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Annex A

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**International
Criminal
Court**

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Date: 15 August 2011

PRE-TRIAL CHAMBER II

Before: Judge Ekaterina Trendafilova, Presiding Judge
Judge Hans-Peter Kaul
Judge Cuno Tarfusser

SITUATION IN THE REPUBLIC OF KENYA

***IN THE CASE OF THE PROSECUTOR v. WILLIAM SAMOEI RUTO, HENRY
KIPRONO KOSGEY, AND JOSHUA ARAP SANG***

Public

DOCUMENT CONTAINING THE CHARGES

Source: Office of the Prosecutor

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Pursuant to Article 61(3)(a) of the Rome Statute, The Prosecutor of the International Criminal Court charges:

WILLIAM SAMOEI RUTO

HENRY KOSGEY

and

JOSHUA ARAP SANG

With **CRIMES AGAINST HUMANITY**, as set forth below:

I. THE PERSONS CHARGED

A. William Samoei RUTO

1. William Samoei RUTO (RUTO) was born on 21 December 1966 in the Uasin Gishu District (Uasin Gishu), Rift Valley Province (Rift Valley), in the Republic of Kenya (Kenya). He is Kalenjin.
2. In 2006 and 2007, RUTO owned at least one house in Sugoi, Turbo division, Uasin Gishu.
3. RUTO attended secondary schools in the Uasin Gishu and Nandi Districts.
4. RUTO is fluent in English, Swahili and Kalenjin.
5. In 1992, RUTO began his political career, joining the KANU election campaign.
6. In 1997, 2002, and most recently in 2007, RUTO was elected Member of Parliament (MP), representing the Eldoret North Constituency, located in Uasin Gishu.

7. Starting in 1999 until the present, RUTO has held various ministerial posts in the Kenyan Government including Minister of Agriculture and Minister of Higher Education.
8. From at least 2005, RUTO was “generally acknowledged to be one of the most important Kalenjin politician” and “the principal Kalenjin spokesman”.
9. By 2007, RUTO, along with others, established the Orange Democratic Movement (ODM). In the 2007 presidential election, the ODM was the strongest opposition to the Party of National Unity (PNU). ODM’s presidential candidate was Raila Odinga. PNU supported the incumbent President, Mwai Kibaki (KIBAKI).
10. By December 2007, RUTO was one of the ODM’s most prominent leaders. In 2007, RUTO was the Kalenjin representative in the ODM Pentagon (top party leadership).

B. Henry Kiprono KOSGEY

11. Henry Kiprono KOSGEY (KOSGEY) was born in 1947. He is Kalenjin.
12. In 1979, KOSGEY was first elected MP representing Tinderet Constituency, located in Nandi District, Rift Valley. KOSGEY has been re-elected in four parliamentary elections between 1992 and 2007.
13. By 2007, KOSGEY had joined the ODM and, by the 2007 elections, was the Chairman of the ODM.
14. In 2007, KOSGEY was re-elected as MP.

C. Joshua Arap SANG

15. Joshua Arap SANG (SANG) was born on 9 September 1975 in Trans-Nzoia District, Rift Valley. He is Kalenjin.
16. He is fluent in English and Kalenjin.
17. From 2005 through the present, SANG has been a radio broadcaster on Kass FM.
18. From 2005 through the present, SANG has hosted a popular call-in program on Kass FM called "Lene Emet"¹ ("*How is the country?*" or "*This is what the world says*" or "*what is the opinion of the country?*"). During this program, SANG aired the views of callers on various topics, including politics.
19. In 2007 and 2008, SANG attended public events where he was referred to as "the famous Kass FM presenter".

II. STATEMENT OF FACTS

20. The Rift Valley is one of Kenya's eight provinces. In December 2007 through 30 January 2008, the Rift Valley was the epicentre of violence following the 2007 general election (commonly referred to as the "PEV").
21. Compared with other provinces, the Rift Valley suffered the greatest number of victims, including over 700 deaths, the largest share of the injuries, and approximately 400,000 forcibly displaced persons.
22. From at least 2006 through January 2008, RUTO and KOSGEY were both senior politicians. During the 2007 elections, RUTO was the Kalenjin representative in

¹ Alternative spellings include *Le Nee Emet*, *Lee Ne Emet*, *Leneemet* or *Lee Nee Emet*.

“the Pentagon”, the ODM’s top leadership structure. KOSGEY was the ODM’s Chairman.

23. In December 2007, Kenya held presidential and parliamentary elections. RUTO and KOSGEY ran for re-election as MP in their respective constituencies. SANG was a broadcaster on the popular radio station, Kass FM, and was a vocal supporter of RUTO and other ODM candidates.
24. From at least 2006 until January 2008, RUTO and KOSGEY, along with SANG and others, planned to expel individuals, namely members of the Kikuyu, Kamba and Kisii ethnic groups (“later referred to as “PNU supporters”) who were perceived to support other political forces, should these political forces win or rig the 2007 elections. Their ultimate goal was to create a Kalenjin and pro-Kalenjin voting block that would serve their interests in any election. Further, their plan was to punish and prevent the Kikuyu, Kamba and Kisii ethnic groups from benefiting from the anticipated electoral victory by inflicting fear and committing the crimes alleged.
25. To execute their plan, RUTO and KOSGEY, together with SANG and others, created a network of perpetrators (“the Network”) by capitalizing on existing entities in the Kalenjin community. By December 2006, the Network consisted of pro-ODM political figures; media representatives, including SANG as a broadcaster on Kass FM; financiers; tribal Elders; local leaders; and former members of the Kenyan police and army.
26. As early as December 2006 through January 2008, RUTO and KOSGEY, together with SANG and others, held no less than 9 preparatory meetings and events. During these meetings they formulated their plans to attack PNU supporters. Their planning included: (1) selecting Commanders to oversee attacks in specific

areas in the Rift Valley; (2) creating a hierarchy below each Commander; (3) coordinating transportation and logistics to and from the targeted locations; (4) announcing preparatory meeting and event locations; (5) fundraising to purchase weapons; (6) paying perpetrators and promising rewards for every PNU supporter killed or property destroyed; (7) identifying target areas; (8) identifying callers to broadcast the Network's message on SANG's show on Kass FM; (9) providing guns, grenades and ammunition to the direct perpetrators, and (10) encouraging the Network to permanently drive out Kikuyu, Kamba and Kisii from the Rift Valley by using derogatory terms such as 'madoadoa'², 'kimoriok'³, and 'kamama'⁴ or parables to refer to the target groups, and encouraging their followers to "take back what belonged to them".

27. Kenyans voted in the general and parliamentary elections on 27 December 2007. On 30 December 2007, the Electoral Commission of Kenya ("ECK") declared the incumbent, President KIBAKI, as the winner of the presidential elections. The circumstances of President KIBAKI's victory were immediately contested by the ODM party members, including RUTO.
28. Following the announcement of the election results, the Network executed attacks against PNU supporters in the Uasin Gishu and Nandi Districts.
29. Prior to executing attacks, direct perpetrators gathered at designated meeting points, where they met their local Coordinators. After the local Coordinators organized the direct perpetrators into groups with assigned tasks, the attacks were executed. Some perpetrators approached designated target areas on foot, while others were transported. SANG encouraged and later coordinated the

² Refers to "Spots".

³ Refers to "Thief".

⁴ Refers to "Uncle or at uncle's place".

attacks through his broadcasts on Kass FM, which included use of pre-determined (coded) language.

30. From on or about 30 December 2007 through 31 January 2008, groups of direct perpetrators attacked locations including Turbo town, the greater Eldoret area (Kiambaa, Yamumbi, Haruma, Kimumu and Langas), Kapsabet town, and Nandi Hills town. Their intention was to permanently expel PNU supporters from the Rift Valley.
31. The Network used similar means and strategy to attack PNU supporters in the targeted locations. Direct perpetrators approached the targets in groups, converging on the targeted locations from all directions. Groups looted and burned homes and businesses previously identified as belonging to PNU supporters. Hundreds to thousands of PNU supporters fled to nearby police stations and churches for refuge. Attackers killed or maimed other PNU supporters as they attempted to flee.
32. Direct perpetrators manning roadblocks and executing attacks demanded information and identification from those attempting to pass. By responding to the direct perpetrators' demands, the persons exposed their ethnicity. Civilians belonging to ethnicities perceived to support PNU were attacked and, in some instances, killed.
33. Sections IV, V and VI are incorporated by reference. These sections set forth the Article 7 chapeau including the time and place of the crimes, their factual basis and the modes of liability for RUTO, KOSGEY and SANG.

III. TERRITORIAL, TEMPORAL AND MATERIAL JURSDICTION

34. All crimes alleged occurred in the Republic of Kenya, a state party to the Rome Statute since 2005.
35. All crimes alleged occurred on or about 30 December 2007 through 31 January 2008.
36. Murder, deportation and persecution are crimes against humanity as defined in Article 7 of the Statute.

IV. FACTS RELEVANT TO THE ARTICLE 7 CHAPEAU ELEMENTS

A. Widespread or Systematic Attack

37. The crimes alleged occurred in the context of a widespread or systematic attack against members of the civilian population, within the meaning of Article 7(1) of the Statute. From on or about 30 December 2007 through 31 January 2008, Network perpetrators were responsible for no less than 9 attacks in different locations targeting PNU supporters. The direct perpetrators implemented the Network's policy of attacking the PNU supporters to punish and permanently expel them from the Rift Valley by systematically inflicting fear, killing, looting, burning or otherwise destroying their property. Their express purpose was to force PNU supporters from the Rift Valley using whatever means necessary, including the commission of crimes.
38. The Uasin Gishu and Nandi Districts suffered the largest share of victims during the PEV. Approximately 230 deaths and injuries to over 1,000 persons were reported in these two districts. Injuries in these districts included wounds from sharp objects and burns. Over 400,000 civilians were displaced from areas in the

Rift Valley, including from Turbo town, the greater Eldoret area (Huruma, Kiambaa, Kimumu, Langas and Yamumbi), Kapsabet town and Nandi Hills town.

39. In Uasin Gishu District (Turbo town and the greater Eldoret area) the attackers killed over 200 people, injured over 500 and displaced 7800 civilians. The attackers in the Nandi District (Kapsabet town and Nandi Hills town) injured over 500 civilians, displaced over 30,000, killed at least 7 people and burned and destroyed at least 400 houses and businesses believed to belong to PNU supporters. Uasin Gishu District suffered the greatest destruction with more than 52,000 houses destroyed due to the PEV – the highest number of houses destroyed during the PEV in a single location in Kenya.
40. RUTO, KOSGEY and SANG knew that their conduct was part of, or intended for their conduct to be part of a widespread or systematic attack.

B. Organizational Policy of the Network

41. The organizational policy of the Network was two-fold: (1) to punish and expel from the Rift Valley those perceived to support PNU, namely, Kikuyu, Kamba and Kisii civilians; and (2) to gain power and create a uniform ODM voting block. The method used to punish and expel PNU supporters and drive them away was to inflict fear and to systematically destroy their homes and other property, leaving them with no alternative but to permanently relocate.
42. The Network achieved its goals by capitalizing on existing entities to further their criminal purpose of punishing and permanently driving away PNU supporters by whatever means necessary, including commission of the alleged crimes.

C. The Organization: Leadership, Structure, and Functioning of RUTO and KOSGEY's Network

43. By 2007, RUTO was the head of a multi-faceted Network that attacked PNU supporters and expelled them from the Rift Valley. The Network included political, media, financial, tribal and military components.
44. RUTO and KOSGEY, together with SANG and others, capitalized on existing structures and roles in Kalenjin society to create a Network with the criminal purpose of expelling PNU supporters⁵ from the Rift Valley by inflicting fear, killing them and systematically destroying their property, leaving them with no alternative but to flee.

POLITICAL

45. Sections I and II are incorporated here by reference.
46. The political component provided the Network with leadership, funding, and a forum for RUTO and KOSGEY to develop their plan and organize the Network's subordinates and direct perpetrators.
47. Given RUTO's position as the Kalenjin leader, KOSGEY's authority was subordinate to RUTO. While RUTO oversaw attacks throughout the Rift Valley, KOSGEY oversaw attacks that were executed in Nandi District.
48. In December 2007, other ODM-affiliated MPs participated in planning and financially supported the PEV attacks, or otherwise participated in preparatory meetings and events in the Uasin Gishu and Nandi Districts.

⁵ Members of the Kikuyu, Kamba and Kisii ethnic groups are collectively referred to herein as "PNU supporters"

MEDIA

49. The media component, including SANG in his role as a broadcaster on Kass FM, furthered the Network's organizational policy, both prior to and during the attacks.
50. Prior to the attacks, Kass FM: (1) broadcasted propaganda against PNU supporters, (2) broadcasted the locations of preparatory meetings and events, and (3) organized fundraising events that financed the attacks. At the preparatory meetings, the Network designated specific persons to call into SANG's program and spread the Network's views.
51. After the presidential election results were announced, SANG: (1) called on perpetrators to begin the attacks; (2) broadcasted coded language signaling that PNU supporters were to be attacked; and (3) broadcasted the locations where the attacks were to take place. Perpetrators who attended the meetings or events listened to the broadcasts, understood the coded language and proceeded to the previously identified locations to execute their plans for attack.
52. During the attacks, SANG sought updates on the perpetrators' progress and broadcasted calls from perpetrators while they were committing the attacks. SANG's broadcasts encouraged other Network perpetrators to continue their participation, and was one method of coordinating the redeployment of resources.

FINANCIAL

53. In addition to Kass FM's fundraising, the Network received financial support for the attacks from a variety of sources including RUTO, KOSGEY and other ODM supporters, supporting organizations and businessmen.

54. The financial component raised funds to (1) compensate attendees at preparatory meetings, (2) purchase weapons, (3) purchase materials to make traditional weapons and (4) sustain the attacks.

TRIBAL

55. Paragraphs 8, 11, 10, 12, 13 and 22 incorporated by reference.

56. During the 2007 election, the Kalenjin community generally supported ODM. By utilizing tribal elders, the Network capitalized on the Kalenjin tradition of demanding strict respect and obedience from their youth. The Elders participated by supporting, planning, coordinating, and conducting “blessings”, all of which contributed to the attacks.

MILITARY

57. The Network had a military component consisting of former members of the Kenyan military and police (Military Component). In 2007, the Military Component advised RUTO on logistical issues, obtained weapons, identified financial resources, and mobilized direct perpetrators.

58. In 2006 and 2007, the Network also had a Military Structure that included three “Commanders” or “Generals” (Commanders), all of whom reported to RUTO or KOSGEY.

59. The Commanders were responsible for specific geographic areas in the Rift Valley, including: (1) the North Rift, including the greater Eldoret area, Turbo

town and Kapsabet town, (2) the Central Rift Area including Nandi Hills town, and (3) the South Rift Area⁶.

60. RUTO was the head of the Military Component. Below RUTO, the three Commanders led hierarchical organizations (hierarchies) in their respective geographical areas. Each hierarchy contained a horizontal layer of subordinates and direct perpetrators.
61. Subordinates were responsible for identifying PNU supporters' homes and businesses for future attack, obtaining weapons, weapons training and leading perpetrators during the attacks. Direct perpetrators who were trained were provided weapons and/or designated to lead attacks.
62. RUTO provided logistical support including: (1) providing telephones to subordinates, (2) providing guns and gas/fuel to perpetrators, and (3) coordinating transportation to take perpetrators to and from locations previously identified for attacks.
63. RUTO, KOSGEY and Network affiliates promised perpetrators immunity for the crimes, and/or promised monetary awards or land if they succeeded.
64. When attacks were executed, the Network strategically deployed perpetrators. Those with military training were sent to locations which were believed to require skilled manpower. Untrained perpetrators were deployed with bows and arrows to areas that were assessed to have less risk.

⁶ The South Rift Area is irrelevant for the purposes of this Document.

V. FACTS RELEVANT TO INDIVIDUAL CRIMES CHARGED

A. Preparatory Meetings and Events

65. From at least December 2006 through December 2007, RUTO and KOSGEY along with SANG and others planned and coordinated the attacks at a series of preparatory meetings and events held in Uasin Gishu and Nandi Districts. The preparatory meetings and events include those held in the Uasin Gishu District on 30 December 2006, September 2007, 2 November 2007, 6 December 2007 and 14 December 2007. In the Nandi District, no less than 4 preparatory meetings and/or events were held in December 2007.
66. Collectively, these preparatory meetings and events provided a forum for RUTO and KOSGEY, along with SANG and others to address large groups of Network supporters that included (1) media representatives, (2) aspiring/seated MPs, (3) area Councillors, (4) area chiefs, (5) youth, (6) elders, and (7) former Military Commanders.
67. At these meetings and events: (1) RUTO and KOSGEY encouraged the attacks by referring to their targets and using derogatory terms; (2) Commanders were elected and assigned specific geographical areas to control; (3) areas densely populated by PNU supporters were identified; (4) weapons were distributed; (5) logistics regarding weapons (materials/storage for traditional weapons) were decided; (6) transportation and other logistics, such as meeting points, were agreed upon; (7) direct perpetrators were promised rewards for their participation; (8) callers were identified for future broadcasts of Kass FM; (9) participants were informed of the plans to attack other areas and their progress; and (10) participants were compensated for attending meetings or events.

68. At some preparatory meetings or events, the Network made logistical arrangements necessary to coordinate reinforcements between the Uasin Gishu and Nandi Districts.
69. Perpetrators who attended the preparatory meetings and events identified in paragraph 65 participated in attacks in the greater Eldoret area (Kiambaa, Kimumu, Langas, Yamumbi, and Huruma), Turbo Town, Kapsabet Town and Nandi Hills. These attacks are described in detail in paragraphs 71-97.
70. Each attack involved: (1) a local commander; (2) subordinates, the number of whom varied from location to location; (3) specific tasking of individuals to identify targets; (4) the organization of transportation; (5) erection of roadblocks; (6) the distribution of money and weapons; and (7) deployment and reinforcement of direct perpetrators. Most subordinates and perpetrators were transported to and from the attacks, with some groups of perpetrators attacking other towns or districts.

B. The Attacks

INCIDENT 1: TURBO TOWN – UASIN GISHU DISTRICT

71. By December 2007, the Network had identified Turbo town as a target for attack. Turbo town was densely populated with civilian members of the Kikuyu ethnic group, who were PNU supporters.
72. On 30 December 2007, the election results were announced. Shortly thereafter, Network members and perpetrators prepared to attack Turbo town, with the express intention of instilling fear in and expelling PNU supporters.

73. Some direct perpetrators met at a pre-designated meeting points bordering Turbo town, where local Coordinators organized them into groups. Elders distributed tasks. Businesses provided funding, food and livestock to perpetrators. Others provided perpetrators with transportation to Turbo.
74. On 30 or 31 December 2007, armed direct perpetrators attacked Turbo town from all directions. Perpetrators tasked with identifying PNU supporters' property moved with the perpetrators during the attack, identifying pre-determined properties and houses to destroy. Perpetrators poured petrol onto houses and businesses believed to belong to PNU supporters and set them on fire.
75. The attack resulted in the destruction of houses and businesses in Turbo town. Thousands of displaced persons took shelter at local police posts. At least 4 people were killed during the attack.
76. Perpetrators of the attack on Turbo town attended preparatory meetings and events held during December 2006 to December 2007.

INCIDENT 2: GREATER ELDORET AREA, UASIN GISHU DISTRICT

77. As early as 31 December 2007, various locations in the greater Eldoret area were attacked. Some direct perpetrators gathered at pre-designated meeting points, where they were organized by local Coordinators and taken to target locations in waiting vehicles. Other direct perpetrators were transported from other areas. Roadblocks were erected and manned on all major roads. As described below, those locations include Huruma, Kiambaa, Kimumu, Langas, and Yamumbi.
78. Groups were organized, each with an armed designated leader. Other direct perpetrators were armed with traditional weapons, including machetes ("pangas") and bows and arrows.

79. Specific locations in the greater Eldoret area that were attacked include:

- **KIMUMU:** Network subordinates coordinated the attack on Kimumu including instructing perpetrators to retrieve their weapons, distributing money to others to purchase weapons, and coordinating roadblocks. Before the attack, subordinates identified houses belonging to PNU supporters, while others volunteered to transport perpetrators to the areas of attack. Money was distributed to direct perpetrators for the purchase of weapons while others retrieved traditional weapons. On 31 December 2007, direct perpetrators were transported to Kimumu. There, perpetrators used petrol and burned homes that had been previously identified by Network subordinates. The attack resulted in at least 6 killings, while other PNU supporters were chased away or left with no alternative but to permanently relocate.
- **LANGAS:** Between 31 December 2007 and 1 January 2008, Langas was attacked by direct perpetrators. Reinforcements were brought in from the Nandi District. Witnesses reported seeing a Kikuyu woman crying and screaming with her baby. 3 perpetrators took the baby and chopped him to death. At least 30 people died as a result of the attack.
- **YAMUMBI:** Attacks on Yamumbi, an area predominantly inhabited by PNU supporters, began on 30 December 2007. At least one Network group was deployed to Yamumbi on 1 January 2008. Upon the group's arrival, their leader slit the throats of two "babies" who approached them. Other perpetrators killed at least one woman with machetes. Direct perpetrators burned homes and businesses belonging to PNU

supporters, destroying their property and leaving them with no alternative but to relocate.

- HURUMA: On or after 1 January 2008, direct perpetrators attacked Huruma. Perpetrators burned houses and killed PNU supporters. The perpetrators went into the homes of PNU supporters, hacked them to death and burned down their homes. Others trying to escape were shot by arrows. Approximately 14 people died as a result of the attack. Thereafter, the perpetrators returned to their meeting points, reporting that the attacks were successful.

80. Perpetrators who attacked the greater Eldoret area attended some of the preparatory meetings and events held during December 2006 to December 2007.

INCIDENT 3: KIAMBAA CHURCH, GREATER ELDORET AREA, UASIN GISHU DISTRICT

81. Within the same time frame as the greater Eldoret area attacks, the Kenya Kiambaa Assembly of God Church (Kiambaa Church) was attacked and burned on 1 January 2008.

82. In days preceding the attack, PNU supporters from Kiambaa and neighboring areas sought refuge from attacks at the Kiambaa Church, bringing possessions including mattresses. On 1 January 2008, perpetrators armed with traditional weapons attacked the Kiambaa area. Those attacking Kiambaa area blocked access roads prior to the attack to prevent PNU supporters from escaping. Kiambaa Church was then attacked from different directions. Inhabitants were chased towards Kiambaa Church.

83. During the attack, perpetrators forced PNU supporters inside the Kiambaa Church. The perpetrators poured fuel on the Church and mattresses, which were used to block the doors. They then set the Church on fire, killing between 17 and 35 men, women, children, elderly, and disabled persons trapped inside or attempting to flee.
84. As those inside the church attempted to flee, attackers chased them, hacking to death those that they could catch.
85. Houses in Kiambaa were also looted and burned down. As a result, hundreds of Kiambaa residents fled the area and relocated to camps for internally displaced persons (IDPs).
86. Perpetrators who participated in the attack on Kiambaa Church attended some of the preparatory meetings during December 2006 to December 2007.

INCIDENT 4: KAPSABET TOWN – NANDI DISTRICT

87. By December 2007, the Network had identified Kapsabet town as a target for attack. RUTO and KOSGEY engaged local subordinates in the Nandi District, who were responsible for planning and executing particular attacks.
88. After the results of the presidential election were announced, perpetrators started attacking, looting and burning businesses and properties believed to belong to PNU supporters. Network subordinates identified PNU supporters' homes as targets for the attack. Perpetrators then looted and burned homes and businesses and attempted to attack IDPs seeking refuge at a local police station. Other perpetrators blocked the roads to Kapsabet town.

89. PNU supporters' homes and businesses were destroyed in the attack, which left no less than 3 people dead. IDPs fled to Kapsabet town police station which, at its peak, sheltered approximately 7,500 IDPs from Kapsabet town and surrounding areas. A local hospital received over 200 patients with physical injuries.
90. SANG used Kass FM to help coordinate the Kapsabet town attack by broadcasting information that "the war had started" in Kapsabet town, and he also encouraged Network members to participate.
91. During December 2007, RUTO and KOSGEY along with subordinates and perpetrators attended meetings where attacks were planned in Nandi District, including Kapsabet town.
92. In December 2007, KOSGEY met with the Nandi District subordinates and perpetrators to plan the attacks in Kapsabet town and Nandi Hills town.

INCIDENT 5: NANDI HILLS TOWN – NANDI DISTRICT

93. By December 2007, the Network identified Nandi Hills town as a target.
94. On or about 30 December 2007 Nandi Hills was attacked. Prior to the attacks, KOSGEY and RUTO participated in preparatory meetings saying that "they had to get rid of the weeds". RUTO and KOSGEY provided funding for the groups, and perpetrators were promised rewards. Direct perpetrators then attacked Nandi Hills with arrows and petrol bombs. Attackers looted and burned PNU supporters' houses and businesses. Perpetrators erected roadblocks, preventing PNU supporters from escaping. Perpetrators were also given food and money to sustain the attacks.

95. SANG coordinated the violence by using coded language to indicate where to attack, after which attackers gathered and attacked the location. Kass FM also broadcast instructions to close roads in the area.
96. Perpetrators threatened and forced monetary contributions from Kalenjin who were unsupportive of the Network's policy in order to be spared from the violence.
97. PNU supporters sought refuge at a Nandi Hills town police station which eventually housed approximately 32,000 IDPs. IDPs from Nandi Hills town also sought refuge in Kisii. At least three people were killed, one person was burned alive in his car, while others were cut into pieces. The Network provided perpetrators with food and paid youths to continue their attack.

VI. INDIVIDUAL RESPONSIBILITY: Articles 25(3)(a) [RUTO and KOSGEY]

98. RUTO and KOSGEY are individually criminally responsible, pursuant to Article 25(3)(a) of the Statute, for crimes against humanity as defined in Article 7 of the Statute. RUTO and KOSGEY's responsibility as co-perpetrators includes crimes carried out by the Network's subordinates and direct perpetrators. The crimes alleged resulted from RUTO and KOSGEY's common plan. RUTO and KOSGEY's role in the Network and their essential contributions to the common plan gave them control over the crimes committed.
99. RUTO and KOSGEY intentionally engaged in conduct with the awareness that implementation of their common plan would, in the ordinary course of events, lead to the commission of crimes, and they were aware and accepted the risk involved in implementing their common plan. RUTO and KOSGEY were

mutually aware of the factual circumstances that enabled them to jointly control the crimes.

(i) RUTO AND KOSGEY AGREED AND HAD A COMMON PLAN BETWEEN THEMSELVES AND OTHERS

100. RUTO and KOSGEY, together with SANG and others, adopted and implemented an organizational policy of committing widespread and systematic attacks against PNU supporters in order to: (1) punish PNU supporters by inflicting fear, including committing crimes alleged; and (2) expel the PNU supporters from the Rift Valley.

101. Their organizational policy was criminal--to target PNU supporters and punish and expel them from the Rift Valley. RUTO and KOSGEY, together with SANG and others, including subordinates and direct perpetrators did so by systematically inflicting fear, killing, looting, burning or otherwise destroying their property. Their express purpose was to drive PNU supporters from the Rift Valley by whatever means necessary, including the commission of the alleged crimes.

102. At these preparatory meetings and events, RUTO, KOSGEY and others: (1) encouraged participation in the attacks using derogatory terms to discuss their targets; (2) elected Commanders and assigned specific geographical areas to control; (3) identified areas densely populated by PNU supporters; (4) distributed weapons; (5) planned logistics regarding weapons (materials/storage for traditional weapons); (6) agreed upon transportation and other logistics, such as meeting locations; (7) promised direct perpetrators rewards for their participation; (8) identified callers for future broadcasts of Kass FM; (9) informed

perpetrators of the plans to attack other areas and their progress; and (10) compensated participants for attending the preparatory meetings or events.

103. Subordinate to RUTO and KOSGEY, were Network perpetrators (Network subordinates) who were also part of the common plan. They included: (1) political representatives (ODM MPs, Councilors); (2) members of the media including SANG who used Kass FM to incite and coordinate the PEV; (3) financial contributors including businessmen; (4) tribal leaders including Elders; and (5) military personnel.

104. The Network subordinates and direct perpetrators shared RUTO and KOSGEY's organizational policy and common plan. They participated in multiple preparatory meetings and events held by RUTO and KOSGEY where: (1) they planned and organized attacks; (2) used inciting and derogatory terms towards PNU supporters including identifying them as "the enemy"; (3) acquired or planned to acquire guns, fuel, and materials to construct traditional weapons; and (4) organized logistical arrangements, including the identification of houses/businesses to attack.

(ii) RUTO, KOSGEY ALONG WITH NETWORK SUBORDINATES AND DIRECT PERPETRATORS COORDINATED THEIR ESSENTIAL CONTRIBUTIONS RESULTING IN THE CRIMES⁷

105. RUTO's essential contributions included: (1) using his authority as a top Kalenjin leader and MP in the Rift Valley to mobilize supporters for the Network and to implement the common plan; (2) using anti-PNU rhetoric at preparatory meetings and events to create an atmosphere of anti-PNU sentiment and fear

⁷ *Prosecutor v. Lubanga*, Decision on the confirmation of charges, 29 January 2007, ICC-01/04-01/06-803-tEN, para. 347. The essential character of a task is not linked to its performance at the execution stage of the crime (*ibid*, para. 348).

among PNU supporters; (3) providing direct perpetrators with weapons and other logistical necessities; (4) financing the Network; (5) coordinating the implementation of the common plan via coordination of logistics (transportation/communication/perpetrators); and (6) providing instructions to subordinates and direct perpetrators on where to obtain instructions (e.g. SANG/Kass FM), how to communicate to each other, and how to execute the plan.

106. KOSGEY's essential contributions included: (1) using his position as the MP for Tinderet constituency and as a veteran Kalenjin politician to gather and organize Network subordinates and direct perpetrators and to implement the common plan in his locality; (2) representing RUTO in his absence at events; (3) using anti-PNU rhetoric at preparatory meetings and events to create anti-PNU sentiment within the Network and fear amongst PNU supporters; (4) financing the Network; (5) coordinating the attacks; and (6) organizing reinforcements for attacks in Nandi and Uasin Gishu Districts.

107. Network subordinates were also assigned essential tasks to further the common plan. Serving as conduits between RUTO, KOSGEY and the direct perpetrators, subordinates: (1) provided funding, weapons, food, transportation or fuel to the direct perpetrators of the crimes; (2) arranged for the distribution of materials to construct bows and arrows and other traditional weaponry; (3) identified PNU supporters as targets for attack; (4) organized transportation for perpetrators; (5) ensured the provision of sufficient funds to execute the attacks; (6) ensured continuous support of the direct perpetrators of the common plan; and (7) lead perpetrators during attacks while maintaining contact with RUTO to receive instructions and informing him of their progress.

108. RUTO, KOSGEY along with Network subordinates coordinated their essential contributions including: (1) attending preparatory meetings and events where the attacks were planned; (2) contributing funds; (3) creating the organization where they could systematically construct roadblocks, distribute weaponry and attack multiple locations in a limited time frame.

(iii) RUTO AND KOSGEY CONTROLLED THE ORGANIZATION (NETWORK)

109. RUTO and KOSGEY controlled the Network, including in the following ways: (1) RUTO was crowned Kalenjin leader, which gave him the authority to decide on matters affecting the Kalenjin community; (2) RUTO was the single most authoritative ODM figure in the Rift Valley; (3) RUTO used existing structures and roles in Kalenjin society to create a Network; (4) KOSGEY's authority was subordinated only to RUTO, and in his absence KOSGEY acted as RUTO's representative; (5) Commanders responded directly to RUTO, or to KOSGEY in his absence; (6) RUTO and KOSGEY ensured that Network members understood and believed in the common plan; and (7) RUTO and KOSGEY financed the Network.

110. RUTO and KOSGEY controlled the commission of the crimes alleged by operating as the "hubs" of the organization. RUTO and KOSGEY: (1) obtained information from groups located in various locations in the Rift Valley; (2) shared plans and information from group to group regarding targeted locations; (3) reported on the progress of the overall plan; and (4) financially supported the attacks.

111. In specific areas, Network subordinates had limited control over crimes. The Network subordinates possessed information as it related to their specific area. They adopted the Network's organizational policy to punish and expel PNU

supporters and executed attacks. These subordinates, uncharged co-perpetrators, are jointly responsible along with RUTO, and KOSGEY for the crimes in their specific areas over which they exercised control.

112. Direct perpetrators controlled the crimes that they directly committed. The direct perpetrators adopted the organizational policy to punish and expel PNU supporters and committed the crimes alleged. The direct perpetrators are therefore co-perpetrators along with RUTO, KOSGEY and SANG for these crimes.

(iv) EXISTENCE OF AN ORGANISED AND HIERARCHICAL APPARATUS OF POWER

113. RUTO and KOSGEY created an ad hoc hierarchy through which the attacks were executed. RUTO was at the top of the hierarchy, with KOSGEY playing a predominant role. RUTO's and KOSGEY's authority and control over the Network was recognized by Network subordinates and direct perpetrators.

114. RUTO's and KOSGEY's means of exercising control is evidenced by their capacity to: (1) garner supporters to create the Network; (2) provide money and weapons to their subordinates; (3) establish a localized level of subordinates who were responsible for specific geographical areas; (4) establish a functioning command structure; (5) use events and specific language on Kass FM to communicate with subordinates and direct perpetrators; (6) provide weapons training; and (7) impose order by threatening punishment in case of insubordination.

(v) THERE WAS NEAR AUTOMATIC COMPLIANCE WITH RUTO AND KOSGEY'S INSTRUCTIONS

115. RUTO's and KOSGEY's Network including subordinates and direct perpetrators were linked through the organizational policy and common plan described above in paragraphs 41 to 64 and 100 to 104.

116. RUTO and KOSGEY together with SANG and others, ensured near compliance with their instructions by: (1) indoctrinating Network perpetrators to accept and agree with the common plan by referring to PNU supporters in a derogatory manner; (2) training direct perpetrators; (3) creating localized coordination structures headed by local subordinates who ensured compliance in their respective areas; (4) paying subordinates and direct perpetrators; and (5) instilling in the subordinates and direct perpetrators a fear of punishment if they did not participate.

(vi) RUTO AND KOSGEY WERE MUTUALLY AWARE AND MUTUALLY ACCEPTED THAT IMPLEMENTING THEIR COMMON PLAN MIGHT RESULT IN THE REALIZATION OF THE CRIMES CHARGED

117. RUTO and KOSGEY intended to commit the crimes charged, or were aware that crimes would occur in the ordinary course of events. As the leaders of the Network and as architects of the common plan, which specifically called for the commission of the crimes alleged, they had full knowledge that their actions would cause the crimes to occur as they did.

118. RUTO and KOSGEY: (1) shared the common plan; (2) held preparatory meetings and events to plan and organize the attacks; (3) made inciting and derogatory statements about PNU supporters, evidencing specific discriminatory intent against PNU supporters; and (4) financed and organized the attacks

together with Network subordinates and direct perpetrators to punish and expel the PNU supporters from the Rift Valley.

(vii) RUTO, KOSGEY AND THE OTHER CO-PERPETRATORS WERE MUTUALLY AWARE AND MUTUALLY ACCEPTED THAT IMPLEMENTING THEIR COMMON PLAN MIGHT RESULT IN THE COMMISSION OF THE CRIMES CHARGED

119. RUTO and KOSGEY and other Network members were aware and accepted that implementing the common plan would, in the ordinary course of events, result in perpetrators attacking the targeted locations and committing the crimes alleged. Their contributions of planning and fuel, weaponry, and training ensured that PNU supporters would be physically attacked and permanently expelled from the Rift Valley.

120. RUTO's awareness and knowledge is demonstrated by: (1) RUTO's anti-PNU rhetoric at meetings and rallies, inciting anti-PNU sentiment among the direct perpetrators; (2) RUTO's statements to Network perpetrators to attack PNU supporters and expel them from their land, killing them if necessary; (3) RUTO obtaining and distributing funds and other means to Network subordinates and perpetrators; (4) RUTO's requests to recruit ex-soldiers who were already trained.

121. KOSGEY's awareness and knowledge is demonstrated by: (1) KOSGEY's meeting with RUTO to organize and plan for the expulsion of PNU supporters from the area; (2) KOSGEY's use of derogatory language, directed at PNU supporters; (3) KOSGEY's statements to Network perpetrators advocating for the eviction of PNU supporters from the Rift Valley; (4) KOSGEY's participation in plans for deployment, attacks and logistical arrangements by which reinforcements were coordinated between the Uasin Gishu and Nandi Districts;

and (5) KOSGEY's statement that financial assistance would be provided for weapons, bows and arrows, transportation and food, or for use for bribes.

122. The awareness and knowledge of subordinates and direct perpetrators are demonstrated by: (1) their full integration into the Network; (2) their attendance at meetings with RUTO and KOSGEY where they received information regarding the planning, organization, and logistics of the attacks; (3) their commitment to listening to Kass FM, which functioned as a communication tool for the Network; and (4) their provision of logistical assistance and/or support for the attacks.⁸

(viii) RUTO AND KOSGEY WERE AWARE OF THE FACTUAL CIRCUMSTANCES ENABLING THEM TO EXERCISE JOINT CONTROL OVER THE CRIME

123. RUTO's and KOSGEY's knowledge of the factual circumstances that enabled them to exercise joint control over the crimes is demonstrated by: (1) their awareness of the authority that they had within the Network and their leadership role in the implementation of the common plan; (2) their awareness of the roles that they played and the authority that they exercised within the ODM and the Kalenjin community and the leading roles they took at meetings and events where the attacks were planned; (3) their awareness that Network perpetrators shared the common plan; (4) their awareness of and participation in the hierarchically organized structure of the Network; (5) their awareness of the existence of effective local structure of the Network and a functioning communication system within the Network; and (6) their awareness of the circumstances allowing virtually automatic compliance with their instructions, such as the size of the Network, its composition of mainly low-level and

⁸ See generally Section V.A. – "Preparatory Meetings and Events" throughout.

interchangeable perpetrators, and the anti-PNU sentiment shared by members of the Network.⁹

VII. SANG’S CONTRIBUTION TO A CRIME COMMITTED BY A GROUP OF PERSONS PURSUANT TO ARTICLE 25(3)(d)

124. SANG is individually criminally responsible pursuant to Article 25(3)(d) of the Statute for crimes against humanity as defined in Article 7 of the Statute. SANG’s responsibility includes crimes carried out by a group of persons acting with a common purpose. SANG contributed to the commission of the alleged crimes by the Network’s direct perpetrators.

(i) CRIMES WITHIN THE JURISDICTION OF THE COURT WERE COMMITTED

125. Section V.A. is incorporated by reference.

(ii) THE CRIMES ALLEGED WERE CARRIED OUT BY A GROUP OF PERSONS ACTING WITH A COMMON PURPOSE

126. The crimes alleged were carried out through the Network by persons sharing its organizational policy. The common purpose was shared by RUTO and KOSGEY, along with SANG and others including: (1) political representatives, (ODM MPs, Councillors); (2) financial contributors such as businessmen; (3) tribal leaders such as Elders; and (4) former military personnel. The subordinates and direct perpetrators of the crimes alleged are part of RUTO and KOSGEY’s Network.

127. All Network perpetrators, including the direct perpetrators of the crimes acted pursuant to a joint organizational policy of committing widespread and systematic attacks.

⁹ See generally Section V.A. – “Planning Meetings and Rallies” throughout.

128. Sections IV.B and IV.C. are incorporated by reference

(iii) SANG CONTRIBUTED TO THE CRIMES CHARGED

129. Prior to the attacks, Kass FM: (1) broadcasted propaganda against PNU supporters, (2) broadcasted preparatory meetings and event locations, and (3) organized fundraising events that financed the attacks. At the preparatory meetings, the Network designated specific persons to call into SANG's program and spread the Network's views.

130. After the presidential election results were announced, SANG: (1) called on perpetrators to begin the attacks; (2) broadcasted coded language signaling that PNU supporters were to be attacked; and (3) broadcasted the locations the attacks were to take place. Perpetrators who attended the meetings or events listened to the broadcasts, understood the coded language and proceeded to the previously identified locations to execute their plans for attack.

131. During the attacks, SANG sought updates on the perpetrators' progress and broadcasted live from perpetrators as attacks were committed the attacks. SANG's broadcasts encouraged other Network perpetrators to continue their participation, and was one method of coordinating the redeployment of resources.

(iv) THE CONTRIBUTION OF THE SUSPECTS WAS INTENTIONAL

132. SANG's intent is demonstrated by the following actions: (1) as a leading Kalenjin broadcaster, SANG was uniquely situated to broadcast to the Kalenjin community; (2) SANG along with RUTO led meetings advocating for the expulsion of PNU supporters; (3) SANG personally aired anti-PNU rhetoric through Kass FM, which incited fear and hatred against PNU supporters, and

specifically referred to the need to attack them; (4) SANG provided access to pre-screened Network callers and then aired derogatory and anti-PNU language; (5) SANG used coded language during his broadcasts; (6) SANG broadcasted live calls from direct perpetrators during the commissions of attacks.

(v) SANG CONTRIBUTED TO THE CRIMES ALLEGED WITH THE AIM OF FURTHERING THE CRIMINAL ACTIVITY OR CRIMINAL PURPOSE OF THE GROUP

133. Paragraph 132 is incorporated by reference. See Previous Section on SANG's INTENT.

VII. CHARGES

Count 1 (RUTO and KOSGEY)

Murder constituting a crime against humanity

(Article 7(1)(a) and Article 25(3)(a) of the Rome Statute)

From on or about 30 December 2007 to the end of January 2008, WILLIAM SAMOEI RUTO and HENRY KIPRONO KOSGEY committed or contributed to the commission of crimes against humanity in the form of murder in locations including Turbo town, the greater Eldoret area (Huruma, Kiambaa, Kimumu, Langas, and Yamumbi), Kapsabet town, and Nandi Hills town in the Uasin Gishu and Nandi Districts, Republic of Kenya, in violation of Articles 7(1)(a) and 25(3)(a) of the Rome Statute.

Count 2 (SANG)

Murder constituting a crime against humanity

(Article 7(1)(a) and Article 25(3)(d) of the Rome Statute)

From on or about 30 December 2007 to the end of January 2008, JOSHUA ARAP SANG, as part of a group of persons, including WILLIAM RUTO and HENRY KOSGEY, acting with a common purpose, committed or contributed to the

commission of crimes against humanity in the form of murder in locations including Turbo town, the greater Eldoret area (Huruma, Kiambaa, Kimumu, Langas, and Yamumbi), Kapsabet town, and Nandi Hills town in the Uasin Gishu and Nandi Districts, Republic of Kenya, in violation of Articles 7(1)(a) and 25(3) (d) of the Rome Statute.

Count 3 (RUTO and KOSGEY)
Deportation or forcible transfer of population
constituting a crime against humanity

(Article 7(1)(d) and Article 25(3)(a) of the Rome Statute)

From on or about 30 December 2007 to the end of January 2008, WILLIAM SAMOEI RUTO and HENRY KIPRONO KOSGEY as co-perpetrators, committed or contributed to the commission of crimes against humanity in the form of deportation or forcible transfer of population in locations including Turbo town, the greater Eldoret area (Huruma, Kiambaa, Kimumu, Langas, and Yamumbi), Kapsabet town and Nandi Hills town in the Uasin Gishu and Nandi Districts, Republic of Kenya in violation of Articles 7(1)(d) and 25(3)(a) of the Rome Statute.

Count 4 (SANG)
Deportation or forcible transfer of population
constituting a crime against humanity

(Article 7(1)(d) and Article 25(3)(d) of the Rome Statute)

From on or about 30 December 2007 to the end of January 2008, JOSHUA ARAP SANG as part of a group of persons, including WILLIAM RUTO and HENRY KOSGEY, acting with a common purpose, committed or contributed to the commission of crimes against humanity in the form of deportation or forcible transfer of population in locations including Turbo town, the greater Eldoret area (Huruma, Kiambaa, Kimumu, Langas, and Yamumbi), Kapsabet town and

Nandi Hills town in the Uasin Gishu and Nandi Districts, Republic of Kenya in violation of Articles 7(1)(d) and 25(3)(d) of the Rome Statute.

Count 5 (RUTO AND KOSGEY)
Persecution as a crime against humanity
(Article 7(1)(h) and Article 25(3)(a) of the Rome Statute)

From 30 December 2007 to the end of January 2008, WILLIAM SAMOEI RUTO, and HENRY KIPRONO KOSGEY as co-perpetrators, committed or contributed to the commission of crimes against humanity in the form of persecution, when co-perpetrators and/or persons belonging to their group intentionally and in a discriminatory manner targeted civilians based on their political affiliation, committing murder, torture, and deportation or forcible transfer of population, in locations including Turbo town, the greater Eldoret area (Huruma, Kiambaa, Kimumu, Langas, and Yamumbi), Kapsabet town and Nandi Hills town in the Uasin Gishu and Nandi Districts, Republic of Kenya, in violation of Articles 7(1)(h) and 25(3)(a) of the Rome Statute.

Count 6 (SANG)
Persecution as a crime against humanity
(Article 7(1)(h) and Article 25(3)(d) of the Rome Statute)

From on or about 30 December 2007 to the end of January 2008, JOSHUA ARAP SANG, as part of a group of persons, including WILLIAM RUTO and HENRY KOSGEY, acting with a common purpose, committed or contributed to the commission of crimes against humanity in the form of persecution, when co-perpetrators and/or persons belonging to their group intentionally and in a discriminatory manner targeted civilians based on their political affiliation, committing murder, torture, and deportation or forcible transfer of population, in locations including Turbo town, the greater Eldoret area (Huruma, Kiambaa, Kimumu, Langas, and Yamumbi), Kapsabet town and Nandi Hills town in the

Uasin Gishu and Nandi Districts, Republic of Kenya, in violation of Articles 7(1)(h) and 25(3)(d) of the Rome Statute.