

Kenya / ICC

# Kenyatta case dropped, impunity prevails in Kenya

- [english] - Region - Africa - Kenya -

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## Description :

At the start of the 13th Assembly of States Parties to the ICC Statute, FIDH and KHRC, denounce the lack of cooperation of the Kenyan government and the witness interference and intimidation that led to the withdrawal of charges against Mr Uhuru Kenyatta, President of Kenya, before the ICC.

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**At the start of the 13th Assembly of States Parties to the ICC Statute, FIDH and its member organization in Kenya, the Kenyan Human Rights Commission (KHRC), denounce the lack of cooperation of the Kenyan government and the witness interference and intimidation that led to the withdrawal of charges against Mr Uhuru Kenyatta, President of Kenya, before the ICC.**

Yesterday, the States Parties to the Rome Statute met in New York for the 13th Assembly. In the run up to this ASP the ICC Trial Chamber V B issued a decision suspending the trial against Uhuru Kenyatta. On 5th December 2014, the ICC Prosecutor withdrew charges against Uhuru Kenyatta, on a without prejudice basis and announced that her office has faced severe challenges, including a crucial absence of cooperation to get "documentary evidence regarding the 2007-2008 post-election violence including concerning the conduct of the accused", a "steady and relentless stream of false media reports about the Kenya cases ; an unprecedented campaign on social media to expose the identity of protected witnesses in the Kenya cases; concerted and wide-ranging efforts to harass, intimidate and threaten individuals who would wish to be witnesses." This withdrawal is without prejudice to the possibility of bringing new charges against Mr Kenyatta at a later date.

On 3 December, the ICC Trial Chamber had acknowledged that "the Kenyan Government's non-compliance has not only compromised the Prosecution's ability to thoroughly investigate the charges, but has ultimately impinged upon the Chamber's ability to fulfil its mandate, and in particular, its truth-seeking function". The Chamber rejected the Prosecutor's request for a further adjournment in the case and asked the Prosecution to indicate within one week either its withdrawal of the charges or its readiness to proceed with the trial.

***"Dropping the Kenyatta case leaves a blanket impunity. Victims of the post-election violence are left with no avenues to get justice and reparation"*** , declared our organizations. ***"The lack of cooperation by the Kenyan government prevents them from being heard before the ICC while proceedings at national level remain obstructed and a mirage"*** , they added.

Further, our organizations observe that the withdrawal of these charges is not a finding of guilt or innocence on the part of the accused, Uhuru Kenyatta. We note that accountability for the crimes and gross human rights violations from the 2007-2008 post-election violence must still happen at the national and international levels. We regret that there have been no serious efforts by the government of Kenya towards ensuring accountability, justice and reparations for these atrocities. Victims still have no recourse for redress at the domestic level, which is the primary responsibility of the government.

Victims participating in the case have strongly opposed the termination of the trial, saying that this would be "a cruel betrayal of the victims". As Fergal Gaynor, their legal representative declared: ***"The victims' quest for justice has been cruelly frustrated, both in Kenya and at the ICC(...) The surviving victims of those crimes have received no justice from the Kenyan criminal justice system. Thousands now live in abject poverty, uncompensated for the destruction of their homes, businesses and families."***

Although the Trial Chamber recognised that Kenya had fallen short of its obligations to cooperate with the ICC, it decided it would not be in the interests of a fair trial or justice to refer the matter to the Assembly of States Parties. Our organizations believe that the Chamber's finding sent a bad message to States. ***"The 13th Assembly of States Parties should strengthen the non-cooperation procedures, their enforcement and effectiveness in order to ensure that States do not obstruct the Court's prosecution resulting in the sole closure of cases"***, declared

our organizations.

The Chamber also challenged the Office of the Prosecutor (OTP) for not having referred the issue of lack of cooperation earlier. "***The Court and the OTP should learn from this failure and strengthen their investigation, prosecution strategies and system of protection of witnesses and securing evidence***", added our organizations

Our organizations call upon the ICC Trust Fund for Victims to expeditiously deploy its activity in Kenya to develop assistance projects to victims deprived of justice.

### Background information

The Kenyan Government has launched a political offensive to make sure that President Uhuru Kenyatta and Deputy President, William S. Ruto, who both face charges for crimes against humanity, do not stand trial before the ICC.

Among other strategies it includes:

- ▶ a) Non-cooperation with the investigations carried out by the Office of the Prosecutor
- ▶ b) Use of political bodies to ask for a deferral of their cases for 12 months by the United Nations Security Council (UNSC). An effort in which they have enjoyed the support of the African Union, despite its failure at the UNSC.
- ▶ c) Proposing reforms to the Rome Statute to provide for immunities for sitting Heads of State,
- ▶ d) Obtaining agreement at the 12 th session of the Assembly of States Parties to modify the rules of Procedure and Evidence of the ICC so the accused receive a special treatment in light of their official capacity and allowing them to be absent from most parts of the trial.
- ▶ e) Asking for a supplementary item on the agenda of the 13th ASP session on Kenya and the ICC.

For further information, read FIDH position paper for #ASP13:

<https://www.fidh.org/IMG/pdf/asp12positionpaper620a2013ld.pdf>

Following a challenged electoral result, Kenya erupted into violence in December 2007. In the ensuing period, Kenya witnessed unprecedented violence that resulted in at least 1133 deaths, 900 cases of sexual and gender based violence, over 350,000 displaced persons, numerous victims of grievous harm and destruction of property.

Our organisations [documented](#) the absence of justice at the national level and the ongoing human rights violation under the Kenyatta and Ruto presidency.