

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/09-01/11
Date: 30 January 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***

URGENT

Public redacted version of

Decision on prosecution's "Urgent request for reconsideration pursuant to Trial Chamber V's 'Decision on the second and third Prosecution requests for delayed disclosure of witness identities'"

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

The Office of the Prosecutor
Ms Fatou Bensouda
Ms Cynthia Tai

Counsel for William Samoei Ruto
Mr Kioko Kilukumi Musau
Mr David Hooper

Counsel for Joshua Arap Sang
Mr Joseph Kipchumba Kigen-Katwa
Mr Joel Kimutai Bosek

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
Ms Silvana Arbia

Deputy Registrar

Victims and Witnesses Unit
Ms Maria-Luisa Martinod-Jacome
Mr Grant Conje

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 54(3)(f), 64(2), 64(6)(e), 67 and 68(1) of the Rome Statute ("Statute") and Rules 76, 77, 81(2) and 81(4) of the Rules of Procedure and Evidence ("Rules") renders the following decision on the prosecution's "Urgent request for reconsideration pursuant to the Chamber's 'Decision on the second and third Prosecution requests for delayed disclosure of witness identities'"¹:

I. Procedural Background

1. On 5 November 2012, in accordance with the Chamber's decisions on the schedule for trial² and on a redactions regime,³ the Office of the Prosecutor ("Prosecution") filed an application requesting the delayed disclosure of the identities of nine witnesses and authorisation for corresponding redactions to their witness statements or transcripts ("First Application").⁴
2. On 17 December 2012, the Prosecution filed a second application requesting the delayed disclosure of a further seven witnesses ("Second Application").⁵

The Second Application was filed on a confidential *ex parte*, Prosecution and

¹ "Urgent request for reconsideration pursuant to Trial Chamber V's 'Decision on the second and third Prosecution requests for delayed disclosure of witness identities'", 24 January 2013, ICC-01/09-01/11-569-Conf-Exp.

² "Decision on the schedule leading up to trial", 9 July 2012, ICC-01/09-01/11-440 ("Scheduling Order").

³ "Decision on the protocol establishing a redaction regime", 27 September 2012, ICC-01/09-01/11-458 ("Redaction Decision") and annex containing the protocol ("Redaction Protocol") ICC-01/09-01/11-458-AnxA-Corr.

⁴ "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", 5 November 2012, ICC-01/09-01/11-468-Conf-Exp, notified on 6 November 2012. The First Application and its annexes were filed on a confidential *ex parte*, Prosecution and Victims and Witnesses Unit ("VWU") only basis. On 7 November 2012, a public redacted version of the First Application, without the annexes, was filed. ICC-01/09-01/11-468-Red (notified 8 November 2012). Confidential redacted versions of the redactions charts were filed on 4 December 2012. A confidential redacted version of the application was filed on 14 January 2012, notified on 15 January.

⁵ "Second application for delayed disclosure of witness identities and application for variation of the 5 November 2012 deadline with respect to Witnesses 15, 16 and 32", 17 December 2012, ICC-01/09-01/11-515-Conf-Exp. A confidential redacted version was filed on 20 December 2012, ICC-01/09-01/11-515-Conf-Red.

Victim and Witnesses Unit (“VWU”) only basis. On 20 December 2012, a confidential redacted version of the Second Application was filed.⁶

3. On 27 December 2012, the Prosecution filed a third application requesting delayed disclosure of the identities of a further five witnesses (“Third Application”).⁷ The Third Application was filed on a confidential *ex parte*, Prosecution and VWU only, basis. A confidential redacted version of the Third Application was filed on 28 December 2012.⁸
4. On 3 January 2013, the Defence filed a joint response to the Second and Third Applications, requesting the Chamber to dismiss them as untimely⁹ or alternatively, to deny the relief sought in the Applications.¹⁰
5. On 23 January 2013, the Chamber issued its Decision on the Second and Third Applications for delayed disclosure of witness identities (“Decision”),¹¹ which, in the relevant part, rejected the Prosecution’s request to delay the disclosure of the identity of witness P-524, and directed the Prosecution to disclose his identity to the Defence by 30 January 2013.¹² The Decision was issued on a confidential *ex parte*, Prosecution and VWU only, basis. A confidential redacted version was issued simultaneously.¹³

⁶ Confidential redacted version with Confidential Annexes 4-7 of Second application for delayed disclosure of witness identities and application for variation of the 5 November 2012 deadline with respect to Witnesses 15, 16 and 32, 20 December 2012, ICC-01/09-01/11-515-Conf-Red. A public redacted version was filed the same day, ICC-01/09-01/11-515-Red2.

⁷ “Third application for delayed disclosure of witness identities”, 27 December 2012, ICC-01/09-01/11-521-Conf-Exp. A corrigendum to Annex 5 was filed on 3 January 2012, ICC-01/09-01/11-521-Conf-Exp-Anx5-Corr with ICC-01/09-01/11-521-Conf-Exp-Anx5-Corr-Anx.

⁸ Confidential Redacted Version of Third application for delayed disclosure of witness identities, ICC-01/09-01/11-521-Conf-Red and Annexes 1, 2, 4, and 5 thereto.

⁹ “Joint Defence Response to Prosecution’s Second and Third Applications for Delayed Disclosure of Witness Identities and Variation of the 5 November 2012 Deadline”, 3 January 2013, ICC-01/09-01/11-526-Conf, para. 30.

¹⁰ ICC-01/09-01/11-526-Conf, paras 31 – 32.

¹¹ ICC-01/09-01/11-564-Conf-Exp.

¹² ICC-01/09-01/11-564-Conf-Exp, para. 80.

¹³ ICC-01/09-01/11-564-Conf-Red.

6. On 24 January 2013, the Prosecution filed a request pursuant to the Decision,¹⁴ requesting urgent reconsideration of the rejection of witness P-524 ("Request").¹⁵ The filing included two annexes comprising an acknowledgement from the VWU of the receipt of the ICCPP application concerning witness P-524, and an investigator report.¹⁶ The Request and its two annexes were submitted on a confidential *ex parte*, Prosecution and VWU only, basis. A confidential redacted version of the Request was filed on 25 January 2013.¹⁷
7. On 29 January 2013, in a joint response to the redacted version of the Request,¹⁸ the Defence requested the Chamber to maintain its decision not to delay the disclosure of the identity of P-524 beyond 30 January 2013.¹⁹

II. Submissions and analysis

8. In its Request, the Prosecution informs the Chamber that: (i) there are security concerns about witness P-524 relating to incidents which occurred after the Prosecution had filed the Second Application,²⁰ (ii) [REDACTED] and (iii) following these developments, the Prosecution has formally referred P-524 to the VWU on 22 January 2013 with an Application for Protection, [REDACTED].²¹ The Prosecution submits that these incidents constitute compelling new information in light of which the decision to reject P-524's delayed disclosure should be reconsidered.²²

¹⁴ ICC-01/09-01/11-569-Conf-Exp.

¹⁵ ICC-01/09-01/11-569-Conf-Exp, para. 1.

¹⁶ See Annexes A and B to ICC-01/09-01/11-569-Conf-Exp.

¹⁷ ICC-01/09-01/11-569-Conf-Red.

¹⁸ ICC-01/09-01/11-574-Conf.

¹⁹ ICC-01/09-01/11-574-Conf, para. 13.

²⁰ ICC-01/09-01/11-569-Conf-Exp, paras. 5 and 8 and .

²¹ ICC-01/09-01/11-569-Conf-Exp, para. 7.

²² ICC-01/09-01/11-569-Conf-Exp, paras 8 and 14.

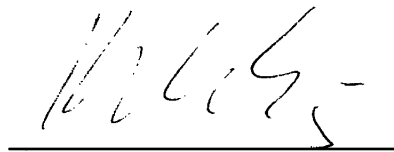
9. The Chamber considers that the recent developments in P-524's security situation justify the further temporary non-disclosure of his identity in order to give the VWU sufficient time to finalise its security assessment and to put in place any required measures. The witness's identity should be disclosed as soon as VWU has confirmed that the necessary protective measures have been implemented and it is safe to reveal P-524's identity to the Defence.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

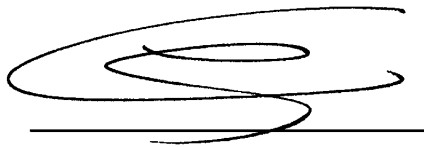
GRANTS the relief sought in the Request until such time as the VWU has confirmed that protective measures have been implemented.

INSTRUCTS the VWU to inform the Prosecutor and the Chamber as soon as P-524's identity can be safely disclosed.

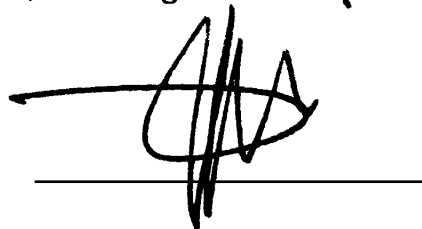
Done in both English and French, the English version being authoritative.



Judge Kuniko Ozaki, Presiding



Judge Christine Van den Wyngaert



Judge Chile Eboe-Osuji

Dated 30 January 2013

At The Hague, The Netherlands