

THE ICC CRISIS IN AFRICA: AN OPPORTUNITY FOR THE PHILIPPINES?

by Mark Edel V. Diaz

In October 2016, Burundi, South Africa, and Gambia withdrew from the International Criminal Court (ICC), a decision believed to be rooted in the Court's alleged bias against Africans. The ICC, thus far, has indicted 36 people – all of whom are Africans. Moreover, nine out of the ten investigations it is currently working on involve Africans. This has caused lingering doubt on the integrity of the judicial organization among Africans, with states such as Namibia and Uganda expressing their intent to pull out before and Kenya even proposing a mass withdrawal to the African Union. It is worth noting that the African bloc is the largest regional contingent, with 34 out of the 124 States Parties. Nevertheless, several countries continue to support the Court, such as Botswana, Côte d'Ivoire, Nigeria, Senegal and Tunisia. The change of leadership in Gambia earlier this year also called for a revocation of their withdrawal; while a judge in South Africa blocked the withdrawal and argued that it was unconstitutional. The differing opinions among Africans clearly signal an impending crisis for the ICC.

Whether or not the Court is partial against Africans requires a whole different examination. The more apparent concern in this case is the problematic relationship of the ICC with many of African States Parties that may be another manifestation of the current trend of neoliberal institutions becoming weaker and less significant. There were also initiatives, however, of expanding the jurisdiction of the homegrown African Court of Justice and Human Rights to try international criminal cases, although this is yet to be adopted due to financial and structural constraints. Also, the diminishing influence of the ICC is sure to impact the global fight against impunity and upholding of human rights and international law.

A domino effect?

The impending "mass exodus" has started to gain ground in some corners of the world, with state leaders outside Africa leading the way, as illustrated by the withdrawal of Russian President Vladimir Putin in November 2016 (although Russia never ratified the statute) and Philippine President Rodrigo Duterte's threat to withdraw after being criticized due to his policy on drugs. A withdrawal of the Philippines, however, requires senate approval before submission to the UN Secretary General, and it will only take effect after a year.

In any case, a withdrawal is a possibility as the West struggles to maintain influence over less powerful states in Africa and also the Philippines. While the interaction between the Philippines and many African states is minimal, they have shared experiences of colonialism and challenges encountered in the Global South. President Duterte was quoted echoing the same anti-West, anti-neocolonialist sentiment of African states, and he argued that the ICC failed to make the more powerful states accountable for their own atrocities. The disappointment in international institutions for its alleged partiality to the West would likely make the Philippines turn its back against the ICC. What does this mean for the Philippines?

Of gains and losses

There are more incentives for the Philippines if it remains a state party to the Rome Statute despite the impending mass withdrawal of African states. Factors for staying include (1) an opportunity to strengthen relations with Africa through the ICC, (2) its constitutional duty to uphold the rule of law and human rights, and (3) the necessity to maintain ties with a global network in a rapidly changing international environment.

Whatever happens to the cases of the three African countries after withdrawing from the ICC remains to be seen and they will experience the effects, should there be any, years after, and will only be the precedent cases for the Philippines. Still, a

withdrawal has moral repercussions on a state's image and foreign relations. These include: first, a perception of utter disregard for human rights, which is a benchmark of democracy; secondly, it can be seen as turning a blind eye for the victims of war crimes, genocide, etc. that can incapacitate the ICC, leading to a persistence of impunity. Finally, it may affect trade-related privileges and assistance tied to the promotion of human rights and good governance.

It is in the best interest of the Philippines to remain a state party of the ICC and support calls for the reform of the Court, which include a fair investigation of all countries involved in severe conflicts. This way, the Philippines can develop its relations with the countries from this continent, and at the same time, establish a good international posture in the fight for justice. In addition, the appointment of Filipino Judge Raul C. Pangalangan to the ICC in 2015 is an indicator of the Philippines' excellent relations with the Court; which in itself is an opportunity to take a more proactive role and steer the ICC towards a fairer and a more peaceful community of nations that uphold international law.

Meanwhile, the Philippine Constitution gives importance to the values of truth, justice, and human rights; figuring in the preamble and mentioned several times in the entirety of the document. As a democracy, it is vital for the Philippine government to uphold these values and live by this commitment – to do so is to honor its constitutional duty to provide a “just and humane society” and “promote the common good”. Moreover, the commitment to the ICC also easily dovetails with its principled support to the Responsibility-to-Protect (R2P) norm in the international community. In other words, a strong commitment to these ideals is warranted by Manila's domestic and international obligations – they are never mutually exclusive.

Nothing to gain, nothing to lose

The cloud of uncertainty surrounding international institutions and the persistence of conflict around the world has ushered in a very unpredictable environment. Antagonizing the international community is the last thing Manila wants to do. In this case, the better course of action is to cultivate existing networks and make more friends. This is very much possible through its membership with institutions like the ICC. Manila can do as much as to maximize the opportunities presented by these networks.

The absence of a strong international court poses a serious risk to human rights and impunity, especially in unstable autocracies. The ICC is the only permanent court that can initiate and conduct proceedings on large scale criminal acts, and its decline will be detrimental to the world in the long run. Therefore, it is best for the Philippines to rally behind the strengthening and reforming of the ICC, and be at the forefront of justice, human rights, and international law. Doing so will be good for its relations with African countries, its domestic and international responsibilities, and its global image. There is nothing to lose for staying, and nothing to gain from leaving. 🌸

Mark Edel V. Diaz is a Foreign Affairs Research Specialist with the Center for International Relations and Strategic Studies of the Foreign Service Institute.

Mr. Diaz can be reached at mvdiaz@fsi.gov.ph

CIRSS Commentaries is a regular short publication of the Center for International Relations and Strategic Studies (CIRSS) of the Foreign Service Institute (FSI) focusing on the latest regional and global developments and issues.

The views expressed in this publication are of the authors alone and do not reflect the official position of the Foreign Service Institute, the Department of Foreign Affairs and the Government of the Philippines.

The Center for International Relations and Strategic Studies (CIRSS) of the Foreign Service Institute (FSI) undertakes studies in support of the formulation, review, and dissemination of Philippine foreign policy. It also organizes conferences, roundtable discussions (RTD), lectures, and forums as channels for interaction, cooperation, and integration of the efforts of local and foreign experts from government, private and academic sectors on foreign policy issues and their domestic implications.

© 2017 by the Center for International Relations and Strategic Studies. All rights reserved.

