

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original:

No.: ICC-
Date: 28 May 2012

TRIAL CHAMBER V

Before: Judge Kuniko Ozaki, Presiding
Judge Christine Van den Wyngaert
Judge Chile Eboe-Osuji

SITUATION IN KENYA

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

PUBLIC DOCUMENT

**Filing of the victims' representative pursuant to the "Order scheduling a status
conference"**

Source: Victims' Legal Representative

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

Counsel for the Defence

Counsel for William Samoei Ruto
Mr Kioko Kilukumi Musau
Mr David Hooper
Counsel for Joshua Arap Sang
Mr Joseph Kipchumba Kigen-Katwa
Mr Joel Kimutai Bosek

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

Deputy Registrar

Mr Didier Preira

Counsel Support Section

Mr Esteban Peralta-Losilla

Victims and Witnesses Unit

Ms Fiona McKay

Detention Section**Victims Participation and Reparations
Section**

Ms Maria Luisa Martinod-Jacome

Other

1. The victims' representative files the present document pursuant to the Trial Chamber's "Order scheduling a status conference" of 14 May 2012 (the "**Order**").¹
2. The Order states that in the light of the decision of the Appeals Chamber of 23 April 2012,² "the legal representative of victims shall provisionally continue to represent victims currently participating in the proceedings before the Trial Chamber until a decision is made on the legal representation of victims".³
3. Paragraph 2 of the Order sets out the agenda for the status conference to be held on 11 June 2012 (consisting of items A-P).

Submissions on the agenda for the status conference

4. Paragraph 3 of the Order states that the common legal representatives may make submissions on items A-C of the agenda by 28 May 2012.
5. Items A-C of the agenda are:
 - A. Date of the trial;
 - B. Languages to be used in the proceedings, in particular, the languages spoken by the witnesses the parties intend to call and any victims the legal representatives may seek authorisation to call; and
 - C. Anticipated length of the presentation of evidence at trial;
6. The victims' representative regrets that she is unable to make meaningful submissions on these agenda items at this stage. This is due to the lack of approval by the Registry for the

¹ ICC-01/09-01/11-413.

² ICC-01/09-01/11-409.

³ Order, paragraph 6.

legal aid budget of the Court to cover the necessary work by the victims' representative and members of her team. As the Victim's Representative's field staff in Kenya have not been authorised to work, they are not in a position to contact victims for their views.

7. As noted above, on 23 April 2012, the Appeals Chamber issued its "Decision on the 'Application of the Victims' Representative pursuant to Article 83 of the Regulations'" (the "**23 April 2012 Appeals Chamber decision**").⁴ In that decision, the Appeals Chamber held that, without prejudice to the power of the Trial Chamber to determine questions of victim representation at the trial phase, unless and until the representation agreement is brought to an end pursuant to article 17 of the Code, the legal representative appointed pursuant to the 5 August 2011 decision continues to represent the victims.

8. In that decision, the Appeals Chamber went on to state that:

This, however, does not mean that the scope of legal assistance paid by the Court must be maintained at the same level as during the pre-trial proceedings. ... In the view of the Appeals Chamber, and based on the information currently available to the Chamber, the approach of the Registry as to legal assistance paid by the Court for the present phase of the proceedings before the Appeals Chamber, namely that further activities of the Legal Representative must be authorised beforehand by the Registry in order to be covered by the legal aid scheme, is therefore adequate.

9. On 26 April 2012, the Registry wrote a letter to the victims' representative,⁵ stating that pursuant to the 23 April 2012 Appeals Chamber decision, activities of the legal representative must be authorised by the Registry in advance in order to be remunerated under the legal aid scheme of the Court. That letter also stated that the resources available under the legal aid scheme of the Court were restricted to the legal representative personally, and that involvement by any other members appointed to the victims' representative's team pursuant to the 5 August 2011 decision would not be remunerated under the Court's legal aid scheme.

⁴ ICC-01/09-01/11-409.

⁵ Annex A to the present filing.

10. On 7 May 2012, the victims' representative submitted a request to the Registry for pre-authorisation of activities of members of the victims' representative's team.
11. On 18 May 2012, the victims' representative sent a follow-up e-mail to the Registry,⁶ seeking further pre-authorisation for work on the filings referred to in the Order.
12. On 23 May 2012, the Registry sent to the victims' representative a letter stating that "the Registry shall consider the relevant activities performed by you as a legal representative before the Trial Chamber V as eligible for remuneration under the legal aid scheme until a decision is made on the legal representation of victims or until any other relevant factors justify otherwise". However, the letter stated that the requested pre-authorisation was refused in relation to the field workers, and that no decision had yet been reached in relation to the requested pre-authorisation for the other members of the victims' representative's team. The decision emphasised that "no payment for any *post facto* activities shall be made".
13. On 24 May 2012, more than three weeks after the victims' representative's letter was sent requesting urgent pre-authorisation, the Registry sent to her a further letter requesting clarifications of the request for pre-approval, but effectively refusing the request in relation to the other members of the victims' representative's team.
14. The victims' representative will as soon as possible be filing a request under Article 83(4) of the Regulations for review of the Registrar's decisions of 24 May 2012 and 24 May 2012. At this stage, given that the Registry have made clear that pre-approval is required for any work by the victims' representative's team, given that pre-approval for work by the victims' representative was given only on 23 May 2102, and given that pre-approval for work by other members of the victims' representative has not been granted, it has not been possible to date for the victims' representative's team to undertake the necessary work to respond substantively to agenda items A-C, and evaluate whether other items need to be added. In particular, any decision by the victims' representative to seek authorisation to call victims

⁶ Annex D to the present filing.

at the trial will require prior communication between the victims' representative and the victims that she represents. It will also require an analysis of the applications of each of the 327 victims represented, with a view to determining which of the victims it would be appropriate to seek authorisation to call. This will require work by the victims' representative's field workers and case manager, in respect of whom, pre-approval has not been granted by the Registry.

15. In the circumstances, the victims' representative would respectfully request the leave of the Chamber to make submissions on the agenda, after a decision has been taken on the regulation 83(4) request that the victims' representative will be filing.
16. The victims' representative also respectfully requests that she be permitted at that stage to make submissions also on agenda item K ("Time limit for the submission of applications for victim participation").

Other agenda items

17. Paragraph 4 of the Order states that should the victims' representative wish to add other items to the agenda of the status conference, she should indicate it in her written submissions.
18. The victims' representative submits that to the extent that the matter has not been resolved prior to the status conference, an agenda item should be the legal representation of the victims at the trial phase, including the resources to be made available to the victims' representative's team from the Court's legal aid budget.
19. The victims' representative respectfully submits that it would be useful for the Chamber to order that a representative of the Registry's Counsel Support Section ("CSS") attend the status conference, in order to answer any questions that the Chamber may have concerning the handling by CSS of the victims' representative's requests for resources.

A handwritten signature in blue ink, consisting of a series of loops and a long horizontal stroke, positioned above a solid horizontal line.

Sureta Chana
Legal Representative

Dated this 28th day of May 2012

At London, United Kingdom