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28 November 2013

ICC Must be Defended from Political Interference

Rome Statute remains intact, but political campaign leading to new rules on appearance at trial risks undermining Court's independence

No immunity remains at the core of the Rome Statute, but a political campaign that has led to new rules on the appearance of sitting heads of state at trial risks undermining the independence of the International Criminal Court (ICC), civil society organizations said today at the conclusion of the Assembly of States Parties (ASP) in The Hague.

The annual meeting of the ICC's governing body was dominated by discussions on changing the Court's rules on the presence at trial of senior government officials while in office.

"While the Rome Statute's core principle of no immunity remains in place, there is a big question mark over the process that led to these new rules. They have been fast-tracked due to a concerted political campaign and very clearly have a potential impact on ongoing trials," said **William Pace, convenor of the Coalition for the ICC**. "Our members view the efforts of Kenya and other African governments to excuse, defer or exempt heads of governments from prosecution as a serious political threat to the integrity of the Rome Statute and ICC, to victims, to witnesses and to the NGOs that support them. Political attacks on the Court, especially when it first came into existence, were overcome and we are committed to protecting it from this one."

Following days of intensive negotiations, states agreed on a proposal to allow those mandated to fulfill "extraordinary public duties at the highest national level" to request excusal from presence at trial and to be represented by their legal counsel. However, it would be for ICC trial judges to decide on any request taking into account a number of factors, including the interests of justice and the nature of the hearing in question. The rule would only apply for persons under summons to appear. The possibility of allowing the accused to appear via video in the courtroom was also part of this rule change.

"States have conceded to political pressure thereby endangering the integrity of the Rome Statute and disregarding victims' interests and concerns." **Karim Lahidji, president of the International Federation for Human Rights (FIDH)**. "FIDH and its members will remain highly mobilised against possible attempts to undermine the Statute and the ICC judges' integrity by states."

It is now up to ICC judges to decide on how to interpret the new rules, and civil society organizations have underlined that the Rome Statute will take precedence in their considerations.

"Kenyan civil society is satisfied with its work at this Assembly. At the African Union (AU) and at the United Nations (UN) there was no room for an alternative voice. Here, we have expressed the views of victims and affected communities on the rule changes that Kenya and some AU members were pushing through and clarified some of the facts that have been misrepresented in an apparent effort to stop the Kenyan cases from running their course," said **Njonjo Mue, a representative of Kenyan civil society**. "Our view on the changes to Rule 134 is that they offend the principle of equality and personal attendance at trial as espoused in Articles 27 and 63 of the Rome Statute. The new rule attempts to amend the Rome Statute through the back door and we expect it to be challenged in court in due course."

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Other rule changes adopted at the Assembly concerned allowing the use of recorded testimony in proceedings, and giving trial judges the power to decide on holding hearings outside The Hague.

The Assembly's first ever debate on victims was deemed successful by most, helping to maintain a focus on the Court's key beneficiaries in this highly politicized ASP.

"The plenary session on victims' rights reaffirmed the commitment of states to protect the dignity of victims and ensure their individual recognition, even when they would be allowed to participate in court proceedings only through common legal representation," said **Dr. David Donat Cattin, secretary general designate of Parliamentarians for Global Action.**

The Assembly also came to agreement on the ICC's budget for next year. It will get €121.55 million, an increase of €6.4 million recommended by the ASP's budget experts. Canada had originally sought to impose a reduced budget but eventually agreed to an increase.

"No Peace Without Justice welcomes the adoption by consensus of the 2014 ICC budget accepting the recommendations presented by the Committee on Budget and Finance (CBF)," said **Alison Smith, legal counsel with No Peace without Justice.** "We are particularly pleased that the ASP gave more resources to the Court at a time where it needs full support for wider and better-staffed investigations conducted by the Office of the Prosecutor and to continue optimising its outreach activities to start at the earliest possible opportunity, preferably whenever an interest in a particular country is indicated or work begins."

Donations to the Trust Fund for Victims were announced by a number of states, including The Netherlands (€1 million), Germany (€ 900,000), the United Kingdom (£300,000) and Sweden (€ 3 million over four years - the largest donation to date).

Cooperation with the Court was also discussed extensively culminating in a resolution adopted at the Assembly.

"Even in the midst of the more politicized discussions at the Assembly over the ICC's mandate, there was still serious debate of how states can provide the cooperation the court needs to get its real work done, including protecting witnesses and victims," said **Elizabeth Evenson, senior legal counsel with Human Rights Watch.** "States also agreed to develop an action plan on arrests in the coming year, and this should enhance prospects for justice."

As the Assembly was meeting last weekend, a number of states arrested persons suspected of interfering with witnesses in the ongoing ICC trial of Jean-Pierre Bemba, including his lead defense counsel.

Meanwhile, during a debate requested by the AU on the indictment of sitting heads of state and its consequences on peace, stability and reconciliation, civil society made forceful interventions on protecting the Rome Statute provisions excluding immunity, among other issues.

The Assembly also adopted a resolution that will bring into existence the "Independent Oversight Mechanism," which will allow for independent investigations into the conduct on ICC officials and staff.

States elected Justice Geoffrey Henderson of Trinidad & Tobago to the ICC judges' bench. Six members of the CBF were also elected.

COALITION FOR THE INTERNATIONAL CRIMINAL COURT

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Experts from human rights organizations members of the Coalition are available for comment. Contact: communications@coalitionfortheicc.org.

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The Coalition for the International Criminal Court is a global network of civil society organizations in 150 countries working in partnership to strengthen international cooperation with the ICC; ensure that the Court is fair, effective and independent; make justice both visible and universal; and advance stronger national laws that deliver justice to victims of war crimes, crimes against humanity and genocide. For more information, visit: www.coalitionfortheicc.org.