

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 15 March 2011

Date of submission: 2 February 2017

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

**Public redacted version of "Request for temporary restriction of access to
Dissenting Opinion of Judge Kaul (ICC-01/09-01/11-2)", 15 March 2011,
ICC-01/09-01/11-3-Conf-Exp**

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

Counsel for the Defence

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

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

1. On 8 March 2011, Pre-Trial Chamber II issued the “Decision on the Prosecutor's Application for Summons to Appear for William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang”.¹
2. On 15 March 2011, Judge Kaul issued the “Dissenting Opinion by Judge Hans-Peter Kaul to Pre-Trial Chamber II's ‘Decision on the Prosecutor's Application for Summons to Appear for William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang’” (“Dissenting Opinion”).²
3. Based on a preliminary review of the Dissenting Opinion, the Prosecution is of the view that, although no names were revealed, information included therein allows informed persons to draw conclusions as to the identity of protected persons.
4. [REDACTED]

¹ ICC-01/09-01/11-1.

² ICC-01/09-01/11-2.

- [REDACTED]
- [REDACTED]
5. Circulation of this information can therefore undermine existing protective measures and expose persons cooperating with the Prosecution to unmanaged risks. In order to prevent any harm to these persons, the Prosecution submits an urgent request aimed at limiting access to the Dissenting Opinion by temporarily removing it from the website of the Court. Moreover, the Registry should be ordered to refrain from any further circulation of the Dissenting Opinion. Finally, if the Dissenting Opinion has been made available to any persons representing the Suspects, then they should be ordered to destroy any electronic hard or soft copy and not to use the information that they may have obtained in any way.
 6. Accordingly, the Prosecution urgently requests that the Chamber enter, as an emergency interim measure, an order removing the Dissenting Decision from the public website and withdrawing it to the extent possible from the suspects or their counsel. The Prosecution will file tomorrow a document providing details as to the portions of the Opinion which in its view reveal sensitive information, the reasons for this conclusion and its recommendations for redactions to the Public Document.



Luis Moreno-Ocampo
Prosecutor

Dated this 15th day of March 2011

At The Hague, The Netherlands