

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/09-01/11
Date: 1 September 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

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

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 and
Joshua Arap Sang**
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
Geoffrey Nice
Rodney Dixon

Amicus Curiae

REGISTRY

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

Defence Support Section

Victims and Witnesses Unit

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 decision on the “Request by the Government of Kenya in respect of the Confirmation of Charges Proceedings” (the “Request”).²

1. On 8 March 2011, the Chamber, by majority, decided to summon William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang (collectively the “Suspects”) to appear before it.³ 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 2011.⁴

2. On 31 March 2011, the Government of Kenya filed the “Application on Behalf of the Government of the Republic of Kenya Pursuant to Article 19 of the Rome Statute” (the “Admissibility Challenge”), requesting, *inter alia*, that the Pre-Trial Chamber “find the two cases presently before it to be inadmissible”.⁵

3. On 30 May 2011, the Chamber rendered the “Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute”, in which it determined that the case is admissible.⁶

4. On 6 June 2011, the Government of Kenya filed an appeal entitled “Appeal of the Government of Kenya against the ‘Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute’” (the “Appeal”).⁷

¹ Pre-Trial Chamber II, “Decision Designating a Single Judge”, ICC-01/09-01/11-6.

² ICC-01/09-01/11-310.

³ 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-01/09-01/11-01.

⁴ ICC-01/09-01/11-T-1-ENG.

⁵ ICC-01/09-01/11-19, para. 80

⁶ Pre-Trial Chamber II, “Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute”, p. 28.

⁷ ICC-01/09-01/11-109.

5. On 30 August 2011, the Appeals Chamber issued the “Judgment on the appeal of the Republic of Kenya against the decision of Pre-Trial Chamber II of 30 May 2011 entitled ‘Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute’” (the “Judgment”), wherein the Appeals Chamber dismissed the Appeal and confirmed that the case is admissible.⁸

6. On 1 September 2011, the Government of Kenya filed the Request, in which it seeks leave “[...] to have a legal representative in the courtroom [...], and any other deemed appropriate by the Pre-Trial Chamber, for the duration of the confirmation of charges proceedings”.⁹ In its submissions, the Government of Kenya states that it does not request any rights of audience during the confirmation of charges hearing but only to have a “watching brief” over the proceedings, since it “[...] is currently investigating each of the [S]uspects in this case” and it accordingly has “[...] a legitimate interest in being present in the courtroom [...]”.¹⁰

7. The Single Judge notes rule 122(1) of the Rules of Procedure and Evidence, according to which “[t]he Presiding Judge shall determine how the hearing is to be conducted [...]”.

8. The Single Judge wishes to underline, first of all, that the Appeals Chamber rendered its Judgment on the Appeal filed by the Government of Kenya, and that therefore its challenge to the admissibility of the present case pursuant to article 19(2)(b) of the Rome Statute is *res judicata*. Thus, no issue concerning the Government of Kenya or brought by the latter to the attention of this Chamber is currently pending before the bench. Accordingly, the Single Judge considers that the Government of

⁸ Appeals Chamber, “Judgment on the appeal of the Republic of Kenya against the decision of Pre-Trial Chamber II of 30 May 2011 entitled ‘Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute’”, ICC-01/09-01/11-307, para. 125.

⁹ ICC-01/09-01/11-310, para. 4.

¹⁰ ICC-01/09-01/11-310, para. 2.

Kenya has no procedural standing before the Chamber for the purpose of the confirmation of charges hearing. Therefore, the Request must be rejected.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

rejects the Request.

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



Judge Ekaterina Trendafilova
Single Judge

Dated this Thursday, 1 September 2011

At The Hague, The Netherlands