



87 Vauxhall Walk, London SE11 5HJ, Tel: +44 (0)20 7793 1777, www.redress.org

PRESIDENT KENYATTA ICC CASE: KENYAN GOVERNMENT SHOULD ACCOUNT FOR IMPEDING ACCESS TO JUSTICE AND TRUTH FOR THOUSANDS OF VICTIMS OF THE POST-ELECTION VIOLENCE

ICC judges decide not to adjourn the case further; decline to refer Kenya to the ICC's governing body despite the Court's criticism of the lack of cooperation from Kenya

London, 4 December 2014 – On 3 December, the ICC Trial Chamber rejected the Prosecutor's request for a further adjournment in the case against Uhuru Kenyatta, current President of Kenya, who is accused of committing crimes against humanity, following the disputed 2007 presidential elections. The Trial Chamber directed the Prosecution to indicate, within one week, either its withdrawal of the charges or its readiness to proceed to trial.

The Chamber also rejected the Prosecution's request for a finding of non-cooperation against Kenya, who joined the ICC in 2005, and for the matter to be referred to the ICC's governing body, the Assembly of States Parties (ASP). Despite recognising that Kenya had fallen short of its obligations to cooperate with the ICC, the ICC judges decided it would not be in the interests of a fair trial or justice to refer the matter to the ASP.

The Chamber explained that the Kenyan Government had not cooperated in good faith and had not taken meaningful steps to compel production of the materials requested by the ICC prosecutor. They noted: "the Kenyan Government's non-compliance has not only compromised the Prosecution's ability to thoroughly investigate the charges, but ultimately impinged upon the Chamber's ability to fulfil its mandate."

In REDRESS' view, the Chamber's finding that Kenya failed to cooperate should have led the Court to refer the matter to the ASP. Its failure to do so sends the wrong message to States.

"Effectively, the Court is saying: our powers to compel a State to cooperate with the ICC are limited so we will not even try," said Carla Ferstman, Director of REDRESS. **"There should be real consequences for States who fail to cooperate with the Court. The Assembly of States Parties meets next week in New York. We call on it to reinforce the way non-cooperation is addressed. What is in place is simply not sufficient."**

Despite reserving their strongest criticism to the Kenyan Government, the judges also noted that the Prosecutor should have brought up the issue of non-cooperation much earlier and it was unclear why this was not done.

"The decision highlights failures at multiple levels, but one thing is clear: the real losers here are the thousands of men, women and children who were killed, raped, tortured and

forcibly displaced from their homes and whose plight for justice remains unanswered,” added Ferstman.

Victims participating in the case have strongly opposed the termination of the trial, saying that this would be “a cruel betrayal of the victims”. For many victims, the ICC trial remains their only hope for justice, in the face of the lack of effective investigations and prosecutions in Kenya since the post-election violence took place seven years ago. This is compounded by the fact that the International Crimes Division of the High Court – which was expected to try post-election violence cases - remains non-operational two years after the Government of Kenya announced its creation.

For further information, please contact: Eva Sanchis, REDRESS Communications Officer, on eva@redress.org or +44 20 7793 1777.

Background on 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 to 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.

About REDRESS: We are an award-winning human rights charity based in London which works internationally to combat torture by seeking justice and reparation for torture survivors. We are also the informal facilitator of the Victims' Rights Working Group (www.vrwg.org), a network of more than 400 national and international organisations and experts that advocates on victims' issues before the International Criminal Court.