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South Africa reverses ICC withdrawal: Now make international justice work for all

With civil society campaign central to revocation of ICC repeal bill and notification to UN, ANC demonstrates commitment to the rule of law

South Africa/Benin/New York—Following a hard-fought civil society campaign, South Africa's reversal of steps towards withdrawing from the Rome Statute of the International Criminal Court (ICC) and revoking of a bill to repeal national laws outlawing genocide, crimes against humanity and war crimes is a commendable indication of the country's commitment to the rule of law, the Coalition for the ICC said today.

On 13 March 2017, South African Minister of Justice and Correctional Services Michael Masutha withdrew the ICC Repeal Bill, intended to remove the country's Rome Statute implementing legislation, from further consideration before the South African Parliament. Last week, South Africa rescinded its official notification to the UN Secretary General of its intention to withdraw from the Rome Statute. This means that, for now, South Africa has stopped all internal and external processes regarding its withdrawal from the ICC Statute.

"The Southern Africa Litigation Centre welcomes parliament's withdrawal of the ICC Repeal Bill. SALC along with many CSOs made submissions in time for the 8 March deadline on the Repeal Bill. SALC's submissions recommended either a scrapping or review of the Repeal Bill in particular to include transitional arrangements for ongoing investigations and cases," **Kaajal Ramjathan-Keogh, Executive Director, Southern Africa Litigation Centre.** "The revocation of the notice of withdrawal to the UN as well as this withdrawal of the Repeal Bill presents a fresh opportunity for the South African Parliament to reconsider whether or not it will leave the ICC and we hope that Parliament seriously considers the submissions made by concerned individuals and CSOs in its deliberations on this issue."

"At this point, it is unlikely that a new withdrawal process will commence in the future given all the other pressing national issues in South Africa, including an ANC elective conference at the end of the year preceded by a policy conference in June, and general elections in 2019. Certainly, both parliament and more decisively the Gauteng Division of the High Court in Pretoria have forced the hand of the executive in this issue," **said Allan Ngari Senior Researcher at the Institute for Security Studies.** "The ANC facing a leadership crisis affecting every sphere of governance and policy implementation. In its failing attempts to redeem its image both nationally and internationally, what seemed to the ANC as low-lying fruit (mantras of collective withdrawal from a neo-colonialist ICC and a chance to chart the way forward for African states) has not really been so. Although the executive has never publicly presented division around ICC matters, there have been attempts to sanitize the situation and several other issues."

"It is my sincere hope that the South African Government has reversed its previous unfortunate decision to withdraw from the Rome Statute. It will achieve far more for international justice for the victims of atrocity crimes by remaining an active member of the ICC," **said Richard Goldstone, former South Africa Constitutional Court Justice and Chair of the Coalition's Advisory Board.** "The leadership of African nations is crucial for the future success of international criminal justice. It is what the interests of the victims of these awful crimes dictate—that South Africa should remain engaged."

"South Africa's commendable decision to revoke the ICC Repeal Act is a testament to the tireless

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efforts of civil society and many others in South Africa and around the world to protect historic human rights advances. The ANC now has a golden opportunity to reengage with the ICC and lead efforts to make international justice work for all," **said Clément Capo-Chichi, Africa Coordinator for the Coalition for the ICC.** "Atrocity victims, including Apartheid survivors, as well as the wider global community can take heart from the decision as it bucks the trend of South Africa's recent responses to rulings by its judiciary on its duties as an ICC member state. It will be critical now to preserve and build upon this show of renewed commitment. While South Africa's ICC withdrawal has been upended, we must remain engaged and vigilant against attempts to restart the process."

The Coalition for the ICC, in conjunction with South African civil society, launched a [campaign](#) calling on South Africa to stay with the ICC. The Southern Africa Litigation Center in particular has played a key role in challenging the constitutionality of the South African government's decision to unilaterally withdraw from the Rome Statute in the South African courts. The group has also challenged the government's failure to arrest and surrender ICC suspect and Sudanese President Omar al-Bashir in June 2015 when he attended the African Union Summit, despite treaty obligations and ICC requests.

On 7 April 2017 in a public hearing, South Africa government representatives will face ICC judges over the country's failure to arrest al-Bashir. The ANC government has repeatedly claimed head-of-state immunity under customary international law is in conflict with its Rome Statute obligations, and that it had not been properly consulted on this matter.

On 22 February 2017, Pretoria's high court placed a constitutional roadblock on South Africa's path to withdrawal from the ICC, ordering President Jacob Zuma to revoke the country's October 2016 ICC withdrawal notice to the UN over a failure to obtain prior parliamentary approval.

Judges ruled the move was "hasty, irrational and unconstitutional." South African and international civil society welcomed the decision as a victory for the rule of law, and called on parliamentarians to strongly oppose domestic efforts to repeal ICC legislation.

The Portfolio Committee on Justice and Correctional Services of the South African Parliament, tasked with making recommendations to parliament on the Implementation of the Rome Statute of the ICC Repeal Bill, received a range of comment from civil society, academics and legal experts calling on the government to reverse course.

The International Commission of Jurists (ICJ) submitted a brief to the Committee in collaboration with a number of South Africa's leading jurists. The brief was signed by Retired South African Constitutional Court Justices Laurie Ackermann; Richard Goldstone; Johann Kriegler; Yvonne Mokgoro, Kate O'Regan, Zak Yacoob. It was co-signed by Navi Pillay, former United Nations High Commissioner for Human Rights, former judge of the ICC and former President of the International Criminal Tribunal for Rwanda (ICTR). Wilder Tayler, Secretary General, signed on behalf of the ICJ.

The signatories urged South Africa to remain a party to the Rome Statute of the ICC and engage, where appropriate with other African States, in actively pursuing appropriate reforms within the Assembly of State Parties, with a view to making the ICC more effective in advancing the objectives of international justice.

During the Committee proceedings, last week, the South African Cabinet noted the ruling of the High Court and said it would abide by the ruling and that it had established a task team to determine a compliance road map. Members of parliament also expressed dissatisfaction with the non-



appearance of the Ministers of Justice and of International Relations and Cooperation and Minister of Justice.

More:

[South Africa: ICJ calls for South Africa to stay in the ICC](#)

[International Criminal Court ruling: briefing by Department of Justice](#)

[South African civil society debates ICC withdrawal moves, SABC news](#)

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. As one of the most historic advances in the protection of global human rights, the innovative system established by the Rome Statute is designed to punish perpetrators, bring justice to victims and contribute to stable, peaceful societies. The Court has already made significant progress in holding those most responsible for atrocities to account. Victims are already receiving help to rebuild their lives. But global access to justice remains uneven, and many governments continue to deny the ICC jurisdiction where it is most needed.

There are currently ten active investigations before the ICC: 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 33 arrest warrants and nine summonses to appear. Four trials are ongoing. There have been two convictions and one acquittal. Ten preliminary examinations are currently ongoing, including into situations in Afghanistan, Burundi, Colombia, Guinea, Palestine, Iraq/UK, Nigeria, Ukraine, Gabon and the Registered Vessels of Comoros, Greece and Cambodia. The OTP has concluded preliminary examinations relating to Honduras, Venezuela, Palestine and the Republic of Korea, declining in each case to open an investigation.

About us

The Coalition for the ICC is a network of 2,500 civil society organizations, small and big, in 150 countries fighting for global justice for war crimes, crimes against humanity and genocide for over 20 years. We made international justice happen; now we're making it work.

<http://www.coalitionfortheicc.org/>

Experts from human rights organizations members of the Coalition are available for background information and comment. Contact: communications@coalitionfortheicc.org