

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 7 November 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

**Prosecution's Response to the "Defence Request to have a Corrigendum Filed to
Public Transcript ICC-01/09-02/11-T-13-ENG ET WT 03-10-2011"**

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

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Karim Khan, Kennedy Ogetto

Counsel for Uhuru Muigai Kenyatta:

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Morris Azuma Anyah

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

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations Other
Section**

1. During the confirmation of charges hearing, on 3 October 2011, the Defence of Mr. Ali responded to the evidence of the Prosecution and presented its evidence.¹
2. The Defence of Mr. Ali now requests to amend the transcript of the 3 October proceedings, by way of a corrigendum to correct “EVD numbers, pages numbers and one legal decision [that] were misspoken”.²
3. Having reviewed the proposed corrections, the Prosecution notes that in several instances, the numbers or wording identified as error vary notably from the proposed corrections. For example, the Defence seeks to replace the reference to a Lubanga decision with a reference to a Bemba decision; or for example number “0116” is suggested to be replaced with number “0105”.
4. The Prosecution does not oppose the Defence attempt to submit corrected information, but disagrees with its recommended process to rewrite the transcripts by way of a corrigendum. These appear in fact to be attorney errors, not transcription errors. In the Prosecution’s view, it should be an inviolable principle that the transcript must at all times accurately reflect what was said in court. If the identified mistakes are the fault of counsel, not the transcriber, they should be brought to the Chamber’s attention by some other means. The official record should not be altered or rewritten.
5. Instead, the Registry should verify what was said at the hearing and ensure that the transcript accurately reflects the discussions in Court. If the transcripts are accurate, they should not be amended.

¹ ICC-01/09-02/11-T-13-ENG.

² ICC-01/09-02/11-358 and ICC-01/09-02/11-358-AnxA

Conclusion

6. For these reasons, the Prosecution requests the Pre-Trial Chamber to reject the request of the Defence of Mr. Ali, except where, upon review by the Registry, the information was correctly referred to during the hearing.



Luis Moreno-Ocampo, Prosecutor

Dated this 7th day of November 2011

At The Hague, The Netherlands