

**FOR IMMEDIATE RELEASE**

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**ASP 13: For a Stronger ICC, Enhance State Cooperation**

*ICC member states meeting next week must make international justice more effective by enhancing state cooperation and strengthening compliance mechanisms*

**The Hague/New York**—International Criminal Court (ICC) member states meeting next week must make international justice more effective by enhancing cooperation with the Court and putting in place strong mechanisms for compliance with its decisions, the Coalition for the ICC said today.

The 13th annual session of the Assembly of States Parties (ASP)—the ICC's governing body current membership of 122—takes place at UN Headquarters in New York from 8-17 December. Global civil society attending the Assembly will be urging governments to strengthen many aspects of the ICC system.

A timely debate on improving cooperation with the Court and its decisions is set to take place. The ICC prosecutor today withdrew the case against Kenyan President Uhuru Kenyatta for lack of evidence after judges had rejected a request for indefinite adjournment earlier this week. The judges also stated that the Kenyan government's non-compliance with requests for cooperation compromised the prosecution's ability to thoroughly investigate the charges against Kenyatta. However, they declined to refer the matter the ASP. The prosecutor can appeal this decision, and can again bring charges against Kenyatta if new evidence comes to light.

“For the Rome Statute system to overcome major challenges, the highest level political support by states parties must be demonstrably increased. It has become clear after the ICC's first 12 years that the ASP needs to comprehensively review and address cooperation issues such as arrest strategies, victim and witness protection and non-essential contact with indicted senior government officials. We see a lack of state cooperation curtailing the Court's effectiveness in many of its investigations and prosecutions, as indicated most recently by the judges in the Kenyatta case,” **said William R. Pace, convenor of the Coalition for the ICC.** “While there has been important leadership in the Assembly on this matter, stronger mechanisms are now needed, including procedures to deal with governments that are failing to live up to their obligations as states parties to the Statute.”

“The circumstances under which the case has been withdrawn raise grave concerns both for the victims of the crimes for which Kenyatta was charged, who have waited for justice for seven years, as well as for victims of future atrocity crimes who may see similar state obstructionism as Kenya has so effectively deployed to thwart the search for justice and the fight against impunity,” **said James Gondi of Kenyans for Peace with Truth and Justice (KPTJ).** “The primary responsibility to prosecute perpetrators of mass violence and to repair the harm done to the victims always lies with the state, with the ICC coming in only as a Court of last resort where the state is unable or unwilling to play this role. The Prosecutor's decision to withdraw the charges against Kenyatta therefore does not absolve the Kenyan government of this

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responsibility.”

“We are dismayed by the fact that despite finding that cumulatively, the approach of the Kenyan Government in the Kenyatta case falls short of the standard of good faith cooperation, the Trial Chamber nonetheless declined to refer Kenya to the ASP,” **said Njono Mue, a transitional justice expert.** “This decision not only threatens to extinguish the only remaining hope that the victims had for justice, but it is also likely to encourage states to obstruct proceedings of the court through non-cooperation and further undermine the fight against impunity. We therefore strongly urge the prosecutor to appeal.”

“Effectively, the Court is saying: our powers to compel a State to cooperate with the ICC are limited so we will not even try,” **said Carla Ferstman, director of REDRESS.** “There should be real consequences for States who fail to cooperate with the Court. The ASP meets next week in New York. We call on it to reinforce the way non-cooperation is addressed,” **added Ferstman.** “What is in place is simply not sufficient. The decision highlights failures at multiple levels, but one thing is clear: the real losers here are the thousands of men, women and children who were killed, raped, tortured and forcibly displaced from their homes and whose plight for justice remains unanswered.”

It remains undecided whether the Assembly will discuss a Kenyan request for a special agenda item to discuss the conduct of the ICC and the Office of the Prosecutor. The ICC president, prosecutor, and registrar, along with civil society, insist that many of the issues should instead be addressed before the relevant Chamber.

Cooperation in the area of sexual and gender-based crimes will be a special focus at this Assembly, with the ICC prosecutor set to launch her Office’s policy on the investigation and prosecution of such crimes.

“We welcome the decision of the ASP Bureau to hold a plenary session on cooperation during the 13th session of the ASP, dedicated in part to the issue of “Cooperation in the Field of Sexual and Gender-based Crimes,” **said Diane Brown, senior legal officer at Women’s Initiatives for Gender Justice.** “State cooperation is paramount to overcoming the unique challenges related to the investigation, prosecution and adjudication of sexual and gender-based crimes. It is our hope that this session will contribute to greater understanding of the particular ways that states parties can support the Court in its efforts to ensure accountability for this specific category of crimes and deliver justice to the victims,” **Brown continued.** “The Office of the Prosecutor’s new Policy Paper on Sexual and Gender-Based Crimes provides concrete steps as well as overarching principles to support the Court and states parties in these efforts.”

The ICC budget for 2015 will also be decided. Last year, states granted an increase after years “zero growth.” With the Court’s increasing workload, the prosecutor warned that a lack of resources is hampering investigations, while other areas of the Court are stretched thin.



“The ICC's budget for 2015 will also be decided. This year, the ICC requested an increase of 17 million euros including to fund a second investigation by the Office of the Prosecutor in the Central African Republic. The Committee on Budget and Finance has recommended that this should be reduced by 6 million euro. Some states are also calling for further reductions, including imposing “zero growth” on last year's budget,” **said Jonathan O'Donohue, legal adviser at Amnesty International and leader of the Coalition's budget team.** “The prosecutor has indicated that resource restrictions are delaying and hampering some investigations and the Registry warned that reductions to its ‘bare minimum’ budget request for 2015 would undermine its essential functions,” **O'Donohue continued.** “Governments meeting at this Assembly must consider the resource challenges cited by the Court and ensure that sufficient resources are allocated to ensure that the ICC functions effectively and independently to deliver justice to victims.”

The Assembly will also elect its new president and six new ICC judges, among other officials. The Coalition is calling for the judicial elections process to be fair, transparent and merit-based.

“States must elect the highest qualified candidates to these vital leadership positions by carefully considering the report of the ASP's Advisory Committee on Nominations which has provided an impartial assessment of the nominees,” **said Jelena Pia-Comella, deputy executive director of the Coalition for the ICC.** “If states want a more effective and efficient ICC proceedings, electing the right people to lead is a good place to start.”

Sidiki Kaba, Senegal's minister of justice and a longtime supporter of the ICC, is the consensus candidate for ASP president. He will replace Ambassador Tiina Intelmann, whose contributions as president of the Assembly have been notable.

“FIDH welcomes the endorsement of Sidiki Kaba, its Honorary President, for the position of president of the ASP. His well-known commitment for an effective ICC and for the protection of the integrity of the Rome Statute will serve him to achieve the vast challenges he will face,” **said Karim Lahidji, president the International Federation for Human Rights (FIDH).** “Kaba's Presidency should contribute to preserving the central role of victims in ICC proceedings. As the first African President of the ASP, Sidiki Kaba will play a crucial part in addressing the relations between Africa and the ICC.”

States should also ensure that the Court's communications and outreach activities are strengthened and adequately financed for the meaningful delivery of fair and credible justice to victims.

“States should continue to urge the Court to ensure that outreach begins at the earliest possible opportunity—including during its preliminary examinations,” **said Alison Smith, legal counsel and director of the International Criminal Justice Program for No Peace Without Justice.** **Smith added** “While early and direct outreach is a widely recognized best practice, the ICC has so far not been visible



enough even in countries with full ongoing investigations.”

ICC member states will also consider amendments to the Court’s Rules of Procedure and Evidence.

On the sidelines of the Assembly, civil society will meet with African, Asian, European, Latin American and Middle East North African governments to discuss means of advancing the Rome Statute system of justice throughout the world.

The Coalition will hold a civil society press briefing, provisionally scheduled for 13.30 on 9 December 2014 at the UN press briefing room.

*For more information on the 13th ASP, visit our [ASP 13 webpage](#). For more information on ICC elections, visit our [elections webpage](#).*

*Experts from human rights organizations members of the Coalition are available for background information and comment. Contact: [communications@coalitionfortheicc.org](mailto:communications@coalitionfortheicc.org)*

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**BACKGROUND:** The ICC is the world’s first permanent international court to have jurisdiction over war crimes, crimes against humanity, and genocide. Central to the Court’s mandate is the principle of complementarity, which holds that the Court will only intervene if national legal systems are unable or unwilling to investigate and prosecute perpetrators of genocide, crimes against humanity and war crimes.

There are currently nine active investigations before the Court: the Central African Republic I & II; the Democratic Republic of the Congo; Darfur, Sudan; Kenya; Libya; Uganda; Côte d’Ivoire and Mali. The ICC has publicly issued 31 arrest warrants and nine summonses to appear. Two trials are ongoing. The Office of the Prosecutor has made public that it is examining nine situations on four continents, including Afghanistan, Colombia; the registered vessels of the Comoros, Greece and Cambodia; Georgia, Guinea, Honduras, Iraq (examination re-opened in 2014), Nigeria and Ukraine. The Office of the Prosecutor has concluded preliminary examinations relating to Iraq, Venezuela, Palestine and the Republic of Korea, declining in each case to open an investigation.

The Coalition for the International Criminal Court is a global network of civil society organizations in over 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.

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