

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/09-02/11
Date: 1 February 2012

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

Decision on the "Prosecution's Application to Submit a Consolidated Response to Kenyatta's 'Defence Application for Leave to Appeal the 'Decision on the Confirmation of Charges' and Muthaura's 'Defence Application for Leave to Appeal the 'Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute'"

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 Mohamed Hussein Ali
Evans Monari, John Philpot,
Gershom Otachi Bw'omanwa, Gregory
Kehoe

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
Maria Luisa Martinod-Jacome

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 renders this decision on the “Prosecution’s Application to Submit a Consolidated Response to Kenyatta’s ‘Defence Application for Leave to Appeal the ‘Decision on the Confirmation of Charges’ and Muthaura’s ‘Defence Application for Leave to Appeal the ‘Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute’” (the “Request”).²

1. On 23 January 2012, the Chamber issued its “Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute”.³
2. On 30 January 2012, the Defence of Mr. Muthaura and the Defence of Mr. Kenyatta filed their respective applications for leave to appeal the decision on the confirmation of charges (collectively, the “Defence Applications”).⁴
3. On 31 January 2012, the Prosecutor filed the Request, whereby he requested that the Chamber grants him leave to: (i) file a consolidated response to both the Defence Applications; and (ii) extend the page limit for this consolidated response from 20 pages to 40 pages total.
4. The Single Judge notes regulation 37 of the Regulations of the Court (the “Regulations”). Regulation 37(1) of the Regulations provides that “[a] document filed with the Registry shall not exceed 20 pages, unless otherwise provided in the Statute, Rules, [the] Regulations or ordered by the Chamber.” Pursuant to regulation 37(2) of the Regulations, “[t]he Chamber may, at the request of a participant, extend the page limit in exceptional circumstances”.
5. The Single Judge is of the view that the choice of whether to file a consolidated response, instead of two different responses, to the Defence Applications ultimately

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

² ICC-01/09-02/11-387.

³ Pre-Trial Chamber II, ICC-01/09-02/11-382-Conf.

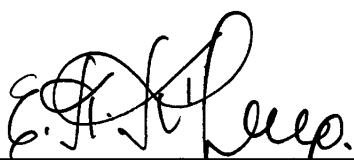
⁴ ICC-01/09-02/11-385-Corr; ICC-01/09-02/11-384.

rests with the Prosecutor and, therefore, that no leave is necessary to this effect. With respect to the extension of page limit, the Single Judge considers that such request shall be granted, since, in essence, this would not add any additional pages to the Prosecutor's total response, but, as correctly pointed out in the Request, it would merely allow him "to respond in the single document with the same number of pages as [he] would use if two briefs were prepared".

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

GRANTS the Prosecutor an extension of page limit from 20 to 40 pages for his consolidated response to the Defence Applications.

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



Judge Ekaterina Trendafilova
Single Judge

Dated this Wednesday, 1 February 2012

At The Hague, The Netherlands