



"Africa and the ICC: One Decade On" | Africa and the ICC: Lessons Learned and Synergies Ahead

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Excellencies, Ladies and Gentlemen, Distinguished Guests and Colleagues,

I join previous speakers in acknowledging and commending Africa Legal Aid for its important contribution to advancing the course of international criminal justice. My thanks go to you Evelyn and your co-hosts for your unyielding commitment to this cause, for the organisation of this conference and affording me the opportunity to be here today amongst such distinguished

panellists and audience.

In just over ten years of its existence, the ICC, and in particular, the Office of the Prosecutor continues to forge ahead in its mandate of vigorously pursuing those who commit mass crimes that shock the conscience of humanity.

My Office has, and will continue to do so without fear or favour, guided only by the law and evidence, devoid of any political considerations, always subject to scrutiny by independent judges. In its efforts to deliver independent and impartial justice, the Office and the Court as a whole have recorded some successes, but have also faced their fair share of challenges.

Many of these challenges are natural for a relatively new player in the field of international relations, which is mandated by its founding treaty to be the nucleus of an ever emerging

international criminal justice system.

As an independent judicial institution operating in a highly politicized international environment, the ICC was bound to be viewed with scepticism. Its role and functions were bound to be misunderstood.

Challenging the status quo and bringing about a paradigm shift was not going to be easily accepted. Those who benefitted from the status quo were bound to be concerned by the new reality that it was no longer going to be business as usual – that indeed, war and violence as politics by other means now face the arm of international criminal justice.

Some may argue that the ICC failed to fully appreciate and take into account the international political scene in which, as a new player, it was trying to find its place. Others may make the curious argument that given this reality and that the Court's legal reach is limited in the absence of universal jurisdiction, the ICC should not intervene in places where it has jurisdiction – in effect, neglecting the calls of millions of victims whose rights and dignity have been trampled upon by mass crimes, and for whom the ICC represents the only realistic hope for justice and accountability.

Curiously, not even the strongest opponents of the ICC have criticised or can criticise it for stepping out of bounds or failing to operate within the four corners of its founding treaty. This only confirms that the ICC has been fervently executing the mandate given to it by the 122 States Parties, including the 34 African States that have ratified the Rome Statute.

The ICC is a fact of life and all players in the international arena must adjust their behaviour to the reality that this new player in the international scene is committed to fulfilling its mandate of ending impunity for mass crimes that tear at the fabric of society and threaten the peace, security and well-being of the world. The ICC is duty bound and committed to discharge this crucial mandate fairly, independently and impartially.

That being said, inter-institutional relations take time to build and nurture. For example, negotiations between the ICC and the European Union as well as the UN were protracted and difficult. The relations between the African Union and the ICC must thus be looked at from this broader context. It will take time, patience, perseverance and above all, commitment, for that relationship to be fully cemented. There is no question that these two important institutions can, in a complementary fashion and with full respect for their respective mandates, fully cooperate and support one another to promote and implement their critical work.

The relationship between the ICC and the African Union is fundamentally important, and we certainly hope and aspire to have stronger ties. In fact, the Court as a whole tries to engage,

as much as possible, and at different levels, with the African Union, to provide information and clarify misunderstandings about our activities when and where necessary.

Understanding and respecting each other's mandates is key to institutional relations. The ICC has a clear judicial mandate, while other players including the African Union have a political mandate. Political considerations have no place in judicial determinations and the Court has no role to play in political processes. What is important is for the respective political and judicial institutions to fully understand one another.

Communication, dialogue and exchange of views on issues of mutual interest are essential to institutional relations. The ICC's proximity to Brussels greatly facilitates dialogue between ICC and the EU. The presence of the New York Liaison Office provides the UN quick and easy access to the ICC, and vice versa. Indeed, most of the operational contacts and follow ups between the two institutions are carried out through the Liaison Office.

This model can be replicated at the AU Head Quarters to facilitate dialogue and exchange of views. It will be recalled that ICC's request for the establishment of such an office in Addis Ababa is still pending. It remains our sincere hope that this issue will be revisited soon. The establishment of such an office would go a long way in serving as a bridge between the Court and the AU, in facilitating dialogue; disseminating accurate information about the ICC and its activities and fostering collaboration between these important institutions.

In the meantime, efforts to enhance dialogue and promote understanding of each other's mandates continue at various levels. In July of this year, a joint ICC/AU Seminar was held in Addis Ababa. The main purpose of the seminar was to facilitate dialogue and provide an opportunity for frank and open discussions between the ICC and the AU, with a view to fostering understanding of the respective mandates of the two institutions, discussing issues of mutual interest and strengthening the relationship between the two institutions.

There was general consensus that this useful annual event, the third of its kind since 2011, should be replicated in the coming years. Similar initiatives have also been undertaken.

Ending impunity for mass crimes is not the preserve of any one institution – it is a common goal and aspiration that ties us all together in our shared quest for justice, peace and stability in Africa and beyond.

The unfortunate reality is that our Continent continues to witness some of the most brutal forms of violence, human rights violations and criminality. Even as we speak, thousands of victims continue to suffer the brunt of this brutality in Central African Republic, the Democratic Republic of the Congo and Mali, to mention a few. It would be an abdication of

duty if the ICC were to fail to exercise its jurisdiction, especially when it is called upon to do so by these states themselves, in the face of such brutality.

The dilemma we face is that every situation ICC is called upon to deal with will always be politically volatile. However, justice for victims of crimes committed in these situations should never be sacrificed at the altar of political expediency.

In this regard, the ICC is doing its part. In accordance with our mandate and following the meticulous gathering of evidence, we have investigated and sought the prosecution of individuals alleged to be responsible for the massive crimes committed in recent years. To be clear, we have investigated and prosecuted because we were called upon by the states concerned to do so and in particular because the 5 countries in question were either unwilling or unable to exercise their primary responsibility of investigating and prosecuting crimes in these situations.

In each case, we followed the letter and spirit of the Rome Statute, going through a painstaking process of ascertaining whether all conditions for the exercise of jurisdiction are met.

Respect for sovereignty and deference to any on-going national judicial processes is a paramount consideration in our determination of whether or not to proceed with investigations. Our assessments and decisions are subject to rigorous, independent review by judges and in most cases, the judges have confirmed that we have complied with all statutory requirements for proceeding with cases.

Accordingly, we have prosecuted Congolese warlords for the terrible suffering they have inflicted on innocent civilian populations, including the most vulnerable members of society like women and children; we have indicted Joseph Kony and his Lord's Resistance Army top commanders for the havoc they have wreaked in Northern Uganda and its neighbouring countries; we have held Jen-Pierre Bemba responsible for the massive campaign of rapes he allegedly allowed to take place in the Central African Republic while he was in command.

Our case against rebels who we allege attacked AU Peacekeepers in Haskanita is yet another example of how our justice mandate complements the AU's peace keeping mandate. It is a crime under the Rome Statute for anyone to attack those responsible for keeping peace between warring factions. The Haskanita rebels' case should be a clear message to would-be perpetrators that the ICC takes peacekeeping seriously and that it will not hesitate to take action against anyone who threatens fragile peace by attacking those assigned to keep that peace. This is clearly an area where more synergies between the ICC and the AU can be developed through cooperation and sharing of information.

Potential for more synergies exists in other areas. The AU's Five-Year Gender, Peace and Security Programme designed amongst others, to enhance protection of women in conflict and post-conflict situations in Africa perfectly fits into my Office's new Strategic Plan of enhancing the integration of a gender perspective in all areas of our work, paying particular attention to sexual and gender-based crimes and crimes against children.

against children. Attacks against civilians; sexual and gender-based violence in times of war; recruitment and use of children as soldiers, are just some of the examples where the ICC and the AU can work together. In addition to sharing our policies on some of these issues, we can contribute to enhancing the AU's efforts to stem the tide of these 6 scourges by sharing our expertise and experiences in the investigation and prosecution of these grave crimes.

In conclusion, let me stress that the ICC has never claimed the monopoly of justice. Given its limited infrastructure and resources, the ICC will not be able to and it was not designed to cope with the unlimited range of cases from all over the world including Africa.

We are a court of last resort and we shall cooperate with and support all genuine efforts aimed at bringing to justice, those alleged to be responsible for commission of mass crimes.

Let me however be clear: we shall not hesitate to assume our responsibility if those alleged to be responsible for these crimes, irrespective of their status or affiliation, are not brought to face genuine and real justice. We will do so wherever our jurisdiction is established, in Africa or elsewhere.

The wrath of war and violence neither spares nor is limited to race, sex, religion or regional alliance. It does not discriminate between East, West, North or South. Its misery on mankind has universal application as do the laws that have been created to bring method to the madness of war and conflict.

As a most proud African, let me state that it is an undeniable fact that accountability for mass crimes and the rule of law are vital to the stability, security and prosperity of the Continent. This recognition was very much alive when Africa played a prominent role in the establishment of the ICC, and it is this truism that needs to be fully embraced again. The sacrifice of our past, the great suffering of African victims and their hopes – indeed, our collective hope – for a more promising future demand a robust commitment to international criminal justice.

I thank you for your attention.

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