

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 29 July 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 Document,  
with Public Annexes A and B  
and Confidential Annex C**

**Prosecution's Third Communication of the Disclosure of Incriminating Evidence and  
Rule 77 Materials to the Defence**

**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**

**Counsel for the Defence**

**Counsel for Francis Kirimi Muthaura**

Karim A. A. Khan QC and  
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**Counsel for Uhuru Muigai Kenyatta**

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**Counsel for Mohammed Hussein Ali**

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Philpot and Gershom Otachi Bw'omanwa

**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**

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**Registrar**

Silvana Arbia, Registrar

Didier Preira, Deputy-Registrar

**Victims and Witnesses Unit**

**Defence Support Section**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

1. The Prosecution is disclosing within the deadline established by the Second Disclosure Decision unredacted material that can be submitted without jeopardizing the safety and well-being of witnesses, victims, and other persons at risk.

### **Background**

2. On 7 April 2011, Judge Trendafilova, acting as the Single Judge for Pre-Trial Chamber II (“the Single Judge”), established the regime for evidence disclosure and related matters for this case (“the First Decision”).<sup>1</sup>
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”).<sup>2</sup> In the Second Decision, the Single Judge ordered the Prosecution to disclose to the Defence any evidence on which it intends to rely for the purposes of the confirmation of charges hearing, that has been collected after 31 March 2011 and for which no redaction is needed, no later than Friday, 29 July 2011.<sup>3</sup>
4. In the same decision, the Single Judge ordered the Prosecution to permit the Defence to inspect, pursuant to Rule 77, any books, documents, photographs and other tangible objects in its possession or control which: (i) were collected after 31 March 2011 and are intended for use by the Prosecution by Friday 29 July 2011; and (ii) are material to the preparation of the defence as soon as practicable.<sup>4</sup>

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<sup>1</sup> ICC-01/09-02/11-48.

<sup>2</sup> ICC-01/09-02/11-64.

<sup>3</sup> ICC-01/09-02/11-64, para. 19.

<sup>4</sup> ICC-01/09-02/11-64, paras. 19-21.

5. The Prosecution herewith submits its third communication of disclosure to the Defence of incriminating evidence collected after 31 March 2011 and for which no redaction is needed. Although the evidence was disclosed for its prevailing incriminating value, the Prosecution has informed the Defence that the disclosed documents may also contain information of a potential exculpatory nature or such that may be material to the preparation of the defence.
6. By this submission, the Prosecution also communicates its third disclosure to the Defence of Rule 77 materials for which no redactions are needed and are either material to the preparation of the defence or intended for use by the Prosecution. The Prosecution notes that it has no materials which were obtained from or belonged to the suspects.
7. In compliance with the First Decision, this disclosure is accompanied by: (i) lists of evidence that identify recipients for each evidentiary item and reflect the access and level of confidentiality of each item (Public Annex A and Confidential Annex C),<sup>5</sup> and (ii) the analysis of each piece of evidence reflecting its relevance (Public Annex B).<sup>6</sup> In compliance with the decision, the Prosecution is providing the material to the Registry. Additionally, in compliance with its autonomous duties established by Article 61(3) of the Rome Statute and Rules 121(2)(c) and (3) of the Rules, the Prosecution has provided a copy of the evidence to each of the Defence teams.
8. Pursuant to Regulation 23 *bis* of the Regulations of the Court, the Prosecution requests that Annex C be treated as confidential because it contains information originating from a confidential source.

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<sup>5</sup> Annex A is the List of Evidence for Pre-Trial INCRIM Package 7, 29 July 2011. Confidential Annex C is the List of Evidence for Pre-Trial Rule 77 Package 6, 29 July 2011.

<sup>6</sup> Annex B is the in-depth analysis chart for Pre-Trial INCRIM Package 7, 29 July 2011.

9. The Prosecution is mindful of its obligation under Article 68(1) of the Rome Statute to ensure the protection of victims and witnesses. The Prosecution had therefore assessed, prior to disclosure, that the evidence in this submission could be disclosed to the Defence without jeopardizing the safety and well-being of witnesses, victims, and other persons at risk.



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Luis Moreno-Ocampo  
Prosecutor

Dated this 29<sup>th</sup> day of July 2011  
At The Hague, The Netherlands