

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

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Date: 5 August 2011

**PRE-TRIAL CHAMBER II**

**Before: Judge Ekaterina Trendafilova, Single Judge**

**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  
With a Confidential Annex**

**Decision on Victims' Participation at the Confirmation of Charges Hearing and in  
the Related Proceedings**

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

**The Office of the Prosecutor**  
Luis Moreno-Ocampo, Prosecutor  
Fatou Bensouda, Deputy Prosecutor

**Counsel for William Samoei Ruto**  
Joseph Kipchumba Kigen-Katwa, David  
Hooper and Kioko Kilukumi Musau

**Counsel for Henry Kiprono Kosgey**  
George Odinga Oraro

**Legal Representative of the Victims**  
Sureta Chana

**Counsel for Joshua Arap Sang**  
Joseph Kipchumba Kigen-Katwa  
**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparation**

**The Office of Public Counsel for  
Victims**  
Paolina Massidda

**The Office of Public Counsel for the  
Defence**

**States Representatives**

**Amicus Curiae**

## **REGISTRY**

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**Registrar & Deputy Registrar**  
Silvana Arbia, Registrar  
Didier Preira, Deputy Registrar

**Defence Support Section**

**Victims and Witnesses Unit**  
**Victims Participation and Reparations  
Section**  
Fiona McKay

**Detention Section**  
**Others**  
Liesbeth Zegveld  
Peter Njenga Mwangi  
Francis Kissinger Kakai  
Nicholas Kaufman

**Judge Ekaterina Trendafilova**, acting as Single Judge on behalf of Pre-Trial Chamber II (the “Chamber”) of the International Criminal Court (the “Court”),<sup>1</sup> hereby renders this decision on victims’ participation at the confirmation of charges hearing and in the related proceedings.

## **I. Introduction**

1. The present decision addresses in a comprehensive manner the issues relating to the participation of victims at the confirmation of charges hearing and in the proceedings related thereto. The decision therefore follows an articulate structure that, for the sake of clarity, is laid out hereunder.

2. The Single Judge will at first recall the relevant procedural history (Section I) and the applicable law (Section II). Thereafter, the observations submitted by the parties on the victims’ applications will be addressed (Section III) and the criteria for the recognition of the applicants as victims participating in the present proceedings will be laid out and analyzed (Section IV). In conclusion of this part of the decision, the Single Judge will provide general explanation of the main reasons for her decision to grant or, conversely, to deny the applicants the status of participants in the present case (Section V).

3. Upon identification of the victims admitted to participate in the instant proceedings, the Single Judge will then address the matter of the victims’ common legal representation (Section VII.A.) and specify the participatory rights which the victims can exercise through their legal representative(s) at the confirmation of charges hearing and in the related proceedings (Section VII.B). Finally, the Single Judge will decide on a number of requests advanced by the Defence of Mr. Ruto and Mr. Sang in connection with the victims’ applications for participation (Section VIII).

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<sup>1</sup> Pre-Trial Chamber II, “Decision Designating a Single Judge”, ICC-01/09-01/11-6.

4. The Single Judge wishes to clarify that the present decision is classified as “public” although it refers to the existence of documents and, as the case may be, to a limited extent to their content, which have been submitted and are currently treated as confidential. The Single Judge considers that the references made in the present decision are required by the principle of publicity and judicial reasoning. Moreover, those references are not inconsistent with the nature of the documents referred to and have been kept to a minimum. Therefore, with a view to protecting the applicants’ safety, this decision outlines the principles applied and delineates the approach taken in assessing the applications, by way of referring to them in light of their common features. An individual assessment of all applications for participation transmitted to the Chamber is provided in the confidential annex attached to the present decision.

## II. Procedural History

5. On 8 March 2011, the Chamber, by majority, decided to summon William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang to appear before the Court.<sup>2</sup> Pursuant to this decision, the suspects voluntarily appeared before the Court at the initial appearance hearing held on 7 April 2011,<sup>3</sup> during which, *inter alia*, the Chamber scheduled the commencement of the confirmation of charges hearing for Thursday, 1 September 2011.<sup>4</sup>

6. On 30 March 2011, the Single Judge issued the “First Decision on Victims’ Participation in the Case”, whereby she instructed the Victims Participation and Reparation Section (the “VPRS”) with a view to properly and expeditiously assisting the Chamber in the preparation of the forthcoming proceedings in relation to victims’ issues (“the 30 March 2011 Decision”).<sup>5</sup> In the said decision, the Single Judge also

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<sup>2</sup> Pre-Trial Chamber II, “Decision on the Prosecutor’s Application for Summons to Appear for William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang”, ICC-01/09-01/11-01.

<sup>3</sup> ICC-01/09-01/11-T-1-ENG.

<sup>4</sup> ICC-01/09-01/11-T-1-ENG, page 17, lines 12 to 25.

<sup>5</sup> Pre-Trial Chamber II, ICC-01/09-01/11-17.

ordered the parties to submit their observations, if any, on the victims' applications within a time limit of two weeks upon notification of the concerned applications.

7. On 18 May 2011, the Registrar submitted to the Chamber 59 victims' applications, together with a report prepared pursuant to regulation 86(5) of the Regulations of the Court (the "Regulations") and transmitted those applications, in a redacted form, to the parties (the "First Transmission").<sup>6</sup>

8. On 3 June 2011, in compliance with the deadline set up in the 30 March 2011 Decision, the Defence for William Ruto and Joshua Sang as well as the Defence for Henry Kosgey submitted their observations on the victims' applications of the First Transmission together with a number of requests.<sup>7</sup>

9. On 24 June 2011, the Registrar transmitted to the Chamber and to the parties additional 105 victims' applications for participation in the present proceedings (the "Second Transmission").<sup>8</sup> The parties' observations on the applications submitted by this group of applicants were duly filed within the deadline of two weeks of their notification.<sup>9</sup>

10. On 8 July 2011, the Single Judge issued the "Decision on the Defence Requests in Relation to the Victims' Applications for Participation in the Present Case", addressing some of the requests advanced by the Defence of Mr. Ruto and Mr. Sang in their observations on the victims' applications included in the First Transmission

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<sup>6</sup> ICC-01/09-01/11-91 – "First transmission to the Pre-Trial Chamber of applications to participate in the proceedings" and "confidential *ex parte*" annexes attached thereto; ICC-01/09-01/11-92 – "First Transmission to the parties and legal representatives of redacted applications to participate in the proceedings" and "confidential *ex parte*" annexes attached thereto; and ICC-01/09-01/11-93-Conf-Exp – "First report on applications to participate in the proceedings" and annexes attached thereto.

<sup>7</sup> ICC-01/09-01/11-102, and the confidential annex attached thereto, and ICC-01/09-01/11-107-Conf, respectively.

<sup>8</sup> ICC-01/09-01/11-141 – "Second transmission to the Pre-Trial Chamber of applications to participate in the proceedings" and "confidential *ex parte*" annexes attached thereto; ICC-01/09-01/11-142 – "Second Transmission to the parties and legal representatives of redacted applications to participate in the proceedings" and "confidential *ex parte*" annexes attached thereto; and ICC-01/09-01/11-143-Conf-Exp – "Second report on applications to participate in the proceedings" and annexes attached thereto.

<sup>9</sup> ICC-01/09-01/11-177 and confidential annex attached thereto – observations on behalf of Mr. Ruto and Mr. Sang; ICC-01/09-01-11-178 – Prosecutor's observations; and ICC-01/09-01/11-179 – observations on behalf of Mr. Kosgey.

(the “8 July 2011 Decision”).<sup>10</sup> Other requests, in light of their nature, have been deferred.

11. The third and last transmission of victims’ applications for participation – comprising of 230 applications – was submitted by the Registrar on 8 July 2011 (the “Third Transmission”).<sup>11</sup> The Prosecutor’s observations thereto were filed on 22 July 2011,<sup>12</sup> whilst those from the Defence of Mr. Ruto and Mr. Sang were filed the day after.<sup>13</sup>

12. On 1 August 2011, the Prosecutor filed the document containing the charges brought against the suspects (the “DCC”).<sup>14</sup>

13. On 1 August 2011, the Registrar filed the “Proposal for the common legal representation of victims” (the “Proposal on Common Legal Representation”).<sup>15</sup>

### III. The Applicable Law

14. For the purposes of the present decision, the Single Judge has considered a number of provisions of the applicable law. In particular, the Single Judge notes articles 21, 57(3)(c), 61, 67 and 68 of the Rome Statute (the “Statute”), rules 16, 85, 89 to 92 and 121 of the Rules of Procedure and Evidence (the “Rules”) and regulation 86 of the Regulations. The Single Judge will recall the relevant provisions within the context of the different sections of the present decision.

15. The Single Judge wishes to point out that the scope of the present decision is limited to the participation of victims at the confirmation of charges hearing and in the related proceedings. In this respect, reference is made to article 61(7) of the

<sup>10</sup> ICC-01/09-01/11-169.

<sup>11</sup> ICC-01/09-01/11-170 – “Third transmission to the Pre-Trial Chamber of applications to participate in the proceedings” and “confidential *ex parte*” annexes attached thereto; ICC-01/09-01/11-171 – “Third Transmission to the parties and legal representatives of redacted applications to participate in the proceedings” and “confidential *ex parte*” annexes attached thereto; and ICC-01/09-01/11-172-Conf-Exp – “Second report on applications to participate in the proceedings” and annexes attached thereto.

<sup>12</sup> ICC-01/09-01-11-222-Conf

<sup>13</sup> ICC-01/09-01/11-227 and confidential annex attached thereto.

<sup>14</sup> ICC-01/09-01/11-242 and its annexes.

<sup>15</sup> ICC-01/09-01/11-243 and its annexes.

Statute, which clarifies the limited purpose and scope of the confirmation hearing in providing that “[t]he Pre-Trial Chamber shall, on the basis of the hearing, determine whether there is sufficient evidence to establish substantial grounds to believe that the person committed each of the crimes charged”. Therefore, whilst at the trial stage a determination on the innocence or guilt of the accused is made, what is at stake at the confirmation of charges is whether the evidence placed before the Chamber shows substantial grounds to believe that the suspects committed the crimes charged and, accordingly, shall be committed to trial or not.

#### **IV. The Issues Raised by the Parties in their Observations on the Victims’ Applications**

16. The Single Judge recalls that, pursuant to rule 89(1) of the Rules, the parties have had the opportunity to provide observations on all 394 applications of victims wishing to participate in the present case. Observations of a general nature will be analysed and addressed in the present decision, while specific comments submitted by the parties in respect of individual applications are addressed, where applicable, in the assessment of each application provided in the confidential annex appended hereto.

##### **A. The Prosecutor’s Observations**

17. The Single Judge notes that the Prosecutor only provided observations on the victims’ applications submitted in the Second and Third Transmissions. No observations were filed on the applications of the First Transmission. The Prosecutor’s observations therefore cover 335 applications out of the total number of 394 transmitted by the Registry in the present case.

18. In his observations, the Prosecutor submits that 243 applicants<sup>16</sup> out of 335 should be granted authorization to participate as they meet all requirements for

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<sup>16</sup> 92 of these applications are part of the Second Transmission (a/0153/10; a/0234/10; a/0275/10; a/0356/10; a/0578/10; a/0590/10; a/2080/10; a/8327/11; a/8328/11; a/8329/11; a/8330/11; a/8331/11;

participation in the present proceedings.<sup>17</sup> With regard to 42 applications,<sup>18</sup> the Prosecutor contends that redactions applied make it difficult to determine whether the applicants meet all the requirements for participation and, accordingly, leaves it to the Single Judge to determine whether these requirements are fulfilled.<sup>19</sup>

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a/8332/11; a/8333/11; a/8334/11; a/8336/11; a/8338/11; a/8339/11; a/8342/11; a/8343/11; a/8345/11; a/8346/11; a/8347/11; a/8349/11; a/8350/11; a/8351/11; a/8352/11; a/8355/11; a/8356/11; a/8358/11; a/8359/11; a/8361/11; a/8362/11; a/8365/11; a/8366/11; a/8367/11; a/8368/11; a/8369/11; a/8370/11; a/8373/11; a/8375/11; a/8379/11; a/8380/11; a/8381/11; a/8382/11; a/8383/11; a/8384/11; a/8386/11; a/8387/11; a/8388/11; a/8391/11; a/8392/11; a/8393/11; a/8394/11; a/8395/11; a/8397/11; a/8398/11; a/8400/11; a/8401/11; a/8402/11; a/8403/11; a/8404/11; a/8405/11; a/8407/11; a/8408/11; a/8409/11; a/8413/11; a/8415/11; a/8416/11; a/8417/11; a/8418/11; a/8419/11; a/8422/11; a/8423/11; a/8424/11; a/8425/11; a/8426/11; a/8428/11; a/8429/11; a/8430/11; a/8431/11; a/8432/11; a/8433/11; a/8434/11; a/8435/11; a/8436/11; a/8437/11; a/8438/11; a/8440/11; a/8442/11; a/8443/11; a/8420/11), whilst 151 are part of the Third Transmission a/0063/10, a/0143/10, a/0145/10, a/0237/10, a/0266/10, a/0379/10, a/0574/10, a/0580/10, a/0595/10, a/2085/10, a/8224/11, a/8260/11, a/8269/11, a/8645/11, a/8646/11, a/8647/11, a/8648/11, a/8649/11, a/8650/11, a/8651/11, a/8652/11, a/8653/11, a/8654/11, a/8655/11, a/8657/11, a/8658/11, a/8659/11, a/8661/11, a/8663/11, a/8664/11, a/8666/11, a/8709/11, a/8710/11, a/8711/11, a/8712/11, a/8713/11, a/8714/11, a/8715/11, a/8716/11, a/8717/11, a/8718/11, a/8719/11, a/8720/11, a/8721/11, a/8723/11, a/8724/11, a/8728/11, a/8729/11, a/8730/11, a/8732/11, a/8733/11, a/8734/11, a/8735/11, a/8737/11, a/8738/11, a/8739/11, a/8741/11, a/8743/11, a/8746/11, a/8747/11, a/8749/11, a/8750/11, a/8758/11, a/8767/11, a/8770/11, a/8775/11, a/8777/11, a/8779/11, a/8781/11, a/8782/11, a/8783/11, a/8827/11, a/8835/11, a/8836/11, a/8837/11, a/8846/11, a/8849/11, a/8851/11, a/8856/11, a/8857/11, a/8859/11, a/8861/11, a/8867/11, a/8868/11, a/8869/11, a/8873/11, a/8874/11, a/8895/11, a/8896/11, a/8897/11, a/8899/11, a/8900/11, a/8901/11, a/8902/11, a/8903/11, a/8904/11, a/8905/11, a/8906/11, a/8908/11, a/8909/11, a/8910/11, a/8911/11, a/8912/11, a/8914/11, a/8916/11, a/8917/11, a/8918/11, a/8920/11, a/8921/11, a/8922/11, a/8923/11, a/8924/11, a/8925/11, a/8933/11, a/8936/11, a/8938/11, a/8939/11, a/8940/11, a/8941/11, a/8942/11, a/8943/11, a/8945/11, a/8946/11, a/8947/11, a/8951/11, a/8952/11, a/8954/11, a/8957/11, a/8960/11, a/8961/11, a/8962/11, a/8964/11, a/8967/11, a/8980/11, a/8982/11, a/8983/11, a/8985/11, a/8986/11, a/8987/11, a/8988/11, a/8989/11, a/8990/11, a/8994/11, a/8997/11, a/8998/11, a/8999/11, a/9000/11, a/9001/11, a/9003/11, a/9005/11, a/9010/11).

<sup>17</sup> ICC-01/09-01/11-178-Conf, para. 26 and ICC-01/09-01/11-222-Conf, para. 2.

<sup>18</sup> 10 applications transmitted in the Second Transmission (a/8335/11; a/8337/11; a/8353/11; a/8363/11; a/8372/11; a/8374/11; a/8376/11; a/8390/11; a/8396/11 and a/8399/11) and 32 in the Third Transmission (a/0372/10, a/8246/11, a/8722/11, a/8725/11, a/8727/11, a/8731/11, a/8736/11, a/8745/11, a/8751/11, a/8771/11, a/8773/11, a/8774/11, a/8776/11, a/8778/11, a/8780/11, a/8784/11, a/8785/11, a/8841/11, a/8842/11, a/8845/11, a/8850/11, a/8855/11, a/8872/11, a/8950/11, a/8955/11, a/8959/11, a/8966/11, a/8991/11, a/9004/11, a/9009/11, a/9011/11 and a/9019/11).

<sup>19</sup> ICC-01/09-01/11-178-Conf, paras 4 and 15 and ICC-01/09-01/11-222-Conf, paras 4 and 25.

19. Finally, the Prosecutor submits that 51 applications<sup>20</sup> should be deferred until further information or documentation is obtained. This concerns instances where the applicant fails to: (i) provide sufficient and/or consistent documentation satisfactorily proving the identity;<sup>21</sup> (ii) explain why only a substitute form of identification has been submitted;<sup>22</sup> (iii) complete the required portion of the application when not applying on his/her own behalf;<sup>23</sup> or (iv) provide sufficient information concerning the circumstances in which they suffered harm.<sup>24</sup>

## **B. The Defence Observations**

20. The Defence submits that all 394 applications for participation in the proceedings should be rejected because none of them allegedly fulfills the requisite criteria. The Single Judge will hereunder address the main issues raised by the Defence teams.

### ***1. Identification of perpetrators and persons responsible for the alleged crimes***

21. The Single Judge notes that both Defence teams argue that a large number of applications should be rejected since the applicant fails to identify the suspects (or groups to which the suspects allegedly belonged) as responsible for the crimes as a result of which the harm was suffered.<sup>25</sup>

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<sup>20</sup> 4 applications are part of the Second Transmission (a/8348/11; a/8354/11; a/8360 and a/8337/11) and 47 of the Third Transmission (a/8742/11, a/8744/11, a/8849/11, a/8919/11, a/8996/11, a/9006/11, a/9007/11, a/9012/11, a/9013/11, a/9015/11, a/9016/11, a/9017/11, a/9018/11, a/9020/11, a/9021/11, a/9022/11, a/9023/11, a/9024/11, a/9025/11, a/9026/11, a/9027/11, a/9028/11, a/9029/11, a/9030/11, a/9031/11, a/9032/11, a/9033/11, a/9034/11, a/9035/11, a/9036/11, a/9037/11, a/9038/11, a/9039/11, a/9040/11, a/9041/11, a/9042/11, a/9043/11, a/9044/11, a/9045/11, a/9046/11, a/9047/11, a/9048/11, a/9051/11, a/9052/11, a/9053/11, a/9054/11 and a/9055/11).

<sup>21</sup> ICC-01/09-01/11-178-Conf, para. 24 and ICC-01/09-01/11-222-Conf, para. 11.

<sup>22</sup> ICC-01/09-01/11-222-Conf, para. 11.

<sup>23</sup> *Ibid.*, para. 11.

<sup>24</sup> *Ibid.*, para. 11.

<sup>25</sup> ICC-01/09-01/11-107-Conf, para. 41, wherein the Defence of Mr. Kosgey refers to the following applications: a/0056/10, a/0064/10, a/8015/11, a/8018/11, a/8020/11, a/8021/11, a/8023/11, a/8024/11, a/8026/11, a/8027/11, a/8030/11, a/8032/11, a/8034/11, a/8038/11, a/8039/11, a/8040/11, a/8042/11, a/8043/11, a/8047/11, a/8049/11, a/8051/11, a/8052/11, a/8053/11, a/8058/11, a/8059/11, a/8067/11, a/8079/11, a/8099/11, a/8091/11, a/8096/11, a/8097/11, a/8101/11. The argument is reiterated by Mr. Kosgey also with respect to some applications included in the Second Transmission (*i.e.* a/0153/10, a/0275/10, a/2080/10, a/8330/11, a/8331/11, a/8334/11, a/8343/11, a/8346/11, a/8349/11, a/8350/11 See

22. In this respect, the Single Judge notes the provision of regulation 86(2) of the Regulations, according to which the application form shall contain “the identity of the person or persons the victim believes to be responsible” but only “to the extent possible”. Accordingly, and concurring with the findings of other Chambers of the Court,<sup>26</sup> the Single Judge, in her 30 March 2011 Decision, did not insert the identification of perpetrators among the information necessary for the applications submitted to be considered complete.<sup>27</sup>

23. Furthermore, the Single Judge agrees with the finding of Trial Chamber III which stated that at times it will inevitably be impossible for the applicants to establish precisely who committed the relevant crime(s) and that, consequently, it would be an unfair burden to require the applicant victims to identify the actual perpetrator(s) of the crime(s) allegedly causing them harm within the meaning of rule 85(a) of the Rules.<sup>28</sup>

24. In light of the above, the Single Judge takes the view that the identification of the perpetrators is not a requirement for a victim’s application for participation to be considered complete.

## ***2. Distinction of applications for participation and reparation***

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Annex 28, a/8354/11, a/8355/11, a/8360/10, a/8362/11, a/8368/11, a/8379/11, a/8380/11, a/8382/11, a/8386/11, a/8396/11, a/8397/11, a/8399/11; a/8401/11, a/8407/11, a/8408/11, a/8413/11, a/8424/11, a/8425/11, a/8431/11, a/8437/11, a/8443/11). See also Mr. Ruto and Mr. Sang’s observations: ICC-01/09-01/11-102-Conf-AnxA, ICC-01/09-01/11-177-Conf-AnxA and ICC-01/09-01/11-227-Conf-AnxA.

<sup>26</sup> See e.g. Pre-Trial Chamber I, “Decision on the Requests of the Legal Representative of Applicants on application process for victims’ participation and legal representation”, ICC-01/04-374, para. 12; Pre-Trial Chamber I, “Public Redacted Version of the ‘Decision on the 97 Applications for Participation at the Pre-Trial Stage of the Case’”, ICC-01/04-01/07-579, para. 44; Pre-Trial Chamber III, “Fourth Decision on Victims’ Participation”, ICC-01/05-01/08-320, para. 81; Pre-Trial Chamber I, “Decision on the 34 Applications for Participation at the Pre-Trial Stage of the Case”, ICC-02/05-02/09-121, para. 7; Trial Chamber II, “Decision on the treatment of applications for participation”, ICC-01/04-01/07-933-tENG, para. 28; Trial Chamber III, “Decision defining the status of 54 victims who participated at the pre-trial stage, and inviting the parties’ observations on applications for participation by 86 applicants”, ICC-01/05-01/08-699, paras 35 and 36.

<sup>27</sup> Pre-Trial Chamber II, 30 March 2011 Decision, para. 19.

<sup>28</sup> Trial Chamber III, “*Corrigendum* to Decision on the participation of victims in trial and on 86 applications by victims to participate in the proceedings”, ICC-01/05-01/08-807-Corr, para. 94.

25. In its observations, the Defence of Mr. Kosgey also submits that a number of applications should be rejected in light of the fact that the applicants used the standard application form for reparation and submitted a declaration expressing their wish to participate in the proceedings only in December 2010 or in June 2011.<sup>29</sup> According to the Defence of Mr. Kosgey, “these applications cannot be accepted because they have not been submitted to the Court before 14 September 2010” as requested by the Single Judge in the 30 March 2011 Decision.<sup>30</sup> The same concern has been raised by the Defence of Mr. Ruto and Mr. Sang with respect to the same and additional applicants.<sup>31</sup>

26. In this regard, the Single Judge recalls the ruling in the 30 March 2011 Decision that an application for reparation would be considered as an application for participation and, accordingly, accepted for the purposes of the present decision, only if: (i) the application was submitted before 14 September 2010 (*i.e.* the date when the new standard application form, combining the application for participation and reparations, was available on the website of the Court); and (ii) the applicant submits a further declaration expressing his or her wish to participate in the proceedings.<sup>32</sup> Therefore, it was already clear that the said declaration could have been submitted *after* the date of 14 September 2010. This date itself only constituted the deadline for the submission of the application for reparation in order for it to be considered as an application for participation, insofar as subsequently complemented by the said declaration.

27. The Single Judge notes that the applications concerned were submitted to the Court before 14 September 2010 and were subsequently complemented by personal

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<sup>29</sup> ICC-01/09-01/11-107-Conf, paras 10 and 11, referring to applications a/0041/10, a/0042/10, a/0045/10, a/0051/10, a/0056/10 and a/0064/10; ICC-01/09-01/11-179-Conf, paras 11-13, referring to applications a/0153/10; a/0234/10; a/0275/10; a/0356/10; a/0578/10; a/0590/10; a/2080/10.

<sup>30</sup> ICC-01/09-01/11-107-Conf, para. 11.

<sup>31</sup> ICC-01/09-01/11-102 and ICC-01/09-01/11-177, with reference to the same applications referred to by Mr Kosgey. In its observations on the applications of the Third Transmission (ICC-01/09-01/11-227), the Defence of Mr. Ruto and Mr. Sang, additionally, refers to the following applications: a/0063/10, a/0143/10, a/0145/10, a/0237/10, a/0266/10, a/0372/10, a/0379/10, a/0574/10, a/0580/10 and a/0595/10.

<sup>32</sup> Pre-Trial Chamber II, 30 March 2011 Decision, para. 16.

declarations of the applicants requesting participation in the proceedings. Accordingly, and contrary to the assertion of the Defence, the concerned applications are to be viewed as applications for participation duly transmitted to the Chamber.

### ***3. Issues related to the credibility of the applicants***

28. The Defence of the suspects asserts that a number of applications for participation should be rejected due to reasons that cast doubts as to the credibility of the applicants.

29. More specifically, both Defence teams refer to some applications wherein the handwriting changes,<sup>33</sup> or wherein the applicants do not include English among the languages spoken, although the form has been filled out in English.<sup>34</sup> According to the Defence, this casts doubts as to the credibility of the applicants concerned and their applications shall thus be rejected.

30. The Single Judge is of the view that the concerned applications are to be rejected only in the event that the applicants do not state that they were assisted in completing the forms. To the contrary, when the applicants duly informed the Court that they were assisted in the process of filling in their applications, this information suffices for the applications concerned not to be rejected *a priori*.

31. In this respect, the Single Judge notes that no provision in the Court's legal texts requires the applications for participation to be filled in by the applicants in person. In fact, during the application process, intermediaries or other persons might assist

<sup>33</sup> ICC-01/09-01/11-107-Conf, referring to application a/8096/11; ICC-01/09-227-Comf-AnxA, referring to application a/8655/11, a/8657/11, a/8732/11, a/8737/11, a/8742/11, a/8743/11, a/8744/11, a/8745/11, a/8746/11, a/8749/11, a/8751/11, a/8919/11, a/8967/11, a/8996/11, a/9011/11, a/9012/11.

<sup>34</sup> ICC-01/09-01/11-107-Conf, paras 25-30. The Defence of Mr Kosgey refers to applications a/0064/10, a/8015/11, a/8018/11, a/8019/11, a/8022/11, a/8023/11, a/8029/11, a/8033/11, a/8053/11, a/8055/11 and a/8101/11. Mr Ruto and Mr. Sang refers to the following applications of the Third Transmission (ICC-01/09-01/11-227, para. 20): a/8269/11, a/8714/11, a/8729/11, a/8731/11, a/8733/11, a/8738/11, a/8758/11, a/8773/11, a/8776/11, a/8779/11, a/8780/11, a/8782/11, a/8784/11, a/8785/11, a/8850/11, a/8869/11, a/8900/11, a/8919/11, a/8983/11, a/8986/11, a/8994/11, a/9013/11, a/9016/11, a/9017/11, a/9018/11, a/9022/11, a/9023/11, a/9026/11, a/9027/11, a/9028/11, a/9031/11, a/9032/11, a/9033/11, a/9034/11, a/9036/11, a/9037/11, a/9049/11, a/9053/11, a/9054/11, and a/9055/11.

the applicant in filling in the forms, most commonly when the applicant is illiterate or does not speak the language in which the form is to be completed. Thus, with respect to those applicants who clarify that they were assisted in filling in the application form, the Single Judge is of the view that the fact that they do not indicate English as a spoken language does not ground *per se* the rejection of the applications. This is so, regardless of whether the applicants define the person assisting them as an “interpreter”. The same principle holds true for the change of the handwriting within one and the same application.

32. However, the Single Judge takes the view that the applications shall be rejected in case there are indications that the involvement of those assisting the applicants in filling in the forms casts doubts on whether the description of the facts therein appropriately reflects the applicants’ own accounts of the events.

33. The Single Judge also notes that the Defence of Mr. Kosgey mentions a number of findings of the Review Report of October 2010 by the Kenya National Dialogue and Reconciliation Monitoring Project to the effect that “[f]indings that witnesses have been compromised, coached or intimidated to tailor their testimony in a particular way cast doubt as to the credibility of the applicants”.<sup>35</sup> Since the Defence does not refer to concrete facts or precise information that would cast doubts as to the credibility of specific applicants, the Single Judge finds the argument put forward by Mr. Kosgey entirely speculative in nature and will therefore not take it into consideration for the purposes of the present decision.

34. Finally, the Single Judge notes that the Defence of Mr. Ruto and Mr. Sang submit that in a number of applications the language used by the applicants is very similar or, in some instances, even identical.<sup>36</sup> In this respect, the Single Judge considers that

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<sup>35</sup> ICC-01/09-01/11-107-Conf, para. 32.

<sup>36</sup> ICC-01/09-01/11-102-Conf-AnxA, referring to a/0041/10, a/0045/10, a/0051/10 and a/0056/10. ICC-01/09-01/11-227-Conf-AnxA, referring to: (i) a/8923/11 and a/8924/11; (ii) a/8936/11, a/8939/11, a/8940/11, a/8946/11, a/5647/11, a/8652/11; (iii) a/8941/11 and a/8942/11; (iv) a/9013/11, a/9015/11, a/9016/11, a/9017/11, a/9018/11, a/9019/11, a/9019/11, a/9020/11, a/9021/11, a/9022/11 and a/9023/11.

this factor does not ground *per se* the rejection of the concerned applications. Indeed, as already clarified, the assessment as to the credibility of the applicants shall be conducted in light of the specific circumstances of each application. In particular, the Single Judge is of the view that applications using a similar description of facts could still reflect the applicants' own accounts of the events, when, *inter alia*, the applicants were assisted in filling in the form by the same person or they refer to the very same specific events. Once again, it is to be clarified that the applications will be rejected, should the Single Judge consider that the applicants were forced or improperly influenced in filling in their applications.

#### ***4. Vagueness of the applications***

35. The Defence of Mr. Kosgey also contends that a number of applications are too vague to allow a determination "as to whether the elements of an offence charged set out in the charges have been met".<sup>37</sup>

36. In this regard, the Single Judge wishes to clarify that, while the applicants are requested to provide a general description of the harm suffered, it is not necessary for them to provide a detailed description of the constitutive elements of a particular offence. Conversely, it is for the Single Judge to consider whether the event(s) as described by the applicants may constitute one of the crimes charged against the suspects, as clarified below in paragraphs 48 and 49.

37. In this respect, worthy recalling are the following findings of the Appeals Chamber:

[T]he Pre-Trial Chamber is in the best position to determine the nature and the quantum of evidence it deems necessary and adequate at that stage of the proceedings to establish the elements of rule 85(a) of the Rules of Procedure and Evidence. What evidence (be it documentary or otherwise) may be sufficient cannot be determined in the abstract, but must be assessed on a case-by-case basis

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<sup>37</sup>ICC-01/09-01/11-107-Conf, para. 64. The Defence of Mr. Kosgey refers to the following applications: a/0051/10, a/0065/10, a/8015/11, a/8016/11, a/8017/11, a/8018/11, a/8024/11, a/8025/11, a/8027/11, a/8033/11, a/8043/11, a/8049/11, a/8051/11, a/8052/11, a/8067/11, a/8079/11, a/8091/11.

and taking into account all relevant circumstances, including the context in which the Court operates.<sup>38</sup>

38. In light of this general principle, the Single Judge will analyze, on a case-by-case basis, the 394 victims' applications submitted, taking into account the general circumstances of the events as described by the applicants as well as the intrinsic coherence of the applications themselves.

#### **V. The definition of victims under rule 85(a) of the Rules**

39. In order for a victim to participate in the present proceedings, it must first be determined whether the applicant qualifies as a victim of the case, within the meaning of rule 85 of the Rules. The Single Judge notes that all applications in the present case are submitted under rule 85(a) of the Rules. This provision defines victims as "natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court". The Single Judge considers that the said provision, as interpreted by the different Chambers of the Court,<sup>39</sup> mandates the recognition of an applicant as "victim" in the present case provided that: (i) his or her identity as a natural person appears duly established; (ii) the events described in the application for participation constitute the crime(s) within the jurisdiction of the

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<sup>38</sup> Appeals Chamber, "Judgement on the appeals of the Defence against the decisions entitled 'Decision on victims' applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06, a/0082/06, a/0084/06 to a/0089/06, a/0091/06 to a/0097/06, a/0099/06, a/0100/06, a/0102/06 to a/0104/06, a/0111/06, a/0113/06 to a/0117/06, a/0120/06, a/0121/06 and a/0123/06 to a/0127/06' of Pre-Trial Chamber II", ICC-02/04-01/05-371, para. 2.

<sup>39</sup> See e.g. Pre-Trial Chamber I, "Decision on the Applications for Participation in the Proceedings of VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5 and VPRS 6", ICC-01/04-101-tEN-Corr, para. 79; Pre-Trial Chamber I, "Décision sur les demandes de participation à la procédure a/0004/06 à a/0009/06, a/0016/06 à a/0063/06, a/0071/06 à a/0080/06 et a/0105/06 dans le cadre de l'affaire le Procureur c. Thomas Lubanga Dyilo", p. 8; Pre-Trial Chamber II, "Public Redacted Version of 'Decision on victims' applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06 to a/0104/06 and a/0111/06 to a/0127/06'", ICC-02/04-01/05-252, para. 12; Pre-Trial Chamber I, "Public Redacted Version of the 'Decision on the 97 Applications for Participation at the Pre-Trial Stage of the Case'", para. 65; Pre-Trial Chamber III, "Fourth Decision on Victims' Participation", ICC-01/05-01/08-320, para. 30; Pre-Trial Chamber I, "Decision on the 34 Applications for Participation at the Pre-Trial Stage of the Case", ICC-02/05-02/09-121, para. 11; Pre-Trial Chamber I, "Decision on Victims' Participation at the Hearing on the Confirmation of the Charges", ICC-02/05-03/09-89, para. 2; Trial Chamber III, "Decision on 772 applications by victims to participate in the proceedings", ICC-01/05-01/08-1017, para. 38.

Court with which the suspects are charged; and (iii) the applicant has suffered harm that appears to have arisen “as a result” of the crime(s) charged.<sup>40</sup>

40. The Single Judge will hereunder address these requirements in turn.

*1. The applicants' identity as natural persons*

41. The first requirement is that the applicant proves satisfactorily his or her identity as a natural person.

42. In this respect, the Single Judge recalls the 30 March 2011 Decision which, in light of the established jurisprudence of the Court, allows the submission of any of the following documents as proof of the applicant's identity: (i) Passport; (ii) National Identity Card; (iii) Birth Certificate; and (iv) Driver's Licence. Furthermore, as indicated, the Single Judge considers acceptable, for the purposes of satisfactorily establishing the identity of the applicant, the submission of other less reliable forms of identification, insofar as they are accompanied by a brief explanation of the reason why any of the above-mentioned documents was not available.<sup>41</sup> Within such category of substitute forms of identification, the Single Judge included, in a non-exhaustive manner, the following documents: (i) National ID Waiting Card; (ii) Chief's Identification Letter which provides certain basic information: (a) the full name, date and place of birth, and gender of the victim applicant; and (b) the name of the Chief, his or her signature and the use of an official stamp; (iii) Notification of Birth Cards (for minors); (iv) Clinic Cards (for minors); (v) Kenya Police Abstract Form (for lost national identity cards or Kenyan passports); (vi) a signed declaration from two witnesses – accompanied by their proof of identity – attesting to the identity of the victim applicant.

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<sup>40</sup> The Single Judge notes that various Chambers have interpreted this as four requirements, but considers that, in substance, their understanding of the requirements of rule 85(a) does not depart from that taken in present decision.

<sup>41</sup> Pre-Trial Chamber II, 30 March 2011 Decision, para. 9.

43. The Single Judge wishes to add that, pursuant to rule 89(3) of the Rules, an application for participation may also be made by “a person acting with the consent of the victim, or a person acting on behalf of a victim, in the case of a victim who is a child or, when necessary, a victim who is disabled”. In this case, the identity of both the victim and the person acting with his/her consent or on his/her behalf must be duly established by the documentation referred to in the previous paragraph. Furthermore, in case of an application submitted on behalf of a victim who is a child or is disabled, also the link between the victim and the person acting on his or her behalf must be satisfactorily proven through the above-mentioned documentation.

*2. The events described by the applicants appear to constitute at least one of the crimes with which the suspects are charged*

44. The second requirement pursuant to rule 85(a) of the Rules is that the incidents described by the applicants appear to constitute “[a] crime within the jurisdiction of the Court”.

45. The Single Judge recalls that, for a crime to fall within the jurisdiction of the Court, it must be one of those referred to in article 5(1)(a) to (c) of the Statute and defined in articles 6, 7 and 8 of the Statute (jurisdiction *ratione materiae*) and must have been committed within the timeframe specified in article 11 of the Statute (jurisdiction *ratione temporis*). In addition, the crime must meet one of the two alternative conditions embodied in article 12 of the Statute, namely it must be committed either (i) on the territory of a State Party to the Statute or a State which has made a declaration provided for in article 12(3) of the Statute (jurisdiction *ratione loci*) or (ii) by a national of a State Party or a State which has made the said declaration (jurisdiction *ratione personae*).

46. However, not any incident purportedly qualifying as a crime within the jurisdiction of the Court fulfils *per se* the said criterion of rule 85(a) of the Rules. In particular, it is necessary that a link between the incident(s) described by the applicant and the case brought by the Prosecutor against the suspects be established.<sup>42</sup> At this stage of the proceedings, the scope of the case is delineated by the facts contained in the charges as presented by the Prosecutor in the DCC. The Single Judge is thus called upon to ascertain whether the incident(s) described by the applicants fall(s) within the factual scope of the case to be examined by the Chamber at the confirmation of charges hearing.

47. The Single Judge notes that the three suspects are charged by the Prosecutor as follows:

**Count 1 (RUTO and KOSGEY)**  
**Murder constituting a crime against humanity**  
(Article 7(1)(a) and Article 25(3)(a) of the Rome Statute)

From on or about 30 December 2007 to the end of January 2008, WILLIAM SAMOEI RUTO and HENRY KIPRONO KOSGEY committed or contributed to the commission of crimes against humanity in the form of murder in locations including Turbo town, the greater Eldoret area (Huruma, Kiambaa, Kimumu, Langas, and Yamumbi), Kapsabet town, and Nandi Hills town in the Uasin Gishu and Nandi Districts, Republic of Kenya, in violation of Articles 7(1)(a) and 25(3)(a) of the Rome Statute.

**Count 2 (SANG)**  
**Murder constituting a crime against humanity**  
(Article 7(1)(a) and Article 25(3)(d) of the Rome Statute)

From on or about 30 December 2007 to the end of January 2008, JOSHUA ARAP SANG, as part of a group of persons, including WILLIAM RUTO and HENRY KOSGEY, acting with a common purpose, committed or contributed to the commission of crimes against humanity in the form of murder in locations including Turbo town, the greater Eldoret area (Huruma, Kiambaa, Kimumu, Langas, and Yamumbi), Kapsabet town, and Nandi Hills town in the Uasin Gishu and Nandi Districts, Republic of Kenya, in violation of Articles 7(1)(a) and 25(3) (d) of the Rome Statute.

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<sup>42</sup> See e.g. Appeals Chamber, "Judgment on the appeals of the Prosecutor and The Defence against Trial Chamber I's Decision on Victims' Participation of 18 January 2008", ICC-01/04-01/06-1432, para. 58; Pre-Trial Chamber III, "Fourth Decision on Victims' Participation" ICC-01/05-01/08-320, paras 61-63; Pre-Trial Chamber I, Pre-Trial Chamber I, "Decision on victims' modalities of participation at the Pre-Trial Stage of the Case", ICC-02/05-02/09-121, para 12; Pre-Trial Chamber I, "Decision on Victims' Participation at the Hearing on the Confirmation of the Charges", ICC-02/05-03/09-89, para. 4

**Count 3 (RUTO and KOSGEY)**  
**Deportation or forcible transfer of population**  
**constituting a crime against humanity**  
(Article 7(1)(d) and Article 25(3)(a) of the Rome Statute)

From on or about 30 December 2007 to the end of January 2008, WILLIAM SAMOEI RUTO and HENRY KIPRONO KOSGEY as co-perpetrators, committed or contributed to the commission of crimes against humanity in the form of deportation or forcible transfer of population in locations including Turbo town, the greater Eldoret area (Huruma, Kiambaa, Kimumu, Langas, and Yamumbi), Kapsabet town and Nandi Hills town in the Uasin Gishu and Nandi Districts, Republic of Kenya in violation of Articles 7(1)(d) and 25(3)(a) of the Rome Statute.

**Count 4 (SANG)**  
**Deportation or forcible transfer of population**  
**constituting a crime against humanity**  
(Article 7(1)(d) and Article 25(3)(d) of the Rome Statute)

From on or about 30 December 2007 to the end of January 2008, JOSHUA ARAP SANG as part of a group of persons, including WILLIAM RUTO and HENRY KOSGEY, acting with a common purpose, committed or contributed to the commission of crimes against humanity in the form of deportation or forcible transfer of population in locations including Turbo town, the greater Eldoret area (Huruma, Kiambaa, Kimumu, Langas, and Yamumbi), Kapsabet town and Nandi Hills town in the Uasin Gishu and Nandi Districts, Republic of Kenya in violation of Articles 7(1)(d) and 25(3)(d) of the Rome Statute.

**Count 5 (RUTO AND KOSGEY)**  
**Persecution as a crime against humanity**  
(Article 7(1)(h) and Article 25(3)(a) of the Rome Statute)

From 30 December 2007 to the end of January 2008, WILLIAM SAMOEI RUTO, and HENRY KIPRONO KOSGEY as co-perpetrators, committed or contributed to the commission of crimes against humanity in the form of persecution, when co-perpetrators and/or persons belonging to their group intentionally and in a discriminatory manner targeted civilians based on their political affiliation, committing murder, torture, and deportation or forcible transfer of population, in locations including Turbo town, the greater Eldoret area (Huruma, Kiambaa, Kimumu, Langas, and Yamumbi), Kapsabet town and Nandi Hills town in the Uasin Gishu and Nandi Districts, Republic of Kenya, in violation of Articles 7(1)(h) and 25(3)(a) of the Rome Statute.

**Count 6 (SANG)**  
**Persecution as a crime against humanity**

## (Article 7(1)(h) and Article 25(3)(d) of the Rome Statute)

From on or about 30 December 2007 to the end of January 2008, JOSHUA ARAP SANG, as part of a group of persons, including WILLIAM RUTO and HENRY KOSGEY, acting with a common purpose, committed or contributed to the commission of crimes against humanity in the form of persecution, when coperpetrators and/or persons belonging to their group intentionally and in a discriminatory manner targeted civilians based on their political affiliation, committing murder, torture, and deportation or forcible transfer of population, in locations including Turbo town, the greater Eldoret area (Huruma, Kiambaa, Kimumu, Langas, and Yamumbi), Kapsabet town and Nandi Hills town in the Uasin Gishu and Nandi Districts, Republic of Kenya, in violation of Articles 7(1)(h) and 25(3)(d) of the Rome Statute.

48. As indicated below,<sup>43</sup> a number of victims' applications for participation shall be rejected since the events described therein fail to meet one or more of the parameters shaping the present case. In particular, the Single Judge recalls that the suspects are charged with crimes allegedly committed from on or about 30 December 2007 and January 2008. Accordingly, when the applicants refer solely to incidents allegedly occurred before and/or after these dates, the applications shall be rejected, since the events described fall outside the scope of the case before the Chamber. The same holds true for events that allegedly took place in locations other than those referred to by the Prosecutor in the charges brought against the suspects.

49. Finally, the Single Judge recalls that only the events that appear to constitute the crimes of murder, deportation or forcible transfer and persecution (allegedly committed through acts of murder, torture, deportation or forcible transfer of population), as charged, fulfil the relevant criteria for the purposes of rule 85(a) of the Rules. However, as stated above, the applicants are not required to provide a detailed legal description of the constitutive elements of a particular offence. In fact, the legal characterization of the facts included in the charges remains to be determined ultimately by the Chamber under article 61(7) of the Statute.

***3. The applicant has suffered harm as a result of the alleged commission of the crime***

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<sup>43</sup> See *infra* Section VI.

50. The third element to be considered is the “harm” that the applicants claim to have suffered. The Single Judge notes and endorses the established jurisprudence of the Court, according to which the “harm” within the meaning of rule 85(a) of the Rules includes physical injury, emotional suffering and economic loss.<sup>44</sup>

51. However, it is not sufficient that the harm claimed by the applicants falls within one of the categories specified above. Within the meaning of rule 85(a) of the Rules the harm must also: (i) ensue from the crime(s) with which the suspects are charged; and (ii) be personal, *i.e.* it must have been personally suffered by the applicant.

52. The Single Judge holds that the standard of causation between the crime and the harm relevant for the purposes of the present decision cannot be established with precision *in abstracto*. Conversely, this shall be assessed on a case-by-case basis in light of all the circumstances of the events as described in the applications.

53. Further, as indicated, the second element that qualifies the harm within the meaning of rule 85(a) of the Rules is that it be *personally* suffered by the applicants. In this respect, the Single Judge recalls and endorses the findings of other Chambers of the Court, including that of the Appeals Chamber to the effect that “the notion of victim necessarily implies the existence of personal harm”.<sup>45</sup>

54. Finally, with respect to the definition of harm, the Single Judge considers that the relevant harm within the meaning of rule 85(a) of the Rules could also be indirect

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<sup>44</sup> Appeals Chamber, “Judgment on the appeals of the Prosecutor and The Defence against Trial Chamber I’s Decision on Victims’ Participation of 18 January 2008”, ICC-01/04-01/06-1432, para. 32. See also Pre-Trial Chamber I, “Decision on Victims’ Applications for Participation in the Proceedings”, ICC-01/04-101-tEN-Corr; Pre-Trial Chamber II, “Decision on Victims’ Applications for Participation”, ICC-02/04-01/05-252; Pre-Trial Chamber I, “Decision on the Applications for Participation in the Proceedings”, ICC-02/05-111; Pre-Trial Chamber III, “Fourth Decision on Victims’ Participation” ICC-01/05-01/08-320; Trial Chamber I, “Decision on Victims’ Participation”, ICC-01/04-01/06-1119; Pre-Trial Chamber I, “Decision on the 34 Applications for Participation at the Pre-Trial Stage of the Case”, ICC-02/05-02/09-121.

<sup>45</sup> Appeals Chamber, Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I’s Decision on Victims’ Participation of 18 January 2008, 11 July 2008, ICC-01/04-01/06-1432, para. 38. See also Pre-Trial Chamber III, “Fourth Decision on Victims’ Participation” ICC-01/05-01/08-320, para. 71.

under certain conditions. Indeed, as held by the Appeals Chamber, “[h]arm suffered by one victim as a result of the commission of a crime within the jurisdiction of the Court can give rise to harm suffered by other victims”.<sup>46</sup> In particular, the Single Judge takes the view that applicants may be admitted to participate in the present proceedings also in case they suffered harm: (i) as a result of the harm suffered by the direct victim; or (ii) whilst intervening to help direct victims of the case or to prevent the latter from becoming victims because of the commission of these crimes.<sup>47</sup>

55. With respect to indirect victims as described in the preceding paragraph, *sub* (i), the Single Judge wishes to clarify that emotional harm may be claimed by an immediate family member of the direct victim, only insofar as the relationship between them has been sufficiently established. This could be, for example, the case where the applicant claims to have suffered emotional harm as a result of the death of a family member, which in turn occurred as a result of the crimes with which the suspects are charged. It is therefore required that a proof of the identity of the direct victim as well as a proof of the link between the applicant and the direct victim be provided in accordance with paragraph 42 above in order for the present requirement to be met.<sup>48</sup>

## **VI. Conclusion on the assessment of the applications**

<sup>46</sup> Appeals Chamber, “Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I’s Decision on Victims’ Participation of 18 January 2008”, ICC-01/04-01/06-1432, para. 32.

<sup>47</sup> Pre-Trial Chamber I, “Decision on the Applications for Participation in the Proceedings Submitted by VPRS 1 to VPRS 6 in the Case the Prosecutor v. Thomas Lubanga Dyilo”, ICC-01/04-01/06-172-t-EN, pp. 7-8; Pre-Trial Chamber I, “Public Redacted Version of the ‘Decision on the 97 Applications for Participation at the Pre-Trial Stage of the Case’”, ICC-01/04-01/07-579, para 66; Trial Chamber I, Redacted Version of “Decision on indirect victims”, ICC-01/04-01/06-1813, para. 51; Pre-Trial Chamber I, “Decision on the 34 Applications for Participation at the Pre-Trial Stage of the Case”, ICC-02/05-02/09-121, para. 13.

<sup>48</sup> See Appeals Chamber, “Judgment on the appeals of the Defence Judgment on the appeals of the Defence against the decisions entitled ‘Decision on victims’ applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06, a/0082/06, a/0084/06 to a/0089/06, a/0091/06 to a/0097/06, a/0099/06, a/0100/06, a/0102/06 to a/0104/06, a/0111/06, a/0113/06 to a/0117/06, a/0120/06, a/0121/06 and a/0123/06 to a/0127/06’ of Pre-Trial Chamber II”, ICC-02/04-01/05-371, para. 1 (“[W]hen a Pre-Trial Chamber is considering whether an applicant fulfils the criteria of rule 85 (a) of the Rules of Procedure and Evidence because he or she suffered emotional harm as the result of the loss of a family member, it must require proof of the identity of the family member and his or her relationship with the applicant”).

56. The Single Judge has reviewed all victims' applications for participation transmitted in the present case, in light of the requirements recalled in the paragraphs above. As already clarified, an individual assessment of each application is contained in the confidential annex attached to the present decision. Nevertheless, for the sake of clarity and with a view to ensuring the principle of publicity of the proceedings, the Single Judge will hereunder identify the applications for participation hereby rejected grouping them into different categories on the basis of common features. It is however to be recalled that, pursuant to rule 89(2) of the Rules, "[a] victim whose application has been rejected may file a new application later in the proceedings".

57. At first, a number of applications shall be rejected as incomplete since they do not provide the required information. In this respect, the Single Judge recalls that, according to the 30 March 2011 Decision and as held by other Chambers of the Court,<sup>49</sup> the following information, supported by documentation, if applicable, must be covered by the applications submitted:

- (i) the identity of the applicant;
- (ii) the date of the crime(s);
- (iii) the location of the crime(s);
- (iv) a description of the harm suffered as a result of the commission of [one of the crimes with which the suspects are charged];
- (v) proof of identity;

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<sup>49</sup> For example, Pre-Trial Chamber I, "Decision on the Requests of the Legal Representative of Applicants on application process for victims' participation and legal representation", ICC-01/04-374, para. 12; Pre-Trial Chamber I, "Public Redacted Version of the 'Decision on the 97 Applications for Participation at the Pre-Trial Stage of the Case'", ICC-01/04-01/07-579, para. 44; Pre-Trial Chamber III, "Fourth Decision on Victims' Participation", ICC-01/05-01/08-320, para. 81; Pre-Trial Chamber I, "Decision on the 34 Applications for Participation at the Pre-Trial Stage of the Case", ICC-02/05-02/09-121, para. 7; Trial Chamber II, "Decision on the treatment of applications for participation", ICC-01/04-01/07-933-tENG, para. 28; Trial Chamber III, "Decision defining the status of 54 victims who participated at the pre-trial stage, and inviting the parties' observations on applications for participation by 86 applicants", ICC-01/05-01/08-699, paras 35 and 36.

(vi) if the application is made by a person acting with the consent of the victim, the express consent of that victim;

(vii) if the application is made by a person acting on behalf of a victim, in the case of a victim who is a child, proof of kinship or legal guardianship; or, in the case of a victim who is disabled, proof of legal guardianship;

(viii) a signature or thumb-print of the Applicant on the document, at the very least, on the last page of the application.<sup>50</sup>

58. Furthermore, the Single Judge considers that victims' applications must also contain, as a *minimum*, sufficient information to satisfactorily establish, to the extent clarified above, the requirements of rule 85(a) of the Rules.

59. Accordingly, and without prejudice to the specificities of each individual application as addressed in the confidential annex hereto, the Single Judge considers that a number of applications shall be rejected, in their entirety or in part, mainly for one or more of the following reasons:

(i) the applications fail to provide the required information recalled in paragraph 57 and are, therefore, incomplete;<sup>51</sup>

(ii) the applicants – whether applying on their own behalf or not – do not submit an adequate proof of identity in accordance with the requirements laid out in the 30 March 2011 Decision and recalled in paragraph 41 above;<sup>52</sup>

(iii) the applicants claim to have suffered harm as a result of the death of a family member without adequately proving either the existence of the direct victim or the link between the two or both as required in light of paragraph 55 above;<sup>53</sup>

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<sup>50</sup> Pre-Trial Chamber II, 30 March 2011 Decision, para. 19.

<sup>51</sup> Applications a/8329/11; a/0580/10; a/8845/11; a/9000/11; and a/9049/11.

<sup>52</sup> Applications a/8069/11 and a/8742/11.

<sup>53</sup> Applications: a/0045/10; a/8043/11; a/8045/11; a/8094/11; a/2080/10; a/8327/11; a/8332/11; a/8336/11; a/8337/11; a/8338/11; a/8345/11; a/8346/11; a/8349/11; a/8352/11; a/8354/11; a/8356/11; a/8361/11; a/8362/11; a/8365/11; a/8369/11; a/8370/11; a/8372/11; a/8374/11; a/8376/11; a/8379/11; a/8384/11; a/8387/11; a/8388/11; a/8391/11; a/8396/11; a/8397/11; a/8398/11; a/8399/11; a/8401/1; a/8402/11; a/8404/11; a/8409/11; a/8413/11; a/8415/11; a/8417/11; a/8420/11; a/8423/11; a/8425/11; a/8426/11;

(iv) the lack of intrinsic coherence within the applications themselves casts doubts on the credibility of the applicants, like in the instances referred to in paragraphs 29 to 32 above;<sup>54</sup>

(v) the events described in the applications fail to meet one or more of the parameters shaping the present case, as specified in paragraphs 46 to 49 above.<sup>55</sup>

60. On the other hand, the Single Judge, as outlined in greater detail in the confidential annex, is satisfied that 327 applicants fulfil all of the criteria set out in rule 85(a) of the Rules and, accordingly, should be recognized as victims of the crimes with which the suspects are charged. They are thus admitted to participate at the confirmation hearing and in the proceedings related thereto.

## **VII. Participation of victims at the confirmation of charges hearing and in the related proceedings**

61. After having conducted her determination as to the applicants to be admitted to participate in the present proceedings, the Single Judge will in this section specify the procedural rights to be granted to victims acknowledged hereby as participants.

62. The Single Judge recalls that pursuant to article 68(3) of the Statute the Chamber has the authority to decide that victims' "views and concerns" be presented by their legal representatives. Furthermore, rule 91 of the Rules addresses victims' participation in the proceedings *through* their legal representatives. Before enumerating the different participatory rights that in light of the applicable law

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a/8428/11; a/8432/11; a/8440/11; a/8443/11; a/0063/10; a/8224/11; a/8260/11; a/8648/11; a/8658/11; a/8732/11; a/8736/11; a/8737/11; a/8741/11; a/8743/11; a/8746/11; a/8747/11; a/8749/11; a/8770/11; a/8774/11; a/8835/11; and a/8869/11.

<sup>54</sup> Applications: a/0042/10; a/0064/10; a/8015/11; a/8018/11; a/8019/11; a/8022/11; a/8029/11; a/8033/11; a/8053/11; a/8055/11; a/8101/11; a/8348/11; a/2085/10; a/8714/11; a/8856/11; and a/8939/11.

<sup>55</sup> Applications: a/0772/10; a/8046/11; a/2080/10; a/8328/11; a/8345/11; a/8366/11; a/8373/11; a/8375/11; a/8383/11; a/8387/11; a/8405/11; a/8415/11; a/8416/11; a/0145/10; a/0595/10; a/8260/11; a/8733/11; a/8735/11; a/8736/11; a/8737/11; a/8739/11; a/8741/11; a/8827/11; a/8837/11; a/8841/11; a/8849/11; a/8850/11; a/8857/11; a/8867/11; a/8896/11; a/8919/11; a/8925/11; a/8938/11; a/8950/11; a/8954/11; a/8964/11; a/8985/11; a/8996/11; a/9003/11; a/9007/11; a/9009/11; and a/9011/11.

victims can exercise through their legal representative(s), the Single Judge will thus address the matter of their common legal representation.

#### A. Common Legal Representation of Victims

63. At the outset, the Single Judge recalls once again that the present decision addresses the issues relating to victims' participation at the confirmation of charges hearing and in the related proceedings. Therefore, in this section, the Single Judge will exclusively address the matter of common legal representation of those victims that are hereby admitted to participate in such proceedings.

64. At first, the Single Judge notes the relevant portions of rule 90 of the Rules, according to which:

2. Where there are a number of victims, the Chamber may, for the purposes of ensuring the effectiveness of the proceedings, request the victims or particular groups of victims, if necessary with the assistance of the Registry, to choose a common legal representative or representatives. In facilitating the coordination of victim representation, the Registry may provide assistance, *inter alia*, by referring the victims to a list of counsel, maintained by the Registry, or suggesting one or more common legal representatives.

3. If the victims are unable to choose a common legal representative or representatives within a time limit that the Chamber may decide, the Chamber may request the Registrar to choose one or more common legal representatives.

4. The Chamber and the Registry shall take all reasonable steps to ensure that in the selection of common legal representatives, the distinct interests of the victims, particularly as provided in article 68, paragraph 1, are represented and that any conflict of interest is avoided.

65. The Single Judge, heedful of the number of victims admitted as participants in the present proceedings and with the view to ensuring meaningful victims' participation as well as fairness and expeditiousness of the proceedings, is of the opinion that common legal representation should be provided for the victims hereby admitted as participants and that all of them should be represented by a single common legal representative. In this respect, the Single Judge takes due consideration of the conclusion of the Registrar to the effect that in the present case no "distinct interests

of the victims” have arisen and that no conflict of interest has been reported to date.<sup>56</sup> Accordingly, there are no reasons for dividing the victims into different groups and appointing more than one common legal representative.

66. The Single Judge recalls that, in the 30 March 2011 Decision, she already instructed the VPRS “to take appropriate steps with a view to organizing common legal representation for the purposes of the confirmation of charges hearing, in accordance with rule 16(1)(b) and 90(2) of the Rules”.<sup>57</sup> Accordingly, the Registrar submitted to the Chamber the Proposal on Common Legal Representation, on which the Single Judge will now resort to address the matter under consideration.<sup>58</sup>

67. The Single Judge notes that in the present case all victims admitted to participate at the confirmation of charges hearing and in the proceedings related thereto have already either appointed a legal representative in their applications for participation or, in the absence of any such appointment, have been assisted so far by the Office of Public Counsel for Victims (OPCV) pursuant to the 30 March 2011 Decision. The Single Judge endorses the view of the Registrar that, although “it is usually preferable to have continuity of legal representation”,<sup>59</sup> “prior representation of applicants in a case is not *of itself* a determinative factor in choosing a common legal representative”.<sup>60</sup> Accordingly, the continuity of legal representation of victims is to be considered only as one of the criteria that are of relevance for the purposes of selecting a common legal representative of victims. This entails that other counsel may be eligible to be appointed as common legal representatives, regardless of their previous involvement in the present case.<sup>61</sup>

68. In this respect, the Single Judge has thoroughly considered all the criteria identified by the Registry for the selection of suitable candidates to recommend to be

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<sup>56</sup> ICC-01/09-01/11-243, paras 11 and 12 and ICC-01/09-01/11-243-Anx2, paras 10-12.

<sup>57</sup> Pre-Trial Chamber II, 30 March 2011 Decision, para. 24.

<sup>58</sup> ICC-01/09-01/11-243.

<sup>59</sup> ICC-01/09-01/11-243-Anx3, para. 3; ICC-01/09-01/11-243-Anx1, para. 11.

<sup>60</sup> ICC-01/09-01/11-243, para. 23.

<sup>61</sup> ICC-01/09-01/11-243-Anx3, para. 3.

appointed by the Chamber as common legal representative. These criteria, which have to be adjusted to the particularities of a given case, go beyond the minimum requirements for counsel set out in the Court's legal texts and are based on the Court's jurisprudence and on the experience of the Registry to date.<sup>62</sup>

69. First, the candidate "should demonstrate an established relationship of trust with the victims or the ability to establish such a relationship".<sup>63</sup> In considering this criterion, the Registry has taken into account whether a candidate: (i) already represents the victims in the case or in the situation at stake; (ii) has an engagement with victims in other *fora*; (iii) is known to the victims as a human rights advocate or a community leader; (iv) shares cultural, ethnic, linguistic heritage with all victims, or part of them; and (v) will enable victims to speak frankly about the crimes experienced.<sup>64</sup>

70. Second, the candidates "should demonstrate an ability and willingness to take a victim-centred approach to their work".<sup>65</sup> According to this criterion, preference may be given to candidates who have experience in working with victims or vulnerable groups.<sup>66</sup>

71. The third criterion identified by the Registry is the familiarity of the candidate with the country where the crimes in connection to which the victims are admitted to participate in the proceedings have been allegedly committed.<sup>67</sup> Such familiarity may originate from the fact that the candidate is from that country, or it may be the result of professional or personal experience that the candidate could have gained.<sup>68</sup>

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<sup>62</sup> ICC-01/09-01/11-243, para. 16.

<sup>63</sup> ICC-01/09-01/11-243-Anx3, para. 2.

<sup>64</sup> *Ibid.*, paras 2 and 4.

<sup>65</sup> *Ibid.*, para. 6.

<sup>66</sup> *Ibid.*

<sup>67</sup> *Ibid.*, para. 7.

<sup>68</sup> *Ibid.*

72. Fourth, the candidate should have relevant expertise and experience, demonstrated by: (i) previous experience in criminal trials, at the national or international level, either before the Court or before other international tribunals; (ii) experience representing large groups of victims; and (iii) specialized study in relevant academic fields.<sup>69</sup>

73. Fifth, the candidate needs to be ready to commit a significant time: (i) to maintain contact with a large number of clients; (ii) to follow developments in Court's proceedings; (iii) to take any appropriate steps in the proceedings; and (iv) to maintain adequate contact with the Court.<sup>70</sup>

74. Lastly, the candidate must demonstrate a minimum level of knowledge in information technology.<sup>71</sup>

75. The Single Judge endorses such criteria as identified by the Registrar, as well as the conclusions of the Registrar that, in light of the said criteria, "the benefits of continuity of representation are minimal in respect of the existing private legal representatives in the present case",<sup>72</sup> since the Registrar is not convinced either (i) that "the current legal representatives have established meaningful relationships of trust with significant number of their clients" or (ii) that "counsel's representation to date in this case indicates a particular familiarity with ICC proceedings". Hence, the Registrar is of the view that "the involvement to date of victims' current counsel has not provided them with any material advantage over other candidates in terms of the selection criteria".<sup>73</sup>

76. The Single Judge recalls that, on the basis of the said criteria and in light of the Single Judge's order to properly organize the common legal representation of

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<sup>69</sup> *Ibid.*, para. 8. See also Trial Chamber III, "Decision on common legal representation of victims for the purpose of trial", ICC-01/05-01/08-1005, para. 12.

<sup>70</sup> ICC-01/09-01/11-243-Anx3, para. 10.

<sup>71</sup> *Ibid.*, para. 12.

<sup>72</sup> ICC-01/09-01/11-243, para. 22

<sup>73</sup> *Ibid.*, paras 22 and 23.

victims, the Registrar conducted an appropriate selection process in several steps, comprising of: (i) a request for expression of interest sent to the lawyers on the Registry's list of counsel; (ii) an initial review of the candidates who provided the information requested; (iii) an evaluation of written answers to questions on the proposed approach towards legal representation of victims; and (iv) a telephone interview. Upon the said selection process, the Registrar proposes Ms. Sureta Chana for the position of common legal representative in the present case, whose expression of interest and *curriculum vitae* are attached to the Proposal on Common Legal Representation as Annex 5.<sup>74</sup>

77. Taking into account the criteria identified by the Registrar and the proposal to discontinue the current legal representation of victims and upon evaluation of the personal information and professional skills of the proposed candidate, the Single Judge hereby decides to appoint Ms. Sureta Chana as common legal representative of all the victims admitted to participate by the present decision.

78. The Single Judge concurs with other Chambers of the Court with respect to the necessity that an appropriate legal and administrative support be provided to the common legal representative in order to perform her duties in an efficient and expeditious manner.<sup>75</sup> In this respect, the Single Judge adopts such approach as also reiterated by the Registrar in her Proposal on Common Legal Representation, according to which a support structure to be proposed by the Registrar would allow the common legal representative to:

- a. Keep his or her clients informed about the progress of the proceedings and any relevant legal or factual issues that may concern them, in accordance with article 15 of the Code of Conduct for Counsel. The support structure should also allow the common legal representative to respond to a reasonable number of specific legal inquiries from individual victims.

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<sup>74</sup> *Ibid.*, para. 29.

<sup>75</sup> Trial Chamber III, "Decision on common legal representation of victims for the purpose of trial", ICC-01/05-01/08-1005, para. 25; Trial Chamber II, "Order on the organisation of common legal representation of victims", ICC-01/04-01/07-1328, para. 17

- b. Receive general guidelines or instructions from his or her clients as a group and particular requests from individual victims.
- c. Maintain up to date files of all participating victims and their whereabouts.
- d. Obtain qualified legal support on a need basis.
- e. Store and process any confidential filings or other information, including the identity of his or her clients, in a safe and secure manner.
- f. Communicate with victims in a language they understand.<sup>76</sup>

79. The Single Judge notes that, according to the Registrar, the common legal representative will presumably rely on the Court's legal aid scheme under rule 90(5) of the Rules, and, therefore, that the size and nature of the legal team to support the common legal representative "will largely depend on the resources made available for that purpose by the Registry".<sup>77</sup> In light of the peculiarities of the case – including the number of victims admitted to participate, the geographical and linguistic difficulties in establishing contact with the victims and the legal and factual complexity of the present case – the Registrar proposes, for the pre-trial proceedings, to finance "to a reasonable level" the assistance of: (i) a legal assistant; (ii) a qualified case manager; and (iii) two field assistants.<sup>78</sup>

80. The Single Judge, mindful that the effectiveness of common legal representation depends, *inter alia*, on the assistance, in terms of financial and human resources, provided to the common legal representative, considers the Registry's proposal appropriate and thus endorses it.

81. Turning to the matter of the transitional phase from the previous representation to the newly appointed common legal representation, the Single Judge recalls that, pursuant to articles 15(2) and 18(5) of the Code of Professional Conduct for counsel, all counsel previously representing the victims admitted to participate by the present decision shall convey to the common legal representative "any communication that counsel received relating to the representation" as well as "the entire case file, including any material or document relating to it". In this respect, the Single Judge is of the view that the Registrar shall supervise the said transitional phase, including by

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<sup>76</sup> ICC-01/09-01/11-243, para. 32.

<sup>77</sup> *Ibid.*, para. 31.

<sup>78</sup> *Ibid.*, para. 34.

way of holding meetings with the victims in order to explain the reasons and the process of appointment of the common legal representative.

82. Finally, the Single Judge wishes to recall that the OPCV is under an obligation, pursuant to regulation 81(4) of the Regulations, "to provide assistance to the legal representative for victims".

### **B. Victims' Participatory Rights**

83. As clarified above, victims may participate in the present proceedings and exercise a number of rights through their common legal representative.

84. The Single Judge recalls that according to article 68(3) of the Statute, where their personal interests are affected, victims may present their views and concerns at "stages of the proceedings determined to be appropriate by the Chamber and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial". The Single Judge, therefore, notes that the provision of article 68(3) of the Statute constitutes the general legal basis for victims to be granted the right to express their "views and concerns" upon an application justifying the existence of the conditions envisaged in the said provision. In particular, in order for the Chamber to grant them rights under the said legal basis, victims must justify that their personal interests are affected by the specific issue(s) under consideration. An assessment thereof cannot thus be conducted in *abstracto*, but, conversely, shall be performed on a case-by-case basis, upon specific and motivated request submitted by the legal representative of victims. Furthermore, the language of article 68(3) of the Statute gives the Chamber discretion in the determination of the manner of victims' participation in the proceedings, which shall be established ensuring that no prejudice to the rights of the suspects and to a fair and impartial trial be caused.

85. The Single Judge notes that, alongside article 68(3) of the Statute, a number of other provisions of the applicable law *expressis verbis* confer upon victims certain

rights that they could exercise *ex lege*, through their legal representative, at the confirmation of charges hearing and in the related proceedings. The Single Judge will hereunder enumerate these procedural rights. This is however without prejudice to any other right that the Chamber could grant the victims in the course of the proceedings either *proprio motu* or upon specific and motivated request submitted by the legal representative, as clarified in the preceding paragraph.

### ***1. Attendance and participation at the confirmation of charges hearing***

86. The Single Judge recalls that, according to rule 91(2) of the Rules, the legal representative of victims shall be entitled to attend and participate in the proceedings. With respect to the attendance at the hearings in the present case, the Single Judge considers that the victims' legal representative has the right to attend all public sessions of the confirmation of charges hearing as well as all public hearings convened in the related proceedings. In the event that the Chamber decides to hold parts of the confirmation hearing *in camera* or *ex parte*, it retains the option to decide, on a case-by-case basis, whether to authorise, upon motivated request, the victims' legal representative to attend those sessions. The same applies to any other *ex parte* or *in camera* hearing convened in the present case.

87. Turning to the matter of participation at the hearings, the Single Judge notes that the provision of rule 91(2) of the Rules specifies that the rights of the legal representatives of victims "shall include participation in hearings, unless, in the circumstances of the case, the Chamber is of the view that the representatives' intervention should be confined to written observations or submissions".

88. In the present case, the Single Judge considers that victims' legal representative may, upon motivated request specifying why and how the victims' personal interests are affected by the issues concerned, be authorized to make oral submissions during the confirmation of charges hearing, subject to any direction of the Chamber. In its determination, the Chamber will, *inter alia*, take due account of the stage of the

proceedings, the nature of the issue(s) concerned, the rights of the suspects and the principle of fairness and expeditiousness of the proceedings.

89. Finally, the Single Judge recalls the provision of rule 89(1) according to which participation in the proceedings may include making opening and closing statements. Consequently, the Single Judge considers that the victims' legal representative shall be entitled to make a brief opening statement at the confirmation of charges hearing as well as a brief closing statement at the end of the hearing. The said rights shall be exercised in accordance with the schedule of the confirmation of charges hearing which will be issued in due course.

## ***2. Access to the public record of the case***

90. Pursuant to rule 121(10) of the Rules, victims or their legal representatives may consult the record of all proceedings before the Pre-Trial Chamber, created and maintained by the Registry in accordance with the said provision. However, the same provision clarifies that such right is "subject to any restrictions concerning confidentiality and the protection of national security information."

91. The Single Judge thus considers that the legal representative of the victims authorised to participate pursuant to the present decision has the right, during the confirmation hearing and in the related proceedings, to have access to all public filings and public decisions contained in the record of the case. The right of access to the public record of the case extends to the public evidence filed by the Prosecutor and the Defence and contained in the record of the case, in the same format (*i.e.* unredacted versions, redacted versions or summaries, as well as electronic versions with the *metadata* required by the e-Court Protocol) in which it has been made available to the party which has not proposed it.

92. In relation to those decisions, filings or evidence that are classified as "confidential", the Chamber retains the option to decide on a case-by-case basis,

either *proprio motu* or upon receipt of a specific and motivated request, whether to grant victims' legal representative access thereto.

93. Finally, in light of the presence of the victims' legal representative in the courtroom, the Single Judge is of the view that she should also have access to the transcripts of: (i) the public sessions of the confirmation of charges hearing; (ii) the sessions of the confirmation of charges hearing held *in camera* or *ex parte* which the legal representative was authorised by the Chamber to attend; (iii) the other public hearings and status conferences held in the present case; and (iii) any other *in camera* or *ex parte* hearings which the legal representative will attend pursuant to the Chamber's authorisation. The Chamber reserves its right to decide on a case-by-case basis, on its own motion or upon receipt of a specific and motivated request, whether to grant the victims' legal representative access to the transcripts of non-public sessions of the confirmation of charges hearing or of non-public hearings and status conferences that the legal representative will not have been authorised to attend as well as to the transcripts of non-public hearings or status conferences held before the issuance of the present decision.

94. Despite the absence of any such request at this moment of time, the Single Judge is of the view that, in order for the legal representative of victims to duly perform her duties as well as to meaningfully exercise her rights as established in the present decision, the victims' legal representative shall be granted *proprio motu* access to the redacted and unredacted versions of the applications for participation submitted by the victims hereby admitted to participate at the confirmation of charges hearing and in the related proceedings. The Registry is thus instructed accordingly.

### ***3. Notification of filings and decisions***

95. According to rule 92(5) and (6) of the Rules, the victims' legal representative shall be notified by the Registrar of all decisions and filings filed during the proceedings in which they are admitted to participate. In light of this provision and mindful of the

restriction to the access to confidential information as set forth in rule 121(10), the Single Judge holds that the legal representative of victims is entitled to be notified, on the same basis as the Prosecutor and the Defence, of: (i) all requests, submissions, motions, responses and other “documents” within the meaning of regulation 22 of the Regulations which are filed as “public” in the record of the case; (ii) all the public decisions of the Chamber in the present proceedings; and (iii) of the confirmation of charges hearing and any postponement thereof, as well as the date of delivery of the decision in accordance with rule 92(5) of the Rules.

96. The Chamber, however, considers that if a party or a participant in the present proceedings wishes to notify a document classified as “confidential” to the victims’ legal representative, it may do so by including in the said document the name of the legal representative to be notified thereof. The Registry shall then notify the legal representative accordingly.

97. The Single Judge considers that, despite the classification as “confidential” of the annex attached to the present decision, the notification thereof to the common legal representative of victims is essential. The Registry is thus instructed to notify the said annex to the legal representative of victims.

#### *4. Questioning of witnesses*

98. The Defence has informed the Chamber of its intention to call a total of 6 witnesses to testify at the confirmation of charges hearing.<sup>79</sup>

99. The Single Judge takes note of the provision of rule 91(3) of the Rules, which, in principle, allows victims’ legal representatives to question witnesses and experts called to testify before the Chamber. The very same provision, however, clarifies that the questioning of witnesses by the victims’ legal representative can take place only pursuant to an authorisation of the Chamber and subject to a number of restrictions.

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<sup>79</sup> ICC-01/09-01/11-228-Conf-Exp; ICC-01/09-01/11-231 and confidential *ex parte* annex attached thereto; and ICC-01/09-01/11-232 and confidential *ex parte* annex attached thereto.

100. Therefore, if the legal representative of victims wishes to question witnesses called to testify at the confirmation of charges hearing, she must make an application to the Chamber, which shall include demonstration of personal interests that are affected by the issue(s) under consideration. In this regard, rule 91(3)(a) of the Rules entrusts the Chamber with the authority to request the legal representative to provide, together with the request to question a witness, a written note of the questions, which shall be communicated to the Prosecutor and, if appropriate, to the Defence, in order for them to make observations thereto. The Chamber will then decide on the application, taking into account, as provided for by 91(3)(b) of the Rules, *inter alia*, the stage of the proceedings, the rights of the suspects, the interests of the witness and the principle of fairness and expeditiousness of the proceedings. If a request to question a witness is granted, the Chamber, in accordance with rule 91(3)(b) of the Rules, will also decide at that point of time on the procedure to be followed.

#### ***5. Filing of written submissions***

101. Finally, the Single Judge considers that the legal representative of the victims admitted to participate in the present proceedings may be authorised by the Chamber to make written submissions on specific issues of law and/or fact. This right may be employed if the legal representative proves, by way of an application to that effect, that the victims' personal interests are affected by the issue(s) at stake and the Chamber deems it appropriate, in light of, *inter alia*, the stage of the proceedings, the nature of the issue(s) concerned, the rights of the suspects and the principle of fairness and expeditiousness of the proceedings.

#### **VIII. The Requests advanced by the Defence of Mr. Ruto and Mr. Sang**

102. Finally, the Single Judge turns to the requests put forward by the Defence of Mr. Ruto and Mr. Sang in its observations on victims' applications submitted by the Registrar in the three transmissions.

103. The Single Judge recalls that in her 8 July 2011 Decision she has deferred a decision on a number of requests advanced by the Defence of Mr. Ruto and Mr. Sang in its observations on the victims' applications included in the First Transmission with respect to the disclosure to the Defence of the identity of a number of applicants. As recalled below, a number of other requests have instead already been ruled on by the Single Judge in the 8 July 2011 Decision.

***1. The Defence request that the Prosecutor be provided with the unredacted versions of the victims' applications***

104. In its observations on the applications of both the Second and the Third Transmission, the Defence of Mr. Ruto and Mr. Sang requested that the Prosecutor be provided with the unredacted versions of the victims' applications in order for him to discharge his obligations under article 54 and article 67(2) of the Statute.<sup>80</sup> The Single Judge recalled that the same request had been advanced by the Defence in its observations on the victims' applications of the First Transmission and that she already ruled on the matter in the 8 July 2011 Decision, whereby the said request was granted to the extent specified therein. In this respect, the Defence of Mr. Ruto and Mr. Sang further clarified that the request was reiterated only "in the event that such [was] not already ordered" by the 8 July 2011 Decision.<sup>81</sup>

105. The Single Judge recalls that, according to the 8 July 2011 Decision, the Registrar has been ordered to transmit to the Prosecutor "the unredacted versions of *all* the victims' applications for participation *received* in the present case"<sup>82</sup> (emphasis added), thus including those submitted to the parties in the Second and Third Transmission. Being confident that the Registrar duly complied with the said order and, accordingly, already transmitted to the Prosecutor the victims' applications received in the case, the Single Judge does not deem it necessary that a new order

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<sup>80</sup> ICC-01/09-01/177, paras 6 and 21 and ICC-01/09-01/11-227, paras 6 and 27.

<sup>81</sup> ICC-01/09-01/177, para. 6. ICC-01/09-01/11-227, para. 6.

<sup>82</sup> 8 July 2011 Decision, para. 16 and operative part, emphasis added.

covering the applications of the Second and Third Transmission be issued to that effect.<sup>83</sup> The Defence request is thus moot.

*2. The Defence request that lesser redacted versions of the victims' applications be provided to it*

106. The Defence of Mr. Ruto and Mr. Sang also requests that it be provided with lesser redacted versions of some victims' applications included in the Second and Third Transmission.<sup>84</sup> In particular, Mr. Ruto and Mr. Sang refer to a number of applications wherein the extent of redactions allegedly prevents the Defence from ascertaining whether the criteria under rule 85(a) of the Rules are met, "due to the fact that in some instances, the location of the events was completely redacted, and in others, all information from the identity cards were redacted or unreadable".<sup>85</sup>

107. In relation to the redaction to the locations of the events, the Defence submits that its prejudice "could be remedied by substituting this information with details concerning the large geographic area".<sup>86</sup> In support of such request, the Defence refers to a number of decisions of Pre-Trial Chamber I with respect to the responsibility of the Chamber to implement "counter-balancing measures to

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<sup>83</sup> In this respect, the Single Judge notes that, on 4 August 2011, all the applications filed in the record of the case and part of the three transmissions made by the Registrar have been reclassified as "confidential *ex parte* Registry and OTP only". Accordingly access thereto has already been provided to the Prosecutor.

<sup>84</sup> ICC-01/09-01/11-177, paras 12 to 16 and para. 21 (iii).

<sup>85</sup> ICC-01/09-01/11-177, para. 12. The Defence refers to the following applications: (i) a/0275/10, a/0590/10, a/8329/11, a/8332/11, a/8337/11, a/8342/11, a/8351/11, a/8353/11, a/8355/11, a/8363/11, a/8369/11, a/8370/11, a/8374/11, a/8375/11, a/8376/11, a/8399/11, a/8400/11, a/8402/11, a/8419/11, a/8420/11, a/8423/11, and a/8437/11 (wherein the location of the events was entirely redacted); (ii) a/8394/11 and a/8405/11 (wherein all information from the identity cards was redacted); and (iii) a/8331/11, a/8347/11, a/8356/11, a/8361/11, a/8365/11, a/8428/11, and a/8438/11 (wherein all the information from the identity cards was unreadable). The same request has been reiterated with respect to the applications included in the Third Transmission: ICC-01/09-01/11-227, paras 12 to 16, referring, for example, to the following applications: a/8249/11, a/8733/11, a/8736/11, a/8773/11, a/8775/11, a/8876/11, a/8780/11, a/8845/11, a/8850/11, a/8855/11, a/8872/11, a/8895/11, a/8896/11, a/8899/11, a/8901/11, a/8902/11, a/8903/11, a/8904/11, a/8905/11, a/8908/11, a/8909/11, a/8910/11, a/8911/11, a/8912/11, a/8914/11, a/8916/11, a/8917/11, a/8918/11, a/8919/11, a/8920/11, a/8955/11, a/8959/11, a/8966/11, a/8990/11, a/8991/11, a/9004/11, a/9009/11, a/9011/11, a/9012/11, a/9047/11.

<sup>86</sup> ICC-01/09-01/11-177, para. 14.

ameliorate any prejudice which ensues from redactions".<sup>87</sup> The Single Judge notes that the mentioned case-law is to be read within the context of the protective measures in the form of non-disclosure of *evidence*, pursuant to rule 81(2) and (4) of the Rules. It is therefore not automatically applicable to the present scenario, since, as already clarified in the 8 July 2011 Decision, the victims' applications for participation can by no means be considered as evidence.<sup>88</sup>

108. Conversely, the legal basis for the non-disclosure of identifying information of the victim applicants in their applications for participation is to be found in articles 68(1) and 57(3)(c) of the Statute, which mandate the Court to take appropriate measures to protect, *inter alia*, the safety, privacy, physical and psychological well-being of the victims. The Single Judge is cognizant that, in accordance with the principle of proportionality enshrined in article 68(1) of the Statute, measures taken pursuant to this provision may restrict the rights of the suspect only to the extent necessary.

109. At first, the Single Judge considers that the redactions of the specific locations of the events appear necessary to protect the applicants' safety and security. Indeed, the locations concerned are so small that, in combination with other information provided in the applications, their disclosure to the Defence would create a risk that the applicants would be identified. In these circumstances, the copy of the applications shall be transmitted to the Defence with the necessary redactions, as was duly done by the Registrar.

110. With respect to the Defence request that information of a more general nature of the locations of the events be given to it by the Registrar, the Single Judge notes rule 89(1) of the Rules, which states that:

Subject to the provisions of the Statute, in particular article 68, paragraph 1, the Registrar shall provide a *copy of the application* to the Prosecutor and the defence,

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<sup>87</sup> ICC-01/09-01/11-177, para. 14 .

<sup>88</sup> Pre-Trial Chamber II, 8 July 2011 Decision, para. 9.

who shall be entitled to reply within a time limit to be set by the Chamber (emphasis added).

111. The provision of rule 89(1) of the Rules thus makes it clear that the parties are only entitled to receive a copy of the victims' applications for participation. Accordingly, it is on the applications as submitted by the applicants that the parties are permitted to provide their observations. The applicable law does not envisage that the applications be, in all or in part, replaced or supplemented by any analysis of the Registrar. Moreover, the opposite would run counter to the *ratio* of rule 89(1), which is that the parties provide their observations on the applications engaging directly and solely with the information as submitted by applicants.

112. In light of the above, the Single Judge is of the view that the request of the Defence to "order the Registry to replace the redaction of entire locations with information concerning the general locality" shall be rejected.

113. As far as the redactions to the applicants' identity documents are concerned, the Single Judge is of the view that, in light of the nature, purpose and circumstances of the current proceedings, the concerned redactions are limited to what is strictly necessary due to the security situation in Kenya and the applicants' safety and do not amount to an unnecessary restriction of the rights of the Defence. Indeed, the redactions applied are the only available measures to protect the applicants concerned, since the disclosure of any further information would compromise their safety and security. Such redactions cannot, accordingly, be reduced and the Defence request to that effect shall be rejected.

### ***3. The Defence requests for disclosure of the identity of a number of victims***

114. The Defence of Mr. Ruto and Mr. Sang also requests that the identity of those victims falling within an identified number of categories be disclosed to it.

115. Firstly, Mr. Ruto and Mr. Sang request the Single Judge to order the Registrar to disclose to the Defence “the identities of applicants who have either explicitly indicated that their identity could be provided to the Defence (or expressed no preference), or who have failed to provide any justification” for non-disclosure to the Defence.<sup>89</sup> Such request had already been put forward in the Defence observations on the applications of the First Transmission and has been again reiterated for the purposes of the applications submitted in the Third Transmission.<sup>90</sup>

116. Further, the Single Judge recalls that, in the observations on the applications of the First Transmission, the Defence requests that the unredacted version of the applications of victims who are also witnesses in the present case be disclosed to the Defence.<sup>91</sup> Mr. Ruto and Mr. Sang also request that, in case of victims who are also anonymous witnesses, the Prosecutor be ordered to provide the Defence with a list, which cross-references the pseudonyms of anonymous witnesses with the application number of related applicants.<sup>92</sup> In its subsequent observations on the other batches of victims’ applications, the Defence of Mr. Ruto and Mr. Sang “reserve[d] its right to request the same in relation to the applications in the Second [and Third] Transmission at the appropriate time”.<sup>93</sup>

117. In the 8 July 2011 Decision, the Single Judge deferred a ruling on these requests since such ruling “is warranted only in the event that applicants bearing the status of witnesses (whether anonymous or not) or applicants who have not requested that their identity be not disclosed to the parties are admitted to participate in the present case”.<sup>94</sup>

118. With respect to those victims who did not indicate the wish that their identity be withheld from the Defence or expressed no preference in this regard, the Single

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<sup>89</sup> ICC-01/09-01/11-177, para. 7.

<sup>90</sup> ICC-01/09-01/11-102, para 27 and ICC-01/09-01/11-227, para. 27.

<sup>91</sup> ICC-01/09-01/11-102, paras 14 and 27.

<sup>92</sup> ICC-01/09-01/11-102, paras 14 and 27 and ICC-01/09-01/11-227, para 25.

<sup>93</sup> ICC-01/09-01/11-177, para. 19 and ICC-01/09-01/11-227, para. 25.

<sup>94</sup> Pre-Trial Chamber II, 8 July 2011 Decision, para. 7.

Judge is of the view that a cautious approach is warranted in the present circumstances. Indeed, the Single Judge concurs with the Defence of Mr. Ruto and Mr. Sang that the wording of the concerned question used in the application form is unclear.<sup>95</sup> Furthermore, the absence of security concerns at the time when the applications have been filled in does not mean that any such concern could not in the meantime have become warranted. The Single Judge is, in fact, mindful of the Court's obligation to take appropriate measures with a view to providing for the protection of victims and witnesses within the meaning of articles 57(3)(c) and 68(1) of the Statute. In this sense, it seems appropriate, before disclosing the identity of such victims to the Defence, to request that their legal representative contact them in order to receive clear and updated instructions on the matter.

119. With respect to the victims who allegedly did not provide adequate justification for the request for non-disclosure to the Defence, the Single Judge notes that the Defence refers to an Appeals Chamber's Judgment with respect to redaction of evidence pursuant to rule 81(4) of the Rules.<sup>96</sup> As stated above, the Single Judge recalls once again that the provision of rule 81(4) of the Rules – together with the Appeals Chamber's guiding principles in the interpretation and application thereof – only deals with restrictions on disclosure of *evidence* and, therefore, is not directly applicable in the present scenario.<sup>97</sup>

120. The Single Judge recalls that, pursuant to the applicable law, it falls within her duty to provide for the protection of victims, taking due account of all the existing circumstances. In light of this, the Single Judge considers that a finding of a risk of the security of victims, which would justify the non-disclosure of their identity to the Defence is not conditioned upon the victims comprehensively justifying its existence.

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<sup>95</sup> ICC-01/09-01/11-177, para. 10.

<sup>96</sup> ICC-01/09-01/11-177, para. 11. The Defence of Mr. Ruto and Mr. Sang indeed refers to Appeals Chamber, "Judgment on the appeal of the prosecutor against the decision of Pre-Trial Chamber I entitled 'First Decision on the Prosecution Request for Authorisation to Redact Witness Statements'", ICC-01/04-01/07-475.

<sup>97</sup> See Pre-Trial Chamber II, 8 July 2011 Decision, para. 9.

The Single Judge has therefore reviewed the applications concerned in their entirety, not limiting her evaluation to the specific section dealing with the security concerns as expressed by the applicants. Upon such review, the Single Judge is of the view that the information provided by those victims, also in light of the volatile security situation in Kenya, sufficiently justifies the non-disclosure of their identity to the Defence.

121. However, the Single Judge considers that what is expressed above with respect to the potential change of circumstances from the time of the submission of the application is also valid for those victims who requested that their identity not be disclosed to the Defence because of perceived security risks. The legal representative of victims is thus instructed to contact also such victims for the purposes of verifying their preference as to the disclosure of their identity to the Defence and inform the Chamber accordingly. The Single Judge also requests the legal representative to inform the victims of the availability of protective measures other than that of the complete anonymity *vis-à-vis* the Defence, such as the confidentiality of the victims' identity towards the public. In this respect, the Single Judge concurs with the proposal of the Defence of Mr. Ruto and Mr. Sang to the effect that victims should also be clarified of "the difference between disclosure of their identity to the public and disclosure of their identity to the Defence [...] to see if that has a bearing on the individual's preference".<sup>98</sup>

122. The Single Judge now turns to the request that the Defence of Mr. Ruto and Mr. Sang be provided with the identity of the victims who are also witnesses on whom the Prosecutor intends to rely for the purposes of the confirmation hearing or are "related" to them.<sup>99</sup> The Single Judge, upon review of the list of the victims admitted to participate in the proceedings, has not identified any of them as being also a witness in the present case. Accordingly, the request of the Defence to be

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<sup>98</sup> ICC-01/09-01/11-177, para. 10.

<sup>99</sup> ICC-01/09-01/11-102, para. 14.

provided with the identity of those bearing the status of both victims and witnesses is moot.

123. Finally, with respect to the family members of witnesses, the Single Judge is of the view that, even in case any of them is admitted as victim by the present decision, this does not entail that his or her safety should be put at risk due to the choice of a relative of his/hers to testify in the present case. This is so, also, in light of the fact that the victim may even not be aware of the said scenario. The Defence request to be provided with the unredacted applications of victims who are family members of witnesses in the present case, if any, shall therefore be rejected.

#### *4. The Defence request to limit the participatory rights of anonymous victims*

124. The Defence of Mr. Ruto and Mr. Sang finally requests the Chamber that anonymous victims be prohibited from questioning witnesses and, more generally, from presenting “submissions concerning the evidential foundation of the Prosecution case, or any Defence counter-evidence”.<sup>100</sup> In support of such request, the Defence refers to several decisions issued by other Chambers of the Court.<sup>101</sup>

125. The Single Judge recalls that the common legal representative of victims (whether anonymous or not) has not been granted, as of right, the opportunity to question witnesses or to submit observations on the evidential foundation of the parties’ respective cases. To the contrary, as clarified above, the Chamber will decide on a case-by-case basis whether the legal representative of victims should be authorised to do so only upon an application substantiating the existence of personal

<sup>100</sup> ICC-01/09-01/11-177, para. 18. See also ICC-01/09-01/11-102, para. 26 and ICC-01/09-01/11-227, para. 24.

<sup>101</sup> Mr. Ruto and Mr. Sang explicitly refer to the following decisions: Pre-Trial Chamber I, “*Décision sur les modalités de participation des victimes a/0001/06, a/0002/06 et a/0003/06 à l’audience de confirmation des charges*”, ICC-01/04-01/06-462-tEN, pp. 8 and 9; Pre-Trial Chamber I, “*Decision on the Set of Procedural Rights Attached to Procedural Status of Victim at the Pre-Trial Stage of the Case*”, ICC-01/04-01/07-474, paras 180-182; Pre-Trial Chamber I, “*Decision on victims’ modalities of participation at the Pre-Trial Stage of the Case*”, ICC-02/05-02/09-136, paras 22 and 23; Trial Chamber IV, “*Order requesting observations from the legal representatives on the agreement as to evidence pursuant to Rule 69 of the Rules of Procedure and Evidence*”, ICC-02/05-03/09-165, paras 4-6.

interests. In deciding on such individual requests, the Chamber will also consider whether granting the request would be prejudicial to the rights of the suspects as well as to the general principles of fairness and expeditiousness of the proceedings. Against this background, should the legal representative's request be granted, the Chamber will also determine the appropriate manner in which the right shall be exercised.

126. In light of the above, the Single Judge is not persuaded by the Defence argument that permitting anonymous victims to question witnesses or present submissions concerning the evidential foundation of the parties' respective cases constitutes *per se* a prejudice to the rights of the suspects. A determination in this respect will be made by the Chamber only upon request and on a case-by-case basis in light of: (i) the victim's personal interests as alleged by the legal representative; (ii) the scope of the procedural right requested; and (iii) the principle of fairness and expeditiousness of the proceedings.

127. In view of the above, the Defence request shall be rejected.

**FOR THESE REASONS, THE SINGLE JUDGE HEREBY**

**a) DECIDES** to admit the following victims as participants at the confirmation of charges hearing and in the related proceedings: a/0041/10; a/0045/10; a/0051/10; a/0056/10; a/2078/10; a/2082/10; a/8016/11; a/8017/11; a/8020/11; a/8021/11; a/8023/11; a/8024/11; a/8025/11; a/8026/11; a/8027/11; a/8028/11; a/8030/11; a/8031/11; a/8032/11; a/8034/11; a/8036/11; a/8037/11; a/8038/11; a/8039/11; a/8040/11; a/8042/11; a/8043/11; a/8045/11; a/8047/11; a/8049/11; a/8051/11; a/8052/11; a/8054/11; a/8056/11; a/8057/11; a/8058/11; a/8059/11; a/8067/11; a/8078/11; a/8079/11; a/8088/11; a/8091/11; a/8094/11; a/8096/11; a/8097/11; a/0153/10; a/0234/10; a/0275/10; a/0356/10; a/0578/10; a/0590/10; a/8327/11; a/8330/11; a/8331/11; a/8332/11; a/8333/11; a/8334/11; a/8335/11; a/8336/11;

a/8337/11; a/8338/11; a/8339/11; a/8342/11; a/8343/11; a/8346/11; a/8347/11; a/8349/11;  
a/8350/11; a/8351/11; a/8352/11; a/8353/11; a/8354/11; a/8355/11; a/8356/11; a/8358/11;  
a/8359/11; a/8360/11; a/8361/11; a/8362/11; a/8363/11; a/8365/11; a/8367/11; a/8368/11;  
a/8369/11; a/8370/11; a/8372/11; a/8374/11; a/8376/11; a/8379/11; a/8380/11; a/8381/11;  
a/8382/11; a/8384/11; a/8386/11; a/8388/11; a/8390/11; a/8391/11; a/8392/11; a/8393/11;  
a/8394/11; a/8395/11; a/8396/11; a/8397/11; a/8398/11; a/8399/11; a/8400/11; a/8401/11;  
a/8402/11; a/8403/11; a/8404/11; a/8405/11; a/8407/11; a/8408/11; a/8409/11; a/8413/11;  
a/8417/11; a/8418/11; a/8419/11; a/8420/11; a/8422/11; a/8423/11; a/8424/11; a/8425/11;  
a/8426/11; a/8428/11; a/8429/11; a/8430/11; a/8431/11; a/8432/11; a/8433/11; a/8434/11;  
a/8435/11; a/8436/11; a/8437/11; a/8438/11; a/8440/11; a/8442/11; a/8443/11; a/0063/10;  
a/0143/10; a/0237/10; a/0266/10; a/0372/10; a/0379/10; a/0574/10; a/8246/11; a/8269/11;  
8645/11; a/8646/11; a/8647/11; a/8648/11; a/8649/11; a/8650/11; a/8651/11; a/8652/11;  
a/8653/11; a/8654/11; a/8655/11; a/8657/11; a/8659/11; a/8661/11; a/8663/11; a/8664/11;  
a/8666/11; a/8709/11; a/8710/11; a/8711/11; a/8712/11; a/8713/11; a/8715/11; a/8716/11;  
a/8717/11; a/8718/11; a/8719/11; a/8720/11; a/8721/11; 8722/11; a/8723/11; a/8724/11;  
a/8725/11; a/8727/11; a/8728/11; a/8729/11; a/8730/11; a/8731/11; a/8732/11; a/8738/11;  
a/8743/11; a/8744/11; a/8745/11; a/8746/11; a/8747/11; a/8749/11; a/8750/11; a/8751/11;  
a/8758/11; a/8767/11; a/8770/11; a/8771/11; a/8773/11; a/8774/11; a/8775/11; a/8776/11;  
a/8777/11; a/8778/11; a/8779/11; a/8780/11; a/8781/11; a/8782/11; a/8783/11; a/8784/11;  
a/8785/11; a/8835/11; a/8836/11; a/8842/11; a/8846/11; a/8851/11; a/8855/11; a/8859/11;  
a/8861/11; a/8868/11; a/8869/11; a/8872/11; a/8873/11; a/8874/11; a/8895/11; a/8897/11;  
a/8899/11; a/8900/11; a/8901/11; a/8902/11; a/8903/11; a/8904/11; a/8905/11; a/8906/11;  
a/ 8908/11; a/8909/11; a/8910/11; a/8911/11; a/8912/11; a/8914/11; a/8916/11; a/8917/11;  
a/8918/11; a/8920/11; a/8921/11; a/8922/11; a/8923/11; a/8924/11; a/8933/11; a/8936/11;  
a/8940/11; a/8941/11; a/8942/11; a/8943/11; a/8945/11; a/8946/11; a/8947/11; a/8951/11;  
a/8952/11; a/8955/11; a/8957/11; a/8959/11; a/8960/11; a/8961/11; a/8962/11; a/8966/11;  
a/8967/11; a/8980/11; a/8982/11; a/8983/11; a/8986/11; a/8987/11; a/8988/11; a/8989/11;  
a/8990/11; a/8991/11; a/8994/11; a/8997/11; a/8998/11; a/8999/11; a/9001/11; a/9004/11;  
a/9005/11; a/9006/11; a/9010/11; a/9012/11; a/9013/11; a/9015/11; a/9016/11; a/9017/11;  
a/9018/11; a/9019/11; a/9020/11; a/9021/11; a/9022/11; a/9023/11; a/9024/11; a/9025/11;

a/9026/11; a/9027/11; a/9028/11; a/9029/11; a/9030/11; a/9031/11; a/9032/11; a/9033/11; a/9034/11; a/9035/11; a/9036/11; a/9037/11; a/9038/11; a/9039/11; a/9040/11; a/9041/11; a/9042/11; a/9043/11; a/9044/11; a/9045/11; a/9046/11; a/9047/11; a/9048/11; a/9051/11; a/9052/11; a/9053/11; a/9054/11; and a/9055/11;

**b) DECIDES** to reject the applications for participation submitted by applicants: a/0042/10; a/0064/10; a/0772/10; a/8015/11; a/8018/11; a/8019/11; a/8022/11; a/8029/11; a/8033/11; a/8046/11; a/8053/11; a/8055/11; a/8069/11; a/8101/11; a/2080/10; a/8328/11; a/8329/11; a/8345/11; a/8348/11; a/8366/11; a/8373/11; a/8375/11; a/8383/11; a/8387/11; a/8415/11; a/8416/11; a/0145/10; a/0580/10; a/0595/10; a/2085/10; a/8224/11; a/8260/11; a/8658/11; a/8714/11; a/8733/11; a/8734/11; a/8735/11; a/8736/11; a/8737/11; a/8739/11; a/8741/11; a/8742/11; a/8827/11; a/8837/11; a/8841/11; a/8845/11; a/8849/11; a/8850/11; a/8856/11; a/8857/11; a/8867/11; a/8896/11; a/8919/11; a/8925/11; a/8938/11; a/8939/11; a/8950/11; a/8954/11; a/8964/11; a/8985/11; a/8996/11; a/9000/11; a/9003/11; a/9007/11; a/9009/11; a/9011/11; and a/9049/11;

**c) DECIDES** to appoint Ms. Sureta Chana as common legal representative of all the victims admitted to participate by the present decision;

**d) GRANTS** the legal representative of victims the right to attend all public sessions of the confirmation of charges hearing as well as all public hearings convened in the related proceedings;

**e) GRANTS** the legal representative of victims the right to make brief opening and closing statement at the confirmation of charges hearing in accordance with the schedule thereof;

**f) ORDERS** the Registrar to provide the legal representative of victims with access to the public record of the case, including public evidence disclosed by the parties;

- g) **ORDERS** the Registrar to notify the common legal representative of victims of all public decisions and filings, effective as to the date of the present decision;
- h) **ORDERS** the Registrar to notify the common legal representative of victims of the confidential annex attached to the present decision;
- i) **ORDERS** the Registrar to transmit to the common legal representative of victims the redacted and unredacted versions of the applications for participation submitted by the victims hereby admitted to participate at the confirmation of charges hearing and in the related proceedings;
- j) **ORDERS** the legal representative of victims, upon consultation with her clients, to communicate to the Chamber, by no later than Monday, 22 August 2011, the victims' preference on the disclosure of their identity to the Defence;
- k) **REJECTS** the requests advanced by the Defence of Mr. Ruto and Mr. Sang.

Done in both English and French, the English version being authoritative.



Judge Ekaterina Trendafilova  
Single Judge

Dated this Friday, 5 August 2011  
At The Hague, The Netherlands