

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No.: ICC-01/09-02/11

Date: 3 June 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. FRANCIS KIRIMI MUTHAURA,  
UHURU MUIGAI KENYATTA AND MOHAMMED HUSSEIN ALI**

**Public**

**Decision Requesting Observations on the Place of the Proceedings for the  
Purposes of the Confirmation of Charges Hearing**

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 Francis Kirimi Muthaura**  
Karim A. A. Khan and Kennedy Ogeto

**Counsel for Uhuru Muigai Kenyatta**  
Steven Kay and Gillian Higgins

**Counsel for Mohammed Hussein Ali**  
Gregory Kehoe and Evans Monari

**Legal Representatives of the Victims**

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparation**

**The Office of Public Counsel for  
Victims**

Paolina Massidda

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

**States Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar & Deputy Registrar**

Silvana Arbia, Registrar  
Didier Preira, Deputy Registrar  
**Victims and Witnesses Unit**

**Defence Support Section**

**Detention Section**

**Victims Participation and Reparations  
Section**

Fiona McKay

**Other**

**PRE-TRIAL CHAMBER II** (the “Chamber”) of the International Criminal Court (the “Court”) renders this decision<sup>1</sup> requesting observations from the parties and participants on the desirability of holding the confirmation of charges hearing in the Republic of Kenya.

1. On 31 March 2010, the Chamber, by majority, issued its decision authorising the Prosecutor to commence an investigation into the situation in the Republic of Kenya (the “31 March 2010 Authorisation Decision”).<sup>2</sup>

2. On 8 March 2011, the Chamber by majority, decided to summon Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali to appear before the Court on Thursday, 7 April 2011.<sup>3</sup>

3. On 18 March 2011, the Chamber issued a decision setting a new date for the initial appearance hearing, as Friday, 8 April 2011.<sup>4</sup>

4. On 8 April 2011, during the initial appearance hearing, the Chamber set 21 September 2011, as the date for the commencement of the confirmation of charges hearing.

5. The Chamber notes articles 3(1), (3) and 4(2) of the Rome Statute (the “Statute”), rule 100 of the Rules of Procedure and Evidence (the “Rules”) and regulations 80 and 81 of the Regulations of the Court.

6. The Chamber further notes that although article 3(1) of the Statute states that the “seat of the Court shall be established at The Hague in the Netherlands”, paragraph 3 of the same provision makes clear that the Court “may sit elsewhere, whenever it

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<sup>1</sup> While concurring with the Chamber, Judge Hans-Peter Kaul reiterates, for the purposes of this decision, his declaration as annexed in a previous decision, see Pre-Trial Chamber II, “Decision on the Conduct of the Proceedings Following the Application of the Government of Kenya Pursuant to Article 19 of the Rome Statute”, ICC-01/09-02/11-40.

<sup>2</sup> Pre-Trial Chamber II, “Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya”, ICC-01/09-19-Corr.

<sup>3</sup> Pre-Trial Chamber II, “Decision on the Prosecutor’s Application for Summonses to Appear for Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali”, ICC-01/09-02/11-1.

<sup>4</sup> Pre-Trial Chamber II, “Decision Setting a New Date for the Initial Appearance”, ICC-01/09-02/11-8.

considers it desirable, as provided in this Statute". Moreover, according to rule 100(1) of the Rules, the Court "may decide to sit in a State other than the host State, in a particular case, where [it] considers that it would be in the interests of justice".

7. In this regard, the Chamber underlines that it is in the process of assessing the desirability and feasibility of conducting the confirmation of charges hearing on the territory of the Republic of Kenya. Accordingly, the Chamber deems it valuable, for a proper assessment of the interests of justice in the present case, to receive observations from the Prosecutor, the Defence and the victims who have applied for participation, on such possibility.

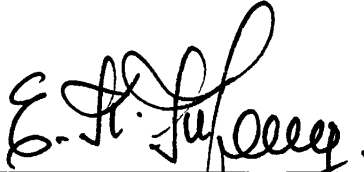
**FOR THESE REASONS, THE CHAMBER, HEREBY**

**a) requests** the Prosecutor and the Defence to submit their observations on the subject matter referred to in paragraph 7 of the present decision, by no later than Monday 13 June 2011, at 1600 hours;

**b) decides** to appoint the Office of Public Counsel for Victims to submit observations on behalf of the victims who applied for participation, by no later than Monday 13 June 2011, at 1600 hours;

**c) orders** the Victims Participation and Reparations Section to provide the necessary assistance to the Office of Public Counsel for Victims for the purposes of contacting victims expeditiously.

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



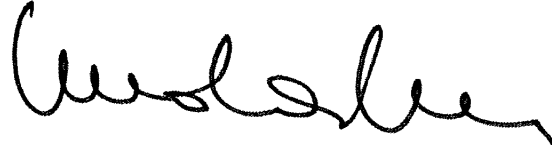
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Judge Ekaterina Trendafilova  
Presiding Judge



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Judge Hans-Peter Kaul  
Judge



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Judge Cuno Tarfusser  
Judge

Dated this Friday, 3 June 2011

At The Hague, The Netherlands