

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/09-01/11
Date: 2 September 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 Document

**With Confidential Annexes 1 to 5 *ex parte* available only to the Registry and
the Legal Representative of participating victims**

Submission of information relating to the former Legal Representatives' Motion

Source: Registry

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

The Office of the Prosecutor

Mr Luis Moreno-Ocampo

Ms Fatou Bensouda

Ms Cynthia Tai

Counsel for the Defence

Mr Joseph Kipchumba Kigen-Katwa

Mr Kioko Kilukumi Musau

Mr George Odinga Oraro

Legal Representatives of the Victims

Ms Sureta Chana

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

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

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Counsel Support Section

Mr Esteban Peralta Losilla

Deputy Registrar

Mr Didier Preira

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Ms Fiona McKay

Other

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

NOTING the Chamber’s Decision on Victim Participation in Proceedings Related to the Situation in the Republic of Kenya;¹

NOTING the Registry’s Proposal for the common legal representation of victims;²

NOTING the Chamber’s Decision on Victims’ Participation at the Confirmation of Charges Hearing and in the Related Proceedings, which *inter alia* appointed the counsel recommended by the Registry as common legal representative of victims (the “Decision on Victim Participation”);³

NOTING the Motion from Victims a/0041/10, a/0045/10, a/0051/10 and a/0056/10 requesting the Pre-Trial Chamber to Reconsider the Appointment of Common Legal Representative Sureta CHANA for All Victims (the “Motion”);⁴

NOTING rules 16(1)(b) and 90 of the Rules of Procedure and Evidence; regulations 24 *bis*, 79, 80 and 82 of the Regulations of the Court; and regulations 112 and 113 of the Regulations of the Registry;

CONSIDERING that the Registry is in possession of information which may be relevant to the Chamber in determining the Motion;

CONSIDERING that Annexes 1 to 5 include information identifying victim participants and intermediaries and are therefore classified as confidential *ex parte* only available to the Registry;

TRANSMITS the following Submission of Information relating to the Motion.

¹ ICC-01/09-24.

² ICC-01/09-01/11-243.

³ ICC-01/09-01/11-249.

⁴ ICC-01/09-01/11-314.

1. The present submission is filed by the Registry in order to provide information which may be of assistance to the Single Judge in determining the Motion from Victims a/0041/10, a/0045/10, a/0051/10 and a/0056/10 requesting the Pre-Trial Chamber to Reconsider the Appointment of Common Legal Representative Sureta CHANA for All Victims (the "Motion").⁵
2. The Registry notes that in its Proposal for the common legal representation of victims⁶ it set out extensively the basis on which that proposal was made, including among other things, the steps taken to incorporate the views of the then applicants for participation. The Registry therefore does not intend in the present submission to respond to the arguments regarding alleged errors in the Registry's procedures. Neither will the Registry at this time make submissions regarding the standing of the former legal representatives to present their Motion. Rather the Registry wishes to correct in several respects the information presented in the Motion.
3. First, the Registry wishes to inform the Single Judge of information relating to the former legal representation of the four victims covered by the motion, prior to Ms Chana's appointment. Each of the four victims initially presented an application for reparations,⁷ signed in late November or early December 2009. In each case, that application appointed as legal representatives the following four lawyers: Liestbeth Zegveld, Mbuthi Gathenji, Arthur Igeria, and Boniface Njiru.
4. Only in June 2011 did three of the four victims submit new powers of attorney which indicated that:

⁵ ICC-01/09-01/11-314.

⁶ ICC-01/09-01/11-243.

⁷ A declaration requesting participation in proceedings was subsequently submitted in December 2010 by each of the four victims.

- The victims had been informed that Mr Gathenji and Mr Njiru intended to withdraw their representation as well as of the reasons for this;
- The victims appointed Ms Zegveld, Ms Njogu, Mr Sluiter and Mr Igeria to represent them.

However despite recommendations made by the Registry, Mr Gathenji and Mr Njiru have not filed a request under regulation 82 of the Regulations of the Court, seeking the Chamber's leave to withdraw their representation.

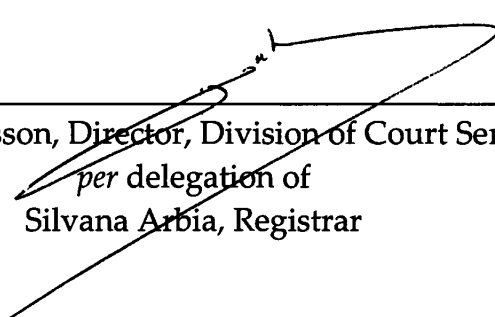
5. Regarding the previous representation of these victims the Registry therefore draws to the Chamber's attention that:
 - (i) Contrary to what is implied by the Motion, the lawyers making it have not represented these victims for "the last nearly four years" or the "the past four years".⁸
 - (ii) Victim a/0056/10 has never submitted a power of attorney appointing Ms Njogu or Mr Sluiter to represent him;
 - (iii) Pending a request to the Chamber from Mr Gathenji and Mr Njogu to withdraw, the legal representation of victims a/0041/10, a/0045/10 and a/0051/10 remained unclear prior to the appointment of Ms Chana.
6. Annexes 1 to 4 to the present filing are the application forms submitted by the four victims in question, including their declarations seeking participation and the powers of attorney submitted by three of them.
7. Secondly, the Registry brings to the Chamber's attention that, acting in compliance with the Single Judge's orders in the Decision on Victim Participation, it sought to facilitate meetings between the victims previously represented by Ms Zegveld and others, and their new legal representative,

⁸ ICC-01/09-01/11-314, paragraphs 5 and 13(v).

Ms Sureta Chana. Indeed, the Registry worked together with Ms Wambui Njogu and the administrative assistant of the organization serving as intermediary for her, to arrange such a meeting in Nakuru on 24 August 2011. On that day from 10am Ms Chana and Registry staff met with two of the four victims on whose behalf the Motion is purportedly made (a/0041/10 and a/0056/10). Indeed the Registry notes that legal aid money was provided to Ms Chana for the purpose of reimbursing the transport costs incurred by these victims in coming to meet her. Included in Annex 5 are receipts signed by the two victims and the administrative assistant who facilitated the meeting.

8. The Registry notes the declarations by these two victims, which were annexed to the motion, state, *inter alia*, “that I do not accept that SURETA CHANA is representing my interests. *I do not know her, I have never spoken to her* and I do not have confidence in her. She was imposed on me by the Court.” [emphasis added]. These declarations were signed in Nairobi on the same day as the victims had met with Ms Chana in Nakuru, having traveled from Uasin Gishu District that morning.
9. The Registry also notes that during the meeting of 24 August 2011 victims a/0041/10 and a/0056/10 did not object to their representation by Ms Chana, or seek to participate in proceedings unrepresented. Their only request was that Ms Njogu be considered for inclusion as a member of Ms Chana’s legal team.
10. The Registry notes that the declarations provided by victims a/0045/10 and a/0051/10 are dated 29 August 2011, well after the Registry had sought to facilitate a meeting between these victims and Ms Chana with the assistance of Ms Njogu.

11. The Registry emphasizes that the meeting on 24 August was arranged with the assistance of Ms Njogu and therefore presumably with the knowledge of her other colleagues in whose name the Motion is also presented.
12. Finally, while the present filing is intended to provide information to the Chamber, the Registry notes that it has concerns regarding several assertions made in the Motion which are of fundamental significance to the representation of victims before the Court.⁹ Should the Single Judge consider that she would be assisted by a submission from the Registry indicating its views on the legal and practical implications of such assertions the Registry would be ready to provide a further submission.



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

Dated this 2 September 2011

At The Hague, The Netherlands

⁹ For example those made in ICC-01/09-01/11-314, paragraph 13(iv) and 26 to 27.