



Original: **English**

No.: ICC-01/09-02/11
Date: **12 September 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

Notification to the Chamber and Request for Re-Notification by 31 October 2011

Source: Victims' Legal Representative

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 Francis Kirimi Muthaura

Mr. Karim A.A. Khan, QC, Mr. Essa Faal,
and Mr. Kennedy Ogetto

Counsel for Uhuru Muigai Kenyatta

Mr. Steven Kay, QC, and Ms. Gillian
Higgins

Counsel for Mohammed Hussein Ali

Mr. Evans Monari, Mr. John Philpot and
Mr. Gershom Otachi Bw'omanwa

Legal Representative of the Victims

Mr. Morris Anyah

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

Ms. Paolina Massidda

**The Office of Public Counsel for the
Defence**

States Representative

Amicus Curiae

REGISTRY

Registrar

Ms. Silvana Arbia

Defence Support Section

Deputy Registrar

Mr. Didier Preira

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Ms. Fiona McKay

Other

I. INTRODUCTION

1. The Decision which appointed the Victims' Legal Representative directed him to notify the Pre-Trial Chamber by 12 September 2011 of victims' preferences regarding the disclosure of their respective identities to the Defense.¹ Consultation with the 233 victims that he represents was deemed a prerequisite to the requisite notification.²

2. Notification is hereby given by the Legal Representative, in compliance with the directive in the Decision.

II. NOTIFICATION

3. The Legal Representative personally consulted with 94 of his 233 clients and none of those consulted wished to have their identity disclosed to the Defense. The decisions of those 94 victims were preceded by candid consideration between them and the Legal Representative about all possible ramifications of either the disclosure or non-disclosure of their identity to the Defense. The victims were then given time to reflect about the matter and to decide for themselves. These were consequently informed decisions, given intelligently and voluntarily.³

4. Those who were consulted evidenced an appreciable degree of anxiety regarding the security situation in Kenya and also expressed concerns about their personal security. The consultations took place during meetings between 30 August and 2 September 2011 in Kisumu and Nairobi, Kenya.

¹ Pre-Trial Chamber II, "Decision on Victims' Participation at the Confirmation of Charges Hearing and in the Related Proceedings," ICC-01/09-02/11-267, 26 August 2011 (the "Decision"), page 47, para. (j).

² Ibid.

³ The victims were aware of the distinction between disclosure of their identity to the Defense versus to the public at-large.

5. The Legal Representative was appointed on 26 August 2011 and he traveled to Kenya on 29 August 2011 to meet with the victims. Not all of the 233 victims could be mobilized to meet with the Legal Representative for a variety of reasons, not the least of which relate to the present circumstances of many victims as internally-displaced persons with critical needs for daily survival. The possibility of contacting such victims through other means was logistically impossible due to the remoteness of the areas in which they live and their lack of access to telephones. Moreover, meeting in person was the preferred and arguably more prudent course to adopt, given the complexity of the issues involved and the need to develop mutual respect and trust between counsel and client.

6. In respect of those victims that the Legal Representative was unable to meet with whilst he was in Kenya, it is submitted that the *status quo ante* be maintained and non-disclosure be presumed unless otherwise indicated. The bases for discerning the wishes of those 139 victims is the information which the Legal Representative gleaned from meetings in Kenya with relevant intermediaries, members of Non-Governmental Organizations that are focused on victims' issues, representatives of civil society groups and those from the Court's Victims Participation and Reparations Section (VPRS). Those meetings explicated a climate of serious concern for the security and well-being of victims of the post-election violence in Kenya.

III. CONCLUSION

7. The Legal Representative will be returning to Kenya soon after the confirmation of charges hearing to undertake consultations with the remaining victims. Assuming the permissibility of proceeding in the manner thus contemplated, the Legal Representative undertakes to report to the Chamber by no later than 31 October 2011 about the preferences of the remaining 139 victims. Alternatively, and should leave of the Chamber be deemed necessary for an extension of the time period within which to comply with the directive of the Decision, the Legal

Representative prays that the Chamber allow him until 31 October 2011 to report on the preferences of the remaining 139 victims.

Respectfully submitted,



Morris Anyah

Victims' Legal Representative

Dated this 12th day of September 2011

At The Hague, The Netherlands.