



18 April 2011

STATEMENT

Kenya: Political Leaders Must Promote Inter-Ethnic Understanding

ARTICLE 19 reminds Kenya's political leaders to promote intercultural understanding through their speeches and actions by refraining from making statements that undermine equality and fuel inter-ethnic tensions. The responsibilities of political leaders are especially vital at this time of heightened tensions in Kenya surrounding two ongoing cases against six prominent Kenyans before the International Criminal Court (ICC).

Introduction

ARTICLE 19 is concerned about the escalating levels of inter-ethnic tensions in Kenya. This tense atmosphere stems from discussions currently taking place in the country relating to two ongoing cases against six prominent Kenyans at the ICC as well as recent comments made by Deputy Prime Minister Uhuru Kenyatta and former Education Minister William Ruto – at recent rallies and in the media. Comments made by some members of parliament attending a rally against the ICC process on Monday 4 April and on Monday 11 April have also contributed to fuelling tensions within the country.

International Criminal Court: process

The two ongoing cases against six Kenyans accused of having committed crimes against humanity have attracted a huge degree of interest in Kenya, and beyond. The so-called "Ocampo Six" are accused of being the main perpetrators of the 2007-2008 post-election violence that claimed more than 1,300 lives and forcefully displaced over 650,000. They include some of the most powerful people in the country such as Uhuru Kenyatta, Deputy Prime Minister, finance minister, the son of Kenya's first president, Jomo Kenyatta, and the perceived leader of the Kikuyu tribe; Francis Muthaura, head of the public service and Cabinet Secretary; William Ruto, the former education minister and the perceived leader of the Kalenjin ethnic group; and Hussein Ali, the former policy chief. Each of the "Ocampo Six" maintains their innocence.

The ICC issued summonses in relation to each of the six individuals following requests by the ICC Prosecutor in December 2010. The first three defendants – William Ruto and Henry Kosgey, both until recently cabinet ministers, parliamentarians and senior members of the Orange Democratic Movement, and Joshua Sang, the head of KASS FM, a radio station – are accused of committing crimes against humanity. The charges include murder, forcible transfer and persecution of perceived supporters of President Mwai Kibaki's Party of National Unity.

The three remaining defendants – Francis Muthaura, Uhuru Kenyatta, and Hussein Ali, who was chief of police during the violence – are accused of committing crimes against humanity, including through murder, forcible transfer of population, rape and other forms of sexual violence, and persecution by employing the services of a known criminal gang called Mungiki, to carry out attacks against perceived Orange Democratic Movement supporters. They are also accused of instructing the police not to interfere with these attacks or bring the perpetrators to justice.

The ICC's involvement in the "Ocampo Six" case stems from the failure of Kenya's coalition government to set up a credible local tribunal to try those responsible for the ethnic attacks during the post-election violence in 2007-2008, which had its roots in politically inspired violence of earlier decades dating back to the independence, in 1963.

The Kenyan government has attempted to challenge the ICC prosecutions over the admissibility of the case arguing that justice can be dispensed locally. However, Kenya's justice system has failed to hold to account any of the perpetrators of the post-election violence in any of the over 3500 cases reported and under investigation.. The Kenyan government has also appealed to the UN Security Council, which has refused to intervene, to defer the international charges against the "Ocampo Six" for a year. In sharp contrast to the attitude of their government, most Kenyans support the ICC process. A poll published on Tuesday 5 April 2011 by the research firm Synovate indicated that 61% of Kenyans wanted the trials to proceed at the Hague.

The ICC has set the confirmation of charges hearing in the cases of Ruto, Kosgey and Sang for 1 September 2011 and in the cases of Muthaura, Kenyatta and Hussein Ali for 21 September 2011.

Escalating inter-ethnic tensions

Although four of the six suspects have kept a relatively low profile since being named by the ICC Prosecutor in December 2010, Kenyatta and Ruto have made highly publicised speeches at rallies and "prayer tours" around the country in an attempt to discredit the ICC process and to cause public disaffection against Raila Odinga.

These rallies have transformed into venues for ethnic mobilisation and recall the increasing tensions that led up to the 2007 elections. Although Kenyatta and Ruto deny that their speeches spread ethnic hatred, it is apparent that their speeches which "abuse, ridicule and provoke others ... sow the seeds of discord that can easily manifest themselves in violence" and a new wave of bloodshed in Kenya. The situation has prompted the country's leading newspaper, *The Daily Nation*, to argue: "unless checked, these politicians will lead this country into anarchy" (Editorial, *The Daily Nation*, 4 April 2011).

The ICC itself has indicated its concern about the dangers of such speeches upon a new bout of violence in Kenya. At the pre-trial hearing of Ruto, Kosgey and Sang, Judge Ekaterina Trendafilova indicated that: "It came to the knowledge of the chamber by way of following some articles in the Kenyan newspapers that there are some movements towards re-triggering the violence in the country by way of using some dangerous speeches." Judge Trendafilova said that such activities were a breach of a key condition imposed on the suspects when the summonses were issued on 8 March 2011, although she did not single out any specific individuals. Failure to heed

the warning of the ICC, however, could lead to the replacement of the summonses to appear with arrest warrants for those found in breach of the conditions.

In defiance of the ICC warning, supporters of Kenyatta and Ruto have subsequently indicated that these men will continue to speak out against the ICC and their cases. The supporters also indicate that Kenyatta, Ruto, the other members of the Ocampo Six and the supporters themselves should be free to talk as they wish.

Responsibilities of Political Figures and the Media, Obligations on the State

ARTICLE 19 reminds all state and political actors in Kenya that the rights to freedom of expression and equality are universal, interdependent and indivisible human rights. Put differently, these rights are mutually reinforcing and can only be properly realized if they are promoted at the same time.

ARTICLE 19 reminds politicians and other leadership figures – including the “Ocampo Six” – that they have responsibilities to avoid making statements that promote discrimination on ethnic grounds or undermine equality in Kenya. These political figures should instead take advantage of their positions to promote intercultural and inter-ethnic understanding, including by contesting where appropriate, discriminatory statements or behavior.

Furthermore, ARTICLE 19 recommends that Kenyan media should, take care to report in context and in a factual and sensitive manner whilst ensuring acts of discrimination and the harm caused by them are brought to the attention of the public. The media should also avoid unnecessary references to ethnicity and other group characteristics that may promote intolerance, but take steps to ensure that their workforces are diverse and they address issues that concern all ethnic groups.

The responsibilities of political and other leadership figures and the media have been elaborated upon in the *Camden Principles on Freedom of Expression and Equality*. ARTICLE 19 draws attention to the *Camden Principles* as they are especially relevant to the situation in Kenya at this time.

NOTES TO EDITORS:

- For more information please contact: Henry Maina, Director, ARTICLE 19 Kenya henry@article19.org or Mona Samari, Senior Press Officer ARTICLE 19, + 44 207 324 2510 or email mona@article19.org
- For ARTICLE 19’s Statement welcoming the issue for summonses made by the ICC Prosecutor see <http://www.article19.org/pdfs/press/justice-through-truth-and-transparency-protecting-the-rights-of-survivors-of.pdf>
- For the Camden Principles on Freedom of Expression and Equality see <http://www.article19.org/pdfs/standards/the-camden-principles-on-freedom-of-expression-and-equality.pdf>
- ARTICLE 19 is an independent human rights organisation that works around the world to protect and promote the right to freedom of expression. It takes its name from Article 19 of the Universal Declaration of Human Rights, which guarantees free speech.