



Luis Moreno-Ocampo
Prosecutor

Kenya National Dialogue and Reconciliation Two Years On: Where Are We?

Statement

Nairobi

2 December 2010

EXCELLENCIES, LADIES AND GENTLEMEN,

IT IS A PLEASURE TO BE IN KENYA. AS THE PROSECUTOR OF THE INTERNATIONAL CRIMINAL COURT, I AM AN INDEPENDENT PART OF THE KENYAN JUSTICE SYSTEM. I HAVE TO SERVE THE ENTIRE KENYAN COMMUNITY. I HAVE A SPECIAL DUTY TO LISTEN TO THE VICTIMS. THE LAST TIME I WAS HERE, IN MAY, I HAD THE OPPORTUNITY TO MEET SOME OF THEM; I PAID A VISIT TO SOME NEIGHBOURHOODS. I ALSO MET WITH TRADITIONAL AND RELIGIOUS LEADERS; I MET LEADERS OF CIVIL SOCIETY. RECENTLY, MY TEAM WENT TO THE RIFT VALLEY. WE VISITED SOME OF THE PLACES WHERE THE VIOLENCE OCCURRED. TODAY, IT IS A PLEASURE FOR ME TO BE HERE AS PART OF THIS CONVERSATION. JUSTICE IS NOT A MATTER ONLY FOR A PROSECUTOR. JUSTICE REQUIRES A COLLECTIVE EFFORT.

I AM PARTICULARLY GRATEFUL FOR THE RESPECT KENYAN LEADERS HAVE DEMONSTRATED FOR MY INDEPENDENT ROLE. SINCE OUR FIRST MEETING, I HAVE BEEN IMPRESSED BY THE COMMITMENT OF PRESIDENT KIBAKI AND PRIME MINISTER ODINGA TO FIND SOLUTIONS TO PAST CONFLICTS AND TO LAY THE FOUNDATIONS FOR A NEW STYLE OF POLITICAL LEADERSHIP BASED ON RESPECT AND COOPERATION. AS PRIME MINISTER ODINGA SAID TODAY, THEY WILL DEAL WITH THE UNDERLYING REASONS FOR THE VIOLENCE.

THE GRAND COALITION IS SUPPORTED BY AN EVEN GREATER COALITION, A GLOBAL COALITION. THEY ARE NOT ALONE. THEY ARE SUPPORTED BY THE AFRICAN UNION. THEY ARE SUPPORTED BY THE STATES PARTIES OF THE ROME STATUTE. THEY ARE SUPPORTED BY THE INTERNATIONAL COMMUNITY AS A WHOLE. IN THE WORLD TODAY, REGIONAL ORGANISATIONS SUCH AS THE AFRICAN UNION ARE PLAYING A CRITICAL ROLE IN CONFLICT RESOLUTION. THE AU PANEL OF EMINENT AFRICAN PERSONALITIES IS A GREAT EXAMPLE OF THIS NEW TREND. DIFFERENT STATES PARTIES OF THE ROME STATUTE ARE OFFERING SUPPORT. GHANA AND TANZANIA ARE IMMEDIATE EXAMPLES. FROM OTHER MORE REMOTE REGIONS, LET ME MENTION COLOMBIA, WHICH IS OFFERING ITS EXPERIENCE ON VICTIMS REPARATIONS, THE UNITED KINGDOM WHICH MADE A SPECIAL FINANCIAL CONTRIBUTION TO PROTECT WITNESSES, GERMANY, WHICH IS PROVIDING TREATMENT FOR HIV/AIDS VICTIMS, AS WELL AS OTHERS, SUCH AS THE NETHERLANDS, WHICH IS SUPPORTING HUMAN RIGHTS DEFENDERS. SO KENYANS ARE NOT ALONE.

FINALLY, I WOULD LIKE TO THANK KOFI ANNAN FOR THIS OPPORTUNITY TO BRIEF YOU ON OUR JUDICIAL MANDATE, AND ALSO I WOULD LIKE TO THANK KOFI ANNAN FOR HIS LEADERSHIP AND COMMITMENT TO PEACE AND JUSTICE. KOFI ANNAN IS A GLOBAL LEADER. FOR EIGHT YEARS HE HAD THE HIGHEST INTERNATIONAL POSITION, AS SECRETARY-GENERAL OF THE UNITED NATIONS. HE RECEIVED A NOBEL PRIZE. HE HAD NOTHING ELSE TO PROVE, NOTHING ELSE TO WIN. HOWEVER, AT THE PEAK OF THE POST ELECTION VIOLENCE IN KENYA, HE EXPOSED HIS REPUTATION AND ACCEPTED THE IMMENSE RESPONSIBILITY TO HELP KENYANS TO FIND A SOLUTION. NO ONE ELSE COULD HAVE

MOVED THE ENTIRE INTERNATIONAL COMMUNITY TO SUPPORT KENYA AS KOFI ANNAN DID. FURTHER, HE HAS REMAINED INVOLVED, TO ENSURE THE FULL IMPLEMENTATION OF THE AGREEMENT. THIS MEETING IS A UNIQUE OPPORTUNITY TO UNDERSTAND EACH OTHER AND KEEP MOVING AHEAD. I AM VERY GRATEFUL TO BE HERE.

LADIES AND GENTLEMEN,

I HAVE THE PRIVILEGE AND THE RESPONSIBILITY TO BE THE FIRST PROSECUTOR OF THE INTERNATIONAL CRIMINAL COURT. MY MANDATE IS TO END IMPUNITY AND TO CONTRIBUTE TO THE PREVENTION OF FUTURE CRIMES.

I HAVE TO INVESTIGATE THE CRIMES COMMITTED DURING THE POST ELECTION VIOLENCE AND TO PRESENT THE EVIDENCE TO THE CHAMBERS OF THE INTERNATIONAL CRIMINAL COURT. THE JUDGES WILL DECIDE.

I WANT TO BE CLEAR, WE ARE NOT INVESTIGATING THE ELECTIONS; WE ARE NOT ANALYZING POLITICAL RESPONSIBILITIES; WE ARE NOT MAKING ANY JUDGEMENT ON THE POLITICAL PARTIES. WE ARE INVESTIGATING MURDERS, RAPES AND FORCED DISPLACEMENTS: CRIMES AGAINST HUMANITY.

THERE ARE NO DOUBTS THAT MASSIVE CRIMES WERE COMMITTED IN KENYA; THE ISSUE IS WHO IS RESPONSIBLE. SOMEONE IS RESPONSIBLE. THIS IS MY CHALLENGE. TO PROVE WHO ARE THE MOST RESPONSIBLE FOR THE CRIMES COMMITTED; TO PROVE IT IN A COURT OF JUSTICE.

I HAVE TO IMPARTIALLY COLLECT THE EVIDENCE, PROTECTING THE RIGHTS OF THE VICTIMS, THE SECURITY OF THE WITNESSES AND RESPECTING THE RIGHTS OF THE ACCUSED. WE RECEIVED INFORMATION FROM THE KENYA NATIONAL COMMISSION ON HUMAN RIGHTS AND THE WAKI COMMISSION; THEIR WORK WAS FUNDAMENTAL IN DECIDING TO OPEN AN INVESTIGATION IN KENYA.

SINCE LAST MARCH, WHEN THE JUDGES ISSUED AN AUTHORIZATION, MY OFFICE HAS BEEN INVESTIGATING THE CRIMES COMMITTED. WE COLLECTED NEW EVIDENCE, NEW TESTIMONIES, NEW VIDEOS AND NEW DOCUMENTS. WE ARE NOT GOING TO DISCUSS OUR EVIDENCE IN THE MEDIA. WE WILL DO IT IN COURT.

WE HAVE TO BE FAIR. WE OFFERED THOSE IDENTIFIED BY THE COMMISSIONS AS RESPONSIBLE AN OPPORTUNITY TO PROVIDE US WITH THEIR EXPLANATION OF THE FACTS. SOME OF THEM TOOK IT.

NOW WE ARE READY TO PRESENT OUR CASES TO THE JUDGES OF THE ICC IN THE NEXT TWO WEEKS.

BEFORE 17 DECEMBER, WE WILL FILE BEFORE PRE-TRIAL CHAMBER II OF THE INTERNATIONAL CRIMINAL COURT TWO WRITTEN APPLICATIONS OF AROUND 80 PAGES EACH, SUMMARIZING THE FACTS AND ANALYZING THE EVIDENCE COLLECTED. WE HAVE TO PROVE THAT THERE IS A REASONABLE BASIS TO BELIEVE THAT THE PERSONS COMMITTED THE CRIMES.

THERE ARE TWO DIFFERENT CASES, EACH INVOLVING THREE INDIVIDUALS WHO HAVE TO FACE JUSTICE. THEIR NAMES WILL BE KNOWN, BUT THESE SIX INDIVIDUALS ARE STILL PRESUMED INNOCENT. THEIR GUILT OR INNOCENCE WILL BE DECIDED BY THE JUDGES AT THE END OF A JUDICIAL PROCESS, NOT AT THE BEGINNING.

WE WILL NOT REQUEST AN ARREST WARRANT. WE WILL ASK THE JUDGES TO ISSUE SUMMONSES TO APPEAR. IF THE INDIVIDUALS IDENTIFIED AGREE TO APPEAR VOLUNTARILY AND THE JUDGES ACCEPT IT, THE PERSONS MAY REMAIN FREE DURING THE TRIAL. IN THIS SITUATION, THE JUDGES' FINAL DECISION WILL DEFINE IF THEY GO TO JAIL OR IF THEY SHOULD BE ACQUITTED.

WHAT ARE THE FOLLOWING STEPS?

FIRST: THE INDIVIDUALS IDENTIFIED BY THE PROSECUTION SHOULD EXPRESS THEIR WILL TO APPEAR VOLUNTARILY BEFORE THE JUDGES. IF THEY REFUSE, AN ARREST WARRANT CAN BE ISSUED.

SECOND: THE JUDGES OF THE PRE-TRIAL CHAMBER COULD REJECT MY REQUEST TO ISSUE A SUMMONS TO APPEAR, APPROVE IT OR TRANSFORM IT INTO AN ARREST WARRANT. THIS COULD HAPPEN IN THE FIRST PART OF 2011.

THIRD: IF THE CHAMBER AGREES WITH MY REQUEST, THE INDIVIDUALS IDENTIFIED WOULD COME TO THE HAGUE TO MAKE THEIR INITIAL APPEARANCE BEFORE THE JUDGES.

FOUR: A PUBLIC HEARING TO CONFIRM THE CHARGES WILL BE HELD. THIS IS THE STAGE WHERE THE JUDGES REVIEW THE EVIDENCE AND DECIDE WHETHER IT IS ENOUGH TO PROCEED TO TRIAL. THE INDIVIDUALS CAN BE REPRESENTED BY THEIR LAWYERS. THIS COULD HAPPEN IN THE SECOND PART OF 2011 OR THE BEGINNING OF 2012.

FIVE: THE JUDGES WILL MAKE THEIR DECISION. THEY CAN CONFIRM THE CHARGES AND SEND THE CASE TO TRIAL OR AMEND OR REJECT THE CHARGES.

SIX: AFTER THIS PROCESS, A TRIAL. THIS COULD HAPPEN IN THE SECOND PART OF 2012 OR EARLY 2013. AT THIS STAGE MY OFFICE HAS TO MEET THE HIGHEST STANDARD OF PROOF; WE HAVE TO PROVE BEYOND REASONABLE DOUBT THAT THE PERSONS COMMITTED THE CRIMES.

MEANWHILE, OUR INVESTIGATION WILL CONTINUE IN AND OUTSIDE KENYA. WE ARE WORKING WITH LADY JUSTICE RAWAL TO INTERVIEW SOME POLICE OFFICERS. THEY ARE NOT UNDER INVESTIGATION. THEY ARE CALLED AS WITNESSES. WE HOPE THAT THE SECURITY SITUATION IN KENYA WILL ALLOW US TO TAKE TESTIMONIES FROM VICTIMS IN KENYA.

WE HAVE SOME PROBLEMS TO SOLVE. WE ARE CONCERNED BY INFORMATION WE HAVE REGARDING ATTEMPTS TO BRIBE OR INTIMIDATE INDIVIDUALS PERCEIVED TO BE OUR WITNESSES. WE DISCUSSED THE ISSUE AT THE HIGHEST LEVEL. I AM SURE THAT THE SITUATION WILL IMPROVE DRAMATICALLY. I WANT TO BE CLEAR: UNDER THE ROME STATUTE, MY OFFICE HAS JURISDICTION TO PROSECUTE THESE PEOPLE FOR OBSTRUCTING JUSTICE. I HEREBY PUT THEM ON NOTICE.

SOME INDIVIDUALS HAVE ALSO CLAIMED TO BE WITNESSES AND TO HAVE BEEN INDUCED TO GIVE A FALSE STATEMENT. I WOULD LIKE TO CLARIFY THAT THEY ARE NOT MY WITNESSES. LET ME ADD THAT WE ALSO REVIEWED THE WORK DONE BY THE KENYA NATIONAL COMMISSION ON HUMAN RIGHTS AND WE FOUND NO SUPPORT FOR SUCH ALLEGATIONS.

LADIES AND GENTLEMEN,

LET ME CONCLUDE.

THE INTERNATIONAL CRIMINAL COURT WILL MAKE A CONTRIBUTION TO DO JUSTICE IN KENYA. THE RESPONSIBILITY OF SIX INDIVIDUALS, WHO, IN ACCORDANCE WITH THE EVIDENCE, BEAR THE GREATEST RESPONSIBILITY FOR THE CRIMES COMMITTED, WILL BE EVALUATED IN COURT. THESE PEOPLE WILL GO TO THE HAGUE. THE JUDGES WILL MAKE FINAL DECISIONS IF THEY HAVE TO GO TO JAIL, BUT THIS WILL BE AT THE END OF A FAIR JUDICIAL PROCESS. VICTIMS CAN PARTICIPATE IN THE PROCEEDINGS, PRESENTING THEIR VOICES AND CONCERNS. THEY ARE INVITED, AND IT WOULD BE GOOD FOR US IF THEY PRESENT THEIR CONCERNS IN COURT. THEY CAN ALSO REQUEST COMPENSATION FROM THOSE UNDER INVESTIGATION.

IT WILL BE A DEMANDING PROCESS AND THERE COULD BE DELAYS AND SETBACKS. OUR FIRST TRIAL WAS STAYED TWO TIMES. WE HAD TO APPEAL THE GENOCIDE CHARGES AGAINST PRESIDENT AL BASHIR. SO THERE WILL BE FIGHTS IN COURT. WE WILL PERSIST AND DO OUR PART. WE COUNT ON YOUR SUPPORT. BUT I WANT TO BE CLEAR: WE WILL NOT GO FURTHER THAN THESE SIX INDIVIDUALS. WE ARE HELPING KENYA TO START, TO BREAK IMPUNITY. KENYANS WILL DECIDE ON THEIR OWN WAY FORWARD.

DOING JUSTICE FOR MASSIVE CRIMES IS A LONG JOURNEY. DIFFERENT COUNTRIES HAVE CHOSEN DIFFERENT PATHS. SOUTH AFRICA IS WELL KNOWN FOR ITS TRUTH COMMISSION, IN ARGENTINA WE

STARTED PROSECUTING THE TOP LEADERS 25 YEARS AGO, AND TODAY THERE ARE STILL NEW INVESTIGATIONS BEING OPENED AGAINST OTHER INDIVIDUALS. SO THERE ARE DIFFERENT MODELS. KENYA HAS THE OPPORTUNITY TO CREATE ITS OWN PATH. AFTER THE ICC DECISIONS, KENYANS CAN DISCUSS WHETHER OTHER INDIVIDUALS SHOULD BE PROSECUTED – DISCUSSIONS YOU DESERVE – BUT TODAY KENYA SHOULD DISCUSS HOW TO ASSIST THE VICTIMS NOW, HOW TO ENSURE PEACE AND RECONCILIATION. IN THIS SENSE, KENYA IS TODAY CREATING A NEW PATH.

THERE WAS A POLITICAL AGREEMENT TO STOP VIOLENCE AND HARMONIZE POSITIONS. THIS ACHIEVEMENT COULD BE CHALLENGED IN THE COMING MONTHS. THERE ARE STILL TENSIONS BETWEEN COMMUNITIES THAT COULD BE EXACERBATED DURING THE TRIALS. THERE IS A NEED TO HEAL AND ENSURE RECONCILIATION. THIS IS A CHALLENGE FOR TODAY.

THE JUDICIAL PROCESS WILL PUT THE SUFFERING OF THE VICTIMS IN THE CENTER OF THE PUBLIC AGENDA. THOSE WOMEN RAPED AND INFECTED WITH HIV, THOSE WOUNDED, THE FAMILIES OF THOSE KILLED, THOSE WHO LOST THEIR HOMES, INTERNALLY DISPLACED PERSONS, SHOULD BE ASSISTED TODAY. THERE IS NO REASON TO WAIT UNTIL THE END OF THE ICC TRIAL.

THAT IS WHY THIS MEETING IS AN OPPORTUNITY FOR YOU TO DEVELOP THE KENYA PATH, A COMPREHENSIVE MODEL OF JUSTICE, INTEGRATING THE INQUIRIES CARRIED OUT BY THE KENYAN COMMISSIONS, THE ICC TRIALS, THE POLITICAL AND SOCIAL PROCESS OF PEACE AND RECONCILIATION AND REPARATION TO THE VICTIMS, AND CONSTITUTIONAL AND SYSTEMIC CHANGES. THIS IS THE FUTURE. THIS IS TODAY'S WORK. WE ARE GRATEFUL TO BE PART OF IT.

THANK YOU.