

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 30 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. FRANCIS KIRIMI MUTHAURA,
UHURU MUIGAI KENYATTA AND MOHAMMED HUSSEIN ALI**

Public Document

**Decision Requesting Observations 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 Francis Kirimi Muthaura

Karim Khan, Essa Faal and Kennedy
Ogetto

Counsel for Uhuru Muigai Kenyatta

Steven Kay and Gillian Higgins

Counsel for Mohamed Hussein Ali

Evans Monari, John Philpot and
Gershom Otachi Bw'omanwa

Legal Representatives of the Victims

Morris Azuma Anyah

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

Other

REGISTRY

Registrar & Deputy Registrar

Silvana Arbia, Registrar
Didier Preira, Deputy Registrar

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

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

1. On 8 March 2011, the Chamber, by majority, decided to summon Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali (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 8 April 2011 during which, *inter alia*, the Chamber set the date for the commencement of the Hearing for 21 September 2011.³

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”).⁴

3. On 20 July 2011, the Single Judge issued the “Decision Requesting the Parties to Submit Information for the Preparation of the Confirmation of Charges Hearing” ordering the parties to indicate whether they intended to call live witnesses at the confirmation of charges hearing.⁵

4. On 10 August 2011, the Single Judge issued the “Order to the Defence to Reduce the Number of Witnesses to Be Called to Testify at the Confirmation of Charges Hearing and to Submit an Amended List of *Viva Voce* Witnesses”, limiting the

¹ Pre-Trial Chamber II, “Decision Designating a Single Judge”, ICC-01/09-02/11-9.

² Pre-Trial Chamber II, “Decision on the Prosecutor’s Application for Summons to Appear for Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali”, ICC-01/09-02/11-01.

³ ICC-01/09-02/11-T-1-ENG ET WT, page 14, lines 11 to 15.

⁴ Pre-Trial Chamber II, “Decision Setting the Regime for Evidence Disclosure and Other Related Matters”, ICC-01/09-02/11-48 with annexes.

⁵ Pre-Trial Chamber II, “Decision Requesting the Parties to Submit Information for the Preparation of the Confirmation of Charges Hearing”, ICC-01/09-02/11-181.

number of the witnesses to be called to testify by the Defence at the confirmation of charges hearing to a maximum of two witnesses for each suspect.⁶

5. On 26 August 2011, the Single Judge issued the “Decision on Victims’ Participation at the Confirmation of Charges Hearing and in the Related Proceedings”, wherein the Single Judge, *inter alia*, granted the common legal representative the right to make brief opening and closing statements at the confirmation of charges hearing in accordance with the schedule.⁷ In relation to other participatory rights, the Single Judge held that “victims must justify that their personal interests are affected by the specific issue(s) under consideration. An assessment thereof cannot thus be conducted *in abstracto*, but, conversely, shall be performed on a case-by-case basis, upon specific and motivated request submitted by the legal representative of victims”.⁸

6. The Single Judge notes article 61 of the Rome Statute (the “Statute”) and rule 122 of the Rules of Procedure and Evidence (the “Rules”).

7. At the outset, the Single Judge notes rule 122(1) of the Rules, according to which “[t]he Presiding Judge shall determine how the hearing is to be conducted and [...] may establish the order and the conditions under which [...] the evidence contained in the record of the proceedings [...] [is] to be presented”. In this regard and with a view to properly organizing the conduct of the Hearing, the Single Judge considers it appropriate to receive observations from the Prosecutor and the Defence teams of the Suspects prior to establishing the detailed final schedule of the Hearing.

8. The Single Judge further notes that pursuant to rule 122(2) and (3) of the Rules the parties may raise questions or challenges concerning jurisdiction or admissibility as well as raise objections or make observations concerning an issue related to the

⁶ Pre-Trial Chamber II, “Order to the Defence to Reduce the Number of Witnesses to Be Called to Testify at the Confirmation of Charges Hearing and to Submit an Amended List of *Viva Voce* Witnesses”, ICC-01/09-02/11-226.

⁷ Pre-Trial Chamber II, “Decision on Victims’ Participation at the Confirmation of Charges Hearing and in the Related Proceedings”, ICC-01/09-02/11-267.

⁸ *Ibid.*, para. 106.

proper conduct of the proceedings prior to the Hearing. The Single Judge deems it necessary to receive, for the purposes of establishing the schedule for the Hearing, information as to whether the parties intend to make any such submission, and if so, how much time they anticipate will be necessary to present such issues. Mindful of the rights of the Suspects to be tried without undue delay, the limited purpose of the Hearing, and given that the Chamber is dealing with the case of the *Prosecutor v. William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang* at the same time, the Single Judge decides that the Hearing, which commences on 21 September 2011, shall end by no later than 4 October 2011. Accordingly, in organizing their presentation of the case, the parties shall take into consideration this time frame.

9. In particular, the Single Judge requests the Prosecutor to provide an estimate concerning the time required for the presentation of his evidence and for the questioning of each witness called to testify by the Defence teams. In this respect, the Single Judge notes that, pursuant to article 61(5) of the Statute, “[a]t the hearing, the Prosecutor shall support each charge with sufficient evidence to establish substantial grounds to believe that the person committed the crime charged”. Accordingly, the Single Judge expects that the Prosecutor organize his arguments and presentation of evidence following the Draft Model Chart appended to the 6 April 2011 Decision starting with the contextual element of the crimes against humanity, the specific constituent elements of the crimes charged and thereafter the individual criminal responsibility of each suspect, avoiding any repetitive arguments.

10. By the same token, the Single Judge considers it appropriate to obtain from the Defence teams of the Suspects information on the time needed to present their respective evidence as well as the time they need for the questioning of each witness called to testify.

11. Lastly, the Single Judge recalls the limited purpose of the Hearing and reminds all parties and participants to confine themselves to what is strictly necessary in

order that the Chamber, which has carefully read all filings, discharge its functions pursuant to article 61(7) of the Statute.

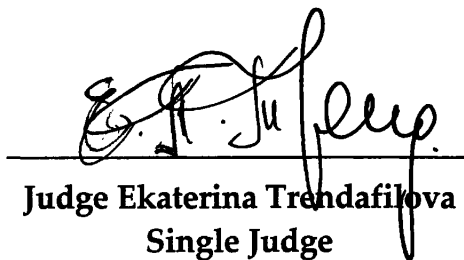
FOR THESE REASONS, THE SINGLE JUDGE HEREBY

a) requests the Prosecutor and the Defence teams to submit by **Friday, 2 September 2011, 16h00**, their observations for the purposes of establishing the final schedule of the Hearing by detailing, in particular, the following:

- (i) whether they intend to raise questions or challenges concerning jurisdiction or admissibility, pursuant to rule 122(2) of the Rules, and/or to raise objections or make observations concerning issues related to the proper conduct of the proceedings prior to the confirmation hearing pursuant to rule 122(3) of the Rules;
- (ii) the estimate of the time required for the presentation of the arguments and evidence, including audio and video based evidence and geographical maps, if any, as well as the questioning of witnesses, within the time frame indicated in paragraph 8;

b) requests the legal representative of victims to indicate by **Friday, 2 September 2011, 16h00**, the time needed for the victims to make their opening and closing statements.

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



Judge Ekaterina Trendafilova
Single Judge

Dated this Tuesday, 30 August 2011

At The Hague, The Netherlands