

ANNEX 3

REPUBLIC OF KENYA

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**Director Public Prosecutions
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RE: UPDATE ON INVESTIGATION INTO SIX ICC SUSPECTS

Further to our report of 5th May 2011, we do confirm that our team is on the ground conducting investigations as directed into all allegations made against the six ICC suspects.

This team was appointed after the ICC Prosecutor named the six suspects. It consists of ten Senior police officers. They have focussed their inquiries mainly in the Rift Valley Province, the epicentre of the Post-Elections Violence. They have been dispatched from the CID HQS and are working there on full-time basis.

The team is instructed to investigate all the allegations made against the six suspects by the ICC Prosecutor as outlined in the

ICC summonses and the Decisions of the Pre-Trial Chamber to issue the summonses.

The team has undertaken various investigative tasks. It has also submitted reports and information on a regular basis. This report is a compilation of all the information gathered to date. The progress made with these tasks will be reported on in the next update on the investigation.

Witness interviews

In relation to all the six suspects the team has approached numerous potential witnesses mainly in the Rift Valley Province to ascertain whether any of them can provide information about the six suspects. About 35 witnesses have so far been interviewed on this subject. These witnesses were, *inter alia*, identified for further inquiry on the basis of evidence already gathered from them and others about crimes committed during the Post-Elections Violence and the alleged perpetrators. The reports filed on the thousands of individual cases that have been investigated by the police and prosecuted, identified potential witnesses who may have valuable information.

To date no evidence has been received from any of these witnesses which could link any of the suspects to the crimes as alleged by the ICC Prosecutor, or any other crimes. These inquiries are still being conducted by the police officers on the

ground. There are also specific inquiries being made in respect of one suspect, Mr. Ruto. Five witness statements were taken from persons who came forward to the Provincial CID office Nakuru of the Rift Valley Province in June-July 2008. They alleged that there had been meetings attended by Mr Ruto in which arming persons to commit violence was discussed and planned. The statements named seven other persons who were allegedly present at these meetings. There are still about ten persons who are being traced to be interviewed. There have been difficulties finding these persons especially due to displacements that resulted from the violence. None of the persons interviewed to date confirmed that any of these meetings took place. Further inquiries thus have to be made with the other persons named in the statement and efforts are still being made to find them for further interview. The team has not been able to locate the five persons who made the original statements to conduct further questioning. It is unknown whether these persons have become ICC witnesses and have thus been moved.

The team also revisited some of the most high profile crime scenes of the Post-Elections Violence to make further inquiries. These included the Kiambaa church where 38 people were murdered and scores maimed and Naivasha town where 19 people were murdered including nine family members.

Review of documentation

The team have examined the police occurrence books from all the police stations in the Rift Valley, Nyanza, Western, Nairobi and Coast provinces. This was a big exercise that took almost two months. The team was looking for any mention of the six suspects and any information that may be relevant to them. This inquiry did not produce any significant results.

The team is also reviewing press clippings and other recordings from the time of the Post-Election Violence. This is important for the allegations of incitement, instigation and planning. The exercise took about 3 weeks and it is not yet completed. Although this exercise reveals that certain persons other than the six suspects were prominent in the media during this time, the inquiries to date have not shown that any of the six suspects made statements that could link them to any of the crimes alleged by the ICC Prosecutor or any other crimes. Further investigations will be undertaken in respect of the other persons who were identified from the searches so far.

Interviews of the suspects

As a result of the ongoing investigation, we have decided to interview the six suspects as suspects under Kenyan law. Hon. Kosgey was interviewed on 6th June, 2011 at CID HQS. The interview was recorded in accordance with our usual police

procedure. The suspect denied the various allegations put to him. In light of the evidence mentioned above, Mr. Ruto will be interviewed next week. It is planned that the other four suspects will also be interviewed next week. They will be entitled to have their lawyers present in accordance with Kenyan law.

Tasks to be completed

The records of the provincial meetings held during the time of the Post-Election Violence will be reviewed as these may contain relevant evidence, especially in light of the ICC Prosecutor's allegations about meetings taking place between the suspects and others. In this regard, the findings of the Waki Report and the Human Rights' Commission's Report in respect of meetings held at the material time will be re-examined for further leads.

The evidence presented before the Truth Justice and Reconciliation Commission will be examined for any references to the six suspects and information that could be relevant to their alleged participation.

The patterns that may emerge from the evidence already gathered about the numerous individual crimes committed during the Post-Election Violence will be analysed. They could provide evidence and further leads in respect of alleged planning and command.

The team is evaluating the results of their inquiries to date and further investigative leads will be identified to be pursued in the coming weeks.

We will continue to seek to cooperate with the ICC Prosecutor to obtain evidence and information upon which he relies as it may assist in the national investigation.

It should also be noted that investigations have taken place into the allegations made by the ICC Prosecutor of witness intimidation to the extent that these have been particularised by the Prosecutor. A separate report will be provided on these inquiries on conclusion of the investigations.



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