

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 11 April 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. UHURU MUIGAI KENYATTA***

Public

Decision on VWU submission regarding witness preparation

Decision 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 the Defence

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

Deputy Registrar

Victims and Witnesses Unit

Ms Maria Luisa Martinod-Jacome

Detention Section

**Victims Participation and Reparations
Section**

Others

Trial Chamber V (“Chamber”) of the International Criminal Court (“Court”), in the case of *The Prosecutor v. Uhuru Muigai Kenyatta*, having regard to Article 64(2) and 3(a) and Article 68(1), issues this Decision on VWU submission regarding witness preparation.

1. On 29 January 2013 the Victims and Witness Unit (“VWU”) informed the Chamber that in order to amend the VWU Unified Protocol on the practices used to prepare and familiarise witnesses for giving testimony (“Familiarisation Protocol”)¹ as instructed in the Decision on Witness Preparation (“Decision”) and the accompanying Witness Preparation Protocol (“Protocol”)², it required clarification as to whether contact is permitted between a calling party and a witness after the completion of witness preparation.³ The Chamber instructed the VWU to raise this issue in a formal filing,⁴ and the VWU filed written submissions on the issue on 21 February 2013.⁵
2. The Office of the Prosecutor (“Prosecution”) responded to the VWU’s submissions on 13 March 2013.⁶ The Prosecution submitted that the silence in the Decision and Protocol regarding non-substantive contact between the calling party and the witness in the 24 hours preceding the witness’ testimony suggests that such contact is, in principle, permissible.⁷ However, in the Prosecution’s view, such contact would rarely be necessary and in any event would not present any risk to the integrity of the case.⁸

3. The defence for Mr Kenyatta did not file submissions on this issue.

¹ 22 August 2011, ICC-01/09-02/11-260.

² ICC-01/09-02/11-588 and ICC-01/09-02/11-588-Anx.

³ Email communication from the VWU to Trial Chamber V Communications on 29 January 2013 at 17:17.

⁴ Email communication from Trial Chamber V Communications to the VWU on 31 January 2013 at 14:32.

⁵ Victims and Witnesses Unit’s Submission following the ‘Decision on witness preparation’ (ICC-01/09-02/11-588), ICC-01/09-02/11-659.

⁶ Prosecution response to “Victims and Witnesses Unit’s Submission following the “Decision on witness preparation” (ICC-01/09-02/11-588)”, notified on 14 March 2013, ICC-01/09-02/11-694.

⁷ ICC-01/09-02/11-694, para. 4.

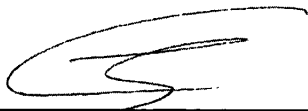
⁸ ICC-01/09-02/11-694, para. 4.

4. The Protocol specifies that the calling party should endeavour to complete its witness preparation session at least 24 hours before the start of the witness' testimony.⁹ The Chamber is of the view that non-substantive contact between the calling party and the witness in the 24 hours preceding the witness' testimony, while not prohibited, should be appropriate in the circumstances and guided by due regard to professional responsibility.¹⁰ Further, from the time the witness begins to testify until the end of the witness' testimony, the calling party's contact with the witness is restricted to its examination in Court, unless otherwise authorised by the Chamber.

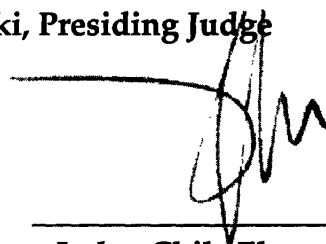
Done in both English and French, the English version being authoritative.



Judge Kuniko Ozaki, Presiding Judge



Judge Christine Van den Wyngaert



Judge Chile Eboe-Osuji

Dated this 11 April 2013

At The Hague, The Netherlands

⁹ ICC-01/09-02/11-588-Anx, para. 11.

¹⁰ See ICC-01/09-02/11-588, para. 41.