

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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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
With Confidential Annex A**

**Prosecution's Communication to the Defence of Incriminating Evidence
pursuant to Article 61(3)(b)**

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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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 incriminating evidence in preparation for the confirmation hearing pursuant to Article 61(3)(b) of the Rome Statute.

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” (“the Second Decision”).² In the Second Decision, the Single Judge ordered that, *inter alia*, the Prosecution shall submit to the Chamber, by 8 July 2011, properly justified proposals for redactions with respect to evidence collected after 31 March 2011.³ The Single Judge also ordered that the Prosecution would disclose to the Defence evidence for which redactions were requested no later than five days after the Chamber’s decision regarding such redactions.⁴
4. On 1 July 2011, the Prosecution sought an extension of the deadline for requesting redactions to documents collected after 31 March 2011.⁵ On 4 July 2011, the Single Judge granted an extension of the deadline to 13 July 2011, with respect only to

¹ ICC-01/09-01/11-44.

² ICC-01/09-01/11-62.

³ ICC-01/09-01/11-62, paras. 19-20, p. 12.

⁴ ICC-01/09-01/11-62, p. 11.

⁵ ICC-01/09-01/11-155-Red.

transcripts of recently conducted witness interviews, and any other witness related materials collected after 1 July 2011 (“the Third Decision”).⁶

5. On 8 July 2011, the Prosecution submitted properly justified proposals for redactions with respect to evidence collected after 31 March 2011, which did not constitute transcripts of witness interviews or witness-related material collected after 1 July 2011 (“8 July Application”).⁷
6. On 13 July 2011, the Prosecution submitted properly justified proposals for redactions with respect to evidence collected after 31 March 2011, which constituted transcripts of witness interviews and witness-related material collected after 1 July 2011 (“13 July Application”).⁸ In this filing, the Prosecution indicated that, where it could not produce complete transcripts of interviews conducted in English and Swahili through an interpreter, the Prosecution would disclose transcripts of the English portions of the interviews only, and would additionally supply audio recordings of the complete interviews with redactions as approved by the Single Judge, and voice distortion of all participants.⁹
7. On 22 July 2011, the Single Judge issued the “Fourth Decision on the Prosecutor’s Requests for Redactions”¹⁰ (“the Fourth Decision”) which, *inter alia*, included rulings on the 8 July and 13 July Applications. With respect to interview transcripts containing Swahili, the Single Judge extended the deadline of disclosure by the Prosecution following the Decision to “no later than 1 August”.¹¹

⁶ ICC-01/09-01/11-161, p. 6.

⁷ ICC-01/09-01/11-167-Conf-Exp and related annexes.

⁸ ICC-01/09-01/11-192-Conf-Exp and related annexes.

⁹ ICC-01/09-01/11-192-Conf-Exp, para. 21.

¹⁰ ICC-01/09-01/11-218-Conf-Exp and related annexes.

¹¹ ICC-01/09-01/11-218-Conf-Exp, p. 11.

8. In compliance with these Decisions, the Prosecution herewith submits its communication of disclosure to the Defence of incriminating evidence which was the subject of the Fourth Decision and constitute transcripts containing Swahili, or audio recordings of interviews conducted in English and Swahili through an interpreter. 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.¹²
9. 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 29 July 2011.
10. The Prosecution indicates that, on 29 July 2011, it disclosed transcripts containing only the English portions of these same interviews to the Defence.¹³ With the 29 July 2011 disclosure, the Prosecution provided an analysis of each piece of incriminating evidence reflecting its relevance, as required in the First Decision.¹⁴ Because the documents disclosed on 1 August 2011 contain identical information to that which was disclosed on 29 July 2011, the Prosecution has not included a redundant analysis of the evidence reflecting its relevance.

II. Request for Confidentiality

11. The Prosecution requests that Annexes A 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.

¹² ICC-01/09-01/11-44, p. 11.

¹³ Prosecution’s final List of Evidence pursuant to Rule 121(3) of the Rules indicates each English-only transcript that correlate with each transcript or audio recording containing the full interview in English and Swahili.

¹⁴ ICC-01/09-01/11-44, p. 11.



Luis Moreno-Ocampo

Prosecutor

Dated this 3rd day of August 2011

At The Hague, The Netherlands