



Original: **English**

No.: ICC-01/09-01/11

Date: **1 September 2011**

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
PROSECUTOR v. WILLIAM SAMOEI RUTO, HENRY KIPRONO KOSGEY, and
JOSHUA ARAP SANG*

**Public Document
Urgent**

**Request by the Government of Kenya in respect of the Confirmation of Charges
Proceedings**

Source: The Government of the Republic of Kenya, represented by Sir
Geoffrey Nice QC and Rodney Dixon

Document 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,
Kioki Kilukumi Musau, and David
Hooper QC

Counsel for Henry Kiprono Kosgey

George Odinga Oraro

Counsel for Joshua Arap Sang

Joseph Kipchumba Kigen-Katwa

Legal Representatives of Victims

Legal Representatives of the Applicant

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

Paolina Massida

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

States Representatives

Sir Geoffrey Nice QC
Rodney Dixon

Amicus Curiae

REGISTRY

Registrar

Silvana Arbia, Registrar
Didier Preira, Deputy Registrar

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Fiona McKay

Other

Request by the Government of Kenya

1. Noting the Judgment of the Appeals Chamber delivered on 30 August 2011, the Government of Kenya files this urgent request to be permitted to have a legal representative in the courtroom during the confirmation of charges proceedings in the present case.
2. The Government of Kenya does not request any rights of audience, only that its legal representative attend in the courtroom to have a "watching brief" over the proceedings. The Government of Kenya is currently investigating each of the suspects in this case, who have been interviewed by the Kenyan police. The Government of Kenya has a legitimate interest in being present in the courtroom as a State Party of the ICC which is actively investigating the three suspects in order to hear the evidence presented and the submissions of all of the parties whether given in public or confidentially.¹ The evidence and submissions presented during the confirmation hearing are directly relevant to the national investigation presently being undertaken in Kenya into the three suspects.
3. Attendance in the courtroom for a "watching brief" is essential as it will ensure that the legal representative of the Government of Kenya is present during all confidential sessions which cannot be followed in the public gallery. It will also permit the legal representative to observe in the courtroom the nature of the evidence presented including the demeanour of the witnesses called. Representation in the courtroom will serve to recognise the Government of Kenya's status as a State Party which is involved in the present case through its own investigation into the three suspects. There is no good reason to deny the Government of Kenya's limited request in the present circumstances.
4. For all of these reasons the Government of Kenya respectfully requests that it be permitted to have a legal representative in the courtroom under the specific conditions proposed above, and any others deemed appropriate by the Pre-Trial Chamber, for the

¹ In the event that there is any objection to the Government of Kenya having access to any particular materials or being present in any part of the proceedings these can be raised and dealt with in the proceedings on a case by case basis if they arise. The legal representative and the Government of Kenya would of course be bound by any appropriate orders made by the Pre-Trial Chamber in respect of the confidentiality of any materials and the proceedings.

duration of the confirmation of charges proceedings. The Government of Kenya asks that the Pre-Trial Chamber consider its request on an urgent basis.



Sir Geoffrey Nice QC
Rodney Dixon
Counsel on behalf of the Government of the Republic of Kenya

Dated 1st September 2011
The Hague , The Netherlands