

VICTIMS OF THE POST-ELECTION VIOLENCE AND THE CIVIL SOCIETY SUPPORT FOR CONCURRENCY OF INTERNATIONAL CRIMINAL COURT AND ENACTMENT OF THE SPECIAL TRIBUNAL FOR KENYA

We, victims of the Post-Election violence and civil society organizations observe and state as follows;

1. Recalling the recent official visit of the Chief Prosecutor of the International Criminal Court (ICC) Mr. Louis Moreno Ocampo to Kenya with the sole purpose of meeting the President and the Prime Minister to charter and agree on the options available to prosecute masterminds of post-election violence; and thereafter the swift assignment of three judges of the Pre-Tri Chambers to handle Kenya situation.
2. Reiterating that this is a historic moment for Kenyan people, which must not be lost, to take steps and decisively ending the historical cycle of impunity that has given rise to massive suffering to individuals and communities and debilitating effect on the country's future;
3. Aware that the latitude and opportunity that the Government of Kenya has been having to demonstrate ability and willingness to put in place domestic arrangements for establishing credible criminal accountability mechanism in relation to the post election violence has been wasted, and has now necessitated engagement with the ICC;
4. Concerned that the government of Kenya is toying with the option of the establishing a special division of the High Court as its vehicle for bringing accountability in relation to the post election violence; And totally declaring this option unacceptable to the country as it is an insult to our collective painful experiences if not a downright attempt to further entrench impunity;
5. Observing the glaring lack of public confidence and trust in the Kenyan Judiciary was one of the triggers of the post election violence. And noting that there have been no reforms achieved in transforming this incredibly dilapidated institution; Therefore firmly objecting that this judicial system can be trusted to prosecute gross violations of human rights and prosecute International crimes with an unreformed High Court as it will only perpetuate the culture of impunity;
6. Declaring that establishing a tribunal short of the one recommended by the CIPEV commission will not only be serving the interests of political elite who do not want to see justice but it will be a serious denial of redress for the many victims of the post election violence who still wait for the day justice will finally and firmly be served;
7. Further acknowledging the Kenya's ratification of the International Criminal Court and domestication of the of the Rome Statute vide International Crimes Act 2008 giving the Court the full avenue to cooperate with Government of Kenya in regard to prosecution of the domestication and international crimes under principle of complementarity committed during the post-election violence;
8. Considering that the rule of law and human rights form the foundation of sustainable peace in Kenya and that impunity for perpetrators of serious international crimes undermines these goals, and convinced that international criminal justice is an essential component of democratization process in Kenya;
9. Stating that the police do not have the capacity to conduct proper, genuine and credible investigations, and to preserve evidence for the crimes to be prosecuted and thus secure convictions related to the post-election violence; AND this fact backed by existence of ample information implicating the police as suspects in the perpetration of sexual and other forms of violence as well as recalling that the police are on record as denying the occurrence of sexual violence;

10. Recognizing that the International Criminal Court represents the court of the last resort in the aspiration to end impunity not only in Kenya but in the whole world; and therefore urging ICC to conduct investigations and provide justice to thousands of victims crimes against humanity and other grave human rights violations that shock the conscience of humanity;
11. Noting with great concern the reported pressure on some African countries to suspend their support for the Court or even formally withdraw from the Rome Statute; Acknowledging that the establishment of the International Criminal Court has had a significant deterrent effect and has helped prevent further occurrence of atrocities in some countries; Bearing in mind that countless victims of mass atrocities in Kenya, Africa and elsewhere in the world rely on the International Criminal Court to provide justice where national justice systems are not able or unwilling to do so.
12. Understanding the limitations and the opportunities that the International criminal Court has in terms of the types of crimes; threshold and the number of perpetrators it can investigate and prosecute; And Concerned that many serious international crimes are still being committed across the continent, and that the planners and perpetrators of these atrocities are seldom brought to justice;
13. And determined to continue fulfilling our responsibility to promote accountability and to meaningfully contribute towards ending impunity by: i) reminding political leaders of the relevance of international justice and of their commitments and obligations under international and domestic law to investigate and prosecute serious crimes; ii) keeping international criminal justice on the domestic and regional agendas; and iii) assisting government officials, lawyers, the media, and victims to participate in the delivery of international justice on a practical level;

Hereby resolve and urge the government of Kenya to:

- i. Commit to respect the principles established under the Rome Statute and not to take any steps that could undermine the functioning of the Court;
- ii. Fully support the work of the International Criminal Court, which represents the last resort for the thousands of victims of grave human rights violations who cannot obtain justice at the national level;
- iii. Not to deviate from the principles underpinning the Court's work, namely that individuals responsible for war crimes, crimes against humanity and genocide – including even the most senior government officials – be brought to justice, and that the interests of victims be given priority through, among others, the award of compensation and reparations.
- iv. Consider the negative impact any decision to withdraw commitment, cooperation and support would have on the fight against impunity, the development of international justice, and the rule of law in Kenya, Africa and other parts of the world;
- v. Take cognize that the International criminal Court will not retreat on its determination to prosecute the masterminds of the post-election violence regardless of the of the Government of Kenya efforts to undermine the Court
- vi. Urgently mobilize the prerequisite political will in the Parliament to facilitate the enactment of the Special Tribunal for Kenya bill 2009 in order to avoid creating impunity gap as the International Criminal Court will prosecute a handful of those bearing the greatest responsibility to the Post-election violence;

Civil society undertakes to:

- Engage with relevant government officials and ICC representatives to create a platform for dialogue between governments and the Court.

- Conduct targeted activities to support the work of the ICC in Africa, including through constructive engagement with your respective governments, lobbying, awareness raising and capacity building
- Work with African media to ensure informed reporting on international criminal justice and the ICC as part of civil society's role in promoting accountability, preventing conflicts, and rejecting impunity on the continent. In this vein, we urge the media to support this initiative not just as medium but as stakeholder adversely affected by the long history of impunity in Kenya
- Ensure that victims are given a voice in the debate about international criminal justice in Africa, especially in the context of political agreements which risk undermining justice and the rights of victims, including to compensation and reparations.

Strongly urge the African Union to:

- Adhere to the principles elaborated in the Constitutive Act by supporting justice and the rule of law;
- Reaffirm commitment to end impunity for serious international crimes and uphold the values of accountability, protection of human rights and the rule of law, as espoused in the Africa Union Constitutive Act, relevant African and international human rights instruments, and relevant obligations under national legal and constitutional frameworks.
- Establish a mechanism to facilitate dialogue between the African Union, Civil Society, the International Criminal Court, and other relevant bodies;
- Africa to maintain its leading role in the development of the ICC and international criminal justice despite ICC now largely portrayed as an 'imperialist' imposition by powerful Western nations. We believe that this is a misleading and unproductive approach to the Court, and one which illustrates the urgent need to raise awareness about international criminal justice and how the ICC works throughout Africa.
- African governments must recognize the importance of ending impunity on the continent. Articles 3(h), 4(h), 4(m) and 4(o) of the AU's Constitutive Act and the objectives outlined in the AU's Protocol Relating to the Establishment of the Peace and Security Council, commit Member States to ensuring respect for the rule of law and human rights, and condemning and rejecting impunity. Article 4(h) of the Act states that "it is the right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity.

Further strongly advise the International Criminal Court to:

- Engage robustly with key government officials, victims, civil society actors, and the general public in Kenya and Africa to counter negative perceptions and widely inform on its activities on the ground;
- Hold hearings in African States as an important symbolic move to bring justice closer to African victims and to facilitate access to justice for victims and relevant communities.