

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: ICC-01/09-02/11
Date: **2 September 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 MOHAMED HUSSEIN ALI***

Public Document

Observations on the Schedule for the Confirmation of Charges Hearing

Source: Victims' Legal Representative

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

The Office of the Prosecutor

Mr. Luis Moreno-Ocampo, Prosecutor
Ms. Fatou Bensouda, Deputy Prosecutor

Counsel for Francis Kirimi Muthaura

Mr. Karim A.A. Khan, QC, Mr. Essa Faal,
and Mr. Kennedy Ogetto

Counsel for Uhuru Muigai Kenyatta

Mr. Steven Kay, QC, and Ms. Gillian
Higgins

Counsel for Mohammed Hussein Ali

Mr. Evans Monari, Mr. John Philpot and
Mr. Gershom Otachi Bw'omanwa

Legal Representative of the Victims

Mr. Morris Anyah

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

Ms. Paolina Massidda

**The Office of Public Counsel for the
Defence**

States Representative

Amicus Curiae

REGISTRY

Registrar & Deputy Registrar

Ms. Silvana Arbia, Registrar
Mr. Didier Preira, Deputy Registrar

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Ms. Fiona McKay

Other

1. The Single Judge requested observations on the schedule for the confirmation of charges hearing, on behalf of the Trial Chamber.¹ The Legal Representative of victims was directed to indicate how much time would be required by the victims for their opening statement and closing argument.²

2. Accordingly, the Legal Representative of victims respectfully requests thirty minutes for an opening statement, and forty-five minutes for closing arguments.

3. The two-hundred and thirty-three victims have suffered a variety of different types of harm encompassed within the five crimes alleged in the Document Containing the Charges. Their personal interests are vitally affected not only by the question of whether the charges as a whole should be confirmed against these accuseds, but also the individual counts that should be confirmed and the scope of those counts.³ Recent Defense submissions suggest that, in addition to a general challenge to evidence linking the accuseds to the charged crimes, they intend to seek the exclusion of one or more counts or types of harm from the scope of the charges.⁴ It is submitted that the personal interests of the victims will be significantly engaged by these arguments, thereby necessitating a reasonable opportunity to respond, notwithstanding the limited purpose of the confirmation hearing.

4. The opening statement and closing argument will naturally be presented in less time, should circumstances allow the Legal Representative to do so.

¹ Decision Requesting Observations on the Schedule for the Confirmation of Charges Hearing, ICC-01/09-02/11-274, 30 August 2011 (“Decision”).

² Decision, paragraph (b) of the Orders, p. 6.

³ Confirmation decisions can, as the jurisprudence shows, have a substantial impact on the scope of the charges confirmed, and do not always result in a “yes” or “no,” in respect of the charges. *See e.g.*, Trial Chamber II, “Decision Pursuant to Article 67(1)(a) and (b) of the Rome Statute on the Charges of the Prosecutor against Jean-Pierre Bemba Gombo”, 15 June 2009.

⁴ “Corrigendum to ‘Defence Preliminary Motion Alleging Defects in the Document Containing the Charges (DCC) and List of Evidence (LoE) and Request that the OTP be ordered to re-file an Amended DCC & LoE’”, ICC-01/09-02/11-268-Corr, 28 August 2011; “Defence Observations on 245 Applications for Victim Participation in the Proceedings”, ICC-01/09-02/11-248. The point, to be clear, is not that these specific motions require an oral response in the confirmation hearings, but rather that the Defence has shown through these motions that it is likely to seek to exclude particular types of harm from the scope of the charges on either legal or factual grounds during the confirmation hearing.

Respectfully submitted,



Morris Anyah

Victims' Legal Representative

Dated this 2nd day of September 2011

At Nairobi, Kenya