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Kenya must comply with ICC summons on post-election violence

Amnesty International has urged the Kenyan authorities to ensure that government officials suspected of being implicated in post-election violence in 2008 comply with a summons from the International Criminal Court (ICC).

The ICC yesterday issued two summonses to six Kenyans including the Deputy Prime Minister and the former chief of police, but the Kenyan government is trying to get the case deferred.

"Those allegedly responsible for human rights violations in Kenya in 2008 cannot continue to dodge justice," said Erwin van der Borgh, Amnesty International's Africa director.

"The Kenyan authorities must cooperate with the ICC, rather than persisting with attempts to have the trials in Kenya."

The six suspects include Deputy Prime Minister Uhuru Kenyatta, former Higher Education Minister William Ruto, head of the Civil Service Francis Muthaura and former police chief Mohammed Hussein Ali.

They are accused of crimes against humanity alleged to have been committed during the violence, which followed the disputed December 2007 election between President Mwai Kibaki and rival Raila Odinga, who is the current prime minister.

The crimes set out in the decision of the Pre-Trial Chamber of the ICC include murder, forcible transfer of population, rape, persecution and other inhuman acts.

However, the Kenyan government is calling on the UN Security Council to request that the ICC defers the case.

"Any Security Council decision to defer the ICC's investigation would constitute political interference with the justice process and could result in impunity," said Erwin van der Borgh.

"The Kenyan authorities must comply with the summons of the six named suspects, as well as ensuring that other individuals implicated in human rights violations are brought to justice."

Background

On 8 March 2011 the Pre-Trial Chamber of the ICC issued two summonses to appear for six Kenyan citizens for their alleged roles in the 2007-2008 Kenyan post-election violence. This decision follows the ICC Prosecutor's applications to the Court, filed in December 2010, for summonses to appear of these six individuals on the basis that they are responsible for crimes against humanity alleged to have been committed during the violence.

The Pre-Trial Chamber requires the suspects to appear before the Court on 7 April 2011 for an initial hearing - a process whereby the Pre-Trial Chamber shall satisfy itself that the six persons have been informed of the crimes which they are alleged to have committed and of their rights under the Rome Statute.

Amnesty International is aware that the Kenyan government is currently in the process of formally seeking a UN Security Council's consideration of a deferral on the basis of Article 16 of the Rome Statute. The organization is of the view that the Security Council cannot "request" the Court to defer an investigation or prosecution under Article 16, unless it is acting under Chapter VII of the UN Charter.

Under Article 19 of the Rome Statute the Kenyan government may apply to the ICC on the basis that it is able and willing genuinely to investigate the crimes alleged to have been committed by the six persons summoned to appear. The six Kenyan citizens are also allowed to challenge the admissibility of the case or the jurisdiction of the ICC. However, although Kenya has enacted implementing legislation defining the crimes in the Rome Statute as crimes under international law, this legislation (The International Crimes Act) is prospective only and does not cover the period of the crimes listed in the summons. In addition, no steps have been taken so far to establish a credible local judicial process that would have jurisdiction over the six. This failure is what has left the Prosecutor of the ICC with no option but to act in relation to the Kenyan case.