



Press Conference by the Prosecutor of the International Criminal Court, Luis Moreno-Ocampo

Notes for the Media (Backgrounder only): *This text is also available on www.icc-cpi.int*

Thursday, November 26, 2009 The Hague and by videoconference, Nairobi

Today, the Prosecutor of the International Criminal Court, Luis Moreno-Ocampo asked the Pre-Trial Chamber for authorization to open an investigation into the situation of Kenya.

For the purpose of this application, the Prosecutor has relied on a series of national and international reports produced by: the Commission of Inquiry into Post-Election Violence; the Kenyan National Commission on Human Rights (KNCHR); the Office of the High Commissioner for Human Rights; UNICEF, UNFPA, UNIFEM and Christian Children's Fund; the UN Special Rapporteur on extrajudicial, summary or arbitrary executions; the Federation of Women Lawyers (FIDA-K); Centre for Rights Education and Awareness (CREAW), Human Rights Watch; the International Crisis Group and others.

According to Kenyan authorities 1,220 persons were killed during the violence that followed the general elections in December 2007. Hundreds of rapes were documented and many more were unreported, making the real number likely much higher; 350,000 persons were internally displaced, 3600 persons were injured.

The Prosecutor considers that there is a reasonable basis to believe that crimes against humanity within the jurisdiction of the Court were committed in the context of the post-election violence of 2007-2008, in particular crimes of murder, rape and other forms of sexual violence, deportation or forcible transfer of population and other inhumane acts.

It is up to the Judges to decide on the Prosecutor's request to open an investigation.

Notification to victims

From 23 November 2009, when the Prosecutor formally notified Kenyan victims that he will request authorization from ICC Judges to open an investigation, **victims have 30 days to send to the Judges any comments or views** on the Prosecutor's request (see attached notice). Contrary to media reports, the notification to victims is **not** a call to send evidence.

These comments or views, formally known as "representations," are separate from the right of victims to participate in proceedings or receive reparations. Victims of post-election violence in Kenya will be given this opportunity at a later stage.

Witness protection

The Prosecutor is concerned by reports of threats against human rights defenders, members of the Kenyan Parliament or any other person that openly supports justice for the post-election violence victims. This includes in particular alleged threats and intimidation by Kenyan police officers.

The Prosecutor met with Minister of State for Provincial Administration & Internal Security, Professor George Saitoti in Nairobi to ensure adequate protection for the Kenyan victims of these crimes. He also had a meeting in The Hague with the Attorney-General Amos Wako. They are responsible to protect the victims of these crimes, human rights defenders and any other Kenyan citizen.

The Prosecutor of the ICC will ensure the security of all witnesses called to testify before the Court.

Next steps

Should the investigation be authorized:

- The investigation will proceed expeditiously. A team of investigators is ready to deploy. The Prosecutor has already collected and analysed documents submitted by the Waki Commission and others. The Waki Commission list of suspects is not binding on him. He has a duty to conduct his own, impartial investigation; he will make his own determination on who should be prosecuted. His policy is to prosecute those most responsible for the gravest crimes.

- If the Judges authorize the investigation the Prosecutor will return to Kenya in early 2010 to meet with victims.
- When the Prosecutor considers he has enough evidence, he can request that the Judges issue a Summons to Appear or an Arrest Warrant.
- The Prosecutor expects that the definition of charges and suspects will take place in the course of 2010. Only then will the names of persons who have to face justice be revealed; not before.
- The Prosecutor will present in Court a limited number of cases, 2 or 3, against those persons considered the most responsible. Kenyan accountability mechanisms will address the cases of other perpetrators.

OTP PUBLIC NOTICE:

**VICTIMS OF POST-ELECTION VIOLENCE IN KENYA HAVE 30 DAYS TO
MAKE REPRESENTATIONS TO ICC IN THE HAGUE**

The Hague, 23 November 2009

By this notice, the Prosecutor of the International Criminal Court informs victims of alleged crimes committed in Kenya during the post-election violence of 2007-2008 that he will request authorization from Pre-trial Chamber II to open an investigation into such alleged crimes, in accordance with Article 15(3) of the Rome Statute and Rule 50 of the Rules of Procedure and Evidence.

The Prosecutor considers that *“there is a reasonable basis to proceed with an investigation into the Situation in the Republic of Kenya in relation to the post-election violence of 2007-2008”*.

According to Article 15(3) of the Rome Statute, *“victims may make representations to the Pre-Trial Chamber, in accordance with the Rules of Procedure and Evidence”*.

In accordance with the Rules of Procedure and Evidence (Rule 50), *“the Prosecutor shall inform victims, known to him [...] or to the Victims and Witnesses Unit, or their legal representatives, unless the Prosecutor decides that doing so would pose a danger to the integrity of the investigation or the life or well-being of victims and witnesses. The Prosecutor may also give notice by general means in order to reach groups of victims if he or she determines in the particular circumstances of the case that such notice could not pose a danger to the integrity and effective conduct of the investigation or to the security and well-being of victims and witnesses”*.

Accordingly, the Prosecutor notifies victims of the post-election violence in Kenya that they can send their comments to the Judges of Pre-Trial Chamber II on whether an investigation on such alleged crimes should be opened. The victims or their legal representatives have 30 days to make representations to the Pre-Trial Chamber.

Victims can make their representations in writing to Pre-Trial Chamber II, which they should channel through the Registry to the postal address below:

International Criminal Court
Pre Trial Chamber II
PO Box 19519
2500 CM, The Hague
The Netherlands

Further information will follow shortly.

The Pre-Trial Chamber may request additional information from any of the victims who have made such representations, and may hold a hearing if it considers it appropriate.

The Chamber will give notice of its decision on the Prosecutor’s request to victims who have made representations.

Should the Judges authorize the opening of the investigation, victims will also have the opportunity to present their voices and concerns during the proceedings and, at a later stage, to request reparations.

The present notice has been posted as of today on the website of the Court, and sent to the media of Kenya, and to a wide range of NGOs. The Registry has been informed.