

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/09-02/11
Date: 12 September 2011

PRE-TRIAL CHAMBER II

Before: Judge Ekaterina Trendafilova, Single Judge

**SITUATION IN THE REPUBLIC OF KENYA
IN THE CASE OF THE PROSECUTOR V. FRANCIS KIRIMI MUTHAURA,
UHURU MUIGAI KENYATTA AND MOHAMMED HUSSEIN ALI**

**Public
Urgent**

Decision Requesting Observations

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 Khan, Essa Faal, Kennedy
Ogetto, Shyamala Alagendra

Counsel for Uhuru Muigai Kenyatta
Steven Kay and Gillian Higgins

Counsel for Mohammed Hussein Ali
Evans Monari, John Philpot and
Gershon Otachi Bw'omanwa

Legal Representatives of the Victims
Morris Azuma Anyah

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 hereby issues this Decision requesting observations.

1. On 8 March 2011, the Chamber, by majority, decided to summon Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali (collectively “the Suspects”) to appear before the Court.² Pursuant to this decision, the Suspects voluntarily appeared before the Court at the initial appearance hearing held on 8 April 2011,³ during which, *inter alia*, the Chamber scheduled the commencement of the confirmation of charges hearing for Wednesday, 21 September 2011.⁴
2. On 6 April 2011, the Single Judge issued the “Decision Setting the Regime for Evidence Disclosure and Other Related Matters”.⁵
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 “20 April 2011 Calendar Decision”), wherein the Prosecutor was ordered, *inter alia*, “to file in the record of the case as soon as possible and no later than Friday, 19 August 2011 the Document Containing the Charges and the List of Evidence as required by rule 121(3) of the Rules”. The Defence was also ordered to disclose to the Prosecutor the evidence they intend to present at the confirmation hearing and the list of this evidence, no later than 5 September 2011.⁶

¹ Pre-Trial Chamber II, “Decision Designating a Single Judge”, ICC-01/09-02/11-9.

² 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-01/09-02/11-01.

³ ICC-01/09-02/11-T-1-ENG.

⁴ ICC-01/09-02/11-T-1-ENG, page 14, lines 11 to 15.

⁵ Pre-Trial Chamber II, “Decision Setting the Regime for Evidence Disclosure and Other Related Matters”, ICC-01/09-02/11-48.

⁶ “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”, ICC-01/09-02/11-64, p. 13.

4. On 19 August 2011, in compliance with the 20 April 2011 Calendar Decision, the Prosecutor filed the Document Containing the Charges (the “DCC”) and the list of evidence.⁷

5. On 26 August 2011, the Single Judge issued the “Decision on Victims’ Participation at the Confirmation of Charges Hearing and in the Related Proceedings” (the “Decision on Victims’ Participation”), in which she decided to admit 233 victims as participants in the confirmation of charges hearing and in the related proceedings and appointed Mr. Morris Anyah as the common legal representative of all the victims admitted in the present case.⁸

6. On 5 September 2011, in compliance with the 20 April 2011 Calendar Decision, the Defence teams of the Suspects disclosed to the Prosecutor the respective evidence they intend to present at the confirmation of charges hearing and the list of this evidence.⁹

7. On 9 September 2011, the Chamber received the “Request for Access to Confidential *Inter Partes* Material” (the “Request”), in which the common legal representative seeks “access to all *inter partes* confidential material filed in the record of the case”.¹⁰

8. The Single Judge notes article 68(3) of the Rome Statute, rule 121(3), (6), (10) of the Rules of Procedure and Evidence (the “Rules”).

9. Considering that in his Request, the victims’ common legal representative seeks access to the confidential material disclosed by the Prosecutor and the Defence pursuant to rule 121(3) and (6) of the Rules, respectively, the Single Judge, with a view to addressing the Request, considers it appropriate to obtain the views of the

⁷ ICC-01/09-02/11-257 and ICC-01/09-02/11-257-AnxA, as amended on 2 September 2011. See ICC-01/09-02/11-280 and ICC-01/09-02/11-280-AnxA.

⁸ Pre-Trial Chamber II, “Decision on Victims’ Participation at the Confirmation of Charges Hearing and in the Related Proceedings”, ICC-01/09-02/11-267, pp. 45-46, letters (c) and (e) of the operative part.

⁹ ICC-01/09-02/11-293 and its two confidential annexes; ICC-01/09-02/11-295 and its three confidential *ex parte* annexes; ICC-01/09-02/11-300 and its confidential *ex parte* annex; ICC-01/09-02/11-301 and its two confidential annexes.

¹⁰ ICC-01/09-02/11-310, para. 17.

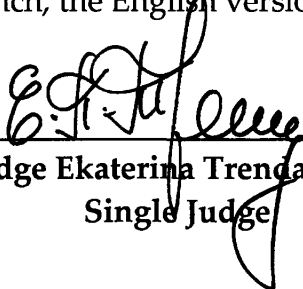
Prosecutor and the Defence teams of the Suspects as to whether or not they object to grant the common legal representative access to their respective lists of evidence.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

a) requests the Prosecutor to submit, no later than Tuesday, 13 September 2011, observations as to whether or not he objects to grant the victims' common legal representative access to his list of evidence;

b) requests the Defence teams of the Suspects to submit, no later than Tuesday, 13 September 2011, observations as to whether or not they object to grant the victims' common legal representative access to their respective lists of evidence.

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



Judge Ekaterina Trendafilova
Single Judge

Dated this Monday, 12 September 2011

At The Hague, The Netherlands