

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 9 March 2012

**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 AND  
JOSHUA ARAP SANG**

**Public Document**

**Decision on the “Urgent Request by the Victims’ Representative for an order from the Chamber requiring the Registrar to provide appropriate resources for the current mission in Kenya”**

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 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**

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**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”)<sup>1</sup> issues this decision on the “Urgent Request by the Victims’ Representative for an order from the Chamber requiring the Registrar to provide appropriate resources for the current mission in Kenya”( the “Victims’ Legal Representative’s Request”/ the “Request”).<sup>2</sup>

## **I. PROCEDURAL HISTORY**

1. 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>3</sup> Pursuant to this decision, the suspects voluntarily appeared before the Court at the initial appearance hearing held on 7 April 2011,<sup>4</sup> during which, *inter alia*, the Chamber scheduled the commencement of the confirmation of charges hearing for Thursday, 1 September 2011.<sup>5</sup>

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”, addressing issues relating to participation of victims at the confirmation of charges hearing and in the proceedings related thereto, including victims’ common legal representation for the purposes of these proceedings (the “5 August 2011 Decision”).<sup>6</sup>

3. On 1 September 2011, the confirmation of charges hearing commenced and lasted for one week.

4. On 23 January 2012, the Chamber issued the “Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute”, in which, *inter alia*, it confirmed the charges presented against Mr. Ruto and Mr. Sang to the extent

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

<sup>2</sup> ICC-01/09-01/11-392-Red.

<sup>3</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>4</sup> ICC-01/09-01/11-T-1-ENG.

<sup>5</sup> ICC-01/09-01/11-T-1-ENG, page 17, lines 12 to 25.

<sup>6</sup> ICC-01/09-01/11-249.

specified in the decision, and declined to confirm the charges brought against Mr. Kosgey.<sup>7</sup>

5. On 29 February 2012, the Chamber received the Victims' Legal Representative's Request in which she requests the approval and advancement of the sum of thirteen thousand and twenty (13020) Euros to cover costs of a mission presently carried out in Kenya. The Legal Representative also requests that the said mission be extended to three weeks.<sup>8</sup>

6. On 2 March 2012, the Registrar filed her observations on the Victims' Legal Representative's Request, requesting the Chamber to deny the reliefs sought therein based on the inadmissibility of the Request, for having no legal basis, or, in the alternative, on its merits.<sup>9</sup>

7. On 5 March 2012, the Victims' Legal Representative filed an application for leave to reply to the observations submitted by the Registrar.<sup>10</sup>

8. On 7 March 2012, the Victims' Legal Representative filed before the Chamber an Addendum to her Request, supplementing her previous filing with an exchange of emails between her and the Counsel Support Section of the Registry.<sup>11</sup>

9. On 9 March 2012, simultaneously with the present decision, the Chamber issued the "Decision on the Defence applications for leave to appeal the Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute", rejecting those applications in their entirety and ordering the Registrar to transmit to the Presidency the record of the proceedings in the present case, including the Decision on the Confirmation of Charges, pursuant to rule 129 of the Rules.<sup>12</sup>

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<sup>7</sup> ICC-01/09-01/11-373.

<sup>8</sup> ICC-01/09-01/11-392-Conf-Exp, para. 62.

<sup>9</sup> ICC-01/09-01/11-393-Conf-Exp.

<sup>10</sup> ICC-01/09-01/11-395-Conf-Exp.

<sup>11</sup> ICC-01/09-01/11-396-Conf-Exp.

<sup>12</sup> ICC-01/09-01/11-399.

## II. APPLICABLE LAW

10. The Single Judge notes 68(3) of the Rome Statute and rules 90 and 91 of the Rules of Procedure and Evidence.

## III. THE SINGLE JUDGE'S DETERMINATION

11. The Single Judge notes that the Victims' Legal Representative submits that "the main purposes of the mission are to meet with those victims that the victims' representative has not yet met (pursuant to the 5 August 2011 Decision), and to inform victims about the outcome of the confirmation of charges hearing, following the Chamber's Confirmation of Charges decision on 23 January 2012".<sup>13</sup>

12. The Single Judge observes that, pursuant to the 5 August 2011 Decision, Ms. Chana was appointed as common legal representative of those victims admitted to participate at the confirmation of charges hearing and in the related proceedings thereto. In particular, she was entrusted with the responsibility to exercise, on those victims' behalf, a number of participatory rights at the confirmation of charges hearing and in the proceedings related thereto. Thus, the Victims' Legal Representative's appointment was clearly limited to these proceedings. Indeed, the Single Judge, when addressing the matter of common legal representation, clarified at the outset that:

[T]he 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.<sup>14</sup>

13. The Single Judge further notes that, pursuant to the 5 August 2011 Decision, the Victims' Legal Representative was indeed ordered to consult with her clients and

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<sup>13</sup> ICC-01/09-01/11-392-Conf-Exp, para. 6.

<sup>14</sup> 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. 63.

to report back to the Chamber as to the instructions received by the victims.<sup>15</sup> However, the 5 August 2011 Decision specifies that the purpose of this order was to obtain information with respect to disclosure of the victims' identity to the Defence for the purposes of the confirmation of charges hearing, and in advance of this hearing.<sup>16</sup> The time limit for the Victims' Legal Representative to report to the Chamber was accordingly set for Monday, 22 August 2011. It follows that the Victims' Legal Representative's argument that her current mission bears the purpose of meeting "those victims that the victims' representative has not yet met (pursuant to the 5 August 2011 Decision)" cannot stand and is therefore without merit.

14. Equally untenable is the other alleged purpose of such mission, namely to inform the victims of the outcome of the decision on the confirmation of charges, which, in the Victims' Legal Representative's submission, is "critical, and time sensitive", given that "lack of clarity and insufficient information could have an adverse impact on the future participation of the victims in the case".<sup>17</sup> As recalled above, pursuant to the 5 August 2011 Decision, the Victims' Legal Representative's mandate was limited to the confirmation of charges hearing and related proceedings, and thus did not include, in and of itself, future involvement in the case. Holding otherwise would be tantamount to predetermining a possible different approach to victims' common legal representation by the Trial Chamber to be constituted pursuant to article 61(11) of the Statute.

15. Similarly, the "assistance, in terms of financial and human resources",<sup>18</sup> that, pursuant to the 5 August 2011 Decision, was to be provided by the Registrar to the Victims' Legal Representative, was limited to the scope of the mandate for which she

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<sup>15</sup> 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, paras 118 and 121, and operative part *sub j*).

<sup>16</sup> 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, paras 118 and 121, and operative part *sub j*).

<sup>17</sup> ICC-01/09-01/11-392-Conf-Exp, para.7.

<sup>18</sup> 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. 80.

was appointed, *i.e.* to represent victims at the confirmation of charges hearing and proceedings related thereto.

16. The Single Judge considers that with the issuance of the decision on the confirmation of charges and the rejection of the applications for leave to appeal this decision, the proceedings before the Chamber that are related to the confirmation of charges have come to an end.

17. In light of the above, the Victims' Legal Representative has no more *locus standi* to put forward before the Chamber the Request with respect to her current mission, the purpose of which goes beyond the mandate specified in the 5 August 2011 Decision. Accordingly, the Single Judge is of the view that the Victims' Legal Representative's Request must be dismissed *in limine*.

18. Based on the above finding, the Victims' Legal Representative's application for leave to reply to the observations submitted by the Registrar shall also be dismissed *in limine*.

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

**DISMISSES** *in limine* the Victims' Legal Representative's Request and her application for leave to reply to the Registrar's observations.

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

  
 Judge Ekaterina Trendafilova  
 Single Judge

Dated this Friday, 9 March 2012

At The Hague, The Netherlands