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5 December 2016

Annual ICC Assembly: States hold ground on ICC, but serious challenges remain

African governments lead calls for unity, dialogue and greater focus on victims in underfunded international justice system

The Hague/New York—A strong show of support led by African states and others at the annual assembly of International Criminal Court (ICC) member states gives renewed impetus to overcoming challenges in the international justice system, the Coalition for the ICC said today.

Constructive spirit

The 15th Assembly of States Parties (ASP) to the Rome Statute concluded in The Hague on 24 November 2016. Despite fears that more states could join the announced withdrawals of three African ICC member states from the Rome Statute in the lead-up to the Assembly, the 124 ICC member states and other delegates were praised for the constructive spirit of discussions at the annual meeting of the Court's governing and legislative body. No further withdrawals were announced.

"Despite fears to contrary, this Assembly was more constructive than others in recent years, with open and transparent debate, devoid of attempts to politically interfere in ICC cases as seen in years past," said **William R. Pace, convener of the Coalition for the ICC**. "The positive outcome of this Assembly must now be used as springboard to deepen dialogue and to address concerns in order to make the ICC and international justice system work for all. The recent political convulsions around the world driven by retrenchment to nationalism and xenophobia have no doubt underlined the need to protect this unique and indispensable system of justice."

At sessions in 2014 and 2015, states forced the ASP to consider dangerous and inappropriate resolutions interfering with the independent work of the Office of the Prosecutor and judiciary.

Unity and dialogue

In statements at the opening of the Assembly, the UN High Commissioner for Human Rights Prince Zeid, ICC President Silvia Fernández de Gurmendi, ICC Prosecutor Fatou Bensouda and the ASP President Sidiki Kaba all called for greater unity and dialogue in the face of challenges.

Government and civil society participants further stressed the need for more constructive dialogue on all issues, including the concerns that African states have of not being listened to in previous sessions, while underlining that the independence of the ICC and integrity of the Rome Statute must be ensured, in particular the exclusion of immunity for heads of state under Rome Statute Article 27.

"I would like to say to Burundi, to South Africa and to The Gambia: do not go; Remain so that we can work on the basis of the values that unite us, the same values and principles which are nothing but the demand for justice for all but also respect for independence and integrity of the Court and respect for Article 27 of the Rome Statute which is the basis of the greatest progress that humanity has known since Nuremberg; This is the basis for the defense of impunity. We are a family, we must, hand in hand, face the trials, sometimes in pain, sometimes in disagreement. But we must move forward, advance in union, so that the values of justice, freedom for all, equality and equity can triumph," said **ASP**

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**President Sidiki Kaba.**

The overall policy resolution—the catch-all “omnibus” resolution on strengthening the ICC—was adopted much more constructively than in recent years and maintained very high standards of policy supporting the Rome Statute and ICC.

Africa backs ICC

The Assembly’s general debate and special session on Africa and the ICC saw strong reaffirmations of support for the ICC and international justice from the vast majority of delegations from Africa and beyond. The vast majority of African states—including Burkina Faso, Botswana, Democratic Republic of Congo, Côte d’Ivoire, Lesotho, Malawi, Mali, Namibia, Nigeria, Senegal, Sierra Leone, Tanzania, Uganda and Zambia—reaffirmed their desire to stay part of the Rome Statute system and work for positive reform of the ICC. Many governments expressed regret about the announced withdrawals of South African, Burundi and The Gambia, and called for reconsideration. South Africa’s Attorney General meanwhile expressed hope for dialogue that could forestall the country’s announced withdrawal.

“The ICC is not just struggling under the weight of a legacy of impunity on our continent; it is also struggling under the weight of history. There are strong sentiments among African peoples driven by legacies of racism, domination and exclusion. These sentiments are real and they cannot, and should not be wished away. Like Mandela, all Africans in this room have at one point or another in our lives been insulted, discriminated against or victimized because of the colour of our skin. But when this has happened, when we have felt unfairly treated, we have not walked away from the problem, we have confronted it. We have been part of the solution to the myriad challenges confronting us as members of the human family and in so doing, we have often shown others the way,” **said Njonjo Mue, Senior Advisor to Kenyans for Peace with Truth and Justice (KPTJ) and serves as the Chair of the Kenyan Section of the International Commission of Jurists.** “All African ICC member states must do the same. They must work within the Rome Statute structures to improve an ICC that is needed more desperately now that when it was first created.”

“States should explore all legislative, diplomatic, and legal avenues to robustly respond to concerns of African states in the ICC system, including the role of the UN Security Council,” **said Chino Obiagwu of the Nigerian national Coalition for the ICC.** “The African group of state parties should also reflect as to whether there are political leaders in the continent who may want to use any excuse to weaken the international justice system in order to reduce the effort to close impunity gap. Look at Burundi. Everyone knows we are watching what could explode into major crises if not addressed. So can African States and the world allow this to happen?”

Civil society show of force

The Assembly also one of the strongest showings of global civil society in recent years, with over 400 NGO delegates in attendance, underlining the continuing relevance of the international justice system in the face of rising occurrences of grave crimes the world over. NGO delegations from Kenya, Burundi, Cote D’Ivoire, Mali, South Africa, Ukraine, Georgia, Palestine, Mexico, Colombia, The Philippines, Lebanon, Morocco and Iraq joined NGOs from many countries in greater Europe, North America and other regions at this year’s Assembly.

One the main achievements of the ASP was again the extraordinary constellation of meetings held mostly by Coalition member organizations, as well as many by governments, with the participation of



high level officials from the ICC and other international and regional organizations

The side events enriched and deepened the debate covering a large range of topics, including: The ICC and Africa; National prosecutions of ICC crimes; Sexual and gender-based crimes; Crimes against children; Increasing threats to civil society; Climate justice and the ICC; The activation of the Crime of Aggression (possibly at next year's Assembly); Redress for Kenyans after the ICC; Witness interference in ICC trials; The newly established ICC Bar Association; The increasing deterrent effect of international criminal tribunals; Justice in Mali; Complementarity in Central and West Africa; Lessons learned, loose ends and legacy in Kenya; Victims' rights and complementarity in Colombia, Uganda, and the Central African Republic; Liability for public statements in the Philippines; The role of the ICC in promoting accountability for crimes committed in Ukraine; The Bemba ruling and beyond: prosecuting conflict related sexual violence; cooperation and judicial assistance; The ICC and crimes against humanity in North Korea; the draft convention on the prevention and punishment of crimes against humanity; moving victims' reparation forward; accountability options for Syria; the role of international criminal justice in the fight against human slavery; strengthening financial investigations—alternative sources of evidence for the ICC; global civil society and European states; Domestic accountability for crimes against humanity in Mexico; Crimes against humanity, sex crimes, and command responsibility: development in international crime practice; Child soldiers: prevention and accountability; Innovation of Extraordinary African Chambers for the Prosecution of Hissene Habré; The Extraordinary Chamber in the Courts of Cambodia; The Trust Fund for Victims and; Challenges for the universality and threats for the integrity of the Rome Statute system: the role of parliamentarians.

Double-standards on budget

A group of the largest economy ICC member states—calling themselves the G7 (Japan, Germany, UK, France, Italy, Spain and Canada) threatened to vote for a zero-growth budget for the ICC in 2017. In the end they succeeded in setting the ICC budget for 2017 at €141.6 million, a meagre increase on the 2016 budget of €139.5 million. This is €6 million less than Court officials had requested to maintain court activities and to open new investigations and prosecutions and to improve essential victim-related activities.

"Sadly, the ICC member states that have decided that the Court will not get the budget it needs next year are crippling its ability to open new investigations and to increase its impact. This double-standard on the part of some states means that victims of the most heinous crimes will lose out, and feeds into perceptions of bias of the Court," **continued Pace**. "The ICC must of course ensure that taxpayer's money is well spent. Efforts are underway to strengthen investigations and prosecutions, to speed up trials, and to bring justice closer to, and make it more relevant for, victims and affected communities. States should work with the ICC to increase its efficiency and impact, not against it. We have an international justice system that many never believed would ever happen—and most important, could not be agreed to by governments today. It's crucial to make it work for all victims. In coming assembly meetings, the silent majority of ICC member states supporting the ICC, each with an equal vote in the Assembly, must be much more vocal and assertive in the face of the bigger powers actions that threaten to strangle the Court."

The Court's budget request was approved by the Assembly's own finance committee and comes after years of efficiency-measures. Its rejection very clearly hampers the ICC's ability on its mandate to deliver fair, effective and independent justice to victims of grave crimes. States have mandated the Court to enforce the Rome Statute and to respond to demands for justice from victims and the global



community. They cannot expect and demand the Court to do more each year with less.

“We continue to be disappointed that the ICC does not seem to be given the resources that it needs. We are concerned that the amount of funding that's been given to the Court may not be sufficient for it to carry out its activities. We really think that states need to think about this realistically, because we are not sure that they are the moment and I think that probably over the next twelve months the budget is going to be more of an issue than withdrawals,” **said Alison Smith, legal counsel and director of the International Criminal Justice Programme of No Peace without Justice.**

Threats to civil society

One side-event, ironically on increasing threats to civil society working on the ICC, saw Kenyan human rights defender Gladwell Otieno threatened by a delegate with ties to the Kenyan government, underlining the need for all states parties to be vigilant in their protection of civil society and vehement in supporting the integrity and independence of the Court. The ASP at this session adopted a statement of concern at the threats faced by NGOs working on the ICC.

“This is reflective of the way government treats human rights defenders in Kenya. They insult us, defame us, malign us... because we have a higher profile, there is more international attention on us, we are in a somewhat better position. But there are lots of young men in the slums or ghettos who are no longer living or who are regularly brutalised by police,” **said Gladwell Otieno, executive director, The Africa Centre for Open Governance (AfriCOG), representing Kenyans for Peace with Truth and Justice.**

“[It] is a worrying sign for civil society and I think that it is something that we need to pay a lot more attention to and something that we would also be looking to states to pay a lot more attention to and to speak out against,” **Smith continued.**

Kenyan victims disillusioned

Several side events touched on lessons-learned in the ICC investigation in Kenya, which has seen the collapse of all cases related to the country's 2007-08 post-election violence. Victims in the country remain without justice or reparation and expressed their disillusionment with ICC, the Trust Fund for Victims and national proceedings.

“Thousands of resilient Kenyan victims continue to bear the physical and psychological scars of the post-election violence. A restorative justice fund that the President pledged to establish two years ago is yet to pay out a single shilling to victims. On the contrary, we have witnessed the humiliation of victims who had camped outside Parliament for a month to demand reparations being brutalised and violently evicted. We urge the Government of Kenya to move beyond rhetoric and institute a comprehensive reparations programme that duly caters to the needs of all victims. This should, however, not be seen as an alternative to criminal justice measures. The Kenyan government should ensure that all perpetrators of the post-election violence are brought to justice. This is especially important in order to avoid the risk of violence recurring as the country prepares to go into another closely contested presidential election in August 2017,” **Otieno continued.**

“I believe that when the Court progresses in its work, victims will have more and more results from the Court. They will understand that the Court is really their court. Because it is quite clear that this court is the one that the victim can accede easily and they can give their points and they can be listened. Now,



in terms of reparation, they are still waiting. I firmly believe that the time will come that the court will be able to answer appropriately the victims concerned in terms of reparations,” **said Francis Dako, consultant for Human Rights Watch.**

“States have a responsibility to restore the lives of victims of atrocity crimes. The Kenyan state should establish a state-run victims fund to compensate victims as a way of promoting their human rights,” **said Stephen Lamony, Head of Advocacy and Policy on United Nations with the Coalition for the ICC.**

With the collapse of the ICC Kenya cases in 2015 and 2016, victims participating in the case have been left with recourse to reparations through ICC judicial proceedings. The Trust Fund for Victims, which can provide assistance to victims outside the judicial process, was criticized for “not showing up” in Kenya by victims at the Assembly session.

In a statement issued after the Assembly session, the Trust Fund called upon “States, the ICC, civil society, and all the world's citizens to find the will power and resources to ensure that justice is delivered to victims: not only in the court room but also in their homes and in their communities.”

In the TFV Board's estimation, annual revenue of €10 million is needed to improve and sustain its ability to be responsive to its mandates of delivering assistance and Court-ordered reparations to victims, noting with concern that annual revenue has been on the decline in the past two years, from €5 million in 2013 and 2014 to around €2 million in 2016.

Russia, China, and the United States and the ICC-ASP

Criticism that three permanent members of the UN Security Council have not ratified the Rome Statute was raised in many ASP meetings. In what was termed a publicity stunt, non-ICC member state Russia announced on the opening day of the Assembly that it was “unsigned” the Rome State—an action that some observers attributed to ICC scrutiny of situations in Georgia and Ukraine, and to ongoing Russian military actions in Syria.

China, in the closing plenary complained that it was not permitted to participate more in the omnibus negotiations due to its status as an observer-state at the Assembly.

The United States meanwhile, whose actions in Afghanistan may come under greater scrutiny by the ICC prosecutor as indicated in the 2016 Report of ICC Preliminary Examinations, also participated constructively as an observer-state during the Assembly session. However, anticipation that the last 10 years of constructive engagement by the United States with the ICC could be reversed by the Trump administration was widely discussed.

About the ASP

As the ICC’s governing body, the Assembly of States Parties provides the ICC with management oversight and strategic direction, elects officials, decides the budget, considers matters of non-cooperation, and can amend the Rome Statute and other rules. It is composed of all states parties to the Rome Statute and meets at least once a year. The success of the ICC depends on the good functioning and decisions of the ASP. Civil society plays a vital role in urging the Assembly, and its individual member states, to uphold its responsibility to make international justice effective. Throughout the year and at its annual session, we urge the Assembly to improve its working methods, transparency, and state support for justice and the ICC. Civil society also campaigns to avoid political



interference with the strict judicial or prosecutorial independence of the ICC, constantly reminding the Assembly of its proper role in the Rome Statute system.

About the ICC

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. As one of the most historic advances in the protection of global human rights, the innovative system established by the Rome Statute is designed to punish perpetrators, bring justice to victims and contribute to stable, peaceful societies. The Court has already made significant progress in holding those most responsible for atrocities to account. Victims are already receiving help to rebuild their lives. But global access to justice remains uneven, and many governments continue to deny the ICC jurisdiction where it is most needed.

There are currently ten active investigations before the ICC: the Central African Republic I & II; Democratic Republic of Congo; Darfur, Sudan; Kenya; Libya; Uganda; Côte d'Ivoire; Mali and Georgia. The ICC has publicly issued 33 arrest warrants and nine summonses to appear. Four trials are ongoing. There have been two convictions and one acquittal. Ten preliminary examinations are currently ongoing, including into situations in Afghanistan, Burundi, Colombia, Guinea, Palestine, Iraq/UK, Nigeria, Ukraine, Gabon and the Registered Vessels of Comoros, Greece and Cambodia. The OTP has concluded preliminary examinations relating to Honduras, Venezuela, Palestine and the Republic of Korea, declining in each case to open an investigation.

About us

The Coalition for the ICC is a network of 2,500 civil society organizations, small and big, in 150 countries fighting for global justice for war crimes, crimes against humanity and genocide for over 20 years. We made international justice happen; now we're making it work. www.coalitionfortheicc.org

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