

**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

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”)¹ as instructed in the Decision on Witness Preparation (“Decision”) and the accompanying Witness Preparation Protocol (“Protocol”)², it required clarification as to whether contact is permitted between a calling party and a witness after the completion of witness preparation.³ The Chamber instructed the VWU to raise this issue in a formal filing,⁴ and the VWU filed written submissions on the issue on 21 February 2013.⁵
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.⁶ 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.⁷ Further, from the time the witness begins to testify until the end of the witness’ testimony, the calling

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

² ICC-01/09-01/11-524 and ICC-01/09-01/11-524-Anx.

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

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

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

⁶ ICC-01/09-01/11-524-Anx, para. 11.

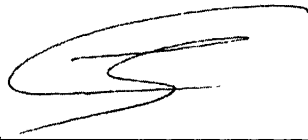
⁷ See ICC-01/09-01/11-524, para. 37.

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

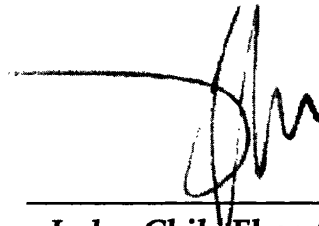
Done in both English and French, the English version being authoritative.



Judge Kuniko Ozaki, Presiding Judge



Judge Christine Van den Wyngaert



Judge Chile Eboe-Osuji

Dated 11 April 2013

At The Hague, The Netherlands