

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

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

Date: 14 April 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

**Prosecution's report concerning documents collected under articles 54(3)(e), 72 and
93(8) of the Statute**

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 Khan and Kennedy Ogetto

Counsel for Uhuru Muigai Kenyatta:

Steven Kay QC and Gillian Higgins

Counsel for Mohammed Hussein Ali:

Gregory Kehoe and Evans Monari

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

Registrar

Silvana Arbia, Registrar

Didier Preira, Deputy-Registrar

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

1. On 6 April 2011, Pre-Trial Chamber II requested the Prosecution to “submit a report indicating the number of documents of exculpatory nature pursuant to article 67(2) of the Statute or otherwise material for the preparation of the Defence in accordance with rule 77 of the Rules that he has received in the present case, which are protected under articles 54(3)(e), 72 and 93(8) of the Statute and the possibility, if any, for waiving the restrictions imposed by the information provider” by 15 April 2011.¹
2. The Prosecution hereby informs the Chamber that:
 - It has collected no documents under article 54(3)(e).
 - It has collected no documents under article 72.
 - It has collected one document under article 93(8) of the Statute which contain exculpatory information pursuant to article 67(2) or material for the preparation of the Defence in accordance with rule 77. This document is a file from the Kenya Police Criminal Investigation Department concerning its investigation into post-election violence incidents in Naivasha.²
3. The Government of the Republic of Kenya (“Government of Kenya”) provided these documents to the Prosecution.
4. As to the possibility, if any, for waiving the restrictions imposed by the information provider, the Prosecution has sent a letter to the Government of Kenya requesting its consent for the disclosure of these documents as evidence before the Court. The Prosecution will inform the Chamber of the Government of Kenya’s response when available.

¹ ICC-01/09-01/11-44, p. 11 para. 1.

² KEN-OTP-0039-1325



Luis Moreno-Ocampo
Prosecutor

Dated this 14 day of April 2011
At The Hague, The Netherlands