



Original: English

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

Date: 16 August 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 Confidential Annexes A-C

Defence Filing of List of Evidence
Intended for Use at the Confirmation of Charges Hearing

Source: Defence for Mr. William Ruto and Mr. Joshua Sang

Document 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 Ruto

Joseph Kipchumba Kigen-Katwa,
David Hooper QC, Kioko Kilukumi
Musau and Kithure Kindiki

Counsel for Henry Kosgey

George Odinga Oraro, Julius Kemboy
and Allan Kosgey

Counsel for Joshua Sang

Joseph Kipchumba Kigen-Katwa, Joel
Kimutai Bosek and Philemon K.B. Koech

Legal Representatives of the Victims

Legal Representatives of the Applicants

Sureta Chana

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Silvana Arbia

Counsel Support Section

Deputy Registrar

Didier Daniel Preira

Victims and Witnesses Unit

Detention Section

1. During the initial appearance of Mr. Ruto, Mr. Kosgey and Mr. Sang on 7 April 2011, the Single Judge set the date for the commencement of the confirmation of charges hearing (“Confirmation” or “Confirmation Hearing”) for 1 September 2011.¹ Thereafter, on 20 April 2011, the Single Judge issued a *Decision on the ‘Prosecution’s application requesting disclosure after a final determination of Kenya’s admissibility challenge’ and Establishing a Calendar for Disclosure Between the Parties*.² Therein, the Single Judge ordered the Defence “to disclose to the Prosecutor the evidence they intend to present at the confirmation hearing, if any, and to file the list of such evidence, no later than Tuesday 16 August 2011”.³
2. The Defence sought a six-week postponement of the confirmation of charges hearing,⁴ but this request was denied.⁵ The Defence subsequently sought a two-day extension of this deadline⁶ and was granted an extension until midnight on 16 August.⁷ The Defence reserves its right to seek leave to appeal both of these decisions.
3. The Defence has attempted in good faith to comply with the Court’s orders. The Defence hereby lists in three confidential annexes the lists of evidence that it intends to rely on for the purposes of the confirmation of charges hearing. The material for Mr. Ruto is listed in Confidential Annex A and the material for Mr. Sang is listed in Confidential Annex B. The names of the two *viva voce* witnesses for Mr. Ruto and Mr. Sang are identified as part of their respective lists. However, both Mr. Ruto and Mr. Sang intend to rely not only on the material listed in their own list but on the material listed in the other’s list as well. Furthermore, Mr. Ruto and Mr. Sang intend to rely on the Prosecution disclosures indicated in Confidential Annex C. All lists are marked confidential at this time so as to not prejudice ongoing investigations and because not all materials are public. Additionally, the lists contain sensitive information about witnesses.

¹ *Prosecutor v. Ruto et al*, ICC-01/09-01/11-T-1-ENG, 7 April 2011.

² *Prosecutor v. Ruto et al*, ICC-01/09-01/11-62, Decision on the ‘Prosecution’s application requesting disclosure after a final determination of Kenya’s admissibility challenge’ and Establishing a Calendar for Disclosure Between the Parties, 20 April 2011 (“**Decision on the Disclosure Calendar**”).

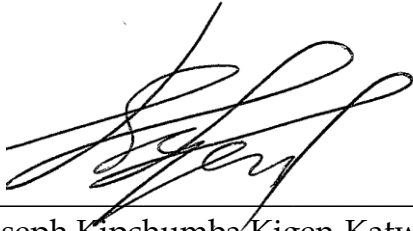
³ Decision on the Disclosure Calendar, p. 13.

⁴ *Prosecutor v. Ruto et al*, ICC-01/09-01/11-255, Urgent Defence Application for Postponement of the Confirmation Hearing and Extension of Time to Disclose and List Evidence, 11 August 2011.

⁵ *Prosecutor v. Ruto et al*, ICC-01/09-01/11-260, Decision on the Urgent Defence Application for Postponement of the “Confirmation Hearing and Extension of Time to Disclose and List of Evidence”, 12 August 2011.

⁶ *Prosecutor v. Ruto et al*, ICC-01/09-01/11-264, Ruto and Sang’s Joinder to Kosgey’s Contingent Request for Extension of Time Limit for Disclosure in Compliance with the E-Court Protocol, 15 August 2011.

Respectfully Submitted,

A handwritten signature in black ink, appearing to be 'Joseph Kigen-Katwa', written over a horizontal line.

Joseph Kipchumba Kigen-Katwa

On behalf of Mr. Joshua Arap Sang and Mr. William Samoei Ruto

Dated this 16th day of August 2011

At Nairobi, Kenya