



RUTO, KOSGEY & SANG
INFORMAL SUMMARY
CONFIRMATION OF CHARGES HEARING
1ST - 8TH SEPTEMBER 2011

Situation Case	Republic of Kenya 01/09-01/11 The Prosecutor v. William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang	<u>William Samoei Ruto</u> : born 1966 in Kamagut, Kenya; National of the Republic of Kenya; currently suspended Minister of Higher Education, Science and Technology of the Republic of Kenya
Hearing: Chamber:	Confirmation of charges Judge Ekatarina Trendafilova (Presiding Judge), Judge Hans-Peter Kaul, Judge Cuno Tarfusser	<u>Henry Kiprono Kosgey</u> : born 1947 in Nandi district, Kenya; National of the Republic of Kenya; Currently Member of Parliament (MP) and Chairman of the Orange Democratic Movement (ODM)
Parties:	OTP: Mr Fatou Bensouda and team; Defence Mr Ruto: Kioko Kilukumi Musau, Joseph Kipchumba Kigen-Katwa, Kithure Kindik and team; Defence Mr Kosgey: Mr. George Odinga Oraro, Mr Julius Kipkosgei Kemboi, Mr Allan Kibet Kosgey, and team; Defence Mr Sang: Mr Joseph Kipchumba Kigen-Katwa, Mr Joel Kimutai Bosek, Mr Philemon Kiptum Koeh-Busienei and team	<u>Joshua Arap Sang</u> : Born 1975 in Kitale, Trans-Nzoia District, Kenya; National of the Republic of Kenya; Currently the head of operations at Kass FM in Nairobi, the Republic of Kenya
Participants	327 victims represented by Legal Representatives for Victims: Mr. Sureta Chana	<p>Alleged crimes: <u>William Samoei Ruto and Henry Kiprono Kosgey</u> allegedly committed as indirect co-perpetrators and; <u>Joshua Arap Sang</u> allegedly contributed to the commission of:</p> <ul style="list-style-type: none"> • Crimes against humanity: Murder, forcible transfer of population and persecution

01 September, 2011

Observations were made on procedure, jurisdiction and admissibility by the three suspects' Defence Teams. The participants then gave their opening statements.

Defence Observations

The Defence of Mr. Ruto made observations on:

- **The Frustration of Mr. Ruto and the admissibility challenge:** Mr Hooper expressed the frustration of his client for the charges being exclusively based on the testimony of 7 anonymous witnesses and stated that the Ruto Defence team was considering the possibility of challenging the admissibility of the case.
- **Exculpatory evidence and stay of the proceeding:** There had been a 'total failure' by the Prosecutor, as the Defence has to date not received any exculpatory evidence. Mr Hooper stressed that this might constitute a reasonable ground for a request of stay of the proceedings.

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The Defence of Mr. Kosgey made observations on:

- **The meaning of ‘Organisation’ as a contextual element in Crimes against Humanity:** The word ‘organisation’ as conceived in Art. 7 RS should be limited to ‘State or State-like entities’ as supported in Honourable Judge Kaul’s Dissenting Opinion and the ‘case by case’ approach endorsed by the Pre Trial Chamber in the present case should not be followed.

The Defence of Mr. Sang made observations on:

- **Contradictions in the charges:** It was submitted that the facts on which the charges were based, were defective and contradictory. It was alleged that this was due to the lack of proactive investigations by the OTP.
- **Capability of “The Organisation” to commit crimes against humanity:** The Defence highlighted inconsistencies in the Prosecutor’s strategy with regard to the five criteria¹ used to demonstrate the capability of the ‘Organisation’ to commit crimes against humanity. The Defence of Mr. Sang submitted that the five requirements had not been met.

Prosecution Opening Statement - The Prosecutor, Mr. Luis Moreno-Ocampo submitted:

- **There are substantial grounds to believe that the suspects are individually responsible:** A widespread and systematic attack, with ‘massive crimes’ and violence occurred in the Rift Valley.
- **Planned Violence:** Crime and violence was carefully planned, not spontaneous, in order to gain a uniform Rift Valley voting block for ODM² to gain political power.
- **Criminal Plan since 2006:** Mr Ruto and Mr. Kosgey prepared a criminal plan to gain political power starting in December 2006
- **Organisation Created:** A highly efficient organisation or hierarchical network was created with media, financial, political elements, comprised of elders, politicians, police officers and hundreds of followers.
- **Role of Media, Kass FM and Joshua Arap Sang:** The media ensured the implementation of the common plan by ensuring logistical organisation, support and propaganda. Coded language was also used on the radio.
- **8 Meetings held:** At least 8 meetings were held to plan and coordinate attacks.
- **Attacks:** During attacks, it was alleged that murder, looting and forced displacement took place. The common features of the attacks were; Local commanders, subordinates, specific tasking, organised transportation, roadblocks and employment and reinforcement of the direct perpetrators.

Opening Statement of Legal Representative of Victims, Ms. Sureta Chana submitted:

- **Property Destroyed:** Nearly all victims had their houses and property destroyed
- **Displaced Victims:** Virtually all victims had to flee their homes. Some have subsequently returned but live in a climate of menace and fear.
- **Victims and Witnesses:** It is important to distinguish between victims and witnesses.

¹ The criteria submitted were a hierarchical command, widespread and systematic attacks, control over part of a territory and existence of planned strategy.

² ODM: the Orange Democratic Movement. The opposition party at the time of the December 2007 elections, led by Raila Odinga.

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- **Justice and Impunity:** All victims have a natural longing to see justice done especially in light of an alleged culture of impunity in Kenya.
- **Property Destruction and Persecution:** Victims are concerned that the alleged burning and destruction of their property has only been charged under the umbrella of persecution and not as a separate crime.
- **Reparations:** Victims desire reparations as a form of restitution. It is feared that by not including destruction of property in the charges this may affect any possible reparations.

Defence Teams' Opening Statements

William Ruto's Defence Team submitted:

- **'Completely Innocent':** Mr Ruto is completely innocent of all the charges.
- **Instantaneous Violence:** The violence was not planned but an instantaneous reaction to the election results.
- **OTP Investigations:** The Investigations carried out in Kenya were not professional, impartial or effective.
- **Meetings:** William Ruto did not attend any preparatory meetings, although he did attend campaign meetings between 2005 and 2007.
- **Anonymous Witnesses:** The Prosecution relied on anonymous witnesses would not stand up to scrutiny were they to be questioned in the hearings.
- **'The Network':** The 'network' is a creation of the Prosecution for which no evidence exists.
- **Mr. Ruto as Commander:** Mr. Ruto did not have any command over the Rift Valley or any network. Commanders had never visited Mr. Ruto's residence.

William Ruto gave an unsworn statement in which he that he was shocked by the charges made against him which were completely untrue. Mr. Ruto stated that no commanders had ever visited his house.

Henry Kosgey's Defence Team submitted:

- **No Substantial Grounds:** There are no substantial grounds to believe that Mr. Kosgey planned and assisted violence in a network, nor that a network even existed.
- **Meetings:** The Prosecution does not have evidence which can support Mr. Kosgey's attendance at preparatory meetings.
- **Redacted Evidence and Anonymous Witnesses:** This has heavily prejudiced the preparation of Mr. Kosgey's defence.
- **Irrelevant Evidence:** The OTP has produced a large amount of irrelevant evidence which has caused confusion to Mr. Kosgey's defence team and it is clear that the OTP's evidence against Mr. Kosgey does not in fact refer to him.

Joshua Sang's Defence Team submitted:

- **Broadcast Evidence is Exculpatory:** The OTP case against Mr. Sang is founded mainly on recorded broadcast material. Analysis of this evidence shows it to be exculpatory.
- **OTP Witnesses:** The witnesses presented by the OTP contradict each other and have no credibility.
- **No Tribal Bias:** Mr Sang and Kass FM has no bias against any tribe, party or

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religion.

- **Meetings at Mr. Ruto's home:** Mr. Sang never visited the home of Mr. Ruto until December 2009, so the alleged planning in 2006 or 2007 did not occur.
- **OTP acted in bad faith:** The OTP has always avoided interviewing and meeting with Mr. Sang and has not acted in good faith.

Joshua Arap Sang gave an unsworn statement where he spoke of his innocence and his lack of malice to any person and tribe. Mr Sang stated that he had never used coded language and when he was supposedly on air, the messages were actually recorded messages appealing for peace.

02 September, 2011

The Prosecution presented its case against three the suspects. The Defence of Mr. Ruto commenced it case.

The Prosecution Team submitted its case:

- **Crimes Against Humanity - context, organisation's policy and network:** an organisation of more than 100 people carefully prepared, through a series of meetings and hate speeches the 2007 post-electoral violence (PEV). The "Network of the perpetrators" had Mr. Ruto as its leader, Mr. Kosgey as its political arm and Mr. Sang as its principal avenue for communication and propaganda. The Prosecutor stated that "the Network" received funding from 5 different sources.
- **Hierarchy of the Network:** Mr. Ruto and Mr. Kosgey were at the top of the organisation, intermediaries were also used, numerous local coordinators provided funding and other subordinates acted as the physical perpetrators of the crimes.
- **Widespread and systematic attacks:** The Network coordinated and carried out a policy consisting of widespread and systematic attacks against the civilian population (in particular by killing, looting and forcibly transferring the targeted groups).
- **Burning of church in Kyamba:** The Prosecution made reference to an incident in which between 17 and 35 women and children were allegedly burnt alive in a church in Kyamba on 1st January 2008.
- **Forcible Transfer:** The forcible transfer of people to camps as a specific goal of the attacks.
- **Persecution:** The crime of persecution had been committed against Kikuyus, Kambas and the Kisii people who had been targeted for political reasons.
- **Hate Speech:** Derogatory language against the targeted groups had been used during speeches at the preparatory meetings.
- **Logistical Planning:** Mr. Ruto and Mr. Kosgey distributed maps at meetings which indicated areas with the greatest concentration of the targetted groups.
- **Criminal Responsibility of Ruto and Kosgey:** There are substantial grounds to believe that Mr. Ruto and Mr. Kosgey are responsible as indirect co-perpetrators for the alleged crimes. The two suspects, during eight documented meetings, planned and implemented the common plan, created and implemented a common network, provided foning, weapons and information on the victims and established rewarding mechanisms as well as avenues for impunity.
- **Criminal Responsibility of Mr. Sang:** Mr. Sang was responsible due to his alleged

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contribution to the crimes committed. Mr. Sang used his position as a popular broadcaster in order to spread information and propaganda quickly and effectively, before and during the attacks, furthering the commission of the alleged crimes.

The Defence of Mr. Ruto then presented its case. Mr. Hooper submitted that there were no substantial grounds to believe that Mr Ruto had committed the alleged crimes due to:

- **Anonymous Witnesses:** The OTP's case is based on long interviews given by seven anonymous witnesses which have been redacted in such a way that the Defence cannot test the reliability of the testimony.
- **Exculpatory Evidence:** The OTP had failed to investigate any exculpatory evidence.
- **Lack of physical evidence:** No evidence had been presented by the OTP relating to money transfers, broadcasting transcripts or recordings which incriminate the suspects.
- **The lack of specificity in the Prosecutor case:** The terms used by the OTP, such as 'network', 'attacks', 'supporters', 'subordinates' are extremely vague.
- **Spontaneous Violence:** The PEV and the crimes committed were not part of a widespread and systematic policy but spontaneous in nature.
- **Organisational policy for crimes against humanity:** The defence urged the Chamber to apply the orthodox interpretation of the term 'organisational policy' which has been limited to 'State or State-like organisations'.
- **The lack of logic in the purpose of the organisational policy:** There was no logic in attacking targeted groups after Presidential elections had taken place and more than a year in advance of Prime-Ministerial elections where Mr. Ruto was a candidate.
- **Indirect Co-perpetration:** Such a mode of liability had no foundation in the Rome Statute and should be rejected by the Chamber.

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03 September, 2011

The Defence of Mr. Ruto questioned its two witnesses and the Prosecution cross-examined the witnesses, followed by questioning from the other parties.

Ruto Witness 1: Mr. Cherambo who was a former police officer in Kenya.

Ruto Witness 2: Mr. Kabarosna Andrieu Kuono who worked for the Committee for Peace in the Eldoret East area.

During questioning by the Defence of Mr. Ruto, Ruto Witness 1 provided testified on:

- **Relationship with the suspects and meetings:** The witness stated that he knew Mr. Ruto, Mr. Kogsey and Mr. Sang but that he had never participated in the alleged meetings with Mr. Ruto and others in December 2007.

During cross-examination by the Prosecution, the witness provided insight on:

- **His career and training as a GSU³ Commander:** The witness was the GSU General Commander for three years and he received specialised training for law enforcement tasks and riots, including training for organising road blocks. The GSU was both a police and paramilitary force devoted to the protection of life and property.
- **Witness alleged participation in the meetings:** The witness stated that he didn't participate in any meetings with Mr. Ruto in November or December 2007.

During questioning by Judge Kaul, Ruto witness 1 testified on:

- **His Meeting with Mr. Ruto:** The witness stated that he had met Mr. Ruto once in 2009 when Mr. Ruto was travelling around the Country for his campaign. Many people were present at the meeting and no bi-lateral consultations took place between them.

During questioning by the LRV, the witness testified on:

- **The alleged crimes and the victims:** The witness admitted that crimes such as burning, looting and forcible transfer had been committed during the PEV in 2007 and that in the Rift Valley the majority of victims were Kikuyus.

During questioning by the Defence of Mr. Sang, the witness provided insight on:

- **Kass FM and Mr. Sang:** The witness stated that he used to listen Kass FM from time to time but that he had never heard Mr. Sang using derogatory language against Kikuyus or another particular group.
- **Violence and investigation:** The witness asserted that violence erupted because of the elections result. Nothing had been planned before, but investigations had been tailored to hold the Kalenjin community responsible.

³ GSU: Special Wing of Kenya Police.

During questioning by the Defence of Mr. Ruto, Ruto Witness 2 testified on:

- **His relationship with Mr. Ruto:** The witness stated he has known Ruto since 1992 as they are neighbours.
- **Meetings with Mr. Ruto:** The witness confirmed that he had participated in all the four meetings organised in Mr. Ruto's house during the election campaign of 2007. No weapons were distributed during those meetings.
- **Post Election violence:** During the PEV, in the witness' community, a meeting took place among the Kalenjins to protect their Kikuyu neighbours from attacks. The witness confirmed that in his community houses were looted but no one died and since 2008 the relationship between different ethnicities had been friendly.

During questioning by the Prosecution, the witness provided insight on:

- **Distribution of CDF (Constituency Development Fund):** The witness explained that CDF monies are to be used for projects such as construction projects, youth movement projects, and school projects. According to the witness, every Kenyan constituency receives money through their representative MP.
- **The witness relationship with Mr. Ruto's Counsel:** The witness first got in contact with Mr. Katwa in the beginning of 2011, after Mr. Katwa learned of his willingness to participate in the proceedings. He explained that Mr. Katwa initiated the contact and subsequently visited him. The witness provided and signed 2 written statements based on what he had seen during the post-election violence, one drafted by himself and the other drafted by Mr. Ruto's Counsel.

5 September 2011

The Defence teams for Henry Kosgey and subsequently Joshua Arap Sang made their submissions to the judges of Pre-trial Chamber II

Submissions by the Defence team of Henry Kosgey

Mr. Oraro discussed the reliability of the evidence submitted by the OTP and questioned its probative value in linking Mr. Kosgey to the alleged crimes:

- **No concrete proof:** The OTP had failed to provide concrete proof that Mr. Kosgey was culpable as an indirect co-perpetrator of the alleged crimes. The OTP evidence did not prove that Mr. Kosgey was involved in developing a common plan, that he had the intent to commit the crime, nor that he exercised effective control over the physical perpetrators.
- **Unreliability of OTP evidence and Witness 6:** It was submitted that the entire case of the OTP was anchored on unreliable and undisclosed evidence, in particular, the evidence of Prosecution Witness 6. Specific features that compromise the credibility of Witness 6 were presented.
- **Witness Statements:** The probative value of the summaries provided by the OTP were indeterminable as the Defence was not provided with any information regarding the origin of the disclosed witness summaries and key details provided by Witness 6 implicating Mr. Kosgey including the dates when he allegedly attended planning meetings – were redacted.

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- **Witness 6 implicating Mr. Kosgey:** Only Witness 6 named Mr. Kosgey as a participant in the alleged meetings organised to plan attacks towards PNU supporters through the “network”.
- **Network financing:** Witness 6’s statement that Mr. Kosgey financed all activities of the “network” contradicted the allegation that the “network” was financed through collections.
- **No adequate information:** Mr. Kosgey was denied the adequate information necessary to properly respond to the alleged charges brought against him.
- **The Network:** The OTP has not provided substantial evidence that links Mr. Kosgey with the alleged organisation.

Submissions by the Defence team of Joshua Arap Sang

Mr. Joseph Katwa provided counter-evidence regarding Mr. Sang’s specific involvement in the alleged crimes:

- **Coded Language:** None of the transcripts presented by the OTP as evidence against Mr. Sang, exhibited the use of coded language encouraging the expulsion of Kikuyus.
- **Appeals for Peace:** Mr. Sang disseminated peaceful message, contrary to the OTP’s submissions.
- **Live radio banned:** It was impossible for Mr. Sang to have gone on air to broadcast live inflammatory messages during 30 December 2007-1 January 2008, as a directive was placed that banned all live radio broadcasts in Kenya at that time.
- **Whereabouts of Mr. Ruto:** Video evidence was presented establishing the whereabouts of the Mr. Ruto on 2 November 2007 when he was supposedly hosting a planning meeting. It was submitted that the video clearly shows that Mr. Ruto was not at home but 100 km away from his home in the company of many people.
- **Evidence of Witness 8:** The evidence provided by Prosecution Witness 8 is unreliable: On the same day in which Witness 8 claimed that Mr. Ruto hosted a meeting in his home where weapons were distributed, 14 December 2011, Mr. Ruto was at a political rally in Amagoro, where Mr. Sang was also present. A video was shown to the Court as evidence of this.

6 September 2011

The Defence team for Joshua Arap Sang continued to present its case and the first Witness of Mr. Sang gave testimony:

Sang Witness 1: Mr. Paul Kiprono Chepkwony, a professor at Moi University in Kenya

The Defence of Joshua Arap Sang continued to present their evidence:

- **Alibis:** It was possible for the defence of Mr. sang to prove that he did not attend specific meetings to plan the violence, as he was at different locations at on the dates given by the OTP.
- **Meetings:** Material supplied by the Defence of Mr. Sang has showed that meetings were never held and that the OTP evidence is ‘pure fabrication’.

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- **Contradictory Witnesses:** Different OTP witnesses continually contradict each other and are inconsistent in their testimony as regards dates and facts.
- **Coded Language:** The OTP or its witnesses have not been able to state what the coded language was, its formulation, solution or its purpose. Furthermore, there is no evidence or transcript of Mr. Sang using any coded language.
- **OTP witnesses:** OTP witness 8 is allegedly 'a self-confessed criminal'. Other witnesses are 'career witnesses' who have testified extensively for other commissions and NGOs and who the OTP have not independently investigated.
- **Mr. Sang's hierarchy in the 'network':** The OTP has created Mr. Sang's position in the organisation and the OTP witnesses also contradict each other on his role.
- **Exculpatory Evidence:** The OTP has not discussed exculpatory evidence due to the inherent weaknesses in its case and evidence which could not have withstood cross-examination.
- **Individual Criminal Responsibility of Mr. Sang:** There can be no individual responsibility as; Mr. Sang does not have the necessary intent to commit the crimes, there is no nexus or causal link between words spoken on air and actions on the ground, political speech and rhetoric is protected during democratic elections, Mr. Sang cannot be held liable for the views of others expressed on his radio station.

During questioning by the Defence of Mr. Sang, Sang witness 1 testified on:

- **Previous appearance on Kass FM:** The witness had appeared on Kass FM on many occasions and had been interviewed by Mr. Sang.
- **Incited violence:** Mr Sang had never incited people to violence nor used inflammatory or coded words.
- **'Kimurgelda and Kamama':** These are 2 Kalenjin words which are not considered derogatory and have good intentions.
- **Witness' role in politics:** The witness has appeared on Mr. Sang's radio show in order to campaign during his political campaigns.
- **Mr. Sang Impartial:** When interviewing political figures, Mr. Sang would state that he was impartial and did not take any political side.
- **Spontaneous Violence:** The PEV in 2007 was spontaneous and not planned.

During questioning by the OTP, Sang witness 1 testified on:

- **How recruited as a witness:** The witness stated that he had been approached 2 weeks prior to the hearings to testify. He had not discussed his testimony with Mr. Sang's defence team only the charges against Mr. Sang.
- **Mr Ruto:** The witness stated that he had met Mr Ruto in 2000, but did not know Ruto at all outside of politics. The witness had never been to Mr. Ruto's house.

During Questioning by the LRV, sang witness 1 stated:

- **Crimes Committed:** Crimes had been committed, including destruction of property and looting. Other people had been displaced and moved into camps.

Judge Trendafilova asked the witness 2 questions:

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- **Founding of UDM:** UDM had been founded in 2002 but it had remained dormant until 2007 when it was revived. William Ruto was not a member of UDM in 2007.
- **Spontaneous PEV in 2007:** The PEV was spontaneous as there had been no prior planning but there had been anxiety prior to the release of the Presidential election results.

7 September 2011

The Defence team for Joshua Arap Sang questioned its second witness.

Sang Witness 2: Bishop Jackson Kosgei, who was a presiding bishop of a church and patron of EMO foundation⁴.

During questioning by the Defence of Mr. Sang, the witness provided insight on:

- **Mr. Sang:** The witness stated that he knows Mr. Sang and he usually listen to Kass FM.
- **Coded Language:** The witness alleged that neither derogatory nor coded language had been used during broadcasts as the audience of Mr. Sang was cosmopolitan.
- **Post electoral violence:** The witness stated that the post electoral violence of 2007 erupted in a spontaneous rather than organised manner.
- **EMO Foundation:** The witness confirmed he was one of the patrons and founders of the EMO foundation active in 2007-2008 to restore peace in the Rift Valley. The EMO Foundation was the organisation listed in the charge sheet. The EMO Foundation did not exist in 2007, but was registered in 2010. None of the suspects had ever been a member of the EMO foundation.
- **EMO Community Development Society:** The witness stated that he was the patron of the EMO Community Development Society.
- **EMO Investment:** The witness is an honorary member of the board of directors of EMO Investment.
- **Information on EMO Groups:** Information on the groups was available on websites and financial details of these organisations is readily available.
- **Meetings:** The witness denied that he had participated in neither a meeting organised by Mr. Ruto on the 30th December 2007 nor any other meeting. Nor had an EMO representative been at any meetings.
- **Mr Ruto as a Kalenjin Leader:** Mr. Ruto was not the undisputed leader of the Kalenjin Community.

During the cross-examination by the Prosecutor, the witness provided insight on:

- **Witness role in EMO:** The witness described his role on the different EMO bodies and the fund raising by EMO Investments in order to purchase a property.

⁴ The Prosecution has submitted that as part of their plan, the members of the 'network' raised money to support the common plan through organisations named EMO Foundation/EMO Community Development Society/EMO Investment.

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- **Violence:** The witness did not plan any violence. If it was planned, this was not known by the witness.
- **Witness involvement in the case:** The witness asserted that he heard about the EMO involvement in the case on the news. Allegedly the witness then decided to call Mr. Sang and accepted to give testimony.
- **Discussions with Mr. Sang's defence team:** The witness had not discussed the case with the Mr. Sang's lawyers prior to the case, only practicalities of his testimony.

The LRV questioned the witness on the PEV:

- **Crimes Committed:** The witness confirmed that crimes had been committed: property was destroyed and people were killed. The witness had not visited any camps where displaced people had fled.

The witness then made a statement to the Court stating that the case had deliberately implicated and marginalised the Kalenjin community. Judge Trendafilova interrupted the witness, stopped his statement and explained that he was appearing in a neutral capacity.

8 September 2011

The Parties in the case presented their closing statements.

OTP - Closing statement

- **There are substantial grounds to confirm the charges:** There is evidence that William Ruto created an organisation and attended meetings and that he planned, organised and encouraged the violence. Mr. Kosgey was significantly involved in the network; and that Sang contributed, encouraged helped to coordinate the crimes.
- **On the witnesses:** The testimonies of the Defence witnesses were not believable and it was alleged that their testimony was based on the instruction of others. Many testimonies were similar in nature and they contained unnatural formalistic language. The OTP alleged that some of the Defence witnesses were not uninterested parties, but were actually involved in the crimes.
- **Issue of Alibis:** All three suspects claimed that there were far away geographically from the events and that it was impossible for them to be at the meetings. Nevertheless, all three suspects had access to helicopters and could travel great distances quickly and it was thus possible for them to attend the meetings.

LRV Closing Statement

- **Alleged Culture of Impunity:** According to the LRV, there is a well-established culture of impunity in Kenya. The fact that Mr. Ruto tried to absent himself from the Court has been perceived as a cavalier disregard to the authority of the Court.

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- **Optimism of Victims:** These proceedings are a source of optimism for the victims who hope that the intervention of the ICC will put an end to the cycle of violence and impunity.
- **Intimidation of witnesses and victims:** Allegedly, there have been attempts to create a climate of intimidation in Kenya. The identities of some of the OTP witnesses (especially number 6 and 8) are also said to be commonly known.

Defence of William Ruto Closing Statement:

- **Witnesses:** The witnesses used by the OTP are self-confessed criminals whose testimony the OTP does not believe itself. Furthermore, the OTP witnesses have not been brought before the Court in order to have their testimony examined.
- **Helicopter:** Mr. Ruto was not transported to meetings on a helicopter.
- **Investigations:** The OTP investigations were not genuine and the factual accuracy of the OTP case was not counterchecked by the OTP.
- **The 'network':** The network has never existed and was a creation of the OTP.
- **Presidential race:** The case and the OTP investigations are a political scheme to keep Mr. Ruto out of the upcoming Kenyan Presidential election campaign.

Defence of Mr. Kosgey Closing Statement

- **Meetings:** Of 8 alleged meetings, Mr. Kosgey allegedly attended only 3.
- **Witness 6:** Only witness 6 describes Mr. Kosgey's attendance at meetings or his position in the network. However, Witness 6 is anonymous and his testimony is inconsistent and contradicts other witnesses.
- **Consequences of confirmation:** If the charges are confirmed on such a small amount of evidence, that will impact on necessary standards the Pre-Trial Chamber will be seen to be applying in its role as a 'filter'.

Defence of Mr. Sang Closing Statement

- **No Transcripts:** The OTP has failed to produce transcripts of the period 30 December 2007 - 3 January 2008, during which a broadcasting ban was in place, when Mr. Sang was accused of coordinating the violence.
- **Charges should not be confirmed:** There is no nexus between Mr. Sang and a common plan and Mr. Sang did not contribute to any criminal scheme.
- **No OTP investigations:** Investigations have not been done carried out by the OTP, had they been, it would be possible to see that OTP witnesses had lied.
- **Witnesses:** The OTP witnesses are 'self-confessed criminals' who contradict each other and whose testimony cannot be corroborated.
- **Anonymity of witnesses:** The anonymity granted to OTP witnesses lowers their probative value.
- **Court politicised:** The OTP has politicised the case, the Court process and the ICC.

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