

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 13 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**

Public Document

**Decision on the Defence Requests in Relation to the Submission of a
Comprehensive In-Depth Analysis Chart**

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
Maria Luisa Martinod-Jacome

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 the Defence Requests in Relation to the Submission of a Comprehensive In-Depth Analysis Chart.

1. On 8 March 2011, the Chamber, by majority, decided to summon William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang to appear before it.² Pursuant to this decision, the suspects voluntarily appeared before the Court at the initial appearance hearing held on 7 April 2011 during which, *inter alia*, the Chamber set the date for the commencement of the confirmation of charges hearing for 1 September 2011.³

2. On 6 April 2011, the Single Judge issued the “Decision Setting the Regime for Evidence Disclosure and Other Related Matters”, in which she explained, *inter alia*, the required analysis of evidence exchanged between the parties.⁴

3. 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”, whereby the Single Judge, *inter alia*, ordered the Prosecutor to file into the record of the case, by Monday 1 August 2011, the document containing the charges and the list of the evidence on which he intends to rely for the purposes of the confirmation of charges hearing.⁵

4. On 12 July 2011, pursuant to a request of the Defence teams,⁶ the Single Judge issued a decision in the case of *The Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali* whereby, *inter alia*, she ordered the

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

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-T-1-ENG page 17, lines 12 to 25.

⁴ Pre-Trial Chamber II, ICC-01/09-01/11-44.

⁵ ICC-01/09-01/11-62.

⁶ ICC-01/09-02/11-141; ICC-01/09-02/11-143; and ICC-01/09-02/11-156.

Prosecutor to submit, together with his list of the evidence, an in-depth analysis chart of the evidence upon which he intends to rely for the purposes of the confirmation of charges hearing, wherein each piece of evidence is linked to each constituent element of the crimes charged, and, wherein each piece of evidence concerning the alleged criminal responsibility is presented with respect to each suspect separately.⁷

5. On 13 July 2011, the Defence of the suspects in the present case requested that the same order be issued also for the purposes of the in-depth analysis chart of the evidence included in the list of evidence to be submitted by the Prosecutor in the instant case.⁸

6. The Single Judge notes articles 21(1)(a), 21(3), 61(3)(b) and 67(1)(a) and (b) of the Rome Statute (the "Statute") and rule 121 (2) and (3) of the Rules of Procedure and Evidence.

7. The Single Judge recalls the relevant part of the decision issued in the companion case, wherein it is stated as follows:

20. The Single Judge is of the view that the chart as presented by the Prosecutor is sufficiently organized to put the Defence in a position to proceed with the preparation of its case throughout the disclosure proceedings. In this respect, the Single Judge recalls that, according to rule 121(3) of the Rules, the disclosure proceedings will be finalized at the latest 30 days before the commencement of the confirmation of charges hearing, when the Prosecutor will submit the Document Containing the Charges and the list of the evidence – out of all the pieces of evidence previously disclosed to the Defence – upon which he intends to rely for the purposes of the confirmation of charges hearing.

21. The Single Judge considers that, for the purposes of the analysis charts submitted throughout the disclosure proceedings, the way the Prosecutor presented his evidence with respect to the alleged criminal responsibility of the suspects satisfactorily permits the Defence to progressively building up its case. However, the Prosecutor is requested, at the end of the disclosure proceedings, to present the evidence upon which he intends to rely for the purposes of the confirmation hearing – namely the evidence included in his list of evidence pursuant to rule 121(3) of the Rules – in an in-depth analysis chart wherein each piece of

⁷ Pre-Trial Chamber II, "Corrigendum to Decision on the Defences' Requests for a Compliance Order in regard to Decision 'ICC-01/09-02/11-48'", ICC-01/09-02/11-167-Corr.

⁸ ICC-01/09-01/11-188 and ICC-01/09-01/11-189.

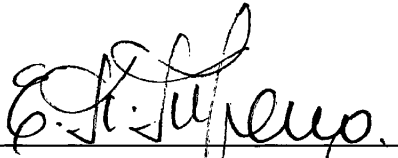
evidence relevant to the alleged criminal responsibility of each suspect will be presented separately.⁹

8. In light of the fact that the same reasoning applies also with respect to the present case, the Single Judge considers that the same order shall be issued hereby. The deadline for the Prosecutor's submission of the final in-depth analysis chart must however be adjusted in light of the different timeframe between the two cases. For the purposes of the present case, the chart shall be submitted by Monday, 1 August 2011, *i.e.* the final date for the submission by the Prosecutor of the document containing the charges and of the list of the evidence upon which he intends to rely for the purposes of the confirmation of charges hearing.

FOR THESE REASONS, THE SINGLE JUDGE

ORDERS the Prosecutor to submit, by no later than Monday, 1 August 2011, a comprehensive in-depth analysis chart of the evidence included in the list of the evidence upon which he intends to rely for the purposes of the confirmation of charges hearing, wherein each piece of evidence is linked to each constituent element of the crimes charged, and, wherein each piece of evidence concerning the alleged criminal responsibility is presented with respect to each suspect separately.

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


 Judge Ekaterina Trendafilova
 Single Judge

Dated this Wednesday, 13 July 2011

At The Hague, The Netherlands

⁹⁹ Pre-Trial Chamber II, "Corrigendum to Decision on the Defences' Requests for a Compliance Order in regard to Decision 'ICC-01/09-02/11-48'", ICC-01/09-02/11-167-Corr, paras 20 and 21.