

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 6 June 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 Document

Decision Ordering the Victims and Witnesses Unit to Submit 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 A. Khan and Kennedy Ogetto

Counsel for Uhuru Muigai Kenyatta
Steven Kay and Gillian Higgins

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

Legal Representatives of the Victims

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 requesting the Victims and Witnesses Unit (the “VWU”) to submit observations on the risk assessment carried out by the Prosecutor with respect to the witnesses on whom he intends to rely for the purposes of the confirmation hearing.

1. On 15 December 2010, the Prosecutor submitted the “Prosecutor’s Application Pursuant to Article 58 as to Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali” requesting the Chamber to issue summonses to appear for the persons concerned, together with a number of annexes attached thereto.²

2. 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.³ Pursuant to this decision, the suspects voluntarily appeared before the Court at the initial appearance hearing held on 8 April 2011,⁴ during which, *inter alia*, the Chamber scheduled the commencement of the confirmation of charges hearing for Wednesday, 21 September 2011.⁵

3. On 3 June 2011, the Chamber received the “Prosecution’s First Application Pursuant to Rule 81(2) and Rule 81(4) for Redactions to Statements of Witnesses and Other Materials to Be Relied Upon at the Confirmation Hearing” together with the annexes A to M (the “First Application for Redactions”),⁶ whereby the Prosecutor requests the Single Judge to grant redaction of information including identities and other identifying information of witnesses on whom he intends to rely for the purposes of the confirmation hearing, pursuant to rule 81(4) of the Rules of Procedure and Evidence (the “Rules”).

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

² ICC-01/09-31-Conf-Exp and its Annexes.

³ 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.

⁴ ICC-01/09-02/11-T-1-ENG.

⁵ ICC-01/09-02/11-T-1-ENG, page 14, lines 11 to 15.

⁶ ICC-01/09-02/11-101-Conf-Exp.

4. The Single Judge recalls articles 43(6), 57(3)(c) and 68 of the Statute of the Court (the “Statute”) and rules 17, 81, 87 and 88 of the Rules.

5. The Single Judge recalls that, for the purposes of her ruling on the First Application for Redactions and on the basis of the jurisprudence of the Appeals Chamber,⁷ it is required, *inter alia*, that an assessment be conducted with respect to the existence of an objectively justifiable risk to the safety of a witness and/or a family members of his arising from the disclosure of identifying information to the Defence.

6. In this regard, the Single Judge notes that in the First Application for Redactions, the Prosecutor also provides the security risk assessment carried out by him with respect to each and every witness on whom he intends to rely for the purposes of the confirmation hearing and in respect of whom he requests that redactions be granted pursuant to rule 81(4) of the Rules (the “Prosecutor’s risk assessment”).⁸

7. The Single Judge considers necessary, with a view to enabling her to properly rule on the First Application for Redactions, that the VWU provide its observations on the security risk assessment submitted by the Prosecutor with respect to each witness and attached to the First Application for Redactions as well as to propose any additional or alternative protective measures that might be necessary or appropriate in order to ensure the proper protection of a given witness and/or his family members.

8. The Single Judge further notes that, according to the Calendar for Disclosure issued on 20 April 2011,⁹ other two deadlines have been established for the Prosecutor’s requests for redaction on the evidence on which he intends to rely for

⁷ Appeals Chamber, “Judgment on the Appeal of the Prosecutor against the decision of Pre-Trial Chamber I entitled ‘First Decision on the Prosecution Request for Authorisation to Redact Witness Statements’”, ICC-01/04-01/06-475, para. 71.

⁸ ICC-01/09-02/11-101-Conf-Exp-AnxB1, C1, D1, E1, F1, G1 and H1.

⁹ Pre-Trial Chamber II, “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.

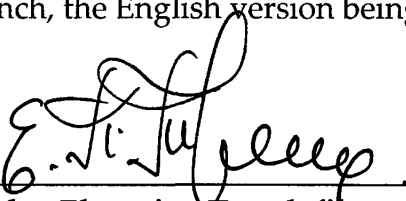
the purposes of the confirmation hearing, namely Friday 24 June 2011 and Friday, 29 July 2011. Therefore, the VWU is also hereby instructed to submit the said observations with respect to any other witnesses for whom redactions will be requested by the Prosecutor in accordance with the Calendar for Disclosure no later than one week after any such request is presented by the Prosecutor.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

ORDERS the VWU to submit, no later than Tuesday, 14 June 2011, its observations on the Prosecutor's risk assessment, including any proposals for additional or alternative protective measure which might be necessary or appropriate in order to ensure the protection of a given witness.

ORDERS the VWU to submit such observations no later than one week after any other request for redactions pursuant to rule 81(4) of the Rules that will be filed by the Prosecutor in accordance with the Calendar for Disclosure.

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



Judge Ekaterina Trendafilova
Single Judge

Dated this Monday, 06 June 2011

At The Hague, The Netherlands