

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/09-01/11
Date: 22 September 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

**Decision on the “Renewed Request by the Victims’ Representative for
authorisation by the Chamber to make submissions on specific issues of law and/or
fact”**

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, Julius Kemboy
and Allan Kosgey

Counsel for Joshua Arap Sang

Joseph Kipchumba Kigen-Katwa, Joel
Bosek and Philemon Koech

Legal Representatives of the Victims

Sureta Chana

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

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

States Representatives

Amicus Curiae

REGISTRY

Registrar & Deputy Registrar

Silvana Arbia, Registrar
Didier Preira, Deputy Registrar

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Judge Ekaterina Trendafilova, acting as Single Judge on behalf of Pre-Trial Chamber II (the “Chamber”) of the International Criminal Court (the “Court”)¹ hereby issues this Decision on the “Renewed Request by the Victims’ Representative for authorisation by the Chamber to make written submissions on specific issues of law and/or fact” (the “Request”).²

1. On 8 March 2011, the Chamber, by majority, decided to summon William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang (collectively the “Suspects”) to appear before it.³ Pursuant to this decision, the Suspects voluntarily appeared before the Court at the initial appearance hearing held on 7 April 2011 during which, *inter alia*, the Chamber set the date for the commencement of the confirmation of charges hearing for 1 September 2011.⁴

2. On 5 August 2011, the Single Judge issued the “Decision on Victims’ Participation at the Confirmation of Charges Hearing and in the Related Proceedings” (the “5 August 2011 Decision”) wherein she, *inter alia*, admitted 327 victims to participate in the present proceedings; appointed Ms. Sureta Ghana as common legal representative of all the victims; and specified the participatory rights which the victims can exercise through their legal representative at the confirmation of charges hearing as well as in the related proceedings.⁵

3. On 1 September 2011, as scheduled, the confirmation of charges hearing commenced.

4. On 8 September 2011, during the closing session of the confirmation of charges hearing, the Chamber granted the victims’ legal representative up until 30 September

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

² ICC-01/09-01/11-333.

³ 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-01/09-01/11-1.

⁴ ICC-01/09-01/11-T-1-ENG.

⁵ Pre-Trial Chamber II, “Decision on Victims’ Participation at the Confirmation of Charges Hearing and in the Related Proceedings”, ICC-01/09-01/11-249, pp. 46-49, letter (a) to (i) of the operative part and paras 83-101.

2011 to submit final written observations on issues discussed during the confirmation hearing itself.⁶

5. On 16 September 2011, the Chamber received the Request, in which the victims' legal representative seeks leave to make written submissions on article 61(7)(c)(ii) of the Rome Statute (the "Statute"), with a view to suggesting that the charges brought by the Prosecutor against the Suspects should reflect acts of destruction of property, looting and infliction of physical injuries and that "the Chamber should exercise its power [...] under [the said provision] to request the Prosecutor to consider amending the charges:

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

6. In the view of the victims' legal representative, the issue at stake is of utmost concern for the 327 victims admitted in the present case, since almost the totality of them has indicated that they have suffered material harm as a result of destruction of property.⁸ In addition, during the confirmation of charges hearing, statements were made that acts of destruction of property, looting and infliction of physical injuries were carried out.⁹ The victims' legal representative recalls that Mr. Ruto himself as well as the two witnesses called by his Defence team acknowledged that such acts were committed during the post-election violence in Kenya.¹⁰ Furthermore, it is significant in the opinion of the victims' legal representative that "allegations of acts of

⁶ ICC-01/09-01/11-T-12-ENG, pp. 76-77.

⁷ ICC-01/09-01/11-333, para. 27.

⁸ ICC-01/09-01/11-333, para. 11.

⁹ ICC-01/09-01/11-333, para. 12.

¹⁰ ICC-01/09-01/11-333, para. 13.

burning and destruction of property and looting feature so prominently and centrally in the Prosecution case”.¹¹

7. The Single Judge notes articles 21(1)(a), (3) and 68(3) of the Statute.

8. In the 5 August 2011 Decision, the Single Judge held that the legal representative of victims may be authorised by the Chamber to make written submissions on specific issues of law and/or fact if: (i) the legal representative of victims proves, by way of an application to that effect, that the victims' personal interests are affected by the issue(s) at stake; and (ii) 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 the expeditiousness of the proceedings.¹²

9. The Single Judge also stressed that the assessment of applications pursuant to article 68(3) of the Statute cannot 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.¹³

10. Having considered the submissions of the legal representative of victims, the Single Judge is of the view that the personal interests of the victims in the present case are indeed affected by the issue raised during the confirmation of charges hearing and reiterated in the Request. The Single Judge also considers that no prejudice would be caused to the rights of the suspects and to the fairness and expeditiousness of the proceedings if the victims' legal representative was authorised to make written submissions on the issue outlined in the Request.

¹¹ ICC-01/09-01/11-333, para. 14.

¹² Pre-Trial Chamber II, “Decision on Victims’ Participation at the Confirmation of Charges Hearing and in the Related Proceedings”, ICC-01/09-01/11-249, para. 101.

¹³ Pre-Trial Chamber II, “Decision on Victims’ Participation at the Confirmation of Charges Hearing and in the Related Proceedings”, ICC-01/09-01/11-249, para. 84.

11. However, the Single Judge wishes to point out that this is without prejudice to the final determination by the Chamber on the subject-matter of the proposed submissions.

12. Accordingly, the Request may be granted to the extent that the victims' legal representative is authorised to include in her final written submissions, which are due on 30 September 2011, observations on the issue(s) proposed in the Request.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

grants the Request.

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



Judge Ekaterina Trendafilova
Single Judge

Dated this Thursday, 22 September 2011

At The Hague, The Netherlands