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Kenya: Post-election violence suspects must be brought to justice

The Kenyan government has failed to implement a fair and credible judicial process to try those accused of carrying out human rights violations, including possible crimes against humanity, during last year's post-election violence, said Amnesty International.

Amnesty International voiced its dismay at the process following a statement issued yesterday by the Prosecutor of the International Criminal Court (ICC) that he will seek to open an investigation into post-election violence in Kenya.

"The Kenyan government has left the ICC no option but to open an investigation by its failure to do so itself," said Godfrey Odongo, Amnesty International's East Africa researcher.

"Kenya has failed to define the crimes against humanity committed by members of all parties during the elections last year as crimes under national law. By doing so, it has opened the door to an ICC investigation and prosecution."

Kenya enacted the International Criminal Court Act, 2008, defining crimes against humanity and other crimes under international law as crimes under Kenyan law, but only if committed after January 2009.

That law also provides for cooperation with the ICC, but permits the Attorney General, a political official, broad discretion to refuse to cooperate with the Court.

"Kenya seems unwilling and unable to investigate and prosecute those responsible for the violence, particularly those at the highest level in political parties and in the government," said Godfrey Odongo.

The country has failed to amend the Constitution to permit the establishment of a special court that could try some of those suspected of responsibility for possible crimes against humanity during the elections last year.

The ICC has only a limited capacity to investigate and try persons suspected of crimes against humanity, and Kenya has a duty to ensure effective prosecution at the national level to put an end to impunity for the perpetrators of these crimes.

Following the enactment of the Truth Justice and Reconciliation Act, 2008, there is now a Truth, Justice and Reconciliation Commission (TJRC) in place and the TJRC has indicated it will start hearings by mid next year.

However to date there is no clear government policy on how any local judicial processes to try persons suspected of crimes committed during the violence would be complementary to the ICC process and the

ongoing truth, justice and reconciliation process.

“A Justice, Truth and Reconciliation Commission can begin to establish the truth about what happened during the terrible weeks following the election – but it cannot determine guilt or innocence of those accused, which remains an obligation of the Kenyan judiciary,” said Godfrey Odongo.

Notes to editors

In July, the government formally announced that it would carry out accelerated police, prosecution and judicial reforms to ensure investigation and prosecution of perpetrators. However no time lines were provided for these reforms which have not been affected. At the time, the government also announced that it would not support the establishment of a Special Tribunal specifically to try the crimes and human rights violations committed in the post-elections violence.

A private members Bill seeking to re-introduce a constitutional amendment and the enactment of a Special Tribunal remains pending in Parliament.