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The ICC Intervention in Kenya

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SUMMARY POINTS

- Kenya's March 2013 elections will be the most complex the country has ever faced.
- The International Criminal Court's (ICC) indictment of presidential candidate Uhuru Kenyatta and his running mate William Ruto has boosted their popularity among parts of the Kenyan electorate that dispute ICC allegations that the post-election violence of 2007–08 was pre-planned by organized ethnic networks.
- The Rome Statute, which established the ICC, removes the immunity that a serving head of state might otherwise enjoy under national or international law. As Kenya is party to the Rome Statute, even if Kenyatta and Ruto are elected as president and vice president, they will still be subject to the rulings of the court.
- The ICC's requirement for defendants to attend hearings at The Hague on a full-time basis would severely impede the ability of an indicted elected official to deploy the duties of their office. In past cases where heads of state or government have been indicted by international courts, they have stepped down from their positions of authority while their trials take place.
- It is not possible to predict how long the ICC trials of Kenyatta and Ruto will take, but past cases at the court have taken at least three years to complete. There is a significant chance that the trials will still be an issue for Kenya's general elections in 2018.
- The case of Sudan demonstrates the difficulty that international partners face in maintaining normal economic and diplomatic relationships with countries whose head of state have been charged by the ICC.

KENYA'S ELECTIONS: 2007 AND 2013

Kenya's last general elections, held in December 2007, were followed by unprecedented inter-communal violence that erupted as anger over the conduct of the elections combined with longstanding problems such as a culture of impunity, the informalization of violence, social and spatial inequalities, communal narratives of historical injustice, high unemployment rates, and grievances over corruption and the monopolization of political power by a small number of elites. The violence left over 1,000 Kenyans dead and almost 700,000 displaced. In his role as chair of the African Union (AU) Panel of Eminent African Personalities, Kofi Annan led mediation efforts that resulted in a power-sharing agreement between President Mwai Kibaki's Party of National Unity (PNU) and the then-opposition Orange Democratic Movement (ODM). The agreement allowed Kibaki to stay on as head of state and created the position of prime minister for ODM leader Raila Odinga.

Kenya will again head to elections on 4 March 2013, and Kibaki will step down after completing two terms as president. The elections will be Kenya's first under its new constitution, which was inaugurated in August 2010. They will be more complex than any ballot previously held in Kenya. Citizens will have to vote for six posts, and there is a strong possibility of a run-off for the presidency. According to polls conducted in January 2013, 46 per cent of voters say that they will vote for the current Prime Minister Raila Odinga, who is running for the presidency on a Coalition for Reform and Democracy (CORD) ticket, while 43 per cent say they will support current Deputy Prime Minister Uhuru Kenyatta and the Jubilee Alliance in the elections.¹

The indictment of Kenyatta and his running mate, the leading Kalenjin politician William Ruto, by the International Criminal Court (ICC) for their alleged role in orchestrating post-election violence in 2007–08 has shaped debate during the campaigning for this year's polls. If elected as president and vice president, Kenyatta and Ruto's ICC charges could significantly impact Kenya's domestic politics, and also its international diplomatic and economic relationships.

Both CORD and the Jubilee Alliance have reason to believe that they can win the presidency. While some opinion polls suggest that Odinga has a substantial lead, Kenyatta's Jubilee Alliance has demonstrated high registration rates. The majority of the Kikuyu community is believed to support the Jubilee Alliance, and the Kikuyu have also historically turned out to vote in

¹ 'Presidential race too close to call – an inevitable runoff', Ipsos Synovate, 25 January 2013, <http://www.ipsos.co.ke/home/index.php/downloads>. The figures cited here discount those who said that they are not going to vote.

higher numbers than other ethnic groups in Kenya. If predicted voting patterns prevail in March 2013, then neither Odinga nor Kenyatta will win the presidency in the first round. If no party appeals the conduct of the first round of elections and there is a run-off for the presidency, its date will coincide with the opening of the trials of Kenyatta and Ruto at the ICC in The Hague. Like the 2007 elections, the 2013 elections are too close to call.

THE ROAD TO THE ICC

As part of the political negotiations that brought the post-election crisis of 2007–08 to an end, PNU and ODM officials agreed to establish several commissions of inquiry. This included a Commission of Inquiry into Post-Election Violence (CIPEV) answerable to the AU Panel of Eminent African Personalities. After drawing on existing documentation and conducting its own investigations, CIPEV concluded that, while the post-election violence, ‘was spontaneous in some geographic areas and a result of planning and organization in other areas’, in places ‘what started as a spontaneous violent reaction to the perceived rigging of elections later evolved into well organized and coordinated attacks’.² The commission also found that Kenya’s state security agencies had ‘failed institutionally to anticipate, prepare for, and contain the violence’³ and were themselves guilty of acts of violence and gross human rights violations.

The commission recommended that a special tribunal should be established with ‘the mandate to prosecute crimes committed’⁴ in order to overcome chronic impunity, which it deemed to be at the heart of post-election violence. Moreover, conscious of how successive governments in Kenya have failed to implement recommendations of commissions of inquiry in the past,⁵ CIPEV’s report included a safety clause stipulating that ‘in default of setting up the Tribunal, consideration will be given by the [AU Panel of Eminent African Personalities] to forwarding the names of alleged perpetrators to the special prosecutor of the [ICC]’.⁶ Following a number of attempts to establish a special tribunal through the Kenyan parliament, and the emergence of the popular political slogan, ‘don’t be vague, let’s go to The Hague’, the names of

2 *Report of the Commission of Inquiry into Post-Election Violence, Republic of Kenya, 2008*, p.viii, http://www.communication.go.ke/Documents/CIPEV_FINAL_REPORT.pdf

3 *Ibid.*, p.vii.

4 *Ibid.*, p.ix.

5 *A Study of Commissions of Inquiries in Kenya, Africa Centre for Open Governance, 2007*; *Lest We Forget: The Faces of Impunity in Kenya*, Kenya Human Rights Commission, 2011

6 *Report of the Commission of Inquiry into Post-Election Violence*.

those alleged to be most responsible for the post-election violence were passed to the prosecutor of the ICC in July 2009.

There are 121 states that are party to the Rome Statute, the treaty which led to the creation of the ICC in July 2002. Of these, 33 are African states. Kenya became a party to the Rome Statute on 15 March 2005, agreeing that from that date the court may investigate, prosecute and try individuals accused of offences that might constitute genocide, war crimes and crimes against humanity committed in the territory of Kenya, or by Kenyan nationals. However, the ICC can exercise its jurisdiction only in cases where a state is unwilling or genuinely unable to carry out the investigation or prosecution in accordance with the principle of complementarity.

On 26 November 2009, after analysing the information handed over by CIPEV, the Office of the ICC Prosecutor used its powers to initiate an investigation on its own initiative (*proprio motu*). This marked the first time an ICC investigation was launched without a referral from a state that is party to the Rome Statute or the United Nations (UN) Security Council. On 31 March 2010, the prosecutor's request to proceed with an investigation was authorized by a majority decision of the Pre-Trial Chamber (PTC), the panel of ICC judges that confirms indictment and issue arrest warrants or summons to appear.

THE TWO CASES

In December 2010 the ICC prosecutor at that time, Luis Moreno-Ocampo, identified six individuals as responsible for crimes against humanity carried out after Kenya's 2007 elections, with the alleged crimes falling into two separate cases. Charges against four of the original six accused were confirmed in January 2012 by a majority of the PTC judges.⁷ However, one of the three PTC judges issued a dissenting opinion, arguing that it was not clear that the alleged crimes against humanity were committed as part of a calculated 'organizational policy' to attack civilians, as stipulated in the Rome Statute.⁸ On 24 May 2012, The Appeals Chamber unanimously rejected the

⁷ In the Case of *the Prosecutor v. William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang*, No. ICC-01/09-01/11, Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute, 23 January 2012; In the Case of *the Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali*, No. ICC-01/09-02/11, Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute, 23 January 2012.

⁸ Id., Dissenting Opinion by Judge Hans-Peter Kaul; Article 7(2)(a) of the Rome Statute of the International Criminal Court, http://untreaty.un.org/cod/icc/statute/99_corr/2.htm; L. Muthoni Wanyeki, *The International Criminal Court's Cases in Kenya: Origin and Impact*, Institute for Security Studies, 2013.

defence's assertion that the alleged crimes do not qualify as crimes against humanity under the Rome Statute.⁹

Case one is *Prosecutor v. William Samoei Ruto and Joshua Arap Sang*. Ruto is alleged to be responsible as an indirect co-perpetrator (that is, he has been accused of committing crimes through another person) for the crimes against humanity of murder, forcible transfer and persecution. Joshua Arap Sang, an ODM-affiliated radio presenter, is alleged to have contributed to the commission of the crimes committed by a group of persons led by Ruto. These crimes were allegedly committed against PNU supporters as part of a plan to gain power in northern parts of Rift Valley Province, and to punish and drive out PNU supporters.

Case two is *Prosecutor v. Francis Kirimi Muthaura and Uhuru Muigai Kenyatta*. Francis Muthaura, former head of Kenya's civil service and close ally of President Kibaki, and Deputy Prime Minister Kenyatta are alleged to be indirect co-perpetrators of the crimes against humanity of murder, forcible transfer, rape, persecution and other inhumane acts. These crimes were allegedly committed to ensure that the PNU remained in power, and as part of planned revenge attacks against ODM supporters in Nakuru and Naivasha towns in the central Rift Valley. The two accused allegedly collaborated to mobilize Mungiki, a Kikuyu-led gang, to attack perceived ODM supporters.

Charges against two other suspects – the National Chairman of ODM, Henry Kiprono Kosgey (indicted as part of Case one), and former commissioner of the Kenya Police, Muhammed Hussein Ali (indicted as part of Case two), were rejected because the PTC found there was insufficient supporting evidence.¹⁰ Should new evidence come to light, the prosecutor could bring charges anew.

9 In the Case of *the Prosecutor v. William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang*, No. ICC-01/09-01/11 OA3 OA4, Decision on the appeals of Mr William Samoei Ruto and Mr Joshua Arap Sang against the decision of Pre-Trial Chamber II of 23 January 2012 entitled "Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute", 24 May 2012; In the Case of *the Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali*, No. ICC-01/09-02/11 OA4, Decision on the appeals of Mr Francis Kirimi Muthaura and Mr Uhuru Muigai Kenyatta against the decision of Pre-Trial Chamber II of 23 January 2012 entitled "Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute", 24 May 2012.

10 In the Case of *the Prosecutor v. William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang*, No. ICC-01/09-01/11, Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute, 23 January 2012; In *the Case of the Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali*, No. ICC-01/09-02/11, Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute, 23 January 2012.

The trials of Ruto, Sang, Kenyatta and Muthaura are due to start on 10 and 11 April 2013.¹¹

PROCEEDINGS AT THE ICC

On 31 March 2011, the Kenyan government challenged the admissibility of the cases before the ICC. It argued that the adoption of Kenya's new constitution and associated legal reforms had opened the way for Kenya to conduct its own prosecutions relating to the post-election violence. On 30 May 2011, the PTC rejected these challenges, arguing that the Kenyan government had yet to begin investigations into any of the cases before the ICC.¹² On 30 August 2011, the ICC Appeals Chamber confirmed the PTC's decision on the admissibility of the cases.¹³

The four accused have been allowed to remain at liberty pending trial. They will remain outside the ICC's custody provided that they attend their trials and refrain from interfering with witnesses. This has allowed Kenyatta and Ruto to campaign freely in the run-up to 2013's presidential elections. The ICC can issue an arrest warrant at any stage of the proceedings if the accused refuse to cooperate with it. The prosecutor has expressed concerns about increasing intimidation and interference of witnesses in Kenya, but no evidence linking this to the accused has been found.

11 In the Case of *the Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, No. ICC-01/09-01/11, Decision on the schedule leading up to trial, 9 July 2012; In *the Case of the Prosecutor v. Francis Kirimi Muthaura and Uhuru Muigai Kenyatta*, No. ICC-01/09-02/11, Decision on the schedule leading up to trial, 9 July 2012.

12 In the Case of *the Prosecutor v. William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang*, No. ICC-01/09-01/11, Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute, 30 May 2011; *The Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali*, No. ICC-01/09-02/11, Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute, 30 May 2011.

13 In the Case of *the Prosecutor v. William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang*, No. ICC-01/09-01/11, Judgment on the appeal of the Republic of Kenya against the decision of Pre-Trial Chamber II of 30 May 2011 entitled "Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute, 30 August 2011; *The Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali*, No. ICC-01/09-02/11, Judgment on the appeal of the Republic of Kenya against the decision of Pre-Trial Chamber II of 30 May 2011 entitled "Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute, 30 August 2011.

ABOUT THE ICC

Immunities

Under the Rome Statute, state officials are not immune from prosecution for international crimes. Even if an accused individual holds an official position such as head of state, parliamentary or government member, elected representative or government official, this does not free them from criminal responsibility.¹⁴ The Rome Statute also removes the immunity that a serving head of state or government might otherwise enjoy under national or international law.¹⁵ Even the heads of states who have not accepted the jurisdiction of the ICC are not entitled to immunity under the Rome Statute, if a situation in that state is referred to the ICC by the UN Security Council. The ICC's indictment of the President Omar al Bashir of Sudan in March 2009 is a key example of this.

The ICC's position on immunities is in line with other international criminal courts. For example, the International Criminal Tribunal for Rwanda convicted the former prime minister of Rwanda, Jean Kambanda, and sentenced him to life imprisonment for genocide and crimes against humanity. The Special Court for Sierra Leone (SCSL) indicted Charles Taylor while he was president of Liberia. As a result of increasing pressure from the international community, Taylor resigned and was later surrendered to the SCSL. He was convicted and sentenced in 2012 to 50 years' imprisonment, but his appeal is still pending at the SCSL.

Additionally, the former vice president of the Democratic Republic of Congo, Jean-Pierre Bemba, is currently on trial at the ICC for alleged international crimes committed in the Central African Republic. He has remained in the custody of the ICC since his arrest. During his detention, he considered running for president in the DR Congo's 2011 elections, but later dropped this plan.

As a party to the Rome Statute, Kenya cannot invoke immunity to oppose the arrest, surrender and prosecution of the accused if they failed to show up for the trial at the ICC. If Kenyatta or Ruto were elected to the positions of president and vice president in Kenya's forthcoming elections, they would therefore still have to attend their trials at the ICC or face possible sanctions.

¹⁴ Article 27(1) of the Rome Statute of the International Criminal Court.

¹⁵ Article 27(2) of the Rome Statute of the International Criminal Court.

State cooperation with the ICC

Kenya's government is obliged to cooperate fully with the ICC in investigations and prosecutions of crimes within its jurisdiction. The ICC does not have its own police force and so the cooperation of states is essential to the arrest and surrender of suspects. When a state fails to comply with a request to cooperate, the court may refer the matter to the Assembly of States Parties for further action.¹⁶ The assembly is made up of representatives of all states which are party to the Rome Statute, and acts as an oversight body for the ICC.¹⁷ The assembly may recommend resolution of non-cooperation issues through diplomatic means, such as through 'good offices' intervention by the president of the assembly.¹⁸

Participation of victims in ICC trials

Victims are allowed to participate in the proceedings of ICC trials in two ways. They can either appear directly before the court (in person or video-link) or they can participate *in absentia* through a common legal representative. If the accused are convicted, the court may order reparations to victims. Reparation can take the form of compensation, rehabilitation or more symbolic methods such as outreach. These efforts can be made towards individuals or whole communities. If the court decides to order collective reparation, it may ask for compensation to be made through the ICC's Trust Fund for Victims.

THE ICC AND THE ELECTION CAMPAIGN

The ICC's intervention in Kenya has helped to shape political alliances ahead of the March 2013 elections. Kenyatta and his running mate and co-accused William Ruto were in opposing camps in the 2007 elections, but despite this they came together in the name of bringing peace between their Kikuyu and Kalenjin communities following the ICC's confirmation of charges against them.

The Jubilee Alliance has helped to bring the Kalenjin and Kikuyu communities together politically and while inter-communal narratives of injustice, mistrust, and stereotypes remain at the local level, the alliance has decreased the likelihood of Kalenjin-Kikuyu violence in 2013.

¹⁶ Article 87(7) of the Rome Statute of the International Criminal Court.

¹⁷ Article 112 of the Rome Statute of the International Criminal Court.

¹⁸ Resolution ICC-ASP/10/Res.5, Strengthening the International Criminal Court and the Assembly of States Parties, Annex: Assembly procedure relating to non-cooperation, ICC-ASP/10/20.

This is significant as the 2007–08 post-election violence – and targeted ethnic attacks that took place in the early 1990s – largely pitted Kalenjin in the Rift Valley against their Kikuyu neighbours. The ICC's intervention, along with new government regulations supported by civil society actors and international partners to closely monitor public statements and media reports for hate speech have acted as a deterrent against inflammatory speech and incitement. However, questions remain about whether some Kenyans have responded to this new context by turning to coded language and metaphors¹⁹ and by holding more closed-door meetings, rather than refraining entirely from all acts of hate speech and incitement.

A more negative impact of the ICC's involvement is the way that it has raised the stakes of winning and losing the 2013 elections, and has contributed to the division of Kenyan voters into two opposing camps characterized by a strong ethnic logic. For some Kenyans, the election has become a referendum on the ICC's intervention, and many who will vote for Odinga and CORD will partly do so as a rejection of the joint candidacy of Kenyatta and Ruto. Many regard the leadership of the Jubilee Alliance as a political marriage forged to protect the two indicted men from the ICC.

However at the same time, Kenyatta and Ruto have both gained popularity since the ICC's charges against them were announced. This is partly due to a commonly expressed opinion that the ICC's intervention is a political ploy by Odinga and his purported 'Western allies' to ensure the electoral victory of CORD. In this narrative, President Kibaki and Prime Minister Odinga are seen to bear greater responsibility for the 2007–08 post-election crisis. The idea that Kenyatta and Ruto have been targeted by the ICC as the result of malign political influences both within and outside Kenya draws strength from dissenting opinions at the ICC, and has placed great emphasis on the Luo background that US President Barack Obama's shares with Odinga.

Strong narratives have also developed at a community level. Within the Kalenjin community, for example, prominent arguments cast the ICC's charges against Ruto and Sang as an indictment of the whole community based on a disputed claim that the violence in the Rift Valley was organized prior to the 2007 election by a 'Kalenjin network'. References to the existence of such a network were made by the ICC's prosecutor when charges against Ruto and Sang were confirmed, but have been rejected by many at the local

¹⁹ *The Use of Coded Language and Stereotypes among Kenyan Ethnic Communities*, National Cohesion and Integration Commission, 2013.
<http://www.cohesion.or.ke/images/downloads/Media%20Brief-final.pdf>

level as being at odds with individual and collective experiences of the post-election crisis.

In turn, many in the Kikuyu community maintain that even if Kenyatta is guilty of organizing revenge attacks in central Rift Valley, these were acts of self-defence on behalf of the Kikuyu who were targeted by violence in other parts of Kenya after the 2007 election. This argument maintains that the ICC should therefore not be involved, and in fact that Kenyatta's alleged actions helped to end the violence and to force the principals to the negotiating table.

The ICC's intervention has also prompted much public debate about the role of foreign diplomats, international political commentators, media and international election observers in Kenya. The perception of some that such actors, along with the ICC, represent illegitimate external interference in Kenya's domestic politics has important implications for the way in which the involvement of international players might be received during the 2013 elections and beyond.

KENYA BEYOND MARCH 2013

If on 4 March 2013 no presidential candidate wins 51 per cent of the vote and at least 25 per cent of the vote in half of Kenya's 47 counties, then a run-off must be held within 30 days of the initial poll date. Any run-off in the presidential elections will coincide with the start of the trials of Kenyatta and Ruto at the ICC.

However, if an appeal against the election results is lodged after the first round of voting, a run-off could be delayed and take place approximately three weeks after the ICC trials have begun. While both scenarios would have significant implications for the electoral contest, the latter would potentially damage the ability of Kenyatta and Ruto to campaign if they are required to attend the ICC hearings in person.

If elected president and vice president respectively, the ability of Kenyatta and Ruto to carry out their official duties while attending trial at The Hague would undoubtedly be impeded, unless the court allowed them to be absent from the proceedings. The range and importance of the president and vice president's roles and duties in Kenya make this a serious concern.²⁰

²⁰ *Kenya's 2013 Elections*, International Crisis Group, Africa Report 197, 2013 <http://www.crisisgroup.org/~media/Files/africa/horn-of-africa/kenya/197-kenyas-2013-elections.pdf>

Such a situation shares some similarities with the March 2005 indictment of Ramush Haradinaj, then-prime minister of Kosovo, by the International Criminal Tribunal for the former Yugoslavia. Haradinaj had served as Kosovo's prime minister for 100 days, but stepped down after his indictment for the war crimes of cruel treatment, torture and murder. He was granted provisional release pending the trial and was allowed to appear in public and engage in political activities, but was required to stay in detention during his trial. After his acquittal in November 2012, Haradinaj resumed his political career in Kosovo as a leader of Alliance for the Future of Kosovo, one of the country's main political parties.

A victory for Kenyatta and Ruto might have implications for the levels of domestic and foreign economic investment in Kenya. It could also complicate the government's relations with Kenya's leading civil society organizations and the international community – many of whom have supported the ICC process. For example, the European Union has a policy of maintaining only essential contact with ICC indictees, and it is possible that any act of non-compliance with the ICC on Kenya's part could lead to some form of international sanction. However, if Odinga wins the presidency with CORD, it is not clear how he might deal with the ICC indictees. There is a possibility that he could try to gain domestic political mileage by insisting that Kenyatta and Ruto stand trial within Kenya or in East Africa, rather than at The Hague – playing to the argument that Kenya's judiciary is better equipped than the ICC to seek justice for the 2007–08 post-election violence.

One unintentional but potentially positive consequence of the ICC's intervention has been the increase in Kenya's engagement with regional and international bodies. For example, the government has used the AU to lobby other African states on the issue of non-cooperation with the ICC, and has also used its strong position within the Intergovernmental Agency for Development (IGAD).²¹

In combination with Kenya's new constitution, judicial reforms, and to a lesser extent, security sector reforms, the ICC's indictment of prominent members of the political elite has contributed to a general sense of change and reform. The ICC's involvement may therefore help to tackle a culture of impunity and contribute to a sense of reform both in the short and long term.

The issue of the ICC is likely to remain politically contentious in Kenya for many years to come. It is not possible to predict the length of its proceedings,

²¹ Wanyeki, *The International Criminal Court's Cases in Kenya*.

but to date only two trials have concluded at the court. Both took approximately three years to complete, and final appeals in both cases are still pending. In other international criminal courts such as the International Criminal Tribunal for Rwanda and the Special Court for Sierra Leone, appeal proceedings have taken a number of years, meaning that the cases of *Prosecutor v. William Samoei Ruto and Joshua arap Sang* and *Prosecutor v. Francis Kiriimi Muthaura and Uhuru Muigai Kenyatta* could be as much of an issue in Kenya's 2018 general elections as they are proving to be in 2013.

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