



Coalition for the International Criminal Court

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MEDIA ADVISORY

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Four Kenya Post-Election Violence Suspects to Face Trial at ICC

Pre-Trial Judges Confirm Charges of Crimes Against Humanity for Ruto, Sang, Muthaura and Kenyatta But Say They Lack Evidence to Try Kosgey and Ali

WHAT: Today, 23 January 2012, Pre-Trial Chamber II (PTC II) of the International Criminal Court (ICC) delivered its decisions on whether to move to trial two cases against six individuals allegedly responsible for the commission of crimes against humanity during post-election violence in 2007-2008 in Kenya. The ICC is the world's first permanent international court to prosecute war crimes, crimes against humanity and genocide.

HOW: In the case against William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang, judges confirmed charges of crimes against humanity against Ruto and Sang, but declined to confirm those against Kosgey. In the case against Francis Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali, judges also confirmed charges of crimes against humanity against Muthaura and Kenyatta, but declined to confirm those against Ali. The decisions were taken by majority of the Chamber, with Judge Hans-Peter Kaul dissenting.

The cases will therefore move to trial against William Samoei Ruto, Joshua Arap Sang, Francis Muthaura and Uhuru Muigai Kenyatta at this stage. Both the prosecution and the defence have the right to request the Chamber to appeal today's decisions. Today's decision does not preclude the Prosecutor from re-requesting the confirmation of charges against Kosgey and Ali if supported by additional evidence.

WHO: In the first case, PTC II found that there was sufficient evidence to try William Samoei Ruto (a suspended government minister and deputy party leader of the Orange Democratic Movement (ODM)) pursuant to article 25(3)(a) of the Rome Statute, in the commission of the crimes against humanity of murder (article 7(l)(a)), forcible transfer of population (article 7(l)(d)) and persecution (article 7(l)(h)) during post-election violence in Kenya in 2007-2008.

PTC II also found that there was sufficient evidence to try Sang (head of operations at a radio station in Nairobi) for having 'otherwise contributed' (within the meaning of article 25(3)(d) of the Rome Statute) to the commission of the abovementioned crimes.

However the judges established that they lacked sufficient evidence to try Henry Kiprono Kosgey (a current Member of Parliament and chairman of the ODM) as indirect co-perpetrator of the abovementioned crimes.

In the second case, PTC II found that there was sufficient evidence to try Francis Muthaura (head of the civil service and secretary to the cabinet) and Uhuru Muigai Kenyatta (deputy prime minister and minister for finance) as indirect co-perpetrators pursuant to article 25(3)(a) of the Rome Statute, in the commission of the crimes against humanity of murder(article 7(l)(a)), 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)) during the post-election violence in Kenya in 2007-2008.

Judges however established that they lacked sufficient evidence to try Mohammed Hussein Ali (chief executive of the postal corporation) for having 'otherwise contributed' (within the meaning of article 25(3)(d) of the Rome Statute) to the commission of the abovementioned crimes.

NEXT STEPS: William Samoei Ruto, Joshua Arap Sang, Francis Muthaura and Uhuru Muigai Kenyatta will face trial before the ICC in due course. Before the start of the trials, a number of preparatory hearings will be held to deal with issues such as the disclosure of evidence to the defense, participation of victims or the language to be used during the trials.

327 and 233 victims have been admitted to participate in the first and second cases respectively, through their legal representatives and will participate in the trial. Additional victims have a right to apply for participation in the trial.

COMMENTS:

"ICJ Kenya supports the decisions confirming the charges against Ruto, Sang, Muthaura and Kenyatta as an important step forward in ensuring justice for the victims of the terrible crimes of the post-election violence of 2007/8," said **George Kegoro, executive director of the Kenya chapter of the International Commission of Jurists**. "We underline the judicial, not political, nature of the ICC process which seeks to respond on behalf of the 1200 killed, 900 sexually assaulted and the thousands still in camps as a result of the post-election violence, and urge all Kenyans to be confident in it and let justice run its course."

"Now that the charges are confirmed ICJ Kenya calls upon the President and Prime Minister to fulfill their obligations to uphold the rule of law and suspend from office

Deputy Prime Minister Kenyatta and Head of Civil Service Muthaura in line with chapter 6 of the Kenyan constitution and also call upon the suspects to vacate office of their own volition in line with their statements of 15 December 2010 to cooperate with the ICC,” Kegoro continued. “The suspects now need to present themselves voluntarily to the ICC and the Kenyan government must continue to cooperate with the ICC as per public statements made in this respect, article 86 of the Rome Statute, and Kenya’s International Crimes Act.”

“FIDA Kenya welcomes today’s decision to confirm charges against some of the suspects in these cases, in particular the confirmation of the rape charges against Kenyatta and Muthaura,” said **Grace Maingi-Kimani, executive director of the Federation of Women Lawyers Kenya (FIDA Kenya)**. “However we also underline the urgent need for the Office of the Prosecutor to bring forward charges for the rape cases in Kibera and Nyanza,” she added. “We further call for a local prosecutorial process to deal with the middle- and lower-level perpetrators of crimes committed during the post-election violence in Kenya.”

“Today’s decision to send these four suspects to trial represents a major step towards justice for victims of grave crimes which brought chaos to Kenya in 2007/2008,” said **William R. Pace, Convenor of the Coalition for the International Criminal Court**. “The decision declining to confirm charges against Kosgey and Ali does not refute that terrible crimes occurred during the post-election violence, but that the evidence assigning individual responsibility to the defendants did not convince the ICC’s independent judges at this time,” he said. “We now call for increased cooperation with the Court, including through the continued voluntary appearances of the suspects at the forthcoming trial proceedings.”

BACKGROUND: The ICC prosecutor’s investigation into crimes against humanity allegedly committed in Kenya during the 2007-2008 post-election violence was authorized by judges of PTC II on 31 March 2010, following a request by the ICC prosecutor on 26 November 2009. It was the first time the prosecutor initiated an investigation of his own accord (*“proprio motu”*) without the need for a referral from states parties to the Rome Statute or by the United Nations Security Council. On 8 March 2011, PTC II issued summonses to appear for Ruto, Kosgey and Sang, as well as for Muthaura, Kenyatta and Ali, in relation to their alleged roles in the 2007-2008 Kenyan post-election violence, and they made their initial appearance before the ICC on 7 and 8 April 2011 respectively. On 30 August 2011, the ICC Appeals Chamber confirmed the admissibility of the two cases in the Kenya situation, rejecting the challenges of the Kenyan government.

PTC II held confirmation of charges hearings from 1 to 8 September 2011 in the case against Ruto, Kosgey and Sang, and from 21 September to 5 October 2011 in the case against Muthaura, Kenyatta and Ali. On 26 October 2011, PTC II announced that it would issue its decisions on whether to send the cases to trial on the same date due to concerns for the safety of victims and witnesses involved in the cases.

PTC II is composed of judges Ekaterina Trendafilova (Presiding Judge), Hans-Peter Kaul and Cuno Tarfusser.

The ICC is the world’s first permanent international court to prosecute war crimes, crimes against humanity, and genocide. 120 states have joined the Rome Statute, the

Court's founding treaty. Central to the Court's mandate is the principle of complementarity, which holds that the Court will only intervene if national legal systems are unwilling or unable to investigate and prosecute perpetrators of genocide, crimes against humanity, and war crimes. There are currently seven active investigations before the Court: the Central African Republic; the Democratic Republic of the Congo; Côte d'Ivoire; Darfur, the Sudan; Uganda, Kenya and Libya. The ICC has publicly issued 19 arrest warrants and nine summonses to appear. Three trials are ongoing. The ICC prosecutor has also made public that it is examining eight situations on four continents: Afghanistan, Colombia, Georgia, Guinea, Honduras, Republic of Korea, Nigeria and Palestine.

The Coalition for the International Criminal Court is a global network of civil society organizations in 150 countries working in partnership to strengthen international cooperation with the ICC; ensure that the Court is fair, effective and independent; make justice both visible and universal; and advance stronger national laws that deliver justice to victims of war crimes, crimes against humanity and genocide. For more information, visit: www.coalitionfortheicc.org

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