

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/09
Date: 18 February 2011

PRE-TRIAL CHAMBER II

Before: Judge Ekaterina Trendafilova, Presiding Judge
Judge Hans-Peter Kaul
Judge Cuno Tarfusser

SITUATION IN THE REPUBLIC OF KENYA

Public

Decision on Request for Reclassification

Decision to be notified, in accordance with regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

Luis Moreno-Ocampo, Prosecutor
Fatou Bensouda, Deputy Prosecutor

Counsel for the Defence

Legal Representatives of the Victims

Legal Representatives of the 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

Other

William Ruto/Joseph Kipchumba Kigen-
Katwa

REGISTRY

Registrar & Deputy Registrar

Silvana Arbia, Registrar
Didier Preira, Deputy-Registrar

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

PRE-TRIAL CHAMBER II (the “Chamber”) of the International Criminal Court renders this decision on the Prosecutor’s request for reclassifying as “confidential” a certain portion of document ICC-01/09-32-Conf-Exp-AnxB (the “Prosecutor’s Request”).¹

1. On 31 March 2010, the Chamber issued its decision in which it granted, by majority, the Prosecutor’s request to commence an investigation in the situation in the Republic of Kenya for crimes against humanity to the extent specified in the operative part of the said decision.²

2. On 15 December 2010, the Prosecutor submitted the “Prosecutor’s Application Pursuant to Article 58 as to William Samoei Ruto, Henry Kosgey and Joshua Arap Sang” requesting the Chamber to issue summonses for the persons concerned to appear.³

3. On 21 December 2010, the Registrar transmitted to the Chamber “an application communicated by Katwa & Kemboy Advocates, Commissioners for oaths on behalf of Applicant William Ruto”, together with annexes A and B (the “Application”).⁴ Annex A includes the actual submission outlining William Ruto’s requests,⁵ while annex B embodies the enclosures thereto.⁶ This Application was submitted under rule 103 of the Rules of Procedure and Evidence, whereby William Ruto requested “to be granted leave to make oral and written observations”⁷ on a number of issues elaborated in the filing.

¹ ICC-01/09-41-Conf-Exp.

² Pre-Trial Chamber II, “Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya”, ICC-01/09-19.

³ ICC-01/09-30-Red with annexes.

⁴ ICC-01/09-32 with two annexes.

⁵ ICC-01/09-32-Conf-Exp-AnxA.

⁶ ICC-01/09-32-Conf-Exp-AnxB.

⁷ ICC-01-09-32-AnxA, p. 3.

4. On 18 January 2011, the Chamber rejected the Application and decided to re-classify as public document ICC-01/09-32-Conf-Exp and annex A thereto.⁸

5. On 11 February 2011, the Chamber received the Prosecutor's Request in which he sought reclassifying to confidential only item 4 of the enclosures included in document ICC-01/09-32-Conf-Exp-AnxB of the Application, for the sake of accessing the information included therein.⁹

6. The Chamber notes articles 68(1) and 57(3)(a) and (c) of the Rome Statute and regulation 23 *bis* (3) of the Regulations of the Court (the "Regulations").

7. According to regulation 23 *bis* (3) of the Regulations, "[w]here the basis for the classification no longer exists, whosoever instigated the classification, [...], shall apply to the Chamber to reclassify the document".

8. The Chamber has reviewed the contents of item 4 of the enclosures included in document ICC-01/09-32-Conf-Exp-AnxB and finds that the information provided therein may be relevant to the Prosecutor's investigations concerning the cases under consideration and that its disclosure to the Prosecutor has no potential risk on persons involved in the proceedings, including witnesses. This, in turn, has the effect that the basis for the initial classification no longer exists and accordingly, requires the Chamber to reconsider the level of confidentiality of this document. However, being convinced of the arguments set forth by the Prosecutor supporting that item 4 should not be available to the public at this stage, and given that the Chamber is duty bound to take appropriate measures to ensure the protection, safety and privacy of witnesses, it considers it appropriate to grant the Prosecutor's Request to the extent specified in paragraphs 10 and 11 of his filing.

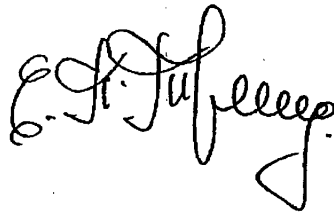
⁸ Pre-Trial Chamber II, "Decision on Application for Leave to Submit *Amicus Curiae* Observations", ICC-01/09-35.

⁹ ICC-01/09-41-Conf-Exp.

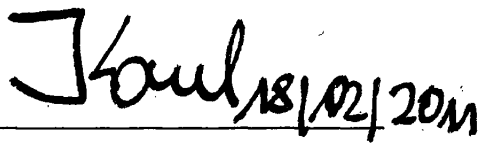
FOR THESE REASONS, THE CHAMBER HEREBY

- a) **decides** to reclassify as "confidential" item 4 , pages 13-29 of document ICC-01/09-32-Conf-Exp-AnxB ;
- b) **decides** to retain the original classification "confidential, *ex parte*" for the remaining pages of said document;
- c) **orders** the Registrar to notify the Prosecutor of the relevant part of the re-classified annex ICC-01/09-32-Conf-ExpB.

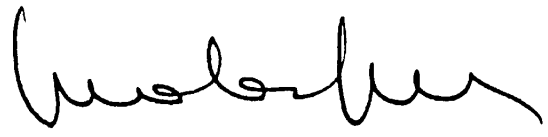
Done in both English and French, the English version being authoritative.



Judge Ekaterina Trendafilova
Presiding Judge



Judge Hans-Peter Kaul
Judge



Judge Cuno Tarfusser
Judge

Dated this Friday, 18 February 2011

At The Hague, The Netherlands