



Original: English

No.: ICC-01/09-01/11
Date: 22 August 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. WILLIAM SAMOEI RUTO,
HENRY KIPRONO KOSGEY AND JOSHUA ARAP SANG

PUBLIC

Defence Observations on the Schedule for the Confirmation Hearing

Source: Defence for Mr. William Samoei Ruto and Mr. Joshua Arap Sang

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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Legal Representatives of the Victims

Sureta Chana

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

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Mr. Didier Daniel Preira

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. Introduction

1. On 17 August 2011, the Single Judge issued a *Decision Requesting Observations on the Schedule for the Confirmation of Charges Hearing*,¹ in which the Single Judge indicated that the Confirmation Hearing would last eight days, from 1 to 12 September 2011.² Therein, the Single Judge also requested the parties to submit observations for the purpose of establishing the final schedule of the confirmation of charges hearing by detailing, in particular: (i) whether they intend to raise challenges to jurisdiction or admissibility and/or to raise objections related to the proper conduct of the proceedings prior to the confirmation hearing and (ii) the estimate of the time required for the presentation of the arguments and evidence, including the questioning of witnesses.³
2. The Defence for Mr. Ruto and Mr. Sang makes its observations below, keeping in mind the limited purpose of the Confirmation Hearing and confining itself to what it deems “strictly necessary”⁴ in order to achieve the objectives of Article 61(6), ie, to object to the charges, to challenge the evidence presented by the Prosecution, and to present evidence.
3. The Defence requests that in addition to its specific observations below, the Defence always be afforded its right to make final observations after the Prosecutor, in accordance with the principle established by Rule 122(8).⁵ Further, that the Single Judge adopts a flexible approach to any established time limits, such that the schedule remains “subject to change if developments in the proceedings necessitate it”.⁶

II. Requested Modalities

Challenges Concerning Jurisdiction or Admissibility – Rule 122(2)

4. The Defence intends to challenge both jurisdiction and admissibility in respect of the cases against Mr. Ruto and Mr. Sang. The Defence notes Rule 58(2) which allows challenges or questions concerning jurisdiction and admissibility to be joined to

¹ *Prosecutor v. Ruto et al*, ICC-01/09-01/11-272, Decision Requesting Observations on the Schedule for the Confirmation of Charges Hearing, 22 August 2011 (“**Scheduling Request**”).

² In the absence of any information to the contrary, the Defence assumes the Pre-Trial Chamber will be sitting full days.

³ *Id.*

⁴ Scheduling Request, para. 11.

⁵ *Prosecutor v. Bemba*, ICC-01/05-01/08-336, Decision on the Schedule for the Confirmation of Charges Hearing, 29 December 2008, paras 12 and 22 (“**Bemba Scheduling Order**”).

⁶ Bemba Scheduling Order, para. 17.

confirmation proceedings as long as this does not cause undue delay, in which circumstances the Pre-Trial Chamber shall hear and decide on the challenge or question first. The Defence will present both written and oral arguments and evidence in respect of these challenges, and requests one hour to present its argument on jurisdiction and one hour to present its argument on admissibility. The Defence's intention to present arguments on admissibility is however contingent on the receipt of all relevant and necessary documents from the Kenyan authorities; in the absence of these documents the Defence cannot argue admissibility as part of the confirmation hearing. The Defence requests that the Pre-Trial Chamber reach its decisions on jurisdiction and/or admissibility, prior to hearing other aspects of the confirmation of charges hearing. The Defence submits that this would be the most efficient use of the Chamber's time.

Issues Related to the Conduct of the Proceedings – Rule 122(3)

5. The Defence may raise specific issues relating to the conduct of the proceedings under Rule 122(3).

Estimate of Time Required

6. The Defence requests one hour each for counsel for Mr. Ruto and counsel for Mr. Sang to make an opening address.
7. The Defence does not object to the Single Judge's preference that the Prosecution organize his arguments and presentation of evidence following the Draft Model Chart appended to the 6 April 2011 Decision.⁷
8. The Defence indicates that its substantive submissions will take four hours for Mr. Ruto and four hours for Mr. Sang. This will include an analysis of the Prosecution evidence (including arguments as to the propriety of its investigations) as well as a presentation of key Defence evidence. The Defence will also make legal submissions with respect to the modes of liability under which Mr. Ruto and Mr. Sang are charged.
9. The Defence prefers that the parties and the Pre-Trial Chamber not spend in-court time viewing lengthy audio or video files, and that instead reference simply be made to them during the course of submissions and witness testimony.

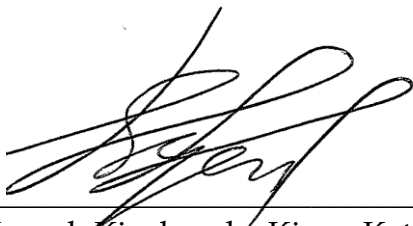
⁷ Scheduling Request, para. 9.

10. The Defence requests that the *viva voce* witnesses be heard after all of the other arguments. The Defence has previously indicated that it will call two *viva voce* witnesses for Mr. Ruto and two *viva voce* witnesses for Mr. Sang. The Defence requests a maximum of five hours for direct and re-examination of each witness; additional time may be needed for translation.

11. The Defence also requests that it be allotted an hour for Mr. Ruto and an hour for Mr. Sang for the purpose of making closing submissions.

III. Conclusion

12. The Defence submits that the requested allocations of times are reasonable and necessary for the Defence to ensure that Mr. Ruto and Mr. Sang are able to substantively challenge the Prosecution evidence and present its own evidence.



Joseph Kipchumba Kigen-Katwa
On behalf of Mr. Joshua Arap Sang and Mr. William Samoei Ruto

Dated this 22nd day of August 2011

In Nairobi, Kenya