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Kenya: Denouncing the Rome Statute shall not have any effect on investigations currently under course

The motion passed by the Kenyan Parliament on 22 December to ask the Government to take appropriate action to withdraw from the Rome Statute of the International Criminal Court, if supported by the Government, shall not discharge Kenya from the obligations arising from the Statute, said Amnesty International.

The motion calls for the repeal of the International Crimes Act (which domesticates the Rome Statute in Kenya) and requests the Government to withdraw from the Rome Statute. However, the Rome Statute provides that any withdrawal of a state party – Kenya is a party since 2005 – shall take effect one year after the date of receipt of the notification by the UN Secretary General. In addition, in case Kenya decides to denounce the Rome Statute, the withdrawal shall not affect any cooperation with the Court in connection with criminal investigations and proceedings in relation to which Kenya had a duty to cooperate and which were commenced prior to the date on which the withdrawal became effective, nor shall it prejudice in any way the continued consideration of any matter which was already under consideration by the Court prior to the date on which the withdrawal became effective, said Amnesty International.

In March the International Criminal Court (ICC) authorized the Prosecutor Luis Moreno Ocampo to open an investigation into the 2007/2008 post-election violence. As a consequence, in December the prosecutor made an application requesting the ICC to issue summonses to appear against six Kenyan citizens. The Prosecutor considers that there are reasonable grounds to believe that the six are responsible for crimes against humanity allegedly committed in Kenya during the violence. It is for the ICC – through its Pre-Trial Chamber II - to decide whether or not such summonses to appear are to be issued.

To date the Kenyan government has failed to institute fair and credible investigations into alleged international crimes and human rights violations committed during the post-election violence and to bring to justice suspected perpetrators. In particular the government has failed to ensure the establishment of a Special Tribunal - a judicial mechanism - as recommended by the official Commission of Inquiry into the Post-Election Violence in a 2008 report. This failure left the ICC with no option but to intervene in relation to persons believed to bear responsibility in relation to alleged crimes against humanity.

According to the Commission of Inquiry the post-election violence led to the death of over 1,100 people through politically and ethnically-motivated killings, police killings and the displacement of over 500,000 people from their homes.

Amnesty International calls on the Kenyan government to reject the parliamentary motion calling for the repeal of the International Crimes Act and Kenya's withdrawal from the ICC in the interests of the need to deal with impunity for crimes under international law and human rights violations. The organization also calls on the government to ensure full cooperation with the ICC regarding the Kenyan case currently pending before the Court.

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