



**Cour  
Pénale  
Internationale**

**International  
Criminal  
Court**

ICC-PIDS-WU-60/10\_Eng

# 20 December 2010 #60 ICC Weekly Update



## Situation in the Republic of Kenya

The Republic of Kenya ratified the Rome Statute on 15 March 2005, becoming a State Party. On 6 November 2009, upon receiving a letter from the Prosecutor indicating his intention to submit a request for the authorisation of an investigation *proprio motu*, the International Criminal Court's Presidency issued a decision assigning the situation in the Republic of Kenya to Pre-Trial Chamber II. On 26 November 2009, the Prosecutor submitted a request to Pre-Trial Chamber II for the authorisation of an investigation into that situation in relation to the post-election violence of 2007-2008.

### Statement by ICC Prosecutor Luis Moreno-Ocampo on Kenya

14 December 2010

As you know, tomorrow I will file two applications for summonses to appear for six individuals we believe are the most responsible for the post-election violence.

I believe summonses are sufficient to ensure the appearance of all six suspects. But as ICC Prosecutor, I am requesting that clear conditions be imposed on them, namely:

- To frequently update the Court on all their personal contact details and whereabouts;
- Not to make any personal contact with any of the other suspects, unless through their legal counsel to prepare their defence;
- Not to approach any perceived victims or witnesses of crimes;
- Not to attempt to influence or interfere with witness testimony;
- Not to tamper with evidence or hinder the investigation;
- Not to commit new crimes.

In addition, they must respond to all requests by ICC judges; they must attend all hearings when required, and post bond if the judges so instruct them.

These conditions are strict. They are in accordance with the Rome Statute and ICC rules.

Let me be clear.

If the suspects do not comply with the conditions set by the Chamber, I will request arrest warrants.

If there is any indication of bribes, intimidation or threats, I will request arrest warrants.

I expect the suspects to indicate to the Chamber shortly their intention to surrender voluntarily.

Source: Office of the Prosecutor

## Kenya's post election violence: ICC Prosecutor presents cases against six individuals for crimes against humanity

15 December 2010

ICC Prosecutor Luis Moreno-Ocampo today requested the International Criminal Court to issue summonses to appear against six Kenyan citizens to face justice for massive crimes committed during the post-election violence (PEV) in Kenya.

The Prosecutor has concluded there are reasonable grounds to believe crimes against humanity were committed, in the first Prosecution case, by:

1. **William Samoei Ruto** - currently: Minister of Higher Education, Science and Technology (suspended), MP for Eldoret North and during the PEV, MP for Eldoret North. The Prosecution considers that he was one of the principal planners and organizers of crimes against PNU supporters;
2. **Henry Kiprono Kosgey** - currently: Minister of Industrialization, MP for Tinderet Constituency, ODM Chairman and during the PEV: MP for Tinderet. The Prosecution considers that he was one of the principal planners and organizers of crimes against PNU supporters; and
3. **Joshua Arap Sang** - currently Head of Operations, KASS FM and during the PEV: Radio broadcaster. The Prosecution considers that he was one of the principal planners and organizers of crimes against PNU supporters.



Luis Moreno-Ocampo, ICC Prosecutor © ICC-CPI

And in the second Prosecution case, by:

4. **Francis Kirimi Muthaura** - during the PEV and to date: Head of the Public Service and Secretary to the Cabinet and Chairman of the National Security Advisory Committee. The Prosecution considers that he authorized the Police to use excessive force against ODM supporters and to facilitate attacks against ODM supporters.
5. **Uhuru Muigai Kenyatta** - currently: Deputy Prime Minister and Minister of Finance. The Prosecution considers that during the PEV he helped to mobilize the Mungiki criminal organization to attack ODM supporters; and
6. **Mohammed Hussein Ali** - currently: Chief Executive of the Postal Corporation of Kenya and during the PEV he was Commissioner of the Kenya Police. The Prosecution considers that during the PEV he authorized the use of excessive force against ODM supporters and facilitated attacks against ODM supporters.

"The post election period of 2007-2008 was one of the most violent periods of the nation's history," said the Prosecutor.

The post election attacks left more than 1, 100 people dead, 3,500 injured and up to 600, 000 forcibly displaced. During 60 days of violence, there were hundreds of rapes, possibly more, and over 100, 000 properties were destroyed in six of Kenya's eight provinces.

"These were not just crimes against innocent Kenyans", said Prosecutor Moreno-Ocampo. "They were crimes against humanity as a whole. By breaking the cycle of impunity for massive crimes, victims and their families can have justice. And Kenyans can pave the way to peaceful elections in 2012."

The judges of Pre-Trial Chamber II will now review the evidence. If they determine that there are reasonable grounds to believe that the six persons named committed the alleged crimes, they will decide on the most appropriate way to ensure their appearance in Court. The Prosecution has requested Summonses to Appear.

15.12.2010 - **Prosecutor's Application Pursuant to Article 58 as to William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang**

15.12.2010 - **Prosecutor's Application Pursuant to Article 58 as to Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali**

Source: Office of the Prosecutor

## Annex: Summary of the Application

### Prosecution's Findings

#### Summonses to Appear Requested for Six Individuals

CASE ONE		CASE TWO	
Charges: Crimes Against Humanity <ul style="list-style-type: none"> <li>• Murder</li> <li>• Deportation or forcible transfer of populations</li> <li>• Persecution based on political affiliation</li> <li>• Torture</li> </ul>		Charges: Crimes Against Humanity <ul style="list-style-type: none"> <li>• Murder</li> <li>• Deportation or forcible transfer of populations</li> <li>• Persecution based on political affiliation</li> <li>• Rape and other forms of sexual violence</li> <li>• Other inhumane acts</li> </ul>	
	William Samoei RUTO  Source: Daily Nation, 09/11/2010		Source: The Standard, 16/11/2010  Source: Daily Nation, 09/11/2010
	Henry Kiprono KOSGEY  Speaking as ODM Chairman, press conference on ICC, 3 November 2009 <a href="http://www.youtube.com/watch?v=ba8w8pUL72A&amp;feature=player_embedded">http://www.youtube.com/watch?v=ba8w8pUL72A&amp;feature=player_embedded</a>		Uhuru Muigai KENYATTA  Source: Abeingo Community Network IGONEWS Service, 6 May 2009
	Joshua Arap SANG  Source: Facebook Profile for "Joshua Sang"		Major General Mohammed Hussein ALI  Source: Daily Nation, 8 September 2009

- As early as December 2006, WILLIAM SAMOEI RUTO ("RUTO") and HENRY KIPRONO KOSGEY ("KOSGEY"), prominent leaders of the Orange Democratic Movement ("ODM") political party, began preparing a criminal plan to attack those identified as supporters of the Party of National Unity ("PNU").<sup>[1]</sup> JOSHUA ARAP SANG ("SANG"), a prominent ODM supporter, was a crucial part of the plan, using his radio program to collect supporters and provide signals to members of the plan on when and where to attack. RUTO, KOSGEY and SANG coordinated a series of actors and institutions to establish a network, using it to implement an organizational policy to commit crimes. Their two goals were: (1) gain power in the Rift Valley Province, ("Rift Valley") and in Kenya Central Government, (2) punish and expel from the Rift Valley those perceived to support PNU (collectively referred to as "PNU supporters").
- Kenyans voted in the presidential election on 27 December 2007. On 30 December 2007, the Electoral Commission of Kenya declared that Mwai Kibaki, presidential candidate for the PNU had won the election. The announcement triggered one of the most violent periods in Kenya's history. The Prosecution will present some of the incidents, identifying those who are most responsible.
- Thousands of members of the network ("perpetrators") cultivated by RUTO, KOSGEY and SANG began to execute their plan by attacking PNU supporters immediately after the announcement of the presidential election results on 30 December 2007. On 30-31 December 2007, they began attacks in target locations including Turbo town, the greater Eldoret area (Huruma, Kimumu, Langas, and Yamumbi), Kapsabet town, and Nandi Hills town. They approached each location from all directions, burning down PNU supporters' homes and businesses, killing civilians, and systematically driving them from their homes. On 1 January 2008, the church located on the Kiambaa farm cooperative was attacked and burned with more than hundred people inside. At least 17 people died. The brunt of the attacks continued into the first week of January 2008.

[1] This is a coalition of parties including the Kenya African National Union (KANU), Ford-Kenya, Ford-People, Democratic Party and the National Alliance Party of Kenya.

4. All identified attacks occurred in a uniform fashion. Perpetrators gathered at designated meeting points outside of locations selected for attack. There, they met Coordinators, who organized the perpetrators into groups with assigned tasks. Perpetrators then attacked target locations. Some perpetrators approached on foot, while others were driven or in trucks, previously arranged. SANG helped coordinate the attacks using coded language disseminated through radio broadcasts.
5. In response to RUTO, KOSGEY and SANG's planned attacks on PNU supporters, as well as to deal with protests organized by the ODM, prominent PNU members and/or Government of Kenya officials Francis Kirimi MUTHAURA ("MUTHAURA"), Uhuru Muigai KENYATTA ("KENYATTA"), and Mohammed Hussein ALI ("ALI") developed and executed a plan to attack perceived ODM supporters in order to keep the PNU in power.
6. First, under the authority of the National Security Advisory Committee, of which MUTHAURA and ALI were Chairman and a member, respectively, the Kenya Police in joint operations with the Administration Police ("Kenyan Police Forces") were deployed into ODM strongholds where they used excessive force against civilian protesters in Kisumu (Kisumu District, Nyanza Province) and in Kibera (Kibera Division, Nairobi Province). As a consequence, between the end of December 2007 and the middle of January 2008, the Kenyan Police Forces indiscriminately shot at and killed more than a hundred ODM supporters in Kisumu and Kibera.
7. Second, MUTHAURA, KENYATTA and ALI also developed a different tactic to retaliate against the attacks on PNU supporters. On or about 3 January 2008, KENYATTA, as the focal point between the PNU and the criminal organization the Mungiki, facilitated a meeting with MUTHAURA, a senior Government of Kenya official, and Mungiki leaders to organize retaliatory attacks against civilian supporters of the ODM. Thereafter, MUTHAURA, in his capacity as Chairman of the National Security Advisory Committee ("NSAC"), telephoned ALI, his subordinate as head of the Kenya Police, and instructed ALI not to interfere with the movement of pro-PNU youth, including the Mungiki. KENYATTA additionally instructed the Mungiki leaders to attend a second meeting on the same day to finalize logistical and financial arrangements for the retaliatory attacks.
8. As a consequence, the Mungiki and pro-PNU youth attacked ODM civilian supporters in Nakuru (Nakuru District, Rift Valley Province) and Naivasha (Naivasha District, Rift Valley Province) during the last week of January 2008. During these attacks, the attackers identified ODM supporters by going from door to door and by setting up road blocks for intercepting vehicles, killing over 150 ODM supporters.
9. The violence resulted in more than 1,100 people dead, 3,500 injured, approximately 600,000 victims of forcible displacement, at least hundreds of victims of rape and sexual violence and more than 100,000 properties destroyed in six out of eight of Kenya's provinces. Many women and girls perceived as supporting the ODM were raped.

*Source: Office of the Prosecutor*

### Background information on the Chamber's process of ruling on summons to appear or warrants of arrest

On 31 March 2010, Pre-trial Chamber II, by majority, issued its decision authorizing the Prosecutor to commence an investigation into the situation in the Republic of Kenya in relation to crimes against humanity within the jurisdiction of the Court committed between 1 June 2005 and 26 November 2009. On 15 December 2010, the Prosecutor, after conducting his investigations, submitted to Pre-Trial Chamber II two applications under article 58 of the Rome Statute requesting the issuance of summonses to appear for William Samoei Ruto, Henry Kiprono Kosgey, Joshua Arap Sang (case one) and Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali (case two) for their alleged responsibility in the commission of crimes against humanity. In supporting his requests, the Prosecutor submitted to the Chamber several thousands of pages of documents.

There are different avenues available to the Chamber when ruling on the Prosecutor's applications. The Chamber shall carefully review the evidence and material presented. If it is satisfied that there are reasonable grounds to believe that the person(s) committed the crimes alleged in the Prosecutor's applications, it shall either issue warrants of arrest, or summons(es) to appear with or without conditions. The Chamber may also, in the course of its assessment of the documents submitted by the Prosecutor, decide to go back to him requesting more evidence or clarification in relation to any issue that may arise in the course of its assessment.

If the Chamber finds that the evidence provided by the Prosecutor is not sufficient to meet the reasonable grounds standard, it shall decline to issue either warrants of arrest or summons(es) to appear. The Prosecutor may thereafter re-apply if he managed to secure new evidence in order to meet the reasonable grounds standard.

The Chamber will issue summonses to appear if it is satisfied that summonses are sufficient to ensure the appearance before the Court of those persons against whom it has determined that there are reasonable grounds to believe that they have committed the crimes alleged in the Prosecutor's applications. If the Chamber is not satisfied that summonses are sufficient to ensure such appearance, it will issue warrants of arrest instead.

In the event that the Chamber decides to issue the summonses to appear, it shall set a date for the initial appearance of these persons. The Chamber may issue those summonses with or without conditions. The Chamber will decide which conditions, if any, it wants to set. The

conditions requested by the Prosecutor in his applications are simply indicative for the Chamber. In the event that a person has failed to comply with one or more of the obligations as imposed by the Chamber, the Chamber may, at the request of the Prosecutor or on its own initiative, issue a warrant of arrest in respect of the person.

There is no time-limit within which the Chamber must decide on the Prosecutor's applications for summonses to appear against the six persons. The Chamber will act expeditiously taking into consideration the amount of documents to be analyzed.

### Situation in the Central African Republic

The situation was referred to the Court by the Government of the Central African Republic in December 2004. The Prosecutor opened an investigation in May 2007. In the only case in this situation, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Pre-Trial Chamber II confirmed, on 15 June 2009, two charges of crimes against humanity and three charges of war crimes, and committed the accused to trial before a Trial Chamber. The trial started on 22 November 2010.

#### Decisions taken between 13 - 17 December 2010

##### Bemba case

#### Decision on the Prosecution's Request for Leave to Appeal the Trial Chamber's Decision on Directions for the Conduct of the Proceedings

Issued by Trial Chamber III on 15 December 2010

#### Decision on the review of detention of Mr Jean-Pierre Bemba Gombo pursuant to the Appeals Judgment of 19 November 2010

Issued by Trial Chamber III on 17 December 2010

### Situation in the Democratic Republic of the Congo

In this situation, four cases have been brought before the relevant Chambers: *The Prosecutor v. Thomas Lubanga Dyilo*; *The Prosecutor v. Bosco Ntaganda*; *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*; and *The Prosecutor v. Callixte Mbarushimana*. The accused Thomas Lubanga Dyilo, Germain Katanga and Mathieu Ngudjolo Chui are currently in the custody of the ICC. The suspect Callixte Mbarushimana was arrested on 11 October 2010, in France. He is currently in the custody of the French authorities, pending their consideration of the ICC Registrar's request for the surrender of the suspect. The suspect Bosco Ntaganda remains at large. The trial in the case *The Prosecutor v. Thomas Lubanga Dyilo* started on 26 January 2009. The trial in the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* started on 24 November 2009.

#### Decisions taken between 13 - 17 December 2010

##### Katanga and Ngudjolo Chui case

#### Decision on the Prosecutor's Bar Table Motions

Issued by Trial Chamber II on 17 December 2010

#### Relevant Links

**Courtroom proceedings** can be followed on the ICC website: [www.icc-cpi.int](http://www.icc-cpi.int)

You can also consult the **hearing schedule**

**Video summaries** can be found on our **YouTube channel**

The ICC's activities can also be followed through **Twitter**

## Interacting with communities

### ICC annual Outreach Report and related video are now available to the general public

The International Criminal Court (ICC) has launched its **Outreach Report 2010** and related **video**, which presents the ICC Outreach Unit's work from 1 October 2009 to 1 October 2010. The English-language version of this report, the video, and previous annual reports are available on the ICC website. A French translation of the 2010 report will be available soon.

The report was first launched by the ICC Registrar, Ms Silvana Arbia, and Outreach Unit officers at the Assembly of States Parties' ninth session. In her opening **address**, Ms Arbia presented the report and summarized its scope and findings, including the outreach activities conducted and results achieved at the seat of the Court in The Hague, and in Uganda, the Democratic Republic of the Congo (DRC), the Central African Republic (CAR), and Kenya, as well as in Chad and other countries where large groups of Sudanese populations are currently residing. The report also gives the contextual judicial and other factors influencing the work of the Outreach Unit, challenges

faced along the way, and the plans for going forward.

Through the Outreach Unit, the Registry responded to a series of emerging challenges while maintaining its efforts to counter misconceptions, make proceedings accessible, and create realistic expectations among affected communities. For example, the Registry deployed an interdisciplinary team in Kenya before Pre-Trial Chamber I decided to grant the Prosecutor approval to investigate alleged crimes committed in the territory of that country in relation with the post-election violence of 2007 and 2008. In the DRC, timely explanations were provided to communities on the Trial Chamber's decision to stay the proceedings in the case *The Prosecutor v. Thomas Lubanga Dyilo* and the Prosecutor's subsequent appeal against that decision.

During this reporting period, considerable efforts were also made to strengthen the Legal Outreach Programme in the context of the Female Counsel Campaign, launched in association with the International Bar Association (IBA), and aimed at increasing the number of female counsel representing defendants and victims before the Court.

In this period, in connection with the five situations with cases brought before the Court, the Outreach Unit organised a total of 422 interactive sessions targeting directly 46,499 people, of which 11,605 were women. Estimated audiences of nearly 70 million people were regularly exposed to Court information through local radio and television programmes. The majority (70 percent) of respondents to surveys conducted by the ICC among participants during these sessions, had realistic expectations about the scope of the work of the Court.

## Calendar

DECEMBER 2010						
Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
20	21	22	23	24	25	26
27	28	29	30	31		
JANUARY 2011						
Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
					1	2
Please note that there will be no hearings during the ICC's Judicial Recess from Friday, 17 December 2010 (17:30) until Tuesday, 4 January 2011 (09:00).						

The calendar is subject to last minute changes.

**\* The publication of the ICC Weekly Update is suspended until 10 January 2011.**