

## ICC Is Too Young To Die At 20 And Must Not Provide Safe Passage For Regime Atrocity Perpetrators

**(Intersociety, Nigeria: 17<sup>th</sup> July 2018)**-It deeply troubles our heart that global institutions and other mechanisms for promotion and protection of human rights and global justice are steadily putting themselves in the danger list of extinction. Key among these international institutions is the International Criminal Court (ICC), created and adopted via Rome Statute in Italy on 17<sup>th</sup> July 1998. The ICC, with headquarters at The Hague, Netherlands; was principally created for the purpose of ending global impunity over crimes of grievous human nature including *genocide, crimes against humanity and war crimes*; and bringing their perpetrators to criminal or punitive justice.

First in the danger list of extinction is the United Nations (UN) which has clearly made itself a *global lame duck* in the midst of raging atrocities around the world perpetrated against hundreds of millions of vulnerable populations by atrocious home governments, their institutions particularly security agencies; and the atrocious non State actors especially genocidal armed opposition groups such as Nigeria's Boko Haram terror organization and Jihadist Fulani Brigades which operate under the color of Fulani Herdsmen.

Second in the global danger list of extinction is the United Nations Human Rights Council (formerly UN High Commission for Human Rights). The UN Human Rights Council is presently nothing less than a toothless international organization with acutely skewed global spread; mockingly described by critics as *United Nations Commission for Genocide and Atrocity Perpetrators*. The body recently lost the United States of America as one of its 47-member States and is presently facing acute shortage of at least 100 member-States of UN, out of its 193-member States to truly make itself a *global body for the protection and promotion of human rights*.

The most shocking is the fact that ICC has made the danger list of extinction as the newest endangered global human rights and justice institution facing extinction in just twenty years of its existence. Originally created to serve the global community and populations as "global human rights and justice police", it has been described by many critics as "representing the interests of atrocity perpetrators and abandoning the vulnerable populations including victims of genocide, war crimes and crimes against humanity". ICC is also seen by many pundits as having concluded its own funeral and set to die too young at 20, or in just twenty years of its existence". As a matter of fact, the international criminal justice body has little or nothing to show for twenty years of its existence.

It is recalled that ICC was created on 17<sup>th</sup> July 1998 when its Rome Statute was adopted or signed by 120 member-States of the United Nations, out of which 60 ratified or acceded to the Statute on 1<sup>st</sup> July 2002 when it entered into force. The Federal Government of Nigeria ratified the Rome Statute on 27<sup>th</sup> September 2001 thereby making it a fully fledged State-Party. As at 27<sup>th</sup> October 2017, 123 member-States of UN or others with observer status have ratified or acceded to the Rome Statute, out of which European States have 43 binding signatories including 18 members of former Eastern Europe and 25 members of former Western Europe. A total of 33 African States have ratified the Statute while 19 members of Asia-Pacific States and 28 Latin American and Caribbean States have also acceded to same.

Presently, 31 countries including USA, Russia and Israel have signed but refused to ratify the Statute while 42 others including China and Iran have neither signed nor ratified same. While two out of five permanent members of the United Nations Security Council (UNSC): United Kingdom and France have ratified or become State-Parties to ICC, three other members: USA, Russia and China have refused to do same till date. Republic of France ratified on 9<sup>th</sup> June 2000 and the United Kingdom on 4<sup>th</sup> October 2001. The trio of Germany, Italy and Japan which levied war against the world via World War II have also ratified the Rome Statute on 11<sup>th</sup> December 2000 (Germany), 29<sup>th</sup> November 1999 (Italy) and 17<sup>th</sup> July 2007 (Japan).

The Republic of El-Salvador is the last to have ratified the ICC Statute on 3<sup>rd</sup> March 2016. Presently, only four countries-Philippines, Burundi, South Africa and Gambia have indicated interest to leave or withdraw from ICC, out of which South Africa and Gambia rescinded their decisions to leave on 7<sup>th</sup> March 2017 (South Africa) and 10<sup>th</sup> February 2017 (Gambia). The Republic of Burundi withdrew temporarily on 27<sup>th</sup> October 2017 while Republic of Philippines has offered to leave by 17<sup>th</sup> March 2019.

Notwithstanding the rights of 43 UN member States that refrained from signing or ratifying the Rome Statute or 31 others that signed but refused to ratify same or any member-State opting to withdraw from ICC or has withdrawn from same; the Chapter VII of the United Nations Charter or under referral powers of the UN Security Council is mandatorily put in place to empower the UNSC to refer cases of grievous abuses of human rights or crimes of grievous human nature (genocide, crimes against humanity or war crimes) to the Prosecutor of ICC for investigation and possible prosecution. A typical example was Sudan which is not a State-Party to ICC but was investigated and indicted (its President and ors) over killings and other human tragedies in its Darfur Region.

Also governing authorities of member-States or non member-States of ICC under turbulent crises or State actor or non State actor engineered “complex humanitarian emergencies” or grievous human rights abuses are exempted from ICC jurisdiction and sledge hammer provided they credibly fulfill their obligations under the principle of complementarity and no impunity. Under the principle, founded on laws of natural justice; governing authorities in the troubled or gravely abused regions are mandated to use their national justice and other penal institutions to bring the perpetrators to justice and cater for the welfare of survivors including victims’ relatives or families.

Where it is credibly established that such governing authorities shield the perpetrators or collude with complicit non State actor violent entities in perpetrating such heinous crimes, or brazenly and blatantly display their inability and unwillingness to act using the internationally standardized national institutions; then the rights of such governing authorities under the principle of complementarity and no impunity can no longer be validly exercised; and as such, the jurisdictional powers of the ICC shall be fully invoked against the perpetrators and complicit governing officials or authorities.

This statement of ours, therefore, is necessitated by raging public outcries trailing the troubling invitation by the authorities of the ICC and the Government of Netherlands to the President of Nigeria; who is widely seen as regime atrocity complicit; to participate and deliver an official speech today, being 17<sup>th</sup> July 2018 at the 20<sup>th</sup> Anniversary of ICC holding at The Hague, Netherlands. The outcries by citizens of Nigeria and reputable local and international rights groups and the media are well founded. The invitation is also a serious indictment on the part of ICC for choosing to dine and wine with one of its potential defendants on the altar of bloods of thousands of defenseless citizens hacked to death in Nigeria since mid 2015.

It is recalled that we had on 15<sup>th</sup> April 2018 raised alarm and expressed deep dismay over suspicious visit to the Presidency of Nigeria by newly elected President of ICC, Judge Chile Ebue-Osuji. We had also warned that such suspicious and needless visit to a country and its central Government under multiple investigations by ICC is a serious threat capable of undermining independence and integrity of the Court. We also demanded from the ICC President the public disclosure of the purpose of such unholy visit. The statement, dated 15<sup>th</sup> April 2018 is here: <https://www.linkedin.com/pulse/icc-presidents-official-visit-accused-state-nigeria>. Three months after our expressed dismay, strong suspicion following same is now confirmed by latest sad development.

By recent investigative report of the Punch Newspaper (Saturday Punch of 14<sup>th</sup> July 2018), no fewer than 113 petitions were pending against present central Government of Nigeria, Boko Haram terror group and Government protected Fulani Jihadist Brigades operating under the colour of Fulani Herdsmen. The 113 petitions were filed at ICC as at December 2017. The Newspaper also disclosed that several groups across the country especially those in the old Middle Belt have threatened to or freshly dragged the Federal Government of Nigeria to ICC over persistent killings by armed Fulani Herdsmen and strong suspicion of Government involvement or collusion.

Aggrieved groups that have filed or threatened to file their petitions before ICC, according to the Newspaper, are the Maize Farmers Association of Nigeria, Adamawa State, the Farmers Protection Council, Taraba State, the Coalition of Middle Belt Ethnic Groups, the Plateau Initiative for Dev & Advancement of the Native, the Middle Belt Youth Assembly, the Christian Lawyers Fellowship of Nigeria, the Coalition of Benue socio-cultural groups comprising Mdgzou U Tiv, Idoma National Forum and Omi'Ngede. Others are Professor Agbo Madaki-a renowned Professor in Benue State, the Center for Human Rights & Social Justice, the Alaigbo Development Foundation (ADF) and the reputable law firm of Fein & Delvalle PLLC, based in New York and headed by a former Assistant Attorney Gen of USA, Mr. Bruce Fein; etc.

The 113 petitions so far filed and dozens of others being compiled for filing before the ICC by other aggrieved Nigerians are a strong message to ICC including strong recognition of the Court as last hope for tens of millions of defenseless Nigerians that have lost tens of thousands of their loved ones and remained endangered in the hands of atrocity perpetrators in the country. Volumes of petition filed and others in making also confer legitimacy and acceptability of the Court by common Nigerians who are traditional beneficiaries of the Court mandate.

Sadly and shockingly, the ICC has continued to disappoint the global vulnerable populations. The Court is disastrously outliving its usefulness in a shortest period of its existence and has woefully failed in the past twenty years by paltry attracting only 26 cases before it and issuing only 32 arrest warrants with nine people detained and fifteen remaining at large. In the Court's colossally failed twenty years of existence only nine appearance summons and six verdicts were issued; three cases dropped and eight convictions and two acquittals secured; all since 1<sup>st</sup> July 2002 when its operations commenced.

The raging outcries and protests by concerned Nigerians and others going on around the world are not only on account of the troubling invitation extended to Nigerian President but also against widely suspected compromise of the Court's integrity and snail pace of its work despite squandering tens of millions of dollars in its annual budgets with little or nothing to show for it. The Court's budget for 2018, for instance, is over \$147m, yet the vulnerable and threatened populations of the world are more threatened and endangered than before the coming into existence by the Court in 1998.

As for widely suspected complicit Nigerian governing authorities who are busy exporting their corruptible diplomatic lobbying beyond borders with capacity to pervert justice at international arena including the ongoing sad developments at the ICC; it must be clearly stated that there is no escape route for perpetrators of regime atrocities and aiders and abettors of those perpetrated by non-State actor violent entities.

No matter how long it takes justice must take its full course and be brought on the heads of the perpetrators. The governing authorities under reference who instead of fishing out perpetrators under their shield and punishing them using abundantly available national justice institutions, can continue to run from pillar to pole abroad especially at the ICC headquarters. But they must be lest assured by the apostles of justice that justice will one day catch up with those they are shielding or encouraging to kill, dismember, loot and plunder. This is more so when nothing lasts forever. Political power including political appointment is transient and never last forever. It is the same ICC that dines and wines with widely suspected atrocity perpetrators and accomplices today that will be used to secure justice for victims and other threatened populations at the appointed time.

No amount of pressure or diplomatic gimmickry can save any perpetrator fingered or involved in recent killings in Nigeria especially those massacred in Southeast and South-south, Northeast and the old Middle Belt Region including Southern Kaduna. ICC commenced its so called "preliminary investigations" on Nigeria as far back as in 2010, yet eight years down the line, the Court still wobbles and fumbles with more thousands of unprotected citizens sent to their early graves by Government and its collaborative non State violent entities.

By the findings of the US Committee on Foreign Relations (2018), Nigeria recorded over 53,000 killings since 2011 and almost 20,000 in the past three years. These killings would have been substantially prevented had ICC lived up its assigned mandate having commenced its endless investigations against the country's leaders and armed opposition groups since 2010. We hereby call on the authorities of the Court to retract their dying steps and resurrect the Court from its threatening coffin of extinction. We also call for joint efforts by all the apostles of justice across the world to save the Court from dying too young at 20.

It is very important to inform further that should the ICC decides to pronounce itself dead at 20, the Court is just one out of numerous other mechanisms available regionally and internationally to seek an end to reign of impunity for the perpetrators of regime atrocities and atrocious others under the colour of non State actors. Among such alternative mechanisms are:

- **Universal Jurisdiction:** Whereby some states have provisions in their laws granting their domestic Courts jurisdiction to investigate and try all persons, regardless of their nationality and their location or residence, suspected to have committed international crimes, even if such crimes were committed on the territory of another state against foreign nationals.
- **Jurisdiction based on Active Personality:** Whereby most national legal systems provide for jurisdiction over their own nationals suspected of certain international criminal activity, even if the crime(s) were committed outside their own borders against a foreign national.
- **Jurisdiction based on Passive Personality:** Whereby in a certain number of countries, laws provide for jurisdiction over any person committing certain international crimes against one of its nationals, even if the crime was committed by a foreign national in a foreign country.

**Signed:**

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