

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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

Date: 8 August 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 Annex A
and Confidential Annex B**

**Prosecution's Second Communication of the Disclosure of Potentially Exculpatory
Evidence and Fourth Communication of the Disclosure of 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

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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

Victims and Witnesses Unit

Defence Support Section

Detention Section

**Victims Participation and Reparations
Section**

Other

1. Pursuant to the calendar established by the Single Judge in the Second Disclosure Decision, the Prosecution is disclosing 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 Disclosure Decision").¹
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 Disclosure Decision").² In the Second Disclosure Decision, the Single Judge ordered the Prosecution to disclose to the Defence any evidence of a potential exculpatory nature under Article 67(2) of the Statute as soon as practicable and on a continuous basis.³
4. The Single Judge also ordered the Prosecution to permit the Defence to inspect, pursuant to Rule 77, any books, documents, photographs and other tangible objects in his possession or control which are material to the preparation of the defence as soon as practicable.⁴
5. The Prosecution herewith submits its second communication of disclosure to the Defence of evidence of a potential exculpatory nature under Article 67(2) of the

¹ ICC-01/09-02/11-48.

² ICC-01/09-02/11-64.

³ ICC-01/09-02/11-64, para. 21.

⁴ ICC-01/09-02/11-64, para. 21.

Statute and for which no redaction is needed. Although the evidence was disclosed for its prevailing potentially exculpatory value, the Prosecution has informed the Defence that the disclosed documents may also contain information that may be material to the preparation of the defence.

6. By this submission, the Prosecution also communicates its fourth disclosure to the Defence of Rule 77 materials for which no redactions are needed and are material to the preparation of the defence.
7. In compliance with the First Disclosure Decision, this disclosure is accompanied by 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 B).⁵ 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 B be treated as confidential because it contains information of a sensitive nature not currently available to the public.
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.

⁵ Annex A is the List of Evidence for Pre-Trial PEXO Package 5, 08 August 2011. Confidential Annex B is the List of Evidence for Pre-Trial Rule 77 Package 7, 08 August 2011.



Luis Moreno-Ocampo
Prosecutor

Dated this 8th day of August 2011
At The Hague, The Netherlands