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SOUTH AFRICA JUSTICE SYSTEMS

# Now is the time to strengthen the ICC not weaken it

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By Netsanet Belay, Amnesty International's Africa Director for Research and Advocacy

This week, 123 countries that have signed up to the International Criminal Court (ICC) started their annual meeting in The Hague amid concern of waning support for international justice from some African states.

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Netsanet Belay, Africa Director: Research and Advocacy

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Despite widespread impunity for crimes committed during the 2007/8 post-election violence, the government of Kenya is pursuing political efforts to interfere in and stop the trial of its Deputy President.

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Both governments have indicated that they may withdraw from the ICC's Statute.

South Africa and Kenya are not alone in seeking to politicize the work of the ICC. Some members of the UN Security Council are more intent on advancing their own interests than supporting the ICC as an effective tool to ensure justice. Russia notably vetoed a resolution referring the situation in Syria to the ICC, but they are not the only ones blocking access to justice for victims. Only two weeks ago, New Zealand circulated a draft resolution at the UN Security Council seeking to rule out access to the Court for Israeli and Palestinian victims.

In addition, the Assembly refuses to provide the Court with sufficient resources to keep pace with the large number of emerging situations that it should deal with. This could potentially force the ICC to make impossible choices on where it seeks to deliver justice.

Somehow, in spite of these serious political challenges, a way must be found to strengthen not weaken the ICC. As the only credible avenue of justice for so many victims in many different countries, it is simply too important to fail.

From the outset, when the ICC was established 13 years ago, it was clear that challenging the entrenched global culture of impunity and reluctance to prosecute powerful figures would never be easy.

At the time South Africa commented wisely that “it is our actions and not just commitments that will earn us the privilege to be associated with the establishment of this Court.”

Impunity exists because, more often than not, the crimes are committed under the direction of those in power against the vulnerable and the marginalized in society. Victims' lack of political power means that, having failed to protect them, governments often ignore their interests and demands for justice, truth and reparation in order to protect those in power and their interests.

We have seen this play out time and time again.

During the 2014 conflict in Gaza for example, residential homes were targeted by Israel forces and rocket attacks by Hamas. Neither side to this conflict has been willing and able to genuinely investigate the crimes and prosecute suspected perpetrators, leaving the ICC the only possibility that the victims of these crimes will see justice.

Indeed, the ICC has the potential to play an important role in ending such injustice. With its mandate to step in when national authorities refuse or are unable to act, the ICC can prosecute a few key cases and deliver some measure of justice to victims and thus press national authorities to fulfil their responsibilities.

In its first case, the ICC listened directly to the stories of child soldiers who had been subjected to abuses, including being beaten and forced to commit terrible acts. Having convicted Thomas Lubanga from DRC, and sent a strong message to recruiters of child soldiers around the world, the Court is now developing a reparation order to help the victims. Without the ICC, there would simply be no justice for these victims.

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Over 10,000 victims have engaged in the ICC’s proceedings so far and victims in many other situations including Afghanistan, Colombia, Libya, Mexico, Palestine, Syria, Sudan, South Sudan and Ukraine are now looking to the ICC to ensure that they receive justice.

Despite this strong support from victims, it must be recognized that the ICC is not a perfect institution. It has failed to ensure access to justice for victims in many situations outside Africa and to fully respect the rights of the accused, victim and witnesses in some cases. Its decision that Abdullah al-Senussi could be tried in Libya despite very serious human rights concerns is extremely troubling.

However, these weaknesses highlight the need for constructive engagement rather than destructive attacks.

In light of the ever-increasing number of crimes being committed around the world, it is essential that all governments including Kenya and South Africa remain strongly engaged in supporting international justice.

The capacity of the ICC must be increased so that it can respond to crimes wherever they are committed and efforts that threaten the independence of the Court or its ability to deliver justice for victims must be defeated.

Impunity is a global epidemic. We need the ICC and the support of all states to combat it.

*\*This op-ed was first published in the Mail & Guardian Africa*

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