



ICC PROSECUTOR'S WITHDRAWAL OF CHARGES AGAINST KENYATTA, A BLOW TO VICTIMS OF THE POST-ELECTION VIOLENCE IN KENYA

London, 5 December 2014 – Today, the ICC Prosecutor Fatou Bensouda withdrew the charges against President Uhuru Kenyatta, who had been charged with crimes against humanity in connection with the 2007/2008 post-election violence in Kenya, which left over 1,100 people dead and several hundred thousands of other victims.

The Prosecutor announced her decision two days after an ICC Trial Chamber found that Kenya, which has been an ICC member state since 2005, had failed to adequately cooperate with her investigation in the case, but decided not to refer the matter to the ICC's governing body, the Assembly of States Parties (ASP). The Chamber had given the Prosecutor a week to either withdraw the charges or express her readiness to proceed to trial.

The Prosecutor explained that crucial evidence regarding the 2007-2008 post-election violence could only be found in Kenya and was only accessible to the Prosecution through the assistance of the Government of Kenya, which did not provide it. The Prosecutor said that she also faced "other severe challenges" which had hampered her investigations, including: "a steady and relentless stream of false media reports about the Kenya cases; an unprecedented campaign on social media to expose the identity of protected witnesses in the Kenya cases and a concerted and wide-ranging efforts to harass, intimidate and threaten individuals who would wish to be witnesses."

Reacting to the Prosecutor's announcement, Carla Ferstman, Director of REDRESS, said: **"The abrupt end to the Kenyatta case reveals multiple failings by multiple actors and is a devastating blow to victims of the post-election violence. The ICC only became involved because of the complete failure of Kenyan authorities to account for the violence. Not a single high-level official has been prosecuted and there have only been a few prosecutions of low-level perpetrators. The International Crimes Division of the High Court – which was expected to try post-election violence cases - remains non-operational two years after its creation was announced. Now that the ICC case against Kenyatta has fallen apart, the victims will once again turn to the Kenyan judicial system in the hopes that justice can be achieved. We hope that these calls for justice will be resolutely answered."**

Ferstman added: **"The ICC Prosecutor should draw some lessons from the failings in this case. Prosecuting a President for crimes against humanity and expecting the evidence to come from the government he leads is aspirational, even if it does align with Kenya's obligations under the Statute. The Office of the Prosecutor needs to be able to conduct**

robust investigations and to seek out evidence from the widest possible array of sources.”

Referring to Kenya’s lack of cooperation and claims of witness intimidation, Ferstman said: **“Kenya’s lack of cooperation and the allegations relating to witness intimidation are extremely serious and should have been scrupulously followed up at the earliest opportunity, using the full arsenal of the Rome Statute. Timidity has not worked and does not work with governments who are non-cooperative and demonstrate no serious commitment to justice.”**

For further information, contact Eva Sanchis, REDRESS Communications Officer, on eva@redress.org or +44(0)2077931777.

Background of the case

- From December 2007 to December 2008 unprecedented violence erupted in Kenya resulting in at least 1,133 people killed, 900 cases of rape or other sexual and gender based violence, numerous victims of grievous harm and destruction of property, and over 350,000 persons displaced, according to the Waki Commission, the Commission of Inquiry into the Post-Election Violence. It was the worst violence in Kenya since its independence.
- On 31 March 2010, Pre-Trial Chamber II of the ICC granted, by majority, the ICC Prosecutor’s request to open an investigation into alleged crimes against humanity in Kenya. The investigation was opened after Kenya failed to establish a special local tribunal to try the post-election crimes, a recommendation of the Waki Commission.
- On 15 December 2010, the ICC Prosecutor requested Pre-Trial Chamber II of the ICC to issue summonses to appear for six Kenyans in relation two separate cases on the basis that there existed reasonable grounds to believe that they were criminally responsible for crimes against humanity. As a result, William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang (Case 1) as well as Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali (Case 2) were summoned to appear before the Court.
- On 23 January 2011, the Judges declined to confirm the charges against Ali. Pre-Trial Chamber II confirmed the charges against Muthaura and Kenyatta and committed them to trial. The same day, Pre-Trial Chamber II also confirmed the charges against Ruto and Sang. The charges against Kosgey were dropped.
- On 23 January 2012, Kenyatta was charged, as an indirect co-perpetrator, with five counts of crimes against humanity consisting of murder, deportation or forcible transfer, rape, persecution and other inhumane acts allegedly committed during the post-election violence in Kenya in 2007-2008. The case, *The Prosecutor v. Uhuru Muigai Kenyatta*, was committed to trial before Trial Chamber V.
- On 18 March 2013, the charges against Muthaura were withdrawn, following the deaths and withdrawal of key witnesses in the case and amidst claims from the Prosecutor that Kenya had not provided access to crucial evidence and witnesses.
- In 9 April 2013, Kenyatta and Ruto became, respectively, President and Deputy President of Kenya.
- On 10 September 2013, the trial against Ruto and Sang opened.
- On 31 March 2014 Trial Chamber V adjourned the trial start date of 5 February 2014 in the Kenyatta case after the Prosecutor asked for an adjournment, because she did not have enough evidence to prove Kenyatta’s alleged criminal responsibility beyond a reasonable doubt. She said that the Kenyan Government was withholding key evidence.
- On 19 September 2014, Trial Chamber V adjourned for the second time the trial commencement date, scheduled for 7 October 2014. The Prosecutor had requested the adjournment arguing that Kenya had failed to provide information requested by her office, in an amended cooperation

request, and as a result it did not have enough evidence to proceed to trial. The Prosecutor argued that it would be inappropriate to withdraw the charges in light of the Kenyan Government's continuing failure to cooperate fully with the Court's request for assistance, and Kenyatta's position as the Head of the Kenyan Government. The Victims' Representative supported the Prosecutor's request arguing that a termination of the trial would be "inappropriate", "set a dangerous precedent", and would be "a cruel betrayal of the victims". The Defense requested that the case be terminated on 10 September 2014.

- 725 victims are participating in proceedings in the Kenyatta case.
- On 7 and 8 October 2014 the Chamber convened two public hearings to discuss the status of cooperation between the Prosecution and the Kenyan Government and issues raised by the Prosecutor.
- On 3 December 2014, the Chamber rejected the Prosecutor's request for a further adjournment in the case and directed the Prosecution to indicate, within a week, either its withdrawal of charges or readiness to proceed to trial.
- On 5 December 2014, the Prosecutor withdrew the charges against Kenyatta.

About REDRESS: REDRESS is an award-winning human rights organisation based in London which works internationally to combat torture by seeking justice and reparation for torture survivors. REDRESS is also the informal facilitator of the Victims' Rights Working Group (www.vrwg.org), a network of 400 national and international organisations and experts that advocates on victim's issues before the ICC.