



Original: English

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

Date: 05 September 2011

PRE-TRIAL CHAMBER II

Before: Judge Ekaterina Trendafilova, Presiding Judge
Judge Hans-Peter Kaul, Judge
Judge Cuno Tarfusser, 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

**Defence First Communication of Pre-Trial Evidence, Pursuant to Rule 78 of the
Rules of Procedure and Evidence to the Prosecution**

With Confidential Annexes A B and C

Source: Defence

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

Mr. Luis Moreno-Ocampo, Prosecutor
Ms. Fatou Bensouda, Deputy Prosecutor

Counsel for the Defence

Counsel for Francis Kirimi Muthaura:
Karim A.A. Khan QC and Kennedy
Ogetto
Counsel for Uhuru Muigai Kenyatta:
Steven Kay QC and Gillian Higgins
Counsel for Mohammed Hussein Ali:
Evans Monari and Gershom Otachi

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

Registrar

Ms. Silvana Arbia, Registrar

Deputy Registrar

Mr. Didier Daniel Preira, Deputy
Registrar

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. PROCEDURAL BACKGROUND

1. On 7 April 2011, the Single Judge issued her “Decision Setting the Regime for Evidence Disclosure and Other Related Matters” (the “First Disclosure Decision”).¹
2. On 29 April 2011, the Single Judge issued her “Decision on the ‘Prosecutors application requesting disclosure after a final resolution of the Government’s 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 Defence teams to disclose to the Prosecutor the evidence they intend to present at the confirmation hearing, if any, and to file the list of such evidence, no later than Monday 5 September 2011.³

II. DISCLOSURE COMMUNICATION

3. The Defence hereby submits its first communication of Pre-Trial Evidence, pursuant to Rule 78 of the Rules of Procedure and Evidence to the Prosecution.
4. In compliance with the First Disclosure Decision, this disclosure is accompanied by: (i) the analysis of evidence reflecting its relevance,⁴ (ii) Lists of evidence that identify recipients for every evidentiary item and reflect the access and level of confidentiality of each item;⁵ and (iii) the Witness List.⁶

¹ Pre-Trial Chamber II, Prosecutor v Muthaura et al., Decision Setting the Regime for Evidence Disclosure and Other Related Matters, 7 April 2011, ICC-01/09-02/11-48.

² Pre-Trial Chamber II, Prosecutor v Muthaura et al., Decision on the ‘Prosecutors application requesting disclosure after a final resolution of the Government’s Kenya’s admissibility challenge’ and Establishing a Calendar for Disclosure Between the Parties, 20 April 2011, ICC-01/09-02/11-64.

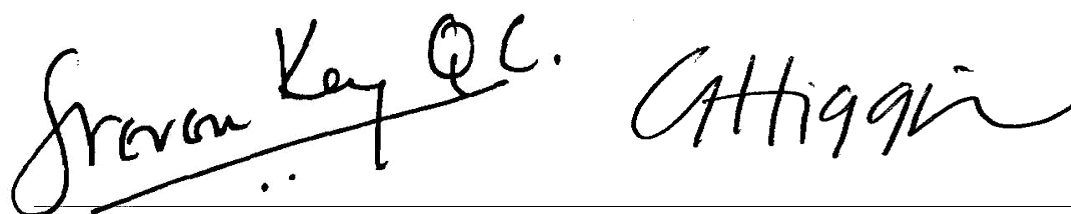
³ Pre-Trial Chamber II, Prosecutor v Muthaura et al., Decision on the ‘Prosecutors application requesting disclosure after a final resolution of the Government’s Kenya’s admissibility challenge’ and Establishing a Calendar for Disclosure Between the Parties, 20 April 2011, ICC-01/09-02/11-64 at p.13.

⁴ Annex A

⁵ Annex B

⁶ Annex C

5. The Defence requests that Annexes A, B and C be treated as confidential as they contain information of a sensitive nature not currently available to the public and/or were obtained from confidential sources.
6. In compliance with the First Disclosure Decision, the Defence is providing the material to the Registry and copies of the evidence to the Prosecution.

The image shows two handwritten signatures in black ink. The first signature, on the left, is 'Steven Kay QC.' and is written over a horizontal line. The second signature, on the right, is 'G Higgins'.

Steven Kay QC and Gillian Higgins
On behalf of Uhuru Muigai Kenyatta

Dated this, Monday 5 September 2011

At The Hague, The Netherlands