

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 13 July 2011

PRE-TRIAL CHAMBER II

Before: Judge Ekaterina Trendafilova, Presiding Judge
Judge Hans-Peter Kaul, Judge
Judge Cuno Tarfusser, Judge

SITUATION IN THE REPUBLIC OF KENYA

**IN THE CASE OF
THE PROSECUTOR *v.* WILLIAM SAMOEI RUTO, HENRY KIPRONO KOSGEY
AND JOSHUA ARAP SANG**

PUBLIC

**Request of the Defence of Mr. Henry Kiprono Kosgey for an Order that the
Prosecution do File a Consolidated In-depth Analysis Chart Presenting Each Piece
of Evidence Relevant to the Alleged Criminal Responsibility of Each Suspect
Separately**

Source: Defence

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, David Hooper QC, Kioko Kilukumi Musau, Kithure Kindiki

Counsel for Henry Kiprono Kosgey:

George Odinga Oraro, Julius Kemboy and Allan Kosgey

Counsel for Joshua Arap Sang:

Joseph Kipchumba Kigen-Katwa, Joel Kimutai Bosek and Philemon K.B. Koech

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Ms. Silvana Arbia, Registrar

Counsel Support Section

Deputy Registrar

Mr. Didier Daniel Pereira, Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Introduction

1. On 8 March 2011, the Pre-Trial Chamber, by majority, issued three summonses to appear in the present case and set the date for the initial appearance of the suspects for 7 April 2011 (Decision on Summonses).¹
2. In the Decision on Summonses, the Chamber found that there were reasonable grounds to believe that Mr. Kosgey and Mr. Ruto bore individual criminal responsibility for the alleged crimes as indirect co-perpetrators pursuant to Article 25(3)(a) of the Statute, and that Mr. Sang was personally responsible pursuant to Article 23(3)(d) of the Statute. In reaching this conclusion, the Chamber found that each defendant contributed to the realisation of the common objective in different ways.²
3. On 6 April 2011, the Single Judge issued her 'Decision Setting the Regime for Evidence Disclosure and Other Related Matters', in which the Chamber, *inter alia*, ordered the Prosecution to file an in-depth analysis chart.³ In a subsequent decision, the Single Judge clarified that the table of analysis was limited to incriminating materials and did not encompass exculpatory materials.⁴
4. The Single Judge rendered identical decisions in the Kenyatta et al. case.⁵
5. On 12 July 2011, in the Kenyatta et al. case, the Single Judge issued her 'Decision on the Defences' Requests for a Compliance Order in regard to Decision "ICC-01/09-02/11-48",⁶ in which the Single Judge requested the Prosecution,

at the end of the disclosure proceedings, to present the evidence upon which he intends to rely for the purposes of the confirmation hearing - namely the evidence included in his list of evidence pursuant to rule 121(3) of the Rules - in an in-depth analysis chart wherein each piece of evidence relevant to the alleged criminal responsibility of each suspect will be presented separately.

¹ Pre-Trial Chamber II, "Decision on the Prosecutor's Application for Summons to Appear for William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang", ICC-01/09-01/11-01.

² At paras. 23, 41-44, 48, and 53.

³ ICC-01/09-01/11-44.

⁴ Decision on the "Prosecution's Application for leave to Appeal the 'Decision Setting the Regime for Evidence Disclosure and Other Related Matters' (ICC-01/09-01/11-44)", ICC-01/09-01/11-74, 2 May 2011.

⁵ ICC-01/09-02/11-48 and ICC-01/09-02/11-77.

⁶ ICC-01/09-02/11-167

Submissions

6. The factual and jurisprudential underpinnings of the Single Judge's Decision apply equally to the Ruto et al. case.
7. Moreover, as noted above, the three defendants are alleged to have contributed to the implementation of the alleged crimes in different manner, and pursuant to different modes of liability. An analysis chart, which differentiates between the evidence related to each of the defendant's criminal responsibility, will allow the Defence for Mr. Kosgey to focus its limited time and resources on the evidence directly relevant to Mr. Kosgey.
8. The filing of a chart in this format would therefore promote judicial economy, and the rights of the Defence under Article 67(1)(a) and (b) to be informed promptly and in detail of the nature, cause and content of the charge, and to have adequate time and facilities to prepare for the confirmation hearing. The most important factor being not for the Prosecutor to disclose the greatest volume of evidence, but the evidence which is of true relevance to the case.

Request for Relief

9. The Defence for Mr. Henry Kosgey therefore respectfully requests the Single Judge to order the Prosecution to file a consolidated in-depth analysis chart wherein each piece of evidence relevant to the alleged criminal responsibility of each suspect will be presented separately.



George Odinga Oraro
On behalf of Henry Kiprono Kosgey

Dated this 13th day of July 2011,
At Nairobi, Kenya