



Questions and Answers

Questions and Answers on the developments in the case

The Prosecutor v. William Samoei Ruto and Joshua Arap Sang

18 June 2013



The trial against William Samoei Ruto and Joshua Arap Sang at the International Criminal Court (ICC) is scheduled to start on 10 September 2013. On 18 June 2013, Trial Chamber V(a) issued a decision on the presence of the accused at trial. The present document contains answers to frequently asked questions about the judges' decision.

Mr Ruto and Mr Sang are accused of three counts of crimes against humanity – murder, deportation or forcible transfer of population, and persecution – allegedly committed in the context of the 2007-2008 post-election violence in Kenya. Neither of the defendants are in the custody of the Court. 327 persons have been granted the status of victims authorised to participate in the proceedings.

1. What was the decision today by the ICC judges?

In order to be able to perform his duties as Deputy President of Kenya, William Samoei Ruto's lawyers requested on 17 April 2013 that he be excused from being physically present throughout his trial.

On 18 June 2013, Trial Chamber V(a) decided, by a majority, to grant the request conditionally. The Chamber has excused Mr Ruto from being physically present at all times during the entire trial, except for:

- (a) the entirety of the opening statements of all parties and participants,
- (b) the entirety of the closing statements of all parties and participants,
- (c) when victims present their views and concerns in person,
- (d) the entirety of the delivery of judgment in the case,
- (e) if applicable, the entirety of the sentencing hearings,
- (f) if applicable, the entirety of the sentencing,
- (g) if applicable, the entirety of the victim impact hearings,
- (h) if applicable, the entirety of the reparation hearings, and
- (i) any other attendance directed by the Chamber.

In addition, the Chamber requires that, at times when Mr Ruto is not present during the remainder of the trial, his absence be directed towards the performance of his duties as Deputy President of Kenya.

2. What would happen if Mr Ruto is not present at the hearings that he is required to attend?

Violations of any of these conditions may result in the revocation of the excusal and/or the issuance of an arrest warrant, as appropriate.

3. Why did the Judges decide to excuse Mr Ruto from continual presence at the trial?

The Chamber found that accused persons are generally required to be physically present throughout their trials under the Rome Statute – the Court's founding treaty.



However, reading the Statute as a whole, the Chamber found that the drafters of the Rome Statute did not intend to create an inflexible requirement that the Accused always be present at trial regardless of the circumstances.

Therefore, the Chamber held that although the Statute establishes a general rule that the Accused must be physically present at trial, the Chamber may exceptionally permit an excusal when necessary to accommodate the particular circumstances of a given case. These excusals may be permitted only in truly exceptional circumstances, and on a case-by-case basis.

In this case, the Chamber found that Mr Ruto's duties as the Deputy President of Kenya qualify as an exceptional circumstance that would make such an excusal reasonable. The Chamber stresses that the excusal is purely a matter of striking a reasonable balance to accommodate the important functions that Mr Ruto must perform as Deputy President of Kenya.

The benefit of the decision is that the trial proceeds without any interruption.

4. Has the position of the accused influenced the Chamber's decision?

No. The Chamber stressed that the excusal allowed to Mr Ruto is purely a matter of striking a reasonable balance that accommodates the demanding functions of his office as Deputy Head of State of Kenya, but does not afford him any immunity.

It should be noted that Mr Ruto is not on trial in his capacity as Deputy President of Kenya. He is being tried in his individual capacity for allegations of crimes made against him as an individual.

5. Does this decision have an impact on the Chamber's authority to try Mr Ruto?

No. The Chamber stressed the principle that there is no immunity from the jurisdiction of the Court.

The Chamber pointed out that the ICC Statute and general principles of international criminal law—and the Constitution of Kenya in particular—agree that Mr Ruto has to be tried at the ICC.

The Chamber considers that it is entirely possible to conditionally grant Mr Ruto the excusal, while still proceeding with his trial, without interruption.

The trial is scheduled to start on 10 September 2013.

6. Will Joshua Arap Sang, the second defendant in the case, be similarly excused from continued presence at trial?

The Chamber's Decision has no effect on Mr Sang who did not apply for a similar excusal. Mr Sang's counsel had informed the Chamber that Mr Sang intends to be present at trial throughout.

7. Will this decision affect the case against Uhuru Muigai Kenyatta?

No. The decision rendered today by Trial Chamber V(a) is not a decision in the case of Mr Kenyatta, which is separate.

Mr Kenyatta has so far not applied to be excused from being present at his trial but to attend the trial via video-link.

It will be up to a different Chamber, Trial Chamber V(b), to decide on the requests of Mr Kenyatta's Defence.

8. Were there other trials at the ICC that have in the past been heard without continued presence of the accused?

No, not to the same extent as allowed by today's decision. However in the Bemba case at the ICC, the Trial Chamber continued hearing the testimony of witnesses on a few occasions in Mr Bemba's absence, at his request.

9. Did the judges consider the impact of the decision on the protection of victims and witnesses?

The judges have stressed that Mr Ruto in his personal capacity as the Deputy President of Kenya has to take effective actions in good faith to ensure that witness and victims are not intimidated. Desirable actions in that connection should include impressing upon his supporters the need to refrain from any conduct or utterance that may reasonably create an intimidating or harassing atmosphere for victims and witnesses.

In parallel, the ICC will continue ensuring appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. These measures are not impacted by the presence or absence of the accused at trial.



10. What measures can the ICC take to assure Mr Ruto surrenders to the Court's custody if there was to be a conviction at the end of the trial, especially if he is not attending his trial continuously?

It is important to stress that under the law, Mr Ruto enjoys a presumption of innocence.

The Chamber will deal with the situation as appropriate, if the Prosecution proves him guilty as charged.

The conditions of the excusal were carefully couched to enable the Chamber to deal with that sort of eventuality, if it does materialise in the end.

The Trial Chamber retains judicial control over the accused during the entirety of the proceedings.

11. Will today's decision have an impact on the participation of victims?

The decision was carefully considered and delivered in a way that seeks to avoid any negative impact on the participation of victims.

It is important to mention that the Chamber also made it a condition that Mr Ruto is required to be present when victims come to court to express their views and concerns in person, as well as during opening statement by victims' counsel, and any reparation hearing or victim impact hearing that may be held in the case.

12. Can the Office of the Prosecutor appeal today's decision?

If the Prosecutor wishes to do so, she may seek the Chamber's authorisation to appeal the decision.