

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/09-02/11
Date: 21 February 2013

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

**Victims and Witnesses Unit's Submission following the "Decision on witness
preparation" (ICC-01/09-02/11-588)**

Source: Registrar

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

The Office of the Prosecutor

Ms Fatou Bensouda

Counsel for Francis Kirimi Muthaura

Mr Karim A. Khan, Mr Essa Faal
Mr Kennedy Ogetto, Ms Shyamala
Alagendra

Counsel for Uhuru Muigai Kenyatta

Mr Steven Kay
Ms Gillian Higgins

Legal Representatives of Victims

Mr Fergal Gaynor

Legal Representatives of 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 Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Detention Section

Others

Deputy Registrar

Mr Didier Preira

Victims and Witnesses Unit

Ms Maria Luisa Martinod-Jacome

**Victims Participation and Reparations
Section**

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

NOTING the “Victims and Witnesses Unit’s Unified Protocol on the practices used to prepare and familiarise witnesses for giving testimony” (the “Familiarisation Protocol”) submitted by the Registrar on 22 August 2011;¹

NOTING the “Registrar's Observations pursuant to regulation 24*bis* of the Regulations of the Court on the “Prosecution Motion Regarding the Scope of Witness Preparation” (ICC-01/09-01/11-446)” submitted by the Registrar on 12 September 2012;²

NOTING the “Decision on witness preparation” (the “Decision”) issued by Trial Chamber V (the “Chamber”) on 2 January 2013;³

NOTING articles 43(6) and 68(1) and (4) of the Rome Statute, rules 16 to 19, 86 to 88 of the Rules of Procedure and Evidence, regulation 41 of the Regulations of the Court and regulations 79 to 96 of the Regulations of the Registry;

CONSIDERING that the Chamber in its Decision adopted the “Witness Preparation Protocol”⁴ and ordered “the Registry to file an updated version of the Familiarisation Protocol in accordance with paragraph 54 [of the Decision]”;⁵

CONSIDERING that paragraph 54 of the Decision states that the “Familiarisation Protocol is to be followed in this case, except to the extent that it regulates contact

¹ ICC-01/09-02/11-260.

² ICC-01/09-02/11-483.

³ ICC-01/09-02/11-588.

⁴ ICC-01/09-02/11-588, p. 22.

⁵ ICC-01/09-02/11-588, p. 22.

between the calling party and its witnesses in which case it is superseded by the Witness Preparation Protocol”⁶(emphasis added);

CONSIDERING that the Chamber in its Decision defined the term “witness preparation” as the “meeting between a witness and the party calling that witness, taking place shortly before the witness's testimony, for the purpose of discussing matters relating to the witness's testimony”⁷ (emphasis added);

CONSIDERING that according to the “Witness Preparation Protocol” “the calling party shall endeavor to complete its preparation sessions as early as possible and in any event at least 24 hours before the witness’s testimony is due to commence”⁸ (emphasis added);

CONSIDERING that in its Decision the Chamber concluded “that it is neither practical nor reasonable to prohibit pre-testimony meetings between parties and the witnesses they will call to testify at trial”⁹ (emphasis added);

CONSIDERING that in order to be able to amend appropriately the Familiarisation Protocol the VWU would need the guidance of the Chamber with regard to the interpretation to be given to paragraphs 4, 52 and 54 of the Decision read in conjunction with paragraph 11 of the “Witness Preparation Protocol” (Annex to the Decision);

CONSIDERING that the VWU approached the Chamber by e-mail on 29 January 2013 in order to obtain the requested clarification and was instructed on 31 January to raise its question “in a formal filing which the parties could also respond to”;

⁶ ICC-01/09-02/11-588, para. 54.

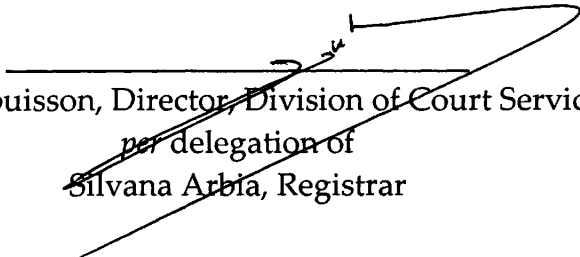
⁷ ICC-01/09-02/11-588, para. 4.

⁸ ICC-01/09-02/11-588-Anx, para. 11.

⁹ ICC-01/09-02/11-588, para. 52.

RESPECTFULLY SUBMITS the below question related to the implementation of Decision ICC-01/09-02/11-588:

1. In order to amend the Familiarisation Protocol in line with the Chamber's Decision, the VWU would like to respectfully seek the clarification from the Chamber as to whether the absence of the prohibition of contact between the calling party and the witness during the pre-testimony meeting (which ends at least 24 hours before the testimony) should be extended to the 24 hours' time period preceding the testimony and further throughout the duration of the testimony or if a prohibition of contact between the witness and the calling party shall be in place once the pre-testimony meeting ends (i.e. 24 hours before the testimony) and until the end of the testimony.



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

Dated this 21st February 2013

At The Hague, The Netherlands