

Why Indonesia, Asia must ratify the Rome Statute

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Indonesia and other Asian countries have for better or worse to ratify the Rome Statute of the International Criminal Court (ICC).

Ratification of the statute will contribute to peace and security throughout the region as it will help end the culture of impunity for serious crimes both through the threat of international prosecutions and the strengthening of each country's national capacity to prosecute such crimes in the future.

The ICC is a permanent international court with the mandate to investigate and prosecute the most serious international crimes, namely crimes against humanity, war crimes and genocide.

However, the ICC's jurisdiction is limited to actions that take place within the territory of a member state, by the citizen of a member state or, in extreme circumstances, an action referred to it by the UN Security Council.

To become a party to the ICC, and subject itself and its citizens to the protection of court's jurisdiction, a country must ratify the Rome Statute, the international treaty that created the court.

Once a country ratifies the statute, the ICC then has the ability to investigate and adjudicate cases of serious crime, but only crimes committed after the country's ratification and only if the country itself proves that it is unable or unwilling to prosecute those crimes within its own domestic courts.

To date, Asia has the lowest number of member states to the ICC of any region, with only 17 countries having ratified the statute, compared with 33 African states, 26 Latin American states and 44 European and other states.

While ASEAN neighbors like Cambodia and the Philippines are among those 17 non-ratifying countries, Indonesia remains resistant to joining this important court.

Indonesia was initially set to ratify the Rome Statute in 2008, but has now rescheduled this commitment to 2013.

Why has Indonesia not yet ratified the Rome Statute?

A major reason for the delay in implementing Indonesia's plan to ratify the Rome Statute appears to be a lack of understanding of the ICC and its mandate.

If Indonesia joins the ICC, its national courts will still have primary jurisdiction to investigate and adjudicate questions of serious crimes. Indonesia will be able to hold the perpetrators to account and

justice will be served to victims of these serious crimes in its domestic courts.

It is only if Indonesia's own domestic justice mechanisms prove unable or unwilling to investigate and prosecute these, then the ICC would be able to step in to initiate its own investigations and processes, after first communicating with the government of Indonesia about these issues.

The ICC does not adopt retroactivity either. Therefore, it has no power to investigate old cases which occurred prior to the ratification of the Rome Statute, unless the state makes a specific request to extend the ICC's jurisdiction to an earlier date.

Past cases that remain sensitive will not be dealt with by the ICC, although they will remain issues of serious concern for national mechanisms.

Being an ICC member will help Indonesia overcome challenges to the country's fulfillment of human rights. Although our record has improved, in some areas of the country the human rights situation remains poor, particularly in Papua, where serious crimes are occurring but impunity is rampant.

Joining the ICC can help Indonesia improve this record, which will bring greater support from citizens and recognition from the international community.

Despite the ICC membership, citizens cannot take their cases directly to the ICC; rather, national courts are responsible to bring those responsible to justice.

The goal of the Rome Statute is not to interfere with national legal systems, except in extreme cases where countries fail to take the requisite steps themselves, and to urge and assist countries to fulfill their national and international obligations in relation to serious crimes.

By joining the ICC, Indonesia will send a clear message and demonstrate a desire to put the rights and safety of its most vulnerable people above the interests of a few who would profit through the abuse of others. Indonesia should no longer support the position of those who have committed the most terrible crimes against the innocent.

On Nov. 15-16, 2011, experts, government officials, prosecutors and civil society groups from Indonesia, Cambodia, the Philippines, Myanmar, Bangladesh, Timor-Leste, Thailand and Nepal, are convening for a two-day regional symposium in Jakarta to discuss challenges, strategies, lessons learned and the need for progress on prosecuting serious crimes in Indonesia and across Asia.

It will serve as a forum to share and learn for Asian countries, where serious crimes have been prosecuted, either by domestic courts, international tribunals, or "hybrid" courts — a mixture of domestic and international law and courts.

It will include discussions with international experts who have worked on domestic prosecutions of serious crimes in Europe, Latin America, Asia and Africa; and on prosecutions of serious crimes at the ICC, the International Criminal Tribunals for the former Yugoslavia and Rwanda, and the Special

Court for Sierra Leone.

Let us all hope that this important discussion will help spur our leaders to take the necessary steps to end impunity and provide justice to those whose access to justice has been denied for too long.

It is only through a commitment to justice and the rule of law that we will be able to create a strong, peaceful and prosperous Indonesia for all.

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