

Situation in the Republic of Kenya

ICC-PIDS-CIS-KEN-02-014/15_Eng

The Prosecutor v. Uhuru Muigai Kenyatta

Updated: 13 March 2015

ICC-01/09-02/11

Uhuru Muigai Kenyatta (Kenyatta)

Was accused of five counts of crimes against humanity in the context of the 2007-2008 post-election violence in Kenya. Charges were withdrawn by Prosecution on 5 December 2014. Proceedings terminated by Trial Chamber V(B) on 13 March 2015. Not in ICC custody.



Date of birth: 26 October 1961

Place of Birth: Nairobi, Kenya,

Nationality: Kenyan

Official position: President of the Republic of Kenya

Summons to appear: 8 March 2011

Initial appearance hearing: 8 April 2011

Confirmation of charges hearing: 21 September - 5 October 2011

Decision on the confirmation of charges: 23 January 2012

Opening of the trial: vacated

Withdrawal of the charges: 5 December 2014

Decision on the withdrawal of charges against Mr Kenyatta: 13 March 2015

Charges

Mr Kenyatta 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));
- rape (article 7(l)(g));
- persecution (article 7(l)(h)); and
- other inhumane acts (article 7(l)(k)).

On 5 December 2014, the Prosecutor filed a [notice](#) to withdraw charges against Mr Kenyatta. On 13 March 2015, Trial Chamber V(B), terminated the proceedings in this case and vacated the summons to appear against Mr Kenyatta.

Alleged crimes (non-exhaustive list)

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

- From 24 until 28 January 2008, the Mungiki criminal organisation allegedly carried out a widespread and systematic attack against the non-Kikuyu population perceived as supporting the Orange Democratic Movement (ODM) (mostly belonging to Luo, Luhya and Kalenjin ethnic groups) in Nakuru and Naivasha.
- The attacks in or around Nakuru and Naivasha resulted in a large number of killings, displacement of thousands of people, rape, severe physical injuries, mental suffering and destruction of property.
- Between, at least, November 2007 and January 2008, *inter alia*, Mr Kenyatta and members of the Mungiki, allegedly created a common plan to commit these attacks. According to the alleged plan, it was envisaged at the meetings that the Mungiki would carry out the attack with the purpose of keeping the Party of National Unity (PNU) in power, in exchange for an end to government repression and protection of the Mungiki's interests.
- The contribution of Uhuru Muigai Kenyatta to the implementation of the common plan was allegedly essential. More specifically, Mr Kenyatta's contribution allegedly consisted of providing institutional support, on behalf of the PNU Coalition, to secure: (i) the agreement with the Mungiki for the purpose of the commission of the crimes; and (ii) the execution on the ground of the common plan by the Mungiki in Nakuru and Naivasha.

Key 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 the authorisation to start an investigation into the situation in Kenya pursuant to article 15(3) of the Rome Statute, about the 2007-2008 post-election violence in Kenya in which around 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 2002 (the date of the Rome Statute's entry into force for Kenya) and 26 November 2009 (the date the Prosecutor filed the request for authorisation to start an 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 Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali to appear before the Court.

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, which took place on 8 April 2011, the Chamber scheduled the confirmation of charges hearing in this case for 21 September 2011.

CONFIRMATION OF CHARGES AND COMMITTAL TO TRIAL

The confirmation of charges hearing was held from 21 September to 5 October 2011. On 23 January 2011, the Judges declined to confirm the charges against Mr Ali. Pre-Trial Chamber II confirmed the charges against Mr Muthaura and Mr Kenyatta and committed them to trial before an ICC Trial Chamber.

On 18 March 2013, the charges against Francis Kirimi Muthaura were withdrawn.

On 23 January 2014, Trial Chamber V(b) vacated the trial commencement date of 5 February 2014 in the case of *The Prosecutor v. Uhuru Muigai Kenyatta*.

On 19 September 2014, Trial Chamber V(b) vacated the trial commencement date in the case *The Prosecutor v. Uhuru Muigai Kenyatta*, which had been provisionally scheduled for 7 October 2014.

WITHDRAWAL OF THE CHARGES

On 3 December 2014, ICC Trial Chamber V(b) rejected the Prosecution's request for further adjournment and directed the Prosecution to indicate either its withdrawal of charges or readiness to proceed to trial. On 5 December 2014, the Prosecutor filed a notice to withdraw charges against Mr. Kenyatta. The Prosecutor stated it had no alternative but to withdraw the charges against Mr. Kenyatta, given the state of the evidence in this case. The Prosecutor indicated it was doing so without prejudice to the possibility of bringing a new case should additional evidence become available.

On 13 March 2015, Trial Chamber V(B), noting the Prosecution's withdrawal of charges against Mr Kenyatta, decided to terminate the proceedings in this case and to vacate the summons to appear against him.

PARTICIPATION OF VICTIMS

725 victims are participating in proceedings in the Kenyatta case and are represented by Fergal Gaynor.

Composition of Trial Chamber V (b)

Judge Kuniko Ozaki (Presiding)
Judge Robert Fremr
Judge Geoffrey A. Henderson

The Office of the Prosecutor

Fatou Bensouda, Prosecutor
James Stewart, Deputy Prosecutor
Benjamin Gumpert, Senior Trial Lawyer

Defence Counsel for Uhuru Muigai Kenyatta

Steven Kay QC
Gillian Higgins

Legal Representative of the Victims

Fergal Gaynor