

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/09-01/11
Date: 3 October 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 “Request by the Victims’ Representative for authorisation to respond to the ‘Defence Request Regarding Prejudicial Comments Made by Victims’ Legal Representative Sureta Chana during Closing Statements”

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 “Request by the Victims’ Representative for authorisation to respond to the ‘Defence Request Regarding Prejudicial Comments Made by Victims’ Legal Representative Sureta Chana during Closing Statements’”.²

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 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” wherein she, *inter alia*, admitted 327 victims to participate in the present proceedings; appointed Ms. Sureta Ghana as common legal representative of all the admitted 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 30 September 2011, the Defence teams of Mr. Ruto and Mr. Sang filed the “Defence Request Regarding Prejudicial Comments Made by Victims’ Legal Representative Sureta Chana during Closing Statements” (the “Request”).⁶ In their submission, the Defence teams claim that the allegations made by the victims’ legal

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

² ICC-01/09-01/11-346.

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.

⁶ ICC-01/09-01/11-343.

representative during her closing statement⁷ – according to which a Kenyan member of the Parliament, on 6 September 2011, “had made inciting remarks through Kass FM [...] thereby creating tensions in Kenya and a likelihood of violence”⁸ – are “untrue, fabricated and sensational”.⁹ Accordingly, the Defence teams of Mr. Ruto and Mr. Sang requests the Chamber to:

- i. Remind the Victims’ Representative of the limitations of her role under Article 68(3) and her obligations under the Code of Professional Conduct;
- ii. Obtain from the Victims’ Representative the full identity and particulars of the alleged “field officer” from whom the counsel sourced the unfounded allegations, with a view to enabling the Court to take such measures as may be deemed fair and just to secure the Court’s integrity and to maintain standards expected of parties to an international court;
- iii. Exclude the allegations from their consideration of the confirmation of charges; and
- iv. Direct that the Prosecution and Victims’ Representative may not raise such issues in their respective confirmation final briefs.¹⁰

4. On 2 October 2011, the Chamber received the “Request by the Victims’ Representative for authorisation to respond to the ‘Defence Request Regarding Prejudicial Comments Made by Victims’ Legal Representative Sureta Chana during Closing Statements’”, wherein she seeks leave to file a written response to the Request.¹¹ Additionally, the victims’ legal representative requests an exceptional extension of page limit up to 30 pages (the “Request for Extension of Page Limit”).¹² The victims’ legal representative claims that the allegations made by the Defence teams of Mr. Ruto and Mr. Sang affect directly the personal interests of the victims.¹³

⁷ ICC-01/09-01/11-T-12-ENG, pp. 26-29.

⁸ ICC-01/09-01/11-343 paras 1 and 9.

⁹ ICC-01/09-01/11-343 para. 1.

¹⁰ ICC-01/09-01/11-343 para. 30.

¹¹ ICC-01/09-01/11-346 para. 4.

¹² ICC-01/09-01/11-346 para. 4.

¹³ ICC-01/09-01/11-346 paras 3-4.

5. The Single Judge notes regulations 24(2), 34 and 37 of the Regulations of the Court (the "Regulations").

6. According to regulation 24(2) of the Regulations, "[v]ictims or their legal representatives may file a response to any document when they are permitted to participate in the proceedings in accordance with article 68, paragraph 3, and rule 89, sub-rule 1, subject to any order by the Chamber". Considering the impact that the subject-matter of the Request has on the victims' personal interests, and cognizant of the right to respond which regulation 24(2) of the Regulations provides the victims with, the Single Judge is of the view that it is appropriate to grant the victims' legal representative the right to respond to the Request.

7. Moreover, according to regulation 37(1) of the Regulations, a document filed with the Registry "shall not exceed 20 pages, unless otherwise provided in the Statute, Rules, these Regulations or ordered by the Chamber". Only exceptionally, pursuant to paragraph (2) of the said regulation, the page limit may be extended. In the present circumstances, the Single Judge does not consider that the subject-matter of the Request warrants an extension of page limit. Accordingly, the Single Judge is of the view that the 20 pages limit referred to in regulation 37(1) of the Regulations shall be retained. It follows that the Request for Extension of Page Limit must be rejected.

8. Lastly, the Single Judge also notes that according to regulation 34(b) of the Regulations the victims' legal representative's response should, in principle, be filed within 21 days of notification of the document to which the participant is responding, "[u]nless otherwise provided in the Statute, Rules or these Regulations, or unless otherwise ordered". In the instant case, the Single Judge, weighing the expeditiousness of the proceedings against the subject-matter of the Request, deems it appropriate to reduce the time limit to 7 days starting from the date of notification of the present decision.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

- a) **grants** the victims' legal representative the right to file a written response to the Request by no later than **Monday, 10 October 2011**, at 16:00 hours;
- b) **rejects** the Request for Extension of Page Limit.

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



Judge Ekaterina Trendafilova
Single Judge

Dated this Monday, 3 October 2011

At The Hague, The Netherlands