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

Date: 4 April 2011

PRE-TRIAL CHAMBER II

Before: Judge Ekaterina Trendafilova, Single Judge

SITUATION IN THE REPUBLIC OF KENYA

**IN THE CASE OF THE PROSECUTOR V. WILLIAM SAMOEI RUTO, HENRY
KIPRONO KOSGEY AND JOSHUA ARAP SANG**

PUBLIC

**Response to 'Registry's assessment of Mr. Joshua Arap Sang's English proficiency
level' with one public Annex**

Source: Office of the Prosecutor

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

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**Victims Participation and Reparations
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Other

Procedural History:

1. On 15 December 2010, the Prosecutor submitted the "Prosecutor's Application Pursuant to Article 58 as to William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang" (the "Prosecutor's Application") together with 19 annexes.¹
2. On 8 March 2011, the Pre-Trial Chamber II (the "Chamber"), by majority decision, issued three summonses to appear before it on 7 April 2011.² Mr. Sang was one of the three summoned individuals.
3. On 31 March 2011, the Registrar filed the "Registry's assessment of Mr. Joshua Arap Sang's English proficiency level"³ (the "Registry's Submission") together with three annexes attached thereto. These annexes include two letters by the Defence Counsel for Mr. Sang, requesting that the proceedings be conducted in Kalenjin as the language with which he is "familiar and comfortable".⁴ Upon receipt of the two letters, the Registrar assessed the proficiency level of Mr. Sang. The Registrar concluded that Mr. Sang appears to be completely fluent in English. Accordingly, she does not recommend the use of Kalenjin for the initial appearance and subsequent proceedings in the case.
4. On 1 April 2011, the Single Judge issued her 'Decision Pursuant to Regulation 24(1) of the Regulations of the Court'⁵ inviting responses to the Registry's Submission.

Prosecution's Response:

5. At the outset, the Prosecutor concurs with Registry's enunciated standard, which is consistent with the Appeals Chamber's decision. In the case of *Katanga and*

¹ ICC-01/09-30-Conf-Exp and its annexes.

² Pre-Trial Chamber II, "Decision on the Prosecutor's Application for Summons to Appear for William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang ", ICC-01/09-01/11-01.

³ ICC-01/09-01/11-20 and its annexes.

⁴ Annex 1 to the Registry's Submission. The Single Judge does not consider that the information revealed from this annex currently classified as "confidential" affects its level of classification.

⁵ ICC-01/09-01/11-21.

*Ngudjolo*⁶ the Appeals Chamber explained that the standard under Article 67(1)(a) and (f) – that the person ‘fully understands and speaks’ a language – is met when the person is completely fluent in the language in ordinary, non-technical conversation.⁷

6. The information provided in the annexes to Registry’s Submission demonstrates that Mr. Sang meets that standard for proficiency in the English language. Mr. Sang portrays an excellent command of English with a rich vocabulary, good syntax and grammar and ease of use. In addition to the materials submitted by the Registry, the Prosecution annexes to this response the open source material ‘Arap Sang on the Hague List’.⁸ This material further demonstrates that Mr. Sang possesses the required fluency in English.
7. The Prosecutor submits that based on the professional opinion and assessment provided in the Registry’s Submission, there is no need for a further expert evaluation of Mr. Sang’s fluency in English. However, should the Chamber consider it necessary, the Prosecutor agrees with the recommendation of the Registry that this be done on pre-existing documents and audio or video recordings of Mr. Sang. These existing materials would provide an objective basis for such assessment that would be superior to a subjective and limited analysis based on Mr. Sang’s performance during a language examination.
8. In sum, the Prosecutor concurs with the Registry’s finding that Mr. Sang is completely fluent in ordinary, non-technical conversation and fully understands and speaks English. It further agrees that Kalenjin interpretation is not necessary at his initial appearance or any subsequent proceedings in the case.

⁶ ICC-01/04-01/07-522 OA3, 27 May 2008.

⁷ Ibid, paragraph 61.

⁸ KassInternational, “Arap Sang on the Hague List”, posted on 17 December 2010, available at <http://www.youtube.com/watch?v=AiYagqFvA8c> (last accessed 04 April 2011; appended hereto as Annex A).

9. Accordingly, the Prosecutor respectfully requests that the Chamber reject Mr. Sang's request to have the initial appearance and subsequent proceedings conducted in the Kalenjin language.



Luis Moreno-Ocampo
Prosecutor

Dated this 4th day of April 2011
At The Hague, The Netherlands