

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 4 July 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**

**Confidential Document,  
With Confidential Annexes A-J**

**Prosecution's First Communication to the Defence of Redacted Incriminating  
Evidence pursuant to Article 61(3)(b) and material subject to disclosure pursuant to  
Rule 77**

**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**

Mr. Kioko Kilukumi Musau, Mr. Joseph Kipchumba Kigen-Katawa, Mr. David Hooper QC, Mr. Kithure Kindiki, Mr. George Odinga Oraro, Mr. Julius Kipkosgei Kemboy, Mr. Allan Kosgey, Mr. Joel Kimutai Bosek and Mr. Philemon K.B. Koech

**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**

**Defence Support Section**

**Victims and Witnesses Unit**

Maria Luisa Martinod-Jacome

**Detention Section**

**Victims Participation and Reparations Section**

Fiona Mackay

**Other**

1. The Prosecution hereby submits its first communication of redacted evidence in preparation for the confirmation hearing pursuant to Article 61(3)(b) of the Rome Statute and Rule 77 of the Rules of Procedure and Evidence. This disclosure includes incriminating evidence and material intended for use by the Prosecution as evidence for the purposes of the confirmation hearing. The disclosed material contains redactions authorized by the Pre-Trial Chamber.

### **I. Procedural History**

2. On 23 May 2011, pursuant to its disclosure obligations in preparation for the confirmation hearing, the Prosecution filed its first application for redactions to evidence it intends to rely on to seek confirmation of charges.<sup>1</sup> On 26 May 2011, the Prosecution filed an addendum to that Application.<sup>2</sup>
3. On 24 June 2011, the Single Judge issued the "First Decision on the Prosecutor's Requests for Redactions and Related Requests" ("the Decision"), ordering the Prosecution to disclose certain documents in the approved redacted form within five days of the Decision.<sup>3</sup>
4. In compliance with the Decision, the Prosecution herewith submits its first communication of disclosure to the Defence of incriminating and Rule 77 evidence for which the Chamber has approved redactions. This disclosure is accompanied by (i) a list of incriminating evidence that identifies recipients for each evidentiary item and reflects the access and level of confidentiality of each item (Annex A), (ii) an analysis of each piece of incriminating evidence reflecting its relevance (Annex B - I),

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<sup>1</sup> ICC-01/09-01/11-96-Conf-Exp and related annexes.

<sup>2</sup> ICC-01/09-01/11-99-Conf-Exp and related annexes.

<sup>3</sup> ICC-01/09-01/11-145-Conf-Exp, p. 40-41. Note: Because this document was filed on a Friday, pursuant to Regulation 33(1)(c) of the Regulations of the Court, the time limit began to run from the next working day of the Court, which was Monday, 27 June 2011.

and (iii) a list of Rule 77 material that identifies recipients for each evidentiary item and reflects the access and level of confidentiality of each item (Annex J).

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

## II. Request for Confidentiality

6. The Prosecution requests that the document and its annexes be received by the Single Judge as "Confidential" because they contain information of a sensitive nature not currently available to the public and/or which was obtained from confidential sources.



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Luis Moreno-Ocampo

Prosecutor

Dated this 4th day of July 2011

At The Hague, The Netherlands