

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/09-01/11
Date: 13 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

**Order regarding the Victims and Witnesses Unit's assessment of the security situation
and protection status of Witnesses 495, 534 and 536**

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 Silas Chekera
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, 68(1) and 68(5) of the Rome Statute ("Statute") and Rules 76, 77, 81 and 84 of the Rules of Procedure and Evidence of the Court ("Rules"), renders the following Order regarding the Victims and Witnesses Unit's assessment of the security situation and protection status of Witnesses 495, 534 and 536.

1. On 23 January 2013, the Chamber issued the "Confidential redacted version of Decision on the second and third Prosecution requests for delayed disclosure of witness identities" ("Decision"),¹ the procedural background of which is incorporated by reference in the present order.² In the Decision, the Chamber authorised the Office of the Prosecutor to temporarily withhold from disclosure to the defence for Mr Ruto and Mr Sang ("Defence") the identities of, *inter alia*, Witnesses 495, 534 and 536.³ The Victims and Witnesses Unit ("VWU") was directed to file a report to the Chamber on the security situation and/or protection status of these three witnesses by 11 February 2013.⁴
2. On 11 February 2013, the VWU filed the requested report with the Chamber, in which it submits that it is in the process of finalising its protection assessments regarding Witnesses 495, 534 and 536 for the Registrar's review.⁵
3. The Chamber recalls that, in the Decision, temporary non-disclosure was authorised for Witness 495 because, in the absence of a finalised VWU security assessment, the Chamber was unable to make a determination as to the risks disclosure may pose for this witness.⁶ The Chamber further recalls that, in the

¹ ICC-01/09-01/11-564-Conf-Red (*ex parte* Prosecution and Registry only version filed same day)

² See 23 January Delayed Disclosure Decision, ICC-01/09-01/11-564-Conf-Red, paras 1-15.

³ Decision, ICC-01/09-01/11-564-Conf-Red, p. 32.

⁴ Decision, ICC-01/09-01/11-564-Conf-Red, paras 69, 86, 95.

⁵ Report, paras 2, 4, 6.

⁶ Decision, ICC-01/09-01/11-564-Conf-Red, para. 69.

Decision, temporary non-disclosure was authorised for Witnesses 534 and 536 in order for the VWU to be able to complete protection assessments for these witnesses.⁷

4. Considering that the VWU needs additional time to complete its protection assessments, and mindful of an accused's right to adequate time for the preparation of their defence,⁸ the VWU is ordered to prepare an updated report on Witnesses 495, 534 and 536 on an expedited timeframe. The updated report should provide: (i) an update as to the status of protective measures for the witnesses; (ii) if final protection measures have not been implemented, estimates as to when final protection measures will be implemented; and (iii) an assessment as to whether the risks to these witnesses have been sufficiently mitigated by interim or final protection measures.

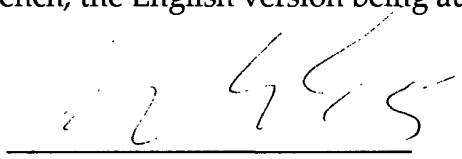
FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

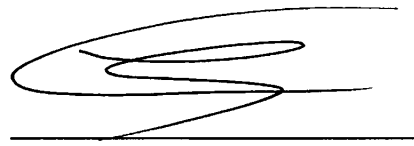
ORDERS the VWU to file an updated report on Witnesses 495, 534 and 536 on an expedited basis and in any event by no later than 20 February 2013 in accordance with paragraph 4 of the present decision.

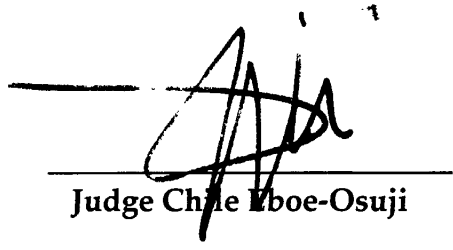
⁷ Decision, ICC-01/09-01/11-564-Conf-Red, paras 86, 95.

⁸ Article 67(1)(b) of the Statute.

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



Judge Kuniko Ozaki, Presiding Judge

Judge Christine Van den Wyngaert

Judge Chile Eboue-Osuji

Dated 13 February 2013

At The Hague, The Netherlands