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Kenya scored key victories in The Hague

Posted by Capital FM On November 29, 2013 4 Comments

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BY AMINA MOHAMMED

I would like to thank the team that has spent weeks negotiating important changes to the Rules of Procedure governing the ICC.

I would also like to thank colleagues from the African Union, and from other like-minded countries that stood with Kenya when it needed to repulse an attack on our sovereignty.

We have achieved a fundamental change in how the ICC functions. This is a major victory for the Kenyan team. It is a significant shift in how the ICC engages.

We came to The Hague with two important goals, and we are glad to announce that we have nailed both.

As you are aware, the ICC has always argued that the accused person must be physically present through the trial. We now have a new rule that says – that is, in fact, not the case.

The ICC has also always said that every individual is equal before its eyes and that no exceptional circumstances exist for Heads of State or Government. The ICC has always argued that our President and Deputy President were merely accused persons before the court and must be treated as such.

Not any more.

The new rule (134 (4) acknowledges that the President and Deputy President are duly elected by the Kenyan people and have a mandate to govern, even while meeting their obligations before the Court. That is a significant step forward in the way the ICC will implement its mandate in future.

As you know, we had a mandate from the African Union pursuant to its resolution that no sitting Heads of State or Government, their deputies, or people mandated to hold such offices may appear before the ICC or indeed any other court while they remain in office.

We have therefore given notice of a special Assembly of State Parties to discuss the amendment of Article 27 on the immunities of Heads of State and Government. We expect such a meeting to be convened after the 90-day notice period expires, in the first quarter of next year.

The other issue that has pre-occupied Kenyans relates to changes made to Rule 68 on prior-recorded statements, which will allow untested testimony to be presented to the Court. Our view is that this new rule is fraught with difficulties and is a dangerous move that will hurt the rule of law.

When a court can admit evidence without cross-examination, then, effectively, then the rights of an accused person can be prejudiced. A prosecutor may also present evidence that is fraudulent.

A majority of the Assembly members were keen to have these changes passed, and so they were.

On behalf of the Kenyan delegation, we argued and forced changes that reassure that the new rules will not apply to the Kenyan cases. We acted to protect our President and Deputy President from the possibility of such evidence being added.

We secured agreement that the new rule would not be used retroactively to the detriment of a person being investigated or prosecuted.

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This is a significant advance for us because the question of ICC intermediaries and agents coaching witnesses is still very much in the public domain.

Earlier this week the ICC issued a verdict compelling the President to be present during his trial. The new rule renders that verdict effectively obsolete (as the verdict was issued on the basis of the old rule).

In terms of the new rule, Counsel can represent the President and Deputy President if they so wish.

A provision for the use of video-link has been agreed for other accused persons at the Court who do not hold similar high office. In Kenya's case, we hope that this remedy will be open to Joshua Sang.

Ladies and Gentlemen

Members of the African Union contact group strongly supported Kenya at the ASP, as indeed, all African countries. We thank all of them, and especially Namibia, Uganda, Tanzania, Botswana, Ghana, Nigeria, Sierra Leone and South Africa.

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Joseph Chepsoi • 2 years ago

Congratulations Ambassador Amina for a well done diplomatic job! You ably led your team all the way to obtain the gains that will benefit even ICC itself! Keep it up and up!

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Boniface Njiru • 2 years ago

Thanks Mheshimiwa. You did an excellent job.

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Qwani • 2 years ago

Well done Amina!! You ignored all the doomsayers and words of bitterness and discouragement that was hurled at you and emerged victorious. It is indeed a major victory for our country, despite what many will say.

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Erykko • 2 years ago

Hey, does your job entail anything else apart from I.C.C. cases for Uhuruto, N.B not Kenya.

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