

Press release

Kenya/ICC

Kenya must uphold the rule of law by continuing to engage with the ICC

21 January 2011 - The International Federation for Human Rights (FIDH) and its member organization in Kenya, the Kenya Human Rights Commission (KHRC) call upon the Kenyan government not to withdraw from the Statute of the International Criminal Court (ICC) or to seek deferral of the Kenyan situation. They further urge the Heads of State and Government meeting at the XVI African Union (AU) Summit, in Addis-Ababa, Ethiopia, from 24 to 31 January 2011, not to recommend withdrawal by African States from the ICC Statute or to support, in any way, Kenya's attempt to defer the ICC process.

FIDH and KHRC recall that, upon adhering to the ICC Statute, Kenya committed to delivering justice to victims of crimes committed on its territory or by its nationals. Kenya accepted to conduct proceedings for serious crimes itself, and, should it fail to do so, to have the ICC investigate and carry out prosecutions. "The ICC has come to investigate violations committed around the post-election violence precisely because Kenya showed that it was unable or unwilling to take up those cases itself", said Souhayr Belhassen, President of FIDH.

"The ICC Prosecutor has identified six suspects, several of whom hold high positions in the government. Although suspects have a right to be presumed innocent until proven guilty, this indicates that crimes were orchestrated at the highest level to attack the civilian population. This is a very serious suspicion", said Muthoni Wanyeki, KHRC Executive Director. *"Withdrawing from the Rome Statute would constitute a step backwards for Kenya and it would send a message to the world about Kenya's disregard for human rights and the fight against impunity for international crimes,"* she proceeded. If Kenya withdraws from the ICC Statute, it would be the first of 114 States Parties to undertake such an action. Kenya's reputation would be seriously compromised.

It must be noted that, should Kenya withdraw from the Rome Statute, such an act would have no legal impact on the ongoing investigations conducted by the ICC. Kenya would still be bound to cooperate with the Court on all ongoing cases and investigations, including by arresting and surrendering individuals targeted by ICC arrest warrants. Those individuals could also be arrested in other countries should they travel abroad.

In addition, FIDH and KHRC are also seriously concerned about reports received on Kenyan officials' visits to other African nations, with the aim of seeking support on the withdrawal initiative, as well as for the African Union to recommend, at its XVI session, a withdrawal from the ICC Statute by all African nations. Whereas there have been reports in the media stating that the Chair of the African Union is confident of the support of the AU in the withdrawal attempts, our organizations call upon all members of the African Union to abstain from supporting such initiatives.

Kenya is also reported as attempting to garner African support for an AU resolution on deferring the Kenyan situation, pending conclusion of judicial reforms. FIDH, the KHRC and the broader Kenyan human rights community strongly urge the AU not to consider such a resolution. Kenya has clearly not met the complementarity test.

Background

Given the failure of the Kenyan government to address impunity for the crimes perpetrated during the post-election violence of 2007-2008, the ICC opened an investigation into those crimes on 31 March 2010.

On 15 December 2010, the ICC Prosecutor announced that he had requested summons to appear for six individuals suspected of having committed crimes against humanity during the post-election violence. Those persons are: William Samoei Ruto, Henry Kiprono Kosgey, Joshua Arap Sang, Francis Kirimi Muthaura, Uhuru Muigai Kenyatta, and Mohammed Hussein Ali.

The announcement has reportedly been received by members of the Kenyan government as an affront to sovereignty. Both the Executive and the Parliament have apparently retracted their previous commitments to cooperate with the ICC. The Executive has committed to African diplomacy to urge AU support for halting the ICC process in Kenya. In acting as such, the Kenyan government is doing so against the wishes of the majority of Kenyans - as proven by numerous opinion polls on the ICC in Kenya and by civil society and media reactions.

On 22 December 2010, the Kenyan Parliament passed a motion requesting the Executive to take steps to withdraw from the ICC Statute. The motion is not legally binding. According to the ICC Statute, a State Party may withdraw from it by way of written notification addressed to the Secretary-General of the United Nations. No such action has been taken by the Kenyan government to officially withdraw from the Statute. A bill could be tabled in the coming days or weeks seeking the same effect and repealing the International Criminal Act of 2008. It is unclear what the effect of such a bill would be on the Executive branch, if passed.

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