



Statement at the 15<sup>th</sup> Session of the Assembly of States Parties to the Rome Statute

### **‘Appeasement condones impunity’**

Mr. President

Kenyan for Peace with Truth and Justice, a coalition of over 30 civil society organisations, continues to call for accountability for the crimes committed during the 2007/8 post-election violence. Six Kenyans were named in connection with seven crimes against humanity charges, but charges were confirmed only in respect of four suspects. Two suspects were elected President and Deputy President before their trials could begin at the ICC. Thereafter, the Prosecutor withdrew charges against two suspects citing **witness bribery and intimidation, as well as failure by the Kenya government to cooperate with the court**. The case against the last two suspects was terminated in April this year for what the court termed as **“intolerable levels of witness interference and political meddling”**.

An unprecedented diplomatic campaign by Kenya has repeatedly and deliberately exerted political pressure on the court in an effort to sabotage the Kenya cases. These diplomatic efforts yielded concessions to the rules of procedure and evidence including to excuse President Uhuru Kenyatta and Deputy President Ruto from continuous presence at their trial. It is arguable that conceding to Kenya’s demands set the stage for the pattern that followed of the undermining the integrity of the court whilst professing to promote its reform and strengthening. The current wave of withdrawals from the ICC under the pretext of protesting apparent bias against Africans only goes to buttress what history has painfully taught us: that appeasement in the face of bullying and threats only emboldens the further pursuit of nefarious objectives with no fear of consequence.

However, the collapse of the Kenya cases has pointed to significant gaps in the operations of the organs of the court including its investigative and prosecutorial approaches, its communications and outreach, and must provoke some introspection from court organs and members of this assembly as to what lessons can be learned and how they can be applied to ongoing and future investigations and prosecutions in order to strengthen the fight for accountability and the search for justice for victims of serious crimes. But, member states cannot escape their primary duty to adequately resource the court so that it can be effective.

#### **Withdrawals**

The notice by South Africa, The Gambia, and Burundi of their intention to withdraw from the Rome Statute will have serious ramifications for the rights of victims who often rely on the Court as the final recourse for justice in the face of inability or unwillingness by their governments to investigate and prosecute international crimes taking place on their territories.

Furthermore, the withdrawals weaken Africa's position to negotiate meaningful reforms to improve the Court within the framework of the ASP. We take solace in the fact that these withdrawals represent the exception rather than the rule among AU member states. We commend the African countries that have publicly voiced their support for the Court and call upon the silent majority of member states to take a stand in support of justice for victims.

This is particularly important given the fact that a number of those states threatening to withdraw are doing so against a backdrop of a rising incidence of political violence. Some of these follow disputed elections or stem from the efforts of incumbent heads of state to prolong their terms in office.

An African Court of Justice and Human and People's Rights with expanded jurisdiction to prosecute international crimes under the Malabo protocol has been proposed as a regional option for justice. However the court is yet to begin operations, but when it does, it will be burdened with provisions that give immunity to sitting heads of state and senior government officials. It is therefore not yet a real option for justice.

Mr. President, it should also not be forgotten that the debate surrounding withdrawals now threatens to overshadow concerns about a key pillar of the Rome Statute system: that of state cooperation. Kenya is among the states that have been referred to the ASP by the trial chamber for non-cooperation. This Assembly should not permit itself to be distracted from this critical debate and from acting decisively against states that do not comply with their obligations under the Rome Statute. We support the sentiment that states who wish to withdraw should do so rather than holding the court hostage. As civil society, while we aspire to truly global justice and universal coverage by the court, are prepared to continue the peaceful struggle for and accountability in other arenas and forums including at the domestic level. And we look forward to the day when such countries can rejoin the court.

Thousands of resilient Kenyan victims continue to bear the physical and psychological scars of the post-election violence. A restorative justice fund that the President pledged to establish two years ago is yet to pay out a single shilling to victims. On the contrary, we have witnessed victims who had camped outside Parliament for a month to demand reparations being violently evicted. We urge the Government of Kenya to move beyond rhetoric and institute a comprehensive reparations programme that duly caters to the needs of all victims. This should however not be seen as an alternative to criminal justice measures. The Kenyan government should ensure that all perpetrators of the post-election violence are brought to justice. This is especially important in order to avoid the risk of violence recurring as the country prepares to go into another closely contested presidential election in August 2017.

In closing, I wish to observe that the ICC may not be a perfect institution, but it is the only dam, painstakingly constructed by international negotiation, to hold back the tide of impunity and protect victims of atrocity crimes. It is an institution worth fighting for and preserving for the sake of the present and future generations. This Assembly should rise up to the occasion not only to defend the court from those seeking to undermine it, but also to strengthen it to ensure that it continues to deliver upon the promise of a truly just and peaceful global community.

I thank you.