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

Date: 23 August 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. WILLIAM SAMOEI RUTO, HENRY KIPRONO KOSGEY
AND JOSHUA ARAP SANG*

Public Document

**Registry's report on the Defence applications for Postponement of the
Confirmation Hearing and Extension of Time to Disclose and List Evidence**

Source: The Registrar

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

The Office of the Prosecutor

Luis Moreno-Ocampo, Prosecutor
Fatou Bensouda, Deputy Prosecutor

Counsel for William Samoei Ruto

Joseph Kipchumba Kigen-Katwa
David Hooper

Counsel for Henry Kiprono Kosgey

George Odinga Oraro

Counsel for Joshua Arap Sang

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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

REGISTRY

Registrar

Silvana Arbia

Deputy Registrar

Didier Preira

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

The Registrar of the International Criminal Court (hereinafter the “Court”)

NOTING the Urgent Defence Application for Postponement of Confirmation and Extension of Time to Disclose and List Evidence”, submitted by the Defence for William Samoei Ruto and Joshua Arap Sang on 11 August 2011;¹

NOTING “Kosgey’s Joinder to Ruto and Sang’s Urgent Defence Application for Postponement of Confirmation and Extension of Time to Disclose and List Evidence” submitted by the Defence for Henry Kiprono Kosgey on 12 August 2011;²

CONSIDERING the urgent request from the Presiding Judge of the Pre-Trial Chamber to be provided with an official report from the Registry on the actions taken to address the issues raised in the above mentioned filings;³

NOTING Article 24*bis* of the Regulations of the Registry.

TRANSMITS, respectfully, the following observations;

A. *“The Registry has still not provided an office(s) for the Defence to use, which has handicapped the Defence’s ability to organize itself efficiently and to use the ICC systems and software including a team shared drive, RingTail and E-Court”*

UPDATE:

1. All defence teams in the Kenyan situation have been provided with the necessary facilities and training to carry out their work in preparation for the confirmation of

¹ ICC-01/09-01/11-255

² ICC-01/09-01/11-256

³ By email from the Senior legal Adviser of the Pre-Trial Division, sent on 16 August 2011.

charges hearing. This includes remote access to their case-file and networks through Citrix; functioning ICC assigned email addresses, *inter alia*. To date, they have been conducting their work, filings submission, *inter alia*;

2. Generally there are two instances where physical presence in The Hague is required.

- i. The first, relates to the need for counsel and where relevant other team members to attend hearings as scheduled by the Chamber, and
- ii. Secondly, for disclosure purposes, there is a temporary need to be physically present in The Hague exclusively for uploading disclosure materials into the defence team's Ringtail through a special computer which has Ringtail IEM. For teams that have offices here at the Seat of the Court, Ringtail IEM is installed in one of their office computers. For teams that don't have offices assigned to them, a "transit office" (with stand alone computers) is available on the first floor of the Arc building⁴, where Ringtail IEM and other required disclosure software (stamping software) can be uploaded on the workstations' computers. Moreover, such teams can receive assistance from the OPCD with Ringtail IEM. The Kenyan teams have been assisted by the OPCD for this purpose, and there has been no real prejudice to them in this regard.

3. While the policy of the Registry has been to provide offices to each defence and victims' teams, this is not as of right, and is subject to availability of offices. The Court at this juncture does not have free offices available. The relevant Registry services have been and are exploring options to free-up necessary space.

4. In sum, while the existence of an office is a plus, it is not a *conditio sine qua non* for the teams to carry out their work, which they have been doing in the absence of

⁴ The Registrar would like to stress that the legal assistant and pro bono member assigned to the Sang team who are in situ here in The Hague and who have also assumed the roles of case-managers for the team, have used both the transit office on the 1st floor referred to above, and are also using the office allocated to the Katanga defence team (through their own IT access to the Sang team). See also section within filing on the offices being organized for the Defence teams.

offices to date, and it appears to CSS that the issue of the office has been invoked merely as an attempt to support the defence request for the postponement of the confirmation of charges hearing on the basis of a purported pseudo violation of the rights of the defence to adequate facilities.

5. As a follow up, the Registry has identified suitable offices for the Defence teams. Two offices are located in the Arc building, one office is located in the Haagse Veste building.

6. The ICT section has been instructed to equip the said offices with the necessary office tools so that the Defence teams would be able to *“organize itself efficiently and to use the ICC systems and software including a team shared drive, RingTail and E-Court”*.

7. Two offices will be ready for use by Tuesday morning 23 August 2011 with the third office available for use by COB Tuesday 23 August.

B. *“The Defence has not yet received training on how to import the metadata into the E-Court system or on how to export documents for disclosure from RingTail, both of which are time-consuming prerequisites to being able to effect disclosure on the 16th”*

8. The Registrar would like to stress that all Defence teams in the Kenyan situation have been provided with the necessary training to carry out their work in preparation for the confirmation of charges hearing. This includes, *inter alia*, remote access to their case-file and networks through Citrix and functioning ICC assigned email addresses.

9. Furthermore, both in April and June 2011, April 19th and June 28th respectively, the eCourt team, upon request from the Counsel Support Section, organised eCourt training for the Defence teams. However, only one member of these teams, a Legal

Assistant, was part of the group. In addition, one on one personal training was provided to the Legal Assistant, when she informed the eCourt team that she was acting as a Case Manager for the defence team, while waiting for the appointment of a dedicated resource.

C. "However, due to the poor internet connection in Kenya, the Defence is unable to access its secure ICC email addresses and is therefore unable to scan and send the confidential materials in a secure format."

10. The Registrar would like to inform the Chamber that no reports from the Kenya teams, prior to Defence submissions, were received indicating that the e email system was not fit for purpose.

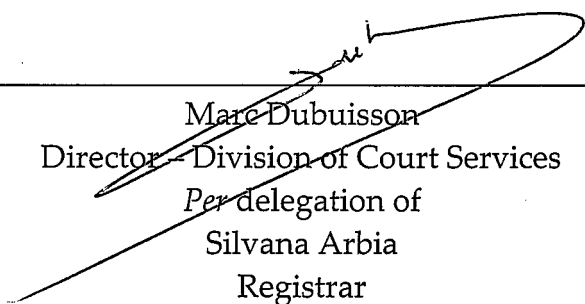
11. Chief ICT Section was in Kenya for 4 days in early July and the Internet connection in Kenya was very good.

12. The import of materials into Ringtail is done from portable media (CDs, pen drives) and not via email. The sheer volume of materials to be imported would make the submission of materials for upload into Ringtail via email impossible. Submitting in person or sending materials via DHL are indeed the only two options they have. There is a field office in Nairobi, which could provide assistance in the transfer of relevant documents to the seat of the Court.

D. "The Defence has identified several witnesses whom it still wishes to interview and take statements from VWU for the purposes of Confirmation. It is not possible to get the required clearance from VWU (which has only been obtained as of this morning)".

13. In two instances the VWU was requested to provide feedback on potential Defence witnesses. The first request was submitted on 3 August (at 16.09 hours) for four names. A reply was given by VWU on 4 August at 12.08 hours. A second request was submitted on 9 August (at 11.34 hours) for 87 names. The VWU reverted back to the Defence team on 11 August at 10.16 hours.

14. The Registrar is of the view that the response time to the Defence requests was adequate and that they were processed in due course.



Marc Dubuisson
Director - Division of Court Services
Per delegation of
Silvana Arbia
Registrar

Dated this 23 August 2011

At The Hague, The Netherlands