

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 20 July 2015

**TRIAL CHAMBER V(A)**

**Before:** Judge Chile Eboe-Osuji, Presiding  
Judge Olga Herrera Carbuccion  
Judge Robert Fremr

**SITUATION IN THE REPUBLIC OF KENYA**

**IN THE CASE OF  
*THE PROSECUTOR v. WILLIAM SAMOEI RUTO and JOSHUA ARAP SANG***

**Confidential**

**Decision on the Common Legal Representative for Victims' Request for *viva voce*  
Presentation of Views and Concerns by the Victims**

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

**The Office of the Prosecutor**

Ms Fatou Bensouda  
Mr James Stewart  
Mr Anton Steynberg

**Counsel for William Samoei Ruto**

Mr Karim Khan  
Mr David Hooper  
Mr Essa Faal  
Ms Shyamala Alagendra

**Counsel for Joshua Arap Sang**

Mr Joseph Kipchumba Kigen-Katwa  
Ms Caroline Buisman

**Legal Representatives of Victims**

Mr Wilfred Nderitu

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparation**

**The Office of Public Counsel for Victims**

Ms Paolina Massidda

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

**States Representatives**

*Amicus Curiae*

**REGISTRY**

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**Registrar**

Mr Herman von Hebel

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Others**

Trial Chamber V(A) (the 'Chamber') of the International Criminal Court (the 'Court'), in the case of *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, having regard to Article 68(3) of the Rome Statute (the 'Statute') and Rule 89 of the Rules of Procedure and Evidence (the 'Rules'), renders this 'Decision on the Common Legal Representative for Victims' Request for *viva voce* Presentation of Views and Concerns by the Victims.'

## I. PROCEDURAL HISTORY

1. On 3 October 2012, the Chamber rendered the 'Decision on victims' representation and participation' (the 'Victims Participation Decision'),<sup>1</sup> in which it established the procedure and modalities for the participation of victims in this case. Particularly, it determined that victims who wished to present their views and concerns before the Chamber may be allowed to do so at various stages of the trial as determined by the Chamber.<sup>2</sup>
2. On 5 June 2015, the Chamber directed the common legal representative for victims (the 'Legal Representative'), to make any application for the victims to call evidence in the case by 12 June 2015.<sup>3</sup>
3. On 12 June 2015, the Legal Representative submitted a request for four victims to present their views and concerns *viva voce* (the 'Request').<sup>4</sup>
4. On 6 July 2015, the Defence for Mr Ruto (the 'Ruto Defence') filed its response, stating that in principle it does not oppose the request.<sup>5</sup>

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<sup>1</sup> By then constituted as Trial Chamber V.

<sup>2</sup> Decision on victims' representation and participation, ICC-01/09-01/11-460, para 56.

<sup>3</sup> Hearing on 5 June 2015, ICC-01/09-01/11-t-206-Conf-Eng, pages 4-5.

<sup>4</sup> Common Legal Representative for Victims' Request for the *viva voce* Presentation of Views and Concerns by Victims a/00115/15, REP a/0041/10, a/25189/13 and a/0372/10, ICC-01/09-01/11-1909-Conf.

<sup>5</sup> Ruto Defence Response to the "Common Legal Representative for Victims' Request for the *viva voce* Presentation of Views and Concerns by Victims a/00115/15, REP a/0041/10, a/0372/10, ICC-01/09-01/11-1926-Conf.

5. On 7 July 2015, the Office of the Prosecutor (the 'Prosecution') informed the Chamber via e-mail that it did not file any observations, since pursuant to the Victims Participation Decision<sup>6</sup> the parties will be able to make more specific submissions on the Request, once they receive the victims' application forms.<sup>7</sup>
6. On 14 July 2015, the Legal Representative submitted reply to the aforementioned Ruto Defence response (the 'Reply').<sup>8</sup>

## II. SUBMISSIONS

7. The Legal Representative requests that the *viva voce* presentation of victims' views and concerns takes place after a decision on the submission of any 'no case to answer' motion has been given.<sup>9</sup> The Legal Representative submits that, even though victims have been allowed to participate via the Legal Representative, 'none of these modes of participation can supplant the *viva voce* expression of victims' views and concerns'.<sup>10</sup> The Legal Representative also states that allowing them to present their views and concerns could 'protect their psychological well-being [...], it is to be recalled that participating victims have expressed anxiety over the pace of the trial [...] as well as their continued state of hopelessness'.<sup>11</sup> Referring to the Victims' Participation Decision, the Legal Representative states that granting the Request could make their participation 'meaningful' as opposed to 'purely symbolic'.<sup>12</sup> Since the Request only involves four witnesses, the Legal Representative submits that it would not be prejudicial or inconsistent with

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<sup>6</sup> Victims' Participation Decision, ICC-01/09-01/11-460, para. 58.

<sup>7</sup> E-mail from the Prosecution to Trial Chamber V-A Communications at 18:27.

<sup>8</sup> "Common Legal Representative for Victims' Reply to the Ruto Defence Response to the Request for the *viva voce* Presentation of Views and Concerns by Victims a/00115/15, REP a/0041/10, a/25189/13", ICC-01/09-01/11-1929-Conf.

<sup>9</sup> Request, ICC-01/09-01/11-1909-Conf, paras 4, 12, 24.

<sup>10</sup> Request, ICC-01/09-01/11-1909-Conf, paras 7-8.

<sup>11</sup> Request, ICC-01/09-01/11-1909-Conf, paras 9-10.

<sup>12</sup> Request, ICC-01/09-01/11-1909-Conf, para. 11.

the rights of the accused and the expeditiousness of proceedings.<sup>13</sup> The Legal Representative makes it clear that the victims do not request to present evidence.<sup>14</sup> He finally submits that the four individuals selected to present their views and concerns (a/00115/15, REP a/0041/10, a/25189/13 and a/0372/10) are representative of the ethnic diversity within the victim population and the locations where the charged crimes were allegedly committed and the heterogeneous and distinct harm suffered.<sup>15</sup>

8. The Ruto Defence submits that it does not oppose the request, provided that:  
(a) the applicants qualify as victims; (b) their participation is limited to presenting their 'views and concerns' and does not amount to presentation of evidence; (c) their views and concerns are relevant to the crimes charged and directly related to the victims' personal interests. The Ruto Defence also requests the Chamber to order the Legal Representative to provide the parties with the victims' identities, unredacted or lesser redacted versions of their applications, and other supporting material, as well as the estimated time needed for the presentation of their 'views and concerns'.<sup>16</sup>
9. The Chamber notes that the Legal Representative filed the Reply without seeking leave of the Chamber pursuant to Regulation 24 of the Regulations of the Court. On that basis, and in light of the Chamber's determination below, the Chamber will disregard this submission. The Reply is not only unauthorised, but it is also unnecessary at this particular moment in the proceedings.

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<sup>13</sup> Request, ICC-01/09-01/11-1909-Conf, para 13.

<sup>14</sup> Request, ICC-01/09-01/11-1909-Conf, paras 14-16.

<sup>15</sup> Request, ICC-01/09-01/11-1909-Conf, paras 17-20.

<sup>16</sup> ICC-01/09-01/11-1926-Conf, paras 2, 11, 24, 33-36.

### III. ANALYSIS

#### *Preliminary Remarks*

10. At the outset, the Chamber recalls the main principles decided upon in the Victims' Participation Decision in this case, which guide the Chamber in its determination of the Request, namely:

- a. The timing of an intervention by one or more victims or by the Legal Representative will need to be determined on a case-by-case basis, taking into consideration the rights of the accused, the effectiveness and expeditiousness of proceedings and the interests of victims concerned;<sup>17</sup>
- b. Participating victims are not parties in the proceedings;<sup>18</sup>
- c. Victims' participation should not unduly delay proceedings or limit the accused's preparation of their defence;<sup>19</sup> and
- d. The procedure under Rule 89(1) of the Rules only applies to victims who wish to participate individually by appearing directly before the Chamber.<sup>20</sup>

11. In relation to the present Request, the Victims' Participation Decision determined that the parties will be provided with ample opportunity to present their observations on the applications, and in order to do so, victims will be required to identify themselves vis-à-vis the parties.<sup>21</sup>

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<sup>17</sup> Victims' Participation Decision, ICC-01/09-01/11-460, para. 13.

<sup>18</sup> Victims' Participation Decision, ICC-01/09-01/11-460, para. 14.

<sup>19</sup> Victims' Participation Decision, ICC-01/09-01/11-460, para. 15.

<sup>20</sup> Victims' Participation Decision, ICC-01/09-01/11-460, para. 32.

<sup>21</sup> Victims' Participation Decision, ICC-01/09-01/11-460, para. 35.

### *Consideration of the Request*

12. As directed in the Victims' Participation Decision, the Legal Representative submits the Request on behalf of four individual victims. In the Request, the Legal Representative explains why these individuals are considered to be best placed to reflect the interests of the victim and he provides a summary of the aspects that will be addressed by each victim.<sup>22</sup>

13. In accordance with the Victims' Participation Decision, the Registry shall assess these individuals' application forms, which shall later be transmitted to the Chamber. On the basis of these victims' application forms, and in conjunction with the Request, the Chamber will make a preliminary assessment as to the appropriateness of the Request. Once the parties make their observations, the Chamber will then make a final determination on the individual participation of the victims, either in person or via video-link, as well as the point of the proceedings in which such participation will take place.<sup>23</sup>

14. Pursuant to Article 68(3) of the Statute, and in order to enable the parties to make meaningful observations on the Request, the individual application forms of the victims concerned, as well as any other relevant supporting material, shall be transmitted as soon as possible. Moreover, as submitted by the Ruto Defence, the Legal Representative shall indicate to the parties the estimated time needed for the victims to present their views and concerns, as well as the suggested manner of their appearance in court, namely whether video-link or physical presence in the courtroom in The Hague are requested.

15. Additionally, and pursuant to Article 68(1) of the Statute, the VWU, in consultation with the Legal Representative, shall make the necessary security

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<sup>22</sup> Victims' Participation Decision, ICC-01/09-01/11-460, para. 56. Request, ICC-01/09-01/11-1909-Conf, paras 17-20.

<sup>23</sup> Victims' Participation Decision, ICC-01/09-01/11-460, paras 57-58.

assessment for the victims concerned and submit a report thereon to the Chamber, including the need, if any, for limited redactions to the application forms and accompanying material, and any other protective and/or special measures pursuant to Rules 87 and 88 of the Rules.

**FOR THE FOREGOING REASONS, THE CHAMBER HEREBY**

**ORDERS** the VWU, in consultation with the Legal Representative, to submit a report to the Chamber pursuant to paragraph 13 above, no later than 21 days after notification of the present decision;<sup>24</sup>

**ORDERS** the Legal Representative and the Registry to transmit to the Chamber and the parties, the victims' application forms, and any other relevant accompanying material, including the specifications in paragraphs 12 and 14 above, no later than 30 days after notification of the present decision;

**ORDERS** the parties to make any observations in relation to the Request, including the individual victims' status pursuant to Rule 85 of the Rules, as well as the timing and scope of the requested participation, no later than 30 days after the transmission of the victims' application forms and accompanying material.

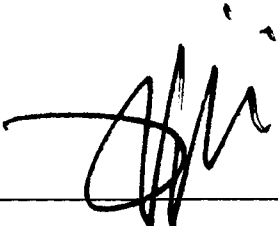
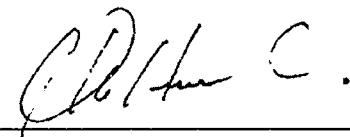
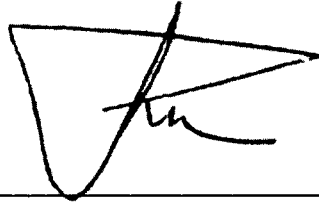
**DEFERS** its decision on the merits of the Request to a later stage, as discussed in paragraph 11 above.

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<sup>24</sup> If the report is confidential ex parte, a confidential redacted version shall be filed simultaneously.



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

  
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**Judge Chile Eboe-Osuji**  
(Presiding)  
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**Judge Olga Herrera Carbuccia**  
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**Judge Robert Fremr**

Dated 20 July 2015

At The Hague, The Netherlands