

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 4 July 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**

URGENT

Public

**Decision on the "Prosecution's request for extension of the third disclosure
deadline of 8 July 2011"**

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 William Samoei Ruto
Joseph Kipchumba Kigen-Katwa, David
Hooper and Kioko Kilukumi Musau

Counsel for Henry Kiprono Kosgey
George Odinga Oraro

Counsel for Joshua Arap Sang
Joseph Kipchumba Kigen-Katwa

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

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

Judge Ekaterina Trendafilova, acting as Single Judge on behalf of Pre-Trial Chamber II (the “Chamber”) of the International Criminal Court (the “Court”)¹ renders this decision on the “Prosecution’s request for extension of the third disclosure deadline of 8 July 2011” (the “Application”).²

1. 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 “Calendar for Disclosure”),³ wherein the evidence which the Prosecutor intends to rely on for the purpose of the confirmation of charges hearing was divided into three groups, on the basis of the time when each piece of evidence has been collected by the Prosecutor. Accordingly, the Single Judge established three distinct deadlines, depending on the group under which each piece of evidence falls, either for disclosure to the Defence of the evidence for which no redaction is needed or for the request to the Chamber to authorize properly justified proposals for redactions. The third deadline established was 8 July 2011, applicable to the evidence collected after 31 March 2011.⁴

2. On 1 July 2011, the Chamber received the Application, in which the Prosecutor advances two requests. First, the Prosecutor requests “[...] that the Chamber grant a partial extension of the third disclosure deadline [...] until 15 July 2011” with regard to the transcripts of interviews with witness 15, witness 16, witness 28 and any other witness related materials collected after the date of the Request (the “First Request”).⁵ Second, the Prosecutor requests “[...] that it be allowed to transcribe and

¹ Pre-Trial Chamber II, “Decision Designating a Single Judge”, ICC-01/09-01/11-6.

² ICC-01/09-01/11-155-Red.

³ Pre-Trial Chamber II, “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”, ICC-01/09-01/11-62.

⁴ Pre-Trial Chamber II, “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”, ICC-01/09-01/11-62, p. 12.

⁵ ICC-01/09-01/11-155-Red, para. 19.

disclose only the English portions of the English-Swahili interviews (with witnesses 0016 and 0028)" (the "Second Request").⁶

3. The Single Judge notes rule 76(3) of the Rules of Procedure and Evidence (the "Rules") and regulation 35 of the Regulations of the Court (the "Regulations").

4. At the outset, the Single Judge notes the partial nature of the Application, meaning that the Prosecutor seeks extension of time limit with regard to a limited portion of material falling under the deadline of 8 July 2011, as established in the Calendar for Disclosure, namely the transcripts of interviews with witness 15, witness 16 and witness 28, as well as any other witness related materials collected after the date of the Application. As pointed out by the Prosecutor, he will timely disclose the remainder of evidence covered by the deadline of 8 July 2011, as ordered by the Single Judge in the Calendar for Disclosure.

5. In support of the First Request, the Prosecutor adduces several arguments. First, he states that "the volume and particular nature of these materials, together with the necessity and importance of having sufficient time to accurately identify and implement redactions before disclosing this evidence to the Defence, constitutes 'good cause'" within the meaning of regulation 35(2) of the Regulations.⁷ Second, the Prosecutor asserts that the task of submitting to the Chamber properly justified proposals for redactions "is necessary to ensure that the Defence receives the information in as complete and accurate form as possible, while also making sure that the disclosure does not jeopardize the safety and security of those witnesses and other persons referred to in the materials".⁸ Lastly, due to the volume of pages produced during the interview sessions with the abovementioned witnesses, the staff available to process the transcripts and the security concerns of these particular

⁶ ICC-01/09-01/11-155-Red, para. 14.

⁷ ICC-01/09-01/11-155-Red, para. 11.

⁸ ICC-01/09-01/11-155-Red, para. 11.

witnesses, the Prosecutor submits that he will not be able to meet the deadline of 8 July 2011.⁹

6. The Single Judge is persuaded that the arguments advanced by the Prosecutor show “good cause” within the meaning of regulation 35(2) of the Regulations. Therefore, the Single Judge concludes that the First Request is to be granted and that, accordingly, the third deadline for disclosure is to be extended to 13 July 2011 only with regard to the transcript of interviews with witness 15, the transcript of interview with witness 16, the transcript of interview with witness 28 and any other witness related materials collected after the date of the Application.

7. With regard to the Second Request, the Single Judge notes that the Prosecutor seeks to be “[...] allowed to transcribe and disclose only the English portions of the English-Swahili interviews (with witnesses 0016 and 0028)”,¹⁰ thus avoiding the transcription and disclosure of the Swahili portion of the interviews of those witnesses. The Prosecutor claims the lack of “the resources required to transcribe, conduct quality control, review and redact both English and Swahili materials and cannot outsource the transcription of Swahili material”.¹¹ Should the Prosecutor be required to provide the Chamber with the full transcription of the interviews of witness 16 and witness 28, he would have to request a longer extension of the disclosure deadline.¹² Further, the Prosecutor asserts that “receiving the interview transcripts in English does not prejudice the Defence as the Chamber has already established that the suspects are fluent in English”.¹³

8. In this regard, as already stated in the “First Decision on the Prosecutor’s Request for Redactions and Related Requests” (the “First Redactions Decision”), rule 76(3) of the Rules stipulates that the Defence has the right to receive witness statements “in original and in a language which the accused fully understands and speaks”. Thus,

⁹ ICC-01/09-01/11-155-Red, para. 13.

¹⁰ ICC-01/09-01/11-155-Red, para. 14.

¹¹ ICC-01/09-01/11-155-Red, para. 14.

¹² ICC-01/09-01/11-155-Red, para. 14.

¹³ ICC-01/09-01/11-155-Red, para. 14.

the Single Judge rejects the Prosecutor's argument that receiving the interview transcripts only in English would not prejudice the Defence. Furthermore, in the same decision the Single Judge ruled that the Prosecutor shall have "[...] ten (10) days following the notification of the present decision to implement the authorized redactions in the English and Swahili texts, and to disclose the transcripts to the Defence".¹⁴

9. Therefore, the Single Judge considers that, when submitting proposals for redactions, the Prosecutor does not have to provide the Chamber with the Swahili portion of the transcript of interviews with witness 16 and witness 28. However, the Prosecutor shall comply with the 10 days deadline established in the First Redactions Decision in order to implement the authorized redactions in the English and Swahili texts, and to disclose the transcripts to the Defence. The Single Judge reiterates her confidence that the Prosecutor, being aware of these issues sufficiently in advance, will be able to comply with his statutory obligations within the deadline as decided.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

a) grants the Prosecutor until Wednesday, 13 July 2011 to submit properly justified proposals for redactions, if any, with respect to the transcript of interviews with witness 15, the transcript of interview with witness 16, the transcript of interview with witness 28 and any other witness related materials collected after the date of the Application;

b) rejects the Second Request.

¹⁴ Pre-Trial Chamber II, "First Decision on the Prosecutor's Request for Redactions and Related Requests", ICC-01/09-01/11-145-Conf-Exp, p. 40.

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



Judge Ekaterina Trendafilova
Single Judge

Dated this Monday, 4 July 2011

At The Hague, The Netherlands