

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 21 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's Application for Extension of Time to Submit Properly
Justified Proposals for Redactions"**

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 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

REGISTRY

Registrar & Deputy Registrar
Silvana Arbia, Registrar
Didier Preira, Deputy-Registrar

Defence Support Section

Victims and Witnesses Unit

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 on the “Defence Application for Extension of Time to Submit Properly Justified Proposals for Redactions”² (the “Defence Application”), filed by the Defence for William Samuel Ruto (“Mr. Ruto”) and Joshua Arap Sang (“Mr. Sang”).

1. On 7 April 2011, the Single Judge issued the “Decision Setting the Regime for Evidence Disclosure and Other Related Matters”, whereby, *inter alia*, principles as to the disclosure of evidence between the parties and its communication to the Chamber have been established.³

2. 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” (the “Calendar for Disclosure”), whereby the Single Judge, *inter alia*, ordered the Defence to submit “properly sufficiently justified proposals for redactions under rule 81 of the Rules” by no later than Friday, 22 July 2011.⁴

3. On 21 July 2011, counsel for Mr. Ruto and Mr. Sang filed the Defence Application for extension of time, requesting “an extension of time to 5 August 2011 for the Defence to submit properly justified proposals for redactions under Rule 81”.⁵

4. The Single Judge notes articles 61 and 67 of the Rome Statute (the “Statute”), rules 81 and 121 of the Rules of Procedure and Evidence (the “Rules”) and regulation 35 of the Regulations of the Court (the “Regulations”).

5. At the outset the Single Judge recalls that according to regulation 35(2) of the Regulations, the Chamber may grant an application for extension of time limit “if

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

² ICC-01/09-01/11-211.

³ Pre-Trial Chamber II, “Decision Setting the Regime for Evidence Disclosure and Other Related Matters”, ICC-01/09-01/11-44.

⁴ Pre-Trial Chamber II, ICC-01/09-01/11-62, para 22 and operative part, letter (c)(ii).

⁵ ICC-01/09-01/11-211, para. 15.

good cause is shown". Accordingly, the Single Judge will determine whether the grounds advanced by the Defence show the existence of "good cause".

6. To this end, the Defence submits that:

i. [it] has not been able to complete its investigations at this time, due to the fact that a less-redacted version of the Prosecution's Article 58 Application has not been made available to the Defence and the Prosecution will not file its Document Containing the Charges ("DCC") until 1 August 2011;

ii. [it] needs to consult with potential witnesses and sources before being in a position to know whether the information requires redactions for their benefit; and

iii. The inability of the Defence to request all necessary redactions by 22 July will prevent it from being able to fully challenge the Prosecution case and present evidence during the Confirmation Hearing, which ultimately prejudices the rights of the suspects.⁶

7. The Single Judge is mindful of the rights of the Defence to properly prepare for the confirmation of charges hearing. To this end, an articulate Calendar for Disclosure was set up already on 20 April 2011. A large quantity of the Prosecutor's evidence has been disclosed to the Defence. The Single Judge also takes note of the Defence's acknowledgment that it "has been progressively preparing its case" and that it "is and has been busy analyzing disclosure, investigating ways to best challenge the Prosecution case and present its own case during the Confirmation".⁷

8. Thus, it is the believe of the Singe Judge that the Defence has organized itself in such a manner that it can comply fully with the orders given by the Chamber in April 2011. In particular, it is the expectation of the Single Judge that the Defence has consulted those witnesses or potential witnesses, which are already known to the Defence, on their security situation and possibly on protective measures to be employed if need be. In this regard, the Single Judge reminds the Defence for Mr. Ruto and Mr. Sang that it has provided the Chamber with a list of potential witnesses it intends to call at the confirmation of charges hearing.⁸

⁶ ICC-01/09-01/11-211, para. 2.

⁷ ICC-01/09-01/11-211, para. 10.

⁸ ICC-01/09-01/11-203 and ICC-01/09-01/11-204.

9. At the same time, the Single Judge acknowledges that certain factors may impact on the preparation of the Defence's proposals for redactions, such as the possibility of recently identified evidence by the Defence, in relation to which protection issues arise, while disclosure is progressing. Further, the Single Judge also pays heed to the conditions imposed on the suspects which require the observance of certain modalities and which may equally impact on the preparation of the Defence's proposals for redactions.⁹ While the Single Judge must factor in the above, she must also consider that the redaction process is a very time- and resource-consuming process¹⁰ and that, accordingly, she must ensure that the Calendar for Disclosure is maintained by all parties.

10. In conclusion, cognizant of the right of the Defence to be provided with adequate time to prepare itself within the meaning of article 67(1)(b) of the Statute but also mindful of the obligation of the Court to decide on the protection of the safety and well-being of (potential) witnesses, as well as the duty of the Single Judge to properly organize the upcoming proceedings, the Single Judge partially grants the Defence Request and authorizes the Defence for Mr. Ruto and Mr. Sang to provide redaction proposals, if any, until Friday, 29 July 2011.

⁹ Pre-Trial Chamber II, "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-01/09-01/11-1; Pre-Trial Chamber II, "Corrigendum of the 'Decision Establishing Modalities to be Observed When Complying with Summons Conditions'", ICC-01/09-01/11-38-Corr; Pre-Trial Chamber II, "Decision on the 'Defence Request for Variation of Decision on Summons or in the Alternative Request for Leave to Appeal'", ICC-01/09-01/11-86.

¹⁰ It is recalled that the Defence must disclose to the Prosecutor the evidence which it intends to present at the confirmation of charges hearing *no later than* Tuesday, 16 August 2011, see Pre-Trial Chamber II, Calendar for Disclosure, ICC-01/09-01/11-62, operative part, letter (c)(i). Any redactions to information contained in the evidence must be assessed and authorized by the Chamber sufficiently in advance.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

partially grants the Defence Request and authorizes the Defence for Mr. Ruto and Mr. Sang to submit properly justified proposals for redactions, if any, until **Friday, 29 July 2011**.

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



Judge Ekaterina Trendafilova
Single Judge

Dated this Thursday, 21 July 2011

At The Hague, The Netherlands