

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

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

Date: 30 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**

Confidential

**Prosecution's Submissions Concerning Confidential Documents in Anticipation of
the Hearing on the Confirmation of Charges**

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

Luis Moreno-Ocampo, Prosecutor
Fatou Bensouda, Deputy Prosecutor

Counsel for the Defence

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 Applicants

Legal Representatives of Victims

Sureta Chana

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

REGISTRY

Registrar

Silvana Arbia, Registrar
Didier Preira, Deputy Registrar

Victims and Witnesses Unit

Maria-Luisa Martinod-Jacome

Defence Support Section

Detention Section

**Victims Participation and Reparations
Section**

Other

1. The Prosecution hereby requests that one item disclosed as "Confidential" be reclassified as "Public". The Prosecution further informs the Chamber about its use of confidential materials during its presentations at the upcoming hearing on the confirmation of charges.

I. Procedural History

2. On 7 April 2011, during the initial appearance of the suspects in this case, Chamber scheduled the commencement of the confirmation of charges hearing for Thursday, 1 September 2011.¹
3. On 20 April 2011, the Single Judge set various deadlines for the Prosecution to submit applications for redactions to its evidence prior to disclosure.²
4. On 23 May 2011, the Prosecutor requested redactions to the metadata of certain non-witness statement documents containing incriminating material.³
5. On 24 June 2011, the Single Judge issued the "First Decision on the Prosecutor's Requests for Redactions and Related Requests", granting some of the Prosecution's requested redactions.⁴

II. Submissions

Reclassification of One Item

¹ ICC-01/09-01/11-T-1-ENG, p. 17 lines 8-25.

² "Decision on the 'Prosecutor'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.

³ , "Prosecution's First Application Pursuant to Rule 81(2) and Rule 81(4) for Redactions in Statements of Witnesses and Related Materials to Be Relied Upon at the Confirmation Hearing", ICC-01/09-01/11-96-Conf-Exp and annexes A1 to O.. The Prosecutor filed a public redacted version, see ICC-01/09-01/11-96-Red.

⁴ ICC-01/09-01/11-145-Conf-Red.

6. The Prosecution requests that a video at EVD-PT-OTP-00245, which is currently classified as "Confidential", be reclassified as "Public". This evidence was collected from a publicly available source on the Internet.⁵ The Prosecution requested redactions to this video in its 23 May request,⁶ and in its 24 June Order the Chamber authorized redactions to the metadata.⁷ As such, the Prosecution disclosed it confidentially. However, after further consideration the Prosecution has determined that this video can be reclassified, as its disclosure to the public would not endanger victims, witnesses, or other persons at risk on account of the activities of the Court, nor would it endanger ongoing investigations.
7. The Prosecution asks that the redactions to the metadata be maintained for the same reasons that the Chamber granted them, namely that, pursuant to Rule 81(2) of the Rules, revealing this information could prejudice ongoing investigations.

Presentation of Evidence during the Hearing on the Confirmation of Charges

8. In the course of its public presentations, the Prosecution will quote or paraphrase limited portions of the transcripts and written statements from interviews of witnesses, which have been disclosed confidentially and for which the Chamber did not authorize redactions. The Prosecution has been careful to select material that can be stated publicly without compromising the safety of its witnesses. Notwithstanding its intent to use discrete portions that do not create security problems, the Prosecution asks that the interview transcripts and written statements nevertheless remain confidential.

⁵ http://www.youtube.com/watch?v=ATbb_dZ1JHQ, last accessed 30 August 2011.

⁶ ICC-01/09-01/11-96-Conf-Exp-AnxM2, p. 11.

⁷ ICC-01/09-01/11-145-Conf-Exp-Anx2, p. 297.

9. Should the Prosecution seek to discuss materials which were disclosed confidentially, and which cannot be discussed publicly in any form without endangering its witnesses, the Prosecution will request that the Chamber go into private session.



Luis Moreno-Ocampo

Prosecutor

Dated this 30th day of August 2011

At The Hague, The Netherlands