

COMMUNIQUE

Prosecutor is given authorisation to open an investigation in Kenya

Paris, Kenya, April 1, 2010 - The FIDH and its member organisation, the Kenya Human Rights Commission (KHRC), welcome the decision rendered yesterday by the judges of Pre-Trial Chamber II of the International Criminal Court (ICC) authorising the Prosecutor to open an investigation into the crimes committed during the 2007/2008 post-election violence in Kenya. Given the issues at stake and the fact that threats to key witnesses have already been registered, FIDH and KHRC urge all actors involved to reinforce efforts directed at strengthening protection of victims and witnesses. In addition, FIDH and KHRC call upon the ICC Prosecutor to consider using his *proprio motu* powers in other situations where intervention of the Court might be needed.

The Prosecutor sought authorisation from the judges, in accordance with Article 15 of the Statute, on 26 November 2009. In a majority decision, the judges authorised the Prosecutor to investigate crimes against humanity committed in Kenya between 1 June 2005 (date of entry into force of the Rome Statute for Kenya) and 26 November 2009.

FIDH and KHRC consider that ICC investigations into the post-election violence are vital in combating impunity for these crimes and ensuring those individuals most responsible are brought to justice, all the more so since no genuine investigations have been conducted by the Kenyan Judiciary into the dramatic events. FIDH and KHRC hope that the investigation will also have a deterrent effect with regard to future violence, in particular around the upcoming 2010 referendum on the new Constitution and 2012 presidential elections.

At the same time, recalling that there have been no effective national proceedings, FIDH and KHRC call upon Kenya to set up mechanisms at the national level to complement ICC proceedings. This is of particular importance given that the ICC will only prosecute those individuals who are the most responsible. Therefore, it is for the Kenya to ensure that perpetrators that do not fall within the jurisdiction of the Court are brought to justice, that impunity is brought to an end and that victims have access to justice and reparations.

Given the various reports about threats and harassment of witnesses, victims and human rights defenders, and the security issues that may arise during the course of the investigation, FIDH and KHRC consider it of the utmost importance that satisfactory protection measures are in place. Therefore, FIDH and KHRC call upon the ICC to reinforce protection measures for witnesses and victims who may be at risk, and upon the Kenyan government to strengthen local protection mechanisms.

Finally, FIDH and KHRC recall that this is the first situation in which the Prosecutor has used his powers to request authorisation to open an investigation on his own initiative. FIDH and KHRC welcome this initiative and call upon the Prosecutor to consider using his *proprio motu* powers in other situations around the world where intervention of the Court might be needed.

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