

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 25 August 2011

PRE-TRIAL CHAMBER II

Before: Judge Ekaterina Trendafilova, Single 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

Decision on the Schedule for the Confirmation of Charges Hearing

Decision 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 and Kioko Kilukumi Musau

Counsel for Henry Kiprono Kosgey

George Odinga Oraro

Counsel for Joshua Arap Sang

Joseph Kipchumba Kigen-Katwa

Legal Representatives of the Victims

Sureta Chana

Legal Representatives of the 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 & Deputy Registrar

Silvana Arbia, Registrar
Didier Preira, Deputy-Registrar

Defence Support Section

Victims and Witnesses Unit

Maria Luisa Martinod-Jacome

Detention Section

**Victims Participation and Reparations
Section**

Other

Judge Ekaterina Trendafilova, acting as Single Judge on behalf of Pre-Trial Chamber II (the “Chamber”)¹ of the International Criminal Court (the “Court”), hereby renders the decision on the schedule for the confirmation of charges hearing (the “Hearing”).

1. On 8 March 2011, the Chamber, by majority, decided to summon William Samoei Ruto (“Mr. Ruto”), Henry Kiprono Kosgey (“Mr. Kosgey”) and Joshua Arap Sang (“Mr. Sang”), (collectively the “Suspects”), to appear before it.² Pursuant to this decision, the Suspects voluntarily appeared before the Court at the initial appearance hearing held on 7 April 2011 during which, *inter alia*, the Chamber set the date for the commencement of the Hearing for 1 September 2011.

2. On 6 April 2011, the Single Judge issued the “Decision Setting the Regime for Evidence Disclosure and Other Related Matters” (the “6 April 2011 Decision”).³

3. On 17 August 2011, the Single Judge issued the “Decision Requesting Observations on the Schedule for the Confirmation of Charges Hearing” (the “Decision Requesting Observations”).⁴

4. On 22 August 2011, the Defence of Mr. Kosgey,⁵ the Defence of Mr. Ruto and Mr. Sang⁶ as well as the Prosecutor⁷ filed their observations on the schedule.

5. The Single Judge notes articles 19, 61 of the Rome Statute (the “Statute”), rules 58, 59, 121, 122 and 140(2)(d) of the Rules of Procedure and Evidence (the “Rules”), and regulations 52 and 64(1) of the Regulations of the Registry.

¹ Pre-Trial Chamber II, “Decision Designating a Single Judge”, ICC-01/09-01/11-6.

² Pre-Trial Chamber II, “Decision on the Prosecutor’s Application for Summons to Appear for William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang”, ICC-01/01-01/11-1.

³ Pre-Trial Chamber II, ICC-01/09-01/11-44 and annexes.

⁴ Pre-Trial Chamber II, ICC-01/09-01/11-272.

⁵ ICC-01/09-01/11-276.

⁶ ICC-01/09-01/11-277.

⁷ ICC-01/09-01/11-279.

A. The Time Schedule of the Hearing

6. The Single Judge recalls the principle of fairness which encompasses the notion of equality of arms and, *inter alia*, requires that the parties be placed on an equal footing and that the Defence always has the final word as prescribed under rules 122(8) and 140(2)(d) of the Rules.

7. The Single Judge has taken into account the parties' observations to the extent possible. However, the parties should bear in mind the second sentence of rule 122(1) of the Rules which states that:

The Presiding Judge shall determine how the hearing is to be conducted and, in particular, may establish the order and the conditions under which he or she intends the evidence contained in the record of the proceedings to be presented.

8. The Single Judge hereby provides the parties and participants with the time schedule for the Hearing as appended to this decision. The time schedule indicates the net time allotted to the parties and participants in the present case. A brief explanation as to the topic of the session is indicated in the schedule. This also extends to the manner in which the questioning of witnesses will take place. However, it remains the responsibility of the parties and participants to organize their presentations according to the time allotted to them. Moreover, the Single Judge emphasizes that the final schedule for the Hearing is subject to change if developments in the proceedings necessitate it. Furthermore, parties and participants shall be aware that some time will be needed for resolving technical matters, such as shifting from public to closed/private sessions and calling witnesses.

9. The Single Judge also underlines that for the sake of efficiency, in case a party does not fully use the time allotted to it in the schedule, the Chamber will automatically move to the next presentation even if it is scheduled for the following day. Thus, the Single Judge expects the parties to be prepared at any time and to be flexible as well.

10. The Defence of Mr. Ruto and Mr. Sang indicated in their observations that it intends to challenge both jurisdiction and admissibility. The Defence of Mr. Kosgey declared to address the Court on a particular jurisdictional issue.

11. In this regard, the Single Judge recalls rule 58(1) of the Rules according to which “a request or application made under article 19 [of the Statute] shall be in writing and contain the basis for it”. Given that the Defence teams of the Suspects expressed intention to challenge the jurisdiction of the case and its admissibility, the Single Judge considers it imperative that such an application be received *before* the start of the Hearing, namely by no later than Tuesday 30 August 2011 at 16h00. This is necessary to trigger the process under article 19 of the Statute enabling the Chamber to proceed with its decision pursuant to rule 58(2) of the Rules regulating the procedure governing the said challenges. Failing to do so will result in the Chamber rejecting to hear any arguments related to the subject-matter during the Hearing since rule 58(1) of the Rules clearly makes it a prerequisite that a written application is lodged before any discussion of the subject-matter can be entertained. In other words, in case no written application is lodged within the time limit set above, the Chamber shall proceed to the next item on the time schedule.

12. Finally, the Single Judge recalls the limited purpose of the Hearing and reminds all parties and participants to avoid repetitive arguments and to confine themselves to what is strictly necessary in order that the Chamber, which has carefully read all the material available, discharge its functions pursuant to article 61(7) of the Statute.

B. The Order of Presentation of Evidence at the Hearing

13. As the Single Judge indicated in the 6 April 2011 Decision and the Decision Requesting Observations, she expects that the Prosecutor and the Defence organize their arguments and presentation of evidence following the Draft Model Chart appended to the 6 April 2011 Decision starting with the contextual elements of crimes against humanity, the specific constituent elements of the crimes charged and finally the individual criminal responsibility of each suspect.

C. Technical Issues

14. The Single Judge stresses that when presenting evidence, the parties shall provide the EVD number plus the last 4 digits of the document ID number or, at a minimum, their page and paragraph numbers.

15. In the event the parties wish to use audio or video material, the Single Judge expects that they will liaise ahead of time with the services of the Registry so that the proceedings can unfold smoothly. For interpretation purposes, the party presenting the audio or video material, shall provide the court officer with the transcripts of the material presented or, if not available, provide the court officer with the recordings at least one full working day before the Hearing so that he or she can transmit these recordings to the interpretation and translation services within the Registry.

16. The parties are further requested to provide the court officer at the end of each Hearing day with a list of the evidence that they intend to present during the Hearing the following day and the order in which they intend to present it so that interpreters and court staff are assisted in their work.

17. The Single Judge also points out that when referring to witnesses, parties and participants shall, in principle, use the pseudonym or witness code.

18. The Single Judge also notes that in days, where there are more than two sessions required or scheduled, each session should not last more than one hour and a half pursuant to regulation 64(1) of the Regulations of the Registry.

19. Further, the Prosecutor requests to submit copies of his oral presentations in the record of the case.⁸ While the Single Judge accepts that the Prosecutor's oral presentation be distributed at the conclusion of each presentation, she does not deem it appropriate that a copy of the Prosecutor's oral presentations, which are reflected already in the transcripts of the Hearing, be integrated into the record of the case.

⁸ ICC-01/09-01/11-279, para. 16.

20. Finally, the Chamber expects that services of the Registry are available *before* the Hearing so as to assist the Chamber, parties and participants in setting up their technical equipment.

D. Presence in the Courtroom

21. The Single Judge finally wishes to make clear that only the parties, participants, and the relevant members of the Division of Court Services, are permitted to be present in the courtroom during the Hearing, namely the Prosecutor and his team, the Defence teams for the Suspects, the common legal representative of victims and her assistant/team, if any, the Registrar, the Victims and Witnesses Unit (the "VWU"), and members of the Division of Court Services.

22. A correlated issue is a question raised by the VWU in an internal memorandum⁹ received by the Chamber on 25 August 2011 concerning the desirability of one of the witnesses to be accompanied by his legal adviser. Although the Court's statutory provisions envisage a possibility for a witness to receive independent legal advice, it is for the Chamber to organize the manner upon which the Hearing will be conducted. Thus, the Single Judge is of the view that, should one or more of the witnesses express desire to be assisted by way of legal advice, the Registrar shall arrange for the legal adviser to provide the necessary support for the witnesses from outside the courtroom.

⁹ 2011/4068938/MLMJ/ns

FOR THESE REASONS THE SINGLE JUDGE HEREBY

- a) **establishes** the schedule of the Hearing to begin on 1 September 2011 as set out in the annex to the present decision.
- b) **decides** that, if the Defence wishes to discuss issues of jurisdiction and/or admissibility during the Hearing, it is required that a written application is submitted in advance by no later than Tuesday, 30 August 2011, 16h00;
- c) **orders** the parties and participants to comply with the modalities set out in section C of the present decision.

Done in both English and French, the English version being authoritative.



Ekaterina Trendafilova
Single Judge

Dated this Thursday, 25 August 2011

At The Hague, The Netherlands