

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 4 July 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. WILLIAM SAMOEI RUTO and JOSHUA ARAP SANG***

**PUBLIC
with public annex**

**Submission of the draft protocol on contacts with the witnesses of opposing parties
and on communication of non-public information to the public in the course of the
parties and participants' investigations**

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

Ms Cynthia Tai

Counsel for for William Samoei Ruto

Mr David Hooper

Mr Kioko Kilukumi Musau

Counsel for Joshua Arap Sang

Mr Joseph Kipchumba Kigen - Katwa

Mr Joel Kimutai Bosek

Legal Representatives of Victims

Ms Sureta Chana

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

Defence Support Section

Deputy Registrar

Mr Didier-Daniel Preira

Victims and Witnesses Unit

Ms Maria Luisa Martinod-Jacome

Detention Section

**Victims Participation and Reparations
Section**

Other

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

NOTING the “Code of Professional Conduct for counsel” adopted by the Assembly of States Parties at the 3rd plenary meeting on 2 December 2005;¹

NOTING the “Decision on the prosecution's application for an order governing disclosure of non-public information to members of the public and an order regulating contact with witnesses” issued by Trial Chamber I on 3 June 2008;²

NOTING the “Code of conduct for investigators” promulgated by the Registrar in consultation with the President and the Prosecutor on 10 September 2008;³

NOTING the “Decision on a number of procedural issues raised by the Registry” issued by Trial Chamber II on 14 May 2009;⁴

NOTING the “*Corrigendum* to Decision on the participation of victims in the trial and on 86 applications by victims to participate in the proceedings” issued by Trial Chamber III on 12 July 2010;⁵

NOTING the “Redacted Decision on the Prosecution’s Requests to Lift, Maintain and Apply Redactions to Witness Statements and Related Documents” issued by Trial Chamber III on 20 July 2010;⁶

NOTING the “Decision authorising the appearance of Victims a/0381/09, a/0018/09, a/0191/08, and pan/0363/09 acting on behalf of a/0363/09” issued by Trial Chamber II on 9 November 2010;⁷

¹ Resolution ICC-ASP/4/Res.1.

² ICC-01/04-01/06-1372.

³ Ref: ICC/AI/2008/005.

⁴ ICC-01/04-01/07-1134.

⁵ ICC-01/05-01/08-807-Corr.

⁶ ICC-01/05-01/08-813-Red.

NOTING the “Corrigendum of the “Decision establishing Modalities to be Observed When Complying with Summons Conditions” issued by Pre-Trial Chamber II on 6 April 2011;⁸

NOTING the “Decision on the “Defence Request for Variation of Decision on Summons or in the Alternative Request for Leave to Appeal” issued by Pre-Trial Chamber II on 12 May 2011;⁹

NOTING the “Decision on the Protocols concerning the disclosure of the identity of witnesses of the other party and the handling of confidential information in the course of investigations” issued by Pre-Trial Chamber III on 6 March 2012;¹⁰

NOTING the “Victims and Witnesses Unit’s Unified Protocol on the practices used to prepare and familiarise witnesses for giving testimony and Protocol on the vulnerability assessment and support procedure used to facilitate the testimony of vulnerable witnesses” submitted by the Registrar before Pre-Trial Chamber I on 16 April 2012;¹¹

NOTING the Status Conference held on 11 June 2012;¹²

NOTING articles 43(6), 67(e) and 68(1), (3) 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 during the Status Conference held on 11 June 2012 the Chamber directed “the parties and legal representatives of victims [...] to jointly consult with

⁷ ICC-01/04-01/07-2517-tENG.

⁸ ICC-01/09-01/11-38-Corr.

⁹ ICC-01/09-01/11-86.

¹⁰ ICC-02/11-01/11-49.

¹¹ ICC-02/11-01/11-93-Anx2.

¹² ICC-01/09-01/11-T-15-ENG.

the Registry with a view to coming up with a workable protocol”¹³ regulating the contacts with the witnesses of opposing parties and communication of non-public information to the members of the public and requested the Registry “to file a report to the Chamber with a draft protocol for the Chamber’s consideration by 4 July”¹⁴;

RESPECTFULLY SUBMITS a draft protocol on contacts with the witnesses of opposing parties and on communication of non-public information to the public in the course of the parties and participants’ investigations for the consideration of the Chamber:

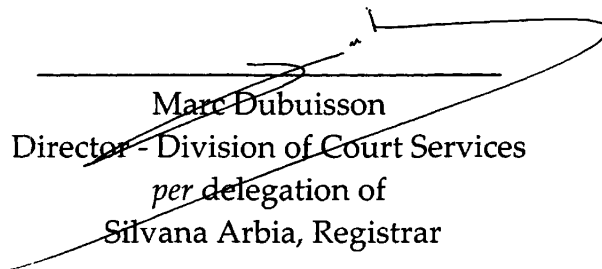
1. The Victims and Witnesses Unit (the “VWU”) liaised with the Prosecution, both Defence teams and the legal representative of victims in order to prepare a draft protocol both on contacts with the witnesses of opposing parties and on communication of non-public information to the public in the course of the parties and participants’ investigations (the “Draft Protocol”). For this purpose the VWU prepared a draft for the parties and participants based on the existing jurisprudence and practices.
2. The respective teams communicated their comments on the Draft Protocol. Despite several exchanges of e-mails between the Registry representatives, no agreement was reached between the parties and the legal representative with regard to some of the provisions of the Protocol.
3. In addition, the Defence team of Mr. Ruto suggested creating “two separate protocols – for clarity and future reference. A protocol on contacts with the witnesses of opposing parties and a protocol on communication of non-public information in the course of the parties and participants investigations”. The Prosecution expressed that it does not object to this suggestion.
4. The VWU incorporated all the suggestions and comments of the parties and the legal representative of victims in the attached document. However, the VWU submits at that stage only one single Protocol as *per* the order of the Chamber

¹³ ICC-01/09-01/11-T-15-ENG, p. 43, lines 2-8.

¹⁴ *Ibid.*

during the Status Conference held on 11 June 2012. The Protocol is attached as an annex to the current document for the consideration of the Chamber.

5. The VWU remains available to provide further assistance to the Chamber in establishing one (or two) final Protocol(s) on contacts with the witnesses of opposing parties and on communication of non-public information to the public in the course of the parties and participants' investigations.



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

Dated this 4 July 2012

At The Hague, The Netherlands