

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 9 May 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,
with Public Annexes A and B**

**Prosecution's First Communication of Disclosure of Incriminating Evidence for
Disclosure to the Defence**

Source: Office of the Prosecutor

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
Cynthia Tai, Trial Lawyer

Counsel for the Defence

Counsel for William Samoei Ruto:

Joseph Kipchumba Kigen-Katwa and
Kioko Kilukumi Musau

Counsel for Henry Kiprono Kosgey:

George Odinga Oraro

Counsel for Joshua Arap Sang:

Joseph Kipchumba Kigen-Katwa

Legal Representatives of Victims

Legal Representatives of 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

REGISTRY

Registrar

Silvana Arbia, Registrar
Didier Preira, Deputy-Registrar

Victims and Witnesses Unit

Defence Support Section

Detention Section

**Victims Participation and Reparations
Section**

Other

1. The Prosecution is disclosing within the deadline established by the Second Disclosure Decision all the unredacted material that can be submitted without jeopardizing the safety and well-being of witnesses, victims, and other persons at risk.

Background

2. On 6 April 2011, Judge Trendafilova, acting as the Single Judge for Pre-Trial Chamber II (“the Single Judge”), established the regime for evidence disclosure and related matters for this case (“the First Decision”).¹
3. On 20 April 2011, the Single Judge issued the “Decision on the ‘Prosecution's application requesting disclosure after a final resolution of the Government of Kenya's admissibility challenge’ and Establishing a Calendar for Disclosure Between the Parties” (“the Second Decision”).² In the Second Decision, the Single Judge ordered that, *inter alia*, the Prosecution shall disclose to the Defence any evidence on which he intends to rely for the purposes of the confirmation of charges hearing that has been collected prior to 15 December 2010 and for which no redaction is needed no later than Friday, 13 May 2011.
4. The Prosecution herewith submits for disclosure to the Defence its incriminating evidence collected prior to 15 December 2010 and for which no redaction is needed. In compliance with the First Decision, this disclosure is accompanied by: (i) a list of evidence that identifies recipients for each evidentiary item and reflects the access and level of confidentiality of each item (Annex A), and (ii) an analysis of each piece of evidence reflecting its relevance (Annex B). In compliance with the First Decision, the Prosecution is providing the material to the Registry. Additionally, in compliance

¹ ICC-01/09-01/11-44.

² ICC-01/09-01/11-62.

with its autonomous duties established by Article 61(3) of the Rome Statute and Rules 121(2)(c) and (3) of the Rules of Procedure and Evidence, the Prosecution is providing a copy to the Defence.

5. As indicated in its pending “Application for Extension of the Time Limit for Disclosure”, the Prosecution seeks an adjustment of the new deadlines adopted by the Second Disclosure Decision. It will force the Prosecution to disclose the majority of its evidence more than three months in advance of the legal deadline. The Prosecution reiterates that the current calendar for disclosure of material that requires redaction is affecting the Prosecution’ right to a fair trial. The Prosecution proposed to disclose the witness statements collected that require redactions after a proper reevaluation of the security in Kenya, within the original deadline established by the Chamber and in accordance with the Statute.
6. That said, the Prosecution is disclosing within the deadline established by the Second Disclosure Decision all the material that can be submitted without jeopardizing the safety and well-being of witnesses, victims, and other persons at risk.

7. Finally, the Prosecution also notes that it has received two letters from defence counsel for Mr. Ruto and Mr. Sang, requesting disclosure of a variety of items. The Prosecution submits that the disclosure of all relevant materials will be subject to the disclosure calendar set by the Chamber and subject to any further modifications that the Chamber may make. Such disclosure will continue to be effected through the Registry.



Luis Moreno-Ocampo
Prosecutor

Dated this 9th day of May 2011
At The Hague, The Netherlands