

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 28 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 Annex A
and Confidential Annex B**

**Prosecution's First Communication of Potentially Exculpatory 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

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Mrs. Fatou Bensouda, Deputy Prosecutor

Counsel for the Defence

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Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

Unrepresented Applicants for 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
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Victims and Witnesses Unit

Ms. Maria Luisa Martinod-Jacome

Defence Support Section

Detention Section

Victims Participation and Reparations Section

Other

1. The Prosecution hereby submits its first communication of potentially exculpatory evidence pursuant to Article 67(2) of the Rome Statute.

I. Procedural History

2. On 7 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 The Single Judge ordered, *inter alia*, the Prosecution to disclose to the Defence any evidence of a potentially exculpatory nature under Article 67(2) as soon as practicable and on a continuous basis.³
4. The Prosecution herewith submits its first communication of disclosure to the Defence of public and confidential documents which contain potentially exculpatory evidence, and for which no redactions are needed. The Prosecution has attached to this Application the related lists of evidence, identifying recipients for each evidentiary item and reflecting the access and level of confidentiality of each item.⁴

II. Request for Confidentiality

5. The Prosecution requests that Annex B be received by the Single Judge as “Confidential” as it because it contains information of a sensitive nature not

¹ ICC-01/09-01/11-44.

² ICC-01/09-01/11-62.

³ ICC-01/09-01/11-62, para. 21.

⁴ Note: No in-depth analysis chart is needed in relation to these documents, as such charts are only required for incriminatory evidence. ICC-01/09-01/11-74, para. 18.

currently available to the public and/or which was obtained from confidential sources.

6. 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 had 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.



Luis Moreno-Ocampo

Prosecutor

Dated this 28th day of June 2011

At The Hague, The Netherlands