

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/09-01/11
Date: 30 August 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

Order to the Registrar to Provide Independent Legal Advice to Witnesses

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

The Office of the Prosecutor
Luis Moreno-Ocampo, Prosecutor
Fatou Bensouda, Deputy Prosecutor

Counsel for William Samoei Ruto
Joseph Kipchumba Kigen-Katwa, David
Hooper and Kioko Kilukumi Musau

Counsel for Henry Kiprono Kosgey
George Odinga Oraro

Counsel for Joshua Arap Sang
Joseph Kipchumba Kigen-Katwa

Legal Representatives of the Victims
Sureta Chana

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

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

States Representatives

Amicus Curiae

Other

REGISTRY

Registrar & Deputy Registrar
Silvana Arbia, Registrar
Didier Preira, Deputy Registrar

Defence Support Section

Victims and Witnesses Unit
Maria Luisa Martinod-Jacome

Detention Section

**Victims Participation and Reparations
Section**

Other

Judge Ekaterina Trendafilova, acting as Single Judge on behalf of Pre-Trial Chamber II (the “Chamber”) of the International Criminal Court (the “Court”)¹ hereby issues this Order to the Registrar to Provide Independent Legal Advice to Witnesses.

1. On 8 March 2011, the Chamber, by majority, decided to summon William Samoei Ruto (“Mr. Ruto”), Henry Kiprono Kosgey and Joshua Arap Sang (“Mr. Sang”) (collectively the “Suspects”) to appear before the Court.² Pursuant to this decision, the Suspects voluntarily appeared before the Court at the initial appearance hearing held on 7 April 2011 during which, *inter alia*, the Chamber set the date for the commencement of the confirmation of charges hearing for 1 September 2011.³

2. On 25 July 2011, the Single Judge issued the “Order to the Defence to Reduce the Number of Witnesses to Be Called to Testify at the Confirmation of Charges Hearing and to Submit an Amended List of Viva Voce Witnesses” (the “Order on the Number of Live Witnesses”),⁴ wherein she ordered the Defence teams “[...] to reduce the number of the witnesses they intend to call to testify at the confirmation of charges hearing to a maximum of two witnesses for each suspect and to submit, by no later than Wednesday, 27 July 2011 an amended list of viva voce witnesses, indicating their names and the scope and subject-matter of their proposed questioning”.⁵

¹ Pre-Trial Chamber II, “Decision Designating a Single Judge”, ICC-01/09-02/11-9.

² Pre-Trial Chamber II, “Decision on the Prosecutor’s Application for Summons to Appear for William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang”, ICC-01/09-01/11-1.

³ ICC-01/09-01/11-T-1-ENG.

⁴ Pre-Trial Chamber II, “Order to the Defence to Reduce the Number of Witnesses to Be Called to Testify at the Confirmation of Charges Hearing and to Submit an Amended List of Viva Voce Witnesses” ICC-01/09-01/11-221.

⁵ Pre-Trial Chamber II, “Order to the Defence to Reduce the Number of Witnesses to Be Called to Testify at the Confirmation of Charges Hearing and to Submit an Amended List of Viva Voce Witnesses” ICC-01/09-01/11-221, p. 13.

3. On 27 July 2011, in compliance with the Order on the Number of Live Witnesses, the Defence teams of the Suspects filed their respective lists of witnesses they intend to call to testify at the confirmation of charges hearing.⁶

4. On 12 August 2011, the Chamber received the "Victims and Witnesses Unit's Unified Protocol on the practices used to prepare and familiarise witnesses for giving testimony" (the "Unified Protocol"),⁷ in which the Victims and Witnesses Unit (the "VWU") stated that "[o]nce the Registry has been made aware that the witness may make self-incriminating statements during his/her testimony, it is the responsibility of the Registry to ensure that the witness is provided with independent legal advice from a qualified lawyer".⁸

5. On 25 August 2011, the Single Judge issued the "Decision on the Schedule for the Confirmation of Charges Hearing",⁹ where she stated that "[...] should one or more of the witnesses express desire to be assisted by way of legal advice, the Registrar shall arrange for the legal adviser to provide the necessary support for the witnesses from outside the courtroom".¹⁰

6. On 30 August 2011, the Chamber received the "Victims and Witnesses Unit's information report on the preparation and familiarisation of viva voce witnesses in the field",¹¹ in which the Defence teams of Mr. Ruto and Mr. Sang indicated that they are willing to request legal assistance for the benefit of witnesses KEN-D09-P-0001 and KEN-D11-P-0001, pursuant to rule 74 of the Rules of Procedure and Evidence (the "Rules").¹²

⁶ ICC-01/09-01/11-202-Conf-Exp; ICC-01/09-01/11-203 and ICC-01/09-01/11-204.

⁷ ICC-01/09-01/11-259 and ICC-01/09-01/11-259-Anx.

⁸ ICC-01/09-01/11-259-Anx, para. 56.

⁹ Pre-Trial Chamber II, "Decision on the Schedule for the Confirmation of Charges Hearing", ICC-01/09-01/11-294; ICC-01/09-01/11-294-Anx-Corr.

¹⁰ Pre-Trial Chamber II, "Decision on the Schedule for the Confirmation of Charges Hearing", ICC-01/09-01/11-294, para. 22.

¹¹ ICC-01/09-01/11-303-Conf-Exp.

¹² ICC-01/09-01/11-303-Conf-Exp, para. 7(b).

7. The Single Judge notes articles 61(6)(c) and 67(1)(e), rule 74(10) and 122(1) of the Rules.

8. The Single Judge recalls rule 74 of the Rules, in particular sub-paragraph 10 of the said rule, which states that “[i]f an issue of self-incrimination arises in the course of the proceedings, the Chamber shall suspend the taking of the testimony and provide the witness with an opportunity to obtain legal advice if he or she so requests for the purpose of the application of the rule”.

9. The Single Judge observes that while the Court’s statutory provisions envisage the possibility for a witness to obtain independent legal advice, rule 122(1) of the Rules vests the Chamber with the power to organize the manner upon which the confirmation of charges hearing shall be conducted. In addition, as already held by the Single Judge, in the event one or more witnesses request legal advice “[...] the Registrar shall arrange for the legal adviser to provide the necessary support for the witnesses from outside the courtroom”.¹³

10. Considering the information made available by the VWU, the Single Judge deems it appropriate that independent legal advice from a qualified lawyer be ensured by the Registrar to witnesses KEN-D09-P-0001 and KEN-D11-P-0001, before the start of the courtroom session when the witnesses are expected to testify and also during any break in the course of the confirmation of charges hearing. Therefore, the Single Judge instructs the Registrar to arrange the necessary facilities for consultation between the witnesses and a legal adviser.

11. The Single Judge instructs the Registrar to be ready to provide independent legal advice, under the same conditions specified in paragraph 10 above and in compliance with the Unified Protocol, to any other witnesses in the present case who might request legal advice pursuant to rule 74(10) of the Rules.

¹³ Pre-Trial Chamber II, “Decision on the Schedule for the Confirmation of Charges Hearing”, ICC-01/09-01/11-294, para. 22.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

a) **orders** the Registrar to provide witnesses KEN-D09-P-0001 and KEN-D11-P-0001 with independent legal advice from a qualified lawyer, before the start of the courtroom session when the witnesses are expected to testify and also during any break in the course of the confirmation of charges hearing;

b) **orders** the Registrar to arrange the necessary facilities for consultation between the witnesses and a legal adviser.

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



Judge Ekaterina Trendafilova
Single Judge

Dated this Tuesday, 30 August 2011

At The Hague, The Netherlands