

Kenya: New Leadership Should Uphold Rights and Obligations Human Rights Watch 9
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President-elect Uhuru Kenyatta and his deputy, William Ruto, who are being sworn in April 9, 2013, should ensure full cooperation with the International Criminal Court (ICC), Human Rights Watch said today. Their new government should also uphold and protect the bill of rights in Kenya's constitution, Human Rights Watch said.

"Kenyatta and Ruto should be held to their promises to attend their trials before the ICC," said Elizabeth Evenson, senior international justice counsel at Human Rights Watch. "As president of an ICC member country, Kenyatta should also ensure that his government provides the cooperation it owes the ICC and the support it needs. Victims of Kenya's post-election violence and their families have already waited more than five years for justice."

Kenyatta and Ruto, along with Ruto's co-accused, Joshua arap Sang, a former radio host, face trials before the ICC on charges of committing or contributing to the commission of crimes against humanity during Kenya's election-related violence in 2007 and 2008. Kenyatta and Ruto have voluntarily been attending ICC proceedings in their cases. As a state party of the court since 2005, Kenya is obligated to cooperate.

Witness protection in the ICC cases is a key concern, Human Rights Watch said. The ICC prosecutor has called the scale of witness interference in the Kenya cases "unprecedented," referring to pressure on witnesses and their families. The prosecutor indicated that one factor in the decision to drop charges against Kenyatta's former co-accused, Francis Muthaura, in March was that witnesses were afraid to come forward. Other factors included a lack of government cooperation and that a key witness had recanted parts of his testimony and admitted accepting bribes. (...)

In a victory speech following the March 4 presidential election, Kenyatta said that his government would live up to its obligations to international institutions. Kenya has permitted the court to carry out some activities within Kenya. But the ICC prosecutor has indicated that Kenya has stalled on requests for assistance in accessing documents, and did not press for the appointment of judges to resolve a stalemate over whether senior police officials could be interviewed. The new administration should make every effort to reverse such obstructions, Human Rights Watch said.

Human Rights Watch also called on the new government to uphold the bill of rights enshrined in the country's 2010 constitution and make progress on needed reforms. Before the election, Human Rights Watch identified gaps in implementation of the reform agenda, particularly in the police force. Intimidation of civil society groups increased in the periods before, during, and following the March 4 elections.

"It is essential for the Kenyan government to uphold the constitution's bill of rights and safeguard the space open to civil society, media, and independent voices," Evenson said. "Kenyan authorities should make sure that the government investigates and prosecutes any

threats against civil society activists, media, and ICC witnesses that amount to violations of national law.”

The ICC prosecutor began investigations into Kenya’s election-related violence in 2007 and 2008 after Kenya’s authorities failed to bring those responsible to account. Trial in the Ruto and Sang case is scheduled to start in late May, while the start of Kenyatta’s trial has been set for July. After the case against Muthaura was withdrawn, Kenyatta lodged a petition before the judges, as yet undecided, to have the case against him dropped.

In advance of the inauguration, a Sudanese newspaper reported that President Omar al-Bashir had planned to attend. Kenyan government officials issued conflicting statements as to whether al-Bashir was invited. Al-Bashir is sought by the ICC, accused of genocide, crimes against humanity, and war crimes committed in Sudan’s Darfur region. A Kenyan government spokesperson indicated that if al-Bashir attends Kenya cannot arrest him given that he is a sitting head of state. But there is no head-of-state immunity under the Rome Statute, the ICC treaty, and Kenya is obligated to arrest al-Bashir. A domestic arrest warrant was first issued against al-Bashir in Kenya in 2011 on the basis of its national law implementing the Rome Statute.

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