

Justice for Kenya

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Kofi Annan 9 September 2013 ON Tuesday, the eyes of Kenya will be firmly fixed on The Hague, where the trial of the country's deputy president, William Ruto, and his co-defendant, Joshua arap Sang, an influential radio executive, is set to begin before the International Criminal Court. They have been charged with crimes against humanity for their alleged roles in the violence that rocked Kenya in late 2007 and early 2008. Kenya's president, Uhuru Kenyatta, will face similar charges in a related case set for trial in November.

As the world reels from atrocities committed in Syria and Egypt, it may be easy to forget that nearly six years ago, it was Kenya that was on fire. In the wake of a contested election result, mobs killed and raped, and torched homes and businesses. Police officers shot hundreds of unarmed protesters. At least 1,100 people died, many more were injured and 600,000 were displaced from their homes.

But Kenyans have not forgotten. Nor have those who intervened to support them in their time of need.

In 2008, I was appointed chairman of the African Union Panel of Eminent African Personalities and mediated an agreement to end the crisis. I arrived in Nairobi as the violence was intensifying, prompting fears that the country could ignite into civil war. The first aim of the mediation was to stop the violence, which it did. Recognizing the complex roots of the conflict, the agreement also called for establishing responsibility for the crimes committed and for constitutional, electoral and security-sector reforms, so that the cycle of violence would not be repeated.

One concrete outcome was the Waki commission, a national inquiry into the postelection violence. It concluded that the violence was not just spontaneous, but, in at least some areas, a result of planning and organization, often with the involvement of politicians and businessmen. This was not surprising — politicians hungry for power have long exploited Kenya's ethnic divisions with impunity.

To break this cycle, the commission recommended that Kenya form a special tribunal to bring to account those most responsible. But the commission also foresaw that Kenya's entrenched political interests might undermine justice, so in the event of inaction, the matter was to be turned over to the International Criminal Court. Kenya's president, prime minister and parliament agreed to these terms. The commission also gave me a sealed envelope with the names of high-level people allegedly responsible for the violence.

Sadly, the commission proved prescient. Kenya's leaders initially agreed to establish a special

tribunal, but proposals for a court were defeated twice by Parliament. It was on the back of these broken promises for justice that, in July 2009, I complied with the commission's recommendations and handed over the sealed envelope to the I.C.C. prosecutor. In the absence of national steps toward accountability, the prosecutor decided, with the approval of the judges of the court, to open investigations.

There have been active efforts to paint the I.C.C. cases as an assault on Kenya's sovereignty. The supporters of Mr. Kenyatta and his running mate, Mr. Ruto, who won the presidential election earlier this year despite the charges against them, have spoken often of the meddling of "foreign powers."

But the record is clear and there should be no doubt: it was the Kenyan government's own failure to provide justice to the victims and their survivors that paved the way to the I.C.C., a court of last resort. These trials also do not reflect the court's unfair targeting of Africa, as has been alleged. Instead they are the first steps toward a sustainable peace that Kenyans want, deeply, and can only be assured of if their leaders are not above the law.

A long road lies ahead. The I.C.C. cases are not a comprehensive solution to Kenya's impunity crisis. Kenya's authorities must also act to investigate and prosecute additional cases connected to the 2007-8 violence. Making clear that no one is above the law is essential to combat decades of the use of violence for political ends by Kenya's political elite.

This is important not only for the victims of the past, but also for Kenya's future. The 2013 elections avoided widespread conflict, but we should not mistake less violence for peace.

The underlying causes of Kenya's crisis are as real as ever and may resurface, since the core reforms that were identified during the mediation have stalled. I have continued to follow Kenya's progress, and there is no question that impunity remains one of the greatest sources of underlying tensions. If it is not checked, there may yet be future generations of victims in Kenya.

Mr. Kenyatta and Mr. Ruto pledged to cooperate with the court, but Parliament [voted last week](#)

to pull Kenya out of the I.C.C. The decision will have no impact on the two cases, and will not take effect for at least another year. Nevertheless, these political moves are an affront to the victims and to the courage that Kenya showed when it joined the court in 2005. In doing so, it became one of a growing community of states, including the majority of African countries, dedicated to tipping the balance in favor of justice and away from impunity. The people of Kenya should not back away from that courage now.

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