

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/09-01/11
Date: 31 October 2014

TRIAL CHAMBER V(A)

Before: Judge Chile Eboe-Osuji, Presiding
Judge Olga Herrera Carbuccion
Judge Robert Fremr

SITUATION IN THE REPUBLIC OF KENYA

**IN THE CASE OF
THE PROSECUTOR *v.* WILLIAM SAMOEI RUTO *and* JOSHUA ARAP SANG**

Confidential *ex parte*, VWU Only

**Decision on Victims and Witnesses Unit's Submission Pursuant to Regulation
41 of the Regulations of the Court on Witness KEN-RDW-P-0072**

Decision to be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

Counsel for William Samoei Ruto

Counsel for Joshua Arap Sang

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

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Others

Trial Chamber V(A) (the 'Chamber') of the International Criminal Court (the 'Court'), in the case of *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, having regard to Articles 67(2) and 68(1) of the Rome Statute, Rules 77 and 81 of the Rules of Procedure and Evidence and Regulation 41 of the Regulations of the Court, issues this 'Decision on Victims and Witnesses Unit's Submission Pursuant to Regulation 41 of the Regulations of the Court on Witness KEN-RDW-P-0072'.

1. On 22 September 2014, the Victims and Witnesses Unit (the 'VWU') filed a submission (the 'Submission') providing information about a protection assessment for proposed Ruto Defence Witness 72 (the 'RDW').¹
2. This information consists of at least the following matters the VWU has learned from RDW: (i) Prosecution Witness 15 told RDW's wife that RDW 'should be careful in his dealings with the Court otherwise he will end up like [Prosecution Witness 397]';² (ii) Witness 15's younger brother informed RDW that a lawyer named Paul Gicheru had sent two police officers to look for RDW because it had become known that RDW had given information to the Prosecution that is now being used to accuse Mr Gicheru of witness interference;³ (iii) Witness 15 had asked RDW for Witness 397's phone number shortly before the latter's disappearance⁴ and (iv) Witness 397 had told RDW that he had indeed spoken to Witness 15 just before he disappeared.⁵
3. The VWU has not shared this information with the parties on grounds that doing so would be contrary to its neutrality.⁶ The VWU avails itself to further clarify the

¹ Victims and Witnesses Unit's submission pursuant to regulation 41 of the Regulations of the Court on witness KEN-RDW-P-0072, 22 September 2014, ICC-01/09-01/11-1531-Conf-Exp.

² Submission, ICC-01/09-01/11-1531-Conf-Exp, paras 3, 11.

³ Submission, ICC-01/09-01/11-1531-Conf-Exp, paras 4, 9, 12.

⁴ Submission, ICC-01/09-01/11-1531-Conf-Exp, para. 10.

⁵ Submission, ICC-01/09-01/11-1531-Conf-Exp, para. 10.

⁶ Submission, ICC-01/09-01/11-1531-Conf-Exp, paras 19, 25.

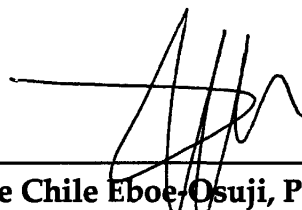
matter or to 'implement any instruction from the Chamber in relation to the disclosure of the information currently available to the VWU'.⁷

4. The Chamber considers that this information available to the VWU should be provided to the parties, as it may assist them in the preparation of their cases. The Chamber considers that such a course of action can be undertaken consistently with the VWU's mandate of neutrality.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

DIRECTS the VWU to provide the information contained in its Submission, including any relevant documentary materials, to both parties. This measure is to be taken following implementation of any additional protection or mitigating measures which the VWU considers necessary.

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



Judge Chile Eboe-Osuji, Presiding



Judge Olga Herrera Carbuccion



Judge Robert Fremr

Dated 31 October 2014

At The Hague, The Netherlands

⁷ Submission, ICC-01/09-01/11-1531-Conf-Exp, para. 27.