



International Federation
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Fédération Internationale des
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Международная Федерация
за права человека

الفدرالية الدولية لحقوق الإنسان

**FIDH Statement
COJUR, 6 February 2014
Brussels**

Thank you very much, once again, for the opportunity to address some words to you, for the first time in 2014. We are looking forward to a strong contribution and collaboration during the remaining of this year.

And FIDH thinks there will be a need for strong contribution during 2014. The ICC is facing critical times, as the Status Conference of yesterday in the Kenyatta case showed. In just one day, one hearing and one case, many of the challenges faced by the Court after its first decade surfaced. Let me point out some of the issues in light of the Kenyatta's case.

- **Cooperation.** We all know ICC investigations and prosecutions depend on cooperation to gather the evidence it needs. To provide such cooperation, State Parties must have the capacity and the willingness to do so. The OTP has complained, several times, about the lack of cooperation by Kenyan authorities. It has now requested the Trial Chamber to come up with a decision of non-cooperation and this will now be addressed in a new Status Conference. There is not yet a decision of non-cooperation by the Trial Chamber. Nevertheless, it is important that State Parties take the responsibility on this. In fact, it is to the members of the ASP to prevent instances on non-cooperation, and strengthen any mechanisms to address non-cooperation in future. We hope that, if the Chamber decides that the Kenyan Government has not fully cooperated, States Parties will have to step forward in support of the Court.
- **Better quality investigations and prosecutions.** The Office of the Prosecutor has adopted a new strategy to strengthen its investigations and prosecutions. Indeed, the judges have already called for a better quality in the evidence gathered by the Office. A proper investigation, as you all know, needs resources. This year, the OTP received a considerable increase in its budget, we recognize that, and the effort of State Parties, in particular, the main contributors. However, while there was an important increase, it departed from a substantial deficit in resources. It was just impossible to investigate massive crimes, committed by complex criminal structures, and substantiate complex modes of liability for those at the highest echelons of those criminal organisations with less than 30 investigators. You must understand that only the DRC, one of the countries under investigations, is larger than any European country, has at least four recognised national languages and 200 ethnic groups. Kenya is larger than Spain, has two official languages and seven major ethnicities. These complexities must be acknowledged. The OTP can no longer have satellite investigations. It needs more presence in the field, and for that it needs resources, but also political support from States Parties.

- **Victims views.** Yesterday, one of the most compelling and powerful interventions was addressed by the Common Legal Representative of victims, and that is to be expected. It is the victims' right to justice what is at stake throughout the proceedings. Unfortunately, in the political fora, victims are usually the ones forgotten. They also need your support, by ensuring that the mechanisms within the Court for their participation and for reparations are strengthened, but also by strengthening how the whole Court responds to their demands for justice. Indeed, the fight against impunity through the ICC can no longer be divided from the victims' right to justice. Victims are right bearers, the ICC, the States and even us, civil society, should remain accountable to them.
- **Complementarity.** Finally, what is certain is that without ICC proceedings, there is no more hope for justice for victims in Kenya. There is just no capacity nor willingness in Kenya to bring justice for the atrocities of 2007-2008, not only for those victims comprised in ICC cases, but for any victim at all. We are faced with two completely opposite scenarios: total impunity vs. some justice. In these circumstances, complementarity efforts should be strengthened through bilateral and multilateral cooperation and cooperation through different actors, such as local civil society groups trying to litigate cases and supporting victims' justice efforts. Those efforts cannot and should not be abandoned once the ICC opens an investigation or prosecution. To the contrary, they should be strengthened, to ensure that national jurisdictions can deal with those responsible that cannot be dealt with in The Hague and reduce the impunity gap.

Thank you very much.