



Coalition for the International Criminal Court
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MEDIA ADVISORY
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PROSECUTOR REQUESTS OPENING OF ICC INVESTIGATION IN KENYA
Prosecutor Requests Judges' Authorization to Investigate Alleged Crimes Committed during 2007-2008 Election Violence

WHAT: On 26 November 2009, the Prosecutor of the International Criminal Court (ICC) Luis Moreno-Ocampo requested the authorization of Pre-Trial Chamber II to open the investigation into crimes allegedly committed in Kenya in relation to the post-election violence of 2007-2008. Judges of Pre-Trial Chamber II will have to consider whether or not there are reasonable basis to proceed with an investigation and that it appears to fall within the jurisdiction of the Court.

WHY: Kenya signed and ratified the Rome Statute and hence is a State Party to the ICC. By becoming a State Party, Kenya has accepted the jurisdiction of the Court over war crimes, crimes against humanity, and genocide committed on its territory or by one of its nationals, thus opening the door for the Prosecutor's investigation into acts which are not being investigated and prosecuted by national authorities.

HOW: Today is the first time that the ICC Prosecutor seeks to open an investigation on his own initiative i.e. *proprio motu*, in accordance with article 15 of the Rome Statute. The other situations currently dealt with by the Court were initially referred to the Prosecutor by States Parties or the United Nations Security Council. Indeed, for the Court to open an investigation, a situation can be referred to the Court by a State Party, the UN Security Council or initiated by the ICC prosecutor himself, with authorization of the Judges.

COMMENT AND BACKGROUND:

“With the Kenyan government failing to establish a special tribunal for Kenya, and the impotence of the national legal system, the ICC Prosecutor is fully justified in seeking to open an investigation in the 2007-2008 post election violence in Kenya,” said James

Gondi, Program Officer, International Commission of Jurists -Kenya (ICJ-Kenya). “We welcome today’s request as it sends a strong sign of hope to victims that justice will be served in Kenya,” he added.

“Today we urge the Court to develop a clear outreach and communications plan to explain the ICC and the Court’s role in Kenya and to enter in a dialogue with affected communities as soon as possible,” said Stephen Lamony, the Coalition’s Africa outreach liaison and situations adviser. “In this process, the Court should consult local civil society and media to design tailored communications strategies for Kenya,” he stressed.

On 16 July 2009, the Prosecutor had received six boxes containing documents and supporting material compiled by the Waki Commission, an international commission of inquiry established by the Government of Kenya to investigate the violence that occurred between December 2007 and February 2008, following presidential elections. The documentation included a sealed envelope containing a list of suspects identified by the Waki Commission as those most responsible for the violence.

The Prosecutor had also received information from Kenyan authorities on witness protection measures and on the status of legal proceedings carried out by national authorities. Thus far national attempts at addressing the post-election violence have resulted in the establishment of the Kenyan Truth, Justice and Reconciliation Commission and discussions in the government to use the regular judicial apparatus instead of a specially constituted tribunal. Constitutional amendments that would have established a special tribunal, as recommended by the Waki Commission, failed to get the requisite consensus in parliament, which meant that the Kenyan Government missed the deadline for initiating prosecutions by the end of September 2009, a deadline agreed upon by both the ICC Prosecutor and the Kenyan Government delegation which visited the ICC on 3 July 2009.

The Prosecutor has alleged he supports a “three-pronged approach” to the Kenya situation that would involve prosecution by the ICC of those most responsible for the post-election violence coupled with national accountability proceedings for other perpetrators, the format for which would be determined by the Kenyan Parliament. The third prong would include other mechanisms, such as a Truth, Justice and Reconciliation Commission.

The ICC is the world’s first permanent international court to prosecute war crimes, crimes against humanity and genocide. To date, the ICC has issued twelve arrest warrants for investigations in four of the most brutal conflicts of our time: the Central African Republic; Darfur, Sudan; Uganda and the Democratic Republic of Congo. Four suspects have been arrested and one has appeared voluntarily at the Court. The ICC is also monitoring at least seven other situations on four continents.

FOR MORE INFORMATION: Experts from Kenyan and international non-governmental organizations are listed on the following pages for comment and background on these developments. See <http://iccnow.org/> for more.

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