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International Criminal Court

Original: **English**

No.: **ICC-01/09-01/11**
Date: **29 February 2012**

PRE-TRIAL CHAMBER II

Before: **Judge Ekaterina Trendafilova, Presiding Judge**
Judge Hans-Peter Kaul
Judge Cuno Tarfusser

SITUATION IN THE REPUBLIC OF KENYA

IN THE CASE OF
THE PROSECUTOR v. WILLIAM SAMOEI RUTO, HENRY KIPRONO KOSGEY AND JOSHUA ARAP SANG

URGENT
PUBLIC REDACTED VERSION
With confidential and *ex parte* annexes

Urgent Request by the Victims' Representative for an order from the Chamber requiring the Registrar to provide appropriate resources for the current mission in Kenya

Source: **Victims' Representative**

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

The Office of the Prosecutor

Counsel for the Defence

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
Silvana Arbia
Deputy Registrar
Didier Preira

Counsel Support Section
Esteban Peralta-Losilla

Victims and Witnesses Unit
Fiona Mckay

Detention Section

Victims Participation and Reparations Section

Other

1. The victims' representative and her case manager are presently on mission in Kenya. In her mission request, the victims' representative requested authorisation of certain expenditures in the sum of €13,020 in order to carry out the objectives of this mission. In the period of nearly 3 weeks between 6 February 2012 when the mission request was submitted, and 24 February 2012, the Counsel Support Section of the Registry (Registry) had various exchanges with the victims' representative's team seeking further information and justifications in relation to various aspects of the mission plan, but the Registry never questioned the requested amount of funds totalling €13,020. Then, on 24 February 2012, the very day that the victims' representative departed for Kenya, the Registry advised that only €2,000 would be "advanced". On 27 February 2012, after the victims' representative and case manager had already arrived in Kenya, the Registry clarified that €2,000 was in fact the total amount that would be authorised for the mission. This is some **15%** of the amount requested as necessary for the mission. Unless further funds are approved immediately, the victims' representative will be unable to carry out the objectives of the mission. An urgent order of the Pre-Trial Chamber is requested, approving the requested sum of €13,020.

Relevant order in force

2. The Single Judge's "Decision on Victims' Participation at the Confirmation of Charges Hearing and in the Related Proceedings" of 5 August 2011[1] (the "**5 August 2011 Decision**") appointing the common legal representative of 327 victims provided that:

> The Single Judge concurs with other Chambers of the Court with respect to the necessity that an appropriate legal and administrative support be provided to the common legal representative in order to perform her duties in an efficient and expeditious manner. In this respect, the Single Judge adopts such approach as also reiterated by the Registrar in her Proposal on Common Legal Representation, according to which a support structure to be proposed by the Registrar would allow the common legal representative to:

[1] ICC-01/09-01/11-249.

> a. Keep his or her clients informed about the progress of the proceedings and any relevant legal or factual issues that may concern them, in accordance with article 15 of the Code of Conduct for Counsel. The support structure should also allow the common legal representative to respond to a reasonable number of specific legal inquiries from individual victims.
> b. Receive general guidelines or instructions from his or her clients as a group and particular requests from individual victims.
> c. Maintain up to date files of all participating victims and their whereabouts.
> d. Obtain qualified legal support on a need basis.
> e. Store and process any confidential filings or other information, including the identity of his or her clients, in a safe and secure manner.
> f. Communicate with victims in a language they understand.[2]

3. The Single Judge also affirmed in that decision that "the effectiveness of common legal representation depends, inter alia, on the assistance, in terms of financial and human resources".[3] That decision furthermore noted "the peculiarities of the case – including the number of victims admitted to participate, the geographical and linguistic difficulties in establishing contact with the victims and the legal and factual complexity of the present case".[4]

4. It is submitted that it is necessarily implicit in this decision that where missions by the victims' representative to the field are approved, adequate financial resources must be made available to enable the approved purpose of the mission to be achieved.

The present mission

5. The purpose of the present mission and projected costs are detailed in the two mission request forms submitted to the Registry dated 6 February 2012 (one in respect of the victims' representative, and one in respect of the team's case manager).[5]

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[2] *Ibid.*, para 78 (footnotes omitted).
[3] *Ibid.*, para 80.
[4] *Ibid.*, para 79.
[5] Confidential and *ex parte* Annex A; Confidential and *ex parte* Annex B.

6. As explained in the mission request forms, the main purposes of the mission are to meet with those victims that the victims' representative has not yet met (pursuant to the 5 August 2011 Decision), and to inform victims about the outcome of the confirmation of charges hearing, following the Chamber's Confirmation of Charges decision on 23 January 2012.[6]
7. The need to inform victims about the outcome of the confirmation of charges hearing is critical, and time sensitive. [REDACTED]
8. [REDACTED] At the very least, the victims must be given an opportunity to give their views on this very important issue. This goes to the very heart of their interests and their views must be placed before the Pre-Trial Chamber.
9. After consultation with her clients during the mission to Kenya, the victims' representative intends to file submissions before the Pre-Trial Chamber in relation to these matters.
10. The purposes and duration of the proposed mission, and the projected cost, are set out in more detail in the mission request forms which are contained in confidential and *ex parte* annexes to the present application.[7]

The handling of the mission requests by the Registry

11. A mission request for this mission was first submitted to the Registry by the victims' representative's team on 2 February 2012.[8] That mission request sought approval for a mission to Kenya to be undertaken by the victims' representative and the team's case manager, commencing 13 February 2012.
12. The Registry responded in an e-mail dated 3 February 2012,[9] stating that the Registry had decided "not to favorably answer to your request at this stage" as insufficient notice of the proposed mission had been given, that a revised request should be submitted giving appropriate notice, and that separate mission requests had to be submitted for the victims' representative and the case manager respectively, together with a mission plan in correct format for each of the travellers.

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[6] ICC-01/09-01/11-373, "Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute", Pre-Trial Chamber II, 23 January 2012 (the "Confirmation of Charges Decision").
[7] Confidential and *ex parte* Annex A; Confidential and *ex parte* Annex B.
[8] Confidential and *ex parte* Annex C p 21-22
[9] Confidential and *ex parte* Annex C p 20-21

13. On 6 February 2012, as requested by the Registry, the victims' representative's team submitted two mission requests (one in respect of the victims' representative, and one in respect of the team's case manager), seeking approval for a three-week mission to Kenya commencing on 19 February 2012.[10] (The start date for the mission was subsequently postponed, such that the victims' representative departed on 24 February 2012). In the e-mail submitting these mission requests,[11] the legal representative's team assured the Registry that the team did not intend to by-pass correct procedures for seeking approval for missions, and noted that the document "Standard procedure defence team" did not refer to the need for a mission plan, nor the need to give a particular period of notice of a proposed mission, nor the need for separate requests for each traveller. The case manger invited the Registry to provide the relevant document containing these requirements, and expressed the willingness of the victims' representative's team to comply with the Registry's requirements.
14. The mission plan provided for meetings with victims in [REDACTED] and [REDACTED], and [REDACTED]. The mission plan also envisaged further meetings in [REDACTED]. The requested expenditure for the mission, in order to accomplish mission activities, was € 13,020, broken down as follows:
    - Transport reimbursement for victims: € 6,400
    - Hall hire: € 730
    - Mobilizers: € 250
    - Tea/Lunch: € 3,900
    - Stationery: € 240
    - Road transport: € 400
    - Communication/internet charges: € 500
    - Contingency: € 600

15. The Registry responded in an e-mail of 10 February 2012.[12] In respect of the request relating to the victims' representative, the Registry requested further information justifying the length of the proposed mission and justifying payment of travel costs for victims. In respect of the request relating to the team case manager, the Registry

[10] Confidential and *ex parte* Annex A; Confidential and *ex parte* Annex B.
[11] Confidential and *ex parte* Annex C p19-20
[12] Confidential and *ex parte* Annex C p 18-19

stated that the request had not been approved, as it was considered that the participation of the case manager in the mission was unnecessary.

16. The victims' representative responded in an e-mail dated 13 February 2012,[13] providing further justification for the length of the proposed mission and for payment of victims' travel costs, and emphasising that the case manager's participation in this mission was only being requested because this was absolutely essential. The victims' representative also provided further information in a teleconference with the Registry on 16 February 2012.

17. In an e-mail dated 17 February 2012,[14] the Registry then informed the victims' representative of the following. The victims' representative's mission had been approved, but for two weeks only. In light of the additional information provided by the victims' representative, the mission request for the case manager had also been approved "to assist you during the mission in Kenya only", and it was specifically stated that approval was not granted for the case manager's participation in the proposed meeting in [REDACTED]. The implication was that the case manager's participation had been approved for the meetings in [REDACTED].

18. In the same email from the Registry, travel expenses were also approved for the field assistants to attend the meeting in [REDACTED], but not the proposed meetings in [REDACTED]. Moreover, a request for an interpreter for the meetings was declined by the Registry.

19. That e-mail of 17 February 2012 further stated:

> About the specific request for advances from the legal aid to cover particular costs associated with meeting your clients (transportation, accommodation for victims and venue hire) as previously communicated, the Registrar must exceptionally approve any advances. In this regard, we will revert to you soon.

20. It is noted that the sum of € 13,020 referred to in paragraph 14 above did not include daily subsistence allowance ("DSA") for members of the victims' representatives team. The travel costs for members of the victims' representative's team to the meetings in [REDACTED] would be the same regardless of how many members of the team travelled to those meetings, since travel was to be by a single hired vehicle

[13] Confidential and *ex parte* Annex C p 16-18.
[14] Confidential and *ex parte* Annex C p 14-16

which would take as many members of the victims' representative's teams as were participating. Thus, the Registry'sdecision not to approve participation by the case manager in the meeting in [REDACTED], and not to approve participation of the field assistants in the meetings in [REDACTED], had no impact on the need for the requested sum of € 13,020 in paragraph 14 above.

21. There was no suggestion in the Registry e-mail dated 17 February 2012 that a decision had been taken not to approve the requested budget of € 13,020, or that the Registry had any concern with the requested amount of € 13,020. That e-mail stated that the Registrar must exceptionally approve any "advances" from legal aid to cover particular costs associated with meeting victims (transportation, accommodation for victims and venue hire). By the use of the expression "advances", the legal representative understood that this e-mail was referring to amounts that would be paid from legal aid *in advance* of a mission (and therefore in advance of expenditure being actually incurred), as opposed to amounts that can only be claimed from the legal aid budget upon *conclusion* of the mission (after the expenditure has actually been incurred).
22. The victims' representative responded to the Registry in an e-mail dated 20 February 2012.[15] In that e-mail, the victims' representative said that she required the presence of field assistants for the meeting in [REDACTED], as the victims speak Kiswahili and Kikuyu, and that field assistants were required for the meetings in [REDACTED], as they are the ones who know and regularly liaise with the intermediaries facilitating victims' travel to the meetings and would be in charge of follow-up. It was also noted on several occasions that meetings with large groups of victims have huge logistical implications and therefore the presence of field assistants is absolutely imperative.
23. In discussions with the Registry, the legal representative's team noted that comparisons were commonly drawn between the missions conducted by her team and the victims' legal representative team in the other Kenya case, Prosecutor v. Muthaura et al. In relation to the cost of the mission, the victims' representative said in the 20 February 2012 e-mail that:

[15] Confidential and *ex parte* Annex C p 13-14

> I appreciate the limitations of the legal aid system and your endeavours to keep costs low whenever possible. In this regard, I have advised you that I am committed to accomplish the mission within the shortest time possible. However, as explained in the mission request and during our telephone conference, we must speak to each individual victim about the time frame of the violations they have suffered. This is a time consuming exercise. We have many more victims than the legal representation team in case 2 and a much greater percentage of our clients are affected by the time frame issue. Unlike the victims in case 2, our victims are spread over a much wider geographical area and must travel very long distances to attend meetings with me, sometimes eight or nine hours, and must then go back to their places of residence. This means that, in practice, much time is lost in transportation and I can only meet with them for about four hours a day. This considerably reduces the time when I can actually engage with and interview them. This is the reason why we considered that two weeks would not suffice. I would like to avoid a further mission on the same matters.

24. In this e-mail, the victims' representative also went on to state that:

> I look forward to your response in relation to the advance. In this regard, I note that advances were given for previous missions and that I accounted for them and gave back the unused funds. It is also noted that going on mission implies substantial expenditure (hotel, meals, stationary, photocopies, etc) which are only reimbursed to me many months later (eg. I have not yet been reimbursed for my missions in August and October last year). For this reason, advances are absolutely essential.

25. This reflected the legal representative's understanding of the ordinary meaning of the word "advance". The point was made that it was burdensome to require the victims' representative to pay the expenses personally and to reclaim them only after the mission, as it may take months for such a claim to be paid. Furthermore, the victims' representative noted that on previous missions she had in fact managed to keep overall expenditure below budget, and had returned unused funds at the end of the mission to the Registry. It is submitted that it was natural for the victims' representative to understand from communications with the Registry to this point that the overall sum requested of € 13,020 had not been called into question, and that the only issue was how much of this sum would be advanced prior to the mission.

26. The Registry responded to this e-mail in an e-mail of 21 February 2012.[16] That e-mail indicated that in the light of the further information provided, travel had now been approved for a field assistant for the meeting in [REDACTED], and for the case manager for the meetings in [REDACTED]. The Registry e-mail of 21 February 2012 also questioned the need for a field assistant to travel to [REDACTED], given that all of the victims to attend that meeting speak Swahili and/or English.
27. The legal representative team responded to the Registry in an e-mail of 22 February 2012.[17] She stated that the presence of a field assistant at the meeting in [REDACTED] was important not only for language reasons but also because it is the field assistant who has a direct on-going relationship with the intermediaries, that the victims' representative's knowledge of Swahili is only conversational, and that many victims who state that they speak English do not in practice speak English well enough for the purposes of meetings of the kind proposed.
28. The Registry responded in an e-mail of 22 February 2012,[18] indicating that approval had now also been granted for travel for a field assistant to the meeting in [REDACTED]. In that e-mail, the Registry then went on to state:

> Please note that your request for an advance is under consideration at the Registrar's office, and we shall inform you shortly of any decision. We also take this opportunity to inform you in this regard that only costs emanating from the approved period of the mission – 26 February to 11 March 2012 are eligible for reimbursement. We kindly request you to consider this during your mission and the additional days you will be in Kenya.

29. Again, a reading of this passage in accordance with the ordinary meaning of the words used would lead to the conclusion that the only issue under consideration was how much of the budget of the mission would be advanced prior to the mission. The express statement that "only costs emanating from the approved period of the mission ... are eligible for reimbursement" implies that amounts that are not advanced will only be reimbursed after termination of the mission. It is submitted that it was again natural for the victims' representative to understand that the overall sum of € 13,020 had not been called into question.

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[16] Confidential and *ex parte* AnnexC p12-13
[17] Confidential and *ex parte* Annex C p 11-12
[18] Confidential and *ex parte* Annex C p 10

30. In an email dated 23 February 2011, the legal representative team acknowledged the Registry's decision to approve the week for 2 weeks only and communicated that the mission would last for 3 weeks and that the costs of the third week would be exceptionally born by the legal representative and the case manager.[19]

31. Subsequently, on 24 February 2012, the very day of the victims' representative's departure for Kenya, the Registry sent an e-mail[20] stating that:

> Following your request for cash advance to facilitate your mission, I hereby inform you that this request has been exceptionally approved for an advance of 2000 Euros. Kindly let us know if you would prefer for this amount to be deposited in your account or sent to you to Kenya by Western Union.

32. Again, the plain meaning of the language used would convey that this e-mail relates only to the amount of the mission budget to be paid prior to the mission by way of "cash advance to facilitate your mission", and not to the overall budget of the mission of € 13,020. Nevertheless, the victims' representative was naturally still very concerned that only some **15%** of the mission budget (€ 2,000 of € 13,020) was being provided by way of cash advance.

33. At the time of receipt of this e-mail, the victims' representative was making final preparations for her departure later that day. She responded with a very brief e-mail to the Registrythat a cash advance of € 2,000 would clearly not be enough.[21] The legal representative's team sent an e-mail to the Registry later the same day, stating (still understanding that the only matter in issue was the amount to be *advanced*), that "Without sufficient advance, we will be unable to undertake the planned activities during the mission", and that "Ms. Chana has asked me to inform you that she is unable to advance any funds herself".

34. The legal representative's team followed up with a further e-mail of 27 February 2012,[22] following her arrival in [REDACTED], stating (again still understanding that the only matter in issue was the amount to be *advanced*) that "As stated in a previous email, our ability to undertake the planned activities will be severely impaired should we not receive the requested advance".

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[19] Confidential and *ex parte* Annex D p 1
[20] Confidential and *ex parte* Annex C p 8-9
[21] Confidential and *ex parte* Annex C p 8.
[22] Confidential and *ex parte* Annex C p 6-7

35. Finally, in an e-mail of 27 February 2004,[23] the Registry responded that:

> Please note that the sums advanced took into consideration all relevant information provided, the costs associated with past missions, the reality in the field and the practice of all external teams. CSS considers that it is reasonable to conclude that if this sum is duly managed for specific purpose it was approved, the mission can be fully achieved ***without any additional costs for the legal aid*** (emphasis added).

36. Thus, the Registry was now indicating, not only that the amount of the advance would be only 15% of the requested authorised expenditure of € 13,020, but that the *total authorised expenditure* would be only 15% of the requested amount.

37. The victims' representative responded to the Registry in a further e-mail of 27 February 2012,[24] reiterating the justification of a budget of € 13,020, and concluding:

> It is sufficiently clear from these calculations that the mission cannot be completed within €2000. Our victims have already been mobilized and we will not be able to meet them. This significantly undermines my mission and will frustrate the victims' expectations.
>
> Kindly advise how I am to proceed given that you are only prepared to advance €2000 which is clearly not enough for me to complete the mission. I will proceed with my mission and after I have spent €2000, I will terminate the mission and inform you accordingly.
>
> We look forward to your expeditious response as we need to inform, victims, mobilizers, venue hire (lest we have to pay for cancellation costs), the FOS and other service providers.

Arguments

38. On any principles of administrative law in any legal system, the decision of the Registry must be unlawful.

39. In terms of administrative law principles in common law systems, it is perverse, or so unreasonable that no reasonable decision maker exercising the Registry's powers in accordance with correct legal principles could have reached this decision.

40. The Registry have approved a requested mission. Elements of the mission that have now been expressly approved include the following:

    a. meetings will be held with victims in [REDACTED];

[23] Confidential and *ex parte* Annex C p 6
[24] Confidential and *ex parte* Annex C p4-6

b. legal aid funding for the mission will include the transportation of victims who travel very long distances to arrive at the meeting point, the hire venues to meet with large groups of victims, and payment for meals of the victims attending the meetings the whole day (see the Registry e-mail of 27 February 2012);

c. meetings will be held with some 280 victims, almost all of which will have to travel long distances for security reasons to meet with the victims' representative's team (with the exception of 10 who are living in a camp in [REDACTED]).

41. The need for a budget of € 13,020 to undertake a mission with these elements has been explained in detail by the victims' representative's team, in protracted exchanges with the Registry since 6 February 2012. It was not until 27 February 2012, after the victims' representative and her case manager had already arrived on mission in Kenya, that the victims' representative was informed that only 15% of the requested expenses were being authorised. Until then, the victims' representative understood that the only issue for consideration by the Registrar was the amount of the € 13,020 budget that would be paid by way of an advance, prior to commencement of the mission.

42. The Registry might seek to argue that when it said in earlier e-mails that the amount of the "advance" still needed to be approved by the Registrar, this meant that the total amount of expenditure for the mission had still not been authorised. The victims' representative denies that anyone reading the Registry's e-mails over the last weeks would have understood references to "advances" as having that meaning. However, even if this is how the references to "advances" should be understood (which is denied), it was only on 24 February 2012 (the day that the victims' representative herself departed for Kenya) that the Registry advised her that only € 2,000 would be "advanced". Clearly, if the Registry or the Registrar had such enormous concerns with the requested expenses of € 13,020, to such an extent that the Registrar was ultimately only willing to approve 15% of the requested amount, it is obvious that a concern of such magnitude should have been put to the victims' representative for further clarification or justification. Since 6 February 2012, there

have been extensive exchanges between the Registry and the victims' representative's team in which the Registry has required further information or justification on a number of matters, including on the reasons for transportation. However, the Registry has never queried the amount of requested expenses of € 13,020.

43. In the e-mail exchanges, the victims' representative has expressed her commitment to keeping expenditure as low as possible, and has noted that in previous missions, the victims' representative has managed to keep expenditure under budget and has returned the excess to the Court at the end of the mission.

44. In the circumstances, for the Registry to inform the victims' representative only on the day of her departure that only 15% of the requested expenditure will be authorised, lacks all good faith.

45. The Registry have given no explanation at all as to how the victims' representative's team could carry out a mission with the approved objectives with expenditure of only € 2,000. The Registry states merely, in the most vague and general way, that it has concluded that this is possible based on (1) "all relevant information provided", (2) "the costs associated with past missions", (3) "the reality in the field", and (4) "the practice of all external teams".

46. As regards the Registry's reference to (1) "all relevant information provided", no explanation is given of what "relevant information" leads to the conclusion that € 2,000 would be sufficient for this particular mission. On the contrary, the information provided by the victims' representative gives detailed reasons for the requested sum of € 13,020. As explained in the victims' representative's 27 February 2012 e-mail to the Registry:[25]

> Just the transport reimbursement for the victims comes to €6400 for 280 victims at KES 2500 per person (the equivalent of €23 per person). Given that our victims travel all night in mini-vans and return the same day because we are not able to accommodate them, €23 per person for transport is clearly a very reasonable about to pay. We also have to pay €4630 for the venue and their lunch which comes to KES 1752. per person (€16). This significantly low cost is because we will hold the meetings in a church.

[25] Confidential and *ex parte* Annex C p 5-6

47. With regards to the Registry's reference to (2) "the costs associated with past missions", as explained in the victims' representative's 27 February 2012 e-mail to the Registry,[26] the costs of the August and October 2011 missions combined was about € 11,500 to meet with 244 participating victims.[27] The objective of the present mission is to meet with some 280 victims.

48. As regards the Registry's reference to (3) "the reality in the field", this reference is unexplained, and incomprehensible without further reasons being stated by the Registry. The victims' representative has given a breakdown of expenses and explained the dynamics in the field and the cost per head in a clear manner. The Registry do not explain how it could possibly conclude that the "reality in the field" is that the mission could be undertaken for only 15% of the requested funds.

49. As regards the Registry's reference to (4) "the practice of all external teams", the victims' representative understands this to be an implicit reference to the fact that (on the victims' representative's information), a sum of € 2,000 was "advanced" to the victims' representative's team in the other case ("**Team 2**") for a mission to Kenya around the same dates. The victims' representative's team in the present case ("**Team 1**") does not know the precise details of Team 2's mission, and it is not Team 1's place to comment on whether the funds provided to Team 2 were adequate for its mission. However, even assuming that € 2,000 was sufficient for Team 2's mission, it is irrational and perverse for the Registry to conclude on that basis that € 2,000 must also be sufficient for Team 1's mission. It must be evident that once the Registry approves a particular mission with a particular objective, it must determine what expenditure will be required for that particular mission. It cannot decide that question by reference to what was required for a different mission by a different team in a different case.

50. As explained in the victims' representative's 27 February 2012 e-mail to the Registry,[28] Team 1's understanding is that the Team 2 mission involves meeting with only 120 victims, while Team 1's mission is to meet 280 victims, more than double that number. The victims represented by Team 2 live in areas which are secure, and

[26] Confidential and *ex parte* Annex C p 5
[27] Confidential and *ex parte* Annex E
[28] Confidential and *ex parte* Annex C p 5

Team 2 is able to visit their victims within their respective home locations. In contrast, the victims represented by Team 1 live in areas which are deemed not to be secure. More than 90% of the victims that Team 1 intends to visit live in Eldoret, Turbo and Nandi Hills – areas dominated by the Kalenjin who are hostile to the ICC process and any parties thereto, including victims. The victims represented by Team 1 would not dare appear to meet with their legal representative in their areas of residence for fear of further persecution. By contrast, most victims represented by Team 2 live in Nyanza and Western Provinces which are dominated by their own tribal communities and are therefore quite safe – a polar difference to the situation of victims represented by Team 1.

51. The areas of Eldoret, Turbo and Nandi Hills are wide geographical areas with poor road transport and communication infrastructure especially within the interior. These locations are also significantly long distances from [REDACTED], which are the locations where the meetings will take place. These locations have been chosen based on recommendations of the Field Office Security (FOS), the victims, and our own assessment. Team 1 has to pay for the venues, for victims' lunch and transportation costs. Since victims come from long distances to attend meetings, their transportation costs are presumably much higher than any transportation costs for the Team 2 mission given that victims in the other case live relatively close to the venue of the meetings.

52. The result is that the victims' representative and case manager are now on mission in Kenya. They cannot carry out their approved mission without approval of the necessary funds. The mission cannot be carried out with only € 2,000. If further funds are not approved immediately, the objectives of the mission will not be accomplished and the mission will be frustrated. The cost of travel already incurred by the victims' representative and case manager to [REDACTED] will have been wasted. Valuable mission time is being lost. The mission was originally requested for a period of three weeks, but the Registry only approved two weeks. Part of that time has now been required to respond to email exchanges with the Registry and to prepare the present application to the Chamber. If further funds are not approved

immediately, insufficient time will remain to enable the mission objectives to be carried out.

53. Additionally, of course, the impact of the Registry's unrealistic decision would be that victims will lose the benefit of consultation with their legal representative, and thereby, in effect, the benefit of their representation.

Other matters

54. This application is filed URGENT, CONFIDENTIAL, and EX PARTE.
55. The reasons for the URGENCY of this application are given above.
56. This application is filed CONFIDENTIALLY and EX PARTE, because it contains sensitive information about a mission to the field and activities undertaken by the victims' representative's team (including *inter alia* specific details of activities to be accomplished, litigation strategy, names of team members and email addresses) to which the parties and the public are must not privy. A PUBLIC REDACTED version is filed jointly with this application.

Conclusion

57. In view of the urgency of this matter, it is submitted that there is no time for further exchanges with the Registry as to the details of the mission and proposed expenditure. The Registry had adequate time to discuss these matters in detail with the victims' representative's team during the numerous exchanges over the period of nearly three weeks that preceded the mission. It was the Registry which created this urgency, by only informing the victims' representative's team on the day that the victims' representative departed for Kenya that only € 2,000 was approved.
58. It is further submitted that the pointlessness of engaging further with the Registry in relation to this matter is also illustrated by the Registry's e-mail of 28 February 2012,[29] responding to the victims' representative's e-mail of 27 February 2012. That e-mail, which was received only when the drafting of the present application was almost complete, states as follows:

> We note that by this communication you introduce new facts about this current mission, which was not indicated in your mission request for approval by the Section. In all communications

[29] Confidential and *ex parte* Annex C p 4

> regarding this mission, you indicated that you will conduct the mission in [REDACTED]. It is the first instance in this communication that you inform us of the intention to visit victims in Nandi hills, Turbo and Eldoret. In this context, since this information was not provided, these areas have not been assessed for suitability of a mission by field security.

59. That statement is so clearly incorrect that the victims' representative is forced to question whether it is made in good faith. The victims' representative has never proposed visiting Nandi hills, Turbo and Eldoret. It has always been made clear that victims from these areas will be travelling to [REDACTED] in order to meet with the victims' representative, as they could not possibly meet with the victims' representative in their home areas of Nandi hills, Turbo and Eldoret due to safety concerns.
60. This latest e-mail from the Registry also confirms that on previous missions, expenditures by the victims' representative have been underspent, and the excess has been repaid by the victims' representative at the end of the mission. In this respect, it is submitted that the victims' representative should not be penalised for being cost-efficient. The over-estimation of required expenditure for previous missions was the result of cost estimations provided by another section of the Registry (specifically, the Victims' Participation and Reparations Section), based on assumptions of normal practices for accommodating victims and hiring commerical conference facilities for meetings. When on these missions, the victims' representative found ways of making economies by holding the meetings in a church which costs very little, and by ensuring that victims return home on the day of the meeting to avoid accommodation expenses for victims. All necessary receipts were provided to the Registry.
61. The victims' representative appeals to the Chamber to provide a resolution to this matter as failure to do so would set a harmful precedent for future missions and for the meaningful participation of victims before the ICC. It is important that all sections of the court observe some measure of good faith in their interactions and that the assumption of bad faith is not foisted upon parties without reasonable grounds.

Relief sought

62. In all the circumstances, the victims' representative's team requests an URGENT order of the Pre-Trial Chamber, approving the sum of the sum of €13,020 requested by the victims' representative in the mission request, and requiring the Registrar to advance the full amount of that sum immediately. Given the time spent on the issue at hand and the extensive reasons provided for the mission to be accomplished over a period of three weeks, the legal representative also requests that the mission be extended for three weeks.

Sureta Chana

Dated this 29th day of February 2012

At Nairobi, Kenya