

**VICTIMS' RIGHTS  
TO PARTICIPATE  
AND  
SEEK REPARATION  
FROM THE ICC**

**Produced by**

**Kituo Cha Sheria**

**(Center for Legal Empowerment)**

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## Acknowledgement

This booklet seeks to provide victims of the 2007-8 post-election violence in Kenya with information about the International Criminal Court (ICC).

It tries to answer some of the main questions raised by victims and seeks to clarify the ICC's mandate and limits so that victims may better understand its role in the Kenyan context.

This booklet aims to inform victims of their rights to participate in ICC proceedings where eligible, and the possibilities of seeking reparation. It also seeks to enable victims to make an informed decision on whether they want to engage with the ICC. The booklet gives a general overview of the ICC's mandate in relation to victims and then highlights how victims' rights before the ICC are being exercised in the specific context of Kenya.

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**Gertrude Angote,**

Executive Director

# 1. The ICC in a nutshell

## 1.1 What is the ICC's mandate and what are its limits?

The ICC is a permanent criminal court founded by an international treaty (the Rome Statute) in 1998 and established in 2002. It deals with:

- Prosecuting suspected individual perpetrators over the age of 18;
- for genocide, crimes against humanity, and war crimes (and aggression after 2018).

*Genocide* means killing, causing serious bodily or mental harm and other acts, when they are committed with the intent to partly or wholly **destroy** a national, ethnical, racial or religious **group**.

*Crimes against humanity* refer to a number of acts (for example murder, extermination, enslavement, deportation) that are committed as part of a **widespread or systematic attack** directed against a civilian population.



*War crimes* mean a number of acts that constitute serious violations of the law and customs that apply in international and non-international **armed conflicts**, for example wilful killing of civilians or mistreatment of prisoners of war.

*Crime of aggression* means the planning, preparation, initiation or execution of an act using armed force by a State against another State.

The ICC can only hold **individuals** accountable, and not armed or criminal groups, States or companies. It is acting only where the State is unable or unwilling to investigate crimes itself. While the ICC is mandated to prosecute all perpetrators, no matter what their rank, in practice, it is likely to focus on those who have had a leading role in committing international crimes. Where there have been massive and widespread crimes, low-level suspected perpetrators, such as police officers or low ranking soldiers, may best be prosecuted and tried before national courts.

The ICC is located in The Hague in the Netherlands, although it may also sit elsewhere. It has field offices in Uganda, the Democratic Republic of the Congo, the Central African Republic, Ivory Coast and Kenya. There are 122 “States Parties” to the Rome Statute (as of July 2013). As a party, states have to abide by the terms of the Statute

### **What duties does Kenya have as a State Party to the Rome Statute?**

Kenyan authorities are obliged to:

- cooperate with the ICC Prosecutor and other organs of the ICC;
- protect victims and witnesses from any harm;
- execute ICC arrest warrants against any person, even if they are sitting heads of State or Ministers.

In the Kenya cases, the accused have to date voluntarily appeared before the ICC’s judges.

## Whose responsibility is it to provide justice?

The role of the International Criminal Court (ICC) is complementary to the Kenyan justice system. This means that first of all, the Kenyan authorities are responsible for providing justice and reparation to victims of the violence. However, despite the fact that post-election violence from December 2007 to February 2008 took place in many regions of Kenya, only few perpetrators have been held to account by the Kenyan state to date.

progress at the national level in providing justice and reparation for victims, many Kenyans turn to the ICC with high expectations and this can easily lead to frustration.

### 1.2 When can the ICC investigate and prosecute

The ICC can investigate and prosecute in three instances:

1. Upon request by the concerned State Party (Central African Republic, Democratic Republic of Congo, Uganda, Mali)



2. On the Prosecutor’s own initiative (Kenya and Ivory Coast). For this, a crime must have been committed on the territory of a State Party or by a citizen of a State Party outside of that territory.

3. If the United Nations (UN) Security Council refers a “Situation” to the Prosecutor (Darfur and Libya).

No. The Statute applies equally to all persons. Anyone, even a President, can be held to account for international crimes he or she is responsible for. The Statute also emphasises the **criminal responsibility** of commanders and other superiors for acts committed by subordinates. There cannot be amnesty (protection or release from prosecution) for international crimes.

### 1.3 What are the main organs of the ICC?

The ICC is composed of the following **four main organs**;

- The **Presidency** is responsible for the overall administration of the Court, with the exception of the Office of the Prosecutor. It is comprised of three ICC judges.

- The **Judicial Divisions** consist of eighteen judges organised into the Pre-Trial Division, the Trial Division and the Appeals Division. The judges of each Division sit in Chambers which are responsible for conducting the proceedings of the Court at different stages.

- The **Office of the Prosecutor** is responsible for receiving referrals and any substantiated information on crimes within the jurisdiction of the Court, for examining them and for conducting investigations and prosecutions. The Office is now headed by the Prosecutor, Mrs. Fatou Bensouda (The Gambia), who was elected in June 2012 by the States Parties for a term of nine years.

- The **Registry** is responsible for the non-judicial aspects of running the Court, headed by the Registrar. The Registrar has set up specific units of direct relevance to victims:

- **Victims and Witnesses Unit (VWU)** to provide protective measures and security arrangements, counselling and other assistance for witnesses, victims who appear before the Court and others who are at risk on account of testimony;
  - **Victims Participation and Reparations Section (VPRS)** to assist victims seeking to participate and/or claim reparation, undertaking a first review of their applications to participate to ensure that they are complete, and requesting additional information from applicants as necessary before transmitting them to the ICC Chambers.
  - **Public Information and Documentation Section** with an Outreach Unit;
  - **Counsel Support Section** deals with legal aid, providing financial assistance to those who cannot pay for their legal representation (in the form of common legal representation in the case of victims).
- The ICC is also composed of other entities such as the:
- **Office of Public Counsel for Victims:** provides legal support and assistance to victims and their legal representatives to ensure effective representation of victims in the proceedings
  - **Office of Public Counsel for Defence:** promotes the rights of the defense

These are fully independent offices although they are related to the Registry for administrative matters.

**The Trust Fund for Victims** is an independent body that complements the work of the ICC and deals with reparation and assistance to victims in

the form of projects to meet victims' physical, material or psychological needs.

## 1.4 What are the stages of ICC investigations and proceedings?

The ICC process takes time. For example, Thomas Lubanga, a Congolese rebel leader, was sentenced to more than 6 years after the ICC issued his arrest warrant (though this is currently on appeal).

The stages of the proceedings are:

- **Preliminary Examination:** In this phase the Prosecutor decides whether or not to open an investigation;
- **Investigation:** The Prosecutor examines facts and evidence, and applies to the Pre-Trial Chamber for an arrest warrant or summons to appear if there are reasonable grounds to believe an individual committed an alleged crime;
- **Pre-Trial:** The Judges will hold a hearing and will confirm charges if there are substantial grounds to believe the alleged crimes were committed, sending the case to trial;
- **Trial:** The judges will hear and evaluate evidence brought by the Prosecutor and Defence. At the end of this process the accused is either acquitted, or found guilty, and if so, sentenced. If a person is convicted, reparations can be awarded to victims of the crimes for which the accused was found guilty.
- **Appeal:** The final decision on guilt, sentencing or reparations can be challenged by either party. At the end of this stage an appeal judgement is given.

## 2. Victims' Rights before the ICC

### 2.1 Who is a victim?

A victim is:

- An individual who has suffered direct or indirect harm as a result of the commission of a crime within the ICC's jurisdiction; and
- Organisations or institutions who have suffered direct harm to property dedicated to religion, education, art or science or charitable purposes, and to their historic monuments, hospitals and other places and objects for humanitarian purposes, as a result of the commission of a crime within the ICC's jurisdiction.

Individuals include **direct victims** as well as **indirect victims** such as the family or dependants of the direct victim and "persons who have suffered harm in intervening to assist victims in distress or to prevent victimization".

To participate in the proceedings, victims must show that the **harm, injury, loss and damage suffered** are related to the charges against the accused. The harm, both direct and indirect, injury, loss and damage include:

- physical harm including making a person unable to bear children;
- moral damage resulting in physical, mental and emotional suffering;
- material damage, including lost earnings and loss of property;
- lost opportunities, including those relating to employment, education, social benefits, social status or legal rights;
- costs such as for legal experts, medical services or social assistance.

### 2.2 Can victims participate in the ICC proceedings?

Yes. Victims can participate under certain conditions in ICC proceedings.

## When can victims participate in the ICC proceedings?

When the personal interests of victims are affected, the ICC may allow victims to present their views and concerns at stages of the proceedings deemed appropriate. However, victims may only do so if it does not affect the rights of the accused and a fair and impartial trial. Victims recognised as participants are informed of the developments in the proceedings which affect their interests.

## What are victims of a situation vs. victims of a case?

The ICC distinguishes between **victims of a “Situation”** and **victims of a “Case”**:

- a) **A situation** covers all the possible crimes under investigation; Victims of a situation are therefore all victims of alleged crimes against humanity related to the 2007/2008 post- election violence in Kenya.
- b) **A case** refers to the specific facts relating to a suspect or accused person. Victims of a case are victims who suffered harm as a result of a particular crime for which someone has been charged by the ICC.

There are limited opportunities for victims of a situation to participate.

## What are the conditions for a victim to participate?

- a) the person is considered a “victim”;
- b) his or her interests are affected;
- c) there are grounds to believe that the victim suffered harm directly linked to the specific crimes prosecuted by the Court, or that he or she suffered harm in intervening to assist direct victims, or to prevent their victimisation.

For example, a victim in the *Kenyatta case* must show that she or he has suffered harm as a result of one of the crimes for which Mr Kenyatta is

on trial. The judges will also assess any possible impact there could be on a fair trial for the accused.

## How can victims participate in the ICC proceedings?

The procedure for participation is not the same in all cases.

Below is a brief description of how victims have applied and participated in the cases in early DRC and the Central African Republic cases, and at the Pre Trial stage of the Kenyan cases. However, **this system has changed significantly for the trial phase in the Kenyan cases** (see Section 3.2 below).

- In order to participate in proceedings victims may complete the standard application form provided by the ICC Field Office and send it back through the staff of the Victims Participation and Reparation Section and/or ICC Field offices.
- The parties (Prosecution and Defence) are entitled to make observations on the victims' applications, after which the ICC judges will decide whether to grant victim status, foreach individual.

This is the approach that was used before the confirmation of charges hearings in the Kenyan cases. The Judges ended up recognising 327 victims as participants in the *Ruto, Sang and Kosgey case*, and 233 victims as participants in the *Kenyatta, Muthaura and Ali case*. **As mentioned, a new approach has been set out for the Trial phase (see Section 3.2 below).**

## What does participation actually mean?

Once a victim has been recognised as a participant, he or she has certain rights:

- a) **The right to present their views and concerns** when their personal interests are affected. This might be through attending hearings, making written observations or statements; questioning a witness, expert or the accused;

- b) The right to be informed of the development of the proceedings;
- c) The right to receive appropriate protection measures.

**Do victims participate in person? Do they appear before the judges?**

If a victim is eligible to participate, it does not mean he or she will participate in person. In most cases, victims participate through a legal representative who attends hearings, makes written submissions and conveys the views and concerns of the victims throughout the proceedings. In some cases, a small number of victims may be allowed to appear in person before the judges. For example in the *Bemba case*, a small number of victims travelled from Central African Republic to The Hague to testify in the trial. A few victims also addressed the judges via video link to present their views and concerns.

**What happens if the application to participate is rejected?**



Victims do not have the right to appeal decisions before the ICC (except decisions on reparation). However, if a victim's application has been rejected, he or she may be able to file a new application at a later stage of the proceedings if she or he has additional information to support the application or if the scope of the proceedings changes.

### **2.3 Can a victim be a witness?**

A witness is someone who has knowledge about a crime or significant event through their senses (e.g. seeing, hearing, smelling, touching), and can help prove aspects of the crime or event.

Usually when a crime is committed a victim can also be a witness of the crime. However, in the ICC process the victim and the witness refer to two distinct categories that may overlap. The victims who qualify to participate in the ICC proceedings present their views and concerns, which is not evidence but will inform the judges on some issues; and hence they are not automatically witnesses. Expressing views and concerns is different from providing evidence; it does not make the victim a witness.

Being a witness means giving evidence and testifying before the ICC in person, and being questioned by the parties. This might have an impact on the determination of the conviction or acquittal.

However, a victim will also be a witness if she or he testifies. Victims participate in their own right during the proceedings; whereas witnesses are called, at a specific time, by the Prosecution, the Defence or the Chamber.

### **2.4 Victims' right to legal representation**

In order to participate and seek reparation before the ICC, victims will generally be represented by a common legal representative appointed by the Court.

The Registry is mandated to assist victims in obtaining legal advice, organising their legal representation and providing legal representatives with adequate support, assistance and information. In addition, the Office

of Public Counsel for Victims may help obtain legal representation.

Victims are free to choose whether to be legally represented. In practice it is best to have legal representation because ICC's proceedings are complicated and there are often a large number of victims.

While victims are also free to choose a legal representative, the judges can request groups of victims to choose a common legal representative to represent their interest. If they fail to do so the ICC can choose one on their behalf and may be able to provide some partial or full financial assistance when victims cannot afford to pay.

## **2.5 Victims' right to protection**

### **Who is eligible?**

The Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. This includes measures to be taken by the Prosecutor in investigations and prosecutions. It also includes measures that the judges can order to protect victims who participate.

### **What form can protection take?**

These measures may include: protective accompaniment, witness and victim support measures of a psychological and practical nature as well as concealing the victims' identities and locations in proceedings, or providing a summary of the information given by a victim if the disclosure of this information may put the victim at risk. For example, victims' applications to participate are not disclosed to the general public to protect their identities. In the Kenya case, the identity of victims who will register with the registry will in principle not be disclosed to the accused.

When a victim appears in person to present views and concerns, or testifies as a witness, the defence is informed of his or her identity (but not the general public). However, the ICC may also order a closed hearing, the witness may be only be partially visible using curtains, or voice distortion

may be used so that the general public cannot identify them. In extreme cases, the Court can decide to relocate a witness to another country.

### **How is protection provided?**

Within the Registry, the **Victims and Witnesses Unit** is mandated to provide protective measures and security arrangements, counselling and other appropriate assistance for witnesses, victims who appear before the Court and others who are at risk on account of testimony given by such witnesses.

Given the number of victims who participate in ICC proceedings and the need for States to cooperate and support the ICC in view of its resource constraints, it is important to recall that there is also the responsibility of Kenya to adopt protection measures.

Every victim has to carefully consider the risks involved, and must make an informed decision about whether he or she wants to participate in ICC proceedings. An assessment of risks, threats, and contingency plans should be done. It is critical to be cautious about who knows of the victims' involvement in ICC proceedings.

## **2.6 Victims' right to reparation**

Victims of crimes for which an accused has been **convicted** can receive reparation for the harm suffered. It is for the Court to decide on reparation, either ordering a convicted person to make appropriate reparation or for reparations to be made through the ICC Trust Fund for Victims (TVF).

To date the ICC has not established general principles relating to reparations. These may be developed on a case-by-case basis. There has been one decision relating to reparation so far, in the case against Thomas Lubanga, where on 7 August 2012, Trial Chamber I established principles on reparation that are applicable to that case. While these may not apply in other cases, it provides the following key elements:

### **Who can apply for reparation?**

Victims may apply for reparations at any time in the proceedings by filing a written application with the Registry. The Victims Participation and Reparation Section has prepared standard forms which are available online and at ICC field offices.

This form must contain certain types of information. This includes the identity and address of the applicant, a description of the injury, loss or harm, the location and date of the incident and, to the extent possible, the identity of the person or persons the victim believes to be responsible for the injury, loss or harm. A description of property that the victim wants returned; or specific injuries or harm that might need to be addressed through rehabilitation or other service should be included (eg. loss of education with corresponding education fees paid; specific medical, psychosocial or other treatment or therapies, etc.).

ICC judges also have the power to order reparation for victims that have not applied.

### **Who can be a beneficiary?**

In the *Lubanga case* the ICC judges decided that reparation **should not** be limited to the relatively small group of victims that participated in the trial or those who applied for reparations.

Reparation may be granted to case victims:

- d) Direct victims, who suffered harm resulting from the crimes for which the accused has been convicted;
- e) Indirect victims, including family members of direct victims, along with individuals who intervened to help the victims or to prevent the commission of these crimes.
- f) Legal entities, such as NGOs or hospitals.

The ICC Chamber recognised that priority might be given to vulnerable victims, including victims of gender-based violence or severely traumatised children.

Although monetary compensation is common as a form of reparation, reparation can also take the form of restitution such as return of property, rehabilitation such as medical and psychological care as well as legal and social services, satisfaction and guarantees of non-repetition, such as public acknowledgment, search for the disappeared and identification of remains, and commemoration or activities aimed at education and at preventing the recurrence of similar crimes.

Reparation can be individual or collective, material or non-material, to address harm suffered by communities and groups of victims.

Not all victims will get reparations ordered by the court at the end of a trial. The trial may last a number of years and it may also take a long time for reparations disbursements or programmes to be designed and implemented.

In the *Lubanga case*, the judges decided that reparation would tend to be collective in the form of programmes or projects benefitting victims.

### **What is the difference between reparation and assistance?**

Under international law, reparation must be adequate, effective and prompt. It should also fit the gravity of the violations and harm suffered by the victim. Reparation is linked to a justice process and acknowledges the harm and suffering experienced by the victims.

Assistance, humanitarian or development initiatives are broader. They are not specifically linked to the harm suffered and beneficiaries are not limited to victims of specific crimes. This means that humanitarian and development projects would not acknowledge the harm experienced and the victims as such. However victims may benefit from assistance projects providing services to affected communities, such as medical treatment, psychosocial counselling, skills training, education or income generation.

### **What is the role of the Trust Fund for Victims (TFV)?**

The TFV is an independent institution established in September 2002.

It has dual a mandate:

- 1) *Provide assistance to victims* independently of trials, through projects aimed at physical or psychological rehabilitation or material support for the benefit of victims and their families.

The TFV implements assistance projects towards ICC situation victims and their families to provide them with physical rehabilitation, material support, and/or psychological rehabilitation. Benefitting from assistance projects is not limited to the victims participating in the ICC proceedings.

This mandate of the TVF is directed at responding to the urgent needs of victims and their communities. As of early 2013, the Trust Fund is funding assistance projects in DRC, Uganda and hopes to start activities in Central African Republic, these could include specific projects rehabilitating helping child mothers and victims of widespread rape for instance.



## 2) *Facilitate and implement reparations* ordered by the ICC

The TVF receives money either using funds traced and seized from the convicted person, or through voluntary contributions made by States, as well as by private donations.

The Fund can be tasked to disburse money, or put into place actual projects to ensure reparation once ordered by a Chamber. The fund can also provide a back-up where the accused has insufficient funds of his own.

In the *Lubanga case*, the ICC judges have left it to the Trust Fund to identify the beneficiaries of reparation, determine the form reparation will take, and propose a reparations plan to the Chamber, focusing on collective reparation. The judges recommended that the TVF appoint a multidisciplinary team of experts to provide assistance in the preparation and implementation of a reparations plan.

## 3. Victims' rights and the ICC in Kenya

### General Information on the Kenyan Situation and Cases

#### How did the ICC intervene in Kenya?

On 15 March 2005, Kenya ratified the ICC Rome Statute. This gave the Court jurisdiction over war crimes, crimes against humanity, and genocide committed by Kenyan nationals or on Kenyan territory after the date of entry into force of the ICC Statute for Kenya (1 June 2005).

On 26 November 2009, the ICC Prosecutor requested authorisation to open an investigation in relation to the crimes allegedly committed during the 2007-2008 post-election violence in Kenya in which around 1,300 people were allegedly killed. This was the first time that the Prosecutor had invoked his powers to begin an investigation at his own instigation, without a referral from the State Party or the United Nations Security Council.

On 31 March 2010, the ICC Pre-Trial Chamber II authorised the

Prosecutor to open an investigation into alleged crimes against humanity committed between 1 June 2002 and 26 November 2009 (the date the Prosecutor filed the request for authorisation to start an investigation) in Kenya.

In February and March 2011 respectively, the Kenya Government requested the UN Security Council to halt ICC proceedings on Kenya and challenged the admissibility of the cases. It argued that the cases should be dealt with in Kenya rather than before the ICC. Both initiatives were rejected.

### **Who were identified as alleged perpetrators?**

On 8 March 2011, Pre-Trial Chamber II summoned *Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali, William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang* to appear before the Court, as it found reasonable grounds to believe that they committed the crimes alleged by the Prosecutor.

On 7 and 8 April 2008, the six defendants made their initial appearance before the Court in The Hague.

### **Why were some charges declined and when will the trial start?**

On 23 January 2012, the ICC Judges declined to confirm the charges against *Ali and Kosgey*. In Kosgey's case, the Chamber found that the Prosecutor relied on one anonymous and insufficiently corroborated witness. In Ali's case, the Chamber found that there was not sufficient evidence to connect the Kenya Police to attacks carried out in the areas where perceived Orange Democratic Movement supporters resided.

The Court confirmed the charges against *Muthaura, Kenyatta, Ruto and Sang* for alleged crimes against humanity committed during post-election violence in 2007-2008 in Kenya and committed them to trial.

On 9 July 2012, Trial Chamber V set the dates for the commencement of the trials in *Ruto & Sang* and *Muthaura & Kenyatta*, for 10 and 11 April 2013 respectively. The defendants are not in the custody of the Court.

On 7 and 8 March 2013, following a request by the accused, Trial Chamber V postponed the start of the trials. It set the provisional start of trial to 9 July 2013 in the *Muthaura and Kenyatta case* and to 28 May 2013 in the *Ruto and Sang case*. At the time of writing, following a request for postponement by Mr. Ruto, the new date for the *Ruto and Sang case* had been set for the 10<sup>th</sup> of September, 2013.

### **Why was the case against Mr. Muthaura dropped?**

On 11 March 2013, the Prosecution notified the Trial Chamber that it was withdrawing all charges against Mr. Muthaura for lack of sufficient evidence. It indicated that it was unable to gather enough evidence in light of a number of security issues affecting witnesses. On 18 March 2013, the Trial Chamber authorised the Prosecution to withdraw the charges against Mr. Muthaura.

## **3.2 Victims' rights in the two Kenyan cases**

### **How many victims have been authorized to participate at the pre-trial stage of the two cases?**

There are currently only two cases in the context of the post-election violence before the ICC for which victims can participate at the Pre-Trial, Trial and Appeal stages. Victims will need to fall within the scope of one of the two cases to qualify as case victims. The scope includes the specific of crimes, locations and periods in time covered by the charges. Only those victims who are linked to the specific crimes in each of the case will be able to participate in the proceedings.

For the purpose of the confirmation of charges proceedings, Pre-Trial Chamber II granted the status of victims (as of May 2013) authorised to participate in the proceeding:

- To 223 persons in the *Kenyatta case*

-To 327 persons in the *Ruto and Sang* case

How can victims participate at Trial?

On 3 October 2012, Trial Chamber V set out a new procedure for victims wishing to participate in the Kenya trials. The Chamber considered that a significantly different approach was needed due to the large number of victims and unprecedented security concerns.

### **What is different for victims wishing to participate in the Kenya cases?**

Only those wishing to appear in person in Court must submit a detailed application:

The Trial Chamber made a distinction between direct individual participation from participation through a common legal representative (“CLR”) or, in other words – individuals who wish to appear in person before Court and those who only wish to be recognised as ‘participants’ in the proceedings.

For those who do not wish to appear in person before Court, an individual application will no longer be necessary. However victims who wish to will be able to register with the Registry.

### What is the difference between direct individual participation, registration and general participation?

The Trial Chamber made a distinction between:

a) *Direct individual participation:*

Victims who wish to **appear in person** before the Court to present their views and concerns will need to follow the general application procedure. They may be able to present their views and concerns in person or via video-link.

Victims appearing in person or via video-link will need to disclose their identity to the parties (the Prosecution and the Defence).

Whether their identity will also be revealed to the broader public will be decided by the Chamber. The final decision on whether someone will appear in person will be made by the judges.

b) *Registration:*

Registered victims who do not wish to appear in person, and are happy to express their views and concerns through a legal representative, are able to register with the Registry through a less detailed process by sending their personal data – including information about the harm suffered. Such registration is voluntary and will not be subject to the Chamber’s individual assessment or the parties’ observations.

c) *General participation:*

The views and concerns of victims who do not register because of their unwillingness or incapacity (for practical or security reasons such as age, physical or mental incapacity, and social pressure) will “nevertheless be voiced, in a general way” through the Common Legal Representative for Victims.

**Is participation mandatory? Does it cost money?**

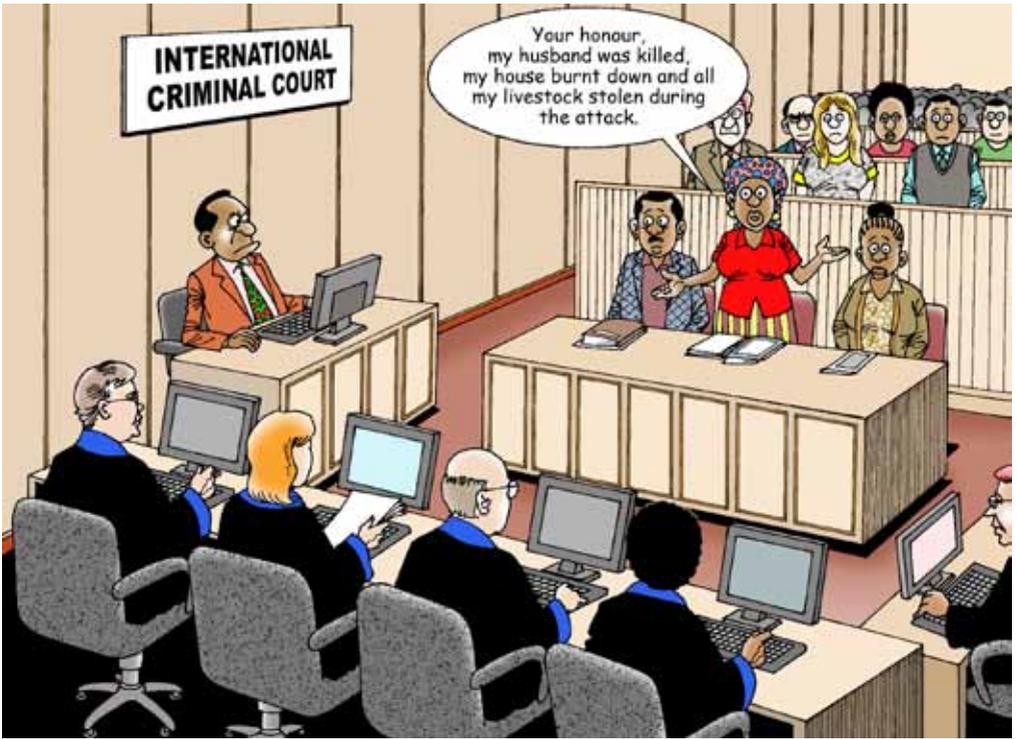
The decision to participate by a victim is a voluntary choice and it is free of charge.

**How can a victim register?**

If a victim decides to participate in the proceedings, she or he should contact the VPRS or a trusted intermediary, such as an NGO linking the ICC with affected communities, who will put them in contact with the Common Legal Representative for Victims (CLR/V) appointed by the judges for the trial stage.

**What will happen to victims who were already recognised as “participants” at the Pre Trial stage?**

Victims who were already authorised to participate at the Pre Trial stage

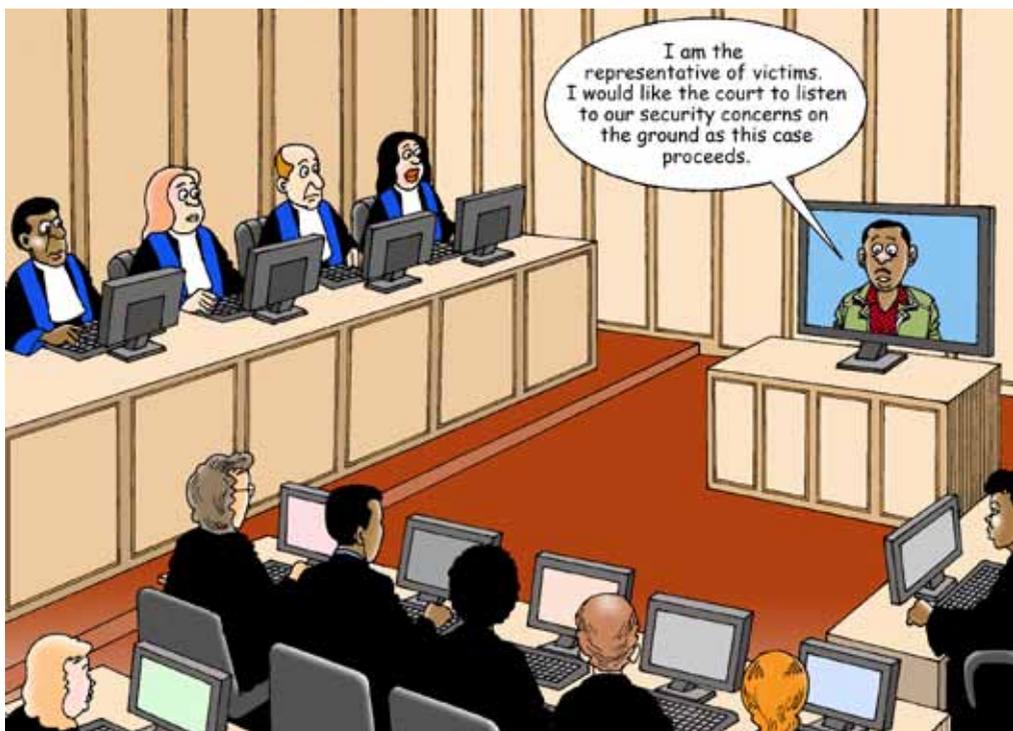


will be considered as having registered to participate through a Common Legal Representative if they fall within the scope of the charges as confirmed. The Chamber instructed the Registry to review whether all participants at the Pre Trial stage still qualify.

**Will all victims who want to appear in person be able to do so?**

No. Victims must be expressly authorised by the Chamber to appear in person.

The CLRV will submit a request to the Chamber on behalf of the victims who want to appear. The request will: 1) explain why these particular victims should be considered as “best placed to reflect the interests of the victims” and 2) contain a summary of the issues the victims will address if authorised to appear.



The Chamber will make a preliminary assessment on the appropriateness of the participation of the victims and can ask the CLRV to make a pre-selection. The Chamber will “pre-select” a limited number of victims who may be authorised to appear and invite the parties to make observations on the victims’ applications. The Chamber will then make a final determination on which victims will be authorised to appear.

### **When will victims be allowed to appear in person?**

Provided some conditions are fulfilled, individual victims may be invited by the Chamber to present their views and concerns in person at trial including during the opening and closing hearings.

### **How can victims obtain more information on their right to participate and seek reparation?**

Victims can contact the ICC's Participation and Reparations Section (VPRS) by email at [Infovic2011@gmail.com](mailto:Infovic2011@gmail.com) or by phone: from 2pm to 5pm at 0700357469

### **How will victims be represented? Who will the Common Legal representative represent?**

Victims not appearing in Court will be represented through a Common Legal Representation system. In the present case, the victims will be represented through a Common Legal Representative to be based in Kenya and who will be assisted by the Court's in-house Office of Public Counsel for victims ('OPCV').

The CLRV will represent all the victims in a case – regardless of whether they are registered or not.

The CLRV will act as the main point of contact for the victims whom he/she represents, to formulate their views and concerns and will appear on their behalf in key hearings only.

The CLRV will be authorised to make opening and closing statements at trial. The OPCV will act as a link between the counsel and the Chamber in everyday proceedings, by attending hearings on behalf of the CLRV and will act under his or her instructions.

The Victims Participation and Reparations Section (VPRS) will provide the Court periodically with a “comprehensive report on the general situation of the victims as a whole”, including statistics on the victims' population. These reports will be able to assist the CLRV to assess victims' interests by informing him or her on the victims' population, their general situation, the harm suffered, etc.

### **Who are the victims' representatives and how were they chosen?**

On 20 November 2012, the Trial Chamber appointed Mr Fergal Gaynor as CLRV in replacement of Mr. Anyah who represented victims at the Pre-Trial stage for Case 2 (*Kenyatta case*).

On 23 November 2012, the Trial Chamber appointed Mr. Nderitu as new CLRV in replacement of Ms. Chana for Case 1 (*Ruto and Sang case*).

They were appointed after the Chamber instructed the Registry to submit recommendations.

In selecting the candidate, the Registrar was asked to take into account specific criteria, which includes: the candidate's knowledge of the case and of the specific situation of the group of victims; the candidate's willingness and ability to maintain an ongoing presence in Kenya throughout the course of the proceedings.

### **What is the impact of dropping the case against Mr. Muthaura on victims?**

During the status conference on 11 March 2013, the CLRV submitted that a decision by the Chamber to dismiss the charges against Mr. Muthaura should be without prejudice and that the Prosecutor should be able to bring charges against him in the future, should circumstances change.

On 18 March 2013, the Trial Chamber reminded Mr. Muthaura that protective measures ordered in respect of victims and witnesses shall continue to have full force and effect after the proceedings have been concluded.

Due to the fact that Mr. Muthaura was charged as an indirect co-perpetrator, together with Kenyatta, **the scope of the charges is not** modified as a result of the decision to drop the case against him.

Similarly the failure to confirm charges against Ali and Kosgey does not impact on victims already accepted to participate, as they were accused of respectively perpetrating the same crimes as in the *Kenyatta and Ruto & Sang* cases.

### **How will victims and witnesses be protected?**

Despite measures to be taken by the ICC at various stages to mitigate the risk for victims, such as concealing identity, it is true that the ICC

has limited resources to provide protection to victims participating in the Court proceedings. Victims must be discrete about who they tell and consider appropriate steps to minimise risks to them and their families.

### **Will victims be able to apply for reparation?**

The proceedings regarding reparation are related to conviction. Reparation may be ordered only in relation to the crimes for which the accused was found guilty and only after such a decision is issued. This may take several years.

### **Will the TVF assist victims in Kenya beyond the scope of the cases?**

Situation victims beyond the scope of the cases may benefit from eventual assistance projects of the TVF. However, as of April 2013, the TVF has not initiated activities in Kenya. As funds are limited, it is not clear whether the TVF intends to do so in the near future.

## **3.1 What is the scope of the charges in the two Kenyan cases?**

### **CASE I: The Prosecutor v. William Samoei Ruto and Joshua Arap Sang**

**Mr. Ruto** of the ODM is alleged to be an “indirect co-perpetrator” of crimes against humanity committed against supporters of the PNU, consisting of:

- murder;
- forcible transfer; and
- persecution

The Pre-Trial Chamber found that he provided essential contributions to the implementation of the common plan by way of organising and coordinating the commission of widespread and systematic attacks that meet the threshold of crimes against humanity, without which the plan

would have been frustrated. William Ruto allegedly:

- i. planned and was responsible for the implementation of the common plan in the entire Rift Valley;
- ii. created a network of perpetrators to support the implementation of the common plan;
- iii. directly negotiated or supervised the purchase of guns and crude weapons;
- iv. gave instructions to the perpetrators as to who they had to kill and displace and whose property they had to destroy; and
- v. established a rewarding mechanism with fixed amounts of money to be paid to the perpetrators upon the successful murder of PNU supporters or destruction of their properties.

**Mr. Sang** of the ODM is alleged to have “contributed to the commission” of the same three crimes (murder, forcible transfer and persecution), although at a lesser mode of liability, because the Pre-Trial Chamber found that his contribution to the commission of the crimes “was not essential”. He is allegedly responsible to have contributed by virtue of his influence in his capacity as a key Kass FM radio broadcaster. He allegedly contributed in the implementation of the common plan by:

- (i) placing his show Lee Nee Eme at the disposal of the organisation;
- (ii) advertising the organisation’s meetings;
- (iii) fanning violence by spreading hate messages and explicitly revealing a desire to expel the Kikuyus; and
- (iv) broadcasting false news regarding alleged murder(s) of Kalenjin people in order to inflame the violent atmosphere.

## What are some of the incidents they are being held to account for?

Pre-Trial Chamber II found that there are substantial grounds to believe that:

- Immediately after the announcement of the results of the presidential election and specifically from 30 December 2007 until 16 January 2008, an attack was carried out – following a unified, concerted and pre-determined strategy – by different groups of Kalenjin people, in locations including Turbo town, the greater Eldoret area (encompassing Huruma, Kiambaa, Kimumu, Langas, and Yamumbi), Kapsabet town and Nandi Hills town, in the Uasin Gishu and Nandi Districts, the Republic of Kenya. The attack allegedly targeted the civilian population, namely the Kikuyu, Kamba and Kisii ethnic groups, which were perceived as Party of National Unity (PNU) supporters.
- In particular, the violence in the Uasin Gishu District (encompassing Turbo town and the Eldoret area) allegedly resulted in more than 230 people killed, 505 people injured and more than 5,000 people displaced. In the Nandi District (encompassing Kapsabet town and Nandi Hills town), the attack allegedly ended in the death of at least 7 persons and thousands of persons were forced to seek refuge at Nandi Hills police station and in the surrounding areas. A number of houses and business premises were also looted and burned.
- Allegedly, there was a plan to punish PNU supporters in the event that the 2007 presidential elections were rigged, which aimed at expelling them from the Rift Valley, with the ultimate goal of creating a uniform Orange Democratic Movement (ODM) voting block. In order to implement the plan agreed upon, a network of perpetrators has been allegedly established with the purpose of evicting members of the Kikuyu, Kisii, and Kamba communities. The Network was allegedly under responsible command and had an established hierarchy. The network possessed the means to carry out a widespread or systematic attack against the civilian population, as its members had access to and utilised a considerable amount of capital, guns, crude weapons and

manpower.

## **CASE II: The Prosecutor v. Uhuru Muigai Kenyatta**

Mr. Kenyatta of the PNU is alleged to be indirect co-perpetrator of the crimes against humanity of murder, forcible transfer, rape, persecution, and other inhumane acts, allegedly committed against ODM supporters, partly in retaliation against attacks against the PNU supporters.

### Charges

Mr. Kenyatta is accused of being criminally responsible as an indirect co-perpetrator for the crimes against humanity of:

- murder
- deportation or forcible transfer of population
- rape
- persecution
- other inhumane acts

What are some of the incidents Mr Kenyatta is being held to account for?

Pre-Trial Chamber II found that there are substantial grounds to believe that:

- From 24 until 28 January 2008, the Mungiki criminal organisation allegedly carried out a widespread and systematic attack against the non-Kikuyu population perceived as supporting the Orange Democratic Movement (ODM) (mostly belonging to Luo, Luhya and Kalenjin ethnic groups) in Nakuru and Naivasha.
- The attacks in or around Nakuru and Naivasha resulted in a large number of killings, displacement of thousands of people, rape, severe

physical injuries, mental suffering and destruction of property.

- Between, at least, November 2007 and January 2008, among other things, Muthaura, Kenyatta and members of the Mungiki, allegedly created a common plan to commit these attacks. According to the alleged plan, it was envisaged at the meetings that the Mungiki would carry out the attack with the purpose of keeping the Party of National Unity (PNU) in power, in exchange for an end to government repression and protection of the Mungiki's interests.
- The contribution of Uhuru Muigai Kenyatta to the implementation of the common plan was allegedly essential. More specifically, Mr Kenyatta's contribution allegedly consisted of providing institutional support, on behalf of the PNU Coalition, to secure:
  - (i) the agreement with the Mungiki for the purpose of the commission of the crimes; and
  - (ii) the execution on the ground of the common plan by the Mungiki in Nakuru and Naivasha.

#### **4. Filling the impunity gap: Other avenues for justice for post-election violence victims?**

##### **What is the relationship between the ICC and national courts?**

National courts are responsible for the prosecution of those perpetrators not prosecuted by the ICC. The ICC investigates and prosecutes only if states or national courts are unable or unwilling to do so.

Kenyan authorities have an obligation under international law to provide effective remedies to victims of serious violations of human rights committed in the 2007-8 post-election violence; and reparation when crimes were committed by state agents or when the State failed to prevent certain crimes committed by private citizens.

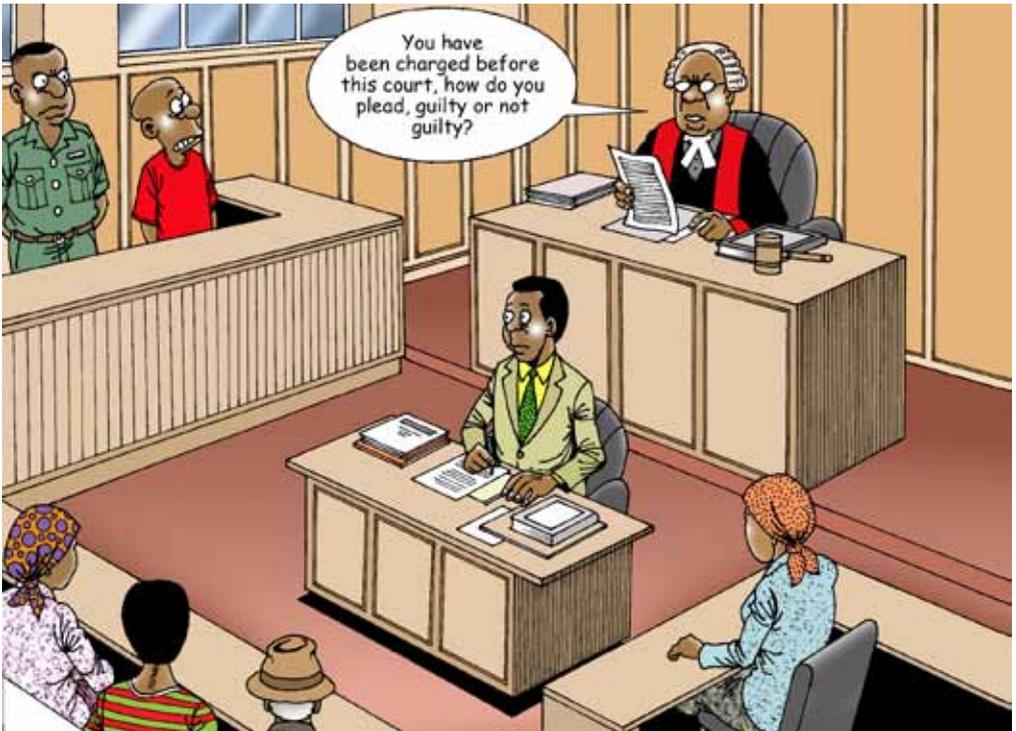
When the Kenyan Government challenged the admissibility of the Kenyan cases before the ICC, the Pre-Trial Chamber ruled that there was

no “concrete evidence of ongoing proceedings before national judges” against the accused.

To date only few alleged perpetrators were brought to justice before Kenyan courts. The Kenyan Office of the Director of Public Prosecutions has reportedly initiated new investigations into at least 6,000 cases involving alleged low and mid-level perpetrators. A task force to review those cases was set up in February 2012. However, in August 2012, the task force concluded that most PEV cases were unsuitable for prosecution due to a lack of evidence.

### **What are victims’ rights in the context of the Kenyan justice system?**

Under international law, victims of serious violations of international human rights and humanitarian law have a right to an effective remedy,



including reparation.

Whatever the outcome of the Kenyan trials before the ICC, the Kenyan authorities have a primary obligation to investigate alleged crimes committed during the post-election violence and bring perpetrators to justice.

*The UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, provides that victims of such crimes must have (a) Equal and effective access to justice; (b) Adequate, effective and prompt reparation for harm suffered; (c) Access to relevant information concerning violations and reparation mechanisms.

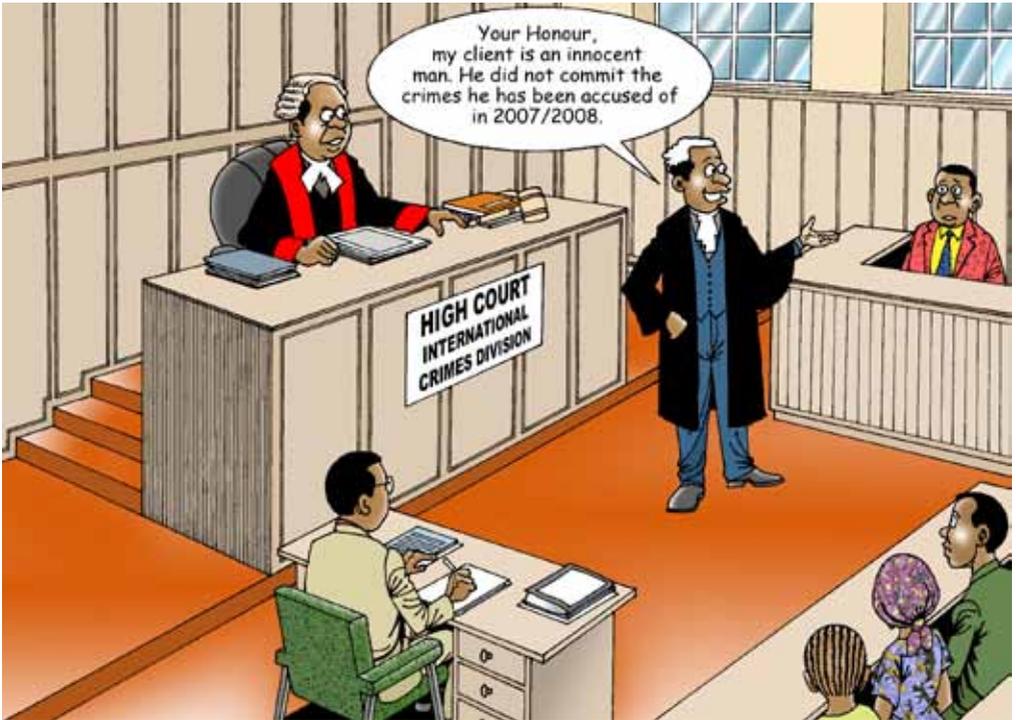
The current initiative by the Kenyan Government to create an International Crimes Division within the High Court in Kenya will have to respect those principles.

### **Are victims of the ICC cases protected in Kenya?**

The Kenyan authorities have an obligation to protect victims. The Witness Protection Agency, established in November 2009, is tasked to provide protection to witnesses who will testify locally and before the ICC, but it lacks funding to implement its mandate.

### **What will be the impact of the Truth Justice and Reconciliation Commission (TJRC) process?**

The TJRC report was publicly released on the 21<sup>st</sup> of May 2013. This report covers historical injustices and human rights violations that occurred between 12<sup>th</sup> December 1963 and 28 February 2008. The TJRC has recommended the establishment of a reparation fund that shall be used to provide reparations to victims of human rights violations and historical injustices. The recommended reparations are material and non-material in nature and shall be granted to individual victims and victim groups. The reparation framework foresees reparations for violations of the right to life and the right to personal integrity, forcible transfer of



populations, historical and contemporary land injustices and systematic marginalization. In so doing, it concentrates on extremely vulnerable individuals, groups who have suffered injustice specifically including historical land injustices and individuals who have been victims of violations of the right to life as well as the right to personal integrity.

Other recommendations related to access to justice for 2007-8 post-election violence victims include:

- Prosecution of individuals involved in torture and ill-treatment
- Declaration under article 36(6) of the Protocol to the African Charter on Human and People's Rights on the establishment of the African Court on Human and People's Rights
- Issuance of a public report on the progress of investigations and

prosecution of 2007-8 post-election related violence

- Investigation and prosecution of all adversely mentioned persons in official reports on politically instigated ethnic violence or clashes notwithstanding their official or other status. The Director of Public Prosecutions shall also take action in respect to the recommendations of various reports of the Kenya National Commission on Human Rights on ethnic and political violence including its report on the 2007-8 post-election violence.

Fast tracking of the establishment of the International Crimes Division of the High Court by the Judiciary, which shall be responsible for the trial of some of the cases referred to the Director of Public Prosecutions for investigations and prosecution.

### **Can victims use regional Human Rights Mechanisms or United Nations mechanisms for PEV?**

Victims can file complaints before regional human rights mechanisms or UN bodies in relation to the responsibility of States (as opposed to individuals) for human rights violations. Such cases can be taken under certain conditions, notably that the applicant has exhausted domestic remedies in Kenya prior to bringing a case before one of those mechanisms. Domestic remedies must be effective, available and adequate – if they are not, a case could be made that no effective domestic remedy exists and therefore a case could be brought directly to a regional or international body.

It is furthermore in discussion if the East African Court of Justice shall be able in the future to try individuals for international crimes, similar to the ICC.

**Kituo cha Sheria** offers assistance to victims in Kenya that decide to participate in the ICC proceedings and to apply for reparations. KITUO gives out information, assists in filling in the form and to collect all necessary documents.

# HAKI ZA WAATHIRIWA ZA KUSHIRIKI NA KUTAFUTA FIDIA MBELE YA MAHAKAMA YA KIMATAIFA KUHUSU KESI ZA JINAI (ICC)



**KITUO CHA SHERIA**

The Centre for Legal Empowerment

*we care for justice*

## **Haki za Waathiriwa za kushiriki na kutafuta Fidia mbele ya Mahakama ya Kimataifa kuhusu Kesi za Jinai {International Criminal Court-ICC}**

Kijitabu hiki kinalenga kuwapa waathiriwa wa vurugu za baada ya uchaguzi wa mwaka wa 2007-8 Kenya, habari kuhusu Mahakama ya Kimataifa kuhusu Kesi za Jinai {International Criminal Court-ICC}.

Kinajaribu kuyajibu baadhi ya maswali makuu ambayo huulizwa na waathiriwa na kinalenga kufafanua wazi mamlaka ya Mahakama hii ya Kimataifa na mipaka yake ili waathiriwa waelewe vyema zaidi wajibu wa Mahakama hii kuhusiana na maswala ya Kenya.

Kijitabu hiki kinalenga kuwafahamisha waathiriwa kuhusu haki zao za kushiriki kwenye taratibu za kesi za Mahakama ya Kimataifa pale ambapo wanaruhusiwa, na uwezo wa kutafuta kulipwa fidia. Kijitabu hiki vilevile kinalenga kuwawezesha waathiriwa kufanya maamuzi yaliyojengeka kwenye ufahamu kuhusiana na kama wangetaka kuhusika kwenye Mahakama ya Kimataifa. Kazi hii inatoa mtazamo wa kijumla kuhusiana na mamlaka ya Mahakama ya Kimataifa kuhusiana na waathiriwa halafu inasisitiza jinsi haki za waathiriwa zinavyoshughulikiwa kwenye Mahakama ya Kimataifa kuhusiana na maswala halisi ya Kenya.

Chapisho hili ni toleo lililorekebishwa kiasi na linaloafikiana na chapisho lililotolewa kwa muungano wa Kituo cha Sheria na REDRESS. Kituo cha Sheria wangependa kuziwasilisha shukrani zao kwa REDRESS ambao wameufadhili uchapishaji wa kijitabu hiki.

Tunatoa shukrani kwa Huduma ya Amani ya Umma (GIZ) inayodhaminiwa na Shirikisho la Ujerumani kwa Maendeleo na Ushirika wa Kiuchumi, ambao wametoa msaada kukigharamia kijitabu hiki.

Vilevile tunamshukuru Aimee Ongeso na Tobias Mwadime kwa mchango wao kwenye chapisho hili.

Gertrude Angote

Mkurugenzi Mkuu

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# 1. Mahakama ya Kimataifa kuhusu Kesi za Jinai (ICC) kwa Jumla

## 1.1 Mamlaka ya Mahakama ya Kimataifa na mipaka yake ni ipi?

Mahakama ya Kimataifa ni mahakama ya kudumu inayoshughulikia kesi za jinai. Ilianziwa na mkataba wa kimataifa (Sheria za Roma) mnamo mwaka wa 1998 na kuundwa mnamo 2002. Mahakama hii inashughulikia:

- Kuwashitaki watu binafsi wanaoshukiwa kutekeleza uhalifu na walio juu ya miaka 18;
- Mauaji ya halaiki, uhalifu dhidi ya umma/uanadamu, na uhalifu wa kivitaa na (uchokozi baada ya mwaka wa 2018).

*Mauaji ya halaiki* ya inamaanisha mauaji, kusababisha madhara ya kina ya kimwili



au ya kiakili na vitendo vingine, pale ambapo madhara haya yanatendeka kwa malengo ya **kuangamiza** sehemu au kwa ukamilifu, taifa, kabila, watu wa rangi fulani au **kundi** la kidini.

*Uhalifu dhidi ya Uanadamu* unamaanisha baadhi ya vitendo (kwa mfano mauaji ya wanadamu, maangamizi, ufanyaji wengine kuwa watumwa, au uhamishaji) ambavyo hutendwa kama sehemu ya **uvamizi uliosambaa na unaofuata utaratibu**, unaoelekezewa umma/raia.

*Uhalifu wa kivita*, unamaanisha baadhi ya vitendo ambavyo vinaleta ukiukaji wa kina wa sheria na tamaduni ambazo zimo kwenye kundi la **vurugu za zitumiazo silaha** za kimataifa na zisizo za kimataifa, kwa mfano mauaji makusudi ya raia au kuwatendea visivyo wafungwa wa kivita.

*Uhalifu wa uchokozi* unamaanisha upangaji, utayarishaji, uanzishaji na utekelezaji wa tendo ukitumia nguvu za kijeshi; tendo linalotekelezwa na serikali dhidi ya serikali nyingine.

Mahakama ya Kimataifa inaweza tu kuwajukumisha/kuwashitaki **watu binafsi** wala si makundi ya kijeshi au ya kihalifu, serikali au makampuni. Mahakama hii hutenda kazi tu pale ambapo Serikali husika imeshindwa au haitaki yenyewe kuchunguza uhalifu. Wakati ambapo Mahakama ya Kimataifa inayo mamlaka ya kuwashitaki wahusika, bila kujali cheo chao, kihakika, zaidi huenda itawalenga wale ambao wanalo jukumu la uongozi katika kutekeleza uhalifu wa kimataifa. Pale ambapo kumekuwa na uhalifu ambao umesambaa kwa mapana, wale washukiwa ambao wamehusika kwenye nyadhifa za chini, kama vile maafisa wa polisi au wale askari ambao ni wa hadhi za chini, huenda watahitakiwa na kufunguliwa mashitaka kwenye mahakama za kitaifa.

Mahakama ya Kimataifa ina makao yake huko Hague kule nchi ya Netherlands, ingawa inaweza kuvifanyia vikao vyake kwingineko. Mahakama hii inazo ofisi za nje kule Uganda, kwenye Jamhuri ya Kidemokrasia ya Kongo, huko Jamhuri ya Afrika ya Kati, Ivory Coast na Kenya. Kunayo mataifa 122 “Mataifa Shiriki” ya Sheria za Roma (kufikia Julai 2013). Kama washiriki, serikali sharti ziambatane na kanuni za Sheria za Roma.

## **Kenya kama Serikali Mshiriki wa Sheria za Roma inayo majukumu gani?**

Watawala wa Kenya wanalo jukumu la:

- kushirikiana na Kiongozi wa Mashitaka (Prosekjuta) wa Mahakama Kuu na viungo vingine vya Mahakama hii ya Kimataifa;

- kuwalinda waathiriwa na mashahidi wasipatwe na madhara yoyote;
- kutekeleza utiwaji nguvuni wa watu binafsi waliotolewa vibali vya kutiwa nguvuni, hata kama wao ni maraisi au mawaziri walio nyadhifani.

Kwenye kesi za Kenya, wale washitakiwa, hadi kufikia sasa wamekuwa wanajiwasilisha wenyewe (bila kulazimishwa) mbele ya mahakimu wa Mahakama ya Kimataifa.

### **Ni jukumu la nani kuleta haki?**

Jukumu la Mahakama ya Kimataifa inayoshughulikia kesi za Jinai (ICC) inausaidia mfumo wa haki wa Kenya. Hii inamaanisha kwanza kabisa kuwa, watawala wa Kenya wanalo jukumu la kuwasilisha haki na fidia kwa waathiriwa wa vurugu. Licha ya hayo, ingawa vurugu za baada ya uchaguzi kutoka Desemba 2007 hadi Februari 2008, zilitendeka kwenye maeneo mengi ya Kenya, ni wahusika wachache tu walioyatekeleza walioweza kushitakiwa na serikali ya Kenya kufikia sasa.

Kwa njia inayoeleweka, kutokana na ufanisi haba wa viwango vya kitaifa katika kuleta haki na ulipaji fidia kwa waathiriwa, Wakenya wengi huigeukia Mahakama ya Kimataifa wakiwa na matumaini makubwa hali ambayo inaweza kukatiza tamaa kwa urahisi.

## **1.2 Ni wakati upi ambapo Mamlaka ya Kimataifa inaweza kuchunguza na kushitaki uhalifu ?**

Mahakama ya Kimataifa inaweza kuchunguza na kushitaki katika hali tatu:

1. Pakiwemo na maombi ya Serikali husika (Jamhuri ya Afrika ya Kati, Jamhuri ya Kidemokrasia ya Kongo, Uganda na Mali)
2. Kutokana na uanzilishi wa Kiongozi wa Mashitaka (Prosekyuta) (Kenya na Ivory Coast). Kutokana na hili, uhalifu sharti uwe umetendewa kwenye eneo la serikali husika au na raia wa nchi husika nje ya eneo.
3. Kama Baraza la Usalama la Umoja wa Mataifa (UM) litapendekeza “Hali” kwa Kiongozi wa Mashitaka (Prosekyuta) (Darfur na Libya).

### **Je kunaye ambaye amekingwa asifikiwe na Mahakama?**

Hapana. Sheria za Roma zinawahusu watu wote kwa usawa. Mtu yeyote, hata Raisi, anaweza kuwajibishwa kwenye mashitaka kuhusiana na uhalifu wa



kimataifa, ambao unamhusu. Sheria za Roma zinasisitiza kuwajibikia uhalifu kwa makamanda na wakuu wengine kwa vitendo ambavyo vimetekelezwa na wadogo wao. Hakuwezi kuwepo na msamaha (kulindwa au kuachiliwa huru kutokana na mashitaka) kwenye uhalifu wa kimataifa.

### 1.3 Vitengo vikuu vya Mahakama ya Kimataifa ni vipi?

Mahakama ya Kimataifa imeundika na **vitengo vikuu vinne** vifuatavyo:

- Uraisi ndio ulio na wajibu wa usimamizi wote kwa jumla wa Mahakama, ila ofisi ya Kiongozi wa Mashitaka (Prosekjuta). Kitengo hiki cha Uraisi kunajumuisha mahakimu watatu wa Mahakama ya Kimataifa
- Vitengo vya Kimahakama vinao mahakimu kumi na wanane wakiwa wamepangika kwenye Kitengo cha Kabla ya kuanzisha Kesi Yenyewe, Kitengo cha Kesi Yenyewe na Kitengo cha Ukataji Rufaa. Mahakimu kwenye kila kitengo huketi kwenye Ofisi ya Mahakimu ambamo wana jukumu la kuongoza kesi za mahakama kwenye viwango tofauti.

- Ofisi ya Kiongozi wa Mashitaka (Prosekyuta) inalo jukumu la kupokea maswala iliyowasilishiwa na habari zilizothibitishwa kuhusiana na uhalifu ulio kwenye mamlaka ya Mahakama, ili ofisi hii iweze kuyakagua yote hayo na iweze kuendeleza uchunguzi na mashitaka. Ofisi hiyo kwa sasa inaongozwa na Kiongozi wa Mashitaka (Prosekyuta) Bi. Fatou Bensouda (kutoka Gambia), aliyechaguliwa Juni 2012 na Serikali Husika, ahudumu kwa kipindi cha miaka tisa.
- Ofisi ya Usajili inalo jukumu la maswala yasiyo ya kimahakama yaliyomo kwenye uendelezaji wa mambo ya Mahakama, na inaongozwa naye Msajili. Msajili ana vitengo maalumu vinavyohusiana moja kwa moja na waathiriwa:

Kitengo cha Waathiriwa na Mashahidi. Kitengo hiki ni cha kutoa hatua za kulinda na mipango ya kiusalama, ushauri na misaada mingineyo kwa mashahidi, waathiriwa wanaojwasilisha mbele ya Mahakama na wengineo ambao wamo kwenye hatari kuhusiana na ushahidi;

Sehemu ya Kushiriki kwa Waathiriwa na Kulipwa kwao: sehemu hii inawasaidia waathiriwa wanaotafuta namna ya kushiriki na/au kudai malipo (fidia), na hutazama kwa mara ya kwanza maombi yao ya kutaka kushiriki, na huhakikisha kuwa maombi hayo yamekamilika. Sehemu hii vilevile hushughulikia habari zaidi kutoka kwa wanaotuma maombi; na habari ambazo zinahitajika kabla ya kuziwasilisha kwenye Ofisi ya Mahakimu ya Mahakama ya Kimataifa.

Sehemu ya Msaada wa Kimashauri inashughulikia msaada wa kisheria, na kutoa msaada wa kifedha kwa wale ambao hawawezi kugharamia kuwakilishwa kisheria (wao hutekeleza haya kwa kutoa uwakilishaji kwa jumla kwenye kesi za waathiriwa).

- Mahakama ya Kimataifa vile vile inajumuisha sehemu kama vile:
  - Ofisi ya Ushauri kwa Umma ambayo inatoa msaada wa kisheria na usaidizi kwa waathiriwa na kwa wanaowawakilisha kisheria ili kuhakikisha kuwa kuna uwakilishaji ufaao kwa waathiriwa kwenye utaratibu wa kesi.
  - Ofisi ya Ushauri wa Umma kwa Mshitakiwa inaendeleza haki za

kujitetea.

Hizi zote ni ofisi ambazo kila moja imejisimamia ingawa zinahusiana na Usajili wa shughuli za usimamizi.

Mfuko wa Dhamana kwa Waathiriwa ni kiungo huru ambacho husaidia kazi ya Mahakama ya Kimataifa na hushughulikia malipo (fidia) na msaada kwa waathiriwa kwa hali ya miradi ambayo inalenga kusimamia mahitaji ya waathiriwa ya kimwili, kivifaa na kisaikolojia.

#### **1.4 Hatua za taratibu za Kesi za Mahakama ya Kimataifa (Uchunguzi na kuendeleza kesi) ni zipi?**

Utaratibu wa Kesi kwenye Mahakama ya Kimataifa huchukua muda. Kwa mfano, Thomas Lubanga, kiongozi wa Waasi Kongo alihukumiwa kifungo cha zaidi ya miaka sita baada ya Mahakama ya Kimataifa kutoa kibali cha kutiwa nguvuni kwake (Jambo hili kwa sasa limekatiwa rufaa).

Hatua za kesi ni:

- Uchunguzi wa Mwanzo: Kwenye hatua hii, Kiongozi wa Mashitaka (Prosekyuta) huamua kama ataanzisha uchunguzi au la;
- Uchunguzi (wenyewe): Kiongozi wa Mashitaka (Prosekyuta) anakagua matukio hakika na ushahidi, na anatuma maombi kwenye ofisi ya Mahakimu ya kushughulikia Kesi kabla ya Kesi Yenyewe ili kutolewe idhini ya kumtia nguvuni au kumwagiza yeyote ambaye, kunaonekana kuwa kuna misingi dhabiti ya kuaminika kuwa alitenda uhalifu unaotajika;
- Kesi Kabla ya Kesi Yenyewe: Mahakimu wanaendeleza kusikizwa kwa kesi na wanathibitisha mashitaka kama kuna misingi dhabiti ya kuamini kuwa uhalifu unaosemekana ulitendeka, na wanaagiza kesi iendelee;
- Kesi: Mahakimu watausikiliza na kuukagua ushahidi unaoletwa na Kiongozi wa Mashitaka (Prosekyuta) na ule unaoletwa na upande wa Mshitakiwa (kujitetea). Mwisho wa utaratibu huu, aliyeshitakiwa ataachiliwa, au atapatikana kuwa na hatia, na kama ni hili la pili, atapewa hukumu. Kama mtu atahukumiwa, malipo (fidia) zinaweza kutolewa kwa waathiriwa wa uhalifu ambao mshitakiwa amepatikana kuwa na hatia.
- Kukata Rufaa: Uamuzi wa mwisho wa mtu kuwa na hatia, kutolewa

kwa hukumu au malipo (fidia) vinaweza kupingwa na upande wowote ule. Mwisho wa hatua hii, uamuzi wa ukataji rufaa utatolewa.

## 2. Haki za Waathiriwa mbele ya Mahakama ya Kimataifa

### 2.1 Mwathiriwa ni nani?

Mwathiriwa ni:

- Mtu binafsi ambaye ameumia kwa njia ya moja kwa moja au isiyo ya moja kwa moja, kutokana na tendo la uhalifu ambao umo chini ya mamlaka ya kesi za Mahakama ya Kimataifa; na
- Mashirika au taasisi ambazo kwa njia ya moja kwa moja, zimedhuriwa mali ambazo zimetengwa kwa maslahi ya dini, elimu, sanaa au sayansi au kwa sababu za kimisaada, na kwa minara au sanamu zao za ukumbusho, hospitali na kwa maeneo mengine na vifaa vya malengo ya kibinadamu; madhara ambayo yametokana na utendaji wa uhalifu uliomo chini ya mamlaka ya kesi za Mahakama ya Kimataifa.

Kati ya watu binafsi, kuna waathiriwa wa moja kwa moja na vilevile wale waathiriwa wasio wa moja kwa moja kama vile familia au wanaowategemea wale waathiriwa wa moja kwa moja, na “watu ambao wamepata madhara kutokana na kuulizwa maswali ya kuwasaidia waathiriwa walio kwenye hali ya kusumbuka au ili kuzuia hali ya kunyanyaswa visivyo/kuonewa”.

Ili kushiriki kwenye taratibu za kesi, waathiriwa sharti waonyeshe kuwa madhara, kuumia, hasara na uharibifu walioupata umehusiana na mashitaka dhidi ya mshitakiwa. Madhara, ya moja kwa moja na yasiyo ya moja kwa moja, kuumia, hasara na uharibifu unajumuisha:

- madhara ya kimwili ikiwemo ni pamoja na kumfanya mtu apotewe na uwezo wa kupata watoto;
- madhara ya kimaadili yanayotokana na kuteseka kimwili, kiakili na kihisia;
- madhara kwa mali, ikiwemo ni pamoja na kupotewa na uwezo wa kupata mapato na kupotewa na mali;

- nafasi zilizopotea, ikiwemo ni pamoja na zile zinazohusiana na ajira, elimu, manufaa ya kijamii, hadhi ya kijamii na haki za kisheria;
- matumizi kama vile ya kuhitaji wataalamu wa kisheria, huduma za kimatibabu au msaada wa kijamii.

## **2.2 Waathiriwa wanaweza Kushiriki kwenye taratibu za kesi za Mahakama ya Kimataifa?**

Ndio. Waathiriwa wanaweza, wakiwa chini ya masharti fulani, kushiriki kwenye utaratibu wa kesi za Mahakama ya Kimataifa.

Ni wakati upi ambapo waathiriwa wanaweza kushiriki kwenye utaratibu wa kesi za Mahakama ya Kimataifa?

Wakati ambapo maslahi ya kibinafsi ya mwathiriwa yamehusika, Mahakama ya Kimataifa inaweza kuwaruhusu waathiriwa kutoa maoni yao na masikitiko yao kwenye hatua za utaratibu wa kesi ambapo itaonekana inafaa. Lakini, waathiriwa huenda tu wakafanya hivyo kama tendo hilo haliziathiri haki za mshitakiwa wala kuathiri kesi yenye haki na isiyopendelea upande wowote. Waathiriwa ambao wanatambulika kama washiriki hufahamishwa kuhusu maendeleo kwenye utaratibu wa kesi ambazo zinayaathiri maslahi yao.

### **Waathiriwa wa hali dhidi ya waathiriwa wa kesi ni akina nani?**

Mahakama ya Kimataifa inatofautisha kati ya **waathiriwa wa “hali”** na **waathiriwa wa “kesi”**.

a) Hali inasimamia uhalifu wowote ule unaochunguzwa; Waathiriwa wa hali kwa hiyo ni wale waathiriwa wa uhalifu ambao unasemekana ulitendeka dhidi ya ubinadamu unaohusiana na vurugu za baada ya uchaguzi za mwaka 2007-2008 Kenya.

b) Kesi inasimamia mambo halisi yanayohusiana na mshukiwa au mtu aliyeshitakiwa. Waathiriwa wa kesi ni waathiriwa ambao walipata madhara kutokana na uhalifu maalumu ambao kutokana nao mtu fulani ameshitakiwa kwenye Mahakama ya Kimataifa.

Kunazo nafasi haba kwa waathiriwa wa hali kushiriki.

### **Ni masharti yapi yaliyopo hata mwathiriwa aruhusiwe kushiriki?**

a) mtu husika awe anachukuliwa kuwa “mwathiriwa”;

b) maslahi yake yawe yameathirika;

c) kuna misingi ya kuaminika kuwa mwathiriwa alipata madhara moja kwa moja kuhusiana na uhalifu maalumu ulioshitakiwa na Mahakama ya Kimataifa, au iwe mtu amepata madhara katika kuingilia kati ili kumsaidia mwathiriwa wa moja kwa moja, au kuzuia kuonewa kwao.

Kwa mfano, mwathiriwa kwenye *kesi ya Kenyatta* sharti aonyeshe kuwa amepata madhara kutokana na mojawapo ya uhalifu ambao Bwana Kenyatta amefunguliwa mashitaka. Mahakimu vilevile watakadiria uwezekano wa athari ambazo huenda ziwepo zinazogusia kesi ya haki kwa mshitakiwa.

Waathiriwa wanawezaje kushiriki kwenye utaratibu wa kesi za Mahakama ya Kimataifa?

Utaratibu wa kushiriki si sawa kwa kesi zote.

Yafuatayo ni maelezo mafupi ya jinsi waathiriwa wametumia na kushiriki kwenye kesi za awali za Jamhuri ya Kidemokrasia ya Kongo na zile za Jamhuri ya Afrika ya Kati, na kwenye Kesi za kabla ya Kesi Zenyewe, humu Kenya. Lakini **mfumo huu umebadilika sana kwenye hatua hii ya kesi yenyewe kwenye kesi za Kenya** (Tazama Sehemu ya 3.2 hapo chini).

- Ili waweze kushiriki kwenye utaratibu wa kesi, waathiriwa wanaweza kuijaza fomu ya kawaida ya maombi inayotolewa na Ofisi zilizomo Nje za Mahakama ya Kimataifa na kuirejesha fomu hii kupitia kwa mfanyakazi wa Sehemu ya Ushirika wa Waathiriwa na Kulipwa Fidia na/au ofisi za huko Nje za Mahakama ya Kimataifa.
- Wahusika (Kiongozi wa Mashitaka (Prosekyuta) na Watetezi (upande wa Mshitakiwa) wana haki ya kutazama maombi ya waathiriwa, na baada ya hapo mahakimu wa Mahakama ya Kimataifa wataamua kama watawapa watu binafsi, cheo hicho cha kuwa waathiriwa.

Huu ndio utaratibu ambao ulitumiwa kabla ya kuidhinishwa kwa kusikizwa mashitaka kwenye kesi za Kenya. Mahakimu waliishia kutambua waathiriwa 327 kuwa washirika kwenye kesi ya *Ruto, Sang na Kosgey* na waathiriwa 233 kama washiriki kwenye *kesi ya Kenyatta, Muthaura na Ali*. Kama **ilivyotajika, mtazamo mpya umewekwa kwenye Awamu ya Kesi Zenyewe** (Tazama Sehemu 3.2 hapo chini).

**Kushiriki kuna maana gani kihakika?**

Mara tu mwathiriwa anapotambulika kuwa mshiriki, anazo haki kadha:

- a) Haki ya kuwasilisha maoni na malalamiko pale ambapo maslahi yae ya kibinafsi yameathirika. Hali hii huenda iwe kupitia kwa kuhudhuria kesi, kwa kutoa mitazamo au taarifa kwa maandishi; kwa kuuliza maswali kama shahidi, mtaalamu au mshitakiwa;
- b) Haki ya kufahamishwa kuhusu maendeleo ya utaratibu wa kesi;
- c) Haki ya kupokea hatua za ulinzi ufaao.

### **Je Waathiriwa hushiriki kibinafsi? Je, wao wenyewe husimama mbele ya mahakimu?**

Kama mwathiriwa ameidhinishwa kushiriki, haimaanishi kuwa yeye atashiriki binafsi. Sana sana, waathiriwa hushiriki kupitia kwa kuwakilishwa na mwanasheria ambaye anahudhuria vikao, anatoa mawasilisho kwa maandishi na kuwasilisha maoni na malalamiko ya waathiriwa kwenye kesi yote. Kwenye kesi kadha, idadi ndogo ya waathiriwa huenda ikaruhusiwa kuwepo mbele ya mahakimu binafsi. Kwa mfano kwenye kesi ya Bemba, idadi ndogo ya waathiriwa ilisafiri kutoka Jamhuri ya Afrika ya Kati na kwenda Hague kutoa ushahidi kwenye kesi. Waathiriwa wachache pia waliwazungumzia mahakimu kupitia kwa mawasiliano ya video na wakawasilisha maoni na malalamiko yao.



## **Kunatendeka nini pale ambapo ombi la kushiriki limekataliwa?**

Waathiriwa hawana haki ya kukata rufaa mbele ya Mahakama ya Kimataifa (ila kwenye maamuzi yanayohusu malipo (fidia)). Lakini, kama ombi la mwathiriwa limekataliwa, huyu anaweza kutuma ombi jipya kwenye hatua fulani ya baadaye kwenye kesi, endapo ana habari ya ziada ya kuimarisha ombi lake au kama upeo wa utaratibu wa kesi umebadilika.

### **2.3 Mwathiriwa anaweza kuwa shahidi?**

Shahidi ni mtu aliye na ufahamu kuhusu uhalifu au tukio maalumu tambulika kupitia kwa milango yake ya kuhisi (K.mf. Kuona, kusikia, kunusa, kugusa), na anaweza kusaidia kuthihirisha mambo kuhusu uhalifu au tukio.

Kawaida wakati ambapo uhalifu umetendeka mwathiriwa huenda pia akawa shahidi wa uhalifu. Lakini kwenye utaratibu wa Mahakama ya Kimataifa, mwathiriwa na shahidi wanasimamia makundi mawili tofauti ambayo huenda yakaingiliana. Wale waathiriwa ambao wameidhinishwa kushiriki kwenye utaratibu wa kesi za Mahakama ya Kimataifa hutoa maoni yao na malalamiko, ambayo si ushahidi, lakini huwafahamisha mahakimu juu ya mambo fulani; na hivyo wao si moja kwa moja mashahidi. Kutoa maoni na malalamiko ni tofauti na kutoa ushahidi; hakumfanyi mwathiriwa kuwa shahidi.

Kuwa shahidi kunamaanisha kutoa ushahidi na kushuhudia mbele ya Mahakama ya Kimataifa, mtu binafsi, na kuulizwa maswali na makundi husika. Hali hii huenda ikawa na athari kwa jinsi kesi itaamuliwa, iwe kutakuwa na kuhukumiwa au kuachiliwa.

Lakini, mwathiriwa atakuwa pia shahidi kama atashuhudia. Mwathiriwa hushiriki kwa haki yake mwenyewe wakati wa utaratibu wa kesi; ilhali shahidi huitwa, kwa wakati maalumu, na Kiongozi wa Mashtaka (Prosekyuta), upande wa mshitakiwa au na ofisi ya Mahakimu.

### **2.4 Haki za Waathiriwa za kupata kuwakilishwa kisheria**

Ili kushiriki na kutafuta kulipwa (fidia) mbele ya Mahakama ya Kimataifa, waathiriwa kwa jumla watawakilishwa na wakili wa jumla ambaye ameteuliwa na Mahakama

Ofisi ya Usajili inalo jukumu la kuwasaidia waathiriwa katika kupata mashauri ya kisheria, kuyapanga mawasilisho yao ya kisheria na kutoa uwakilishaji wa kisheria, wenye msaada tosha, usaidizi na habari. Zaidi na hayo, Ofisi ya Mshauri wa Umma kwa Waathiriwa inaweza kusaidia kutoa uwakilishaji wa kisheria.

Waathiriwa wako huru kuchagua kama wanataka kuwakilishwa kisheria. Kawaida ni vyema kuwakilishwa kisheria kwa vile utaratibu wa kazi za Mahakama ya Kimataifa huwa na uzito na mara nyingi huwa kuna idadi kubwa ya waathiriwa.

Ingawa waathiriwa wako huru kuchagua wakili wa kisheria, mahakimu wanaweza kuyaomba makundi ya waathiriwa kumchagua mwakilishi wao wa jumla ayawakilishe maslahi yao. Kama watashindwa kutenda hayo, Mahakama ya Kimataifa inaweza kumchagua mmoja wao kuwawakilisha na huenda wataweza kutoa msaada wa kifedha ulio kamili au kwa kiasi fulani wakati ambapo waathiriwa hawawezi kulipa.

## **2.5 Haki za Waathiriwa za kupata Ulinzi**

### **Ni nani anayeweza kujumuishwa?**

Mahakama itachukua hatua mwafaka kulinda usalama, usitawi wa kimwili na wa kisaikolojia, hadhi na hali ya kutoingiliwa ya waathiriwa na ya mashahidi. Hii ni pamoja na uwepo wa hatua zitakazochukuliwa na Kiongozi wa Mashitaka (Prosekjuta) katika uchunguzi na mashitaka. Vile vile ni pamoja na hatua ambazo mahakimu wata dai ili kuwalinda waathiriwa ambao watashiriki.

### **Ulinzi unaweza kuchukua muundo upi?**

Hatua hizi zinaweza kujumuisha: maambatano ya kiulinzi, msaada kwa mashahidi na waathiriwa; hatua hizi za msaada zinaweza kuwa za kisaikolojia na za hali ya kiutendaji na vile vile zikiuficha utambulisho wa waathiriwa na makao yao kwenye utaratibu wa kesi, au kwa kutoa ufupisho wa habari inayotolewa na waathiriwa kama ufichuzi wa habari hiyo utamweka mwathiriwa kwenye hatari. Kwa mfano, maombi ya waathiriwa ya kushiriki hayafichuliwi kwa umma ili kulinda utambulisho wao. Kwenye kesi za Kenya, utambulisho wa waathiriwa ambao watajisajili na ofisi ya usajili, kwa kanuni hautafichuliwa kwa washitakiwa.

Wakati ambapo mwathiriwa anajiwasilisha binafsi ili kuwasilisha maoni na malalamiko, au pale ambapo anatoa ushahidi kama shahidi, watetezi wa mshitakiwa hufahamishwa juu ya utambulisho wake (lakini si umma). Lakini Mahakama ya Kimataifa huenda pia ikaagiza kesi isikizwe mahali pa siri, shahidi huenda afichuliwe tu kwa sehemu, akiwa amefichwa kiasi kwa pazia, au sauti yake iwe imegeuzwa kiasi ili umma usiweze kutambua. Kwenye hali za kina sana, Mahakama inaweza kuamua kumhamisha shahidi na kumpeleka nchi tofauti.

### **Ulinzi hutolewa kiviipi?**

Kule kwenye Ofisi ya Usajili, Kitengo cha Waathiriwa na Mashahidi kimepewa

jukumu la kutekeleza hatua na mipango ya ulinzi na usalama, ushauri na misaada mingine mwafaka kwa mashahidi, waathiriwa ambao hujiwasilisha mbele ya Mahakama na wengineo ambao wamo kwenye hatari kutokana na ushahidi uliotolewa na mashahidi hao.

Kutokana na idadi ya waathiriwa ambao hushiriki kwenye utaratibu wa kesi za Mahakama ya Kimataifa na haja ya Serikali kushirikiana na kusaidiana na Mahakama ya Kimataifa huku ikitiliwa maanani ufinyu wa rasilmali zake, ni muhimu kukumbuka kuwa kuna pia wajibu wa Kenya kuwa na hatua za ulinzi.

Kila mwathiriwa anapaswa kuwaza kwa uangalifu kuhusu hatari zilizomo, na ni sharti atoe uamuzi uliojengeka kwenye ufahamu kuhusiana na kama angetaka kushiriki kwenye utaratibu wa kesi za Mahakama ya Kimataifa. Kukadiria hatari, vitisho na mipango ya yale ambayo huenda yatokee bila kutarajiwa lazima yote ifanywe. Ni jambo muhimu mtu kuwa mwangalifu kuhusu nani anayejua kushiriki kwa waathiriwa kwenye utaratibu wa kesi za Mahakama ya Kimataifa.

## **2.6 Haki za Waathiriwa za kupata Fidia**

Waathiriwa wa uhalifu ule wa mshitakiwa ambaye amepatikana na hatia anaweza kupata malipo (fidia) kwa ajili ya madhara aliyopata. Ni Mahakama ndiyo yenye jukumu la kuamua kuhusu malipo, iwe ni kwa kumwagiza aliyepatikana na hatia atoe malipo yanayofaa au malipo hayo yatolewe kupitia kwa Mfuko wa Dhamana wa Waathiriwa.

Hadi kufikia sasa Mahakama ya Kimataifa haijaanzisha kanuni za kawaida kuhusiana na malipo (fidia). Kanuni hizi zinaweza kuundwa kutegemea kesi moja au nyingine. Kumekuwa na uamuzi mmoja kuhusiana na malipo hadi kufikia sasa, kwenye kesi dhidi ya Thomas Lubanga, pale ambapo mnamo tarehe 7 Agosti 2012, Ofisi ya Mahakimu I ilitoa kanuni kuhusu malipo ambayo yanaandamana na kesi hiyo. Ingawa kanuni hizi huenda zisiambatane na za kesi nyinginezo, zinatoa mambo kadha muhimu yafuatayo:

### **Ni nani anaweza kuomba kupata malipo (Fidia)?**

Waathiriwa wanaweza kuomba kupata malipo (fidia) wakati wowote kwenye utaratibu wa kesi kwa kuwasilisha ombi lililoandikwa kwenye ofisi ya Usajili. Sehemu ya Kushiriki kwa Waathiriwa na Kulipwa kwao imetayarisha fomu za kawaida ambazo zinapatikana kwenye mtandao na kwenye afisi zilizomo nje za Mahakama ya Kimataifa.

Fomu hizi sharti ziwe na habari fulani maalumu. Habari hizi ni pamoja na utambulisho na anwani za mtuma maombi, ufafanuzi wa kuumia, hasara au

madhara, pahali na tarehe za tukio na, kufikia kiwango kinachowezekana, utambulisho wa mtu au watu ambao mwathiriwa anaamini walisababisha kuumia, hasara au madhara. Maelezo ya mali ambayo mwathiriwa angependa arejeshewe; au maumizo halisi au madhara ambayo huenda yatahitaji kushughulikiwa kupitia kwa vituo vya urekebishaji au kupitia kwa huduma nyinginezo, sharti zijumuishwe (K.mf. Kupotewa na elimu pakiwepo karo inayoandamana nayo na ile ambayo ilikuwa imelipwa; matibabu halisi ya kimadawa, kisaikolojia au matibabu mengine yoyote, n.k.)

Mahakimu wa Mahakama ya Kimataifa wanao uwezo wa kuamuru malipo kwa waathiriwa hata kama malipo hayo hayajaombwa.

### **Anayeweza kufaidi ni nani?**

Kwenye *kesi ya Lubanga*, mahakimu wa Mahakama ya Kimataifa waliamua malipo (fidia) **isiwe tu** kwa kundi dogo la waathiriwa walioshiriki kwenye kesi au wale tu waliotuma maombi ya kupata malipo (fidia).

Malipo (fidia) inaweza kupewa waathiriwa wa kesi:

- a) Waathiriwa wa moja kwa moja waliopata madhara kutokana na uhalifu ambao mshitakiwa amepatikana na hatia.
- b) waathiriwa wasio wa moja kwa moja, wakiwemo wanafamilia wa waathiriwa wa moja kwa moja, pamoja na watu binafsi ambao waliingilia kati ili kuwasaidia waathiriwa au ili kuzuia uhalifu huo usitendeke.
- c) Mashirika ya kisheria, kama vile Mashirika yasiyo ya Kiserikali au mahospitali.

Ofisi ya Mahakimu wa Mahakama ya Kimataifa ilitambua kuwa nafasi za kwanza zinapaswa kupewa waathiriwa walio kwenye hatari ya kudhuriwa, wakiwemo pamoja na waathiriwa wa vurugu za kijinsia au za wale watoto ambao wametishika kwa kina.

### **Malipo yanaweza kuchukua miundo ipi?**

Ingawa malipo ya kifedha ni ya kawaida kama njia ya kutoa fidia, malipo hayo yanaweza kuchukua muundo wa kurejesha kama vile kurejesha mali, kurekebisha kama vile utunzaji wa kimatibabu na ule wa kisaikolojia na vile kupitia kwa huduma za kisheria na za kijamii, kutosheka na kuhakikisha kuwa uhalifu huo hautarudiwa, kama kupata ufahamu wa umma, kutafuta vilivyopotea na kuvitambua vilivyosalia, na kuwa na ukumbusho au shughuli zinazolenga

kuelimisha na kuzuia utokeaji tena wa uhalifu kama huo.

Malipo (fidia) yanaweza kuwa kwa mtu binafsi au kwa kundi la watu, yawe kwa hali wazi/kitu kinachoweza kuonekana na kushikika au kitu kisichokuwa kwa hali ya kuonekana na kushikika. Malipo pia yanaweza kulenga kushughulikia madhara ambayo jamii na makundi ya waathiriwa yalipata.

Si waathiriwa wote watapata malipo (fidia) yaliyoagizwa na mahakama kufikia mwisho wa kesi. Kesi huenda ikadumu kwa miaka kadha na huenda pia ikachukua muda mrefu kwa utekelezaji wa malipo au mipango kuundwa na kutekelezwa.

Kwenye kesi ya Lubanga, mahakimu waliamua kuwa malipo (fidia) zingeweza kuwa kwa pamoja kwa muundo wa mipango au miradi inayowafaa waathiriwa.

### **Kuna tofauti ipi kati ya malipo (fidia) na msaada?**

Chini ya sheria za kimataifa, malipo (fidia) sharti yawe yanatosha, yawe ya kufaa na yatolewe kwa muda ufaao. Malipo sharti yawe yanatosha kulipia uzito wa vurugu na madhara aliyoyapata mwathiriwa. Malipo (fidia) yanahusishwa na utaratibu wa haki na ufahamu wa madhara na mateso waliyoyapata waathiriwa.

Hatua za kimisaada, za kibinadamu na za kimaendeleo ni pana. Hizi hazilengi tu madhara yaliyopatikana na wanaofaidi sio tu wale waathiriwa wa uhalifu fulani. Hii ni kumaanisha kuwa miradi ya kibinadamu na ya kimaendeleo haitambui madhara yaliyopitiwa na waathiriwa kihakika. Lakini waathiriwa huenda wakafaidika kutokana na miradi ya kimisaada inayotoa huduma kwa jamii zilizoathiriwa, kama vile matibabu ya kiafya, ushauri wa kisaikolojia, ufunzaji wa mbinu, elimu au uzalishaji wa mapato.

### **Jukumu la Mfuko wa Dhamana kwa Waathiriwa ni lipi?**

Mfuko wa Dhamana kwa Waathiriwa ni taasisi huru iliyoanzishwa mnamo Septemba 2002.

Taasisi hii ina majukumu mawili:

(1). *Kutoa msaada kwa waathiriwa* kwa njia tofauti na ile ya kesi, kupitia kwa miradi inayolenga urekebishaji wa kimwili au wa kisaikolojia au wa kivifaa ili kuwafaidi waathiriwa na familia zao.

Huu Mfuko wa Dhamana kwa Waathiriwa huanzisha miradi ya kimisaada kuwaelekea waathiriwa wa hali za Mahakama ya Kimataifa na kwa familia zao ili kuwapa urekebishaji wa kimwili, msaada wa kivifaa, na/au urekebishaji wa

kisaikolojia. Kufaidi kutokana na miradi ya kimisaada sio tu kwa waathiriwa wanaoshiriki kwenye utaratibu wa kesi za Mahakama ya Kimataifa.

Mamlaka ya Mfuko wa Dhamana kwa Waathiriwa yanalenga kuyajibu (kuyashughulikia) mahitaji ya dharura ya waathiriwa na ya jamii zao. Tangu hapo mwaka wa 2013, Mfuko wa Dhamana unaisaidia miradi huko Jamhuri ya Kidemokrasia ya Kongo, Uganda na unanua kuanzisha shughuli huko Jamhuri ya Afrika ya Kati, na hii huenda iwe ni miradi maalumu ya kurekebisha ikisaidia akina mama wachanga na waathiriwa wa unajisi uliosambaa (kwa mfano).

(2). *Kushughulikia na kuanzisha malipo ya fidia yaliyoagizwa na Mahakama ya Kimataifa.*

Mfuko wa Dhamana kwa Waathiriwa hupokea pesa iwe ni kutoka kwa pesa zilizotafutwa na kunaswa kutoka kwa wale waliopatikana na hatia, au kupitia kwa michango huru (ya kujitakia) inayotolewa na Serikali, na vile vile kutoka kwa misaada ya kibinafsi.

Mfuko huu unaweza kupewa jukumu la kutoa pesa, au kuanzisha miradi halisi kuhakikisha uwepo wa malipo (fidia) mara tu ofisi ya Mahakimu inapoagiza.



Mfuko huu unaweza pia kutumika kutoa msaada pale ambapo aliyeshitakiwa hana pesa za kutosha binafsi.

Kwenye *kesi ya Lubanga*, Mahakimu wa Mahakama ya Kimataifa wameuachia Mfuko wa Dhamana kuwatambua wanaopaswa kufaidi kutokana na malipo (fidia), wajue ni aina ipi ya malipo wanayopaswa kupata, na wapendekeze mpango wa malipo ya fidia kwa Ofisi ya Mahakimu, wakilenga malipo ya pamoja. Mahakimu walipendekeza Mfuko wa Dhamana kwa Waathiriwa uteue timu ya wataalamu wa nyanja chana za nidhamu ili watoe msaada katika kutayarisha utekelezaji wa mpango wa ulipaji fidia.

### **3. Haki za Waathiriwa na Mahakama ya Kimataifa Kenya**

#### **3.1 Habari za Jumla juu ya Hali ya Kenya na Kesi zake**

##### **Mahakama ya Kimataifa iliingiliaje humu Kenya?**

Mnamo Machi 15 mwaka wa 2005, Kenya ilitia sahihi kwenye Sheria za Roma kuhusu Mahakama ya Kimataifa. Tendo hili liliipa Mahakama hii mamlaka juu ya uhalifu wa kivita, uhalifu dhidi ya ubinadamu, na mauaji ya halaiki yanayotekelezwa na raia wa Kenya au kwenye maeneo ya Kenya baada ya tarehe hii ya kujitunga na Sheria za Roma kuhusu Mahakama ya Kimataifa (1 Juni 2005).

Mnamo Novemba 26, mwaka wa 2009, Kiongozi wa Mashitaka (Prosekyuta) aliomba aruhusiwe kufannya uchunguzi kuhusiana na uhalifu ambao ulisemekana kutendeka wakati wa vurugu za baada ya uchaguzi za mwaka wa 2007-2008 humu Kenya wakati ambapo jumla ya karibu watu 1,300 inasemekana waliuawa. Hii ilikuwa ndiyo mara ya kwanza kwa Kiongozi wa Mashitaka (Prosekyuta) kuomba atumie mamlaka yake ili kuanzisha uchunguzi kwa kuanzisha mwenyewe, bila ya kupitishiwa ombi na Serikali husika au na Baraza la Usalama la Umoja wa Mataifa.

Mnamo Machi 31, 2010, Ofisi ya Mahakimu ya II ya Kesi kabla ya Kesi Yenyewe ilimruhusu Kiongozi wa Mashitaka (Prosekyuta) aanzishe uchunguzi kuhusiana na uhalifu uliodaiwa kutendeka dhidi ya ubinadamu na uliosemekana kutokea kati ya Juni 1 2002 na Novemba 26, 2009 (tarehe ambayo Kiongozi wa Mashitaka (Prosekyuta) aliwasilisha ombi aruhusiwe kuanza uchunguzi) humu Kenya.

Mnamo Februari na Machi 2011 mtawalia, Serikali ya Kenya ililomba Baraza la Usalama lisitishie utaratibu wa kesi za Mahakama ya Kimataifa huku Kenya na kupinga kuruhusiwa kwa kesi hizo. Serikali ilidai kuwa kesi hizi zinapaswa

kushughulikiwa humu Kenya badala ya mbele ya Mahakama ya Kimataifa. Hatua hizi mbili zilikataliwa.

### **Ni akina nani waliotambuliwa kama watekelezaji wa uhalifu?**

Mnamo Machi 8, 2011 Ofisi ya Mahakimu II ya kushughulikia Kesi kabla Kesi Yenyewe, iliwaagiza *Francis Kirimi Muthaura, Uhuru Muigai Kenyatta na Mohammed Hussein Ali, William Samoei Ruto, Henry Kiprono Kosgey na Joshua Arap Sang* kuja mbele ya Mahakama, kwa vile aliona kuwa kunazo sababu za kutosha kuamini kuwa walikuwa wametenda uhalifu ambao ulikuwa unadaiwa na Kiongozi wa Mashitaka (Prosekyuta).

Tarehe 7 na 8 Aprili mwaka wa 2008, hawa washitakiwa sita walifunga safari kwenda kujiwasilisha kwa mara ya kwanza mbele ya Mahakama huko Hague.

### **Ni kwa nini baadhi ya mashitaka yalitupiliwa mbali na ni wakati upi kesi itaanza?**

Mnamo tarehe 23 Januari mwaka wa 2012, Mahakimu wa Mahakama ya Kimataifa walikataa kuidhinisha kuendelea kwa kesi za Ali na Kosgey. Kwenye kesi ya Kosgey, Ofisi ya Mahakimu ilitambua kuwa Kiongozi wa Mashitaka (Prosekyuta) alitegemea shahidi mmoja ambaye utambulisho wake haukufahamika na ambaye ushahidi wake ulikuwa umeundika kwa hali ambayo haikutosha. Kwenye kesi ya Ali, Ofisi ya Mahakimu ilitambua kuwa hakukuwa na ushahidi wa kutosha kuhusisha Polisi wa Kenya na mashambulizi ambayo yalitekelezwa kwenye maeneo na makazi ambayo yalisemekana kuwa ya waunga mkono wa Chama cha Kidemokrasia cha Chungwa (*Orange Democratic Movement [ODM]*)

Mahakama ilithibitisha mashitaka dhidi ya *Muthaura, Kenyatta, Ruto na Sang* kuhusiana na uhalifu uliodaiwa dhidi ya ubinadamu, (mashitaka) yaliyotekelezwa wakati wa Vurugu za Baada ya Uchaguzi wa 2007-2008 humu Kenya na kuwaagiza wahudhurie mashitaka kwenye kesi yenyewe.

Mnamo Julai 9, 2012, Afisi nambari V(tano) ya Mahakimu (Ofisi ya Kesi Yenyewe) ikatenga tarehe za kuanzishwa kesi za Ruto, na Sang, na ile kesi ya Muthaura na Kenyatta, kuwa tarehe 10 na 11 Aprili 2013 mtawalio. Washitakiwa hawamo kizuizini huko Mahakamani.

Mnamo Machi 2013 tarehe 7 na 8, kufuatia ombi kutoka kwa washitakiwa, Ofisi nambari 9 ya Mahakimu (Ofisi ya Kesi Yenyewe), iliahirisha mwanzo wa kusikizwa kwa kesi. Ilitenga siku iliyonuiwa kuwa Julai 9 mwaka wa 2013 kwa kesi ya *Muthaura na Kenyatta* na tarehe 28 Mei kwa kesi ya *Ruto na Sang*. Wkati wa

kuandika, kufuatia ombi la kuahirishwa lililotumwa na *Bw. Ruto*, tarehe mpya ya kesi ya *Ruto na Sang* ilitengewa tarehe 10 Septemba mwaka wa 2013.

### **Ni kwa nini kesi dhidi ya Bw. Muthaura, iliangukwa?**

Mnamo Machi 11 mwaka wa 2013, Ofisi ya Kiongozi wa Mashitaka (Prosekyuta) iliitambulisha Ofisi ya Mahakimu kuwa ilikuwa inaondoa mashitaka dhidi ya Muthaura kwa kuwa hakukuwa na ushahidi wa kutosha. Ofisi hii ilisema kuwa ilikuwa haiwezi kukusanya ushahidi wa kutosha kuhusiana na shughuli za ulinzi zilizowaathiri mashahidi. Mnamo Machi 18 mwaka wa 2013, Ofisi ya Mahakimu iliiruhusu Ofisi ya Kiongozi wa Mashitaka (Prosekyuta) kuyaondoa mashitaka dhidi ya *Bw. Muthaura*.

### **3.2 Haki za Waathiriwa kwenye Kesi mbili za Kenya**

Ni waathiriwa wangapi ambao wameruhusiwa kushiriki kwenye kesi hizi mbili katika hatua ya kesi kabla ya kesi yenyewe?

Kwa sasa kunazo kesi mbili kwenye muhtadha huu wa vurugu baada ya uchaguzi zilizomo kwenye Mahakama ya Kimataifa na ambazo waathiriwa wanaweza kushiriki kwenye hatua ya Kesi kabla ya Kesi Yenyewe, kwenye hatua ya Kesi Yenyewe na kwenye hatua ya Ukataji Ruffa. Waathiriwa watahitajika kuwa kwenye upeo wa mojawapo wa kesi hizi mbili ili kuidhinishwa kuwa mwathiriwa kwenye kesi. Upeo huu unajumuisha uhalifu maalumu, maeneo na wakati ambao mashitaka yanawakilisha. Ni waathiriwa tu wanaohusishwa na uhalifu halisi kwenye kila kesi ambao wataweza kushiriki kwenye utaratibu wa kesi.

Kwa sababu za kuthibitishwa kwa utaratibu wa mashitaka, Ofisi ya II ya Mahakimu (Kesi kabla ya kesi yenyewe) iliwapa idhini ya kuwa waathiriwa (mnamo Mei 2013) na kuwaruhusu kushiriki kwenye utaratibu wa kesi:

- watu 223 kwenye *kesi ya Kenyatta*
- watu 327 kwenye *kesi ya Ruto na Sang*

### **Waathiriwa watahiriki vipi kwenye kesi?**

Mnamo tarehe 3 Oktoba mwaka wa 2012, Ofisi nambari V (tano) ya Mahakimu (Ofisi ya Kesi Yenyewe), ilitoa utaratibu mpya kwa waathiriwa wanaotaka kushiriki kwenye kesi za Kenya. Ofisi hii ya Mahakimu ilitilia maanani kuwa mbinu tofauti kimsingi ilihitajika kutokana na idadi kubwa ya waathiriwa na malalamiko kuhusu ulinzi, kuhusiana na mambo ambayo hayakutarajiwa.

Ni lipi lililo tofauti kwa waathiriwa wanaotaka kushiriki kwenye kesi za Kenya?

**Ni wale tu ambao wanataka kujiwasilisha binafsi Mahakamani ndio wanaopaswa kutoa maombi yaliyo na habari kamilifu:**

Ofisi ya Mahakimu ya Kesi Yenyewe ilitofautisha kati ya kushiriki kwa moja kwa moja kwa mtu binafsi na kule kushiriki kupitia kwa Wakili wa Kisheria wa Jumla au, kwa maneno mengine – watu binafsi ambao wangependa kujiwasilisha mbele ya Mahakama na wale ambao wangetaka tu kutambulika kama ‘washiriki’ kwenye utaratibu wa kesi.

**Kwa wale ambao hawangetaka kujiwasilisha kibinafsi mbele ya Mahakama,** ombi la kibinafsi halitahitajika kuanzia sasa. Lakini waathiriwa wanaotaka, wataweza kujisajili kwenye Afisi ya Usajili.

**Kunayo tofauti ipi kati ya kushiriki kwa moja kwa moja kwa mtu binafsi, usajili na kushiriki kwa kijumla?**

Ofisi ya Mahakimu ya Kesi Yenyewe ilitoa tofauti iliyoko kati ya:

a) *kushiriki kwa moja kwa moja kwa mtu binafsi:* Waathiriwa wanaotaka kujiwasilisha kibinafsi mbele ya Mahakama kutoa maoni na malalamiko yao watahitaji kufuata utaratibu wa kutuma maombi wa jumla. Wao huenda wataweza kuyawasilisha maoni na malalamiko yao kibinafsi au kupitia kwa mawasiliano ya video.

Waathiriwa wanaojiwasilisha kibinafsi au kupitia kwa mawasiliano ya video watahitajika kufichua utambulisho wao kwa makundi husika (Kiongozi wa Mashitaka [Prosekyuta] na upande wa utetezi [wale wanaowatetea washitakiwa]). Ikiwa utambulisho wao utafichuliwa kwa umma, hilo ni jambo ambalo litaamuliwa na Ofisi ya Mahakimu. Uamuzi wa mwisho juu ya kama mtu atajiwasilisha kibinafsi utatolewa na mahakimu.

b) Usajili

Waathiriwa waliosajiliwa ambao hawataki kujiwasilisha kibinafsi, na wanaridhika kuyatoa maoni yao na malalamiko kupitia kwa wakili wa kisheria, wanaweza kujisajili kwenye Ofisi ya Usajili kupitia kwa utaratibu ambao hauhitaji mambo mengi, watafanya hivyo kwa kutuma maelezo yao ya kibinafsi (data) – ikiwemo pamoja na habari kuhusu madhara waliyoyapata. Usajili wa aina hii ni wa kujitakia (mtu yuko huru) na hatapitishwa kwenye ukadiriaji wa Ofisi ya Mahakimu kibinafsi au kupitishwa kwenye mitazamo ya pande husika.

c) Kushiriki kijumla:

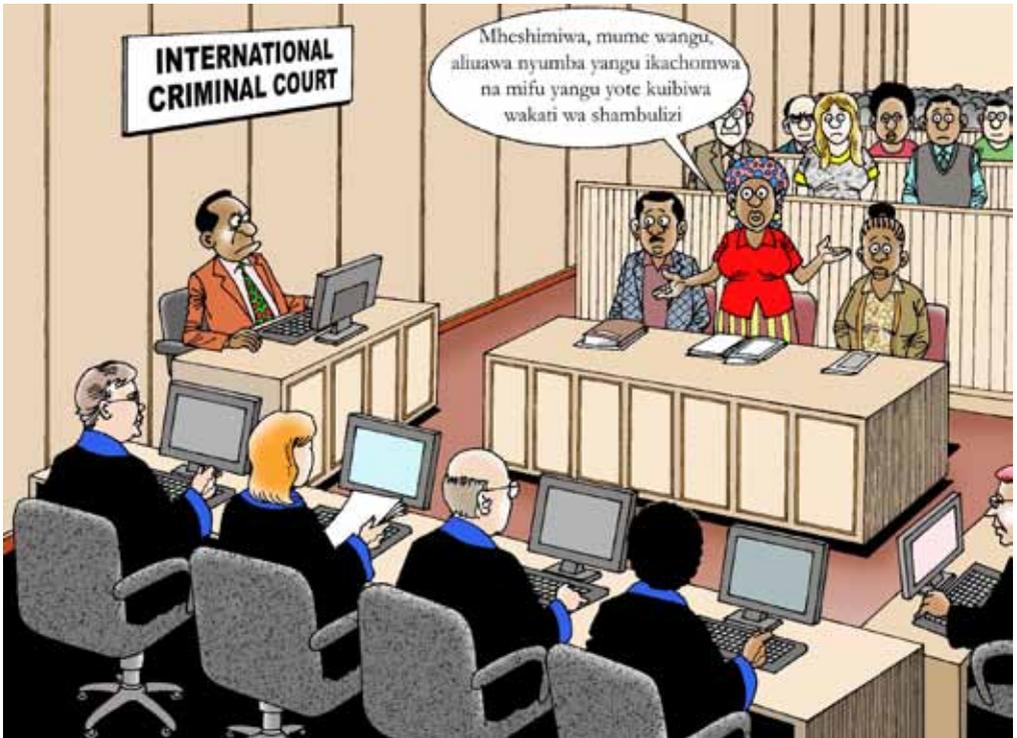
Maoni na malalamiko ya waathiriwa ambao hawajajisajili kwa ajili ya kutotaka au kutokana na ukosefu wa uwezo (kutokana na sababu za kiutendaji au za kiusalama kama vile umri, kutokuwa na uwezo wa kimwili au wa kiakili, na misukumo ya kijamii) wataweza, “liche ya yote kusikika, kwa namna ya kijumla” kupitia kwa Wakili wa Kisheria wa Jumla atakayewawakilisha Waathiriwa.

**Kushiriki ni kwa lazima? Ni hatua ambayo inagharimu pesa?**

Uamuzi wa kushiriki ni jambo la mtu kujitakia akiwa huru na haligharimu pesa zozote.

**Mwathiriwa anawezaje kujisajili?**

Kama mwathiriwa ataamua kushiriki kwenye utaratibu wa kesi, anapaswa kuwasiliana na Sehemu ya Kushiriki kwa Waathiriwa na Kulipwa kwao, au na mwakilishi mwingine yeyote anayeaminika, kama vile Shirika Lisilo la Kiserikali ambalo linaishikamanisha Mahakama ya Kimataifa na jamii zilizoathiriwa,



na wale ambao watawawezesha kuwasiliana na Wakili wa Kisheria wa Jumla atakayewawakilisha Waathiriwa. Ambaye ameteuliwa na mahakimu kwenye hatua ya kesi yenyewe.

**Itawatendekeaje Waathiriwa ambao tayari walikuwa wametambulika kama “washiriki” kwenye hatua ile ya kesi kabla ya kesi yenyewe?**

Waathiriwa ambao tayari walikuwa wameidhinishwa kushiriki kwenye hatua ile ya Kesi kabla ya Kesi Yenyewe watachukuliwa kama waliojisajili kushiriki kupitia kwa Wakili wa Kisheria wa Jumla kama watakuwa kwenye upeo wa mashitaka yaliyoidhinishwa (kuendelea). Ofisi ya Mahakimu iliagiza Ofisi ya Usajili kutazama tena kama washiriki wote kwenye hatua ile ya Kesi kabla ya Kesi Yenyewe bado wameidhinishwa.

**Je wale waathiriwa wote ambao wanataka kujiwasilisha kibinafsi wataweza kufanya hivyo?**

La! Waathiriwa sharti waidhinishwe rasmi na Ofisi ya Mahakimu ndipo waweze kujiwasilisha kibinafsi.



Wakili wa Kisheria wa Jumla atakayewawakilisha Waathiriwa atatuma ombi kwa Ofisi ya Mahakimu kwa niaba ya waathiriwa ambao wanataka kujiwasilisha. Ombi lita- :

- 1) -eleza kwa nini waathiriwa hawa hasa wanapaswa kutiliwa maanani wakiwa ndio “walio kwenye nafasi njema zaidi ya kuwakilisha maslahi ya waathiriwa” na
- 2) -kuwa na ufupisho wa mambo ambayo waathiriwa watayashughulikia kama wataruhusiwa kujiwasilisha.

Ofisi ya Mahakimu itafanya makadirio ya mwanzo ikiangalia kufaa kushiriki kwa waathiriwa na inaweza kumtaka Wakili wa Kisheria wa Jumla atakayewawakilisha Waathiriwa kufanya uchaguzi wa kabla. Ofisi ya Mahakimu “itachagua kimbele” idadi ndogo ya waathiriwa ambao huenda wataidhinishwa kujiwasilisha na ofisi hiyo itazialika pande husika kufanya mitazamo yao juu ya maombi ya waathiriwa. Halafu, Ofisi ya Mahakimu itatoa maamuzi ya mwisho kuhusu waathiriwa ambao wataruhusiwa kujiwasilisha.

### **Ni wakati upi waathiriwa wataruhusiwa kujiwasilisha kibinafsi?**

Mradi tu baadhi ya masharti yametokelezwa, waathiriwa binafsi wanaweza kualikwa na Ofisi ya Mahakimu kuyatoa maoni na malalamiko yao kibinafsi kwenye kesi ikiwemo wakati wa ufunguzi au wakati wa ufungaji wa kesi kusikizwa.

Waathiriwa wanawezaje kupata habari zaidi kuhusiana na haki zao za kushiriki na jinsi ya kupata malipo (fidia)

Waathiriwa wanaweza kuwasiliana na Sehemu ya Kushiriki kwa Waathiriwa na Kulipwa kwao kwa barua pepe kupitia kwa anwani [infovic2011@gmail.com](mailto:infovic2011@gmail.com) au kwa simu: kuanzia saa nane aduhuri hadi saa kumi na moja jioni kupitia nambari 0700357469.

### **Waathiriwa watawakilishwa vipi? Wakili wa kisheria wa Jumla atawawakilisha akina nani?**

Waathiriwa ambao hawatajiwasilisha mbele ya Mahakama watawakilishwa kupitia kwa Mfumo wa Kisheria wa Uwakilishaji wa Kijumla. Kwenye kesi iliyopo sasa, waathiriwa watawakilishwa kupitia kwa Uwakilishi wa Kisheria wa Jumla ambao utakuwepo Kenya na utasaidiwa na Ofisi ya kindani ya Mahakama, inayoshughulikia Ushauri wa Umma kwa Waathiriwa.

Wakili wa Kisheria wa Jumla atakayewawakilisha Waathiriwa atawawakilisha

waathiriwa wote kwenye kesi- haijalishi kama watakuwa wamesajiliwa au la.

Wakili wa Kisheria wa Jumla atakayewawakilisha Waathiriwa atakuwa ndiye kiungo cha mawasiliano kwa waathiriwa atakaowawakilisha, ayaunde maoni yao na malalamiko yao na ndiye atakayejiwasilisha kwa niaba yao, wakati tu wa kusikizwa kesi.

Wakili wa Kisheria wa Jumla atakayewawakilisha Waathiriwa ameruhusiwa kuwasilisha taarifa za ufunguzi na zile za kumalizia wakati wa kesi yenyewe. Ofisi ya kindani ya Mahakama, inayoshughulikia Ushauri wa Umma kwa Waathiriwa itatenda kazi kama kiungo-kati, kati ya wakili mshauri na Ofisi ya Mahakimu kwenye utaratibu wa kesi kila siku; itafanya hivyo kwa kushiriki kwenye kusikizwa kwa kesi kwa niaba ya Wakili wa Kisheria wa Jumla atakayewawakilisha Waathiriwa na itafanya hivyo ikiwa chini ya maagizo yake.

Sehemu ya Kushiriki kwa Waathiriwa na Kulipwa kwao, itaipa Mahakama kila baada ya kipindi fulani, “ripoti kamili juu ya hali ya kijumla ya waathiriwa kwa pamoja”, ikiwemo na takwimu juu ya idadi ya waathiriwa. Ripoti hizi zitamwezesha Wakili wa Kisheria wa Jumla anayewawakilisha Waathiriwa kukadiria maslahi ya waathiriwa kwa kuwafahamisha juu ya idadi ya waathiriwa, hali yao kwa jumla, madhara waliyoyapata, n.k.

### **Wawakilishi wa Waathiriwa ni akina nani na walichaguliwa kivipi?**

Mnamo Novemba 20, 2012, Ofisi ya Mahakimu yenye kushughulikia Kesi Yenyewe ilimteua Bw. Fergal Gaynor kama Wakili wa Kisheria wa Jumla atakayewawakilisha Waathiriwa, akichukua nafasi ya Bw. Anyah aliyewawakilisha waathiriwa kwenye Kesi kabla ya Kesi Yenyewe kwenye kesi nambari 2 (*Kesi ya Kenyatta*).

Mnamo Novemba 23, 2012, Ofisi ya Mahakimu yenye kushughulikia Kesi Yenyewe ilimteua Bw. Nderitu kama Wakili mpya wa Kisheria wa Jumla atakayewawakilisha Waathiriwa, akichukua nafasi ya Bi. Chana kwenye kesi nambari 1 (*Kesi ya Ruto na Sang*).

Hawa waliteuliwa baada ya Ofisi ya Mahakimu kuiagiza ile ofisi ya Usajili kuwasilisha mapendekezo.

Katika kumteua, mteuliwa, Ofisi ya Usajili iliombwa kutilia maanani mambo maalumu, ambayo ni pamoja na: ufahamu wa mteuliwa kuhusiana na kesi na kuhusiana na hali maalumu ya kikundi cha waathiriwa; hamu ya mteuliwa na uwezo wake wa kuendeleza uwepo endelevu humu Kenya kwa kipindi chote ambacho utaratibu wa kesi utaendelea.

## **Athari za kuachana na kesi dhidi ya Muthaura ni zipi kwa waathiriwa?**

Kwenye kongamano la hali la Machi 11, 2013, Wakili wa Kisheria wa Jumla atakayewawakilisha Waathiriwa aliwasilisha wazo kuwa uamuzi wa Ofisi ya Mahakimu iyaangushe mashitaka dhidi ya Muthaura na hili lisiwe na athari na kuwa Kiongozi wa Mashitaka (Prosecyuta) awe na uwezo wa kuleta mashitaka dhidi yake kwa siku za usoni, kama hali itabadilika.

Mnamo Machi 18, 2013, Ofisi ya Mahakimu inayoshughulikia Kesi Yenyewe, ilimkumbusha Bw. Muthaura kuwa hatua za ulinzi zilizotolewa kuhusiana na waathiriwa na mashahidi zitaendelea kuwa na nguvu kamili na athari hata baada ya utaratibu wa kesi kukamilishwa.

Kutokana na ukweli kuwa Bw. Muthaura alikuwa ameshitakiwa kama aliyesababisha madhara akiwa pamoja na wengine, ila si kwa njia ya moja kwa moja, pamoja na Kenyatta, **upeo wa mashitaka haubadilishwi** kufuatia uamuzi wa kuiangusha kesi dhidi yake.

Na kwa njia iyo hiyo, kutohibitisha mashitaka dhidi ya *Ali na Kosgey* hakuwi na athari juu ya waathiriwa ambao tayari walikubali kushiriki, kwa vile hawa (*Ali na Kosgey*) walishitakiwa kwa kutekeleza uhalifu sawa kama vile kwenye kesi ya Kenyatta na ile ya Ruto na Sang.

## **Waathiriwa na Mashahidi watalindwa kiviipi?**

Licha ya hatua zitakazochukuliwa na Mahakama ya Kimataifa kwenye hatua mbalimbali ili kupunguza hatari kwa waathiriwa, kama vile kuficha utambulisho wao, ni kweli kuwa Mahakama ya Kimataifa ina upungufu wa rasilmali za kutoa ulinzi kwa waathiriwa wanaoshiriki kwenye utaratibu wa kesi Mahakamani. Waathiriwa sharti wawe waangalifu sana kuhusiana na yule wanayemwambia na wanapaswa kuchukua hatua zifaazo kupunguza hatari zinazowakabili wenyewe na familia zao.

## **Je Waathiriwa wataweza kutuma maombi ya kulipwa/kupata fidia?**

Utaratibu wa kesi kuhusiana na malipo (fidia) unahusiana na mshitakiwa kupatikana na hatia. Malipo (fidia) yataagizwa tu kuhusiana na uhalifu ambao mshitakiwa atapatikana ana hatia na ni baada tu ya uamuzi wa aina hii kutolewa. Hili ni jambo ambalo huenda litachukua miaka mingi.

## **Je, Mfuko wa Dhamana wa Waathiriwa, utawasaidia waathiriwa humu Kenya hata kufikia zaidi ya upeo wa kesi?**

Waathiriwa wa hali iliyo zaidi ya upeo wa kesi huenda watafaidika kutokana na miradi ya kimisaada, itakayotokea, ya Mfuko wa Dhamana wa Waathiriwa. Lakini, kufikia Aprili 2013, Mfuko wa Dhamana wa Waathiriwa haujaanzisha vitendo vya aina hii Kenya, Kwa vile fedha ni chache, haieleweki wazi kama Mfuko wa Dhamana wa Waathiriwa unauia kutenda hili kwa siku za karibuni.

## 1.1 Upeo wa Mashitaka kwenye Kesi mbili za Kenya ni upi?

**KESI 1:** Kiongozi wa Mashitaka (Prosekyuta) dhidi ya William Samoei Ruto na Joshua Arap Sang

**Bw. Ruto** wa ODM anasemekana kuwa mtekelezaji akiwa pamoja na wengine (ila si kwa njia ya moja kwa moja), wa uhalifu dhidi ya ubinadamu, uhalifu uliotendwa dhidi ya waunga mkono wa PNU; uhalifu huu ni pamoja na:

- Mauaji;
- Kuhamishwa kwa nguvu; na
- Kuteswa

Ofisi ya Mahakimu ya Kesi kabla ya Kesi Yenyewe, ilipata ya kuwa alikuwa na mchango muhimu katika utekelezaji wa mpango wa pamoja kwa njia ya kupanga na kuratibu utendaji wa uvamizi ulioenea na uliokuwa na utaratibu fulani, tendo ambalo linafikia kuwa uhalifu dhidi ya ubinadamu, na bila ya vitendo vyake, mpango huu haungefaulu. William Ruto anashitakiwa kuwa:

1. Alipanga na alikuwa na jukumu la kutekeleza mpango wa pamoja huko kote Bonde la Ufa;
2. Aliunda mfumo wa watekelezaji ili wauunge mkono utekelezaji wa mpango huo wa pamoja;
3. kwa njia ya moja kwa moja alijadiliana kuhusu, na alisimamia ununuzi wa bastola na zana zingine za kivita zisizo za hali ya juu;
4. Alitoa maagizo kwa watekelezaji kuhusiana na yule ambaye walipaswa kumwua na kumhamisha na ni mali ya nani walipaswa kuangamiza; na
5. Aliunda utaratibu wa kuwalipa kwa kiasi maalumu cha pesa, kuwalipa wale ambao wangetekeleza kwa njia ya ufanisi, kwa waunga mkono wa PNU au kuangamiza mali zao.

**Bw. Sang** wa ODM naye inasemekana kuwa “alichangia katika kutenda” uhalifu sawa (mauaji, kuhamishwa kwa nguvu na kuteswa), ingawa kwa njia duni, kwa sababu Ofisi ya Mahakimu iliyoshughulikia Kesi kabla ya Kesi Yenyewe ilipata kuwa mchango wake katika utendaji wa uhalifu huo, “Haukuwa muhimu”. Inasemekana analo jukumu kwa kuwa alichangia, kutokana na uwezo wake wa kuathiri, kwa vile alikuwa na wadhifa kama mtangazaji mkuu wa radio ya KASS FM. Inasemekana alichangia katika utekelezaji wa mpango wa pamoja kwa:

- (I) kukiweka kipindi chake Lee Nee Eme wazi kwa matumizi ya shirika hilo;
- (II) kuitangaza mikutano ya shirika hilo;
- (III) kuchochea vurugu kwa kusambaza ujumbe wa chuki na kwa njia wazi kufichua hamu ya kutaka kuwafukuza Wakikuyu; na
- (IV) kutangaza habari za uongo kuhusiana na mipango iliyosemekana kuwepo ya kuwaua Wakalenjin, kwa malengo ya kuchochea hali ya vurugu.

### **Baadhi ya visa ambavyo wanashitakiwa kuwa walihusika ni vipi?**

Afisi ya II ya Mahakimu ya Kesi kabla ya Kesi Yenyewe ilipata kuwa kunayo misingi mwafaka ya kuamini kuwa:

- Mara tu baada ya matangazo ya matokeo ya uchaguzi wa uraisi na hasa mnamo Desemba 30, 2007 hadi Januari 16, 2008, shambulizi lilitekelezwa- kufuatia mbinu ambayo ilikuwa ni ya umoja na iliyotendwa kwa pamoja na iliyokuwa imewazwa hapo mbele- (lilitekelezwa) na makundi tofauti ya Wakalenjin, kwenye maeneo yakiwemo Turbo mjini, eneo kuu la Eldoret (ikiwemo pamoja na Huruma, Kiambaa, Kimumu, Langas, na Yamumbi), Kapsabet mjini na mji wa Milima ya Nandi, huko Wilaya za Uasin Gishu na Nandi, kwenye Jamhuri ya Kenya. Shambulizi inasemekana liliulenga umati wa raia, yaani makabila ya Wakikuyu, Wakamba na Wakisii, ambayo yalionekana kuwa yanakiunga mkono Chama cha Umoja wa Kitaifa (*Party of National Unity [PNU]*).
- Hasa, vurugu (vita) zilizo kwenye Wilaya ya Uasin Gishu (ukiwemo mji wa Turbo na eneo la Eldoret) inasemekana ziliishia na mauaji ya watu zaidi ya 230, wengine 505 wakaumizwa na zaidi ya watu 5,000 wakalazimika kukosa makao. Kwenye Wilaya ya Nandi (ukiwemo mji wa Kapsabet na ule wa Milima ya Nandi), shambulio, inasemekana liliishia kwa vifo vya watu wasiopungua 7 na maelfu ya watu wakalazimika

kutafuta kimbilio kwenye kituo cha polisi cha Milima ya Nandi na kwenye maeneo yaliyowazingira. Baadhi ya nyumba na maeneo ya biashara yalivamiwa na kuporwa na kuchomwa.

- Inasemekana, kulikuwa na mpango wa kuwapa adhabu waunga mkono wa chama cha PNU endapo uchaguzi wa uraisi wa 2007 ungefanyiwa hila (ungeigbwa); hali hii ilinuia kuwafukuza kutoka Bonde la Ufa, kwa lengo hatimaye la kuunda kundi moja la kupiga kura kwa umoja, kundi la Chama cha Kidemokrasia cha Chungwa (*Orange Democratic Movement [ODM]*). Ili kutekeleza mpango huu waliokubaliana, mfumo wa watekelezaji, inasemekana uliundwa ukiwa na lengo la kuzifukuza jamii za Wakikuyu, Wakisii na Wakamba. Mfumo, inasemekana, ulikuwa chini ya uongozi uliowajibika na ulikuwa na mfumo wa madaraka ulioundika. Mfumo huu ulikuwa na njia za kutekeleza mashambulizi yaliyoenea au yaliyofuata utaratibu maalumu dhidi ya umma/raia, kwa vile wanachama wake walikuwa na uwezo wa kupata na walitumia mtaji wa fedha kiasi kikubwa, bunduki, zana za vita zisizokuwa za hali ya juu sana na wingi wa watu waliokuwa tayari kufanya kazi.

## **Kesi II: Kiongozi wa Mashitaka (Prosekyuta) dhidi ya Uhuru Muigai Kenyatta**

Bw. Kenyatta wa PNU inasemekana alikuwa mtekelezaji, akiwa na wengine, kwa njia isiyo ya moja kwa moja ya uhalifu dhidi ya ubinadamu; uhalifu wa mauaji, kuhamishwa kwa nguvu, unajisi, mateso, na vitendo vingine visivyo vya kibinadamu, inasemekana vilitekelezwa dhidi ya waliounga mkono ODM, kwa sehemu ikiwa ni kulipiza kisasi kutokana na mashambulizi dhidi ya waliounga mkono PNU.

### **Mashitaka**

Bw. Kenyatta anashitakiwa kuwa alikuwa na jukumu lisilo la moja kwa moja la kutekeleza, akiwa na wengine, uhalifu dhidi ya ubinadamu:

- Muaji
- Kuhamishwa au kuhamishwa kwa nguvu kwa umma
- unajisi
- Mateso

- vitendo vingine visivyo vya kibinadamu.

### **Baadhi ya visa ambavyo Bw. Kenyatta anashitakiwa ni vipi?**

Ofisi ya II ya Mahakimu ya Kesi kabla ya Kesi Yenyewe ilipata kwamba kunayo misingi dhabiti kuaminika kuwa:

- Kutoka tarehe 24 hadi tarehe 28 Januari 2008 , Kundi la Kihalifu la Mungiki inasemekana lilitokeleza mashambulizi yaliyoenea na yaliyopangika dhidi ya umma usio wa Wakikuyu ulioonekana kuwa unakiunga mkono chama cha ODM (hasa kutoka kwa jamii za Waluo, Waluhya na Wakalenjin) huko Nakuru na Naivasha.
- Mashambulizi yaliyokuwa Nakuru na Naivasha au kwenye maeneo yaliyoyazunguka, yaliishia kuwa na idadi kubwa ya mauaji, watu maelfu kukosa makao, kunajisiwa, kupata madhara makuu ya kimwili, mateso ya kiakili na uharibifu wa mali.
- Kati ya, angalau, Novemba 2007 na Januari 2008, kati ya mambo mengine, Muthaura, Kenyatta na wanachama wa kundi la Mungiki, inasemekana waliuunda mpango wa pamoja wa kutekeleza mashambulizi haya. Kulingana na mpango unaosemekana, ilifikiriwa kwenye mikutano kuwa Mungiki wangepateleleza mashambulizi kwa lengo la kuendelea kukihifadhi chama cha PNU mamlakani, nayo malipo kwa wanamungiki yawe ni kumaliza kuzimwa na serikali na wapate ulinzi wa maslahi ya Mungiki.
- Mchango wa Uhuru Muigai Kenyatta katika utekelezaji wa mpango huu wa pamoja ulikuwa inasemekana, muhimu. Hasa, mchango wa Kenyatta inasemekana ulikuwa has ni kutoa msaada wa kitaasisi, kwa niaba ya Muungano wa PNU, ili kuhakikisha uwepo wa
  - (I) Makubaliano na Mungiki, kwa maslahi ya utendaji wa uhalifu; na
  - (II) Utekelezaji (kati ya watu) mpango huo wa pamoja; utekelezwe na Mungiki Nakuru na Naivasha,

### **4. Kulijaza pengo la uepukaji kushitakiwa/kuadhibiwa: Njia zingine za kusaka haki kwa waathiriwa wa vurugu za baada ya uchaguzi**

**Kunao uhusiano upi kati ya Mahakama ya Kimataifa na mahakama za**

## kitaifa?

Mahakama za kitaifa zinalo jukumu la kuwashitaki waliotekeleza uhalifu ambao hawajashitakiwa na Mahakama ya Kimataifa. Mahakama ya Kimataifa huchunguza na kushitaki pale tu serikali au mahakama za kitaifa haziwezi au hazitaki kufanya hivyo.

Watawala wa Kenya wanao wajibu chini ya sheria ya kimataifa, kutoa suluhisho mwafaka kwa waathiriwa wa ukiukaji wa kina wa haki za kibinadamu zilizotekelezwa baada ya vurugu za baada ya uchaguzi za 2007-2008; na malipo pale ambapo uhalifu ulitekelezwa na maafisa wa serikali au pale ambapo serikali ilishindwa kuzuia baadhi ya uhalifu uliotendewa raia binafsi.

Wakati ambapo serikali ya Kenya ilipinga kuidhinishwa kwa kesi za Kenya mbele ya Mahakama za Kimataifa, Afisi ya Mahakimu ya Kesi kabla ya Kesi yenyewe, iliamua kuwa hakukuwa na ushahidi wa kutosha wa kesi ambazo zilikuwa zinaendelea mbele ya mahakimu wa kitaifa” dhidi ya washitakiwa.

Hadi wa leo, ni wachache tu kati ya waliotekeleza uhalifu huo, wamefikishwa



kuitetea haki kwenye mahakama za Kenya. Afisi ya Kenya ya Mkurugenzi (Kiongozi) wa Mashitaka ya Umma kama inavyoripotiwa, alianzisha uchuguzi mpya kwenye kesi zisizopungua 6 000 zinazohusu inavyosemekana wale watekelezaji wa chini na wa kiwango cha kati. Kikosi maalumu kuziangalia tena kesi hizo kiliundwa mnamo Februari 2012. Lakini, mnamo Agosti 2012, kikosi hiki maalumu kilihitimisha kuwa nyingi kati ya kesi za vurugu baada ya uchaguzi zilikuwa hazifai kuwasilishwa kama mashitaka kwa vile zilikosa ushahidi.

## **Haki za Waathiriwa kwenye muktadha wa mfumo wa haki wa Kenya ni zipi?**

Chini ya Sheria za Kimataifa, waathiriwa wa ukiukaji wa kina wa haki za kimataifa za kibinadamu na sheria za ubinadamu wana haki ya kupata suluhisho mwafaka, ikiwemo na malipo.

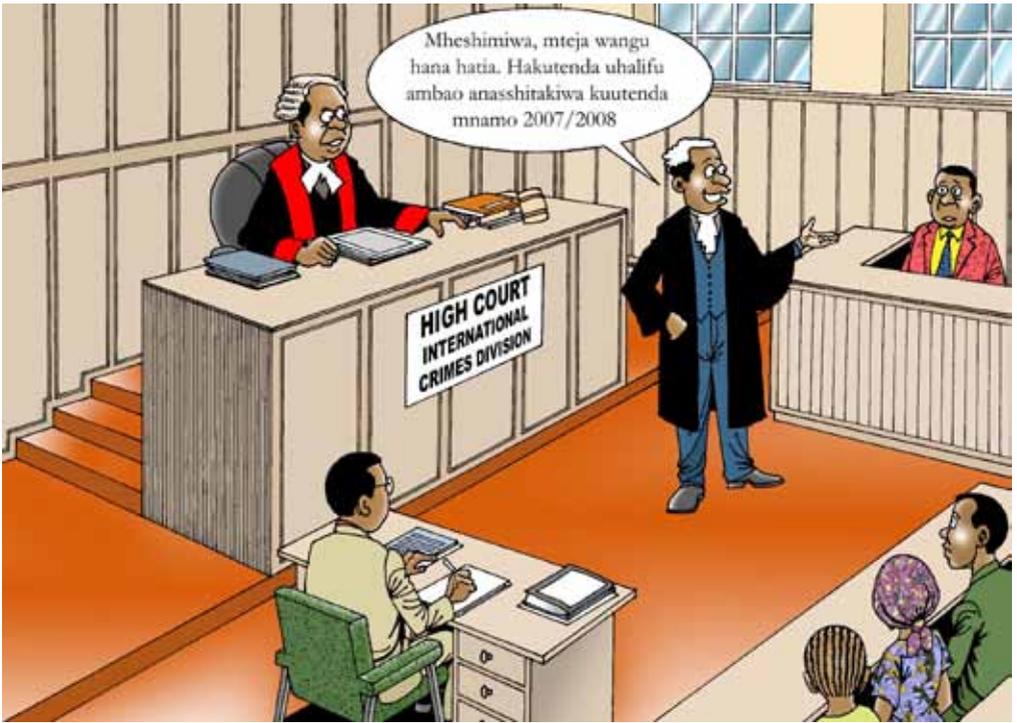
Haijalishi matokeo ya kesi za Kenya yatakuwa yapi mbele ya Mahakama ya Kimataifa, watawala wa Kenya wanao wajibu wa kimsingi kuchunguza uhalifu unaosemekana ulitekelezwa wakati wa vurugu za baada ya uchaguzi na waweze kuwaleta watekelezaji hao kuipata haki.

*Kanuni na maelekezo ya Kimsingi ya Umoja wa Mataifa juu ya Haki ya Suluhisho na Malipo kwa Waathiriwa wa Ukiukaji Mkuu wa Haki za Kimataifa za Kibinadamu na Ukiukaji Mkuu wa Sheria za Kimataifa za kibinadamu*, inasema kuwa waathiriwa wa uhalifu kama huu sharti wawe na (a) uwezo ulio sawa na mwafaka wa kupata haki; (b) Malipo (fidia), ya kutosha na yanayofaa na yaliyo kwa muda ufao kwa madhara waliyoyapata; (c) pawe na uwepo wa kuweza kupata habari husika kuhusiana na mbinu za ukiukaji na malipo (fidia).

Msukumo wa sasa na Serikali ya Kenya kuunda Kitengo cha Uhalifu wa Kimataifa kwenye mipaka ya Mahakama Kuu Kenya sharti uheshimu kanuni hizo.

## **Je Waathiriwa wa Kesi za Mahakama ya Kimataifa wamelindwa humu Kenya?**

Watawala wa Kenya wana jukumu la kuwalinda waathiriwa. Ajensi ya Ulinzi wa Mashahidi, iliyoanzishwa mnamo Novemba 2009, imepewa jukumu la kutoa ulinzi kwa mashahidi ambao watatoa ushahidi wao humu nchini na mbele ya Mahakama ya Kimataifa, lakini inakosa fedha za kutekeleza mamlaka haya.



## Utaratibu wa Tume ya Ukweli, Haki na Maridhiano Utakuwa na athari gani?

Ripoti ya Tume ya Ukweli, Haki na Maridhiano ilitolewa kwa umma mnamo 21 Mei 2013. Ripoti hii inashughulikia ukiukaji wa haki wa kihistoria na ukiukaji wa haki za kibinadamu uliotokea kati ya Desemba 12 mwaka wa 1963 na Februari 28, 2008. Tume ya Ukweli, Haki na Maridhiano imependekeza kuundwe mfuko wa malipo (fidia) ambao utatumiwa kuwapa malipo (fidia) waathiriwa wa ukiukaji wa haki za kibinadamu na ukiukaji wa haki za kihistoria. Malipo yaliyopendekezwa ni ya kimali na yasiyo ya kimali kwa hali yake, na malipo haya watapewa waathiriwa binafsi na makundi athiriwa. Mfumo wa malipo (utoaji fidia) unaonelea malipo kwa ukiukaji wa haki ya uhai na haki ya uadilifu wa mtu binafsi, kuhamishwa kimabavu kwa umma, ukiukaji wa haki kuhusu mashamba, kesi za kale na za sasa na mfumo wa ukandamizwaji. Katika kufanya hivyo, Tume hii imejishughulisha na watu binafsi walio hatarini kabisa, makundi ambayo yameteseka ukiukaji wa haki hasa ukiwemo ukiukaji wa kihistoria wa haki za mashamba na watu binafsi ambao wamekuwa waathiriwa wa haki ya uhai na vilevile haki ya uadilifu wa kibinafsi.

Mapendekezo mengine yanayohusiana na uwezo wa kupata haki kwa waathiriwa wa vurugu za baada ya uchaguzi za 2007-8 ni pamoja na:

- Kushitakiwa kwa watu binafsi waliohusika katika kutesa na kutendea watu visivyo.
- Taarifa chini ya kifungu 36(6) ya hati za awali (protokoli) kwa Afisi ya Mahakimu ya Afrika juu ya Haki za Kibinadamu na Watu juu ya uundaji wa Mahakama ya Afrika juu ya Haki za Kibinadamu na Watu.
- Kutolewe ripoti ya umma juu ya maendeleo ya uchunguzi na kushitakiwa kwa vurugu za 2007-8 zinazohusiana na uchaguzi
- Uchunguzi na kushitakiwa kwa watu wote waliotajwa kwenye ripoti rasmi juu ya vurugu na migongano ya kisiasa inayoanzishwa na vurugu za kikabila bila kujali hadhi yao au cheo chao. Mkurugenzi (Kiongozi) wa Mashitaka ya Umma. Pia atapiga hatua kufuatia mapendekezo ya ripoti kadha za Tume ya Kenya ya Kitaifa juu ya Haki za Kibinadamu kuhusu vurugu za kikabila na kisiasa ikiwemo ripoti ya 2007-8 ya vurugu za baada ya uchaguzi.

Utekelezaji wa haraka ili kuunda Kitengo cha Uhalifu wa Kimataifa kwenye Mahakama Kuu, hatua inayochukuliwa na Idara ya Mahakama, kitengo ambacho kitakuwa na wajibu wa kushughulikia baadhi ya kesi zilizowasilishwa kwa Mkurugenzi (Kiongozi) wa Mashitaka ya Umma kwa uchunguzi na mashitaka.

Waathiriwa wanaweza kutumia Mbinu za Haki za Kibinadamu au Mbinu za **Umoja wa Mataifa kuhusiana na Vurugu za Baada ya Uchaguzi?**

Waathiriwa wanaweza kuwasilisha malalamiko mbele ya ofisi za haki za kibinadamu au mbele ya mashirika ya Umoja wa Mataifa kuhusiana na wajibu wa Serikali (kinyume na watu binafsi) kuhusiana na ukiukaji wa haki za kibinadamu. Kesi kama hizi zinaweza kuchukuliwa chini ya masharti fulani, hasa kuwa mwasilishi amejaribu kutumia mbinu za usuluhishaji zilizomo nchini Kenya kikamilifu kabla ya kuileta kesi mbele ya mashirika haya. Mbinu za usuluhishaji za kinyumbani sharti ziwe mwafaka, ziwe zinapatikana na ziwe zinatoshleleza – kama hazina hali hizi, kesi inaweza kuwasilishwa kuwa hakuna suluhisho mwafaka la kinyumbani, na kwa hiyo kesi inaweza kuwasilishwa moja kwa moja kwenye eneo au shirika la kimataifa.

Zaidi na hayo inajadiliwa kuwa Mahakama ya Haki ya Afrika Mashariki itakuwa na uwezo kwa siku za usoni, wa kuwashitaki watu binafsi kwa uhalifu wa kimataifa, kwa njia sawa na Mahakama ya Kimataifa.

Kituo cha Sheria kinatoa msaada kwa waathiriwa humu Kenya ambao wataamua kushiriki kwenye utaratibu wa kesi za Mahakama ya Kimataifa na kutuma maombi ili kupokea malipo (fidia). Kituo cha Sheria kinatoa habari, kinasaidia kuzijaza fomu na kukusanya hati zote zinazohitajika.

