

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/09-01/11
Date: 28 November 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***

Confidential

Order requesting additional information on witness security

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 William Samoei Ruto
Mr Kioko Kilukumi Musau
Mr David Hooper

Legal Representatives of Victims

Counsel for Joshua Arap Sang
Mr Joseph Kipchumba Kigen-Katwa
Mr Joel Kimutai Bosek
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**

Others

Trial Chamber V ("Trial Chamber" or "Chamber") of the International Criminal Court ("Court"), in the case of *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, pursuant to Articles 64, 67 and 68(1) of the Rome Statute, Rules 77 and 87 of the Rules of Procedure and Evidence and Regulation 34 of the Regulations of the Court, issues this Order requesting additional information on witness security.

1. On 26 November 2012 the Chamber held an *ex parte* prosecution and Registry only status conference in order to address issues of witness security raised in the prosecution's application for the delayed disclosure of the identities of nine witnesses and authorisation for redactions to corresponding witness statements or transcripts ("Delayed Disclosure Application").¹
2. In the course of the status conference, the prosecution was requested to provide the Chamber with references to the relevant portions of the statements and/or transcripts of witnesses P-268, P-356, P-376, P-397, P-423 and P-471 relating to the risks to their security.² The prosecution is requested to provide this information or any other relevant information by 30 November 2012, in a confidential *ex parte* Chamber and VWU only filing. A confidential redacted version should be filed the same day.
3. In light of the submissions of the prosecution and the Victims and Witnesses Unit ("VWU") during the status conference, the Chamber requests an *ex parte*, Chamber and prosecution only update from the VWU by 7 December 2012 on the security

¹ Prosecution's application for delayed disclosure of the identities of certain witnesses and authorisation of redactions pursuant to Decision ICC-01/09-01/11-458, 5 November 2012, ICC-01/09-01/11-468-Conf-Exp with confidential *ex parte*, Prosecution and VWU only, Annexes 1-9 (notified 6 November 2012). A public redacted version of the application was filed on 7 November 2012 and notified on 8 November 2012, ICC-01/09-01/11-468-Red. The Chamber notes that on 23 November 2012, the Prosecution filed a confidential *ex parte*, Prosecution and VWU Only, update to its Delayed Disclosure Application whereby it withdrew its request for disclosure of one witness's identity on the grounds that the witness was no longer expected to testify at trial. Prosecution's update regarding Prosecution submission ICC-01/09-01/11-468-Conf-Exp, 23 November 2012, ICC-01/09-01/11-480-Conf-Exp. A public redacted version was filed on 27 November 2012, ICC-01/09-01/11-480-Red.

² ICC-01/09-01/11-T-17-CONF-EXP-ENG ET, page 19, lines 7 – 24; page 20, line 22 to page 21, line 15; page 22, lines 9 – 12; page 26, lines 5 – 10; and page 27, lines 9 – 16.

situation of each of the eight witnesses concerned. The update should include, for each witness, whether the witness has been referred to the VWU, a summary of the VWU's security assessment and the current status of any protective measures. The Chamber further requests a confidential update from the prosecution on the general security situation in Kenya, such update to be filed within 7 days of this Order.³

4. Further, in view of the prosecution's submissions⁴ the Chamber reminds the prosecution that it must apply on a case-by-case basis if it wishes to delay disclosure of the identifying information of any witness past 9 January 2012, including any witnesses in the ICC Protection Programme.⁵
5. Finally, the Chamber addresses the related issue of the provision, to the defence, of a redacted version of the prosecution's update to its Delayed Disclosure Application wherein it notified the Chamber that it was withdrawing its application for one witness ("Delayed Disclosure Update").⁶ On 26 November 2012, the Chamber ordered the prosecution to file a redacted version of Delayed Disclosure Update to enable the defence to meaningfully respond to the Delayed Disclosure Application.⁷ A redacted version was duly filed by the prosecution on 27 November 2012 however it redacted the pseudonym of the witness in question. On 28 November 2012, the defence jointly filed a request regarding this issue, asserting that it was "unable to assess [the] full relevance or significance" of the Delayed Disclosure Update and requesting the Chamber to order the prosecution to indicate to the defence the pseudonym and confirmation witness number of the witness in

³ See ICC-01/09-01/11-T-17-CONF-EXP-ENG ET, page 34, line 18 to page 35, line 5.

⁴ ICC-01/09-01/11-T-17-CONF-EXP-ENG ET, page 3, line 21 to page 4, line 2.

⁵ Decision on the schedule leading up to trial, 9 July 2012, ICC-01/09-01/11-440, paras 8 and 16; Decision on the protocol establishing a redaction regime, 27 September 2012, ICC-01/09-01/11-458, para. 30 and ICC-01/09-01/11-458-AnxA-Corr, paras 51 – 53.

⁶ ICC-01/09-01/11-480-Conf-Exp.

⁷ Order regarding redactions, ICC-01/09-01/11-482.

question.⁸ Having considered this matter, the Chamber agrees with the defence that the redacted version of the Delayed Disclosure Update does not provide the defence with the necessary information to enable it to respond to the Delayed Disclosure Application. The Chamber fails to understand the basis for the redaction of the pseudonym of the witness in question, bearing in mind that this pseudonym was provided to the defence in the redacted version of the Delayed Disclosure Application itself. This information is "of relevance to the defence, in particular for the purpose of preparing its response to the Delayed Disclosure Application".⁹

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

DIRECTS the prosecution to file the additional information referred to in paragraph 2 above by 30 November 2012.

DIRECTS the prosecution to file the update referred to in paragraph 3 above within 7 days of this Order.

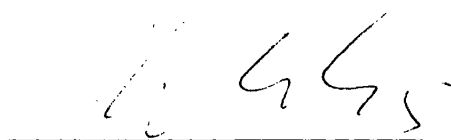
DIRECTS the VWU to file the security update referred to in paragraph 3 above by 7 December 2012

DIRECTS the prosecution to disclose the pseudonym of the witness who is the subject of the Delayed Disclosure Update, by 29 November 2012.

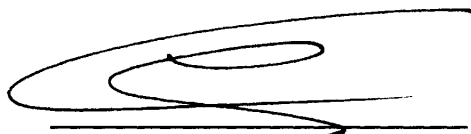
⁸ Joint Defence Request for the Prosecutor to Comply Meaningfully with the Chamber's Order regarding Redactions, 28 November 2012, ICC-01/09-01/11-484.

⁹ ICC-01/09-01/11-482, para. 9.

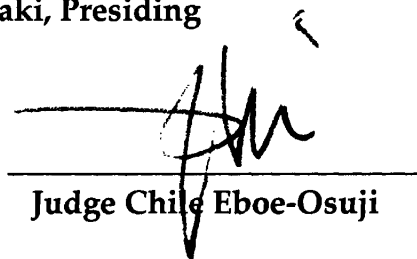
Done in both English and French, the English version being authoritative.



Judge Kuniko Ozaki, Presiding



Judge Christine Van den Wyngaert



Judge Chile Eboe-Osuji

Dated 28 November 2012

At The Hague, The Netherlands