

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 6 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-G**

**Prosecution's Second 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

Registrar

Defence Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Other

1. The Prosecution hereby submits its second 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.¹ On 26 May 2011, the Prosecution filed an addendum to that Application.² On 3 June 2011, the Prosecution submitted its second application for redactions to evidence it intends to rely on to seek confirmation of charges.³
3. On 28 June 2011, the Single Judge issued the "Second 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.⁴
4. In compliance with the Decision, the Prosecution herewith submits its second 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

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

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

³ ICC-01/09-01/11-105-Conf-Exp and related annexes.

⁴ ICC-01/09-01/11-152-Conf-Exp, p. 10-11.

analysis of each piece of incriminating evidence reflecting its relevance (Annex B - F), 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 G).

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 provided a copy of the evidence to each of the Defence teams on 5 July 2011, as ordered by the Chamber.

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.



Luis Moreno-Ocampo

Prosecutor

Dated this 6th day of July 2011

At The Hague, The Netherlands