

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 28 May 2012

TRIAL CHAMBER V

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

SITUATION IN THE REPUBLIC OF KENYA

**IN THE CASE OF
THE PROSECUTOR v. FRANCIS KIRIMI MUTHAURA
AND
*UHURU MUIGAI KENYATTA***

Public document

Registry submissions following the “Order scheduling a status conference”

Source: The Registry

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
Ms Fatou Bensouda

Counsel for Francis Kirimi Muthaura
Mr Karim Khan
Mr Essa Faal

Counsel for Uhuru Muigai Kenyatta
Mr Steven Kay
Ms Gillian Higgins

Legal Representatives of the Victims
Mr Morris Anyah

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 Preira

Victims and Witnesses Unit
Ms Maria-Luisa Martinod-Jacome

Detention Section

Victims Participation and Reparations Section
Ms Fiona McKay

Other

The Registry of the International Criminal Court (the “Court”);

NOTING the “*Decision Setting the Regime for Evidence Disclosure and Other Related Matters*” (“Disclosure decision”) issued by Pre-Trial Chamber II on 6 April 2011;¹

NOTING the “*Order scheduling a status conference*”, rendered by trial Chamber V on 14 May 2012²

CONSIDERING that “the Registry is requested to make submissions on items G and L” and that “submissions are to be filed not later than 28 May 2012”.³

CONSIDERING rules 15 and 13(1) of the Rules of Procedure and Evidence (“RPE”); regulations 22, 23*bis* and 24*bis* of the Regulations of the Court; regulations 16, 21(2), 53 and 54 of the Regulations of the Registry (“RoR”);

TRANSMITS, respectfully, to the Chamber, the following observations;

In relation to the Chamber’s request to make submission on item G of the “Order scheduling a status conference”, in particular, “[w]hether the prosecution anticipates issues concerning the protection of witnesses and other persons (including the need for redactions), the disclosure of the identities of witnesses, as well as referrals to the Court’s witness protection program”, the Victims and Witnesses Unit (the “VWU”),

¹ ICC-01/09-02/11-48

² ICC-01/09-02/11-422

³ ICC-01/09-02/11-422, page 5.

so far informed the Pre-Trial Chamber whenever specific problems in relation to protected witnesses were arising. The VWU will continue informing the Chamber if there is any matter that should be brought to its attention in relation to protected witnesses or other problematic issues concerning referrals to the Court's witness protection program.

In relation to the Chamber's request to make submission on item L - E-court protocol - during the pre-trial stage, the Registry facilitated the whole disclosure procedure as instructed by the Pre-Trial Chamber.⁴

The role of the Registry and the registration procedure were clearly indicated by the Chamber in the Disclosure Decision. The Registry was considered as "a communication channel" between the parties and the Chamber. This means that the Registry was tasked to "register and transmit all evidence disclosed between the parties and communicated to the Chamber expeditiously" and to "register each piece of evidence to be disclosed".⁵

The Registry continues to facilitate the disclosure during the trial phase by uploading the electronic version of the evidence provided by the parties into the courtbook or Registry Ringtail and by storing, pursuant to regulation 16 of the RoR, the original form of evidence submitted by the parties in the Registry vault. In accordance with regulation 53 of the RoR, the Registry also handles evidence during a hearing following the Chamber's order.

Furthermore, during the pre-trial stage each piece of evidence submitted was assigned an "EVD number".

⁴ ICC-01/09-02/11-48 paragraphs 14 to 21

⁵ ICC-01/09-02/11-48, paragraphs 15 and 16

It is respectfully requested to the Chamber to remind the parties and participants that in order to comply with Regulation 54 of the RoR, evidence to be uploaded should also to be submitted in its original form.

The Registry suggests that if evidence presented is to be assigned "EVD numbers" this reference should be different from the one assigned at the pre-trial phase. The prefix "EVD-T" could be used for numbering and registration of evidence to indicate it is evidence presented during the trial phase. For example an item of evidence could be assigned the reference EVD-T-OTP-00001 or EVD-T-D09-00002. This approach is recommended by Registry as it will facilitate future research of this evidence in Ringtail and would avoid confusion between EVD numbers assigned.

The Registry informs the Chamber that the latest version of the Unified Technical Protocol ("E-court Protocol") for the provision of evidence, witness and victims information in electronic form reviewed and updated by the Ecourt User Group ("ECUG") is the one submitted in the case *The Prosecutor v. Laurent Gbagbo*.⁶

The main updates are those related to information stored in the electronic items with the purpose of differentiating the material collected in electronic form (such as e-files and e-mails) and the material collected in physical form.

In light of the upcoming Status Conference to be held on 12 June 2012 the Registry submits as annex 1 to this report the updated Ecourt Protocol and respectfully recommends its adoption for the purposes of trial proceedings unless the Chamber, parties and participants wish to submit new amendments.

⁶ ICC-02/11-01/11-18 Submission of the Generic eCourt Protocol including an Annex 1.

In relation to item P of the “Order scheduling a status conference”, although the Registry has not been requested to make submission in this regard, the VWU respectfully recommends the Chamber to request the parties and participants to consult the Unit should the latter decide to proceed with the development of the protocol “regulating the contact between the parties and protected witnesses called by another party” and the “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”. The VWU hereby suggests applying the practice before other Chambers, such as the Protocols adopted before Trial Chamber II⁷ in the *Katanga and Ngudjolo case* and before Pre-Trial Chamber III⁸ in the *Gbagbo case*.

In addition, the Registry wishes to outline already at this stage of the proceedings that in the absence of any contradictory instruction from the Trial Chamber the VWU will continue applying its “Unified Protocol on the practices used to prepare and familiarise witnesses for giving testimony” filed before Pre-Trial Chamber II in the case of the *Prosecutor v. William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang*⁹ and in the case of the *Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali*¹⁰.

In relation to paragraph 4 of the Order scheduling a status conference, the Registry has identified several issues relating to the organisation of victim participation during the trial that require to be resolved before the commencement of the trial, and is preparing a separate filing in that regard.

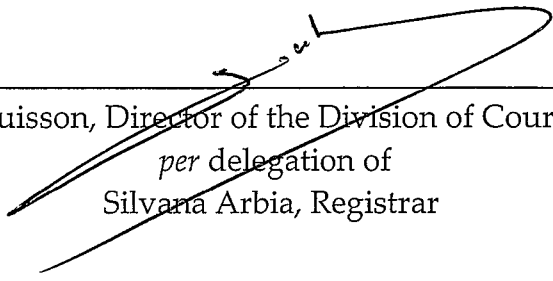
⁷ ICC-01/04-01/07-2007-Anx1

⁸ ICC-02/11-01/11-49-Anx

⁹ ICC-01/09-01/11-259-Anx

¹⁰ ICC-01/09-02/11-260-Anx

Lastly, the Registry would like to reiterate, to all parties and participants, the importance of timely receiving all relevant information, such as but not limited to languages spoken, relating to witnesses and victims so all necessary (and sometimes complex) preparations can be undertaken.



Marc Dubuisson, Director of the Division of Court Services
per delegation of
Silvana Arbia, Registrar

Dated this 28 May 2012

At The Hague in The Netherlands