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UN: Victims' right to justice must take priority at talks over ICC trials on Kenya

The United Nations Security Council must not lose sight of the victims' right to obtain justice for the horrific crimes that took place in Kenya's post-election period nearly six years ago, Amnesty International warned ahead of talks on Thursday.

The UN Security Council is due to host an informal dialogue on the issue with representatives of Kenya and the African Union (AU). It comes after the AU's request earlier this month for a deferral of the ICC trials of Kenyan President Uhuru Kenyatta and Deputy President William Ruto for their alleged role in crimes against humanity during the 2007/2008 post-election violence.

"A deferral of the ongoing International Criminal Court trials of Kenya's leaders would send a dangerous message that the international community does not support justice for the victims of war crimes and crimes against humanity," said Netsanet Belay, Africa Programme Director at Amnesty International.

"UN Security Council members must not back down on the principle that victims of the world's most serious crimes have a right to obtain justice. Kenya's authorities have repeatedly proven they are unable or unwilling to deliver justice in these cases – so the ICC trials must be allowed to proceed without further hindrance."

The AU's letter on 12 October requesting a deferral said the delay would provide "... the time required for the enhancement of the effort aimed at combating terrorism and other forms of insecurity in the country and the region."

It was referring to the violent siege on Westgate Mall in the Kenyan capital Nairobi between 21 and 24 September. The attack, allegedly carried out by the Somali Islamist armed group al-Shabab, claimed at least 68 lives and left more than 175 injured.

Immediately following the Westgate Mall attack, the ICC granted Deputy President Ruto a temporary adjournment of his trial to carry out his official duties back in Kenya. The Court has also said it will allow the accused to be absent from the court in exceptional circumstances.

"These decisions reflect that the ICC is balancing the need for speedy and fair trials as well as the interests of victims and witnesses on the one hand, with the rights and responsibilities of the two accused on the other," said Netsanet Belay.

Amnesty International believes that a deferral of the Kenyan leaders' trials would set a dangerous precedent for international justice.

"Deferring or otherwise delaying the trials of Kenyatta and Ruto would be a disastrous setback for the victims. It would send a dangerous message that future trials can be derailed for political interests," said

Netsanet Belay.

“A deferral now would fuel impunity and incentivize senior politicians to never leave office if they have been suspected of crimes under international law. It would imperil the very foundations of the system of international justice created when the ICC was established.”

The organization urged members of the UN Security Council to encourage the government of Kenya to continue to engage and cooperate fully with the ICC and to ensure the trials continue without undue delay.

Background

The UN Security Council is able to defer International Criminal Court proceedings for one year under Article 16 of the Rome Statute which governs the Court.

Kenya asked the UN Security Council to defer the cases against President Kenyatta and Deputy President Ruto in May 2013, and the African Union filed a new request on 12 October 2013.

More than 1,000 people were killed and some 600,000 displaced after violence rocked Kenya following the country's presidential and parliamentary elections in late 2007.

Violence erupted between groups supporting Mwai Kibaki of the Party of National Unity (PNU), who was declared the winner of the presidential elections and his main rival Raila Odinga, leader of the Orange Democratic Movement (ODM) and was particularly concentrated in Kenya's Rift Valley and in the west of the country.

President Kenyatta and Deputy-President Ruto, who were both senior political figures at the time of the post-election violence, are accused of crimes against humanity including murder, forcible population transfer, and persecution. President Kenyatta is also accused of responsibility for rape and other inhumane acts – including forced circumcision and penile amputation – carried out by the Mungiki, a criminal gang allegedly under his control.

For further information, please see Amnesty International's open letter to the UN Security Council:
<http://www.amnesty.org/en/library/info/AFR32/010/2013/en>