

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/09-01/11
Date: 29 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 regarding 'Prosecution's application pursuant to Article 56'

Decision 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 William Samoei Ruto

Mr Kioko Kilukumi Musau

Mr David Hooper

Counsel for Joshua Arap Sang

Mr Joseph Kipchumba Kigen-Katwa

Mr Joel Kimutai Bosek

Legal Representatives of Victims

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

Maria Luisa Martinod-Jacome

Detention Section

**Victims Participation and Reparations
Section**

Others

Trial Chamber V ("Chamber") of the International Criminal Court ("Court"), in the case of *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, pursuant to Articles 56, 64(6) and 68(1) of the Rome Statute ("Statute"), Rules 17 and 114 of the Rules of Procedure and Evidence and Regulations 24 and 34 of the Regulations of the Court, issues this Order regarding 'Prosecution's application pursuant to Article 56'.

1. On 19 November 2012, the Office of the Prosecutor ("Prosecution") filed a request pursuant to Article 56 of the Statute for the evidence of a "key Prosecution witness" ("Witness") to be taken in advance of trial in order to preserve his testimony in the event that he is not available at the time of trial ("Application").¹ A confidential redacted version of the Application was filed on 22 November 2012.²
2. The Application asserts that the ability of the Witness to testify at trial has been put "into serious question" due to risks to his security and safety and a deterioration of his health, both physical and psychological. As noted in the Application, the Witness's health concerns have been the subject of previous assessments by the VWU.³ During an *ex parte*, Prosecution and VWU only, status conference held on 26 November 2012, the VWU provided the Chamber with a general update on the Witness's situation.⁴ Also during the *ex parte* status conference, the Prosecution confirmed that it wished to pursue its Application.⁵
3. The Chamber considers it important to receive a more detailed assessment from the VWU of the Witness's security and health concerns prior to any determination of the Application. The Chamber further considers it appropriate, in the interests of determining this matter as expeditiously as possible, to shorten the timeframe for

¹ Prosecution's application pursuant to Article 56, ICC-01/09-01/11-474-Conf-Exp.

² Confidential redacted version of Prosecution's application pursuant to Article 56, ICC-01/09-01/11-474-Conf-Red.

³ ICC-01/09-01/11-474-Conf-Exp, paras 21-22; ICC-01/09-01/11-474-Conf-Red, paras 15 – 16. .

⁴ ICC-01/09-01/11-T-17-CONF-EXP-ENG ET, page 10, line 25 to page 11, line 7.

⁵ ICC-01/09-01/11-T-17-CONF-EXP-ENG ET, page 11, lines 11 to 19.

the defence teams for Mr Ruto and Mr Sang (together the "Defence") to submit any response to the Application.

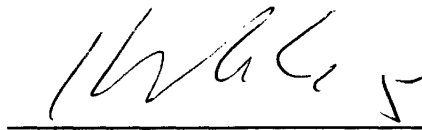
FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

DIRECTS the VWU to file an *ex parte*, prosecution and VWU only, assessment of the Witness's security situation and a preliminary assessment of his health by no later than 7 December 2012;

FURTHER DIRECTS the VWU to file an *ex parte*, VWU only, psychosocial report on the Witness as soon as possible thereafter; and

DIRECTS the Defence to file any response to the Application by no later than 10 December 2012.

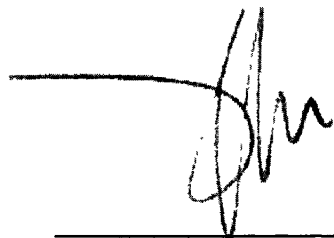
Done in both English and French, the English version being authoritative.



Judge Kuniko Ozaki, Presiding



Judge Christine Van den Wyngaert



Judge Chile Eboe-Osuji

Dated 29 November 2012

At The Hague, The Netherlands