

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/09-02/11
Date: 2 September 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
With Public Annex A and Confidential Annex B**

**Prosecution's Amended Document Containing the Charges and List of Evidence
Submitted Pursuant to Article 61(3) and Rule 121(3), (4) and (5)**

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

Victims and Witnesses Unit

Defence Support Section

Detention Section

**Victims Participation and Reparations
Section**

Other

1. The Prosecution hereby submits its amended Document Containing the Charges (“DCC”) and List of Evidence, pursuant to Article 61(3) of the Rome Statute and Rules 121(3), (4) and (5) of the Rules of Procedure and Evidence (the “Rules”).
2. Pursuant to Rule 121(4) and (5), the Prosecution may amend the DCC and List of Evidence no later than 15 days before the date of the hearing on the amended charges.
3. The amended DCC is contained in Annex A. The amendments do not introduce new evidence, but set out more specific details from disclosed evidence where it is not likely to jeopardise the safety and wellbeing of victims, witnesses and other individuals at risk. Other amendments have been made in good faith to facilitate the preparation of the defence. The Prosecution submits that the amendments are not prejudicial to or inconsistent with the rights of the suspects.
4. Annex A contains the following amendments:
 - In paragraph 29 and counts 1 to 10, “28/29 February” has been amended to state “31 January”.
 - The second sentence of paragraph 50 previously stated “The key preparatory meetings include those held in Nairobi on or about 30 December 2007 and in early, mid and late January 2008.” It has now been amended to state “The key preparatory meetings include those held in Nairobi on or about 30 December 2007 (*at the State House*) and in early, mid and late January 2008.”
 - The first sentence of paragraph 51 previously stated “In the meetings they attended, KENYATTA and MUTHAURA enlisted the services of Mungiki leaders and concluded plans for the launching of retaliatory attacks in the

Rift Valley.” It has now been amended to state “In the meetings they attended, *including the one at the Nairobi Members’ Club on or about 3 January 2008*, KENYATTA and MUTHAURA enlisted the services of Mungiki leaders and concluded plans for the launching of retaliatory attacks in the Rift Valley.”

- The first sentence of paragraph 54 previously stated “In one of the meetings in Nairobi in early January 2008, MUTHAURA requested Mungiki leaders to deploy their members to the Rift Valley to carry out retaliatory attacks.” It has now been amended to state “*At the Nairobi Members’ Club on or about 3 January 2008*, MUTHAURA requested Mungiki leaders to deploy their members to the Rift Valley to carry out retaliatory attacks.”
- An erroneous citation (“KEN-OTP-0028-0002 at 0003”) was removed from footnote 214 and replaced with “KEN-OTP-0043-0002 at 0038-0041, paras. 190-207; KEN-OTP-0052-1506 at 1513-1515, lines 272-333.”

5. The amended List of Evidence is contained in Confidential Annex B. It contains the following amendments:

- In addition to the Prosecution’s Evidence Registration Numbers (“ERN”), parallel citations using EVD numbers provided by the Registry have now been added in a separate column.
- The format of the heading of the witness categories has been changed from “Witness materials #” to “Prosecution Witness #”.

- “Witness materials #1” under “Material which may be used by the Prosecution for purposes of the confirmation hearing, pursuant to Rule 77” has now been amended to state “Prosecution Witness #11”.
 - “KEN-OTP-0045-0002”, which was erroneously included as part of “Material which may be used by the Prosecution for purposes of the confirmation hearing, pursuant to Rule 77”, has now been removed.
6. The Prosecution requests that Annex B be received by the Single Judge as “Confidential” because it contains information of a sensitive nature not currently available to the public and/or which was obtained from confidential sources.



Luis Moreno-Ocampo,
Prosecutor

Dated this 2nd day of September 2011

At The Hague, The Netherlands