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Malaysia backtracks on accession to the Rome Statute

Malaysia not to accede to Rome Statute of the International Criminal Court over political questions arising in domestic process.

New York/Kuala Lumpur—The Coalition for the International Criminal Court – a global network of more than 2,500 civil society organizations in 150 countries – is deeply disappointed with the Malaysia government decision last week to withdraw from the Rome Statute, and strongly urges the state to reconsider its withdrawal.

On March 4, Foreign Minister, Datuk Saifuddin Abdullah had deposited the instrument of accession to the Rome Statute of the ICC, and stated that Malaysia wanted to join the ICC to “combat international crimes”, but that accession will be “subjected to Malaysia’s conditions.” The signed document was deposited to the United Nations Secretary-General on the same day.

On 5 April 2019, Prime Minister, Tun Dr Mahathir Mohamad, announced that Malaysia would withdraw from the Rome Statute of the International Criminal Court (ICC), only a month after it deposited its accession instrument. While the accession had yet to enter into force, this withdrawal has already raised a number of questions both internally and abroad over the reasons behind this move.

“We are withdrawing not because we think that the Rome Statute is bad for us, but because of the political confusion that has been created,” announced **Prime Minister, Tun Dr Mahathir Mohamad**. Indeed, while the Malaysian Cabinet – which holds the authority of acceding or ratifying international treaties- had made the decision to accede, reservations from the opposition parties, Umno and Parti Islam SeMalaysia, and questions arising from the crown prince of Johor, including over sovereignty and immunity issues, resulted in the backtracking of this decision.

After the announcement of Malaysia’s accession to the Rome Statute, the opposition leader, Ismail Sabri Yaakob, called for a withdrawal from the Rome Statute, stating that, “any laws that touch on the interests of the Malay Rulers cannot be done without the permission of the Conference of Rulers,” an issue that has been contested by human rights and constitutional lawyers, as well as government officials in Kuala Lumpur.

Misconceptions surrounding the issue of sovereignty have played a role in this decision, which have led to government officials and supporters of the ICC in Malaysia to reflect on the lack of education and understanding, at all levels, of the Rome Statute of the ICC. In addition, there is a need to clarify that immunities for Rome Statute crimes, for high level officials, including the Conference of Rulers, are circumscribed under *domestic* legislation.

Reflecting on this move, **Andrew Khoo, member of the Bar Council Malaysia**, recalled that in March 1993, provisions were included within the Federal Constitution to in effect remove immunities for traditional Malay rulers in relation to certain conducts. In addition, Khoo also highlighted that Malaysia acceded to the Genocide Convention in December 1994, raising no objections over immunity provisions therein (article IV). “If the government of Malaysia, in December 1994, had no real objections to the Genocide Convention; what has changed?”, asked Khoo.

This decision is particularly unwelcomed following a similar pattern with regards to the accession, last November, to the International Convention on the Elimination of All Forms of

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Racial Discrimination, which also saw a last-minute withdrawal. In its Press Release following the April 5 decision, **Abdul Fareed Abdul Gafoor, President of the Malaysian Bar Council**, stated that "Backpedalling on such a substantial matter does not augur well for Malaysia's credibility and reputation as a member of the international community that upholds international norms and stands up for human rights for all (...) The Malaysian Bar will persist with our longstanding advocacy for Malaysia's accession to the Rome Statute, as well as to the remaining six core international human rights instruments and their optional protocols."

Bill Pace, Convenor for the Coalition for the ICC, called on the government of Malaysia to continue its way forward: "We call on Malaysia to reconsider this position, and we remain at the disposition of the country's authorities to assist in addressing misconceptions around the mandate of the ICC. The principle of complementarity, the Rome Statute's guiding pillar, ensures that national judicial systems retain primary jurisdiction in investigating and prosecuting alleged perpetrators of crimes under international law, a clear sign of respect for state sovereignty", stated Pace during a week-long mission to Kuala Lumpur. In addition, Mr. Pace called on Malaysia to lead the rest of the region by example, signaling that, in these current times, "No region will have a greater impact on the fate of major challenges confronting the international legal order than the Asia-Pacific region."

One of the objectives towards Malaysia's accession to the Rome Statute was to bring justice to the Rohingya refugees at the ICC. In February 2019, the Malaysian Foreign Minister, Saifuddin Abdullah stated the importance to "punish the criminals of atrocities against the Rohingyas in the court." He further added that they will not refuse the Rohingyas to seek refuge in their country. Over 88,880 Rohingyas are now living in Malaysia, according to the United Nations.

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.

There are currently eleven active investigations before the ICC: Burundi; 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 34 arrest warrants and nine summonses to appear. Three trials are ongoing. There have been three convictions and three acquittals. Ten preliminary examinations currently ongoing, including into situations in Afghanistan, Bangladesh/Myanmar, Colombia, Gabon, Guinea, Iraq/UK, Palestine, Nigeria, Ukraine, and Venezuela. The OTP has concluded preliminary examinations relating to Honduras, the Republic of Korea and the Comoros referral, declining in each case to open an investigation.

About us

The Coalition for the International Criminal Court is a global network of civil society organizations in 150 countries fighting for justice for victims of genocide, war crimes, crimes against humanity, and the crime of aggression through national courts and the International Criminal Court. www.coalitionfortheicc.org