

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 3 August 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 Redacted Version of

**Prosecution's communication to the Defence of 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

Mr. Luis Moreno-Ocampo, Prosecutor
Ms. 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

Ms. Silvana Arbia

Deputy Registrar

Mr. Didier Preira

Victims and Witnesses Unit

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 material for the preparation of the defence subject to inspection within the meaning of Rule 77 of the Rules³ as soon as practicable and on a continuous basis.

4. [REDACTED]

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-01/09-01/11-225-Conf-Exp-AnxA.
[REDACTED]

[Redacted]

- 5. [Redacted]

6. In compliance with these Decisions, the Prosecution herewith submits its communication of disclosure to the Defence of material for the preparation of the Defence within the meaning of Rule 77. This disclosure is accompanied by 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), as required in the First Decision.⁹

7. 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 1 August 2011.

II. [Redacted]

- 8. [Redacted]

[Redacted]

9. [REDACTED]
[REDACTED]

10. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

11 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

III. Request for Confidentiality

12. The Prosecution requests that this cover filing and Annex 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. The Prosecution will file a public redacted version of this cover filing only, as soon as practicable.

[REDACTED]



Luis Moreno-Ocampo

Prosecutor

Dated this 3rd day of August 2011

At The Hague, The Netherlands