



Original: English

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

Date: 28 May 2012

TRIAL CHAMBER V

Before: Judge Kuniko Ozaki, Presiding
Judge Christine Van den Wyngaert
Judge Chile Eboe-Osuji

SITUATION IN THE REPUBLIC OF KENYA

IN THE CASE OF

***THE PROSECUTOR v. WILLIAM SAMOEI RUTO
AND JOSHUA ARAP SANG***

Public

Written Submissions in Response to “Order Scheduling a Status Conference”

Source: Defence for Mr. William Samoei Ruto

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 Ruto

David Hooper QC
Kioko Kilukumi Musau

Counsel for Joshua Sang

Joseph Kipchumba Kigen-Katwa
Joel Kimutai Bosek, Philemon K.B. Koech

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

Counsel Support Section

Deputy Registrar

Mr. Didier Daniel Preira

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

1. These submissions are made on behalf of the Defence of William Samoei Ruto ('the Defence') in response to the Chamber's *Order Scheduling a Status Conference*¹ in which the Chamber requested the parties to make written submissions on the proposed agenda in advance of the status conference scheduled for June 11th. The Defence addresses the relevant matters in the order in which they appear in the agenda and as follows:

A. Date of the trial

2. The Defence has not yet had details of the evidential case that the Prosecution will seek to present which may differ in both content and extent to the material produced for the confirmation hearing. The Defence will require an adequate amount of time to prepare for trial once that evidence has been served. The Defence submits that a minimum of four months from final disclosure to trial should be sufficient to provide an adequate amount of time for the Defence to conduct the necessary investigations and preparation.
3. A particular matter arises in this case and that is that William Ruto intends to submit his candidature for President of Kenya to the Kenyan people in the elections to be held on March 4th 2013. Those elections were at first intended to take place in August of this year but were put back as part of the new constitutional process. This is a significant step and important for both the democratic process and the Kenyan people. It is to be stressed that it provides an important and further opportunity for Mr Ruto to advance the process of reconciliation in that country and to help ensure the pacific nature of the election. He has been highly active in reconciling the communities since the last election. The Defence submits that were the trial to commence in March of next year then, given the nature and extent of the case and to provide the Defence sufficient time to prepare, it would not conflict with the duty of the court to ensure expeditiousness of trial.

¹ *Prosecutor v. Ruto and Sang*, ICC-01-09/01-11-413, Order scheduling a status conference, 14 May 2012.

B. Languages to be used in the proceedings, in particular, the languages spoken by the witnesses the parties intend to call and by any victims the legal representatives may seek authorisation to call;

4. The languages anticipated to be employed are Kalenjin, Kikuyu and Kiswahili.

C. Anticipated length of the presentation of evidence at trial;

5. The Defence is not in a position to provide a response at this stage but will be able to provide some indication once the prosecution trial disclosure has taken place.

D. Timing, volume and format of disclosure of evidence by the prosecution pursuant to Rule 76 of the Rules; and

E. Material already disclosed and intended to be disclosed by the prosecution pursuant to Article 67(2) of the Rome Statute ("Statute") and Rule 77 of the Rules;

6. The Defence emphasises that it seeks the earliest and fullest disclosure possible.
7. The Defence submits that the Prosecution should provide the Chamber and the parties with details of the system it has in place to identify potentially exculpatory material.
8. Where material to be disclosed has already been disclosed for the purpose of the Confirmation hearing it is requested that the original ERN number be retained.

H. Whether the Defence intends to advance a Defence in accordance with Rules 79 and 80 of the Rules;

9. The Defence does not advance a case falling within either Rule 79 or 80. Alibi – being in a particular place at a particular time – is not a Defence given the broad mode of liability charged.

I. Whether the parties intend to call experts in accordance with Regulation 44 of the Regulations of the Court ("Regulations"), and if so, whether they intend to give joint or separate instructions to expert witnesses;

10. No settled view has been taken as to the calling of any particular expert and will be dependent on the prosecution case.

J. Agreements as to evidence pursuant to Rule 69 of the Rules;

11. The Defence is currently in discussion with the prosecution as to possible admissions.

K. Time limit for the submission of applications for victim participation;

12. Given the extensive publicity the case has received in Kenya, and the probability that potential victims have notice of the trial, the Defence submits that it would be appropriate, given the work it entails, to have an early resolution of the victims' applications.

M. Whether the parties intend to make any objections or observations concerning the conduct of the proceedings that are still pending or have arisen since the confirmation hearing, pursuant to Rule 134(2) of the Rules;

13. The Defence is not aware of any matter that should be raised at this stage.

N. Whether the parties intend to make applications for a legal re-characterisation of facts under Regulation 55 of the Regulations;

14. The Defence has no submission under Regulation 55 at this stage.

O. Whether the parties envisage that a site visit may be necessary, and, if so, at what stage of the proceedings;

15. A site visit will be necessary in the Defence view. Ideally there should be two – one before the Prosecution case and one on conclusion of the Defence case. If only one site visit is possible then it should take place at the conclusion of the Defence case.

P. Whether a protocol regulating contacts between the parties and protected witnesses called by another party is necessary; including guidelines on the conditions under which the parties may make reference to the identity of protected witnesses, including the fact that they are witnesses, during their investigation.

16. The Defence is mindful of the system introduced in the *Katanga and Ngudjolo* case which has the benefit of having been put into practice.² The Defence would be content to have a similar scheme introduced for the current case.

Other matters

Translation of Documents, Videos, transcripts of videos

17. Where these are to be relied upon by the prosecution they should be produced in translation in English by the Registry translation service. Video recordings of meetings etc that are relied upon should be subject to an agreed transcript and translation in good time prior to production in court.
18. In the event that the Defence has any documents/video that it intends to rely upon and that requires translation into English the Registry translation service should be available to the Defence to effect such translation. In the event that, for any reason, the translation service declines to provide such service then the matter can be resolved by the Chamber.

Trial Scheduling

19. It would assist the Defence to know how it is proposed the Chamber will hear the two cases, whether it will be one month on, one month off etc or any other proposed scheduling.

² ICC-01/04-01/07-2571 Public Décision relative aux modalités de contact entre des victimes représentées et les parties
ICC-01/04-01/07-2148 -Décision sur la requête de la Défense de Germain Katanga relative à la communication et l'utilisation de photographies de témoins protégés

Inter-case Disclosure

20. In the event that exculpatory matters relating to this case come to be revealed in the other Kenyan case then the Defence are concerned to stress that it is for the prosecution to keep the Defence apprised of any such matters in a timely fashion.

Intermediaries

21. The Defence are concerned to be provided, by early disclosure, with information relating to all intermediaries used by the Prosecution in the case.

Definition of 'Organisation'

22. The Defence would be assisted if at an early stage of the trial proceedings and before the evidence is called the Chamber could indicate whether the definition adopted by the confirmation chamber is seen as binding on the trial chamber or whether another definition will be employed and, if so, what that contains.

Respectfully Submitted,



David Hooper, QC and Kioko Kilukumi
On behalf of William Samoei Ruto
Dated 28 May 2012
In The Hague, The Netherlands and In Nairobi, Kenya