AFRICA AND THE INTERNATIONAL CRIMINAL COURT

Presented by Fatou Bensouda – Deputy Prosecutor –ICC-31 may 2007 Pretoria, SA.

Ladies and Gentlemen,

I wish to thank Africa Legal Aid and the Centre for African Renaissance Studies (CARS) of the University of South Africa (UNISA) for inviting me to join this debate, which relates to an important facet of our current activities. I will discuss with you today the relationship between the ICC and Africa, after which I would like to solicit your views and insights on how this relationship can be further developed.

As you may be aware, African countries played an important role in the negotiation of the Rome Statute of the Court, and the result of that process was a comprehensive treaty establishing the first permanent, international court to investigate and prosecute the most serious crimes of international concern.

Today, Africa is the single largest region represented in the Assembly of States Parties to the Rome Statute. This representation has continued to grow and there are currently 29 African States Parties (more than half of the membership of the African Union) out of a total of 104.

I am sure you are all aware that all of the active cases at the court today are in Africa as a result of referrals from African leaders and governments with the exception of Darfur, Sudan. Let me briefly update you on the status of our current cases to give you a comprehensive premise for our discussions this evening which primarily on Africa and The Internatinal Criminal Court.

On 19 April, 2004 the Prosecutor announced that he had received a **referral** from President Kabila of the Democratic Republic of Congo, a state party, about the situation of crimes within the jurisdiction of the Court allegedly committed *anywhere in the territory* of that State since the entry into force of the Rome Statute.

After a preliminary analysis of the situation in DRC to verify that there is a "reasonable basis to proceed with an investigation" (art. 53(1) RS) [(a) the alleged crimes fall within the jurisdiction of the Court, (b) that the case would be admissible and (c) that it is in the interest of justice to start an investigation], In June 2004 the Prosecutor announced his decision to **open the first investigation** of the ICC on the crimes allegedly committed in the territory of DRC after 1 July 2002.

DRC

DRC has been engaged in a long drawn out civil war and according to statistic up to 3 million citizens died, mostly from starvation and disease and the country eastern regions suffer militia violence.

Crimes allegedly committed include, but are not limited to massive killings, torture, sexual violence, recruitment of child soldiers

Recent Developments Regarding DRC and the Court

Thomas Lubanga Dyilo, the alleged founder and President of the Union des Patriotes Congolais (UPC) and alleged former Commander-in-Chief of the Forces Patriotiques pour la Libération du Congo (FPLC), was arrested in Kinshasa and transferred to The Hague on 17 March, 2006. Mr Lubanga Dyilo made his initial appearance before the Court on 20 March 2006.

On 28 August 2006, we filed before the Pre-Trial Chamber I the documents containing the charges and list of evidence against the suspect. We charged him with the war crime of conscripting and enlisting children under the age of fifteen years into armed forces or groups and using them to participate actively in hostilities, under Article 8(2)(e)(vii) Rome Statute.

The confirmation of charges hearing took place from 9 to 28 November 2006.

As President Kirsch once mentioned the confirmation hearing in the case against Thomas Lubanga Dyilo marks a milestone in the building of an international criminal justice system. Regardless of the outcome of this particular case, it will send an indication in the DRC and around the world that using children as soldiers is a very serious war crime that will be prosecuted.

The importance of the case against Thomas Lubanga Dyilo was elaborated upon by the Senior Trial Attorney, Mr Ekkehard Withopf, at the confirmation hearing. Allow me to briefly quote him:

> "The case against Thomas Lubanga Dyilo is a case about children. It is a case about young children. The Prosecution evidence will show that children as young as seven, eight and nine years old were also victims of these type of crimes.
>
> Many of the children were abducted. Abducted on the road, together with other children, in significant numbers. Abducted from schools. Abducted from their parents' houses. In the presence of their families.
>
> The families did not resist. They did not resist because they were threatened with death. They feared being killed.

> Other children joined the FPLC troops voluntarily. They did so for a variety of reasons, such as the desire for revenge of orphans whose families were killed by the militias opposing the FPLC. Such as the wish to gain social status. Such as the need for protection and shelter, and basic survival. Such as having access to food.
>
> The children were instructed to kill the enemies regardless of whether they were combatants or civilians. The commanders forced children, boys and girls, to fight at the frontlines. Forced by threats of execution.
>
> Many child soldiers were killed. Others were seriously wounded."

The Prosecution presented to the Court details of the individual cases of six children who were victims of these crimes. As the Prosecution showed, their experiences reflect those of hundreds of other children.

The first day of the Confirmation Hearing, the 9th of November 2006, was a landmark for international justice in many ways. For the first time in an international criminal tribunal, the views and concerns of the victims could be heard as conveyed by their legal representatives. The OTP believes their participation adds substance and meaning to the hearings.

Pre-Trial Chamber I of the International Criminal Court has confirmed the three charges brought by the Prosecutor against Thomas Lubanga Dyilo for the period from September 2002, when the *Forces Patriotiques pour la Libération du Congo* (FPLC) was founded, to 13 August 2003. Pre-Trial Chamber I therefore referred the case for trial before a Trial Chamber.

The Chamber decided that there is sufficient evidence to establish substantial grounds to believe that Thomas Lubanga Dyilo is criminally responsible as co-perpetrator for the war crimes of enlisting and conscripting of children under the age of fifteen years into the FPLC, the military wing of the *Union des Patriotes Congolais* (UPC) and using them to participate actively in hostilities in Ituri (Democratic Republic of the Congo) from September 2002 to 13 August 2003 and that Thomas Lubanga Dyilo and other high-ranking FPLC commanders shared knowledge of this and that all of them accepted the result.

Due to the recharacterisation of the conflict and other finding by the PTC, both the Prosecutions and the defense filed applications for leave to appeal the decision confirming the charges which has since been denied for both parties by the PTC.

Meanwhile and according to the RS on 6 March 2007 the Presidency of the International Criminal Court issued a Decision constituting Trial Chamber I composed of Judge

Elizabeth Odio Benito, Judge René Blattmann, and Judge Adrian Fulford. The case of The Prosecutor v Thomas Lubanga Dyilo has been referred to the new Trial Chamber.

While the Lubanga team continues preparation for trial, a second investigation team is pursuing crimes allegedly committed by another Ituri armed group. We expect to request arrest warrants during this first half of 2007. We are selecting a third case to investigate in the DRC. In addition to the situation in Ituri the Office continues to assess the situation in the DRC's other provinces. We continue to assess views and interests of victims, in particular to ensure that the main modes of victimization as assessed by those who suffered are adequately covered in our investigative activities.

The Northern Uganda situation

Three months before DRC's referral, on the 29th of January 2004, the Prosecutor announced that he had received a **referral** from President Museveni of Uganda about alleged crimes committed by a militant organisation called the *Lord's Resistance Army*. Uganda became a State party to the Rome Statute on 14th of June 2002. This was therefore a referral by a state party. (but investigation is to entire situation)

There were reports of horrific massacres of civilians in Northern Uganda. In reaction the Prosecutor said that he would soon announce the beginning of a formal investigation into these and other crimes.

An investigation was launched re this situation on 29 July 2004 for crimes allegedly committed and including, but are not limited to:

- Massive killings
- Recruitment of child soldiers
- Sexual enslavement
- Forced displacement

Developments

8 July 2005 – Warrants of arrest were issued against 5 LRA leaders – Joseph KONY, Vincent OTTI, Raska Lukwiya, Okot Odhiambo, Dominic Ongwen [1]

13 October 2005 – Warrants of Arrest unsealed (available on the website of the court), and we also requested Red Notices to be issued by Interpol.

In our application we have charged them for crimes against humanity (murder, sexual enslavement, rape etc) and war crimes (enlisting of children, attacks on civilians, pillaging etc)

The investigation is not concluded, and those bearing the greatest responsibility will be prosecuted, regardless of their affiliation.

We are carefully maintaining the connection with our witnesses and are in a continuous dialogue with the different communities affected by LRA crimes. We are also looking at allegations of serious crimes committed by other actors in Northern Uganda.

One of the militia commanders – Raska Lukwiya – was killed in a confrontation with the Ugandan army. At the request of the Government of Uganda, forensic experts from the Office of the Prosecutor helped to identify his body. While the four remaining LRA commanders are still at large, the Court has made a significant impact on the ground. This case shows how arrest warrants issued by the Court can contribute to the prevention of atrocious crimes.

The Court's intervention has galvanized the activities of the states concerned. Uganda and the DRC, parties to the Rome Statute and legally bound to execute the arrest warrants, have expressed their willingness to do so. The Sudan, a non-State Party, has voluntarily agreed to enforce the warrants.

As a consequence, crimes allegedly committed by the LRA in Northern Uganda have drastically decreased. People are leaving the camps for displaced persons and the night commuter shelters which protected tens of thousands of children are now in the process of closing. The loss of their safe haven led the LRA commanders to engage in negotiations, resulting in a cessation of hostilities agreement in August 2006.

The negotiations seem to be ongoing, we do not know yet the eventual outcome of these negotiations, but any solution can and must be compatible with the Rome Statute. In October the Government of Uganda wrote to the Registry to provide an update on steps taken to execute the warrants. They noted the challenges that they have faced in tackling the LRA and the importance of international support. They also reiterated their understanding of their obligations under the Rome Statute, and their objective to find a "permanent end to the violence that serves the need for peace and justice, compatible with [their obligations to the Court]."

Securing the arrest of the four remaining LRA commanders would prevent recurrent violence and provide justice to the victims. This is a core challenge facing the Court, the international community in general but Africa in particular. We all must ensure that the principles of justice and deterrence underlying the Statute are upheld. The victims have a right to peace, security AND justice.

The amnesty offered to those leaving the LRA and coming out of the bush, is a Ugandan initiative, not an initiative of the Court. Many members of the LRA have taken advantage of this offer to leave the group. In this context, it must be noted that the ICC is not limited legally in anyway by an amnesty given by a municipal jurisdiction. However, it must also be kept in mind that the Office of the Prosecutor has adopted a policy of prosecuting only those most responsible for the relevant crimes.

The Darfur situation

Situation Background

- UN: Darfur is "the world's worst humanitarian crisis"
- Militia's known as Janjaweed have allegedly targeted civilians from the African Fur, Masalit and Zaghawa ethnic groups.

Acting under Chapter VII of the UN charter the UN SC on the 31 March 2005 referred the situation in Darfur to the ICC

The OTP received materials from the International Commission of Inquiry into Darfur. As well as the conclusions of the Commission. The Commission reported that there were mass killings of innocent civilians, systematic rape of girls and women, and the burning of family homes. The Commission provided a list of 51 names. These names remain confidential and represent only the conclusions of that Commission. It is not binding on the Prosecutor and is not a basis for the identification of those persons to be prosecuted by the Court.

The Prosecutor on the 1 June 2005 launched investigation into the situaition pursuant to the said referral.

The Prosecutor reported to the Security Council on 29 June 2005, 13 December 2005 and 14 June 2006. (On matters such as the progress of the investigation, the functioning of domestic courts in Darfur etc etc.) *(We can urge them to read the reports*)

As the prosecutor pointed out to the Security Council recently, the continuing insecurity in Darfur is prohibitive of effective investigations inside Darfur, particularly in light of the absence of a functioning and sustainable system for the protection of victims and witnesses. The investigative activities of the Office are therefore continuing outside Darfur. Since the last report to the UNSC, the OTP has conducted over 70 missions to more than 17 countries

The OTP subsequently has filed the first application naming individuals and alleged crimes in relation to our work in Darfur. We selected the incidents during the period in which the gravest crimes occurred. Based on the evidence collected we identified those most responsible for these crimes.

The complexity of the conflict in Darfur makes our work very difficult: the conflict involves multiple parties, which are not easily distinguished by uniform or insignia, and whose involvement varies over time throughout the different states and localities.
In addition, because of the security situation, we had to investigate crimes committed in Darfur without going to Darfur. The Office reached this decision after a careful consideration of the duties to protect victims and witnesses established under article 68(1) of the Statute.

In spite of these challenges, The OTP has succeeded in collecting the evidence required to impartially investigate the crimes committed in Darfur, investigating exonerating and incriminating circumstances equally.

We have gathered a wide range of evidence, including statements from victims as well as statements from members of the Sudanese Government; materials provided by the Sudanese Government upon request of the Office; thousands of documents collected by the International Commission of Inquiry and information provided by the National Commission of Inquiry on Darfur. Our evidence includes documents generated by states and international organisations, including the United Nations Security Council and the Secretary General of the United Nations.

Reaching the victims was a priority for the OTP. We conducted 70 missions in 17 countries, screening hundreds of potential witnesses and conducting more than 100 formal witness interviews, many of which were with victims. We collected thousands of documents from various sources.

Concerning information provided by the Government of the Sudan, let me recall that the National Commission on Inquiry was established by the President of the Sudan in May 2004 to investigate human rights violations by armed groups in Darfur.

This Commission reported to the President of the Sudan in January 2005 and its report was made available to our Office by the Sudanese Government. The National Commission found, *inter alia*, that from 2003 to 2004 grave human rights breaches were committed by all parties to the conflict and that in Darfur murder and crimes against humanity had been committed by all parties to the conflict. The National Commission also established that many allegations concerning incidents of murder have been attributed to Arab militias generically called "Janjaweed," either acting alone or together with elements of the Sudanese security forces.

In addition, in May 2006 the Government of the Sudan provided a written report responding to questions submitted by the OTP. This report provides information on the various phases of the conflict from the Government's perspective, on matters relating to the military and security structures operating in Darfur, the activities of other parties to the conflict and the legal system governing the conduct of military operations. The written report was supplemented by a meeting between representatives of our Office and military officers in Khartoum in June 2006.

In August 2006 the Government of the Sudan facilitated an investigative mission to Khartoum. A senior trial attorney and a group of investigators from the OTP interviewed two high-ranking civilian and military Sudanese officials. By virtue of their positions, they had knowledge and information relating to the activities of the Government of the Sudan and the other parties to the conflict in Darfur.

Based on a careful and thorough source evaluation of all the evidence collected, we were able to identify the gravest incidents and some of those who could be considered to be the most criminally responsible. We reached the level of reasonable grounds required by the Statute to

prove different types of crimes against humanity (persecution, murder, wilful killing, rape or sexual violence, inhumane acts, beating, deprivation of liberty, torture, imprisonment or severe deprivation of liberty, destruction of property and forcible transfer of civilians) and war crimes (wilful killings, extra-judicial killings, rapes, intentionally attacking civilians, inhumane acts, **c**ruel treatment, outrages upon personal dignity and pillaging).

Before submitting our evidence to the judges, The OTP assessed the admissibility of the case. The admissibility assessment is case specific and not a judgment on the Sudanese justice system as a whole. The OTP has to assess whether the Government of the Sudan is conducting or has conducted genuine national proceedings on the same incidents and the same persons. The OTP requested information from the Government of the Sudan and other sources in order to assess admissibility of the case before proceeding further in accordance with our duties under the Statute.

On the 27th of February this year we presented evidence showing that Ahmad Muhammad Harun, former Minister of State for the Interior of the Government of the Sudan, and Ali Kushayb, a leader of the Militia/Janjaweed, jointly committed crimes against the civilian population in Darfur.

Based on evidence collected during the last 20 months, the Prosecution has concluded there are reasonable grounds to believe that Ahmad Harun and Ali Kushayb, (also known as Ali Muhammad Ali Abd-Al-Rahman) bear criminal responsibility in relation to 51 counts of alleged crimes against humanity and war crimes. The evidence shows they acted together, and with others, with the common purpose of carrying out attacks against the civilian populations.

The crimes were allegedly committed during attacks on the villages and towns of Kodoom, Bindisi, Mukjar, and Arawala in West Darfur between August 2003 and March 2004. The Prosecution has focused on some of the most serious incidents and the individuals who, according to the evidence, bear the greatest responsibility for those incidents.

In early 2003, Ahmad Harun was appointed as head of the “Darfur Security desk”. The most prominent of his coordination tasks was his management of, and personal participation in, the recruitment, funding and arming of Militia/Janjaweed – forces that would ultimately number in the tens of thousands. During a public meeting, Ahmad Harun said that as the head of the “Darfur Security desk”, he had been given “all the power and authority to kill or forgive whoever in Darfur for the sake of peace and security.”

The conflict involved rebel attacks on Sudanese Government installations in Darfur and a counterinsurgency campaign by the Sudanese Government against the rebels. The attacks carried out on towns and villages in Darfur did not target any rebel presence. Rather, they targeted civilian residents based on the rationale that they were supporters of the rebel forces.

The evidence shows that on several occasions Ahmad Harun incited the Militia/Janjaweed to carry out such attacks. For example, in early August 2003, prior to an attack on Mukjar, Ahmad Harun gave a speech where he stated that “since the children of the Fur had become rebels, all the Fur and what they had, had become booty” of the Militia/Janjaweed.

Ali Kushayb, an "Aqid al Oqada" ("colonel of colonels") in West Darfur, was commanding thousands of Militia/Janjaweed by mid-2003. The evidence shows that Ali Kushayb issued orders to Militia/Janjaweed and armed forces to victimise the civilian populations through mass rape and other sexual offences, killings, torture, inhumane acts, pillaging and looting of residences and marketplaces, the displacement of the resident community and other alleged criminal acts.

The Prosecution has devoted considerable resources to assessing the admissibility of this case. Although investigations in the Sudan do involve Ali Kushayb, they are not in respect of the same incidents or conduct that are the subject of the case now before the Court. Therefore, the case is admissible.

The Pre-Trial Chamber I has thoroughly reviewed the evidence and have determined that there are reasonable grounds to believe that the named individuals committed the alleged crimes, they decided on issuing Arrest Warrants against Ahmad Harun and Ali Kushayb as the best manner to ensure their appearance in court.

Ladies and Gentlemen, I have just given you an overview of our ongoing investigations in DRC, Uganda and Darfur. As you also know, the Office of the Prosecutor for the past 18 months continued to assess the situation in CAR following a referral by that government and last week the Prosecutor announced the opening of an investigation into that situation making it our fourth in Africa.

Analysis

Let me briefly mention our work in the analysis of possible situations to be selected. We are developing clear selection criteria in accordance with the Rome Statute. After extensive consultations, in June of this year, we issued a document describing the standards to select situations and cases.

In February 2006 the OTP Office dismissed the communications related to crimes allegedly committed in Venezuela and crimes allegedly committed by nationals of 25 States Parties in Iraq. With regard to Venezuela, we concluded that there was not a reasonable basis to believe that the alleged crimes fell within the jurisdiction of the Court. With regard to Iraq we concluded that the alleged crimes did not reach the threshold required by the Rome Statute. In addition, national proceedings had been initiated by relevant states.

The situation in Côte d'Ivoire remains under analysis. The Office has endeavoured to carry out a mission in Cote d'Ivoire during 2006 for the purpose of preliminary examination. The Côte d'Ivoire government has agreed in principle that a visit can take place but postponed a planned mission earlier this year. We continue to believe that such a mission would be of considerable importance. We will contact the Government of Côte d'Ivoire and renew our request.

In addition to the two situations I just mentioned, analysis work is continuing concerning three additional situations but this work remains confidential at this stage.

Let me now turn to our core discussions this evening, Africa and the ICC. I would straight away like to highlight that:

ICC core values are consistent with African norms

and I am sure that at the end of this presentation you will all agree with me.

It is clear that even those African countries that are not yet States Parties to the Statute share our objective of working for greater accountability. The following examples clearly demonstrate this:

- The Constitutive Act of the African Union provides that the organisation shall function in accordance with the rejection of impunity, among other principles. The Strategic Plan of the AU Commission for 2004-2007 lists advocacy for the ratification of the Rome Statute by all Member States as a core commitment.

- The July 2006 decision of the Assembly of the African Union mandating the Senegalese Government to proceed with the prosecution of Hissene Habré shows the will to support accountability rather than tolerate impunity.

- In his report to the PSC at its 45th meeting on 12 January 2006, the Chairperson of the African Union, Professor Alpha Oumar Konaré, stated that "there can be no lasting peace and reconciliation in Darfur without combating impunity".

- The PSC, at its 46th meeting held on 10 March 2006, adopted a decision on the situation in Darfur in relation to a number of important issues, including peace and justice. In particular, the PSC "urged the Government of the Sudan and the rebel movements to "cooperate with the Office of the Prosecutor of the International Criminal Court…and to take all necessary steps to combat impunity to ensure lasting peace and reconciliation in Darfur".

- Meanwhile, the African States Parties affirmed their support for the Court in a Statement to the UN General Assembly on 9 October 2006 and underscored the need for the international community to extend itself in supporting the Court.

As we continue our assessment of how the relationship **between the Court and African countries has evolved, it becomes clear that the ICC's involvement in Africa has been the result of African leadership.** In three cases (DRC, Uganda, and CAR), investigations were initiated following referrals by the national authorities. A non-State Party, Côte d'Ivoire, has also made a declaration of acceptance of the Court's jurisdiction.

One criticism which is frequently levelled at the Court is that there is a bias towards investigating situations in Africa to the exclusion of others. In response to this, I would point out the following:

- **The ICC is not targeting African countries; its focus on Africa is first a matter of jurisdiction:** The scope of ICC jurisdiction is linked to accession by States Parties: 29 African states have ratified the Statute compared with 12 Asian states and only 1 in the Middle-East.
- The selection of situations is based on legal criteria of jurisdiction, gravity, admissibility and interests of victims.
- The Prosecutor cannot be influenced by factors such as a need to respect geographic balance.
- In a number of cases, especially outside Africa, the ICC has no jurisdiction over the crimes committed as the states concerned have not ratified the Statute.
- The Office of the Prosecutor is granting attention to any situation in the world where crimes falling under the ICC jurisdiction allegedly are committed. The Office receives communications on alleged crimes committed all over the world and analyses each of them with the same care.
- As our decisions in relation to communications on allegations of crimes committed in Iraq and Venezuela have shown, the OTP analyses situations all over the world within the boundaries of our mandate.

In initiating the investigations which are currently ongoing, the Court is responding to the victims' calls for justice. The stories of those in Africa who have suffered as a result of crimes committed against them have been transformed into evidence to unveil the truth. The function of the Court is to enforce accountability and, by involving victims meaningfully during the course of its work and taking their views into account, the Court seeks to position itself so that its work and methodology remain relevant to their interests and, to the extent possible, address their legitimate concerns. **This approach constitutes an important acknowledgement that it is principally on behalf of the victims that the Court acts.**

Ladies and Gentlemen,

I would like to briefly outline the initiatives which the OTP and the Court in general have taken in relation to cooperation in Africa. The Court has been active in engaging African leaders on cooperation:

- The Prosecutor has met with the Presidents of five African countries involved in seeking a solution to the conflicts in the Great Lakes region. He has also met

with the Chairperson of the AU Commission and the Commissioner for Peace and Security.

- The OTP, together with the Presidency, briefed the PSC in June 2006. The Registry joined the Presidency and the OTP in a briefing to the Permanent Representatives' Committee in March this year.

- In October, the Prosecutor briefed the African Friends of the Court in New York on the Office of the Prosecutor's official report of the activities for the last three years, as well as the prosecutorial strategy.

- The President, the Prosecutor and the Registrar met with the African Group in The Hague last month and exchanged views on cooperation and other issues relevant to the Court's work.

- A meeting with President Kufuor of Ghana, in his capacity as Chairperson of the African Union, will take place in June this year.

- The OTP is trying to encourage dialogue on the African continent on the interface between peace and justice and an important conference is being organised by AFLA in Ghana in June to which the OTP is participating at the highest level.

The key objective of the Court's work in developing relations with African countries is to build relationships which will result in support at both the strategic and operational levels. We are also keen to contribute to an improved understanding of how the Court works and the challenges it faces, which is important in building the trust of victims of crimes and affected communities.

Given that African countries have a significant stake in the Court, successful cooperation with them will greatly enhance the effectiveness of the Court and help to ensure the success of the Rome system. Let me share with you some reflections on how I think the AU as a regional body can cooperate with the court.

Some reflections on how the AU and the Court can cooperate, and how the AU can assist the Court

Cooperation

For the Court, there is considerable potential for meaningful cooperation in both strategic and operational terms. Strategically, the AU's open support for ending impunity is extremely valuable, as are other initiatives which would contribute to the realisation of

the Court's goals, such as assistance in strengthening the capacity of national systems to investigate and prosecute crimes within the jurisdiction of the Court.

Indeed, in accordance with the important principle of complementarity, the Court only acts (primarily in relation to individuals bearing the greatest responsibility for the most serious crimes), where the national authorities are not investigating or prosecuting crimes within the jurisdiction of the Court or are unable or unwilling to genuinely do so. The Office of the Prosecutor and the AU could meaningfully cooperate in encouraging national authorities, as appropriate, to assume their responsibility by investigating such crimes themselves, thus obviating the need for an international investigation and prosecution.

Speaking for the Office of the Prosecutor, the African Union and the OTP could also exchange views on and discuss comprehensive approaches to justice and reconciliation, including more traditional reconciliation systems.

The Office of the Prosecutor could also work with the AU to support international cooperation with domestic efforts to combat impunity.

The Court's need for **specific forms of assistance in carrying out its activities** must be understood in light of the fact that it does not have an enforcement mechanism. The implications of this reality are that the Court must build durable support networks as it is heavily reliant on the assistance of various international actors, including the AU.

With regard to the specific forms of assistance which the AU could potentially provide, the following are worth mentioning explicitly:

- Exchange of information and undertaking consultations with the Court on matters of mutual interest. The AU can, for example, help the Office of the Prosecutor to better understand the context of specific countries in which it is analysing (or already investigating) crimes. Similarly, the Pan-African Parliament, to the extent that it is involved in such matters, would also add value by sharing its perspectives, as well as any relevant information.

- Assistance in relation to the protection of staff, victims and witnesses, as the case may be.

- Administrative and logistical assistance where practicable.

- Encouraging Member States to facilitate the activities of the Court, through, for instance, co-operation in the areas of judicial assistance, the arrest and surrender of persons and the identification and transfer of witnesses and victims. Support for the execution by States of arrest warrants issued by the Court is of particular importance.

- Encouraging various AU bodies to assist the Court as appropriate. Peace support or peace monitoring operations, such as AMIS, for instance, are able to provide unique assistance because of their presence on the ground. Such support could include logistical assistance as well as the provision of information which would assist in generating evidence.

- Encouraging Member States to ratify the Rome Statute.

- Assisting Member States who are States Parties to the Statute in incorporating its provisions into their respective national legal systems.

Assistance on this basis would help by delivering practical support and by placing the Court in a position where it is better able to take proper account of all factors which may have a bearing on the operational context.

Challenges

Even as we acknowledge the positive prospects of cooperation, I must mention that there are significant challenges to be overcome or managed.

The very character of the two institutions renders cooperation vulnerable to the inevitable tensions which exist between political organisations and judicial bodies. The challenge would be to create the necessary space, in such an environment, for cooperation to function effectively.

In this regard, one of the main challenges for cooperation is that not all AU Member States are State Parties to the Rome Statute.[2] Consequently, politically contentious investigations will often present special problems which restrict the scope for cooperation and for comprehensive approaches to justice, peace and reconciliation.

These difficulties are themselves compounded by yet another challenge (not peculiar to the AU), namely the need to work around areas where the organisations' mandates place emphasis on different issues and where established procedures would otherwise make meaningful cooperation difficult.

Conclusion

Let me conclude by saying:

We firmly believe that cooperation between the AU and the Court can be of mutual benefit. In this regard, I wish to emphasise our view that collaboration between the Court and the AU should seek to build **strong cooperation on a broad basis** rather than to secure *ad hoc* assistance.

We therefore also hope that the discussion on the draft agreement can be finalized in the near future. Meanwhile, though, interaction and cooperation on specific issues can and should continue.

I would conclude by stressing that cooperation is likely to become ever more important as the Court takes on additional work and the African Union becomes more active in matters related to justice, peace and security. While respecting each other's mandates, working methods and limitations, a great challenge lies ahead of us, namely to generate synergy towards the pursuit of justice.

Finally,

The Lubanga hearings, the impact of the warrants in Northern Uganda, and the Darfur Application illustrate the development of a permanent system of international criminal justice.

The Court is becoming a more complex and multifaceted organisation in which judges issue rulings, victims participate in proceedings and, in due course may receive compensation, and States Parties' support is needed in all areas, notably in securing persons against whom arrest warrants have been issued.

In Rome the drafters created a new system of international criminal justice. Now we are moving to its implementation in practice. This is our common challenge. The debate whether justice should form part of the global efforts to bring peace and security over since Rome. The international community had decided in Rome.

The Office of the Prosecutor will focus on the proper selection of situations and cases, on an impartial and independent investigation taking into account the interests of victims and on a high quality prosecution. This will be our role in ending impunity for genocide and other human rights atrocities.

I now look forward to hearing your views on the issues which have a bearing on the relationship between the Court and Africa and I hope that we are able to have a candid and enriching exchange of views on this very important part of the Court's work.

Thank you.

[1] On 6 July 2006, Pre-Trial Chamber II of the ICC unsealed the results of DNA tests conducted on the corpse reported to be that of Lord's Resistance Army commander Dominic Ongwen. The DNA results are negative, meaning that the body is not that of Dominic Ongwen.

Media reports indicated that on 30 September 2005 Dominic Ongwen was killed in Soroti District, North-Eastern Uganda. The Ugandan Government requested the assistance of the Office of the Prosecutor to conduct DNA tests to confirm the identity of the body as the original identification was complicated by the poor condition of the body.

LRA commander Dominic Ongwen is charged by the ICC with seven counts of War Crimes and Crimes against Humanity. Interpol issued a Red Notice for the arrest of Ongwen on 1 June 2006.

The Office of the Prosecutor considers Ongwen to be at large.

[2] Twenty-six members of the AU have not ratified the Statute.