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AFRICA JUSTICE SYSTEMS

Kenya: State Parties run dangerously close to interfering with the ICC's independence

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The concerted campaign of political interference by the Kenyan government with the judicial independence of the International Criminal Court (ICC) at the Assembly of State Parties this week is a shocking indictment of the lengths the country will go to deny justice to the victims of horrific crimes committed during the post-election violence of 2008, said Amnesty International today.

Kenya effectively attempted to blackmail the Assembly of State Parties (ASP), the political oversight body of the ICC, to acceded to demands which would undermine the trial of the country's Deputy President, William Samoei Ruto, by threatening to withdraw from the ICC. While the proposal was defeated, the fact that the Assembly came perilously close to buckling to the threats from Kenya is a stark warning for the future.

"It is deplorable that this effort was undertaken to protect a single individual – Kenya's current Deputy President. The attempt by Kenya to interfere with cases before the ICC is shocking," said Netsanet Belay, Amnesty International's Regional Research and Advocacy Director for Africa.

"States parties to the ICC must defend the independence of the Court. No state party should ever be allowed to use the threat of leaving the ICC to undermine the Court's independence or seek to influence the proceedings of a particular trial."

Deputy President Ruto is currently facing charges of crimes against humanity, including being criminally responsible for murder, deportation or the forcible transfer of population and persecution at the ICC.

In the meeting of the ASP in The Hague, the Kenyan government threw its full diplomatic weight behind an attack on the ICC's independence. Its concerted lobbying was aimed at undermining the trial of the Deputy President by using the ASP to pressurize judges in their interpretation of the Rule 68, on the admission of prior recorded testimony from some witnesses who later recanted.

However, the efforts of the Kenyan government were rebuffed by a majority of state parties. Although the Assembly bowed slightly to Kenya's demands by recording Kenya's stance on the use of Rule 68 in a report of the proceedings, it stopped short of directly telling the judges how to interpret the rule.

"Such an outcome would have been an absolutely unacceptable level of interference with the Court but thankfully states parties demonstrated the Court's independence was more important than giving in to the Kenyan government's outrageous demands," said Netsanet Belay.

Amnesty International warns that the ASP must continue to be on its guard against attempts to interfere with the Court's independence. Although the worst outcome was avoided at this session, states came dangerously close to setting a precedent allowing political interference with the judicial functions of the Court. However, Amnesty International believes the judges will be able to resist any real or perceived attempts at interference with their independence.

"The failure of the Kenyan authorities to ensure justice, truth and reparation for victims of the horrific crimes committed during the post-election violence illustrates the vital need for Kenya to remain a state party to the Rome Statute under the jurisdiction of the ICC," said Netsanet Belay.

Background

Around 1,100 people were killed in the post-election violence and around 600,000 forced to flee their homes. Many of the injured or the families of those killed have yet to receive justice or reparations. Meanwhile, the majority of perpetrators are yet to face prosecution.

Charges against Uhuru Kenyatta, current President, of crimes against humanity were dropped in December 2014 after the Office of the Prosecutor said the Kenyan government had refused to hand over evidence vital to the case and that witnesses had been bribed and intimidated.

The trial of Ruto, current Deputy President, and Sang continues. Both are facing crimes against humanity, including being criminally responsible for murder, deportation or the forcible transfer of population and persecution.

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