

ICC Complaint Will Continue Despite Prosecutor's 'Wrong' Decision



Representatives of the democratically elected Government were notified of Mrs Bensouda's decision in a personally signed letter dated 23 April 2014. The democratically elected Government's legal team today announced that the decision will not prevent accountability through the International Criminal Court. The distinguished legal team which includes former UK Director of Public Prosecutions Lord Ken Macdonald, former UN Special Rapporteur Professor John Dugard and ICC specialist Rodney Dixon QC are preparing to take the matter to the ICC Judges.

The complaint sent to the ICC contained strong evidence of serious criminal acts perpetrated by the military regime responsible for the coup d'état which resulted in death of over 2000 protestors and the detention of 20,000 people including President Morsi and members of the democratic Government. In meetings held with the ICC, senior officials had accepted that serious crimes had been committed in Egypt since the coup and equated the crimes to those that have been committed in Syria.

The ICC complaint contained an Article 12 (3) declaration, which allowed the ICC to investigate the situation in Egypt. It contained a clear and reasonable legal basis for opening a preliminary examination into the situation in Egypt and was supported by independent opinions from leading international law experts. In contrast, the ICC Prosecutor accepted jurisdiction over the Ukraine as a result of a similar declaration. The ICC announced the Ukraine decision on the same day as informing the democratic Government about the Egypt decision.

Lawyers representing the government have expressed serious concern at the manner in which the decision was taken. The decision has been described as 'wrong in law and devoid of proper and independent legal analysis'.

Tayab Ali of ITN Solicitors who acts for the democratically elected Government said:

'We are instructed to take with immediate effect further legal action at the ICC to seek to defend the rights of the thousands of victims of the military's violent campaign to crush all opposition and maintain the illegal coup.'

We do not agree that the ICC Prosecutor is able to administratively determine that the democratically elected Government of Egypt's referral cannot proceed. Accordingly we will lodge an appeal with the ICC requesting Judges to review the decision made by the Prosecutor. The ICC was established to prevent international crimes and defeat

impunity for those responsible for committing them. In a strong case such as this it is not appropriate for an incorrect administrative decision to prevent accountability for the many well-documented crimes that have been committed in Egypt

I am very disappointed by Mrs Bensouda's personal decision which would cause the ICC to turn its back on investigating and deterring these crimes. It is surprising that the prosecutor has taken this decision in this way and more so when contrasted with the African Union's decision in respect of death sentences, which has taken strong and positive steps to uphold human rights' protections in Egypt. The Chairperson of the African Commission has written to the Egyptian interim authorities directing that they suspend the death sentences and uphold international human rights law.

The complaint lodged at the ICC was based on sound legal principles, which although being clearly presented to the Prosecutor, have been entirely ignored. In addition the complaint contains the clearest evidence that the military regime in Egypt is responsible for committing crimes against humanity, which include murder, torture and enforced disappearance.

It should not be forgotten that the complaint rejected by the ICC prosecutor was in respect of a regime that has unarguably committed crimes against humanity against its own people and recently sentenced hundreds of people to death following trials that lasted only minutes.

It is of serious concern that on the same day that the ICC has recognized the declaration of the Ukrainian government for the killings of protestors, the Prosecutor has notified the democratically elected government of Egypt that its declaration is not acceptable and that those killed by the military regime cannot be investigated by the ICC.

The paradoxical positions taken about the two situations appear to suggest the process used by the Prosecutor to determine the similar complaints was at best seriously flawed and at worst inappropriately politically motivated'.