



Original: English

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

Date: 28 April 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 Document

**JOINT DEFENCE OBSERVATIONS ON THE ARTICLE 19 APPLICATION BY
THE GOVERNMENT OF THE REPUBLIC OF KENYA**

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 & Kennedy Ogetto
Counsel for Uhuru Muigai Kenyatta:
Steven Kay QC & Gillian Higgins

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

Paolina Massidda

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

States' Representatives

Sir Geoffrey Nice QC and Rodney Dixon

Amicus Curiae

REGISTRY

Registrar

Ms. Silvana Arbia

Deputy Registrar

Mr. Didier Daniel Pereira

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. PROCEDURAL HISTORY

1. On 8 March 2011, Pre-Trial Chamber II (the “Chamber”), by a majority decision, issued summonses for Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali (the “Defence”) to appear before the Court on 7 April 2011.¹
2. By a subsequent decision on 18 March 2011, the Chamber set the initial appearance hearing for the Suspects for 8 April 2011.²
3. On 31 March 2011, the Government of Kenya filed an application pursuant to Article 19 of the Rome Statute (the “Application”) requesting, *inter alia*, that the Chamber determine “that the case, against the three persons for whom summonses to appear have been issued, is inadmissible.”³
4. On 4 April 2011, the Chamber rendered a decision on the Application in which it requested the Defence to submit their observations no later than 28 April 2011.⁴
5. The Defence hereby jointly submit their observations:

II. OBSERVATIONS

6. The Defence make no observations as to the merits or otherwise of the Article 19 Application submitted by the Government of the Republic of Kenya.
7. Notwithstanding the above, the Defence avail themselves of this opportunity to reiterate their commitment to fully respect and comply with any and all orders

¹ Pre-Trial Chamber II, Prosecutor v Muthaura et al., Decision on the Prosecutor’s Application for Summonses to Appear for Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali, 8 March 2011, ICC-01/09-02/11-01.

² Pre-Trial Chamber II, Prosecutor v Muthaura et al., Decision Setting a New Date for the Initial Appearance, 18 March 2011, ICC-01/09-02/11-8.

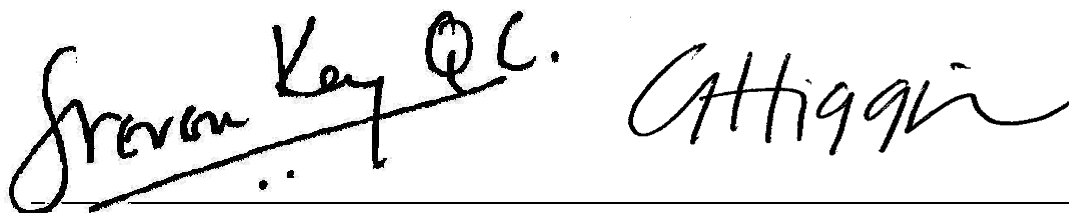
³ Pre-Trial Chamber II, Prosecutor v Muthaura et al., Application on Behalf of the Government of the Republic of Kenya Pursuant to Article 19 of the ICC Statute, 31 March 2011, ICC-01/09-02/11-26, at paras. 80-82.

⁴ Pre-Trial Chamber II, Prosecutor v Muthaura et al., Decision on the Conduct of the Proceedings Following the Application of the Government of Kenya Pursuant to Article 19 of the Rome Statute, 4 April 2011, ICC-01/09-02/11-40.

that the Chamber may make and to continue to cooperate with the court,
without prejudice to their rights under the Statute.



Karim A. A. Khan QC
On behalf of Francis Kirimi Muthaura



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

Dated this Thursday 28 April 2011

The Hague, Netherlands