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**International Criminal Court independence under threat at annual assembly**

*Civil society defends ICC at 14<sup>th</sup> Assembly of State Parties but political campaign to influence trial of Kenyan deputy president sets dangerous precedent.*

**The Hague/New York**—A political campaign at the annual session of the International Criminal Court's (ICC) governing body to influence the ongoing trial of Kenya's deputy president sets a dangerous precedent for the Court's independence, the Coalition for the ICC said today.

The 14th Assembly of States Parties (ASP) to the Rome Statute concluded in The Hague yesterday with governments agreeing to include in the Assembly's final report an interpretation of an ICC rule on the use of pre-recorded witness testimony currently under appeal in the trial of Deputy Kenyan President William Ruto. The inclusion of the requested Kenyan language in the final report holds no obligations for states or the ICC. It remains for ICC appeals judges to decide on the application of Rule 68.

"The political campaign that we have witnessed to influence the ongoing trial of Kenya's deputy president is deeply worrying for the ICC's ability to deliver fair and independent justice," **said William R. Pace, convener of the Coalition for the ICC.** "Using unfounded accusations of an anti-Africa bias at the ICC and threats to withdraw from the Rome Statute, the Kenyan government has sought to gain concessions from this Assembly to put pressure on the decision-making of independent ICC judges. While we recognize that many states responded to the call of civil society to defend the independence and integrity of the ICC, and we remain disappointed that the Assembly bowed to political pressure in officially referencing Rule 68 while we await a judicial ruling on its use," **Pace continued.** "The events of this week show a weakness not of the ICC but of this Assembly, and set a dangerous precedent."

In 2015, the ICC prosecutor used an amendment to Rule 68 of the ICC's Rule of Procedure and Evidence to present pre-recorded witness testimony in the trial. Ruto's defense has challenged the use of the rule, arguing that governments had agreed when adopting the amendment at the ASP in 2012 that it could not be used retroactively and thus to cases that already began.

Ruto is accused, alongside broadcaster Joshua Sang, of orchestrating crimes against humanity in Kenya's 2010-11 post-election violence. The trial began in 2013, but several prosecution witnesses have recanted their testimony. The ICC prosecutor alleges they were pressured to withdraw. The witnesses have been termed hostile by ICC judges. The prosecutor has nevertheless sought to have their original testimonies accepted as evidence.

As ASP 14 was beginning, governments agreed at the last minute to debate a request by Kenya to have the Assembly affirm that when it amended Rule 68, the amendment was not meant to be used in ongoing cases. Following the debate, negotiations continued throughout the eight days of the Assembly session on whether to include the Kenyan proposal in the catch-all omnibus resolution that provides guidance on strengthening the ICC and ASP. Civil society organizations had called on governments to reject the Kenyan request, saying it would infringe on the ICC's judicial independence. After the debate took place, states were urged to ensure that there would be no reference to the interpretation of the amended Rule 68 in any of the formal resolutions adopted at the end of the Assembly. On the basis that doing so would amount to political interference in a matter being litigated in an ongoing ICC trial.



The Assembly finally decided that it would include language on the non-retroactive use of Rule 68 in the final report summarizing discussions of the Assembly, but not in the omnibus resolution.

“Once again, the Assembly of States Parties has relented to the pressure of getting Kenya’s cases before the ICC tried in the Assembly rather than in court. The first time that the Assembly surrendered was in 2013, when it went out of its way to refashion the rules on presence at trial before the court, in a manner that suited the accused’s interests,” **said George Kegoro, executive director of the Kenya Human Rights Commission.** “The consequence of that previous surrender is that, because he is powerful, William Ruto is allowed to stay away from his trial while his co-accused, Joshua Sang, must be present in court during the trial. We have quickly become numbed to this duality of practice, which negates the principle of equality of all persons before the law, a key tenet of the Rome Statute.”

“The Assembly has thus created two tracks of practice. The first is a track involving cases against weak defendants, which continue to be handled by the judicial organs of the Rome Statute and, the second are the cases against politically-strong defendants, which are now tried in the political organs of the Rome Statute, rather than in court. In the face of a determined state, which has taken elaborate, and highly successful domestic and international measures to stifle the possibility of a fair trial of the cases, the Assembly has displayed weakness and, ultimately capitulated. This is a capitulation to impunity, and there is no longer a zone of principled engagement on international justice under the Rome Statute, **Kegoro added.** “By yielding to Kenya’s unreasonable demands, the Assembly has surrendered the mandate of the ICC of bringing accountability against persons bearing the greatest responsibility for the atrocity crimes under the Rome Statute. The ICC will now become a court of low-level perpetrators and is not worth maintaining in this form. Having been ignored by the Kenyan government up to this point, the victims of Kenya’s post-election violence have now been irreversibly betrayed by the Assembly.”

"We came here to give our clear views that the integrity and independence of the Court should be paramount. This is not the first time Kenya brings controversial issues at the very last minute before the ASP. Such behavior is deeply disrespectful towards the other states parties and Kenya’s own obligations under the Rome Statute. While we recognize that the ASP is a forum for states to discuss matters of critical importance regarding the ICC, the motivation behind Kenya’s supplementary agendas is purely influenced by Kenyan domestic politics and do not aim at improving the Rome Statute system," **said Gladwell Otieno, executive director, AfricOG, representing Kenyans for Peace with Truth and Justice.** "We further regret the lack of clarity and commitment shown by the President of the ASP and the Bureau on discussions that should have never happened in the first place. Whether Kenya achieves what it wants or not, the damage has already been done as it should be certain that some matters should never be discussed.

The assembly agreed the ICC’s budget and adopted resolutions covering a range of topics including cooperation between states and the ICC, the efficiency and effectiveness of ICC proceedings, strengthening ICC field presence, and national prosecutions, including of sexual and gender based crimes.

"The ASP is the place where ICC member states can and should come to discuss means to strengthen the ICC system. However, the time, energy and resources that governments dealing have had to expend with the Kenya issue has come at the expense of progress on a range of pressing issues to make international justice more effective and speed up the delivery of justice for victims of grave crimes," **Pace added.** “The leaders of the delegations that adopted the Rome Statute in 1998 would be ashamed of the governments’ delegates at this Assembly that threatened, in some instances to undermine the ICC through financial strangulation, and in others threatening to violate fundamental principles of the



Rome Statute through political interference with ongoing prosecutorial and judicial proceedings.”

**Read more outcomes and reaction from ASP 14 on our #GlobalJustice blog**

<https://ciccglobaljustice.wordpress.com/2015/11/27/asp-14-icc-independence-under-threat-at-annual-assembly/>

**About us**

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](http://www.coalitionfortheicc.org).

Experts from human rights organizations members of the Coalition are available for comment. Contact: [communications@coalitionfortheicc.org](mailto:communications@coalitionfortheicc.org). For more information and daily summaries visit our #GlobalJustice blog <https://ciccglobaljustice.wordpress.com>.

**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 ICC: the Central African Republic I & II; DRC; Darfur, Sudan; Kenya; Libya; Uganda; Côte d’Ivoire and Mali. A prosecution request to open an investigation in Georgia is pending. The ICC has publicly issued 33 arrest warrants and nine summonses to appear. Three trials are ongoing. There have been two convictions and one acquittal. Seven preliminary examinations are currently ongoing, including into situations in Afghanistan, Colombia, Guinea, Palestine, Iraq, Nigeria and Ukraine. The Office of the Prosecutor has concluded preliminary examinations relating to Honduras, Venezuela, Palestine, the Republic of Korea and the Comoros referral, declining in each case to open an investigation.

**WHO WE ARE:** *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.* [www.coalitionfortheicc.org](http://www.coalitionfortheicc.org)

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