

Situation in the Republic of Kenya

ICC-PIDS-CIS-KEN-01-012/14_Eng

Updated: April 2016

The Prosecutor v. William Samoei Ruto and Joshua Arap Sang

ICC-01/09-01/11

Accused of three counts of crimes against humanity in the context of the 2007-2008 post-election violence in Kenya. Trial started on 10 September 2013. Case terminated on 5 April 2016. Not in ICC custody.

William Samoei Ruto (Ruto)



Date of birth: 21 December 1966

Place of birth: Kamagut village, Kenya

Nationality: Kenyan

Official position: Current Deputy President of the Republic of Kenya

Summons to appear: 8 March 2011

Initial appearance hearing: 7 April 2011

Confirmation of charges hearing: 1 - 8 September 2011

Decision on the confirmation of charges: 23 January 2012

Opening of the trial: 10 September 2013

Termination of the case: 5 April 2016

Charges

Mr Ruto was accused of being criminally responsible as an indirect co-perpetrator pursuant to article 25(3)(a) of the Rome Statute for the crimes against humanity of:

- murder (article 7(l)(a));
- deportation or forcible transfer of population (article 7(l)(d)); and
- persecution (article 7(l)(h)).

Joshua Arap Sang (Sang)



Date of birth: 9 September 1975

Place of birth: Kitale, Trans-Nzoia District, Kenya

Nationality: Kenyan

Official position: the head of operations at Kass FM in Nairobi, the Republic of Kenya

Summons to appear: 8 March 2011

Initial appearance hearing: 7 April 2011

Confirmation of charges hearing: 1 - 8 September 2011

Decision on the confirmation of charges: 23 January 2012

Opening of the trial: 10 September 2013

Termination of the case: 5 April 2016

Charges

Mr Sang was accused as an indirect co-perpetrator, of having otherwise contributed (within the meaning of article 25(3)(d) of the Rome Statute) to the commission of the following crimes against humanity:

- murder (article 7(l)(a));
 - deportation or forcible transfer of population (article 7(l)(d)); and
 - persecution (article 7(l)(h)).
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Alleged crimes (non-exhaustive list)

Pre-Trial Chamber II found that there were substantial grounds to believe that:

- Immediately after the announcement of the results of the presidential election and specifically from 30 December 2007 until 16 January 2008, an attack was carried out – following a unified, concerted and pre-determined strategy – by different groups of Kalenjin people, in locations including Turbo town, the greater Eldoret area (encompassing Huruma, Kiambaa, Kimumu, Langas, and Yamumbi), Kapsabet town and Nandi Hills town, in the Uasin Gishu and Nandi Districts, the Republic of Kenya. The attack allegedly targeted the civilian population, namely the Kikuyu, Kamba and Kisii ethnic groups, which were perceived as Party of National Unity (PNU) supporters.
- In particular, the violence in the Uasin Gishu District (encompassing Turbo town and the Eldoret area) allegedly resulted in more than 230 people dead, 505 people injured and more than 5,000 people displaced. In the Nandi District (encompassing Kapsabet town and Nandi Hills town), the attack allegedly ended in the death of at least 7 persons and thousands of persons were forced to seek refuge at Nandi Hills police station and in the surrounding areas. A number of houses and business premises were also looted and burned.
- Allegedly, there was a plan to punish PNU supporters in the event that the 2007 presidential elections were rigged, which allegedly aimed at expelling them from the Rift Valley, with the ultimate goal of creating a uniform Orange Democratic Movement (ODM) voting block. In order to implement the plan agreed upon, a network of perpetrators has been allegedly established with the purpose of evicting members of the Kikuyu, Kisii, and Kamba communities in particular because they were perceived as PNU supporters. The Network was allegedly under responsible command and had an established hierarchy. The network possessed the means to carry out a widespread or systematic attack against the civilian population, as its members had access to and utilised a considerable amount of capital, guns, crude weapons and manpower.
- William Ruto provided essential contributions to the implementation of the common plan by way of organising and coordinating the commission of widespread and systematic attacks that meet the threshold of crimes against humanity, in the absence of which the plan would have been frustrated. William Ruto allegedly: (i) overall planned and was responsible for the implementation of the common plan in the entire Rift Valley; (ii) created a network of perpetrators to support the implementation of the common plan; (iii) directly negotiated or supervised the purchase of guns and crude weapons; (iv) gave instructions to the perpetrators as to who they had to kill and displace and whose property they had to destroy; and (v) established a rewarding mechanism with fixed amounts of money to be paid to the perpetrators upon the successful murder of PNU supporters or destruction of their properties.
- Joshua Arap Sang, by virtue of his influence in his capacity as a key Kass FM radio broadcaster, allegedly contributed in implementation of the common plan by: (i) placing his show Lee Nee Eme at the disposal of the organisation; (ii) advertising the organisation's meetings; (iii) fanning violence by spreading hate messages and explicitly revealing a desire to expel the Kikuyus; and (iv) broadcasting false news regarding alleged murder(s) of Kalenjin people in order to inflame the violent atmosphere.

Main judicial developments:

OPENING OF THE INVESTIGATION

On 5 November 2009, the ICC Prosecutor notified the President of the Court of his intention to submit a request for authorisation to start an investigation into the situation in Kenya pursuant to article 15(3) of the Rome Statute, in regard to the 2007-2008 post-election violence in Kenya, in which approximately 1,300 people were allegedly killed.

On 6 November 2009, the Presidency of the Court assigned the situation to Pre-Trial Chamber II, composed of Judge Ekaterina Trendafilova (presiding judge), Judge Hans-Peter Kaul and Judge Cuno Tarfusser.

On 31 March 2010, Pre-Trial Chamber II granted, by majority, the Prosecution's request to open an investigation into alleged crimes against humanity in Kenya. The investigation covers crimes against humanity committed between 1 June 2005 (the date of the Rome Statute's entry into force for Kenya) and 26 November 2009 (the date the Prosecutor's filed the request for authorisation to start the investigation).

SUMMONSES TO APPEAR

On 15 December 2010, the ICC Prosecutor requested Pre-Trial Chamber II of the ICC to issue summonses to appear for six Kenyans on the basis that there existed reasonable grounds to believe that they were criminally responsible for crimes against humanity.

On 8 March 2011, Pre-Trial Chamber II, by majority, issued the decisions on the applications submitted by the Prosecutor and summoned William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang to appear before the Court on 7 April 2011.

On 31 March 2011, the Government of Kenya filed an application challenging the admissibility of the case before the ICC. On 30 May 2011, Pre-Trial Chamber II rejected this application. Pre-Trial Chamber II's decision was confirmed, on 30 August 2011, by the Appeals Chamber.

At the initial appearance hearing, that took place on 7 April 2011, the Chamber scheduled the confirmation of charges hearing in this case for 1 September 2011.

CONFIRMATION OF CHARGES AND COMMITTAL FOR TRIAL

The confirmation of charges hearing was held from 1 to 8 September 2011. On 23 January 2012, the Judges declined to confirm the charges against Mr Kosgey. Pre-Trial Chamber II confirmed the charges against Mr Ruto and Mr Sang and committed them to trial before an ICC Trial Chamber, which started on 10 September 2013. The defendants are not in the custody of the Court.

TERMINATION OF THE CASE

On 5 April 2016, Trial Chamber V(A) decided, by majority, that the case against William Samoei Ruto and Joshua Arap Sang was to be terminated. This decision does not preclude new prosecution in the future either at the ICC or in a national jurisdiction. This decision may be subject to appeal.

This decision was taken after considering the requests of Mr Ruto and Mr Sang for the Chamber to find 'no case to answer', dismiss the charges against both accused and enter a judgment of acquittal. The Chamber also considered the opposing submissions of the Prosecutor and the Legal Representative of the Victims, and received further submissions during hearings held from 12 to 15 January 2016. On the basis of the evidence and arguments submitted to the Chamber, Presiding Judge Chile Eboe-Osuji and Judge Robert Fremr, as the majority, agreed that the charges were to be vacated and the accused were to be discharged. The majority of the Chamber, having concluded that the Prosecution did not present sufficient evidence on which a reasonable Trial Chamber could convict the accused, also concluded that a judgment of acquittal was not the right outcome, but only vacation of the charges and discharge of the accused. The majority also agreed that there is no reason to re-characterise the charges.

PARTICIPATION OF VICTIMS

628 victims are participating in proceedings and are represented by Wilfred Nderitu.

Composition of Trial Chamber V(a)

Judge Chile Eboe-Osuji (presiding)
Judge Olga Herrera Carbuccion
Judge Robert Fremr

The Office of the Prosecutor

Fatou Bensouda, Prosecutor
James Stewart, Deputy Prosecutor
Anton Steynberg, Senior Trial Lawyer

Defence Counsel for William Ruto Samoei

Karim Khan
Essa Faal
Kioko Kilukumi Musau
David Hooper
Shyamala Alagendra
Venkateswari Alegandra

Defence Counsel for Joshua Arap Sang

Joseph Kipchumba Kigen-Katwa
Silas Chekera
Caroline Buisman

Legal Representative of the Victims

Wilfred Nderitu