



Press Release : 5 April 2016

Ruto and Sang case: ICC Trial Chamber V(A) terminates the case without prejudice to re-prosecution in future

ICC-CPI-20160405-PR1205

Situation: Republic of Kenya

Case: *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*

Today, 5 April 2016, Trial Chamber V(A) of the International Criminal Court ("ICC" or "Court") decided, by majority, Judge Olga Herrera Carbuccion dissenting, that the case against William Samoei Ruto and Joshua Arap Sang is to be terminated. According to the majority, this decision does not preclude new prosecution in the future either at the ICC or in a national jurisdiction. This decision may be subject to appeal.

The Chamber considered the requests of Mr Ruto and Mr Sang that the Chamber find that there is 'no case to answer', dismiss the charges against both accused and enter a judgment of acquittal. The Chamber also considered the opposing submissions of the Prosecutor and the Legal Representative of the Victims, and received further submissions during hearings held from 12 to 15 January 2016. On the basis of the evidence and arguments submitted to the Chamber, Presiding Judge Chile Eboe-Osuji and Judge Robert Fremr, as the majority, agreed that the charges are to be vacated and the accused are to be discharged. They provided separate reasons for this decision.

Judge Fremr found that there is no case for the accused to answer based on an assessment of the Prosecution's evidence in accordance with the Trial Chamber's Decision of 3 June 2014, which outlined the principles and procedure for the Defence's submissions of no case to answer. In his view, the Prosecution did not present sufficient evidence on which a reasonable Trial Chamber could convict the accused.

Accordingly, he considered that there is no reason to call the Defence to bring their case or to prolong the proceedings any further.

Judge Eboe-Osuji, concurring with Judge Fremr's evidential assessment, also vacated the charges and discharged the accused without prejudice to re-prosecution in the future. However, he declared a mistrial in the case, because it cannot be discounted that the weaknesses in the Prosecution case might be explained by the demonstrated incidence of tainting of the trial process by way of witness interference and political meddling that was reasonably likely to intimidate witnesses. In his opinion, Judge Eboe-Osuji also discussed several matters including reparations, immunities and elements of the "crimes against humanity" definition.

The majority of the Chamber, having concluded that the Prosecution did not present sufficient evidence on which a reasonable Trial Chamber could convict the accused, also concluded that a judgment of acquittal was not the right outcome, but only vacation of the charges and discharge of the accused. The majority also agreed that there is no reason to re-characterise the charges.

Judge Herrera Carbuccia appended a dissenting opinion. In her view, the charges against both accused should not be vacated in the present case as such outcome departs from the legal standard established in the Trial Chamber's Decision of 3 June 2014. Judge Herrera Carbuccia considered that the Prosecution case had not 'broken down' and she concluded that there is sufficient evidence upon which, if accepted, a reasonable Trial Chamber could convict the accused.

Background

The trial of William Samoei Ruto and Joshua Arap Sang opened on 10 September 2013. Mr Ruto and Mr Sang were accused of crimes against humanity (murder, deportation or forcible transfer of population and persecution) allegedly committed in the context of the 2007-2008 post-election violence in Kenya.

Over the course of 157 trial days, the Trial Chamber heard the testimony of 30 witnesses for the Prosecution, including two expert witnesses. During that time, the Chamber admitted into evidence 335 exhibits for the Prosecution, 226 exhibits for the Ruto Defence, and 82 exhibits for the Sang Defence. The Prosecution closed its case on 10 September 2015. At the close of the Prosecution's case, the evidentiary record contained 92 photographs, 27 maps, 77 items of audio/visual material, and over 8,000 pages worth of documentary evidence. Throughout the trial proceedings, the Trial Chamber rendered over 400 written and oral decisions.

At the close of the Prosecution case, the Chamber admitted into evidence the prior recorded testimony of five Prosecution witnesses for the truth of their content. However, on 12 February 2016, the ICC Appeals Chamber held the statements to be inadmissible. The current decision is thus rendered on the basis of the evidentiary record as it stood on 10 September 2015, when the Prosecution closed its case, minus the prior recorded testimony of the five witnesses concerned.

■ **Public redacted version of Decision on Defence Applications for Judgments of Acquittal**

• **Video statement: ICC Spokesperson Fadi El Abdallah, 5 April 2016**

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For further information, please contact Fadi El Abdallah, Spokesperson and Head of Public Affairs Unit, International Criminal Court, by telephone at: +31 (0)70 515-9152 or +31 (0)6 46448938 or by e-mail at: fadi.el-abdallah@icc-cpi.int

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