



His Excellency Judge Sang-Hyun SONG
President of the International Criminal Court
Maanweg 1742516AB
The Hague, The Netherlands

September 4, 2013

Re: Responses to recent KPTJ open letter to the International Criminal Court

Your Excellency:

We, Kenyans for Peace with Truth and Justice (KPTJ), are writing in response to recent mentions by trial judges and subsequently in the media of our communication to the International Criminal Court (ICC) on *in situ* hearings.¹ We wish to clarify that our open letter was a collective effort by members of the KPTJ coalition, motivated by our desire to support justice and fairness, without prejudice against any party.

The KPTJ coalition, which consists of a consortium of non-governmental organizations working in the areas of truth and accountability for the 2007-2008 post-election violence, provided the Court with information on potential problems arising with local trial venues, gathered through our own networks and also communicated previously to the Court by victims through their lawyers. KPTJ has consistently worked to maintain a public focus on the situation and rights of victims and stressing that the ICC is a judicial and not a political process. AfriCOG houses the KPTJ secretariat, and it is in this capacity that Ms. Otieno, AfriCOG's Executive Director, signed the letter.

The open letter was written following broad-based consultations with groups which would have been adversely affected if parts of the trial were held locally. Similar opinions have been communicated to the Court by Fergal Gaynor, Common Legal Representative for Victims (CLR), whose interviews demonstrated that 97.4 percent of victims opposed a local trial venue, while 82% of victims interviewed by CLR Wilfred Nderitu also shared these views.² These communications are also public and show that the majority of victims, in interviews with their representatives, expressed opinions that holding the trials in Kenya or Tanzania would compromise the integrity of the proceedings due to the potential for intimidation, coercion and political mobilization around the proceedings.

We emphasise that civil society has a legitimate and recognized role in communicating with the Court. The Rome Statute which established the ICC was drafted with strong input from more than 200 global civil society organizations, whose substantive participation at the Rome Conference was coordinated by the Coalition for the ICC. The Statute itself envisages the participation of victims and NGOs in the work of the ICC, enshrined in Article 75, which instructs the court to invite and take account of representations from interested parties on behalf of victims.

¹ http://www.africog.org/sites/default/files/KPTJ_Open_Letter_to_the_President_of_the_ICC-Excusal_Decision_and_In_Situ_Hearings.pdf; www.icc-cpi.int/iccdocs/doc/doc1556944.pdf

² www.icc-cpi.int/iccdocs/doc/docA9RF701.pdf

Civil society organizations were also fundamental to the Review Conference in Kampala in 2010 in proposing amendments to the Rome Statute and in recent submissions by 140 African organizations on the collaborations between the AU and the ICC for the African Court of Justice and Human Rights. As you know, most field reports and analyses by various organs of the Court are at least partially undertaken in consultation with local civil society groups, like those in Kinshasa in 2013 and in Uganda in 2011, where Judge Daniel David Nsereko Ntanda, President of the Appeals Chamber of the ICC, called on civil society to continue to support the court process through the provision of advocacy and expert advice.

Our open letter to the Court was written in this spirit; as organizations which are on the ground we firmly believe that we have a duty to use available processes to permit the organs of the court to benefit from our informed perspective. Civil society in Kenya, including KPTJ coalition members, has always communicated to various organs of the ICC in good faith and will continue to do so. We remain respectful of the mandate of the Court and will continue to support the work of the Court on this and other issues. Kindly receive the assurance of our most distinguished sentiments.

Signed on behalf of the KPTJ coalition by the following member organizations:

The Kenyan Section of the International Commission of Jurists
Pan African Lawyers' Union
Coalition on Violence Against Women – Kenya
Kenya Human Rights Commission
Haki Focus
Mazingira Institute
Kenya Asian Forum
Constitution & Reform Education Consortium
Federation of women lawyers - Kenya
Citizens' Coalition for Constitutional Culture
Kituo cha Sheria
Inuka Kenya Trust

cc:

The Coalition for the International Criminal Court
Daily Nation
The Standard
The Star
The EastAfrican
Capital FM
British Broadcasting Corporation
Agence France – Presse
Associated Press
Al Jazeera
The Guardian
The New York Times