

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 6 June 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. FRANCIS KIRIMI MUTHAURA*  
AND  
*UHURU MUIGAI KENYATTA***

**Public**

**Scheduling order and amended agenda for the status conference**

Order 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,  
Mr Kennedy Ogetto, Ms Shyamala  
Alagendra

**Counsel for Uhuru Muigai Kenyatta**

Mr Steven Kay  
Ms Gillian Higgins

**Legal Representatives of Victims**

Mr Morris Anyah

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
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

**Deputy Registrar**

**Victims and Witnesses Unit**

Ms Maria Luisa Martinod-Jacome

**Detention Section**

**Victims Participation and Reparations  
Section**

Ms Fiona McKay

**Others**

1. In its "Order scheduling a status conference", issued on 14 May 2012,<sup>1</sup> Trial Chamber V ("Chamber") scheduled a status conference for 12 June 2012. The Chamber also issued an agenda for that status conference and requested the parties, participants and the Registry to make written submissions on some or all of the items on the agenda. It also requested them to indicate whether they wish to add other items to the agenda. The written submissions were filed on 28 May 2012, within the time limit set by the Chamber.<sup>2</sup>
2. The Chamber takes note of the written submissions of the parties, participants and the Registry. In view of these submissions, the Chamber will not require oral submissions on several of the items listed in its scheduling order. The Chamber notes that a number of other issues were raised in the written submissions. The Chamber will add some of these issues to the agenda of the status conference. The agenda shall be amended accordingly.
3. The Chamber therefore issues the following amended agenda for the status conference:
  - A. Date of the trial and the prosecution's submissions regarding the issue of protection of witnesses;<sup>3</sup>
  - B. Timing, volume and format of disclosure of evidence by the prosecution pursuant to Rule 76 of the Rules of Procedure and Evidence ("Rules");

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<sup>1</sup> ICC-01/09-02/11-422.

<sup>2</sup> Prosecution's Submissions on the Agenda for Status Conference, ICC-01/09-02/11-428, with confidential and confidential *ex parte* annexes; Defence Submissions on the status conference agenda items contained in the Trial Chamber's "Order scheduling a status conference" of 14 May 2012 [from the defence counsel for Francis Kirimi Muthaura], ICC-01/09-02/11-427; Defence for Uhuru Muigai Kenyatta Submissions on Status Conference Agenda In Response to Trial Chamber Order dated 14 May 2012 (ICC-01/09-02/11-422), ICC-01/09-02/11-429; Victims' Submissions in Response to the Order Scheduling a Status Conference, ICC-01/09-02/11-426; Registry submissions following the "Order scheduling a status conference", ICC-01/09-02/11-430 with an annex.

<sup>3</sup> Reference is made to the prosecution's submissions, ICC-01/09-02/11-428, paras 3, 11, 12.

- C. The prosecution's proposed "rolling disclosure" approach to disclosure of the identities of witnesses;<sup>4</sup>
- D. 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;
- E. The prosecution's proposal to adopt a new system for authorising and reviewing redactions to disclosed materials, and how this new system would be applied to redactions previously approved by the Pre-Trial Chamber;<sup>5</sup>
- F. 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;
- G. Whether the parties intend to make any objections or observations concerning the conduct of the proceedings which are still pending or have arisen since the confirmation hearing, pursuant to Rule 134(2) of the Rules;
- H. Whether the parties intend to make applications for a legal re-characterisation of facts under Regulation 55 of the Regulations of the Court;
- I. Whether the prosecution should file an amended document containing the charges;<sup>6</sup>
- J. Whether the parties and participants should be required to file written submissions on the legal definition of "organizational policy" and whether the Chamber should rule on the definition prior to the commencement of the trial.

4. The Chamber notes that the prosecution intends to seek a ruling from the Chamber regarding the permissible scope of witness preparation.<sup>7</sup> The prosecution is

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<sup>4</sup> Reference is made to the prosecution's submissions, ICC-01/09-02/11-428, paras 16-17.

<sup>5</sup> Reference is made to the prosecution's submissions, ICC-01/09-02/11-428, paras 19-23.

<sup>6</sup> Reference is made to the submissions of the defence counsel for Francis Kirimi Muthaura, ICC-01/09-02/11-427, paras 32-34, and to the submissions of the defence counsel for Uhuru Muigai Kenyatta, ICC-01/09-02/11-429, para. 23.

requested to file its written submissions on this issue no later than 13 August 2012. The defence for each accused and the legal representative of victims will have 21 days from the day of filing to respond to such submissions in accordance with Regulation 34 of the Regulations of the Court.

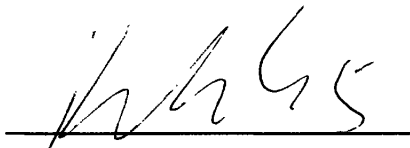
5. The Chamber notes that the defence for Francis Kirimi Muthaura requests that the prosecution should be required to produce signed statements of the witnesses it intends to call.<sup>8</sup> The defence is requested to make a written application setting out its position on this matter and file it no later than 13 August 2012. The prosecution and the legal representative of victims will then have 21 days to respond to that application.
6. Having regard to the number of issues to be discussed at the status conference, the Chamber will hold the conference according to the following schedule:
  - 11.00 – 13.00 – public session,
  - 14.30 – 16.30 – public session.
7. In order to avoid disclosure of sensitive information regarding witness protection, an *ex parte* prosecution and Registry only session will be held between 17.15 and 18.30.

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<sup>7</sup> Prosecution's submissions, ICC-01/09-02/11-428, para. 40.

<sup>8</sup> Submissions of the defence counsel for Francis Kirimi Muthaura, ICC-01/09-02/11-427, paras 38-39.

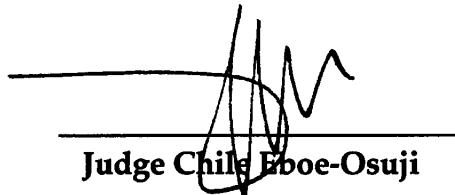
Done in both English and French, the English version being authoritative.



**Judge Kuniko Ozaki, Presiding**



**Judge Christine Van den Wyngaert**



**Judge Chiles Eboe-Osuji**

Dated this 6 June 2012

At The Hague, The Netherlands