

acts of persecution, on the same impermissible grounds. Further, on the case as alleged by the Prosecution, particularly in the passages from the confirmation of charges hearing set out above, these acts were at the very least of a similar character to deportation or forcible transfer of population (Article 7(1)(d) of the Statute) given that they were committed with a view to forcing the victim population to leave the area where their homes were located and not to return. On the Prosecution's case, these acts were, like the other acts specifically charged in the existing counts, within the meaning of Article 7(1)(k) of the Statute, intended to cause great suffering or serious injury to body or to mental or physical health.

24. The Prosecution's own case is that the campaign of crimes as a whole, including the acts of destruction of property, infringed upon the fundamental rights of the victims: in presenting its case, the Prosecution has stated:

The Prosecution submits that in the execution of those crimes, that is, by killing persons that they perceived to be supporters of the PNU political party, by destroying their property, and by forcibly expelling them from their homes, network perpetrators severely deprived these people of their fundamental rights, contrary to international law.⁴⁶

25. This confirms the Prosecution's own theory that acts of destruction of property were, in the same way as acts of murder and forcible expulsion, part of one attack that "deprived [the victims] of their fundamental rights, contrary to international law".

26. It is thus apparent from the case presented by the Prosecution that acts of destruction of property, and looting, and the infliction of physical injuries, were integral and central to the "Attack directed against any civilian population" alleged by the Prosecution within the meaning of Article 7 of the Statute. If the Pre-Trial Chamber determines that there is "sufficient evidence" for purposes of Article 61(7)(a) of the Statute to commit the

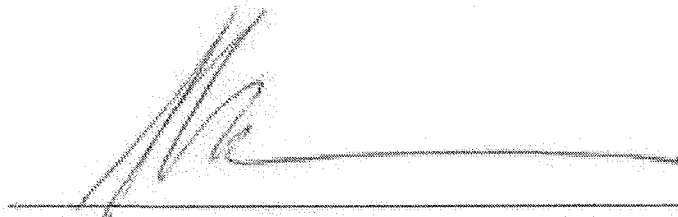
⁴⁶ Transcript, 2 September, p 53 lines 21-25.

Suspects to a Trial Chamber for trial on the charges as presently stated in the charges document, then it is submitted that there is necessarily sufficient evidence to commit the suspects for trial for the crime against humanity of persecution (Article 7(1)(h) of the Statute) or the crime against humanity of other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or mental or physical health (Article 7(1)(k) of the Statute), in relation to the acts of destruction of property, and looting, and the infliction of physical injuries. For reasons previously given by the victims' representative, summarised in paragraphs 16-18 above, there are compelling reasons why in this case the charges should expressly include the acts of destruction of property, and looting, and the infliction of physical injuries.

27. It is therefore submitted that the Pre-Trial Chamber should exercise its power under Article 61(7)(c)(ii) to request the Prosecutor to consider amending the charges:

- a. by expressly specifying that Count 5 and Count 6 encompass additionally acts of destruction of property, and looting, and the infliction of physical injuries; and
- b. by adding counts of the crime against humanity of other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or mental or physical health (Article 7(1)(k) of the Statute), in relation to the acts of destruction of property, and looting, and the infliction of physical injuries.

28. Should the Pre-Trial Chamber make such a request, and should the Prosecution accede to that request, the other questions referred to in paragraph 10 above would become moot.



Sureta Chana

Dated this 16th day of September 2011.

At London, United Kingdom.