



THE KENYAN SECTION OF THE INTERNATIONAL COMMISSION OF JURISTS

Press Statement - Let the ICC Be

President Kibaki, acting in his role on the East African Legislative Assembly (EALA), has launched yet another blatant attempt to circumvent the ICC processes, this time through the East African Community. Once again, the Kenyan government has prioritized four individuals (Uhuru Kenyatta, William Ruto, Francis Muthuara, and Joshua Sang) over the interests of the thousands of victims that were killed, raped, beaten, or evicted, over the interests of the millions of Kenyan citizens that want peace and stability, and now, over the interests of the entire East African Community.

The EALA passed a resolution to expand the jurisdiction of the East African Court of Justice to include criminal jurisdiction, including crimes against humanity. ICJ Kenya believes that this development may possibly be a very positive development in East Africa in the fight for greater accountability and the end of impunity. Unfortunately, the manner in which the changes to the regional court are being done betray a fundamental lack of understanding about the International Criminal Court, about the East African Court of Justice, and about the legal aspects of criminal jurisdiction and admissibility.

The International Criminal Court (ICC) processes, which are now taking the four accused Kenyans to trial, exert Universal Jurisdiction over a Criminal Case, where the domestic (Kenyan) court processes have been found to be unable or unwilling to prosecute the matter. The Kenyan Government was given a chance to set up a criminal mechanism to deal with the 2007 post-election violence cases. They failed. The Kenyan Government took every chance to challenge the admissibility and jurisdiction of the ICC to try the four accused. Every attempted challenge failed. Now, the Kenyan Government is trying to 'transfer' the cases to the East African Court of Justice. This action will also fail, on the simple facts that the East African Community, including the EALA and the East African Court of Justice, is not a 'State', is not a party to the Rome Statute of the ICC, and has no authority or standing with the ICC and its processes.

Additionally, the East African Court of Justice, as a regional mechanism for justice, was never designed to prosecute individuals for criminal matters. It is primarily a body for resolving disputes involving East African Nations. Expanding the Court to include Criminal Jurisdiction is a fundamental change to its nature and character. This is not necessarily a bad thing. However, giving a one-month deadline, without any plans to hire prosecutors, build new buildings to detain accused persons, hire administrative staff, or any other logistical plans is a recipe for failure.