

## TRANSCRIPT

# "THE PROMISE AND REALITY OF THE KENYAN ELECTIONS"

*Interview with Ben Rawlence*

*Correspondent: Kunda Chinku*

*Transcriber note: Heavy accents and a lot of noise in the beginning.*

### **ANNOUNCER:**

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### **MODERATOR:**

Thank you everybody for coming to this-- very timely discussion on the Kenyan elections with (NOISE) incoming (UNINTEL PHRASE). Ben is currently on sabbatical from Human Rights Watch where he is a senior researcher on east Africa and the (UNINTEL) of Africa. (NOISE) Prior to joining (NOISE) Human Rights Watch, he worked with an advisor to the (UNINTEL PHRASE). And before that, as a (NOISE) foreign affairs advisor to the liberal democrats in the UK parliament.

Ben holds a BA in Swahili and history from the school of Oriental and African studies and (NOISE) a masters in international relations from the University of Chicago. He's also the author of *Radio Congo*, signals of hope from Africa's (UNINTEL), which was recently published in the US. In May-- Ben will start his fellowship in Kenya where he will follow the stories of young Somalian habitats of (UNINTEL), the world's largest refugee camp.

Today however, he is here to discuss the recent and very con-- controversial Kenyan elections where Uhuru Kenyatta (PH), ICC and IUT was declared the winner by the independent electoral commission. Then (UNINTEL PHRASE) Oginga (PH) is

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challenging the results in court. And the Supreme Court-- will have about two weeks adjudicating her case. So this is a very timely topic and we'd like to thank Ben for taking the time out of his busy schedule to come here and discuss it. The format-- he'll talk for about 15 to 20 minutes and then we'll open up the floor for questions. Thank you.

## **BEN RAWLENCE:**

Great. Okay, well thanks for having me. It's-- (NOISE) I wasn't expecting to get to know everybody (UNINTEL) until May. But-- it's great to take opportunity of being in New York. I've-- my beginning work for Human Rights Watch on the Horn of Africa was with the 2007 elections in Kenya and the violence. And a report called "Ballots to Bullets"-- which I wrote at that time. So it's-- it's a very interesting kind of bookend-- to now be-- to be stepping away.

I worked on the Human Rights Watch's pre-election report which came out in February-- which laid the ground for-- described the-- the patterns of violence that are existing now. And in a way, that's a very good pointer to sum up the problems that we may see-- evolving depending on how things pan out.

So I-- I'd like to-- (NOISE) to say sort of four thing over 15 or 10-- 10, 15 minutes. The first is the different narratives about the election. The second is what-- what's wrong with that and what's wrong with the elections-- the election results. And what the problems that poses to Kenya. Thirdly, a brief history lesson-- about the work that the NYFA (UNINTEL PHRASE) who work-- who-- as you know runs (UNINTEL PHRASE) for Human Rights Watch in 1992 and 1997 that involved some of these guys.

And then fourthly, I'd like to-- hazard some predictions-- at the risk of being wrong. But I think-- it's an interesting way to sort of think about what we might have to deal with in Kenya and what Lucia might have to deal with in Kenya-- 'cause they're very much on the frontline, as you know. So there seems to have been two emerging narratives that have developed over the last two weeks about what has happened.

The first was most eloquently put by Kenyan writer Yainai Nabinyabanga (PH) in *The Guardian* which was the kind of Kenya pride line which is that the west doesn't understand Kenya. And what we witnessed was a vote for peace for William Ruto (PH), the vice president who is the sort of main kingpin of the Kallengin (PH) community and Ohuru Kenyata, the president elect who's the sort of scion of the Kikuyu community and son of Derma Kenyata, the first president who were both indicted for inciting their respective communities against each other in 2007 and who now are on the same ticket.

Ostensibly to avoid-- being transferred to the Hague but also because it makes electoral sense the two biggest ethnic communities. And his-- Kenya has a sort of very messy history of voting along-- ethnic lines. So that-- that was a-- a very cynical-- a very cynical political move in order to-- to build a-- to build a majority.

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But the Kenyan pride narrative kind of puts that to the side and says Kenya's-- Kenyans are sophisticated. They're voting for peace. This is a-- a finger to the international community. The ICC has no role. We will solve our own problems. And you all need to-- to back off.

(OFF-MIC CONVERSATION)

## **BEN RAWLENCE:**

So the counter to that is-- the sort of-- the main proponents of the counter to that has been Michaela Wrong in the *New York Times* which is a more sort of international-- approach. One that says that-- Kenya, in fact, has-- has voted for-- this is the triumph of-- of an old kind of cynical tribal politics. And it's not-- it's not a positive step that the Kenyan press has muzzled itself and has not asked the kind of questions that you would expect the press to ask.

And that they've done that in-- and-- and they've-- on the one hand self censored them. They've censored themselves. And then on the other, they're saying that this is-- (COUGHING) in aid of peace that we are being responsible-- by not talking of-- by not raising too many questions, by not poking too hard. And particularly, by not talking about ethnic and tribal issues, which-- caused so much grief last time.

Of course, both of those narratives have their problems. The good guy, bad guy tendency of the international coverage is more certainly false. And I think that-- the majority of-- of-- of Kenyan opinion would reject that. That just because William Ruto and Uhuru Kenyatta were indicted for what they did last time does not mean that the cord alliance and ODM and Raila Odinga (PH) are completely clean.

William Ruto was the deputy for Raila Odinga last time. It's inconceivable that the Odinga was not aware of what was going on. He certainly implicated there were strategic decisions taken-- about how to pursue the (NOISE) prosecutions last time which kept Odinga and Kibaki (PH) out of the picture.

And both-- you know, most people believe that both of them also did have blood on their hands. So the good guy, bad guy thing is wrong. At the same time, the Kenya pride narrative definitely has many, many problems. We've seen this in-- the people who work on the international communal court would have seen this in other (UNINTEL) (COUGHING) with-- strong rejections against international justice.

One of the sad things about this is that it's-- we've seen very, very high (NOISE) opinion polls in Kenya in favor of the ICC in 2007 to now and election being apparently one-- on-- on a ticket of rejection of the ICC. So that-- that's a very rapid turnaround and a very-- a rapid slide in public opinion, which I think is-- is concerning.

So neither of those two, I think really-- really captures the-- the whole picture of the Kenyan elections. Where we are now is-- or where-- where both of them sort of-- have-- (COUGHING) end up is with-- the major-- the major problem being the

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credibility of the IEBC. The in-- independent electoral-- I don't know what the B and the C stand for. I can't remember-- but the electoral commission.

And the cred-- the-- the fact that the credibility of the electoral commission is-- is now being challenged in court-- is indicative of some serious problems for Kenya. (COUGHING) The Supreme Court in a way is damned if it finds in favor. It's damned if it finds against. Because either it has to re-- order a rerun under the constitution within 60 days. And a big part of Odinga's petition is that the-- the commission was not prepared-- that-- that the staff are compromised, that in fact we need a new voter's register.

And how long is that gonna take? On the other hand-- if they-- if they find-- against, then there is-- all of the-- sorry, if they find in favor-- against the petition and they uphold the result, then there is the possibility of violence and the-- the-- the-- the prospect that we then have a whole lot of tensions that 49% of the population feels unrepresented and feels cheated-- which is exactly (NOISE) what happened last time. (NOISE)

The second major consequence-- of-- of the-- of the current situation is what I already mentioned. The victim, international justice being the victim of this. That there was a lot of effort taken and a lot of care by the ICC and by lots of other people involved with the ICC to make sure that the intervention was-- was-- that the involvement in Kenya was as-- as appropriate as was possible.

Took all the steps to try and protect witnesses. There were some problems with that. But to tread very carefully with the-- the explosive Kenyan political situation. And despite all of that, I think internet-- the international justice movement as a whole is now very-- very damaged. Because Kenya was, in a way, the exception where the population was polling in very high numbers in favor of the ICC.

And now, we're sort of back to the other countries that-- that-- that-- have all reacted quite strongly about-- against it. And the third victim is the media. And I think the-- Michaela Wrong's analysis is very good. She described a press conference when the-- when the results were announced. And un-- with-- a screen behind the chairman of the in-- of the intellectual commission with numbers that did not add up.

Meanwhile, the Kenyan journalists were not asking any questions at all. And a lot of the substance in the-- in the petitions, the two petitions that are challenging the results-- are not-- were not raised by the press at all. There-- there-- it's been a very sort of-- very muted performance. And it's-- it's a real shame.

And that-- that's something we've seen, I think, deteriorate since 2007. The corruption of journalists and the kind of general movement indicating the press to be more and more acquiescent. So now I get to my history lesson, which is that-- I think it's great that the Kenyan press is being muscular, is being assertive and is rejecting-- the stereotypes that a lot of foreign journalists were-- were using.

And is-- the-- that people do feel that a vote for peace is good and so on. And I think that is positive. On the other hand, (NOISE) if we look in-- in historical perspective, this is actually the final chapter or the-- the-- the current chapter in a very long

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history between the forces of reform and progression and the forces of corruption and impunity in Kenya. (SIREN)

Moy (PH), when he was faced with challenges at home in Kenya back in the '90s, got around the-- the demands of-- of the west and the demands of Kenyan civil society, Minakiai (PH) and others who-- who-- who work with-- with Auser (PH)-- in-- in Nairobi. Among them, he got around the-- those demands-- by holding elections but by fermenting violence.

So he tried to split-- he tried to split the-- the Rift Valley. And he used the-- his two left tenants, William Ruto and Uhuru Kenyatta, at that point in charge of-- carnal youth, which was the ruling party (NOISE) that-- in-- in the single party regime. And used them to ferment violence in the Rift Valley in a report called "Divide and Rule" that's Benaifa (PH) wrote for Human Rights Watch back then.

She talks about that process and about the violence that ensued. 1997 elections we saw the same problem with-- ethnic differences being exacerbated, being manipulated. And we saw a big explosion of violence on the coast in 1997. And Benaifa and others covered that-- that election as well. 2002, we saw the end of the Moy regime. He was finally pushed out.

Kibaki came in. There was the not rainbow coalition if you remember. It was a moment of hope. People thought, "Okay now finally things will change." And people like-- Mina-- like-- like Gladwell-- the Kenyan national-- the Kenya commission for human rights, the Kenyan national commission for human rights. All of the things that they were calling for, they were then expected to be implemented. A new constitution-- including-- a bill of rights kind of relaxation-- liberalization of the press and all this sort of stuff, which began very tentatively.

2007 was the wake up call. 2007 was when people realized that actually, no, Kibaki is not serious. Kibaki is an ethno fascist of the worst kind just like the previous ones. And he had entrenched-- well-- people realized it then-- in Michaela Wrong's book-- *It's Our Turn to Eat* just details this process in-- in-- in a lot of-- in a lot of detail is precisely how he entrenched (UNINTEL) control over the state-- was-- was a block to reform, was a block to-- to justice.

And he put-- him and-- and others put a lot of obstacles in the way of the-- the justice agenda, the progressive agenda after 2000-- the 2007 elections and the search for-- the search for justice for the victims there. So we then-- all of the efforts to have a domestic-- I'm-- I'm sort of telescoping history here. But the end, if you remember, the end of the 2007, '08 elections was that Kofi Annan (PH) stepped in. And there was a promise by Kenya to deliver justice for the victims of the violence.

And if they failed to establish a national mechanism, then the ICC would take over the case. And that's what happened. But the people who were principally responsible for making sure that the national justice ele-- system-- the national mechanism failed are William Ruto and Uhuru Kenyatta.

And there was an enormous May scandal. The proceeds of which were used to pay all of the MPs off three times to stymie every bill that came that tried to establish a

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national tribunal to address the-- to-- to take-- to take the cases of the post election violence. Because, of course, the police was implicated. The government was implicated. We needed some kind of-- system, some kind of court that was (UNINTEL). So they were front and center in making sure that didn't happen. Now (UNINTEL) Odinga of course is not entirely clean.

But he did at least-- play-- a slightly more positive role than those guys. And he played a slightly more positive role again in the-- the constitution-- which William Ruto voted was-- William Ruto tried to stop. He tried to vote against the new constitution that came in 2010. So the constitution passed and that's a good thing.

But the fundamental kind of cynical corrupt politics where parliament will do the bidding of the-- of the richest MPs remained. And though-- that is really the system-- that the current victory represents. It represents a victory for that brand of doing politics. I'm not sure that an-- an Odinga victory would necessarily have represented a victory for some other-- a better brand of politics. But it would probably have opened up space for-- more progressive space for more-- for alternatives.

It would've been-- the first non Kikuyu or Kallengin leader. He had, you know, a broad alliance of other-- other groups from the country. So there was, perhaps, the possibility that that may have been-- more conducive to-- to progressive ideas. So, instead what we have is-- at the moment, a president elect who-- in order to avoid the ICC needs to stay in power-- and needs to not—

## **QUESTION:**

How does his staying in power avoid the ICC?

## **BEN RAWLENCE:**

Well, for the duration of him being in power at least.

## **QUESTION:**

No, but he's not exempt.

## **BEN RAWLENCE:**

No he's not exempt, but he won't be handed over. I mean, if he—

## **QUESTION:**

Yeah.

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## BEN RAWLENCE:

If Odinga was the president-- was the president, he would-- he would most likely be handed over. And the Kenyan state would be after him. As long as he's in control of the Kenyan state, it isn't. So-- yeah, we have a situation where we have-- quite-- you know, quite corrupt and cynical people in power who have already begun to unleash-- campaigns against the press-- against foreign journalists who have all been told that they need to apply for-- for permits and-- and that there are-- you know, a lot of their old commissions are no longer valid.

We have this campaign against Africog (PH)-- implicating our CO as well because of its-- its funding there. So it doesn't look very good. The Supreme Court is going to rule-- on March the 30th. It may rule a bit later than that because it's the Easter weekend. Maybe April the 1st or the 2nd. And there's a certain amount of tension in all the Luu (PH) areas in Kisumu, in Methari, in Kabira (PH) and a little bit on the coast as well.

People are all waiting for that judgment. At the risk of being proved wrong (LAUGH), I think that it's likely that because of the-- the complications involved with-- with the petition, because it will be very hard to prove that the-- even if there are irregularities that they were of a sufficient magnitude to overturn 600,000 votes that the court will likely reject the petition and will confirm Ohuru as president. I think the likely response from that will be an-- a propensity to violence in those places that I mentioned, Kisumu, the informal settlements in Nairobi, and the coast.

And whether or not that actually ticks over into a problem will depend on Odinga's-- restraint. And there he will come under a lot of pressure, I think, from the international community to talk sensibly to keep his people calm. And I think that we will see then an acceleration in non cooperation with the ICC, frustration of ICC activity in Kenya. More intimidation and disappearance of ICC witnesses ahead of the cases.

In July, I think we'll see more intimidation of the press along the lines that we've already seen with increasing restrictions on foreign reporting. I think we'll see-- an increase in the pattern of corruption of the press where it's become very normal now for editors to take big paycheck-- big payoffs from these guys in order not to report things, to bury stories.

There's-- several scandals in the run up to the election where stories were posted on the standard website and then were taken off very quickly. So I think we'll see more of that kind of thing. And I expect we'll see-- a kind of deeper embedding of corruption in-- in wider society fueled by the corruption that's stemming from parliament because keeping all of those MPs happy-- is an expensive business.

And finally, I think we'll see then more pressure-- on and more restrictions using the NGO laws that are in place to squeeze Africog and-- all the other sort of progressive institutions. And they will become-- they will come under increasing intimidation, phone calls, you know, death threats, that kind of thing which we have-- which we

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have seen in 2008, '09. There were-- some people were killed, for example-- for reporting on-- on-- on police corruption back then.

So I think that sort of thing will continue. I'd love to be proved wrong. But that's the sort of worst case scenario. And I think that, (COUGHING) in a way, is the best way of starting to think about how pr-- people who are concerned about-- progressive-- issues in Kenya might want to respond. So let me start there and I'm sorry for talking very quickly. I hope you heard. (LAUGH)

## **MODERATOR:**

Thank you very much. I'm going to open up the floor to questions. We'll take about two or three questions. One (UNINTEL) and give Ben a chance to a-- to answer. But before I do that, I will take the opportunity to ask the first two. So, what are your predictions for the Ruto Kenyata relationship going forward? And second, (NOISE) is there a possibility that parliament will be able to hold the executive in check given the new constitution if Kenyata is confirmed?

## **BEN RAWLENCE:**

Yeah. I think the-- Ohuru-- Odinga and Ruto were-- were best buddies in 2007. And then of course, they fell out. (NOISE) I think that it's-- Ruto will do whatever's best for him. At the moment, I think his best chance of staying out-- his main concern is staying out of Hague. And his best chance of staying out of the Hague is by keeping the Kallengin firmly behind Kenyata, making sure Kenyata gets the-- gets confirmed.

And then making sure that the-- the state is fully behind non cooperation with the ICC. So that cause is best served by a Kikuyu Kallengin alliance for the foreseeable future. In terms of parliament and the new constitution, I think the new constitution is exciting p-- as a potential. And we've seen some-- some progress and some benefits of that in terms of the chief justice and in terms of some of the petitions that were brought ahead of the elections.

But ultimately, they failed. Especially the petitions, for example, to stop Ruto and Ohuru from running because they didn't meet the-- the management and leadership criteria which is in the constitution. So they-- you know, they gutted that-- those amendments, those provisions in the constitution. And then they were allowed to run. So I think there will be probably space for the-- the courts to use the constitution to make some room. But I think fundamentally-- the-- with those guys in charge, it's money that will call the shots.

(OFF-MIC CONVERSATION)



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**KAREN:**

This is Karen. My question is about-- the way that the elections happened this past year and that they seemed that they were peaceful, more peaceful, than most of the past elections have been. I've heard some say in the press, including Ocampo that part of the reason for that was the ICC cases. Do you actually think that that's true?

**BEN RAWLENCE:**

I don't think either of those things are true. I think that this was just as violent. At the pre-election period, we saw the UN counted 600 dead because of Tana River, because of Samburu, because of-- other gang-- gang violence in Kasumu. Other stuff at the coast. We saw-- 30,000 people just based in Mandera county (UNINTEL) the governorship thing.

So actually what we saw in this pre-election period was a devolution of violence. If you-- if you start-- if your starting point is that political competition in Kenya is violent, the devolution that happened under the constitution devolved violence. So you had more seats, governorships, senate, these count-- new county governments that have resources to spend.

And so, if you want to control the budget of a county government, you-- you make sure you have enough people, you know, in the-- in the council. So I think that's-- that-- those pre-election numbers were higher than the pre-election numbers for 2007, excluding Mount (UNINTEL). (NOISE) So I don't think that-- it was necessarily peaceful. And I don't think the ICC had much to do with it. And sorry, the second part?

**KAREN:**

That was really the—

**BEN RAWLENCE:**

Yes.

(OFF-MIC CONVERSATION)

**KAREN:**

And if I could ask a follow up question 'cause-- I forgot what my question was. I'm sorry. I'll come back to it.

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**BEN RAWLENCE:**

Okay.

**KAREN:**

Thank you.

**QUESTION:**

Mine is kind of looking build. If-- if the-- if we see (UNINTEL) stays at status quo, I think they have a very expensive government with-- with-- they are like two (UNINTEL PHRASE) one seated government with a senator, the governors and all those people. (NOISE) Do you have a sense of the economic implication of the new government? Whether it's right or whether it's Ohuru. Because that's a huge, huge number of people.

And then just thinking about it-- listening to your history and having lived it myself, I think we are recycling the same people. Is there space for new leaders? Do you see there is space for-- because they are there. Is there space? Is there room for new leaders to emerge? Because as long as we are recycling these guys, they are all related. They are all interlinked. C-- but-- Odinga's father was Ohuru's father's vice president. I mean, this is the same people. So what's the space for new leadership in Kenya?

**BEN RAWLENCE:**

Well, the 2007 elections and these elections saw a big turnover in the number of-- of MPs. I mean, quite a lot of people were-- were kicked out. Quite a lot-- some of those have come back again this time. But there are loud, young MPs who are trying to-- to make a difference. And there were some loud old MPs like Martha Karua (PH) who were-- who were trying to make a difference. So I think there is space in there but they are within a very suffocating system that is so-- sclerotic with cash (NOISE) and with-- with corruption and impunity that nothing can get done.

And at-- the-- economically, I think all of those-- because politics is expensive not just in terms of the salaries of those people but every time you want to get a bill through parliament it costs billions and billions of shillings 'cause they all want payoffs every time. And as the stakes of those bills and so increase, especially like the national mechanism, the-- the-- the amounts that the MPs were demanding were really, really high.

So I think the corrupt-- the in-- the economic ins-- im-- implications of that system means that we're going to head to, I think, a much more corrupt mafia style economy, ala Nigeria. So that's how I see it really is that the-- the economy will-- will

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boon. We've got oil coming into Kana. We've got Lamu (PH) pipeline. You know it's-- it's gonna be-- bonanza. But there's gonna be this-- as long as you don't talk politics, you'll be fine. But if you get involved in politics, it-- you know, it-- the-- it won't be nice.

(OFF-MIC CONVERSATION)

## QUESTION:

In terms of if both Ruto and Kenyatta are confirmed, in terms of their presence internationally, how do you see that affecting the country being ICC and IT's and Kenya being a different country than Sudan is and how isolated Sudan-- kind of was. And how the-- just affects the country, if it's-- you think it's really gonna have any long term effect in their relationship with the outside world?

## BEN RAWLENCE:

I don't know. I mean-- you'd be better off asking the Sudan people who have followed how that has panned out. I'm-- I'm pretty cynical about-- European diplomats. I think they will find a way of working with Kenya. The-- a friend of mine went to a briefing from the U-- UK embassy in Nairobi saying, "Oh well you know, I can-- I couldn't meet him. You know, I-- we wouldn't meet him personally."

But they'll find-- they'll meet somebody else. You know, they'll just-- I don't think we'll see the kind of isolation-- diplomatic isolation of Sudan. They-- they need to do business. They need to-- you know, need to work. So I-- I-- I think they'll-- they'll find a way one-- somehow. You know?

## MODERATOR:

Sorry Rachel. Let me just ask London, do you have any questions? I guess not. Okay.

## BEN RAWLENCE:

They've had enough.

## QUESTION:

Yeah we do. (UNINTEL) Russell. Hi Ben. Quick question-- in relation to what you may or may not know about the British public affairs consultancy agency that came up with the messaging-- around national sovereignty was instrumental in putting the Brits in particular in a very difficult place in this whole issue of non collabora-- non--

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compact with (UNINTEL) of the ICC.

## **BEN RAWLENCE:**

I-- I don't know anything about it. I know the-- I-- I know the story but I don't know anymore than that I'm afraid.

## **QUESTION:**

And-- and the second question relating to the IEBC-- is the issue of-- how much-- did you have any insight into whether-- partisan political behavior or influence inside the IEBC was a critical factor? Or was it really-- a number of people-- commentators have put it that basically everybody inside the ICC saw it as their big opportunity. It was their turn to eat. And that's what their focus was. And that's why it was so dysfunctional. That combined with the-- the standoff between the chair and-- the chief executive.

## **BEN RAWLENCE:**

I don't know. But I-- I think that the money involved in this election means that-- you know you-- there had to be people-- there had to be money changing hands there for sure. And you only need to look at the-- the March the 2nd register that was posted ahead of the elections and then the register that-- against which they tallied the results are completely different. So definitely there are-- there are big problems there. And I would be very surprised if-- it wasn't the result of cash.

## **MODERATOR:**

Go ahead, Rachel.

## **RACHEL:**

(NOISE) (UNINTEL PHRASE) next picture for SEC prospects. Could they have done anything differently that would've had a different outcome?

## **BEN RAWLENCE:**

I don't think so. No, I think they-- they did-- there are-- there have been concerns about the-- the cases and that they-- you know, now they had to drop against Muthoura (PH). They had to-- pull back on some of the others. They dropped the case against the police chief. That they hadn't done their homework properly.

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But those concerns are slightly different. In terms of the politics of how-- they engaged and how they dealt with Kenya, I think they did it really well. They-- you know they-- Ocampo came and spoke in the-- in the press, talked about what they were trying to do and why they were there. And-- and there was-- a big groundswell of popular opinion for the ICC that evaporated in the last kinda 18 months.

So I think that ICC tre-- trod very carefully. And I-- I think it's a real shame that-- that everybody now thinks that international justice is the ICC when we've got the African corps. We've got-- you know, all of these-- the first international justice-- actually the first sort of-- I-- the way I think-- see it and the way we talked about it in-- in the African division of the Human Rights (UNINTEL) to counter this negative perception of the ICC as an African court is that you-- you know, the first-- international trial was Nuremburg.

And then you had the ICTY in Yugoslavia. And then you had the mixed tribunal in Cambodia. And sierra-- you know, then it's Sierra Leone. Then it's Rwanda. And then it's the ICC. But actually, there are other international mechanisms there as well. And that's what Kenya should be thinking about. But that narrative is lost now. It's just-- you know, the ICC and the African court and, you know, go away. And that-- that's a real shame.

## QUESTION:

I don't think there's another other international mechanism that you could rely on to bring a criminal-- prosecution. There's no African court-- which has-- done anything of that sort—

## BEN RAWLENCE:

No.

## QUESTION:

--to-- to counter (UNINTEL). To—

## BEN RAWLENCE:

No.

## QUESTION:

To engage in anything like that. So the ICC-- is the only-- real possibility. Ben-- one question-- I have is-- well two-- two questions. One is-- the status of Kofi Annan's in

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the-- the community (COUGHING)-- situation. It had been quite high of a-- certain point. Has it completely drained away-- at this stage? And-- then the susceptibility of-- of Kenya to-- to international pressure.

## **BEN RAWLENCE:**

Well Annan, before the (NOISE) election, told Kenyans to think very carefully about who they voted for. And the message was don't vote for the end ITs. (LAUGH) And that went down very, very badly. Because I-- Kenyans, you know, have-- quite rightly don't like being told who to vote for.

So I think whatever credibility he did have-- which he used, you know, I think very wisely and very carefully through 2008, '09, '10 to guide the ICC process and he even talked-- I mean, he was even issuing advice to the ICC. He was telling Ocampo how to handle it. And so-- which I think was great. But I think he's now been superseded by events because he (UNINTEL) that way. And now, the (UNINTEL) has gone-- gone the other way. The-- the lesson for international pressure on Kenya of the 2007 violence was (NOISE) that Kenya is susceptible to international pressure but only of the highest, most forceful sustained—

## **QUESTION:**

(UNINTEL PHRASE) I-- I don't think I'm telling stories-- out of school. But you know, Annan-- worked the international pressure-- effort-- very well then. Just to give you one example. He found that one key-- player had-- a child in school in Switzerland. And he was in touch with the Swiss-- government about revoking the visa. So-- as to put pressure on that participant-- in the-- the process. So he-- he-- he played the game very well-- during-- that period.

And people are-- susceptible to a variety of-- of forms of pressure. Having their children go to-- to school-- in the UK or-- Switzerland or the United States-- (COUGHING) gets to be important to-- to officials in-- in various countries. So-- there are mechanisms (NOISE)-- you know, what I call smart sanctions-- which can be effective.

## **BEN RAWLENCE:**

Yeah. Yeah, and we saw the impact of that in 2007 and '08. I mean, I think that's what I was sort of agreeing with you really that that-- that was fantastic. But it took Annan to bring it all together, to line up the panel of our eminent African personalities. We had to have Condoleezza Rice come herself and have a press conference and hold the hands of these two guys.

So it was-- it-- it took an enormous sustained amount of pressure over a period of about three weeks-- to get them to the table and to-- and to cut a deal. And I-- so I

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think, you know, the only way that the internationals are gonna mobilize on that scale is if there is a (UNINTEL) threat to their interests, which really means stability. So I-- you know, I don't think they're gonna step up-- if it's just an internal Kenyan issue where we-- you know, how to get these guys to the ICC. They're-- they're not gonna actually take major diplomatic steps. It's just gonna, you know, slide.

## **MODERATOR:**

And Lydia?

(OFF-MIC CONVERSATION)

## **LYDIA:**

You-- you-- you ended your-- your talk about-- with this idea of those of us who wanna support civil society inside Kenya. These-- these issues and this history is obviously really critical. So the question I would have is what advice do you have for us?

I mean, obviously we have Osea thankfully on the ground to help-- help guide us in that. But it seems like a lot of what you're saying is in-- in essence, it was a rejection of-- you know, the vote was in some ways a way to flip the bird to the international community and say, you know, "We're Kenyans. We're gonna make our own decisions." So obviously international investments need to be done in a really savvy way. So the question is how do we support Kenyan civil society and local human rights actors without jeopardizing their security or ability to have influence in this environment?

## **BEN RAWLENCE:**

Well, it makes the intervention much more problematic. It means you've got to be so much more delicate, so much more careful about how you intervene. But that doesn't mean that those interventions aren't-- aren't necessary and aren't useful.

And the best guides to that, how to do that, is going to be Osea and-- and Africorps (PH) and all of the people who are engaged. We're back in a way to-- to 1997 really when we had-- a civil society-- in-- in Kenya that was very much at odds with the state-- and needed a lot of international support and encouragement. And-- and-- and minor-- all these people-- all their careers were formed in that struggle. And that the guys who were-- who are running things now were-- were the young guns back then.

And the-- so it-- either way I see it is-- is (UNINTEL) back-- back there. There is now a new constitution to play with. There's slightly more independent courts. So they might be able to-- to-- to make-- make a bit of space. But if things go in the sort of

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negative direction that I-- I suspect, then we will see-- increasing restrictions.

The-- the kind of executive authority that the government can exert, like the NGO registration process and things like that. Journalists permits. You know, those sorts-- that sort of squeezing. But you know, Kenya remains open for business. They will want the economy to keep growing. They will want NGOs to be based there. They won't want to push them too hard. So I think, you know, the-- the-- the attitude of the Kebacki kind of-- mafia network, if you like, up to this point has been-- as long as you don't threaten our essential interests, there's no problem.

Quite *lessez faire*. And I think that will-- you know, that will probably be the case. Until the ICC-- until they're out of the ICC woods, they'll-- they'll be very nervous. But once that's passed and once they realize that their interests aren't threatened, they can make money. They can control things. You know, I think they'll-- they'll let it go. I mean, it might not be-- such a major cultural change.

(OFF-MIC CONVERSATION)

## QUESTION:

(NOISE) What will the donors do? I mean is-- is Kenya becoming more independent? You say it's becoming very rich. It's got oil and so on. When is it gonna be detaching itself from—

## BEN RAWLENCE:

Donor money in Kenya is-- is minimal anyway.

## QUESTION:

Is—

## BEN RAWLENCE:

It's already very, very small. It's tight. They suspended a lot during the Moy era. They got back in in a big way in 2002. And since the economy's been doing so well, they've-- and there's been quite a few corruption scandals with (UNINTEL) education budget, things like that. They've-- they've pulled back and it's very small now. I mean, Kenya's all-- practically (UNINTEL) country. It shouldn't need it. But there is still s-- a residual amount. But I don't think that will make much difference.

## MODERATOR:

Anymore? That's it.



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**BEN RAWLENCE:**

Sorry to depress your Friday. (LAUGH)

(OFF-MIC CONVERSATION)

**MODERATOR:**

Well thank you very much everybody for coming. That was really great. Thank you Ben. (APPLAUSE)

(OFF-MIC CONVERSATION)

\* \* \*END OF TRANSCRIPT\* \* \*