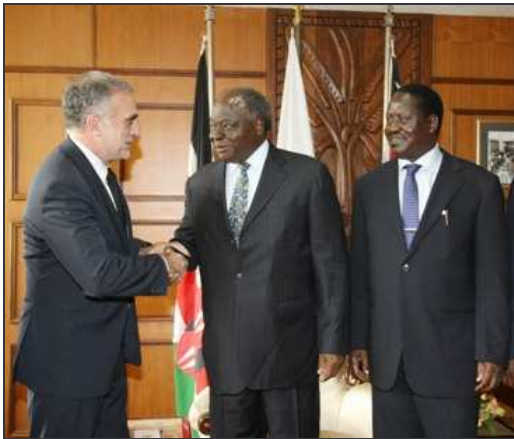




Kenyan authorities committed to cooperate as ICC Prosecutor informs them that in December he will request ICC judges to open an investigation into post-election violence



Prosecutor Moreno-Ocampo, President Mwai Kibaki and Prime Minister Raila Odinga meet at Harambee House office, Nairobi

BACKGROUND

On 5 November 2009, Kenyan President Mwai Kibaki, and Prime Minister Raila Odinga received ICC Prosecutor Luis Moreno-Ocampo in the Office of the President in Nairobi. The Prosecutor came to Kenya to explain to the principals his duties for the initiation of investigations before the ICC. The Prosecutor explained that in December he will request authorization from the judges of the Pre-Trial Chamber to initiate an investigation into alleged crimes committed during the post-election violence.

As the Prosecutor stated, the mandate of the ICC is to “*put an end to impunity and thereby contribute to the prevention of future crimes*”. Kenya ratified the Rome Statute

on 15 March 2005, which entered into force for Kenya on 1 June 2005. In December 2008 the International Crimes Act domesticating the Rome Statute was promulgated after the Kenyan Parliament voted in its favour.

Prosecutor Moreno-Ocampo explained to the principals that in accordance with his preliminary examination of the situation, there is a reasonable basis to believe that the attacks against Kenyan civilians during the post-election violence constitute crimes against humanity under the ICC’s jurisdiction. In accordance with Article 7 of the Rome Statute, a crime against humanity means a widespread or systematic attack directed against the civilian population.

In accordance with the complementarity principle under the Rome Statute, the ICC may intervene only if there are no national proceedings against those responsible for the crimes.

PROCEDURE

The Prosecutor informed the Principals that in accordance with Article 15 of the Rome Statute, in December he will request authorization from the Pre-Trial Chamber to open an investigation. He must show that there is a reasonable basis to believe that crimes within the

jurisdiction of the Court were committed and that there are no relevant national proceedings in connection with those crimes. Moreover, he must be satisfied that there are no considerations based on the interests of justice not to proceed.

The Pre-Trial Chamber may accept the request, reject it or request additional information.

If the Pre-Trial Chamber authorizes the request, the Prosecutor will formally notify all States Parties and any other States with jurisdiction that he has initiated an investigation into the Situation in Kenya.

Within one month of that notification, any State with jurisdiction over the crimes may inform the Court that it is investigating or has investigated criminal acts related to the Situation in Kenya.

If that happens, the Prosecutor will defer to that State unless, upon his application, the ICC judges authorise the Prosecutor to proceed.

PROCESS

Once the investigation is open – not before - the Prosecutor will deploy investigators to the field to collect evidence and take witness statements.

All investigative steps are confidential. Witness security is the Prosecutor's paramount duty and an absolute priority.

Once sufficient evidence has been collected to establish reasonable grounds

to believe an individual bears criminal responsibility, the Prosecutor will request ICC judges to either issue a summons to appear (requesting the suspect to voluntarily appear before the Court) or a warrant of arrest. A summons or warrant may be issued publicly or under seal. **Thus, only at an advanced stage will names of suspects be known.**

After the appearance of the individuals before the Court a hearing will be held to confirm the charges.

Once the Judges conclude that the Prosecutor has established substantial grounds to believe that the person bears criminal responsibility, the charges will be confirmed and the case will be sent to trial.

The Judges may also decide whether any proceedings could be held at a location other than at the permanent seat of the Court in The Hague, such as in the country or the region where the crimes were committed.

At the trial stage, the Prosecutor must prove the responsibility of the accused *beyond reasonable doubt*. All persons enjoy the presumption of innocence before the Court and the full guarantee of legal rights.

POLICY

It is the policy of the Prosecutor to focus investigations on the gravest incidents, to carry out short investigations; and to propose expeditious trials while aiming

to represent the main types of victimization. The cases selected for prosecution will focus on those bearing the greatest responsibility for the most serious crimes.

ICC proceedings are about individual criminal responsibility and not about political responsibility.

By investigating and prosecuting the post-election violence, the Prosecutor aims to contribute to the prevention of similar crimes in the future.

ICC proceedings should go hand in hand with complementary investigations and prosecutions at the national level as well as healing and reconciliation processes.

These three tracks would complement each other. Kenyans could provide an historic example for the world in how to address and prevent massive crimes.

In accordance with the Rome Statute victims of the crimes may apply to participate in the proceedings where their personal interests are affected. The Court or the ICC Trust Fund may, moreover, award reparations to victims.

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