



### *The Post-Election Violence and Mediation*

1. The announcement of the results of the 27 December 2007 general election in Kenya triggered widespread violence, resulting in the deaths of over a thousand people, thousands of people being injured, and several hundreds of thousands of people being displaced from their homes.
2. On 28 February 2008, international mediation efforts led by Kofi Annan, Chair of the African Union Panel of Eminent African Personalities, resulted in the signing of a power-sharing agreement between Mwai Kibaki as President and Raila Odinga as Prime-Minister. The agreement, also established three commissions: (1) the Commission of Inquiry on Post-Election Violence (CIPEV); (2) the Truth, Justice and Reconciliation Commission; and (3) the Independent Review Commission on the General Elections held in Kenya on 27 December 2007.
3. On 15 October 2008 CIPEV- also known as the Waki Commission, published its Final Report. The Report recommended the establishment of a special tribunal to seek accountability against persons bearing the greatest responsibility for crimes relating to the 2007 General Elections in Kenya, short of which, the Report recommended forwarding the information it collected to the ICC.

### *Efforts to Establish a Local Tribunal*

4. On 16 December 2008, President Kibaki and Prime Minister Odinga agreed to implement the recommendations of the Waki Commission and specifically to prepare and submit a Bill to the National Assembly to establish the Special Tribunal. Yet, on 12 February 2009, the Kenyan Parliament failed to adopt the “Constitution of Kenya (Amendment) Bill 2009” which was necessary to ensure that the Special Tribunal would be in accordance with the Constitution. Consequently, the Bill establishing the Special Tribunal could not be discussed further.

5. In the meantime, on 11 February 2009 the Prosecutor affirmed that that the OTP was monitoring the situation in Kenya, and was continuing to follow-up on whether there were national proceedings into the 2008 post-election violence in Kenya.
6. On 3 July 2009 the Prosecutor met with a high level delegation of Kenyan government officials, in The Hague. The Kenyan delegation comprised Mr. Mutula Kilonzo, Minister of Justice and Constitutional Affairs; Mr. James Orengo, Minister of Lands; and Attorney General Amos Wako. The delegation informed the Prosecutor about the steps they planned to follow in the forthcoming year to investigate and prosecute the post-election violence in Kenya. They explained to the Prosecutor that certain measures would require the approval of Parliament.
7. The Kenyan delegation also committed to provide immediately all information requested by the Prosecutor to perform its preliminary examination as well as information on measures put in place to ensure the safety of victims and witnesses pending the initiation and completion of suitable judicial proceedings. The Kenyan officials and the Prosecutor agreed that impunity would not be an option, and that, to prevent new violence in 2012 it was necessary to prosecute those responsible for the crimes committed during the post election violence.
8. On 9 July 2009, the African Union Panel of Eminent African Personalities, chaired by Kofi Annan, announced its submission to the Prosecutor of a sealed envelope which contained a list of persons allegedly implicated and supporting materials entrusted to Mr. Annan by the Waki Commission on the post-election violence. On 16 July 2009, the Prosecutor received the sealed envelope and six boxes containing documents and supporting material compiled by the Commission. The Prosecutor opened the sealed envelope, examined its content and resealed it.
9. On 26 August 2009, the Constitution of Kenya (Amendment) (No. 3) Bill 2009 aiming at the establishment of a special tribunal was gazetted, enabling the bill to be formally debated in Parliament. However, this bill was not debated in the Kenyan Parliament due to the lack of the requisite quorum. Additional bills to establish a Special Tribunal did not meet the necessary parliamentary quorum.
10. On 5 November 2009, the Prosecutor met with President Mwai Kibaki and Prime Minister Raila Odinga in Nairobi. The Prosecutor informed them that since all the statutory criteria were fulfilled, it was his duty to open an investigation. Accordingly, he requested the cooperation of Kenyan national authorities with the Court. The Prosecutor recalled the complementary roles of the ICC and the Kenyan authorities in combating impunity. In a joint press conference the same day, the Prosecutor announced his intention to request authorization to proceed with an investigation into the situation of the Republic of Kenya.

11. The President and Prime Minister issued a joint statement by which they recalled their constructive meeting with the Prosecutor. The Government stated that it remained fully committed to cooperating with the ICC within the framework of the Rome Statute and the Kenyan International Crimes Act.

### *The ICC Judicial Process*

12. On 26 November 2009, the Prosecutor filed a Request for authorization to proceed with an investigation into the situation in the Republic of Kenya in relation to the post-election violence of 2007-2008. On 31 March 2010, Pre-Trial Chamber II granted the Prosecution's Request and an investigation was initiated thereafter.

13. On 15<sup>th</sup> of December 2010, the Prosecution sought summons to appear for six main suspects, who colloquially became known in Kenya as the "Ocampo Six".

14. On 8 March 2011, the Chamber issued summons to appear against six individuals whom the Prosecutor considered to be most responsible for crimes committed during the Post-Electoral Violence. The Judges decided that there were reasonable grounds to believe that William Ruto, Henry Kosgey and Joshua Arap Sang prepared and implemented a plan to attack the civilian population in Rift Valley. They also held that there were reasonable grounds to believe that Uhuru Kenyatta used the Mungiki, in agreement with Francis Muthaura, to retaliate against ODM supporters, and that Muthaura instructed Mohammed Hussein Ali, then Commissioner of Police, not to intervene to prevent the attacks. The suspects appeared before the Court on 7 and 8 April 2011.

### *Alleged Crimes: The Case of Mr. Ruto, Mr. Kosgey and Mr. Sang*

15. The Prosecutor alleges that William Ruto, Henry Kosgey and Joshua Sang committed the crimes of murder, deportation and forcible transfer of population, and persecution. This case concerns crimes committed immediately after the announcement of the results of the presidential election and specifically from 30 December 2007 until the end of January 2008 in locations including Turbo town, the greater Eldoret area (encompassing Huruma, Kiambaa, Kimumu, Langas, and Yamumbi), Kapsabet town and Nandi Hills town, in the Uasin Gishu and Nandi Districts. The Prosecutor believes that these crimes were not spontaneous, but that the suspects mobilized the members and resources of a Network they created during a series of preparatory meetings and events held in the Uasin Gishu and Nandi Districts in the year preceding the attacks. At these meetings and events, the Network allegedly planned attacks

*Alleged Crimes: The Case of Mr. Francis Muthaura, Uhuru Kenyatta and Mohammed Hussein Ali*

16. The Prosecutor alleges that members of the Government of Kenya, namely Francis Muthaura, Uhuru Kenyatta and Mohammed Hussein Ali are responsible for crimes against humanity committed from on or about 24 January 2008 until 31 January 2008, through the Mungiki criminal organization. The Prosecutor contends that Mungiki members carried out a widespread and systematic attack against members of the population perceived as supporting the Orange Democratic Movement (ODM) (primarily those belonging to Luo, Luhya and Kalenjin ethnic groups) in Nakuru and Naivasha.<sup>2</sup> The Prosecutor accuses Muthaura, Kenyatta, and Ali of committing the crimes against humanity of murder, deportation or forcible transfer, rape and other forms of sexual violence, other inhumane acts, and persecution by their involvement in a plan to attack perceived ODM supporters.

17. The Prosecutor alleges that Muthaura and Kenyatta procured the services of the Mungiki to carry out retaliatory attacks against perceived ODM supporters in areas around Nakuru and Naivasha towns during late January 2008. During these attacks, Mungiki and pro-PNU youth allegedly killed, raped, and injured perceived ODM supporters. They also allegedly looted and destroyed properties and displaced thousands of people. The Prosecutor contends that Muthaura and Ali ensured that the Kenya police did not intervene to stop the attacks or to punish those who carried them out.

*Confirmation Hearings*

18. Hearings on whether to confirm charges against Mr. Ruto, Mr. Kosgey and Mr. Sang, and against Mr. Muthaura, Mr. Kenyatta and Mr. Ali took place from 1 to 9 September 2011, and from 21 September to 5 October 2011 respectively. The Hearings were presided over by Judge Ekaterina Trendafilova, Judge Hans-Peter Kaul, and Judge Cuno Tarfusser. The Prosecution presented its evidence against the six suspects, and gave presentations on how this evidence supports each element of the crimes charges. The Defence Teams were each given the opportunity to challenge the Prosecution's evidence. The Hearings concluded with the

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<sup>1</sup> Prosecutor's Application Pursuant to Article 58 as to Ruto, Kiprono Kosgey and Arap Sang, 15 December 2010. (ICC-01/09-30-Red); See also <http://www.icc-cpi.int/iccdocs/PIDS/cis/RutoKosgeySangEng.pdf>

<sup>2</sup> Prosecutor's Application Pursuant to Article 58 as to Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali, 15 December 2010. (CC-01/09-31-Red). See also <http://www.icc-cpi.int/iccdocs/PIDS/cis/MuthauraKenyattaAliEng.pdf>.

Chamber assuring the people of Kenya that the Chamber will carefully examine all of the evidence presented by both parties before taking an independent and impartial decision on whether to confirm the charges.