



**STATEMENT BY KENYANS FOR PEACE WITH TRUTH AND JUSTICE
14TH ASSEMBLY OF STATES PARTIES OF THE ROME STATUTE
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Kenyan for Peace with Truth and Justice is a collective of over 30 civil society organisations, which has been seeking accountability for the post election violence of 2008.

Mr./Mme. President: Once again, this Assembly is being called upon to discuss concerns raised by the Republic of Kenya regarding the application of the Rome Statute in on-going trials before the International Criminal Court. Kenya is also asking for an ad hoc mechanism of five independent jurists to audit the Prosecutor's witness identification and recruitment processes in a petition endorsed by some 190 parliamentarians.

This time Kenya is asking the Assembly to make a finding on the application of Rule 68.

The Kenyan state thus desires that this Assembly make a finding on a matter that is a pending decision in the proceedings of the Court. Such a finding would constitute a direct and wholly unwarranted interference by this Assembly with the judicial mandate of the court.

It also creates a very dangerous precedent – that States Parties with active situations and cases before the Court can reverse decisions or leverage political pressure on the Court through the ASP, to take decisions in favour of the States' positions.

This is not the first time that Kenya has asked the Assembly to discuss a matter that is already before the court. During the 12th Assembly in this very hall, discussions resulted in the amendment of Rule 134 of the Rules of Procedure and Evidence and Rule 68 was also approved.

The request to discuss the Prosecutor's strategy is an escalation of the failed request made at ASP 13 for a discussion on the 'ICC Prosecutor's conduct'. States refused to have this discussion then. The present request should be rejected as an affront to the independence of the Prosecutor's office.

Witness tampering

It is important that this Assembly steps back and considers the context in which the discussions about Rule 68 and the conduct of the Prosecutor are taking place.

The Kenyan cases before the ICC have been affected by unprecedented levels of witness interference characterized by bribery and even elimination. In the Kenyan Case 2, *The Prosecutor versus Uhuru Kenyatta*, 8 members of the Mungiki militia group who allegedly interacted with Mr. Kenyatta during the post-election violence in Kenya in 2008 were reported to have been killed or forcibly disappeared.

Also, intermediaries for Mr. Kenyatta allegedly approached three Mungiki insiders, attempting to enlist them to identify other witnesses who would be willing to give exonerating evidence in favour of Mr. Kenyatta.

In the Ruto case, the Prosecutor has alleged that 16 of the original 42 witnesses have either been killed, recanted or turned hostile. One of the witnesses who died, Meshack Yebai, was abducted in Eldoret, the home area of Mr. Ruto, and turned up dead in another part of the country that is about 1000 kilometres away.

Arrest warrants

In an attempt to bring accountability for the interference with witnesses in Kenya, the ICC has issued three arrest warrants against three Kenyan nationals. However, none of these has been executed, as the Kenyan government has erected multiple legal hurdles to defeat the surrender of the accused persons to the ICC. This is in clear violation of its duty to cooperate with the ICC.

Who killed the witnesses and why? Who wanted them killed and why?

We do not currently know the answers to these questions. Whether or not the questions can be answered is directly tied to the conduct of the Kenyan state.

This Assembly is now in effect being asked by Kenya to compound and reward the silencing of witnesses, and the shielding from accountability of those against whom the court has issued arrest warrants.

This Assembly must think about the victims of the crimes committed in Kenya. Already, the Kenyatta case has been brought to an early end because of interference with witnesses. The underlying reason for the Rule 68 controversy is witness tampering.

This Assembly must speak out clearly in defense of the independence of the Court. Cases being tried by the Court must be tried in the courtroom, not in the corridors of the ASP.

Kenya's interventions are not aimed at strengthening the Court. **Kenya continues to employ double-speak** where it pledges to cooperate with the Court while at the same time actively frustrating it from continued investigation and prosecution of the cases at home and orchestrating a sustained international campaign against it abroad.

The Kenya State's endgame, as publicly declared by various officials including the President, is the immediate, and premature, termination of the case against William Ruto and Joshua Sang, just as was witnessed with the Kenyatta case.

Let us remember also that Kenya has to date not offered domestic solutions for justice, accountability and meaningful and equitable reparations for the victims of post-election violence.

Mr. President, Kenya's domestic politics continue to define and inform its interventions on the ICC and at Assemblies of States Parties. As Kenya enters another pre-election season, characterized by inflamed rallies, hate speech and vituperation of the ICC and the Prosecutor we remind this Assembly that the ICC still remains the only viable hope for justice, truth-telling, accountability and reparations for the victims of the post-election violence in Kenya and the only credible deterrent against future similar crises.

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