

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 30 March 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 Motion by Legal Representative of Victim Applicants to  
Participate in Initial Appearance 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

**Defence**

William Samoei Ruto  
Henry Kirpono Kosgey  
Joshua Arap Sang

**Legal Representatives of the Victims**

**Legal Representatives of the Applicants**

Liesbeth Zegveld

**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”)<sup>1</sup> of the International Criminal Court (the “Court”) hereby renders the decision on the “Motion to Participate in Article 60 Initial Appearance Proceedings” (the “Motion”), submitted to the Chamber by a legal representative of seven victim applicants.

1. On 8 March 2011, the Chamber, by majority, issued three summonses to appear in the present case and set the date for the initial appearance of the suspects for 7 April 2011.<sup>2</sup>

2. On 29 March 2011, the Chamber was notified of the abovementioned Motion. The legal representative of seven victim applicants requests to be present at the initial appearance of William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang.<sup>3</sup> The legal representative further explains the victim applicants’ intention to make “Representations to the Chamber under Article 68” of the Rome Statute (the “Statute”) relating to, in sum, (i) the Prosecutor’s continuation of the proceedings before the Court; (ii) the implications on the termination of the investigation to the fight against impunity; (iii) the deferral of the case to the Kenyan authorities; (iv) the initial appearance of the three suspects in the present case; (v) the authorization to participate in Article 60 proceedings in order to express and protect their personal interest and to be involved in the proceedings from the beginning.<sup>4</sup>

3. The Single Judge notes articles 60(1), 68(3) of the Statute, and rule 85 and 121(1) of the Rules of Procedure and Evidence.

4. At the outset, the Single Judge notes that the applications of the victims concerned have been lodged with the Registry of the Court in December 2010, at a time when

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

<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-01/09-01/11-1.

<sup>3</sup> ICC-01/09-01/11-13-Anx, para. 4.

<sup>4</sup> ICC-01/09-01/11-13-Anx, para. 5.

proceedings in the present case were not yet opened. Hence, the treatment of the applications was governed by the Chamber's "Decision on Victims' Participation in Proceedings Related to the Situation in the Republic of Kenya", dated 3 November 2010,<sup>5</sup> which does not call for treatment of any victim application, unless there is an issue which may require judicial determination at the stage of the situation.<sup>6</sup>

5. Further, the Single Judge notes that the applications of the victims concerned have not yet been submitted to the Chamber, which means that the status of the victim applicants has not been decided yet pursuant to rule 85 of the Rules. Thus, the status of the victims concerned for the time being is that of applicants. Consequently, only when a judicial decision on the status and participation modalities is taken, can the victims concerned exercise their rights under article 68(3) of the Statute and present their "views and concerns".

6. Even assuming *arguendo* that the applications of the victims concerned were to be treated now, it is the view of the Single Judge that their intervention at this particular stage is not appropriate. Most importantly, the Single Judge wishes to recall the purpose of an initial appearance of a person appearing voluntarily before or surrendered to the Court as provided in article 60(1) of the Statute and rule 121(1) of the Rules. Following the explicit language of article 60(1) of the Statute, "the Pre-Trial Chamber must satisfy itself that the person has been informed of the crimes which he or she is alleged to have committed, and of his or her rights under this Statute, including the right to apply for interim release pending trial." Further, pursuant to rule 121(1) of the Rules, "the Pre-Trial Chamber shall set the date on which it intends to hold a hearing to confirm the charges." That said, and considering the issues indicated by the victim applicants which they wish to raise at the initial appearance of the three suspects in the present case, the Single Judge holds

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<sup>5</sup> Pre-Trial Chamber II, ICC-01/09-24.

<sup>6</sup> *Ibid.*, para. 9.

that this would go beyond the scope and purpose of the initial appearance as defined by the Statute and the Rules.


7. Lastly, the Single Judge would like to express her concern that one of the victim applicants has not indicated his or her intention to participate in proceedings before the Court, but submitted only an application for reparations.<sup>7</sup> Nevertheless, the legal representative submitted the Motion also on behalf of that victim applicant. The Single Judge reminds all concerned that any wish for participation in the proceedings must be expressed *explicitly* by the victim applicant and that legal representatives shall receive appropriate instructions from their clients to that effect. The submission of an application for reparations is not sufficient.

8. In light of the foregoing, the Single Judge must reject the Motion.

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

**Rejects the Motion.**

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



Judge Ekaterina Trendafilova  
Single Judge

Dated this Wednesday, 30 March 2011

At The Hague, The Netherlands

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<sup>7</sup> ICC-01/09-01/11-13, para. 8.