

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 3 June 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, B**

**Prosecution's Second Communication of Disclosure of Incriminating Evidence 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

**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**

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**Registrar**

Silvana Arbia, Registrar  
Didier Preira, Deputy-Registrar

**Defence Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

1. 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”).<sup>1</sup> Pursuant to the First Decision, the Chamber ordered that:
  - Disclosure between the parties shall be facilitated through the Registry, where the Registry shall serve as a “communication channel” between the parties and the Chamber;<sup>2</sup> and
  - When submitting evidence to the Registry, the parties shall provide: (i) a list of evidence, (ii) a list of identified recipients for each evidentiary item reflecting the access and level of confidentiality of each item, and (iii) an analysis of each piece of evidence reflecting its relevance as indicated in Annex 2 of the First Decision.<sup>3</sup>
2. 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”).<sup>4</sup> 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 after 15 December 2010 to 31 March 2011<sup>5</sup>.
3. The Prosecution herewith submits for disclosure to the Defence its incriminating evidence collected after 15 December 2010 and 31 March 2011 and for which no redaction is needed. In compliance with the First Decision, this disclosure is

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<sup>1</sup> ICC-01/09-01/11-44.

<sup>2</sup> ICC-01/09-01/11-44 paras. 5 and 13, and page 10.

<sup>3</sup> ICC-01/09-01/11-44 paras. 21-23, and pages 10-11; ICC-01/09-01/11-44-Anx2.

<sup>4</sup> ICC-01/09-01/11-62.

<sup>5</sup> ICC-01/09-01/11-62 para 18.

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). Additionally, in compliance with its autonomous duties established by Article 61(3) of the Rome Statute and Rules 121(2) (c) and (3) of the Rules, the Prosecution has provided a copy of the evidence to each of the Defence teams.

4. The Prosecution is mindful of its obligation under Article 68(1) of the Rome Statute to ensure the protection of victims and witnesses. The Prosecution has therefore assessed, prior to disclosure, that the evidence in this submission could be disclosed to the Defence without jeopardizing the safety and well-being of witnesses, victims, and other persons at risk.



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Luis Moreno-Ocampo  
Prosecutor

Dated this 3 day of June 2011  
At The Hague, The Netherlands