

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 29 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

With Public Annex A and Confidential Annexes B - D

**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

States Representatives

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Victims and Witnesses Unit

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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 and material for the preparation of the Defence within the meaning of Rule 77 of the Rules of Procedure and Evidence (“the Rules”).

I. Procedural History

2. On 7 April 2011, the Single Judge rendered the “Decision Setting the Regime for Evidence Disclosure and Other Related Matters” (“the First Decision”), establishing the modalities according to which the parties would execute disclosure.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”.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)³ and any material for the preparation of the defence subject to inspection within the meaning of Rule 77 of the Rules⁴ as soon as practicable and on a continuous basis.
4. On 28 June, the Prosecution submitted the “Prosecution’s First Application Pursuant to Rule 81(2) and 81(4) for Redactions to Potentially Exculpatory Evidence”.⁵
5. On 20 July 2011, the Prosecution submitted the “Prosecution’s Application Pursuant to Rule 81(2) for Redactions to the metadata of material for the preparation of the defence within the meaning of Rule 17”⁶ and the “Prosecution’s Application

¹ ICC-01/09-01/11-44.

² ICC-01/09-01/11-62.

³ ICC-01/09-01/11-62, para. 21.

⁴ ICC-01/09-01/11-62, para. 21.

⁵ ICC-01/09-01/11-150-Conf-Exp and annexes A to C

⁶ ICC-01/09-01/11-209-Conf-Exp and annex A.

Pursuant to Rules 81(2) and 81(4) for Redactions to documents that are material for the preparation of the defence within the meaning of Rule 77⁷.

6. On 22 July 2011, the Single Judge issued the “Fourth Decision on the Prosecutor’s Requests for Redactions”,⁸ which, *inter alia*, included rulings on these Applications.
7. In compliance with these Decisions, the Prosecution herewith submits its communication of disclosure to the Defence of potentially exculpatory evidence and material for the preparation of the Defence within the meaning of Rule 77. This disclosure is accompanied by lists of evidence that identify the recipients for each evidentiary item and reflect the access and level of confidentiality of each item (Annexes A-D), as required in the First Decision.⁹
8. 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 26 July 2011.

II. Request for Confidentiality

9. The Prosecution requests that Annexes B-D 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.

⁷ ICC-01/09-01/11-210-Conf-Exp and annexes A to C

⁸ ICC-01/09-01/11-218-Conf-Exp and related annexes.

⁹ ICC-01/09-01/11-44, p. 11.



Luis Moreno-Ocampo

Prosecutor

Dated this 29th day of July 2011

At The Hague, The Netherlands