

Kenyan Chief Justice Announces Special Court

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Groundbreaking development made public at launch of IWPR and Wayamo Foundation programme.

Kenyan chief justice Willy Mutunga used the launch of a media project run by IWPR and the Wayamo Communication Foundation to announce the establishment of a special division of the High Court to try cases stemming from the 2007-08 bloodshed, as well as other crimes under international law.

“We are at an advanced stage to set up an International Division of the High Court,” Mutunga said in a November 26 speech at Nairobi’s Strathmore University to launch the two-year programme **Generating Demand for Accountability: A critical reporting and media project in Kenya**.

Mutunga said the International Crimes Division would try mid-level perpetrators, while the cases of four senior figures who face trial next year at the International Criminal Court, ICC, in The Hague would be unaffected. The new institution’s remit will include a range of international and transnational offences such as crimes against humanity, terrorism, money-laundering, and narcotics, human and body-parts trafficking.

The chief justice said the International Crimes Division was needed because Kenya’s security, stability and economy was “mortally threatened” by international-scale crimes.

“Something must be done,” he said.

The ICC has charged four individuals – Deputy Prime Minister Uhuru Kenyatta, parliamentarian William Ruto, former civil service chief Francis Muthaura, and radio presenter Joshua Arap Sang – with orchestrating violence which broke out along ethnic lines in the aftermath of a disputed presidential election at the end of 2007. Two months of fighting left some 1,300 people dead and over half a million others displaced.

The new judicial division will employ the International Crimes Act, a domestic version of the Rome Statute which underpins the ICC. Kenya passed the act in 2009, but it has not so far been applied to crimes committed during the post-election violence, since it was not in force at the time. However, there has been a groundswell of support for a mechanism to deal with these crimes.

“It was under pressure from the Kenyan public that there was justification for the ICD [International Crimes Division],” Reverend Samuel Kobia, a member of the Judicial Services Commission, said at the November 26 event. The commission, which exists to support the independence and accountability of the Kenyan judiciary, has already endorsed plans for a new division.

“We have proposed a structure of ICD which is modeled on the standards of the ICC – the same standards... with the same rules, with the same practice and with the same procedures,” Kobia said.

The launch event was attended by leading figures including Kenya’s attorney general Githu Muigai, British High Commissioner Dr Christian Turner, German ambassador Margit Hellwig-Boette, and Justice James Ogoola, a retired Ugandan judge who was instrumental in setting up a similar international crimes division for the High Court in Kampala.

In a keynote address, Ogoola highlighted lessons that could be learnt from his country’s experience. Uganda set up the division in an effort to prosecute members of the Lord’s Resistance Army, the rebel group which waged a devastating war in the north of the country between 1987 and 2006.

Ogoola underlined the advantages of holding local trials in the Kenyan context.

“In these kinds of crimes, you have victims – lots and lots of victims. We cannot [send] all these victims to The Hague so that they see and feel justice being done,” he said. “But in the ICD, which is right here next door, all the victims will be following, perhaps participating. And justice comes out more shining than when you are out there at the ICC.”

As Kenyans prepare to vote in the March 2013 elections, shortly before the start of the ICC trials, IWPR is working in partnership with the Wayamo Communication Foundation to provide training and support to reporters and editors at ten of the country’s media houses. These include major press outlets like the Nation Media Group, The Standard, The Star and The People; and broadcasters like Capital FM, Kenya Broadcasting Service, Kass FM, Royal Media Services, Pamoja FM, Koch FM, Radio Amani, Radio Nam Lolwe, Baraka FM, and Radio Africa.

Twenty of their staff will be trained in election and transitional justice reporting over the next two years. The journalists all have a longstanding interest in political and legal reporting, and many have covered developments at the ICC since 2010, when the court opened an investigation into the Kenyan violence.

In a two-week training course held in Nairobi from November 26 to December 7, the 20 participants looked at the key issues of election and justice reporting. Specific course components covered hate speech and incitement to violence – a feature of past elections – and how to report on them in an objective and sensitive manner.

As part of the training, IWPR and the Wayamo Communication Foundation commissioned journalists to produce analytical reports on developments in the election campaign and on transitional justice issues. These pieces will be published or broadcast on a special website, ReportingKenya.net, as well as by local media outlets.

As well as encouraging regular reporting, IWPR and Wayamo will host monthly meetings of editors, in partnership with the Kenya Editors' Guild. These meetings will provide a forum for debate and reflection on the challenges facing the media in the run-up to and beyond the elections, as well as during the ICC trials.

The **Generating Demand for Accountability** project is funded by the British High Commission in Nairobi. Speaking at the launch event, High Commissioner Turner paid tribute to the value of the media and the central role they play in Kenyan society.

"We should be ready to celebrate the role of the media, the sophistication of the debate," he said. "The vigour of the daily reporting is something that you should cherish, not criticise."

Attorney-General Muigai used his opening remarks at the event to remind Kenyan journalists of the responsibilities they face, particularly at election time.

"The media, as the guardian of truth, must be accountable of its own accord, and it has a serious obligation to be properly trained and informed," he said.

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