

Why Withdrawing from the Rome Statute Undermines International Justice for Everyone

July 2017 marks 15 years since the Rome Statute that established the International Criminal Court came into force. Many years of painstaking and protracted regional and international diplomacy preceded its adoption in order to secure consensus on the importance of creating a permanent international criminal court that could try the most serious crimes - genocide, war crimes and crimes against humanity. The process that led to the coming into force of the Statute in July 2002 was the shortest in the history of treaty ratification processes, signaling not only the commitment of the international community to challenging impunity, but also a solid reaffirmation that when humanity decides to come together with a common cause, even seemingly insurmountable challenges can be resolved.

The negotiation and adoption of the Rome Statute remains one of the single most important achievements of the last century in the fight against impunity. Since its adoption, more than half of the world's states have joined the Court. Thirty-four States parties are African, which represents the biggest regional block so far.

We believe that the high level of acceptance of the Court in Africa reflects the unshakable belief of African States in the ideals and promises of the Rome Statute. The establishment of the Court is something that Africa should be proud of, as it was rightly seen as beginning of a new chapter in the fight against impunity and a reckoning for those who have for too long disregarded the lives and dignity of their people.

It was also seen as an institution designed to complement national judicial systems. It was believed that the Court would play a positive role in political, social and economic transformation by strengthening the rule of law and respect for the fundamental rights and freedoms of the African people. Indeed, that most of the African cases before the Court were submitted by African States themselves reaffirms this belief. Five of the Court's ten investigations currently in process were launched as a result of referrals by concerned African countries.

We believe that the ideals and values that inspired the creation of the Court still hold true, 15 years after the Rome Statute came into force. However, despite these achievements, the Court is increasingly coming under threat. Burundi, South Africa and The Gambia have all announced their intentions to pull out of the Court. Other States have threatened to do so, if certain conditions are not met. Key among the concerns raised by these countries is the lack of fairness in the prosecution decisions of the Court, perceived by some to disproportionately target African leaders. While joining international institutions and signing international treaties is a sovereign decision, it is pertinent to explore why the very countries that were yesterday at the forefront in the fight against impunity are today no longer interested in doing so. There is a

need for a candid conversation between all stakeholders, especially member states and the Court to identify and address legitimate concerns of all stakeholders. Doing this will enhance mutual trust and cooperation and strengthen the capability of the Court to fulfill its mandate enshrined in the Rome Statute.

Most importantly, the establishment of the Court signified a global commitment to protect victims, when national judicial mechanisms lacked the capacity, willingness or jurisdiction to prosecute those responsible for the most serious crimes. It is not evident that discussions to withdraw from the Court have been accompanied by positive trends with regards to human rights situations, or increased government efforts to promote accountability that could have warranted such withdrawal. Nor is there an existing robust regional judicial mechanism to replace the Court's *raison d'être* of prosecuting those accused of serious violations of human rights and humanitarian law. Withdrawals from the Rome State could leave a potentially disastrous legal gap, with negative impact on the ability of the victims to get redress for serious human rights violations.

The Rome Statute that establishes the Court is a global achievement, and its practices are evolving. However, the Court must be prepared and willing to listen to the concerns of those it intends to serve. Key organs of the Court (the Presidency, Office of the Prosecutor and the Registrar) should collectively and actively pursue dialogue, with State and non-State parties, civil society and victims to explore how the Court can serve both the victims and the legitimate interests of its members. In other words, the Court should strive to earn the trust of Member States, as well as victims.

Unfortunately, States that want to pull out of the Rome Statute have made little, if any, effort to present their grievances through the established forums, such as the Assembly of States Parties. To have done so would have presented an opportunity to have an open and frank dialogue, and discuss how to make the Court a better institution, one that is capable of responding effectively to the challenges it was established to address. Engaging and advocating for reforms should serve the interests of all stakeholders of the Court.

With the ongoing atrocities in Syria, Yemen, Iraq, South Sudan and elsewhere, this is not the right time to abandon the Court. Rather, States and non-State members should reaffirm their commitment to strengthen the Rome Statute and ensure accountability for these horrendous crimes.

We know that the wheels of international justice are painfully slow and imperfect. As someone who witnessed first hand the horrors in Rwanda, the Former Yugoslavia, Sierra Leone and elsewhere, and who has been closely involved in the delivery of international justice at the

International Criminal Tribunal for Rwanda (ICTR), I know too well the consequences when the international community undermines the efforts of international justice.

For the sake of the victims who have suffered and continue to suffer unspeakable horrors, exiting the Court cannot be an option. Remaining outside the court is not an option either. Rather than undermining the Court by withholding support and cooperation, State Parties and non-State Parties alike should work collectively to ensure that the Court becomes an effective and strong institution that meets the objectives of its founders, namely to administer international criminal justice without fear or favour, contribute to the fight against impunity, and promote respect for the rule of law and human rights. We owe it to the victims of these horrendous crimes to strengthen rather than undermine the International Criminal Court, and to reaffirm our commitment to the Rome Statute to “put an end to impunity for the perpetrators of these crimes and thus contribute to their prevention”.

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