

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/09-01/11
Date: 06 February 2013

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

**Confidential redacted version of Second decision on prosecution request for
delayed disclosure of witnesses P-336, P-356, and P-397**

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 ("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(2) and 68(1) of the Rome Statute and Rules 76, 77, 81, and 84 of the Rules of Procedure and Evidence, issues the following Second decision on prosecution request for delayed disclosure of witnesses P-336, P-356 and P-397.

I. Procedural History and Submissions

1. On 5 November 2012, in accordance with the Chamber's decisions on the schedule for trial¹ and on a redactions regime,² the Office of the Prosecutor ("Prosecution") filed an application requesting the delayed disclosure of the identities of certain witnesses, including P-336, P-356, and P-397 ("Application").³
2. On 11 December 2012, in a joint response, the defence teams for Mr. William Samoei Ruto and for Mr. Joshua Arap Sang (together the "Defence") requested the Chamber to deny the Application in its entirety.⁴
3. On 4 January 2013, the Chamber issued its first decision on the Application ("First Decision"),⁵ in which it, *inter alia*, granted the temporary delay of the disclosure of the identities of witnesses P-336, P-356, and P-397 pending the implementation of protective measures. The Chamber also ordered the Victims and Witnesses Unit ("VWU") to file a report on the security situation and protection status of the

¹ Decision on the schedule leading up to trial, 9 July 2012, ICC-01/09-01/11-440.

² Decision on the protocol establishing a redaction regime, 27 September 2012, ICC-01/09-01/11-458 and annex containing the protocol ICC-01/09-01/11-458-AnxA-Corr.

³ 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, notified on 6 November 2012, ICC-01/09-01/11-468-Conf-Exp, with 9 confidential *ex parte* Annexes. A public redacted version was filed on 7 November 2012, notified on 8 November 2012, ICC-01/09-01/11-468-Red. Confidential redacted versions of the nine annexes were filed on 4 December 2012. A confidential redacted version of the First Application was filed on 14 January 2013, notified on 15 January 2013, ICC-01/09-01/11-468-Conf-Red.

⁴ Joint Defence Response to Public Redacted Version of the 5 November 2012 "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", ICC-01/09-01/11-507-Conf.

⁵ Decision on first prosecution application for delayed disclosure of witness identities, ICC-01/09-01/11-531-Conf-Exp. A confidential redacted version was filed the same day.

witnesses by 18 January 2013.⁶ The VWU filed its report on 18 January 2013 ("VWU Report").⁷

II. Analysis

Witnesses P-336 and P-356

4. With respect to witness P-336, the VWU Report notes that, [REDACTED]
[REDACTED]
[REDACTED].⁸ The VWU has confirmed that [REDACTED]
[REDACTED] and that the risk to his safety is mitigated by the present interim protective measures.
5. With respect to witness P-356, who was [REDACTED],⁹
the VWU Report notes that [REDACTED]
[REDACTED].¹⁰ The VWU has confirmed [REDACTED]
[REDACTED] that the risk to his safety is mitigated by the present interim protective measures.
6. The Chamber recalls that in the First Decision it concluded that there was an objectively justifiable risk to the safety of witnesses P-336 and P-356 and ordered temporary non-disclosure of their identities pending implementation of adequate protective measures.¹¹ The Chamber notes that interim protection measures have

⁶ ICC-01/09-01/11-531-Conf-Red, page 36.

⁷ Victims and Witnesses Unit's updated report on the security situation and protection status of witnesses P-336, P-356 and P-397, ICC-01/09-01/11-559-Conf-Exp, notified on 21 January 2012. A 'Corrigendum to Victims and Witnesses Unit's updated report on the security situation and protection status of witnesses P-336, P-356 and P-397' was filed on 28 January 2013, notified on 29 January 2013, ICC-01/09-01/11-559-Conf-Exp-Corr.

⁸ ICC-01/09-01/11-559-Conf-Exp-Corr, page 4.

⁹ See Victims and Witnesses Unit's Submission Pursuant to the "Order requesting additional information on witness security" (ICC-01/09-01/11-485-Conf), 7 December 2012, ICC-01/09-01/11-500-Conf-Exp, page 4, point 3.

¹⁰ ICC-01/09-01/11-559-Conf-Exp-Corr, page 4.

¹¹ ICC-01/09-01/011-531-Conf-Red, paras 46, 52.

now been implemented for both witnesses and that the VWU considers these measures to be adequate in mitigating the security risks. Accordingly, the Chamber is satisfied that there is no need for continuing non-disclosure and orders the identities of the witnesses to be disclosed to the Defence by no later than 11 February 2013.

Witness P-397

7. The VWU Report notes that on 4 January 2013 the Registry [REDACTED]
[REDACTED]
[REDACTED].¹² It further notes that the VWU is [REDACTED]
[REDACTED]
[REDACTED].¹³ The VWU has confirmed that [REDACTED]
[REDACTED].
8. In its First Decision, the Chamber concluded that there was an objectively justifiable risk to the safety of witness P-397 and ordered temporary non-disclosure of his identity pending implementation of adequate protective measures.¹⁴ However, given that the Registrar [REDACTED]
[REDACTED]
[REDACTED], the Chamber considers that there is no justification for an ongoing delay in the disclosure of the witness's identity. The Chamber accordingly orders the Prosecution to facilitate the VWU's implementation of the protective measures and to disclose the witness's identity as soon as possible and in any event by no later than 20 February 2013.

¹² ICC-01/09-01/11-559-Conf-Exp-Corr, page 5.

¹³ ICC-01/09-01/11-559-Conf-Exp-Corr, page 5.

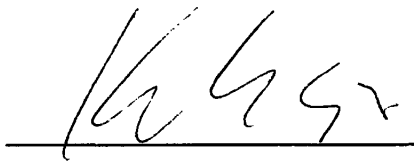
¹⁴ ICC-01/09-01/011-531-Conf-Red, para. 63.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

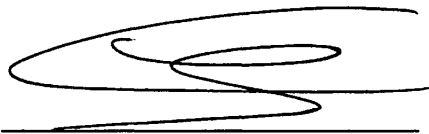
DIRECTS the Prosecution to disclose the identities of witnesses P-336 and P-356 to the Defence by no later than 11 February 2013; and

DIRECTS the Prosecution to facilitate the VWU's implementation of protective measures for witness P-397 and to disclose his identity to the Defence as soon as possible and in any event by no later than 20 February 2013.

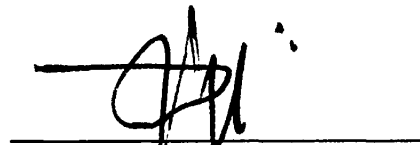
Done in both English and French, the English version being authoritative.



Judge Kuniko Ozaki, Presiding



Judge Christine Van den Wyngaert



Judge Chile Eboe-Osuji

Dated 06 February 2013

At The Hague, The Netherlands