

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 11 April 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***

**Public**

**Decision on VWU submission regarding witness preparation**

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

**Counsel for Joshua Arap Sang**  
Mr Joseph Kipchumba Kigen-Katwa  
Mr Silas Chekera

**Legal Representatives of Victims**  
Mr Wilfred Nderitu

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparation**

**The Office of Public Counsel for  
Victims**  
Ms Paolina Massidda

**The Office of Public Counsel for the  
Defence**

**States Representatives**

*Amicus Curiae*

## REGISTRY

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**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** (“Trial Chamber” or “Chamber”) of the International Criminal Court, in the case of *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, having regard to Article 64(2) and 3(a) and Article 68(1), issues this Decision on VWU submission regarding witness preparation.

1. On 29 January 2013 the Victims and Witness Unit (“VWU”) informed the Chamber that in order to amend the VWU Unified Protocol on the practices used to prepare and familiarise witnesses for giving testimony (“Familiarisation Protocol”)<sup>1</sup> as instructed in the Decision on Witness Preparation (“Decision”) and the accompanying Witness Preparation Protocol (“Protocol”)<sup>2</sup>, it required clarification as to whether contact is permitted between a calling party and a witness after the completion of witness preparation.<sup>3</sup> The Chamber instructed the VWU to raise this issue in a formal filing,<sup>4</sup> and the VWU filed written submissions on the issue on 21 February 2013.<sup>5</sup>
2. The parties did not file submissions on this issue.
3. The Protocol specifies that the calling party should endeavour to complete its witness preparation session at least 24 hours before the start of the witness’ testimony.<sup>6</sup> The Chamber is of the view that non-substantive contact between the calling party and the witness in the 24 hours preceding the witness’ testimony, while not prohibited, should be appropriate in the circumstances and guided by due regard to professional responsibility.<sup>7</sup> Further, from the time the witness begins to testify until the end of the witness’ testimony, the calling

<sup>1</sup> 12 August 2011, ICC-01/09-01/11-259.

<sup>2</sup> ICC-01/09-01/11-524 and ICC-01/09-01/11-524-Anx.

<sup>3</sup> Email communication from the VWU to Trial Chamber V Communications on 29 January 2013 at 17:17.

<sup>4</sup> Email communication from Trial Chamber V Communications to the VWU on 31 January 2013 at 14:32.

<sup>5</sup> Victims and Witnesses Unit’s Submission following the “Decision on witness preparation” (ICC-01/09-01/11-524), ICC-01/09-01/11-616.

<sup>6</sup> ICC-01/09-01/11-524-Anx, para. 11.

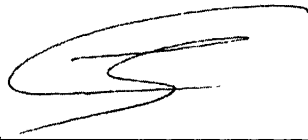
<sup>7</sup> See ICC-01/09-01/11-524, para. 37.

party's contact with the witness is restricted to its examination in Court, unless otherwise authorised by the Chamber.

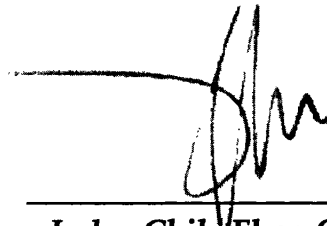
Done in both English and French, the English version being authoritative.



**Judge Kuniko Ozaki, Presiding Judge** . . .



**Judge Christine Van den Wyngaert**



**Judge Chile Eboe-Osuji**

Dated 11 April 2013

At The Hague, The Netherlands