

A Cause for Justice or Quagmire

ICC Practice and Precedent: The Case of Uhuru Kenyatta

A Comment From: Maria Namuma Simiyu, Kenya, PROLAW 2013-2014

The violence that engulfed Kenya after the announcement of the results of the presidential elections on 30 December 2007 resulted in the death of about 1,133 Kenyans, 600,000 forceful evictions, destruction of property worth millions of shillings and sexual violence on women, men, and children.¹

However, no measures were implemented to ensure accountability for human rights violations, including possible crimes against humanity committed in the post election violence by various perpetrators. Consequently, the prosecutor of the ICC proceeded to ask permission from Pre-trial Chamber II of the ICC to initiate investigations.² However questions arose whether he conducted his own investigations or solely relied on investigative reports:³

The Prosecutor preferred charges of crimes against humanity in case 1 against William Samoei Ruto, Henry Kosgey,⁴ and Joshua Arap Sang and in case 2 against Uhuru Kenyatta, Francis Muthaura, and Hussein Ali.⁵ On 23 January 2012, the trial chamber, confirmed the charges against Mr. Ruto and Mr. Sang in case 1, and dismissed that against Mr. Kosgey.⁶ In case 2 charges against Mr. Uhuru, and Mr. Muthaura were confirmed and that against Mr. Ali dismissed.

Three years down the line, the much awaited ICC proceedings have shocked many, as a score of witnesses have since pulled out of the case (not as surprising to Kenyans). This has left the ICC in a confused state, as the prosecutor cries foul over witnesses bribery and intimidation. The underlying question therefore is whether the evidence contained in the reports is sufficient to exonerate the current accused: Mr. Uhuru Muigai Kenyatta. It will be interesting to see how the rule of law is applied in this case; acts against humanity were indeed committed in Kenya at the dawn of the 2007 post election violence. Everyone awaits patiently for the outcome of the case, and many wonder about the plight of the many, still displaced in camps, and apprehensive of the continued tribal tensions in the various regions of Kenya.

Edited by: Venera Ramaj, Kosovo, PROLAW 2013-2014

¹ See Report by the Commission of Inquiry into post election violence. This Committee was chaired by retired judge of the Court of Appeal of Kenya, Justice Phillip Waki, and was commissioned by the President of Kenya His Excellency president Mwai Kibaki to inquire into the causes and outcome of post election violence.

² See The Report by Kenyans for Peace with Truth & Justice, special report published in July 2010, p.5-6. For full version of the report visit www.africog.org.

³ See article by the Kenya Monitor titled: Did Moreno-Ocampo rely only on Waki and KNCHR reports for Kenya cases, October 31, 2011. Which cites the Report by the commission of inquiry into Post Election Violence and the Report by the Kenya Human Rights Commission (KNHCR) on Post Election Violence.

⁴ As defined under Article 7 of the Rome Statute of the International Criminal Court. The suspects were charged on 6 counts: charges of crimes against humanity of murder, deportation or forcible transfer of population, and persecution.

⁵ 10 counts: charges of crimes against humanity of murder, deportation or forcible transfer of population, rape and other forms of sexual violence, other inhumane acts and persecution.⁵

⁶ See Ruling where the Trial judge Ekaterina Trendafilova cited that:

“The chamber is tasked by law only to evaluate the strength of the prosecutor’s case at this pre-trial stage, that is to determine whether the prosecutor presented enough evidence before the chamber to confirm the charges.”...”The standard required by law is that there are substantial grounds to believe that the crimes were committed and that the suspects were responsible for them.”