



European Parliament Seeks Africa Legal Aid's Counsel on EU Support for the ICC

Upon the request of the Committee for Foreign Affairs of the European Parliament and its Subcommittee on Human Rights, Evelyn A. Ankumah, Executive Director of Africa Legal Aid (AFLA), addressed the European Parliament on EU Support for the International Criminal Court concentrating on issues that are of real and practical significance for Africa. In her submission, Evelyn Ankumah had this to say to the European Parliament:



Evelyn A. Ankumah

Africa's Conviction to End Impunity for Crimes Offending Humanity

The ICC is a universal court. It embodies the universal conviction that perpetrators of crimes offending humanity ought to be held accountable before competent courts. This conviction exists in Europe, the Americas, Asia, and indeed in Africa. Recent developments in Africa, however, raise questions about the continent's commitment to the ICC and its ultimate goals of justice, and peace. Africa's political leaders, under the auspices of the African Union, (AU) have not hesitated to criticize the ICC and its Prosecutor, Luis Moreno Ocampo. They accuse the ICC of selective justice and of targeting Africans. Hence, the AU leaders condemn the arrest warrants against Al Bashir and Ghadaffi, and have openly declared that they will not assist the ICC in transferring the two rulers to The Hague. When State Parties, and in this case some 30 African States, refuse to live up to their obligations under the Rome Statute, the efficacy and decisiveness of the ICC are undermined. One of the challenges for the international community and for the European Union is how to persuade, urge, and require African States and their political leaders to do what they are supposed to do, and more generally, how to enhance the legitimacy of the ICC in Africa. How do we pursue and achieve criminal justice in Africa?

The AU's stance against the ICC does not imply that Africa as a whole opposes the Court. Formally, the African Union speaks with one voice, but beneath the surface there are other views among the leaders. In fact, some of the cases before the Court were referred by African States who saw the ICC as a body that can help Africa to strive at criminal justice. The open critique on the ICC by Africa only commenced when the United Nations Security Council referred Sudan and later Libya - two countries which are not State Parties to the Rome Statute - to the Court, and when arrest warrants were issued against sitting Heads of State in those two countries. The views expressed by the AU Heads of State do not reflect the views of all ordinary Africans. There are numerous Africans who support the ICC and see the Court as external assistance in their own internal conflicts and struggle against suppressive regimes. As so often in politics, the voices of the critics are louder than those of the supporters.



ICC Prosecutor Ocampo in Kenya

Selective Justice

Currently, all cases before the ICC are African situations. War Crimes and Crimes against Humanity are committed in other parts of the world too. So, as the critics ask, why are only Africans being investigated and prosecuted? The easy scapegoat is Prosecutor Ocampo. The criticism against the Prosecutor is not justified. The Prosecutor is doing his job, "collecting evidence and prosecuting those against whom sufficient evidence is found to be most criminally responsible". Yet, the ICC is seen by many not as an objective criminal justice

body, but as a politically influenced institute. If crimes allegedly committed by Americans in Afghanistan go uninvestigated and unpunished, then a possible conviction of an African by the ICC will not be perceived by many as international criminal justice being done in The Hague. The ICC may be just, but it is often not perceived as such.

An African for the ICC Prosecutor

A concrete issue now on the table concerns the election of the next Prosecutor when Mr. Ocampo's tenure ends. In December of this year, a new Prosecutor will be chosen. Debates and the required lobbying have started. Many Africans and the AU are of the view that the next Prosecutor ought to be an African. Much can be said in favor of an African Prosecutor. The choice for an African prosecutor could contribute to enhancing the legitimacy of the ICC, especially in Africa. On the other hand, caution seems warranted in view of the AU's stance against the ICC. One cannot exclude the possibility that enormous political pressure will be placed on an African Prosecutor. There is reason to support an African candidate – it could help the ICC and Africa. But a Prosecutor from Africa must fiercely guard her independence. A front-runner for the position seems to be the current Deputy Prosecutor, Gambian born Fatou Bensouda, who among other merits would bring continuity.

African Justice for African Crimes

Another suggested method for solving the ICC's legitimacy problem in Africa concerns the creation of a regional, African criminal law regime. This idea is not without merit. Preferably, justice should be done at home. Justice done at home offers greater guarantees for legitimacy. Yet, there is cause for some skepticism. So far, regional courts and quasi-judicial bodies in Africa have not been very successful or efficient. If a regional criminal court or chamber were to be created, it should supplement and certainly not substitute the ICC. Especially when it comes to the so-called bigger fish, one should not expect too much from a regional African Court. A universal court as the ICC will remain necessary to hold the bigger fish criminally accountable.

Justice Being Done at Home

The notion of Justice being done at home brings me to the role of national courts in the fight against impunity. Let's not forget that the ICC's jurisdiction is subsidiary or complementary to that of national courts. The number of

international crimes being committed far exceeds the capacity of the ICC. The bulk of cases will have to be handled by national courts with limited capacity, expertise, and resources. In many African countries, criminal law authorities already have difficulties handling ordinary crimes, let alone large scale international crimes. In conflict countries where such crimes are committed, and even in seemingly model democracies, the legal systems are often dysfunctional. Yes, the ICC is a key stakeholder to achieve criminal justice in Africa and ought to be strengthened with the necessary resources, but arguably more important is the need to improve the legal systems and judiciaries in African states.



African Union Summit

European Union's Support for Africa

The European Union and its Parliament have committed themselves to international criminal justice and rightly promote the ICC and should continue to do so. The EU is encouraged to urge African States to cooperate with the ICC. The EU should hold the AU and its member States accountable to their obligations under the Rome Statute, and, for example, not support the AU's request to the UN Security Council to defer the Libya situation on the basis of Article 16 of the Statute. At the same time, the EU could do more to strengthen national legal systems in Africa. It could do more to support African NGOs and Civil Society Groups in their outreach programs to bring the work of the ICC

closer to ordinary Africans. Work needs to be done to enhance the image and legitimacy of the ICC in Africa. We need to demystify the work of the Europe based ICC, and bring it closer to Africa and its people.



European Parliament

To read the full text of Evelyn Ankumah's submission click [here](#)

[back to top](#)



ACCRA - HERITAGE TOWER, AMBASSADORIAL ENCLAVE, OFF LIBERIA RD., RIDGE. P.O. BOX: P.M.B., TUC
ACCRA, GHANA

THE HAGUE - ZEESTRAAT 100, 2518 AD, THE HAGUE, THE NETHERLANDS

PRETORIA - 287 SKINNER ST. PRETORIA, TSHWANE. METRO CITY. P.O. BOX 392. UNISA 0003

[Unsubscribe for the Newsletter](#)