

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/09-02/11
Date: 12 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

**Registry's observations on issues related to the commencement of trial
(ICC-01/09-02/11-615)**

Source: The Registry

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

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Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented Applicants
(Participation/Reparation)

The Office of Public Counsel for Victims

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States' Representatives

Amicus Curiae

REGISTRY

Registrar
Ms Silvana Arbia

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Deputy Registrar
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Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Other

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

NOTING the “Order for observations on issues related to the commencement of trial” rendered by Trial Chamber V on 30 January 2013¹;

CONSIDERING that the Registry was ordered “to file its observations on (i) whether the conditions listed in the summonses to appear issued by the Pre-Trial Chamber are sufficient and adequate for the purposes of trial; and (ii) whether there are any practical, financial and/or legal matters to be dealt with for the accused to be able to attend the trial at the seat of the Court, including the modalities of the Accused's stay on the territory of the Host State during the trial and any other urgent matters by 12 February 2013”²

TRANSMITS, respectfully, the following observations:

A. Conditions listed in the summonses to appear

1. The Registry would like to inform the Trial Chamber that a meeting between the Registry and the Host State authorities took place on Monday 11 February 2013 during which the practical aspects of the (long term) stay of the Accused persons on the Dutch territory have been discussed. More specifically, the specific issue of the legal status of the accused persons while staying in the Netherlands has been addressed.

¹ ICC-01/09-02/11-615

² ICC-01/09-02/11-615, page 3.

2. The Host State is currently looking into the various possibilities of ensuring the presence of the Accused at the trial hearings within the existing legal framework. The Dutch authorities indicated that certain limitations such as the length of the validity of the visa or the territory covered by the visa will have to be applied to comply with Schengen rules. In addition, the Host State indicated that the conditions to be applied to the accused persons while in The Netherlands will depend on the security assessment which they will conduct prior to their arrival.

3. The Registry will duly inform the Trial Chamber as soon as additional information become available and hopes to do so during the status conference which is currently scheduled for 14 February 2013.

4. The Registry also believes that it would be useful, for each defence team, to appoint a designated focal point within the teams who will be the main Registry contact for logistical and security related matters in relation to the appearance of the accused persons at trial and who would be reached by the Registry at all time.

B. Practical, financial and legal matters to be dealt with

Practical matters

5. The Registry would like to respectfully draw the attention of the Trial Chamber that the "mode" - either simultaneous or consecutive trials - which will be used for trial proceedings has not been decided upon at this stage by the Trial Chamber. For budget purposes, consecutive trials have been taken into consideration in the 2013 proposed budget. However, an access to the contingency fund in the event of simultaneous trials could be contemplated if accurate figures are available. Choosing between these two possibilities will have serious practical and financial implications regarding the commencement of the trial and the trial itself, taking into

consideration the on-going trial proceedings in the case of the Prosecutor v. Jean-Pierre Bemba Gombo (ICC-01/05-01/08).

6. It is estimated that, where the hearing would be held simultaneously or consecutively, the duration of the trial would range from 18 months to 36 months respectively if, for example, a similar number of witnesses were to appear as in other cases and if there are no incidents or exceptional problems occurring.

7. In the event it is decided that the trial is to take place in simultaneous mode (i.e. on the same day AM sessions in KEN I and PM sessions in KEN II) additional Registry staff (about 40 staff for *inter alia* courtroom support, ITCS, VWU, SSS, Interpretation and Translation...) is to be recruited in order to ensure the proceedings. In the event it is decided that the trial is to take place in consecutive mode (i.e. one week KEN I and one week KEN II – on an indicative basis) no additional staff is to be recruited. However, the time of the trial will be extended considerably having implications on *inter alia* legal aid.

8. During a previous exercise (when simultaneous trials were held), when approximately 40 staff members were to be hired, it took approximately 3-6 months to hire the staff based on accelerated recruitment, loans from other institutions and the use of existing rosters. Rosters still exist based on the functional profiles required in the previous exercise. The rosters are, however, more than two years old and the candidates' interest and availability would need to be determined in addition to their required notice period. Furthermore, a period for training is also to be taken into consideration for new staff to be fully operational in the event they are not on loan.

9. In the event of simultaneous trials and when only two judges would be called, their daily workload (hearings) would be extremely charged (i.e. 4 hours AM in KEN I and 4 hours PM in KEN II) not taking into consideration the work that has to

be performed in addition to being present at the hearing. Therefore, the Registry is of the view that four new judges, rather than two, are to be called for the trial proceedings in both Kenya cases or three new judges, if the existing three judges would be assigned to one case with the three new judges being assigned to the second Kenya case.

10. With regards to the availability of the courtrooms, and considering the ongoing trial proceedings in the case of the Prosecutor v. Jean-Pierre Bemba Gombo (ICC-01/05-01/08), both courtrooms I and II will have to be fully operational in order to ensure the trial proceedings in the Kenya cases regardless of simultaneous or consecutive trial proceedings. As courtroom II is not fully equipped, additional time estimated at approximately 6 weeks, would also be needed to re-equip the courtroom in order to be fully operational again.

11. With regards to the period needed to bring witnesses to court for testimony, the Registry would like to recall that at least 35 days for preparation are necessary in order to ensure the appearance of witnesses in the courtroom. It is also added that, at this stage, the list of witnesses has not been approved yet by the Trial Chamber. For witnesses coming from Kenya, the Court will have to pay due regards to the possible UNDSS conditions regarding their movements/travel.

12. With regards to the languages to be used by witnesses for the Office of the Prosecutor, the Registry has been informed that they would testify in English or Swahili. It is also possible that some witnesses would testify in Luo. Should the latter be the case, the Registry would like to draw the attention of the Trial Chamber that, in this instance, the interpretation would be consecutive. The Registry is also preparing for Kalenjin, from a witness perspective, at the time of the defence case, should the need arise.

13. Given the specificity of the trial and the appearance of the Accused, certain measures in relation to protection might have to be taken.

Financial

14. It is estimated that – for simultaneous proceedings –, the amount of 1.6 million € (for 6 months) would be needed for the recruitment of about 40 staff. However, the figure for the additional staff could be reduced after thorough assessment. Additional resources would also be required for the Human Resources Section to handle the volume of recruitment. Also, additional resources for the new judges are also to be earmarked regarding the approved budget.

15. Other expenses such as, but not limited to, possible long term accommodation for the indigent accused (if requested), travel expenses to attend the hearings,... could be taken into consideration but cannot be exactly specified at this stage. However, it is estimated they will be considerable.

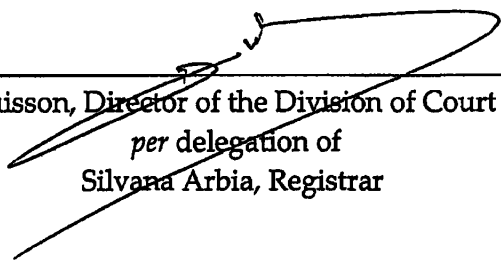
16. As the abovementioned amounts have not been taking into consideration in the approved 2013 Programme Budget a separate request to access the Contingency fund would be needed.

Legal

17. With regards to the legal matters to be dealt with for the accused to be able to attend the trial at the seat of the Court, the Registry refers to the abovementioned “conditions in the summonses to appear” (point A) and will report back to the Trial available.

C. Conclusion

18. Pending the decision on the "mode" to be used for the upcoming trial proceedings, the Registry will facilitate the proceedings taking into consideration the specific practical and financial parameters mentioned above.



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

Dated this 12 February 2013

At The Hague in The Netherlands