

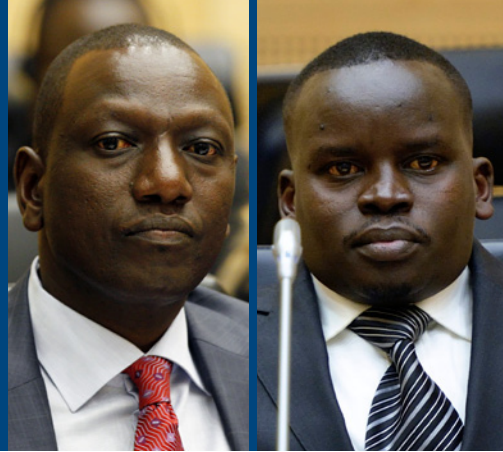


Questions and Answers

Questions and answers about the trial

The Prosecutor v. William Samoei Ruto and Joshua Arap Sang

4 September 2013



The trial in the case *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang* is scheduled to open at the seat of the International Criminal Court (ICC) in The Hague (Netherlands) on Tuesday, 10 September 2013, in the presence of the accused.

1. Who are William Samoei Ruto and Joshua Arap Sang and why are they being prosecuted?

Mr William Samoei Ruto is a Kenyan citizen, born on 21 December 1966 in the village of Kamagut, Kenya. Mr Ruto is accused of being criminally responsible as an indirect co-perpetrator pursuant to article 25(3)(a) of the Rome Statute of the crimes against humanity of murder, deportation or forcible transfer of population and persecution, allegedly committed in Kenya in the context of the 2007-2008 post-election violence. He is currently the Deputy-President of the Republic of Kenya.

Mr Joshua Arap Sang is a Kenyan citizen, born on 9 September 1975 in Kitale, Trans-Nzoia District, Kenya. He is the head of operations at Kass FM in Nairobi. Mr Sang is accused of having otherwise contributed (within the meaning of article 25(3)(d) of the Rome Statute) to the commission of the crimes against humanity of murder, deportation or forcible transfer of population and persecution, allegedly committed in Kenya in the context of the 2007-2008 post-election violence.

On 23 January 2012, Pre-Trial Chamber II judges confirmed the charges against Mr Ruto and Mr Sang and sent the case to trial. The Chamber found that the Prosecutor has established substantial grounds to believe that the crimes against humanity of murder, deportation or forcible transfer and persecution were committed. Judges found that these crimes resulted in the death of hundreds and the displacement of thousands of civilians from Turbo town, the greater Eldoret area, Kapsabet town and Nandi hills.

2. Why are the two accused being prosecuted before the ICC rather than before Kenyan courts?

Kenya is a State Party to the Rome Statute – the Court's founding treaty – since June 2005. On 31 March 2010, Pre-Trial Chamber II judges granted the Prosecutor's request to open an investigation in Kenya for crimes against humanity committed between 1 June 2005 and 26 November 2009. The Prosecutor intervened following consultation with Kenyan leaders and agreement that impunity was not an option following the post-election violence.

Despite several attempts, the Kenyan Parliament did not manage to pass the legislation required to establish a Special Tribunal, to investigate and try those crimes. To date, the government of Kenya has not demonstrated to the ICC judges that it is actually investigating or prosecuting the accused for crimes within the Court's jurisdiction.

The ICC is not, under any circumstances, a substitute for domestic criminal justice systems; it only intervenes if the national judicial system is either unwilling or unable to ensure that justice is done.

3. Who are the ICC judges sitting in this case?

The trial will take place before Trial Chamber V(a), composed of Presiding Judge Chile Eboe-Osuji (Nigeria), Judge Olga Herrera Carbuca (Dominican Republic) and Judge Robert Fremr (Czech Republic).

The ICC judges are persons of high moral character, impartiality and integrity who possess the qualifications required in their respective States for appointment to the highest judicial offices. They all have extensive experience relevant to the judicial work of the Court and established competence in criminal law and procedure.

4. How long will the trial last?

The trial will last several months. The Prosecution and the Defence will present their cases and witnesses before the judges. The Legal Representatives of the Victims will also be authorised to present their observations and to ask questions to the witnesses of both parties. The three judges of Trial Chamber V(a) will ensure the fairness of the trial and that the rights of both parties and of the victims are respected.

While the Prosecution must prove the guilt of the accused, the Trial Chamber will convict someone only if it is satisfied that the charges have been proven beyond reasonable doubt.

At the end of the trial hearings, the judges will render their decision within a “reasonable period of time”. The verdict will be read out in public and will either acquit or convict one or both accused.

The various parties will then be able to appeal the decision before the ICC’s Appeals Chamber.

5. Will Mr Ruto and Mr Sang be present at trial?

In principle, both Mr Ruto and Mr Sang will be present at trial. This might change at a later stage, pending a decision of the Appeal Chamber regarding the possible excusal of Mr Ruto’s presence at trial.

It is important to recall that on 18 June 2013, Trial Chamber V(a) issued a decision excusing Mr Ruto from being continuously physically present at trial, except for specified hearings: the opening and closing statements of all parties and participants and when victims present their views and concerns in person during the trial; the delivery of judgment in the case; and, if applicable, sentencing and reparations; and any other attendance that may be ordered by the Chamber.

The decision was appealed by the Prosecution. On 20 August 2013, the Appeals Chamber gave the Prosecutor’s request suspensive effect until a final decision on this appeal is made. According to the Rome Statute, suspension involves the temporary non-enforcement of a decision. Therefore, Mr Ruto is requested to be present during all trial hearings pending the final determination on the Prosecutor’s appeal.

This decision has no effect on Mr Sang’s presence at trial, as he did not apply for a similar excusal and has informed the Chamber that he intends to be present throughout the trial.

6. Will the accused persons be detained when they appear before the Court for the commencement of the trial, and will they be allowed to return to Kenya during judicial breaks or recess?

The accused persons will not be detained when they appear before the ICC. No arrest warrants or restrictions to travel have been issued against the accused. The accused are requested to be present before the judges only during the hearings. The accused remain free as they have continued to comply with the judges’ orders and conditions. They are not requested to stay in The Hague when hearings are not being held.

7. Who pays for the Defence costs of William Samoei Ruto and of Joshua Arap Sang?


The Court bears the cost of Joshua Arap Sang’s Defence, in accordance with the legal assistance scheme, as he was found indigent by the ICC Registry. On the other hand, William Samoei Ruto bears the cost of his own Defence.

8. Who will take part in the trial?

The trial before Trial Chamber V(a), consisting of three judges who will ensure that the trial is conducted fairly and expeditiously and with full respect for the rights of the Defence, equality of arms and the adversarial principle, will provide the Prosecutor and the Defence with the opportunity to present their case in turn.

At the hearings, the Office of the Prosecutor will present all the evidence at its disposal, submitting for consideration by the judges a large number of the documents it has compiled in the case, as well as audio-visual extracts. It will also call 40 witnesses.

The Defence will then have the opportunity to cross-examine the Prosecution’s witnesses. It should be noted that a large number of these witnesses will be subject to protective measures and will accordingly testify anonymously (their faces and voices may be distorted).



Following the conclusion of the Prosecution's case, which is likely to take a few months, the Defence teams will present the exculpatory evidence in their possession, in support of which they will call a number of witnesses. These witnesses will be examined by Defence Counsel and cross-examined by the Prosecution.

The victims may also address the Court, primarily through their legal representatives. The 327 persons who have been granted victim status by the judges will be represented by their Counsel, Wilfred Nderitu, who will present the views and interests of his clients.

9. How can the victims express their concerns and ensure that their voices are heard before the Court?

The Statute of the Court is innovative in several respects. One of the most significant points is that it grants victims the right to participate in proceedings before an international criminal court. Participation is not the same as being called as a witness and involves the victims providing the Court with their views throughout the course of proceedings, usually through their legal representatives (i.e., their lawyers). This voluntary participation enables victims to express an opinion independently of the parties and offers them the opportunity to communicate directly to the judges about their own concerns and interests.

10. Are the witnesses who testify in the trial safe?

Yes. The Court provides protective measures commensurate with the threats to which witnesses and victims may be exposed as a result of their interaction with the Court. The Registry implements protective measures and security arrangements for witnesses and others who are at risk on account of the ICC proceedings.

Protective measures may, for example, include the anonymity of people participating in the trial, the use of pseudonyms, the redaction of documents or a disclosure ban, or the use of audio-visual techniques to conceal the identity of persons appearing before the Court (voice distortion and image blurring). As a last resort, protected persons may be admitted to the Court's Protection Programme and relocated with their close relatives away from those who threaten them.

The Court ensures that the experience of appearing before the judges does not result in further harm, suffering or trauma. Protection is not merely meant to protect the physical well-being of protected persons, but also to protect their psychological well-being, dignity and privacy insofar as such protection shall not be prejudicial to or inconsistent with the right of the accused to a fair trial. Particular attention is paid to the specific needs of children, elderly people, disabled people and victims of sexual or gender-based violence.

11. How will the affected communities and the Kenyan people be informed of the progress and outcome of the trial?

The publicity of the proceedings is crucial to guarantee a fair trial and thus high-quality justice. The Court offers a variety of services to ensure public access to the process: trial hearings will be webstreamed, and Kenya media representatives, as well as national and international NGOs, will receive support from the ICC to cover the trial. Also, special efforts are undertaken by the Court in order to ensure that the proceedings are accessible to the communities affected by the crimes allegedly committed in Kenya. The Court continues to elaborate and to broadcast audio-visual programmes which enable the Kenyan people to follow and understand the legal proceedings taking place in The Hague, including via radio and television stations.

Furthermore, the Court's staff in Kenya will continue to regularly hold Outreach sessions addressing key social groups during which audio-visual summaries of the proceedings will be screened in order to encourage public involvement in an interactive debate. These meetings will provide an opportunity to listen to the concerns and expectations of the local communities, to explain the mandate of the Court and its sphere of activity, to answer questions and to correct any misinformation.