

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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

Date: 8 July 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 Public Annexes A-C**

**Prosecution's Communication to the Defence of Incriminating Evidence pursuant to
Article 61(3)(b) and material subject to disclosure pursuant to Rule 77**

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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Ms. Fatou Bensouda, Deputy Prosecutor

Counsel for the Defence

Mr. Kioko Kilukumi Musau, Mr. Joseph Kipchumba Kigen-Katawa, Mr. David Hooper QC, Mr. Kithure Kindiki, Mr. George Odinga Oraro, Mr. Julius Kipkosgei Kemboy, Mr. Allan Kosgey, Mr. Joel Kimutai Bosek and Mr. Philemon K.B. Koech

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

The Office of Public Counsel for Victims

Ms Paolina Massidda

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Defence Support Section

Detention Section

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Other

1. The Prosecution hereby submits its communication of evidence in preparation for the confirmation hearing pursuant to Article 61(3)(b) of the Rome Statute and Rule 77 of the Rules of Procedure and Evidence, on 8 July 2011. This disclosure includes incriminating evidence and material intended for use by the Prosecution as evidence for the purposes of the confirmation hearing.

I. Procedural History

2. 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 First Decision”).¹ In the First Decision, the Single Judge ordered that, *inter alia*, the Prosecution shall disclose to the Defence any evidence on which it intends to rely for the purposes of the confirmation of charges hearing that was collected after 31 March 2011 and for which no redaction is needed no later than Friday, 8 July 2011.²
3. On 1 July 2011, the Prosecution requested an extension of this disclosure deadline.³ On 4 July 2011, the Single Judge granted an extension of the deadline only with respect to transcripts of recently conducted witness interviews and any other witness related materials collected after 1 July 2011 (“the Second Decision”).⁴
4. In compliance with these Decisions, the Prosecution herewith submits its communication of disclosure to the Defence of incriminating and Rule 77 evidence which was collected after 31 March 2011, and for which the Single Judge did not grant an extension of the deadline. This disclosure is accompanied by (i) a list of

¹ ICC-01/09-01/11-62.

² ICC-01/09-01/11-62, paras. 19-20, p. 12.

³ ICC-01/09-01/11-155-Red.

⁴ ICC-01/09-01/11-161, p. 6.

incriminating evidence that identifies recipients for each evidentiary item and reflects the access and level of confidentiality of each item (Annex A), (ii) an analysis of each piece of incriminating evidence reflecting its relevance (Annex B), and (iii) a list of Rule 77 material that identifies recipients for each evidentiary item and reflects the access and level of confidentiality of each item (Annex C).

5. 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 8 July 2011.



Luis Moreno-Ocampo

Prosecutor

Dated this 8th day of July 2011

At The Hague, The Netherlands