

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 26 July 2011

Date of submission: 2 February 2017

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 *ex parte* Annexes A to C**

**Public redacted version of
"Prosecution's Application Pursuant to Rule 81(2) and 81(4) for Redactions to the meta
data of material for the preparation of the defence within the meaning of Rule 77", 26
July 2011, ICC-01/09-01-11-225-Conf-Exp**

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

Legal Representatives of Victims

Legal Representatives of 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

REGISTRY

Registrar

Defence Support Section

Victims and Witnesses Unit
Maria Luisa Martinod-Jacome

Detention Section

**Victims Participation and Reparations
Section**

Other

1. The Prosecution hereby submits its application pursuant to Rules 81(2) and 81(4) of the Rules of Procedure and Evidence (“the Rules”) for redactions to the metadata of material for the preparation of the defence within the meaning of Rule 77 of the Rules.

I. Procedural History

2. On 7 April 2011, the Single Judge rendered the “Decision Setting the Regime for Evidence Disclosure and Other Related Matters” (the “First Decision”), establishing the modalities according to which the parties would execute disclosure.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 material for the preparation of the Defence subject to inspection within the meaning of Rule 77, as soon as practicable and on a continuous basis.³

4. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]⁴

¹ ICC-01/09-01/11-44.

² ICC-01/09-01/11-62.

³ ICC-01/09-01/11-62, para. 21.

⁴ This email is appended as Annex A.

5. Before disclosing these two items to the Defence, the Prosecution requests that the Chamber authorize limited redactions to their metadata pursuant to Rules 81(2) and 81(4).

II. Request for Confidentiality

6. The Prosecution requests that this Application and its annexes be received by the Single Judge as “Confidential, *ex parte*, Prosecutor only” as these documents relate to material that is currently confidential and *ex parte* or contain information for which redactions are sought, the disclosure of which would defeat the purpose for which the redactions are requested.

III. Submissions

7. According to Rule 77, the Prosecution shall, subject to restrictions on disclosure as provided in the Rome Statute and Rules 81 and 82 of the Rules, permit the Defence to inspect any books, documents, photographs and other tangible objects in the Prosecution’s possession or control, which are, *inter alia*, material to the preparation of the Defence.
8. Rule 77 is, on its face, subject to Rules 81(2) and 81(4), by which the Prosecution may request, and the Chamber may authorize, the non-disclosure of information where such disclosure would prejudice further or ongoing investigations, or where it is necessary to protect the safety of witnesses and victims and members of their families, respectively.
9. In its “First Application Pursuant to Rule 81(2) and Rule 81(4) for Redactions to Statements of Witnesses and Related Materials to Be Relied Upon at the Confirmation Hearing” (“First Application”), the Prosecution set forth the legal and factual bases for seeking redactions pursuant to Rules 81(2) and 81(4), and

incorporates them by reference.⁵ The Prosecution requests that the Chamber apply the same rules to this Application.

10. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

A. [REDACTED]

11. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]⁶

B. [REDACTED]

12. [REDACTED]
[REDACTED]
[REDACTED]

13. [REDACTED] [REDACTED]
[REDACTED]
[REDACTED]

14. [REDACTED]
[REDACTED]

⁵ ICC-01/09-01/11-96-Conf-Exp, paras. 17-25 (Rule 81(4)), 38-44 (Rule 81(2)).

⁶ The specific redactions are indicated in Annexes B and C.

[REDACTED]

[REDACTED]

15. [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

16. [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]¹⁰

Relief

17. In light of the foregoing, the Prosecution requests that the Chamber approve the proposed redactions.

⁷ See transcript of W-0028's re-interview, KEN-OTP-0057-0227 at 0230-0233, and KEN-OTP-0057-0234 at 0235-0236. Both of these transcripts will be disclosed to the Defence by 1 August 2011.

⁸ The specific redactions are indicated in Annexes B and C.

⁹ E.g. ICC-01/09-01/11-152-Conf-Exp-Anx2, p. 448-449 (ordering the non-disclosure of W-0028's written statement to the CIPEV).

¹⁰ The specific redactions are indicated in Annexes B and C.



Luis Moreno-Ocampo

Prosecutor

Dated this 26th day of July 2011

At The Hague, The Netherlands