

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 19 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**

**Public Document,
With Public Annexes A and B
and Confidential Annex C**

**Prosecution's Communication to the Defence of Potentially Exculpatory Evidence and
material for the preparation of the defence within the meaning of 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

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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

The Office of Public Counsel for the Defence

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Defence Support Section

Detention Section

Victims Participation and Reparations Section

Other

1. The Prosecution hereby submits its communication of potentially exculpatory evidence pursuant to Article 67(2) of the Rome Statute together with material for the preparation of the defence subject to inspection within the meaning of Rule 77 of the Rules of Procedure and Evidence (“the Rules”).

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 the Prosecution, *inter alia*, to disclose to the Defence any evidence of a potentially exculpatory nature under Article 67(2), as well as material for the preparation of the defence subject to inspection within the meaning of Rule 77 of the Rules, as soon as practicable and on a continuous basis.³
4. The Prosecution herewith submits its communication of disclosure to the Defence of public and confidential documents which contain potentially exculpatory evidence or material for the preparation of the defence subject to inspection within the meaning of Rule 77 of the Rules. The Prosecution has attached to this Application the

¹ ICC-01/09-01/11-44.

² ICC-01/09-01/11-62.

³ ICC-01/09-01/11-62, para. 21.

related lists of evidence, identifying recipients for each evidentiary item and reflecting the access and level of confidentiality of each item.⁴

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 15 July 2011.

II. Request for Confidentiality

6. The Prosecution requests that Annex C be received by the Single Judge as “Confidential” because it contains 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 19th day of July 2011

At The Hague, The Netherlands

⁴ Note: While the annexes listing the Rule 77 documents indicate that they are for “Incriminating Evidence”, this was a clerical error; these packages contain only material for the preparation of the defence subject to inspection within the meaning of Rule 77. Also 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.