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**STATEMENT BY THE KENYANS FOR PEACE WITH TRUTH AND JUSTICE (KPTJ) MADE AT THE 13TH SESSION OF THE ASSEMBLY OF STATE PARTIES TO THE ROME STATUTE DURING THE GENERAL DEBATE**

Excellencies, distinguished delegates, ladies and gentlemen,

Thank you Chair for this opportunity to address the 13<sup>th</sup> Assembly of State Parties. I speak on behalf of Kenyans for Peace with Truth and Justice, a coalition of citizens and over 30 organisations working in the human rights, governance and legal fields.

This 13<sup>th</sup> ASP has been preceded by significant developments in international criminal justice. On 5<sup>th</sup> December 2014, the Chief Prosecutor of the ICC gave notice of her intention to withdraw the charges of crimes against humanity against Uhuru Kenyatta, following the decision by Trial Chamber V (B) denying her request for further adjournment of the case pending full cooperation by the Government of Kenya. While it is regrettable that the Prosecutor had to reach this decision, the circumstances surrounding the Kenyatta case and the factors that worked against the prosecution of the case are worth noting. The Office of the Prosecutor (OTP) has decried the frustrations that it has faced in the prosecution of the Kenyatta case. These challenges range from witness tampering, interference and intimidation to lack of cooperation. These factors have a critical impact on international criminal justice, accountability and the fight against impunity.

Ladies and gentlemen, this ASP has had discussions on cooperation with states parties calling for increased cooperation with the ICC and emphasising cooperation as an essential ingredient in the pursuit of justice under the Rome Statute System. The statutory obligation of cooperation lies entirely with States: the onus cannot be passed onto an organ of the Court. The principle of cooperation requires that States do not engage in actions that would undermine the operations of the Court, but in those that would support the Court as an important institution in the fight against impunity. In the same breath, we urge this ASP to reflect on the lessons learnt on the reliance on states for success of the prosecution of cases before the ICC and to explore modalities of strengthening the cooperation procedures and mechanisms of the ASP.

Ladies and gentlemen, while noting that the Prosecution has applied for leave to appeal the Decision on the Prosecution's application for a finding of non-compliance, KPTJ deeply regrets that, although the Trial Chamber found that Kenya's cooperation was below the standard of good faith required from states parties, it refrained from referring Kenya to the ASP under Article 87(7) of the Rome Statute. This significantly contributed to the charges being withdrawn. In addition to the impact of non-cooperation, the withdrawal of charges is a

culmination of several other factors including witness interference and intimidation and the destruction of evidence. These have been exacerbated by a high profile campaign of vilification against the Court waged by the Government of Kenya domestically, at the African Union, the UN Security Council, this Assembly of States Parties and other regional and international fora. The most recent was the President's triumphant declaration "one down, two to go" in relation to the ICC cases and his description today of the ICC as a threat to Kenya's reconciliation and stability. This campaign is clearly calculated to intimidate the Court, stigmatise the victims and discourage potential witnesses from coming forward. This has gone hand in hand with the vilification of civil society and all who support accountability for political violence and a determined onslaught on the democratic gains of our new Constitution.

The overall effect of these developments has been to deny victims the opportunity to know the truth about what happened in 2007/08 and to get justice and reparations for the violations suffered. This is worsened by the lack of credible and meaningful accountability measures for the violence in Kenya. Domestic prosecutions of the heinous crimes and reparations largely remain a mirage in Kenya. We recall that the primary responsibility of investigating and prosecuting these crimes has always been that of the government of Kenya and that on this score, it has dismally failed. We stress that Kenya remains responsible for complying with the OTPs revised records request.

The ICC has enjoyed great support from victims of post-election violence who view the Court as their only viable option for justice. The withdrawal of the charges in case two has dampened their spirits and crushed their hopes for justice. It is imperative that the ICC now carefully designs a strategy that would ensure that these developments are communicated to the victims in a manner that would, *inter alia*, mitigate against a feeling of total disenfranchisement.

Finally, ladies and gentlemen, we note with concern that six years since the opening of the Kenyan situation before the ICC, there has been no tangible effort by the Trust Fund for Victims to commence operations in Kenya despite the clear understanding that the TFV does not depend on a conviction to commence its operations in a situation country. The vast majority of victims continue to be in need of urgent physical and psychological rehabilitation as well as material support to rebuild their lives and regain their dignity. We therefore urge the TFV to urgently conduct its long over-due assessment in Kenya and roll out operations in accordance with its assistance mandate.

I thank you.

**December 12, 2014**

**New York,**