



Submission

to the

**Portfolio Committee on Justice and
Correctional Services**

on the

**IMPLEMENTATION OF THE ROME STATUTE OF
THE INTERNATIONAL CRIMINAL COURT ACT
REPEAL BILL**

[B23 – 2016]

8 March 2017

Introduction

1. The Catholic Parliamentary Liaison Office (CPLO) welcomes the opportunity to comment on the Implementation of the Rome Statute of the International Criminal Court Act Repeal Bill. The CPLO is an office of the Southern African Catholic Bishops' Conference. It is tasked with liaising between the Church and Parliament/Government, commenting on issues of public policy, and making submissions on legislation.

2. The Catholic Church is firmly against South Africa's proposed withdrawal from the Rome Statute. We believe that it is a move which will undermine human rights, and confer not just immunity but impunity on tyrants and dictators. It will set back our country's commitment to building a culture of accountability both at home and abroad, and sully our reputation in the eyes of the world.

3. Above all, it will help to deprive some of the world's most vulnerable people of one of the few means by which they can bring to justice those who carry out ethnic cleansing, genocide and crimes against humanity.

The Lack of Rationale for Repeal

4. The Preamble to Act 27 of 2002, the Act which the government now seeks to repeal, reads as follows:

“MINDFUL that-

** throughout the history of human-kind, millions of children, women and men have suffered as a result of atrocities which constitute the crimes of genocide, crimes against humanity, war crimes and the crime of aggression in terms of international law;*

** the Republic of South Africa, with its own history of atrocities, has, since 1994, become an integral and accepted member of the community of nations;*

** the Republic of South Africa is committed to-*

** bringing persons who commit such atrocities to justice, either in a court of law of the Republic in terms of its domestic laws where possible, pursuant to its international obligations to do so when the Republic became party to the Rome Statute of the International Criminal Court, or in the event of the national prosecuting authority of the Republic declining or being unable to do so, in line with the principle of complementarity as contemplated in the Statute, in the International Criminal Court, created by and functioning in terms of the said Statute; and*

** carrying out its other obligations in terms of the said Statute;”*

5. We submit that nothing has changed since Parliament adopted these words and passed the Act:

Firstly, millions of children, women and men continue to suffer as a result of atrocities of the kind mentioned in the preamble.

Secondly, South Africa was already playing a peace-building role in various African countries in 2002 and in the previous decade. If those efforts were not hindered by our adoption of the Rome Statute in 2002, nor in the period between then and last year, we fail to see how they are now hindered.

Thirdly, to the extent that the ‘rule of international customary law’ which confers diplomatic immunity on heads of state is applicable to indictments issued by the ICC, it was applicable in 2002, when government introduced the law it now proposes to repeal. Thus the question of diplomatic immunity is not a new development that calls for a new response.

6. We further submit that no proper argument has been provided as to how Act 27 of 2002, and South Africa's obligations under the Rome Statute generally, actually 'hinder' the country's diplomatic and conflict-resolution efforts. Government has failed to offer any examples of actual diplomatic efforts, in Africa or elsewhere, which have been stymied, or which it has had to abandon, due to the provisions of the Act.

7. Neither has government been able to point to any successful diplomatic or conflict-resolution interventions achieved before the enactment of Act 27 of 2002, which would have been 'hindered' or made impossible by that Act.

8. In the absence of such examples, we submit that the cost of withdrawal – impunity for visiting tyrants, the serious undermining of an important international human rights instrument, and our alignment with some of the world's most questionable regimes – is far too high a price to pay for any putative and unspecified diplomatic interventions that may, or may not ever, occur.

Conclusion

9. It is worth noting that one of the few countries to have given notice of withdrawal from the Rome Statute in recent years was the Republic of the Gambia, under its former, and now-disgraced, President Yahya Jammeh. One of the first decisions made by his democratically-elected successor, Adama Barrow, was to revoke that withdrawal. We respectfully ask this committee to consider which of those precedents it wishes South Africa follow.

10. We close by quoting from a statement issued by Bishop Abel Gubuza, head of the Justice and Peace Commission of the SACBC:

“Now, more than ever, given the increasing levels of political instability, manipulation of term limits, and democratic reversals, Africa needs stronger deterrence mechanisms against genocide and other crimes that shock the conscience of humanity.”

11. We respectfully ask the Committee to reject the Bill.

For further information please contact:

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