



Original: English

No.: ICC-01/09-01/11  
Date: 24 October 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  
*THE PROSECUTOR v. WILLIAM SAMOEI RUTO, HENRY KIPRONO KOSGEY  
AND JOSHUA ARAP SANG*

Public Document

Response by the Victims' Representative to the "Application on behalf of the  
Government of Kenya for leave to file observations in response to submissions made  
by Legal Representative for the Victims"

Source: Victims' Representative

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 the Defence**

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**

Ms Sureta Chana

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented  
Applicants(Participation/Reparation)**

**The Office of Public Counsel for Victims**

Ms Paolina Massidda

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

**States' Representatives**

Sir Geoffrey Nice QC  
Rodney Dixon

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Silvana Arbia

**Deputy Registrar**

Didier Preira

**Counsel Support Section**

**Victims and Witnesses Unit**

Fiona McKay

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

1. On 20 October 2011, the Government of Kenya filed the "Application on behalf of the Government of Kenya for leave to file observations in response to submissions made by Legal Representative for the Victims" (the "**Government Request**").<sup>1</sup>
2. The Government Request seeks the permission of the Chamber for the Government of Kenya to file its own observations on observations that were made by the victims' representative in the confirmation of charges hearing.
3. In the event that the Chamber does grant permission to the Government of Kenya to file such observations, the victims' representative would request permission to file a response to those observations. In advance of any decision of the Chamber whether or not to grant such permission to the Government of Kenya, the victims' representative does not at this stage address the observations already made in the Government Request.
4. The Government Request states at paragraph 4 that "It is hoped that Ms. Chana will support the Government of Kenya's application to guarantee a fair consideration of the issues".
5. It is a matter for the Chamber whether or not to grant the Government Request. However, the victims' representative does not support it.
6. The Government Request objects to observations made by the victims' representative at the oral confirmation of charges hearing, which was held from 1-8 September 2011. The Government Request was filed 6 weeks after the conclusion of that hearing. It is submitted that no satisfactory reason has been given for the delay in making the Government Request.
7. Paragraph 7 of the Defence Request suggests that the Government of Kenya waited until the victims' representative's final observations were filed on 30 September 2011, and then "reviewed these observations and submissions" before deciding whether to make the Government Request. It is submitted that it is not evident why the Government of Kenya would need to wait until the victims' representative's final observations were filed before deciding whether to object to observations that she had made at the oral hearing. The essence of the Government Request is a contention

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<sup>1</sup> ICC-01/09-01/11-352.

that the victims' representative "failed to bring to the Chamber's attention the efforts, programs and initiatives that have been undertaken by the Government of Kenya" and had presented no concrete evidence that the Government of Kenya has failed to investigate and prosecute persons responsible for Post-Election Violence or that the Government of Kenya was not interested in protecting and assisting victims and witnesses (Government Request, paras 2-3). It is submitted that there is no reason why that contention could not have been raised immediately at the time of the oral confirmation of charges hearing if it was a matter of genuine concern to the Government of Kenya.

8. Furthermore, and in any event, the Government Request was still only made some 3 weeks after the final observations of the victims' representative were filed. It is submitted that no reason has been given why it took a further 3 weeks for the Government Request to be made.
9. More generally, it is noted that the Government of Kenya is not a participant in the confirmation of charges hearing. In the course of proceedings before the Court, it is inherently the case that evidence will be presented, and submissions will be made, concerning persons, organisations and States which are not parties to the proceedings. Proceedings would become unworkable if every such person, organisation or State about which such observations were made could then intervene in the proceedings in order to present its version of events.
10. It is submitted that this is true even where the non-party seeking to intervene is a State Party to the Statute, especially where the State Party is the State on the territory of which the crimes in question were alleged to have been committed.



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Sureta Chana

Dated this 24<sup>th</sup> day of October 2011

At Nairobi, Kenya