

## **ICC Prosecutor Wants More Time to Get Kenyatta Evidence**

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Fatou Bensouda tells judges that Nairobi continues to withhold information, but she refuses to drop case against Kenyan president.

The prosecutor at the International Criminal Court (ICC) in The Hague has declined to drop the charges against Kenya's president, Uhuru Kenyatta, even though she still does not have enough evidence to send the case for trial.

Prosecutor Fatou Bensouda informed judges on September 5 that her team would not be ready to begin proceedings on October 7 as scheduled.

She asked the judges to postpone the case indefinitely until the Kenyan government hands over material sought by her office.

Bensouda first sought to delay the start of the case last December, when she had to withdraw a crucial witness who had lied to her office.

Kenyatta is charged with orchestrating the bloodshed which unfolded in Kenya following a disputed presidential election result in December 2007. At least 1,100 people died and 650,000 others were forced from their homes in two months of violence.

Prosecutors accuse Kenyatta – who was elected president in March 2013 – of being an indirect co-perpetrator responsible for five counts of crimes against humanity including murder, persecution, forcible population transfer and rape.

In a separate case, Kenyatta's deputy William Ruto and former radio journalist Joshua Arap Sang are already on trial on similar charges. Their trial began in September last year.

All three deny the charges against them.

Bensouda's latest request follows months of wrangling between prosecutors in The Hague and the Kenyan government after judges ordered the Nairobi authorities to provide certain documents requested by Bensouda to support her case. (See **[Kenyan President's Trial Adjourned Until October](#)**.)

The three-judge panel issued its first order to hand over the documents in March. In July, Kenya's attorney general identified certain obstacles that he said prevented the government from providing much of the information. Judges issued a second decision on July 31, in which they again directed Nairobi to comply.

Kenyatta's lawyers have accused the prosecution of conducting a "fishing expedition" in a bid to bring their client's case to trial.

Bensouda informed judges this week that the Kenyan government had still not fully complied with either order.

"The prosecution notes with regret that the full and effective compliance required of the government of Kenya and anticipated by the chamber has not materialised to date," Bensouda said in a written submission.

The prosecutor explained that her office would continue pursuing the case because the judges had ordered the government to cooperate and because Kenyatta was the head of state. She explained that prosecutors did not want to undermine the judges' decision and that, as head of state, Kenyatta himself was "ultimately responsible" for its failure to cooperate.

"In ordinary circumstances, the insufficiency of evidence would cause the prosecution to withdraw the charges," Bensouda wrote. "However, it would be inappropriate for the prosecution to withdraw the charges at this stage."

Bensouda said the information her office had received since it first clarified its request for evidence was insufficient.

"In the five months since the prosecution submitted its 8 April 2014 [request for evidence] the government of Kenya has produced a total of 73 pages of documentation," she wrote. "Some are not responsive to the [request]; even the responsive material is a fraction of the information sought."

Meanwhile, in the trial of Ruto and Sang, the first of eight prosecution witnesses ordered to give evidence

took the stand via video link from Nairobi.

In April, ICC judges issued an order for these witnesses to testify after some lost contact with the court and others withdrew testimony they had previously given to Hague prosecutors. (See **ICC Summons Witnesses for Prosecution in Ruto Case.**)

Referred to by the number P604 in order to protect his identity, the first witness used his testimony to make a number of allegations against the Office of the Prosecutor (OTP). One of these was that he had been lured into giving evidence by ICC investigators who promised him a comfortable life in a foreign country.

At his first appearance on September 1 the witness, speaking through his lawyer, Gregory Mutai, said he was too ill to testify and requested an adjournment of 21 days.

Mutai himself said he had not been provided with his client's statement and therefore could not give him guidance. He also said more time was needed for the witness to procure mobile phone records to support his testimony.

But following psychological tests, the ICC's Victims and Witnesses Unit (VWU) took the view that the witness's state of mind did not prevent him from testifying.

The judges rejected the request for an adjournment and ordered Witness P604 to testify on September 4.

During his testimony, the witness informed the court that he had signed a sworn statement in August this year in which he affirmed that that elements of his earlier statement to the OTP had been false.

Asked why he had included false facts in that earlier statement, the witness said he had been approached by a woman from the ICC who informed him that prosecutors were looking for more people to testify against Ruto and Sang.

"She told me that it was good for me to join in giving that statement even if it is false, there is no problem," the witness said. "She told me that if I give out that statement and I am approved to be a witness, I will get many privileges. One, she told me that my children are going to be given free education by the ICC."

He told the court that the woman in question – whom he did not name – had told him he would live a very comfortable life in a country of his choice, and that the ICC would pay his children's school fees.

"She told me, 'This is the only opportunity. If you don't take this opportunity I don't believe another opportunity will come,'" the witness added.

He also said that he had also originally agreed to testify against Ruto out of a personal dislike for him.

"I have been against Ruto from the beginning naturally, so that hatred that I had on Ruto also provoked me to give false statement," he said.

Anton Steynberg for the prosecution sought to have the P604 classified as a hostile witness because of the allegations he had made against the OTP. However, the judges ruled that this would be premature.

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