

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/09
Date: 14 February 2011

PRE-TRIAL CHAMBER II

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

SITUATION IN THE REPUBLIC OF KENYA

**Public
With a Public Annex**

Transmission by the Registry of "An Application for Leave under Article 58 and Article 42(5) (7) and (8)(a) of the Rome Statute and Rule 34(1)(d) and (2) of the Rules of Procedure and Evidence to Participate in the Proceedings Before the Pre-Trial Chamber Relating to the Prosecutor's Application Made under Article 58(7)" submitted on 10 February 2011

Source: The Registrar

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, Prosecutor

Ms Fatou Bensouda, Deputy Prosecutor

Counsel for the Defence

Legal Representatives of the Victims

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

Other

Joshua Kirwa Arap Sang/ Joseph
Kipchumba Kigen-Katwa and Joel
Kimutai Bosek

REGISTRY

Registrar

Ms Silvana Arbia

Deputy Registrar

Mr Didier Preira

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Ms Charlotte Dahuron-Jacoby

The REGISTRAR of the International Criminal Court (the "Court");

NOTING the *"Prosecutor's Application Pursuant to Article 58 as to William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang"* submitted by the Prosecutor on 15 December 2010 (the *"Prosecutor's Application"*);¹

NOTING the *"Decision on the "Application for Leave to Participate in the Proceedings before the Pre-Trial Chamber relating to the Prosecutor's Application under Article 58(7)"* (the *"Decision of 11 February 2011"*) issued by the Pre-Trial Chamber II (the *"Chamber"*) on 11 February 2011;²

NOTING rule 13(1) of the Rules of Procedure and Evidence ("RPE"), regulation 23*bis* of the Regulations of the Court ("RoC"), regulation 21(2) of the Regulations of the Registry ("RoR");

CONSIDERING that, on 10 February 2011 at 14h32, the Katwa and Kemboy law firm communicated electronically to the Registry a document referred to as *"Application for Leave under Article 58 and Articles 42(5) (7) and (8)(a) of the Rome Statute and Rule 34(1)(d) and (2) of the Rules of Procedure and Evidence to Participate in the Proceedings before the Pre-Trial Chamber Relating to the Prosecutor's Application Made under Article 58(7)"* (the *"Application"*);

CONSIDERING that up to date, a decision on the opening or not of a case has not been issued;

CONSIDERING that, the abovementioned Application cannot be considered as a "document" under regulation 22 of the RoC and regulation 21(2)(b) of the RoR, since it does not emanate from a party or participant in a case or situation before the Court;

¹ ICC-01/09-30-Conf-Exp

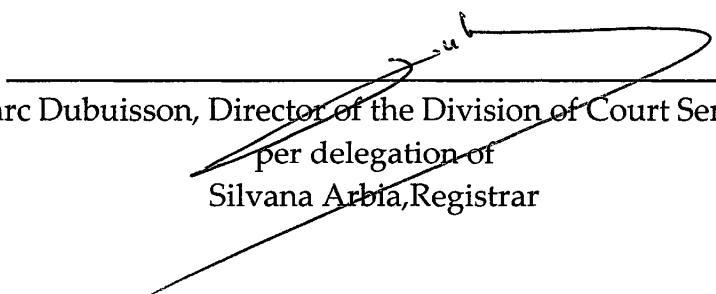
² ICC-01/09-42

CONSIDERING however that this Application seems to be related to the Situation in Kenya under regulation 21 (2)(d) of the RoR;

CONSIDERING the role of the Registry as the Court's channel of communication under rule 13(1) of the RPE;

CONSIDERING that in the Decision of 11 February 2011, the Chamber instructs that "when submissions are filed as public documents, the Registry shall transmit them [submissions by applicants] to the Chamber according to the same level of classification, unless there is a "factual or legal basis", in accordance with regulation 23*bis* (1) of the Regulations [RoC], to present those documents as "confidential", "ex parte" or "under seal"";

TRANSMITS respectfully to the Chamber, in a public annex, the Application, as it was submitted as a public document by the law firm.



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

Dated this 14 February 2011

At The Hague in The Netherlands