

## **Kenyatta Cleared of Charges by the International Criminal Court**

Trial Chamber V(B) of the International Criminal Court (ICC or the Court) on March 13, 2015 withdraw charges in the case concerning Mr Uhuru Kenyatta after the Prosecutor on a “Decision on Prosecution’s application for a further adjournment ” withdraw charges against Mr. Kenyatta; she however stated that should there be new evidence to corroborate the existing information that is substantial enough in the future that will amount to new proceedings then the Court will be triggered to hear the matter.<sup>1</sup> While this news is received with jubilation in Kenya for supporters of the ruling party, opposition and victims of the post election violence are mourning for their lost ones and the anguish that justice has not been meted out.

In order to protect victims and witnesses the Chamber noted that even though the proceeding against Kenyatta is closed, the Court still has jurisdiction over issues concerning the case; this is a protective measure to prevent or shield witnesses and/or victims. This move is pursuant to Article 70 of the Statute that provides that the Court retains jurisdiction over any interference with a witness or with the collection of evidence. The Chamber goes on that, pursuant to Regulation 42 of the Regulations, "[P]rotective measures once ordered in any proceedings in respect of a victim or witness [...] shall continue after proceedings have been concluded, subject to revision by the Chamber".<sup>2</sup>

The euphoria that the Kenyatta trial broad at the ICC has double effects: on the one hand it demonstrated the willing of States Parties to cooperate with the Court to ensure that international criminal justice is given a voice. As the first acting president to stand trial before the Court and finally acquitted of the charges against him is a signal to those that are facing trial or are yet to be indicted, that after all criminal justice is one way of the puzzle. The Court has demonstrated that she is willing to dispense justice where there is not enough evidence to incriminate the accused. The other effect of this acquittal though a sad reality for

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<sup>1</sup> ICC-01/09-02/11-983, para. 1 – 3.

<sup>2</sup> ICC-01/09-02/11-1005, para. 10.

victims and the Prosecution, it has in fact created a certain degree of awareness to those in authority that their excesses can be regulated where their sphere of influence limited.

The quintessential moment surrounding this case I want to believe is not the acquittal of the accused Mr. Kenyatta who currently occupy a high office in his country but the fact that the ICC has registered in its judicial archive that it has successfully tried an active head of state for horrendous crimes; something which would have been unpredicted during the inception of this tribunal. Many still criticize the Court for not taking on big cases or powerful states, but this case is a giant step forward even though the Prosecutor and victims may lament over the outcome of this trial. In a tweet Mr. Kenyatta said "As they say, one case down, two more to go," he is referring to other Kenyan cases (Ruto and Sang) before the Court. Kenyan Foreign Minister Amina Mohamed says her government will work to ensure that charges against the other accused Kenyans are dropped.

It is interesting to note that the Chamber had indicated earlier that even if charges against the accused is dropped, the principle of *ne bis in idem* will not be applicable implying the Prosecutor can at a later stage renew charges against the accused should there be new evidence to this regards.

To wherever direction the outcome of this case weighs, one factor is constant and that is "justice" from the lonesome streets of Nairobi to the air-tight court rooms in The Hague the whispering voices of those who lost love ones and those who were victimized in the process; their plight cannot be ignore and should not be ignored, perhaps, the Court is judging the wrong guys for that history will tell.