

AMNESTY INTERNATIONAL

QUESTIONS AND ANSWERS

AI Index: AFR 32/007/2013
16 September 2013

<http://online.wsj.com/article/SB10001424127887323595004579069431937457734.html>
Kenya's ICC trials

The trial of Kenya's Deputy President William Ruto and former broadcaster Joshua arap Sang on charges of crimes against humanity commenced on 10 September at the International Criminal Court (ICC). The country's President Uhuru Kenyatta also faces similar charges at the ICC. His trial is due to start on 12 November.

Below are some of the key reasons why this trial is vital for human rights.

What is this trial all about?

More than 1,000 people were killed and some 600,000 displaced after violence rocked Kenya following the country's presidential and parliamentary elections in late 2007.

Violence erupted between groups supporting Mwai Kibaki of the Party of National Unity (PNU), who was declared the winner of the presidential elections and his main rival Raila Odinga, leader of the Orange Democratic Movement (ODM) and was particularly concentrated in Kenya's Rift Valley and in the west of the country.

President Kenyatta and Deputy-President Ruto, who were both senior political figures at the time of the post-election violence, are accused of crimes against humanity including murder, forcible population transfer, and persecution. President Kenyatta is also accused of responsibility for rape and other inhumane acts – including forced circumcision and penile amputation – carried out by the Mungiki, a criminal gang allegedly under his control.

Joshua arap Sang was a radio broadcaster based in Eldoret, the scene of some of the worst bloodshed.

In late 2009, after Kenyan authorities failed to investigate and prosecute the crimes committed, despite recommendations by an independent Commission of Inquiry for the government to establish a special tribunal, the ICC prosecutor decided to step in.

Why aren't they being tried in Kenya?

The ICC Statute, which Kenya ratified in 2005, recognises that Kenya has the primary responsibility to investigate and prosecute crimes against humanity committed on its territory.

However, in 2009, the ICC Prosecutor stepped in to investigate crimes committed during the post-election violence, when the Court established that Kenya had failed to show it was taking adequate measures to investigate and prosecute the crimes

Should the trials be moved to Kenya or Arusha to make it easier for the defendants to attend?

The ICC can decide to hold hearings in locations other than The Hague.

Amnesty International supports the ICC doing so in order to bring the proceedings closer to the communities affected by the crimes, when the security situation permits. However, in July, the ICC judges rejected a request to hold the Ruto-Sang trial in Nairobi, Kenya or Arusha in

Tanzania, with the majority of them citing security concerns as one of the reasons for their position. The safety of witnesses, victims, Court staff and the defence and their teams during the course of the trial is of paramount importance. Therefore, the Ruto-Sang trial should proceed in The Hague regardless of the logistical challenges this poses to the defendants.

Is it true that witnesses have been harassed?

There have been reports of interference with witnesses and some witnesses withdrawing from the proceedings because of concerns for their safety. In the last three months, for example, four witnesses have withdrawn their cooperation from the trials – some citing security concerns.

These reports raise serious concerns about the safety of those who are willing to testify at the trials and about the effectiveness of the proceedings themselves. Victims and witnesses must be able to engage with the judicial process safely.

Is the ICC just ‘hunting Africans’?

No. On the contrary, the ICC has focused on delivering justice to African victims, in most cases at the request and with the support of African governments.

Although all eight cases currently under investigations by the ICC are in the African continent, five of them (Central African Republic, Côte d’Ivoire, Democratic Republic of the Congo, Mali and Uganda) were started because the national governments requested the ICC’s intervention.

Libya and Sudan were referred by the UN Security Council with the support of its African members.

Also, 33 African states have ratified the Rome Statute of the ICC and played a vital role in establishing the Court. Furthermore, Africans hold senior positions in the ICC – the Prosecutor, Fatou Bensouda, is from The Gambia and four of the Court’s 18 judges are African.

Can the ICC still deal with this case if Kenya withdraws from the Court’s Statute?

On 5 September 2013 the Kenyan Parliament voted to pass a motion seeking to withdraw from the Rome Statute of the ICC. If Kenya proceeds with withdrawing, it will only take effect one year after the notification is received by the UN Secretary-General and it will not affect the current cases, which according to the Statute must proceed.

Kenya would also still have an obligation to cooperate with the ICC in relation to existing cases.

What are Amnesty International’s expectations for the trial?

Amnesty International expects that, as provided in the ICC Statute, the trials will be fair and respect the rights of the accused as well as victims and witnesses.

The Prosecution’s evidence must be thoroughly tested, the rights of the accused must be fully respected and victims and witnesses must be provided with effective protection and support.

The trials should act as a catalyst for genuine national efforts in Kenya to investigate and prosecute other crimes under international law that the ICC is not able to deal with and generate broader support to address impunity by ensuring national justice, truth and reparation.