



Ms Fatou Bensouda
Prosecutor of the International Criminal Court

The case of the Prosecutor v. William Samoei Ruto and Joshua Arap Sang

Opening Statement - Public
(Check against delivery)

The Hague
10 September 2013

Mr President, Your Honours.

The case which we are about to commence concerns the individual criminal responsibility of the two accused, Mr William Samoei RUTO and Mr Joshua Arap SANG, for the roles they are alleged to have played in the terrible crimes committed against the Kenyan people during the 2007 Post-Election violence: Mr RUTO, as a powerful politician, for his alleged role in planning and organising violence to achieve his political ambitions and satisfy his thirst for political power. Mr SANG, as a radio broadcaster, for his alleged role in using his public voice to further Mr RUTO's criminal plans.

From late December 2007 until early January 2008, Kenya was engulfed in a wave of political and ethnic violence following the results of a hotly contested presidential election. The region worst affected by this violence was the Rift Valley province. It is the violence in the Rift Valley, in particular the districts of Nandi and Uasin Gishu, that is the subject of the present case.

Once the dust had settled and the flames were doused, over 200 people lay dead and another 1000 people were injured in these two constituencies. Over 50,000 homes were razed to the ground in Uasin Gishu alone– the highest number in any single district in Kenya – and tens of thousands of people fled the area. Estimates of the number of internally displaced Kenyans from the Rift Valley range from 200 to 400 thousand. It is difficult to imagine the suffering, or the terror, of the men, women and children who were burned alive, hacked to death, or chased from their homes by armed youths.

A vast majority of the victims of the violence in the Nandi and Uasin Gishu districts were ethnic Kikuyu who were, or were perceived to be, predominantly supporters of the Party of National Unity, commonly referred to as the "PNU". The PNU was the main opposition in the 2007 elections to the Orange Democratic Movement, or ODM, a party in which William RUTO was a powerful leader. The Kikuyu ethnic group was a minority ethnic group in the Rift Valley. The majority, being the Kalenjin ethnic group, had historically perceived the Kikuyu to be unwelcome settlers who had misappropriated what the Kalenjin considered to be their ancestral land.

The question posed in these proceedings is “who is responsible for this violence?” The Prosecution asserts that the two accused, William Samoei RUTO and Joshua Arap SANG are among the most responsible for the crimes of murder, persecution and deportation that occurred in the Rift Valley. The Prosecution will demonstrate that Mr RUTO and his syndicate of powerful allies, including his co-accused Mr SANG, sought to exploit the historical tensions between Kalenjin and Kikuyu for their own political and personal ends.

Your Honours, the evidence which the Prosecution will present will prove, beyond a reasonable doubt, that the crimes for which Mr RUTO and Mr SANG are charged were not just random and spontaneous acts of brutality. On the contrary, this was a carefully planned, coordinated and executed campaign of violence, specifically targeting perceived PNU supporters, their homes and their businesses. Mr RUTO’s ultimate goal was to seize political power for himself and his party through violent means, in the event that he could not do so through the ballot box. By exhorting his supports to rid the Rift Valley of the Kikuyu, Mr Ruto and his Network also sought to permanently alter the ethnic composition of the area in order to consolidate his political power base among the Kalenjin.

As Senior Trial Lawyer Anton Steynberg will explain in more detail, the Prosecution will prove that this campaign of violence was conceived, planned and implemented by a Network of influential Kalenjin. They were led by their anointed tribal leader, William RUTO, a powerful political figure in the Rift Valley. Over a period of 18 months prior to the elections, in a series of private and public meetings, Mr RUTO assembled this network, using to his advantage existing Kalenjin community structures and customs. He assigned responsibilities, raised finance, procured weapons and hosted meetings in furtherance of the criminal aims of the Network. Using community structures, he gathered together an army of loyal Kalenjin youth to go to war for him in the event of an election loss. He also stoked the flames of anti-Kikuyu sentiment, both personally at public rallies, and indirectly through other influential speakers and through the media. And when the election was lost, he gave the order to attack. In this way, he made an essential contribution to the violence that ensued.

The main mouth-piece used by Mr RUTO to spread his message, was his co-accused Joshua Arap SANG. Mr SANG was a popular radio presenter at KASS FM, a major Kalenjin radio station. Mr SANG placed his prime-time radio show at the disposal of the Network to spread their message and coordinate their activities. Mr SANG broadcast anti-Kikuyu rhetoric, spread the word of Mr RUTO's rallies, and even helped to coordinate the actual attacks through coded messages. In this way, he too contributed to the violence.

Mr President, your Honours, the Prosecution submits that under international criminal law, each of the accused is therefore criminally responsible for the acts of Murder, Deportation and Persecution set out in the Document Containing the Charges.

Before I hand over to Mr Steynberg, I feel it is necessary for the benefit of all interested parties who may be following these proceedings, to outline how we have arrived at this point. There has been much speculative and often inaccurate public and political discourse regarding the Prosecution's reasons for investigating the Post-Election Violence in Kenya. Today, too many people have forgotten the intensive efforts of the ICC throughout 2008 and 2009, to encourage Kenya to establish genuine national proceedings. Let me emphasise that the Prosecution intervened in this matter only after Kenyan efforts to establish a domestic mechanism to investigate the violence failed. Allow me to briefly recall the history of this case.

On the 28th of February 2008, international mediation efforts led by Kofi Annan, Chair of the African Union Panel of Eminent African Personalities, resulted in the signing of a power-sharing agreement between President Mwai Kibaki and Prime Minister Raila Odinga. That agreement established three commissions: (1) the Commission of Inquiry on Post-Election Violence (or "CIPEV"); (2) the Truth, Justice and Reconciliation Commission; and (3) the Independent Review Commission on the 2007 General Elections.

On the 15th of October that year, the CIPEV published its Final Report. The Report recommended the establishment of a special tribunal to seek accountability against persons bearing the greatest responsibility for crimes relating to the 2007 Elections, failing which, it recommended forwarding the information it collected to the ICC.

Unfortunately, despite efforts to pass the necessary legislation to take this process forward, by November 2009 the process had reached a stalemate. Nor did there appear to be any reasonable prospect of a resolution. It was only then that the former Prosecutor announced his intention to request permission from the judges to open an investigation, a decision which was fully supported at the time by the Kenyan government. This approach was consistent with the ICC's mandate as a court of last resort.

I should also emphasise that investigation and prosecution have been subject to independent judicial scrutiny at various key stages. In 2010, the judges of the Pre-Trial Chamber authorised the Prosecution to commence its investigation, after concluding that there was a reasonable basis to believe that crimes within the jurisdiction of the Court had been committed. In 2011, the judges concluded that there were reasonable grounds to believe that Mr RUTO and Mr SANG were responsible for these crimes and issued summonses for their appearance at the court. Finally, on the strength of a summary of the Prosecution's evidence, the Pre-Trial Chamber found substantial grounds to believe that the two accused were criminally responsible for the Crimes against Humanity of Murder; Deportation or Forcible Transfer; and Persecution. Moreover, both the Pre-Trial Chamber *and* the Appeals Chamber rejected the Government of Kenya's challenge to the admissibility of the cases, finding that there were no existing national proceedings against the suspects for the conduct alleged before the ICC. Despite all the subsequent political rhetoric and manoeuvring to have the matters referred back to Kenyan tribunals, this situation has still not changed.

This trial is the culmination of a long and difficult investigation. It has been fraught with co-operation challenges and obstacles relating to the security of witnesses. Many victims and witnesses have been too scared to come forward, others have given statements, but subsequently sought to withdraw from the process, citing intimidation or fear of harm. Worrying evidence has also emerged of attempts to bribe witnesses to withdraw or recant their evidence. The fact that I stand before you at the opening of the trial today, your Honours, is something of an achievement in itself.

Let me also caution those persons behind the on-going attempts to intimidate and bribe ICC witnesses. These are serious offences under the Rome Statute and carry hefty sentences upon conviction. The Prosecution is investigating. We will get to the bottom of it and ensure that those responsible also face justice. This trial must be allowed to run its course without interference with the activities and witnesses of either the Prosecution or the Defence.

The Prosecution now has the opportunity and the responsibility to present its evidence in full to this Chamber, in order to prove these charges beyond a reasonable doubt. As accused before this Court, Mr RUTO and Mr SANG will enjoy all the rights and privileges under international law and under the Rome Statute, rights and privileges that have been agreed upon as fair and just by 122 member states around the world, including Kenya. The ICC, as the Kenyan Attorney General has himself rightly recognised, is a Kenyan court. The rights that the court guarantees include the right to be presumed innocent. If the accused persons are indeed guilty, however, the victims of the awful violence that wracked Kenya in 2007 and 2008 deserve to see them punished. This is a matter for the Chamber alone to decide.

The only issue at hand in these proceedings is the guilt or innocence of the Accused before court. This is not a trial of Kenya or the Kenyan people. It is not about vindicating or indicting one or other ethnic group or political party. It is not about meddling in African affairs. This trial is about obtaining justice for the many thousands of victims of the Post-Election Violence and ensuring that there is no impunity for those responsible, regardless of power or position.

Your Honours, I now hand over to Mr Steynberg, Lead Counsel for the Prosecution, who will give a more detailed outline of the evidence that the Prosecution will present in support of the charges against the accused.

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