

International Day for the Elimination of Violence against Women

**Reception co-hosted by the Women's Initiatives for Gender Justice and
the Swedish Ministry for Foreign Affairs
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Thank you Ambassador Emsgård and thank you also to the Swedish Embassy and the Ministry for Foreign Affairs for co-hosting this event with us in support of gender justice and to mark the International Day for the Elimination of Violence against Women.

Today is a day to renew our shared commitment to the goal of preventing sexual and gender-based violence and holding those who perpetrate these crimes accountable. Violence against women is now recognised as the most widespread human rights violation in the world, and one of the leading causes of female homelessness, injuries and death around the globe. Clearly both institutional and individual leadership by states, are necessary elements for collective progress on this issue.

The 25th of November was officially designated as the International Day for the Elimination of Violence against Women by the United Nations in 1999 in honour of 3 women, the Mirabal sisters—Minerva, Maria Therese and Patria – who were assassinated on this day in 1960 for their work for human rights, political reform and an end to dictatorship in the Dominican Republic. Prior to their assassination they had endured harassment, detention and torture by the police on several occasions. Resisting this intimidation, they continued their campaign for civil rights until one evening when they were stopped in their car by members of the secret police and beaten to death. Far from ending the calls for reform, this act of violence fed the movement for political change and eventually led to the end of dictatorship and political transformation in the Dominican Republic.

For the Women's Initiatives, this is a day on which we, along with our 6,000 grassroots members who are women's rights and peace advocates in multiple armed conflicts and situations under investigation by the International Criminal Court, remind ourselves of the successes in advancing gender justice – including through the work of the ICC - and the challenges that remain, especially the limited prosecutions for domestic and sexual violence at the national level.

Witnesses

The Rome Statute system is intended to be rigorous in upholding the rights of the accused, meaningful for victims, and viable for witnesses. It is on the last point that I would like to spend a few moments. This year we have seen serious concerns regarding the safety of ICC witnesses; arrest warrants have been issued in two cases for six accused in relation to charges of corruptly influencing or attempting to corruptly influence witnesses; we have seen Defence Counsel call into question the credibility of witnesses, particularly witnesses of gender-based crimes, before they have even provided their testimony; and the identity of a protected witness, one who had testified about acts of sexual violence, was unlawfully disclosed in the media.

Attempts to caste participation in the ICC as unsafe for witnesses and attempts to intimidate witnesses before, during or after their testimony, are perhaps the biggest threats to the ICC, to the determination of truth and to the attainment of justice.

Whilst issues of the accused's presence at trial and the degree of participation have been dominant at this Assembly of States Parties, in our view, the counter-balance to these concerns is the

Women's Initiatives for Gender Justice



strengthening of provisions and increasing resources for the safety, relocation, and assistance for witnesses. This means supporting those individuals burdened with the responsibility of being a witness to serious crimes, who are willing to face the unfamiliar and unknown environment of a court room, and in some instances face threats and intimidation, but nevertheless persist in their commitment to testify. These are brave, solemn acts of heroism performed everyday by witnesses at the ICC and the ad hoc tribunals.

Not ordinary crimes

The crimes enunciated within the Rome Statute are not for every day offences. These are amongst the most serious crimes and constitute acts of violence which reach the threshold of crimes against humanity, genocide and war crimes. These are extraordinary crimes and therefore the cases before the ICC are not like those ordinarily heard in domestic courts around the world. As such, the solutions to the challenges in prosecuting and adjudicating these crimes cannot always be drawn from the domestic sphere. The Rome Statute and the ICC are intended to be more than the sum of their parts and allow room for and require innovation and adaptation to effectively prosecute crimes within its jurisdiction.

Those against whom charges have been confirmed and who therefore stand accused by the ICC, innocent until proven guilty, have been charged with crimes we have collectively deemed to be amongst the most serious and the most grave. This would suggest that there ought to be little room for exceptionalism.

Undoubtedly as the ICC has become operational and perhaps short-comings or gaps in the framework have been discovered, there may be a need for refinement. But there are two critical points we would like to note here and these are about process and intention. Firstly, in our view, the process and time taken for considering refinements, namely the process which involves the working groups of the Court and States Parties, together reviewing and considering proposed amendments, provides the kind of robust, thoughtful and measured approach the Statute and Court deserve.

Secondly, any changes proposed and adopted by States should be motivated by, and lead to, the strengthening of the operational capacity and impact of the ICC, safeguarding the integrity of the Statute, and guaranteeing the justice process is viable and safe for witnesses.

In reviewing the tribunals and special court, we can see that more often than not success for the justice process has been made possible when judges and prosecutors have had more, rather than less, latitude to apply and interpret their statutes and rules. Ultimately, whatever the framework and budget agreed to by States Parties this week, there must be room for the ICC to apply and interpret the Rome Statute and to have sufficient resources to effectively implement the complexity of its mandate.

Special Segment Debate

During the States Parties special segment debate last Thursday, we heard a lot about truth commissions, national efforts for dialogue and reconciliation and the suggestion that perhaps these could be recognised as fulfilling the complementarity principle of the Rome Statute.

In this regard, it is worth considering the thoughts of Archbishop Desmond Tutu, Chair of the South African Truth and Reconciliation Commission (TRC), who, in 2005 on the 10th anniversary of the creation of the TRC, expressed regret that South Africa had not pursued prosecutions and formal accountability within the Commission's framework. He reflected that while the reconciliation process had been critical in facilitating the testimony of more than 20,000 victims, the process had failed to prosecute those who were responsible for apartheid-era atrocities and had not engaged with the



TRC and sought amnesty on the condition of a full confession. Archbishop Tutu said, 'we probably should have done what the legislation requires and really prosecuted people'.¹

I think it is also important to note that truth and reconciliation mechanisms alone, have rarely benefited victims/survivors of sexual and gender-based crimes and domestic reparative and other reintegration initiatives have often been slow and at times less than effective, with few receiving reparations in forms which satisfied the wrong doing and addressed the impact of the harm suffered.

Although violence against women is one of the crimes for which impunity remains widespread, the Rome Statute and the deliberate and case-by-case work of the ICC provides us with a sound and rational basis for hopeful expectation.

I would like to end by quoting the Prosecutor of the ICC, Fatou Bensouda who said:

'Gender crimes are prominent in our prosecutions because they are prominent in the contexts being prosecuted. This only becomes remarkable against the backdrop of the prior and still prevalent norm of denying their existence, ignoring them and shaming victims. In other settings, it was as if there was a tacit agreement to look the other way while women and children were sexually abused. The body of the ICC's first cases, however, signals to the world that here, at least, this deal is off.'

¹ Tutu urges apartheid prosecutions, *BBC News*, 16 December 2005, available at <http://news.bbc.co.uk/2/hi/africa/4534196.stm>, last visited on 3 December 2013.

