

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 4 April 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

**Transmission of the "Motion to participate in Article 60 Initial Appearance
Proceedings and Article 19 Admissibility Proceedings"**

Source: Registry

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

Liesbeth Zegved

**The Office of Public Counsel for
Victims**

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Sir Geoffrey Nice QC

Mr. Rodney Dixon

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REGISTRY

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Silvana Arbia

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Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Fiona McKay

Other

The Registrar of the International Criminal Court (the “Court”);

NOTING the Decision on the Prosecutor’s Application for Summons to Appear for William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang;¹

NOTING the Decision Designating a Single Judge;²

NOTING the Chamber’s Decision on Victim Participation in Proceedings Related to the Situation in the Republic of Kenya;³

NOTING the First Periodic Report of the Registry on the activities of the Victims Participation and Reparations Section in the Situation in the Republic of Kenya;⁴

NOTING the Transmission of the Motion submitted by the legal representatives of seven applicants for participation in the proceedings;⁵

NOTING the Decision on the Motion by Legal Representative of Victim Applicants to Participate in Initial Appearance Proceedings;⁶

NOTING the First Decision on Victims’ Participation in the Case;⁷

NOTING the Application on Behalf of the government of the Republic of Kenya Pursuant to Article 19 of the ICC Statute;⁸

CONSIDERING that the Registry has received a number of applications for participation in proceedings, some of which appear to be linked to the present case;

¹ ICC-01/09-01/11-1.

² ICC-01/09-01/11-6.

³ ICC-01/09-24.

⁴ ICC-01/09-49.

⁵ ICC-01/09-01/11-13.

⁶ ICC-01/09-01/11-14.

⁷ ICC-01/09-01/11-17.

⁸ ICC-01/09-01/11-19.

CONSIDERING that the Registry has received a further document from legal representatives representing seven applicants for participation in the proceedings, titled Motion to Participate in Article 60 Initial Appearance Proceedings and Article 19 Admissibility Proceedings;

TRANSMITS to the Single Judge the legal representatives's "Motion to Participate in Article 60 Initial Appearance Proceedings and Article 19 Admissibility Proceedings".

Background

1. On 8 March 2011, the Chamber issued its Decision on the Prosecutor's Application for Summons to Appear for William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang.⁹ In that Decision the Chamber ordered the named persons to appear before the Court on Thursday, 7 April 2011 at 9.30 hours for the purposes of a hearing to be held pursuant to article 60 of the Statute and rule 121(1) of the Rules of Procedure and Evidence.
2. On 24 March 2011, the Registry received correspondence from Ms Liesbeth Zegveld, one of a group of lawyers representing applicants for participation in the Kenya situation. The correspondence enclosed a document entitled Motion to Participate in Article 60 Initial Appearance Proceedings ("the first Motion") which Ms Zegveld requested that the Registry transmit to the Chamber. The first Motion was transmitted to the Single Judge on 29 March 2011.¹⁰
3. On 30 March 2011, the Single Judge issued her Decision on the Motion by Legal Representative of Victim Applicants to Participate in Initial Appearance Proceedings, rejecting the first motion.¹¹
4. On 31 March 2011, the Republic of Kenya filed its Application on Behalf of the Government of the Republic of Kenya Pursuant to Article 19 of the ICC Statute, requesting the Chamber dismiss the present case as inadmissible. The Kenyan

⁹ ICC-01/09-01/11-1.

¹⁰ ICC-01/09-01/11-13.

¹¹ ICC-01/09-01/11-14.

Government also requested that a Status Conference be convened to determine the procedure by which its application is dealt with, and that it be permitted to address the Chamber during the first appearance hearing.¹²

5. On 1 April 2011, the Registry received further correspondence from Ms Liesbeth Zegveld, enclosing a document entitled Motion to Participate in Article 60 Initial Appearance Proceedings and Article 19 Admissibility Proceedings ("the second Motion") which Ms Zegveld requests that the Registry transmit to the Chamber. The second Motion is transmitted as the annex to the present filing.
6. The Registry notes that, from the content of the second Motion, it appears that Ms Zegveld is cognizant of the Single Judge's decision rejecting the first Motion. Whilst the first motion is a request for participating in the Initial Appearance on the grounds of articles 60 and 68 of the Rome Statute, the second motion seems to be presented not as an attempt to appeal the decision of the Chamber rejecting the first motion, but rather as a new submission in the light of potentially material new circumstances resulting from the Kenyan Government's admissibility challenge and its related request to appear at the first appearance hearing.

The applications for participation and the Registry's observations thereon

7. The second Motion is presented by Ms Zegveld on behalf of the following seven applicants: a/0041/10, a/0042/10, a/0045/10, a/0048/10, a/0051/10, a/0056/10 and a/0064/10.
8. The Registry recalls that in its Transmission of 29 March 2011, it stated that six of the applications on whose behalf the first motion was presented (a/0041/10, a/0042/10, a/0045/10, a/0051/10, a/0056/10 and a/0064/10) had indicated an explicit wish to participate in proceedings and appeared to be linked to the present case.
9. The Registry also drew to the Chamber's attention that the seventh of the applicants on whose behalf the first Motion was presented (applicant a/0046/10)

¹² ICC-01/09/01/11-19.

had not explicitly indicated a wish to participate in the proceedings and indeed did not appear to be have suffered harm as a result of one of the alleged crimes that is the subject of the present case.¹³

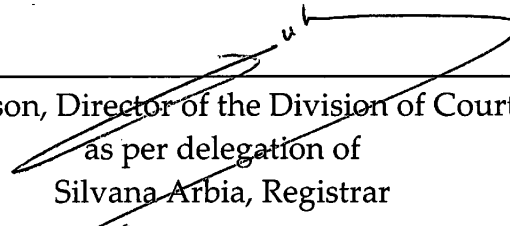
10. The Registry notes that applicant a/0046/10 is not among those on whose behalf the second Motion is presented. Instead reference is made to applicant a/0048/10.¹⁴
11. In respect of applicant a/0048/10 the Registry observes that this application was received by the Registry on 23 December 2010. On 16 December 2010 the Registry received a “Declaration of Request to Participate in ICC Proceedings” from this applicant. However the Registry observes that applicant a/0048/10 alleges that he suffered harm as a result of events which occurred outside the geographical areas covered by the Chamber’s Decision on the Prosecutor’s Application for Summons to Appear for William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang. For this reason the Registry considers that application a/0048/10 does not appear to be linked to the present case.

¹³ ICC-01/09-01/11-13, paragraph 8.

¹⁴ Annex to the present filing, paragraph 7.

12. Should the Single Judge so require, the Registry stands ready to:

- (a) transmit the seven applications to the Single Judge, together with a report thereon, in accordance with regulation 86(5) of the Regulations of the Court, and to include in such a report any analysis or assessment required by the Single Judge;
- (b) prepare appropriately redacted versions of the seven applications in order to transmit them to the Prosecutor and defence for their observations; and/or
- (c) provide further information regarding any other aspect of the second Motion or the seven applications.



Marc Dubuisson, Director of the Division of Court Services
as per delegation of
Silvana Arbia, Registrar

Dated this 4 April 2011

At The Hague, the Netherlands