

# **International Federation for Human Rights (FIDH) Kenya Human Rights Commission (KHRC)**

## **Press Release**

### **Unpunished crimes committed in Kenya targeted by ICC Prosecutor: A possibility to bring justice to victims**

**Paris, Nairobi, The Hague, 26 November 2009** - FIDH and its member organization, the Kenya Human Rights Commission (KHRC), welcome the decision announced today by the Prosecutor of the International Criminal Court (ICC) to address the crimes committed during the 2007/2008 post-election violence in Kenya. The ICC Prosecutor has announced that Kenya will be the first situation where he will exercise its *proprio motu* powers to request the opening of an investigation.

“FIDH condemned the crimes committed in Kenya and regrets that the national justice system failed to investigate, prosecute and sanction those responsible” said Souayhr Belhassen President of FIDH. “Therefore, thousands of victims see the ICC as the last resource access to justice”.

“We hope that the ICC’s intervention will break the circle of impunity and contribute to prevent the commission of further crimes around elections in Kenya and in any other country” said Muthony Wanyeki, KHRC Executive Director.

“It is also imperative that the ICC immediately addresses the safety concerns of survivors and Human Rights Defenders whose security is and will continue to be at risk as a result of today’s announcement”, Ms. Wanyeki added. In this regard, our organizations recall the threats received by those involved in the Imanyara bill (including the kidnapping of Mr. Imanyara’s personal assistant), as well as the mobilization of IDPs by political leaders. The ICC must set up a system to adequately protect victims, witnesses and intermediaries in Kenya. Similarly, the Court and other relevant actors must speak out against intimidation of any survivors.

On 23 November, the Office of the Prosecutor issued a public notice to inform victims of the post-election violence. According to the ICC rules, victims have a right to be informed about a Prosecutor’s request to be authorised to open an investigation. Such information is distributed for the purpose of letting victims decide whether they would like to send their comments to the Judges of Pre-Trial Chamber II on whether an investigation on such alleged crimes should be opened.

FIDH and KHRC welcome the public notice issued by the OTP and urge all the different bodies of the ICC to deploy the necessary measures to ensure that victims’ concerned are well informed of their rights, including the possibility to make representations before the Court, and that they understand the time limits set out by the legal framework to

participate at this stage of the proceedings.

However, FIDH and its member organization in Kenya regret that this notice was not circulated before. According to the ICC Rules of Procedure and Evidence, victims can make representations in these proceedings within 30 days of having been notified according to the Court's Regulations. The process of informing victims of ICC proceedings and developments is a complex one. FIDH and KHCR call upon the relevant Pre-Trial Chamber to take this into consideration when deciding upon the date from which the 30-day period will start to run, so that victims can reflect upon the issues, make an informed decision on their participation and prepare their submissions in due time. The Pre-Trial Chamber in charge of analyzing the Prosecutor's request, should ensure, first of all, that victims are effectively notified and , secondly, to take into consideration the reality of victims in the Kenya, and guarantee the effective exercise of their right.

Finally, FIDH takes this opportunity to recall, that other very serious situations are still awaiting a decision from the ICC Prosecutor as to whether an investigation should be opened. These situations include countries such as Colombia, Afghanistan, Georgia, the Palestinian Territories, among others. FIDH urges the ICC Prosecutor to conclude the analysis of these preliminary situations and exercise his proprio motu powers to open new investigations when the relevant conditions of the ICC Statute are met.

**Press contact :**

Paris : Gaël Grilhot : +33-1 43 55 90 19

The Hague : Mariana Pena : + 31-70 356 02 59