

**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 MOHAMMED HUSSEIN ALI***

PUBLIC

Defence Observations on the Schedule for the Confirmation of Charges Hearing

Source: Defence of General Mohammed Hussein Ali

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 the Defence

Counsel for Francis Kirimi Muthaura:

Karim A.A. Khan QC, Kennedy Ogeto
and Essa Faal

Counsel for Uhuru Muigai Kenyatta:

Steven Kay QC and Gillian Higgins

Counsel for Mohammed Hussein Ali:

Evans Monari, Greg Kehoe, John Philpot
and Gershom Otachi Bw'omanwa

Legal Representatives of the Victims

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, Registrar

Deputy Registrar

Mr. Didier Daniel Preira, Deputy
Registrar

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations

Other

Introduction

1. On 30 August 2011, Judge Ekaterina Trendafilova (the “Single Judge”) issued the “Decision Requesting Observations on the Schedule for the Confirmation of Charges Hearing” in which she required parties to submit observations on the Confirmation of Charges Hearing (the “Hearing”) by 2 September 2011.¹

Time Limits – Jurisdiction, Admissibility and Issues under Rule 122(3)

2. The Defence of Major General Ali (the “Defence”) reserves the right to raise issues and objections with the proper conduct of the proceedings as allowed by rule 122(3) of the Rules of Procedure and Evidence (the “Rules”). If exercised, the Defence respectfully requests 90 minutes for oral argumentation. After such arguments, General Ali respectfully asks that the Chamber exercise the option under Rule 122(6) for a *brief* adjournment while contemplating the issues and objections raised about the proper conduct of the proceedings.
3. The Defence intends to challenge both jurisdiction and admissibility of the case against him. The Defence respectfully requests two hours to present oral arguments against jurisdiction and one hour for oral arguments against admissibility.

Time Limits – The Hearing

4. In light of the recent OTP disclosures, the Defence has been significantly hampered in its preparations. Accordingly, it is extremely difficult to assess time frames needed to respond when many of the OTP disclosures have yet to be fully analysed. With these limitation, the Defence respectfully requests the following time allocations:
 - a. Opening statement – 1 hour 30 minutes
 - b. Response to the Prosecutor’s presentation of evidence – 8 hours

¹ Pre-Trial Chamber II, *The Prosecutor v. Muthaura et al.*, “Decision Requesting Observations on the Schedule for the Confirmation of Charges Hearing”, 30 August 2011, 01/09-02/11-272.

- c. Presentation of Defence evidence on the alleged crimes and mode of responsibility – 6 hours
 - d. Questioning of each witness – 6 hours
 - e. Re-examination of each witness – 90 minutes
 - f. Closing statement – 3 hours
5. In addition to the above, the Defence requests a time allocation of 90 minutes to cross-examine each of the Defence witnesses presented by the Defence teams of Mr. Kenyatta and Mr. Muthaura. The Defence further requests to be allowed 45 minutes to re-examine each of the said witnesses if it need be.

Observations

6. The Defence requests that final observations on the Hearing be submitted no earlier than one month following the closing of the Hearing. Additionally, following rule 122(8) of the Rules that requires “the Prosecutor and the person, in that order, to make final observations” and found in previous Pre-Trial Chamber decisions, the Defence asks that the Chamber require the Prosecutor to submit his brief ten days before the Defence.²

Conclusion

7. Given the limitations presented by the recent OTP disclosures, the Defence submits that the aforementioned time limits are approximate estimates needed to properly represent Major General Ali.

² *The Prosecutor v. Lubanga*, “Decision on the schedule and conduct of the confirmation hearing”, 07 November 2006, ICC-01/04-01/06-678, Annex 1; see also *The Prosecutor v. Katanga and Ngudjolo*, “Decision on the Schedule for the Confirmation Hearing”, 13 June 2008, ICC-01/04-01/07-587-Anx1 and *The Prosecutor v. Abu Garda*, “Decision on the Defence’s request for an extension of time”, 20 November 2009, ICC-02/05-02/09-232; but see *The Prosecutor v. Bemba*, Transcripts of 15 January 2009, T. 141-42 [ICC-01/05-01/08-T-12-Red-ENG CT WT 15-01-2009].

Respectfully submitted,



Evans Monari and Gershom Otachi Bw'omanwa
On behalf of Mohammed Hussein Ali

Dated this 2nd day of September 2011

At Nairobi, Kenya