

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 5 March 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

Order scheduling a status conference and agenda

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 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 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

1. In accordance with Rule 132(2) of the Rules of Procedure and Evidence a status conference shall be held on 11 March 2013 from 12.00 – 13.30 and 14.00 – 16.00.
2. The main purpose of the status conference is for the Chamber to receive additional information on certain legal issues arising out of the applications by the defence for Mr Kenyatta and the defence for Mr Muthaura (together, “Defence”) to order that the preliminary issue of the validity of the Confirmation Decision be referred back to the Pre-Trial Chamber¹ as well as various related filings.²
3. In order to facilitate the preparation for the status conference, the Prosecution and the Defence are requested to submit their views on the following issues by noon 8 March 2013.

A. (Prosecution) The anticipated scope of review and relief by the Pre-trial Chamber when the Prosecution “does not oppose the confirmation decision

¹ Defence Application to the Trial Chamber Pursuant to Article 64(4) of the Rome Statute to Refer the Preliminary Issue of the Confirmation Decision to the Pre-Trial Chamber for Reconsideration, 5 February 2013 (ICC-01/09-02/11-622); and Defence Application pursuant to Article 64(4) for an order to refer back to Pre-Trial Chamber II or a Judge of the Pre-Trial Division the Preliminary issue of the Validity of the Decision on the Confirmation of Charges or for an order striking out new facts alleged in the Prosecution's Pre-Trial Brief and Request for an extension of the page limit pursuant to Regulation 37(2), 7 February 2013 (ICC-01/09-02/11-628-Conf).

² Addendum to ICC-01/09-02/11-628-Conf and ICC-01/09-02/11-628-Conf-AnxA, 20 February 2013 (ICC-01/09-02/11); Corrigendum to Observations on the Conduct, Extent and Impact of the Prosecution's Investigation and Disclosure on the Defence's Ability to Prepare for Trial with Confidential Annex A, Public Annex B, and Public Annex A1, 20 February 2013 (ICC-01/09-02/11-655); Consolidated Prosecution response to the Defence applications under Article 64 of the Statute to refer the confirmation decision back to the Pre-Trial Chamber, 25 February 2013 (ICC-01/09-02/11-664-Conf-Exp); Muthaura Defence Application for Leave to Reply to the “Public redacted version of the 25 February 2013 Consolidated Prosecution response to the Defence applications under Article 64 of the Statute to refer the confirmation decision back to the Pre-Trial Chamber”, 1 March 2013 (ICC-01/09-02/11-668); and Defence Request for Leave to Reply to the “Confidential redacted version of the 25 February 2013 Consolidated Prosecution Response to the Defence applications under Article 64 of the Statute to refer the confirmation decision back to the Pre-Trial Chamber”, 1 March 2013 (ICC-01/09-02/11-669).

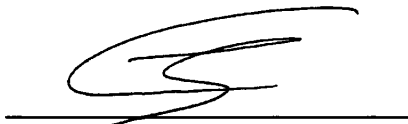
being referred back to the Pre-Trial Chamber for reconsideration with respect to Mr. Muthaura”³;

- B. (Prosecution and the Defence) The definition of a “preliminary issue” referred to in Article 64(4) of the Statute and whether the relief sought by the Defence falls under the definition;
 - C. (Prosecution and the Defence) The scope of the Trial Chamber’s powers under Article 61(11) to address the defence request;
 - D. (Prosecution) The full and detailed accounts of the Prosecution’s pre- and post-Confirmation investigation, respectively, and the amount/proportion of the witnesses/materials produced as a result of post-Confirmation investigation which the Prosecution intends to use at trial stage;
 - E. (Prosecution) The evidentiary case against Mr Muthaura at the time of the Confirmation Hearing and the current proceedings.
4. The Prosecution and the Defence should be in a position to make oral submissions in response to the other parties’ written submissions and related questions the Chamber may have on the relevant filings.

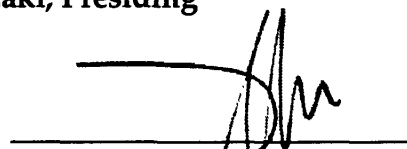
Done in both English and French, the English version being authoritative.



Judge Kuniko Ozaki, Presiding



Judge Christine Van den Wyngaert



Judge Chile Eboe-Osuji

³ ICC-01/09-02/11-664-Conf-Exp, para. 46.

Dated this 5 March 2013

At The Hague, The Netherlands