

**SPEECH DELIVERED BY SACCORD ON THE
CSO POSITION ON ZAMBIA'S MEMBERSHIP TO THE INTERNATIONAL CRIMINAL COURT
PRESS CONFERENCE HELD ON 12TH APRIL, 2017
AT TAJ PAMODZI HOTEL**

Leaders and representatives of Civil Society present;
Representatives of cooperating partners
Members of the Press;
Ladies and Gentlemen

Distinguished ladies and gentlemen, we warmly welcome you to this press conference which we have called to address a matter of great importance. We are grateful that you could find time to be here.

As you may be aware, In January 2016 the African Union urged all member states to consider adopting the Withdrawal Strategy from the Rome statute which creates the International Criminal court. The Zambian government did not adopt the strategy but informed the AU that it needed to hold consultations with the Zambian citizens before taking a position.

Ladies and gentlemen, The International Criminal Court (ICC) is a permanent court established to investigate, prosecute and try individuals accused of committing the most serious of human rights violations and crimes of a nature that concern the international community. The ICC has jurisdiction to investigate and try genocide, crimes of aggression, crimes against humanity and war crimes. The main purpose of the establishment of the ICC was and still is to promote the rule of law and ensure that the gravest international crimes do not go unpunished regardless of who commits them.

Zambia signed the Rome Statute in 1998 and ratified it in 2002. Since ratification there is very little history of engagement between Zambia and the ICC. In 2009, Zambia submitted the name of Her Honorable Ladyship Madam Chibesakunda as a candidate for the position as judge at the ICC.

The government of Zambia through the Ministry of Justice commissioned a consultative process aimed at collecting views from the Zambians with regards Zambia's membership to the ICC. The process commenced on 27th March, 2017 targeting 30 Districts against 109 Districts across Zambia.

Ladies and gentlemen, distinguished guests, while we feel the route taken by government to consult citizens was a good one, the amount of resources allocated and the timing raises serious questions. Further, the criteria for selecting 30 Districts against 109 should have been shared with stakeholders. In any case we are of the view that the verbal consultations should have been done in 79 Districts while the submissions to made through the District Commissioner's offices should have been done in the 30 Districts

In 2010, the Zambian Deputy Permanent Representative to the ICC made a statement at the 9th Assembly of the States Parties to the Rome Statute at which he reiterated Zambia's commitment to the ICC and emphasized the need for States Parties within themselves and in regional blocks take a leading role to ensure cooperation with the court.

We strongly echo the recommendations made by Zambia at the 9th Assembly of the States Parties by stating Zambians as a people are committed to fighting impunity and should therefore not withdraw from the ICC. The work of the Court is as important now as it was when Zambia ratified the Rome Statute.

Ladies and gentlemen, members of the press;

As a group of civil society, we are of the firm belief that any discourse on whether or not Zambia should withdraw from the ICC should be guided by what is in the best interest of the people of Zambia from a Human Rights perspective. The nature of human rights demands that people should have discourse to systems not in control by potential abusers of rights and that nations be held accountable to other nations on the protection of the people they are obligated to protect. The international human rights framework allows citizens the right to pursue remedies even beyond national systems that may be compromised, ineffective or have limited national framework within which to operate such as is the case in Zambia.

Distinguished ladies and gentlemen, H. E President Edgar Lungu said in his address to Parliament that we merely borrow from tomorrow's generation. To this end, the international human rights framework should be viewed as a framework to protect future generations from impunity. We wish to advise that the evils of withdrawal far outweigh the evils of belonging to the ICC. The danger of future generations being victims of impunity necessitates Zambia's belonging to the ICC.

Further, the ICC is a victim-centred court and therefore ensures that perpetrators are answerable for their actions regardless of status. In this unique system, victims can participate in ICC proceedings and receive reparations, including through the Trust Fund for Victims, to help rebuild their lives.

The international human rights framework also allows States Parties to legitimately seek support to end impunity carried out by non-state actors. Ratifying the Rome Statute commits nations to creating national laws to prosecute war crimes, genocide and crimes against humanity. Withdrawing would mean that Nations show less commitment to fighting these vices.

Recommendations

We would therefore like to make the following recommendations based on the overall proposal that Zambia should not withdraw from the ICC;

1. We wish to reiterate that Zambia must remain a member of the ICC. As stated in this position paper, the potential benefits far outweigh the evils of not being a member State. According to its jurisdiction, the ICC can only take cases related to genocide, crimes against humanity, war crimes and crimes of aggression under their investigation, which means that Zambia is under no realistic threat of being investigated or prosecuted under ICC. Its mandate primarily provides protection for the people, and by remaining a member of ICC Zambia has a chance of showing its commitment and support to the international human rights protection regime. Zambia must continue to be an example of a Nation that respects and promotes Human Rights and is not afraid to be accountable to the international community and to allow its citizens recourse to international mechanisms.
2. There is need for the Zambian government to develop a Human Rights Based Approach Policies to govern decision making processes at national and international level. When dealing with human rights the government must be custodians of the interests of its people. This means the government must make decisions based on the best interest of the people whether the people know it or not.
3. There is need to strengthen the national human rights protection framework to ensure that violations of human rights are comprehensively dealt with at national level before appeals to international bodies are made. To this end, there need to be investment in the Judiciary and greater support to the Human Rights

Commission of Zambia as well as other administrative and executive institutions. The government should review systems that ensure there are effective checks and balances and accountability amongst the various organs of the State as well as governance institutions.

4. There is need for Zambia to enact legislation that domesticates the provisions of all human rights treaties that reflect Zambian society. As stated already, Zambia is a dualist State and for people in Zambia to get the full benefit if the rights enshrined in international instruments, there is need to domesticate all the international instruments. Zambia must also take into consideration best practices in governance from an international and regional perspective so that it develops institutions that respond to the needs of the people before all else.
5. There is need for Zambia to establish administrative structures to complement cooperation with international bodies such as the ICC in line with the ICC recommendations to State Parties. Along with the domestication of international instruments, Zambia needs to strengthen existing administrative structures to increase interface and collaboration with international protection mechanisms. The Zambian Judiciary stands to benefit greatly from sharing information with other judicial bodies at both regional and international level. This will allow Zambia build a strong and independent Judiciary that is responsive of the needs of the people of Zambia and acts as custodians of the rights enjoyed by all persons.
6. There is need for the government to protect the submissions of citizens collected during the consultative process and ensure that whatever position it presents to the AU is a representation of the aspirations of the people of Zambia

We would also like to make the following recommendations targeted at the AU

1. The AU should consider establishing more citizen-centred decision making policies to ensure that the protection of the citizens' human rights is the primary consideration behind decisions. The decision to leave the ICC was in our view irrational considering the reasons forwarded. The evil of withdrawing is far greater than staying members of the ICC.
2. The AU should engage the Assembly of States Parties to the Rome Statute so that reforms are instituted to address some of the concerns raised as reasons for withdrawal. The AU had in the past issued statements expressing the desire to engage the ICC in order to initiate reforms. We would therefore recommend that the engagement with the ICC be exhausted before further decision is taken.
3. The AU should advocate for a permanent sit for Africa on the United Nations Security Council. This is in view of the fact that Africa is usually a recipient of most of the UN Security Council decisions. The African voice on the UN Security council ought to be amplified
4. The AU should further invest in regional human rights bodies to ensure that they are effective and are able to address the human rights situation in Africa. The African Court on Human and Peoples' Rights is as it is now, unable to address the offences that are within the jurisdiction of the ICC so that they are complimentary and do not seek to take away from each other. To this end the AU should invest in institutional learning between the courts so that the African human rights protection framework can be as comprehensive as the framework provided by the ICC.
5. There is need for the AU to specifically strengthen the African Court on Human and Peoples' Rights. We also identified that the African Court on Human and Peoples' Rights is significantly weaker than international and other regional institutions with regards the protection from grave human rights violations and international human rights crimes. There will therefore be need to invest more to strengthen the institutional setup of the Court as well as strengthen cooperation between national judicial and administrative institutions to ensure they are complimentary.

Targeted at the International Criminal Court

We make the following recommendations to the ICC through government. This is in view of the need for reforms in the ICC.

1. There is need to address the concerns raised by African States regarding the links with the UN Security Council particularly with regards cases that are recommended by non-members.
2. There is need for the ICC to explore closer links with regional judicial bodies to ensure the principle of complementarity is not just on paper but actually exists.
3. There is need for the ICC to increase efficiency to show nations that contributions are being utilized effectively.
4. There is need for the ICC in conjunction with State Parties and the UN Agencies to raise awareness amongst citizens of State Parties.

CONCLUSION

In conclusion, we would like to react to the following fears raised by states wishing to withdraw from the International criminal court;

1. Bias Against African Leaders

It is not enough to say that the ICC targets African Leaders. The AU should concern itself with the merits of the investigations on alleged violations of Human Rights abuses. The AU has not addressed the merits of the investigations and it is therefore troubling to advocate withdrawal from the ICC on that account. AU members are States Parties to the Rome Statute and therefore are part of the decision making organ of the body and should therefore be able to find discourse to rectify any flaws in the manner the ICC operates. An examination of the investigations carried out by the ICC will show that many of those cases have been at the insistence of the Countries concerned. Further, there have been human rights abuses in the cases investigated and the concern of AU members should be on African people and not avoiding investigation. The AU members advocating withdrawal further cite the non-investigation or lack of progress in the investigations in other countries cannot also be cited as a reason for withdrawal. The essence of the ICC having in place specialized departments is that before a case is opened there must be evidence to show beyond reasonable doubt that the people accused of a crime have indeed committed an offence. It is not objective for the AU to wish prosecution upon people to even out investigations rather than address impunity.

2. Indictment of Sitting Presidents

History has shown time and time again that it is often those in power that tend to commit the gravest of atrocities. Being in office should not shield a person from liability for grave human rights abuses. It is for this reason that the AU should focus on protecting citizens rather than shielding individuals in office. The ICC should not be considered a separate entity but should be seen as a court that compliments the national and regional institutions. This concern highlights a fundamental flaw with national and regional systems as they are often times biased towards those in high political office that may have perpetrated the offences. It should not be the interest of the AU to protect individuals or other office bearers but to protect the people of Africa.

3. Non Membership of Countries that Perpetrate Violations of Human Rights

Human rights protection demands that Nations take positive action to protect citizens. To point at the actions of States that are not part of States Parties to the Rome Statute takes away from the intentions of

signing the treaty. A treaty is signed by a country to show its commitments towards promoting and protecting human rights. The fact that some countries have not signed the treaty does not invalidate the spirit with which it was developed. Pointing at other countries as the reason for advocating withdrawal is a hypocritical and betrays the intentions of the people who are to be protected under the Rome Statute.

4. Inefficiency of the Court

The ICC is an investment towards future peace. Citing the courts budget is again aimed at distracting the people about the intentions of withdrawing. More than half of the courts budget is financed by European Countries. Further, the cost of the ICC should be considered by the cost paid by each individual country, and in the case of Zambia, the annual contribution is below ZMW150,000. This reason for withdrawal is African leaders placing a price on human rights and shows the lack of genuine commitment to protect the interests of the people.

Finally ladies and gentlemen, we would like to appeal to the government to ensure transparency and accountability in the whole process including at the AU summit slated for June/July, 2017. It is our hope that the aspirations and the will of the Zambian people be presented with regards to what position the country takes on Zambia's Membership to the ICC. As civil society, we strongly feel there is no reason as to why Zambia should withdraw its membership from the ICC. This is not withstanding the need to for reforms in the court.

We Thank You

Southern African Centre for the Constructive Resolution of Disputes-SACCORD

Operation Young Vote-OYV

ActionAid Zambia

Anti-Voter Apathy Project (AVAP)

Foundation for Democratic Process (FODEP)

Action Governance Forum (AGF)

Network of African Peacebuilders (NAPS)

Disability Rights Watch (DRW)

Jesuit Centre for Theological Reflection (JCTR)