

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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

Date: 25 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 Document,
With Confidential Annex A**

Prosecution's Communication to the Defence of Potentially Exculpatory Evidence

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

Mr. Luis Moreno-Ocampo, Prosecutor
Ms. Fatou Bensouda, Deputy Prosecutor

Counsel for the Defence

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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

The Office of Public Counsel for the Defence

States Representatives

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REGISTRY

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Defence Support Section

Victims and Witnesses Unit

Ms. Maria Luisa Martinod-Jacome

Detention Section

Victims Participation and Reparations Section

Ms. Fiona Mackay

Other

1. The Prosecution hereby submits its communication of potentially exculpatory evidence pursuant to Article 67(2) of the Rome Statute.

I. Procedural History

2. On 7 April 2011, Judge Trendafilova, acting as the Single Judge for Pre-Trial Chamber II (“the Single Judge”), established the regime for evidence disclosure and related matters for this case (“the First Decision”).¹
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 Between the Parties” (“the Second Decision”).² The Single Judge ordered the Prosecution, *inter alia*, to disclose to the Defence any evidence of a potentially exculpatory nature under Article 67(2) as soon as practicable and on a continuous basis.³
4. On 28 June 2011, the Prosecution submitted its “First Application Pursuant to Rule 81(2) and Rule 81(4) for Redactions to Potentially Exculpatory Evidence”.⁴ On 14 July 2011, the Single Judge issued the “Third Decision on the Prosecutor’s Request for Redactions”⁵, which ordered the Prosecution, *inter alia*, to disclose certain documents containing potentially exculpatory evidence in redacted form.

II. Submissions

5. The Prosecution herewith submits its communication of disclosure to the Defence of confidential documents which contain potentially exculpatory evidence, and for

¹ ICC-01/09-01/11-44.

² ICC-01/09-01/11-62.

³ ICC-01/09-01/11-62, para. 21.

⁴ ICC-01/09-01/11-150-Conf-Exp and related annexes.

⁵ ICC-01/09-01/11-195-Conf and related annexes.

which the Chamber authorized disclosure with redactions. The Prosecution has attached to this Application the related list of evidence, identifying recipients for each evidentiary item and reflecting the access and level of confidentiality of each item.⁶

6. Additionally, in compliance with its autonomous duties established by Article 61(3) of the Statute and Rule 121(2)(c) and (3) of the Rules of Procedure and Evidence, the Prosecution provided copies of the evidence to each of the Defence teams on 20 July 2011.⁷

III. Request for Confidentiality

7. The Prosecution requests that Annex A be received by the Single Judge as “Confidential” because it contains information of a sensitive nature not currently available to the public and/or which was obtained from confidential sources.



Luis Moreno-Ocampo

Prosecutor

Dated this 25th day of July 2011

At The Hague, The Netherlands

⁶ Note: No in-depth analysis chart is needed in relation to these documents, as such charts are only required for incriminatory evidence. ICC-01/09-01/11-74, para. 18.

⁷ The Prosecution inadvertently disclosed document KEN-OTP-0039-1467 to the Defence with pages 1528-1532 redacted. The Prosecution will re-disclose this document without redactions to these pages shortly.