



KPTJ Press Statement On The Confirmation Of Charges Decision

20 January 2012.

Kenyans for Peace with Truth and Justice (KPTJ), an independent umbrella body of Kenyan civil society organizations wish to express our strong support for the International Criminal Court (ICC) process on Kenya as we await the decision of the ICC Pre –Trial Chamber following the confirmation of charges hearings.

In the wake of the disputed 2007 elections, Kenya was rocked by widespread violence involving inconceivable atrocities. Over one thousand Kenyans were killed and many more injured. Over two thousand women were raped and subjected to sexual violence, in many cases by members of the very police force that should have protected them. Kenyans in the hundreds of thousands, were displaced from their homes and lost their property. Four years on, many remain displaced, condemned to living in deplorable conditions. Further, throughout the various stages of the ICC process, victims, survivors and witnesses of post election violence have died, disappeared and/or live in constant fear due to threats against their lives and those of their loved ones as perpetrators and orchestrators of the violence have sought to suppress evidence incriminating them. We wish to urge Kenyans, the media and politicians alike to remember that this process is about the victims, both living and dead, and the survivors of brutal crimes such as rape. Unfortunately, public debate continues to focus on the fates of the main suspects, rather than the victims. This must change.

The State, in a clear dereliction of its duty, has failed to hold to account the perpetrators of the post-election violence. This triggered the intervention of the ICC and the leveling of charges against six suspects who have since undergone confirmation of charges hearings whose outcome we now await.

We note that the Court's decision, whatever the outcome, will be an important step forward in ensuring justice for victims of the monstrous crimes that occurred during the 2007 and 2008 post-election period. We as KPTJ will accept the ruling of the ICC whether the charges are confirmed or not. We point out that all parties will be free to appeal the decision if they so wish, and that is their right, which we support. In addition the Chamber is free to call for additional evidence on any issue.

KPTJ wishes to remind the Kenyan government that it has signed and ratified the Rome Statute and therefore has an obligation to cooperate with the International Criminal Court in keeping with Article 86 of the Rome Statute as well as Kenya's International Crimes Act.

KPTJ would also like to remind His Excellency President Mwai Kibaki and the Right Honourable Prime Minister Raila Odinga of **3 distinct commitments** they made to the Kenyan public, victims and the international community concerning prosecution of the Kenyan cases by the ICC:-

1. The President and the Prime Minister, on the 5th of November, 2009, jointly issued a press statement committing themselves to cooperate with the ICC within the framework of the Rome Statute and the International Crimes Act of Kenya.
2. On the 15th of December, 2010, the President stated that the 6 Kenyan suspects named by the ICC Prosecutor had not yet been fully investigated and, therefore, no action would be taken by the government until a decision on the confirmation of charges was reached.
3. On 16th December 2008 the President and Prime Minister signed an agreement for the implementation of the recommendations of inquiry into post election violence. In which they agreed to ensure that any person holding public office or any public servant charged with a criminal offence related to 2008 post election violence shall be suspended from duty until the matter is fully adjudicated.

Should the charges be confirmed, we demand that the President and the Prime Minister fulfill their commitments and finally suspend from office the Deputy Prime Minister Uhuru Kenyatta, the Head of Civil Service Francis Muthaura, and Postmaster General Maj. Gen. Mohammed Hussein Ali in line with Chapter 6 of the Constitution and also in line with their previous undertakings.

The accused public officials should also vacate office of their own volition pursuant to the statements they issued, also on the 15th December 2010, to cooperate with the ICC in the event of confirmation of charges. This is long overdue. Our new constitutional standards require that a state officer "should bring honour and dignity to the nation and promote confidence in the integrity of the particular state office". It is unacceptable that suspects of crimes against humanity have continued to occupy senior public offices and that some even purport to stand as candidates to lead this nation.

We further call upon the support of political parties as we move towards the next General Election and as we deal with the challenges of the outcome of the ICC decision on confirmation of the cases before them. We particularly appeal to those holding state offices or wishing to stand for state office to uphold the leadership and integrity provisions in the political parties' Code of Conduct.

The Code of Conduct in the Political Parties Act requires a political party not to engage in or encourage violence by its members or supporters; not to engage in or encourage any kind of intimidation of opponents, any other person or any other political party and not to advocate hatred or engage in ethnic incitement, vilification of others or incitement to cause harm. A party whose member engages in such acts will not be registered or can be de-registered. If suspects against whom charges are confirmed engage in such activities, they risk being issued with warrants of arrest by the ICC.

Even if all the charges were to be confirmed against all the suspects, this would by no means release the government from its duty to bring justice, restitution and solace for victims of the 2007-2008 post-election violence. We therefore resolve to continue to push for the lower level and middle level perpetrators of the 2007-2008 post-election violence to account for their crimes before the next General Election through continued pressure on the Police Commissioner, the Attorney General and the Director of Public Prosecutions. If mass violence recurs, these officers shall be held directly responsible as their offices have shown a clear unwillingness to effectively investigate and prosecute PEV cases.

KPTJ wishes to reiterate that a calm and peaceful attitude is what this nation needs, now and throughout the election year. As KPTJ we urge the country to remember that the ICC process is really for the victims. And that, despite all the protestations by politicians to the contrary, the ICC process is judicial and not political – it seeks justice on behalf of the 1200 people killed, over 2000 sexually assaulted and many thousands of internally displaced persons, a large number of whom are still living in camps.

We ask the government to cooperate fully with the ICC, uphold the rule of law and faithfully implement our Constitution to ensure integrity in leadership for the benefit of all Kenyans. We also continue our calls for the establishment of a special judicial mechanism to address those who have not been prosecuted for post-election violence so that we can ensure accountability and peaceful elections.

Kenyans for Peace with Truth and Justice urges all Kenyans to be confident in the ICC process and to let justice run its course.

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Nairobi, 20 January 2012