

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/09-01/11
Date: 20 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 request for an extension of time to submit a report on 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 Regulation 35 of the Regulations of the Court ("Regulations"), renders the following Order regarding the Victims and Witnesses Unit's request for an extension of time to submit a report on 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 ("Prosecution") to temporarily withhold from disclosure to the defence for Mr Ruto and Mr Sang (together, "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 submitted that it was in the process of finalising its protection assessments regarding Witnesses 495, 534 and 536 for the Registrar's review.⁵
3. On 13 February 2013, the Chamber issued the "Order regarding the Victims and Witnesses Unit's assessment of the security situation and protection status of Witnesses 495, 534 and 536" ("Order"),⁶ giving the VWU until 20 February 2013 to complete its protection assessments and file a corresponding report with the Chamber ("Report").

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

² See 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 ICC-01/09-01/11-601-Conf-Exp, paras 2, 4, 6.

⁶ ICC-01/09-01/11-604-Conf.

4. On 19 February 2013 at 16:15pm, the VWU sent an email to the Chamber requesting an extension of time to submit the Report. The VWU submits that, since October 2012, the VWU has received 31 referrals from the Prosecution and one from the Chamber. The VWU informs the Chamber that the assessments needed to process referrals often involve several missions to other countries and that they only have five staff members available to manage all the mission and evaluation reports. Given these constraints, the VWU requests that it be allowed to submit the Report on 1 March 2013.
5. Regulation 35(2) of the Regulations provides that "[t]he Chamber may extend or reduce a time limit if good cause is shown and, where appropriate, after having given the participants an opportunity to be heard".
6. The Chamber stresses the importance for all parties and participants to meet the expected timelines and is concerned that the VWU is requesting this extension of time one day before the deadline, given that at the 14 February 2013 status conference the Registry submitted that the decision of the Registrar on the acceptance of protection measures was scheduled for "next week".⁷ It is also unacceptable that the VWU made such an urgent request by email and without copying the parties.
7. Nevertheless, taking into consideration the constraints indicated by the VWU, the Chamber considers that good cause exists for granting the requested extension. The Chamber emphasises the importance of disclosure of the identities of the three witnesses to the Defence and expects the VWU to do its utmost to ensure that the protection assessments of Witnesses 495, 534 and 536 are completed on a priority basis in order to enable the Prosecution to complete such disclosure.

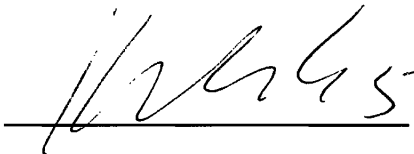
⁷ Transcript, 14 February 2013, ICC-01/09-01/11-T-19-ENG, pp. 8-9.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

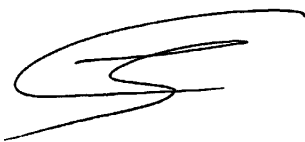
GRANTS the VWU's request for an extension of time to submit the Report and

ORDERS the VWU to file the Report on Witnesses 495, 534 and 536 as soon as the Registrar has decided upon its protection assessments and, in any event, by no later than 1 March 2013.

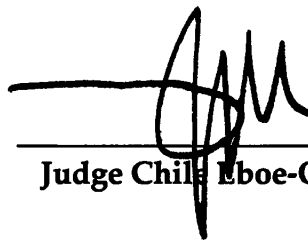
Done in both English and French, the English version being authoritative.



Judge Kuniko Ozaki, Presiding Judge



Judge Christine Van den Wyngaert



Judge Chiles Mboe-Osuji

Dated 20 February 2013

At The Hague, The Netherlands