



Original: **English**

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

Date: **15 August 2011**

**PRE-TRIAL CHAMBER II**

**Before: Judge Ekaterina Trendafilova, Single Judge**

**SITUATION IN KENYA**

**THE PROSECUTOR**

**v.**

**FRANCIS KIRIMI MUTHAURA  
UHURU MUIGAI KENYATTA &  
MOHAMMED HUSSEIN ALI**

**Public Document**

**with Confidential *Ex parte* Annex A available only to the VWU and Muthaura  
Defence**

**Defence Submission of its Amended List of *Viva Voce* Witnesses in Compliance  
with the Single Judge's Order of 10 August 2011**

**Source: Counsel for Ambassador Francis Kirimi Muthaura**

Document 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

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**Counsel for Uhuru Muigai Kenyatta**

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Philpott

**Legal Representatives of the Victims**

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants  
(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

**Counsel Support Section**

**Deputy Registrar**

Didier Prieria

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

## I. BACKGROUND

1. On 20 July 2011, the Single Judge issued the “Decision Requesting the Parties to Submit information for the Preparation of the Confirmation of Charges Hearing”,<sup>1</sup> in which Her Honour ordered the parties to indicate by 5 August 2011 whether they intend to call live witnesses at the confirmation of charges hearing, and, if so, to submit information detailing the subject-matter and the scope of the proposed testimony of each witness.<sup>2</sup>
2. In compliance with the Single Judge’s Decision, the Defence filed its “Submission by the Defence Team of Ambassador Francis K. Muthaura in Preparation for the Commencement of the Confirmation Hearing”<sup>3</sup> on 5 August 2011. In its submission, the Defence notified the Single Judge of its intention to present 8 *viva voce* witnesses, and detailed the subject-matter and scope of the testimony of each of the proposed *viva voce* witnesses in “Annex A” appended to its Submission.
3. On 8 August 2011, the Defence filed its “Defence Application for Permission to Add an additional Witness to its List of *vive voce* witnesses it intends to present at the Confirmation Hearing pursuant to Regulation 35 of the Regulations of the Court.”<sup>4</sup> In its Application, the Defence sought permission for extension of time to submit an additional witness, not available at the time of filing its 5 August submission, to be included in its list of *viva voce* witnesses for the confirmation hearing.<sup>5</sup>
4. On 10 August 2011, the Single Judge issued the “Order to the Defence to Reduce the Number of Witnesses to Be Called to Testify at the Confirmation of Charges Hearing and To Submit an Amended List of *Viva Voce* Witnesses”, in which Her Honour granted the Defence’s request for extension of time and also ordered the Defence to reduce its number of witnesses to be called to testify at the

<sup>1</sup> ICC-01/09-02/11-181.

<sup>2</sup> *Ibid*, p. 8. See also, para. 12.

<sup>3</sup> ICC-01/09-02/11-215+Conf-Exp-AnxA.

<sup>4</sup> ICC-01/09-02/11-223+Conf-Exp-AnxA.

<sup>5</sup> ICC-01/09-02/11-223+Conf-Exp-AnxA.

confirmation hearing to a maximum of two and to file an amended list of *viva voce* witnesses indicating these witnesses names and scope and subject-matter of their proposed questioning by 15 August 2011.<sup>6</sup>

5. On 12 August 2011, the Defence filed its “Defence Application for Allocation of Time to Present *Viva Voce* Witnesses at the Confirmation Hearing”,<sup>7</sup> in which the Defence requested the allocation of 10 hours for the examination of *viva voce* witnesses in *lieu of* capping the number of witnesses at the confirmation hearing. Resolution of this request is pending.
6. In compliance with the Single Judge’s Order of 10 August 2011, and pending the resolution of its Request for Allocation of Time *in lieu of* capping the number of witnesses at the Confirmation Hearing,<sup>8</sup> the Defence hereby appends as Annex A to this submission, its amended list of *viva voce* witnesses. Annex A contains the names of two proposed *viva voce* witnesses as well as the scope and subject-matter of their proposed testimony.

## II. REQUEST FOR CONFIDENTIALITY

7. The Defence files Annex A appended to the Submission as Confidential and *ex* available only to the Victims and Witnesses Unit and the Muthaura Defence in compliance with the Single Judge’s Order to facilitate preparations for the witnesses’ testimony at the upcoming confirmation hearing. Consistent with Rule 121(6) of the Rules of Procedure and Evidence, the Defence requests that this level of classification be maintained until 5 September 2011.<sup>9</sup>

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<sup>6</sup> ICC-01/09-02/11-226.

<sup>7</sup> ICC-01/09-02/11-237.

<sup>8</sup> *Ibid.*

<sup>9</sup> See Rule 121(6) of the Rules of Procedure and Evidence. This Rule states in part that “if the person intends to present evidence under article 61, paragraph 6, he or she shall provide a list of that evidence to the Pre-Trial Chamber no later than 15 days before the date of the hearing.”

Respectfully Submitted,

A handwritten signature in black ink, consisting of a stylized 'K' followed by a horizontal line.

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**Karim A. A. Khan QC**

Lead Counsel for Ambassador Francis K. Muthaura

Dated this 15<sup>th</sup> Day of August 2011

At Nairobi, Kenya