



STATEMENT AT THE 16TH SESSION OF THE ASSEMBLY OF STATES PARTIES TO THE ROME STATUTE

Mr President,

I address you on behalf of the Kenyans for Peace with Truth and Justice coalition.¹

We take this opportunity to thank Mr Sidiki Kaba, the outgoing President, for his stewardship of the Assembly of States Parties through a very difficult period for it and for the Court. We also congratulate Judge O-Gon Kwon as he takes office as the new President of the Assembly.

Mr President, we continue to strongly support this Assembly to achieve its mandate even as we look forward to working more closely with you. Continuing concerns on the effectiveness of the Court and the role that we think the Assembly should play in securing the future of the Rome Statute are some of the issues we hope to be calling upon you to discuss soon.

Mr President, at the last session, the relationship between the Court and some African States was significantly strained: it was characterised by some regrettable intentions to withdraw from the Rome Statute. We appreciate the commitment by the President of the Assembly to prioritise dialogue with African States, from which important results have been achieved, the most notable being the recent retreat held in Addis Ababa in November 2017 between the Court and 19 African States Parties. While we encourage such efforts to continue, we reiterate that engagement must be premised on the good faith and goodwill of African States Parties to fulfil all their obligations, even as dialogue for improved relations continues.

We are encouraged by the decision of the Gambia to rescind its decision to withdraw from the Rome Statute system and note its reinvigorated and strong support for the ICC -- demonstrated by its commitment to champion the campaign for universal ratification while embarking on a national process to domesticate the Rome Statute. It is through such constructive engagement and willingness to reform from the Rome Statute from within that the system of international criminal justice can be strengthened and enabled to deliver justice that truly responds to victims' needs. It is in this spirit that we call on South Africa, despite its recent statement, to revisit its positions and embrace the platform for dialogue presented by the Assembly of State Parties and the Court. Burundi may have withdrawn from the Rome Statute, but the door for its return is not shut.

Mr President, the Court is operating in a challenging environment as it intervenes in complex and tragic conflict situations characterised by serious violations. The Court's preliminary examination in Afghanistan focuses on a conflict that involves a member of the United Nations Security Council,

¹ A coalition of Kenyan citizens and over 30 organisations working in the human rights, governance and legal fields that came together during the crisis over the disputed results of the 2007 elections to seek truth and accountability for the elections and the widespread violence that followed.

which is not a State Party to the Rome Statute while the one in Iraq focuses on the conduct of nationals of a member of the UN Security Council that is also a Rome Statute State Party. Palestine, Ukraine and Nigeria provide other examples of situations that call on the Court to undertake its mandate within a context of ongoing efforts to mediate or end conflict. While such interventions are fraught with political difficulty, we are pleased that the Court has displayed a steadfastness in the execution of its mandate as this is essential in ensuring that justice is indeed universal.

Mr President, when the Court does not work at an optimum, it falls short of meeting the expectations of citizens of the world. It is for this reason that States Parties must demonstrate their commitment to justice by according the Court political support it needs while shielding it from gratuitous interference.

States Parties' engagement with the Court cannot and should not be based on political expediency. A political posture that allows States Parties to invite the Court to investigate violations on their territories, participate in and propose their nationals for key positions in the Court, while at the same time engaging in political rhetoric that disparages the Court and withholding cooperation in the execution of court orders -- particularly the arrest and surrender of accused persons from other ICC situations -- is unhelpful. Some States Parties are embroiled in the contradiction of demanding an effective and functional Court while increasingly constricting its budget.

Mr President, the ramifications of political interference in the Court's judicial processes are all too clear to ignore, as was witnessed in the experience from the Kenya cases. This Assembly is yet to dispense with the referral of Kenya for non-cooperation, as highlighted in the Court's decision of December 19, 2016. The office of the ASP President is in possession of a letter transmitted in September 2017 seeking an update on action taken with respect to Kenya's referral. Mr President, we hope that as you assume office, you will give due recognition and priority to this matter.

The legacy of Kenya's conduct in its engagement with the ICC and its contemporary situation after the recently concluded elections raises significant concerns. Ten years since the 2007 election that made Kenya the subject of the Court's intervention, we continue to observe a nexus between elections and violence in the country. Human rights organisations have documented at least 60 cases of sexual violence in the context of the August 8 election and the numbers continue to rise by the day. The Kenya National Commission on Human Rights in its report after the August 8, 2017 elections documented 37 fatalities in the unrest that followed it. A further report issued for the period leading to the October 2017 repeat election recorded a further five (5) fatalities and more than 90 persons injured, including a two-year-old child. Victims suffered various forms of injury including gunshot wounds, soft tissue injuries and fractures. The campaign of extra-judicial executions and violence after the collapse of the Kenya cases has likely emboldened other actors on the continent who feel that the ICC is losing its deterrence effect.

In conclusion, Mr President, we wish to call upon States Parties to engage candidly with one another as equal peers in this Assembly to be accountable for their commitments signified by their ratification of the Rome Statute and as members of the international community that is inescapably interdependent. At the core of this obligation is the fidelity to the rights and needs of all victims, which calls for transformative justice; a long-term and sustainable perspective of the justice needs of victims in a manner that restores their dignity. In Kenya and beyond, we will continue to hold the space for the victims of atrocity crimes as they must be never be forgotten, and the search for justice though experiencing a temporary setback cannot be extinguished.

I thank you.