

Deputy Prosecutor's remarks

**Introduction to the Rome Statute establishing the ICC and Africa's
involvement with the ICC**

14 April 2009

Ladies and Gentlemen,

Let me start by thanking the International Bar Association for this invitation, as well as for the opportunity to address you all today.

The International Criminal Court was created 10 years ago in Rome. It was built upon the lessons of decades when the world had failed to prevent genocides, in Europe and in Africa. It was built upon the simple recognition that all the old recipes to stop violence and conflicts – amnesties or golden exiles for dictators, sharing of power with massive criminals – just did not work.

The International Criminal Court is a new instrument of peace in a world where conflicts transcend borders. The ICC is not only about altruism, it is also about our self-interest. If States don't deal with massive crimes, there are no safe borders for the global community. A global problem needs a global solution. The ICC is more than a Court; it is a comprehensive and global criminal justice system.

In Rome in 1998, participants including civil society and countries with different legal traditions debated the creation of the Rome Statute from different perspectives, but all shared the same sense that this Conference was not just an exercise in putting ideas on paper. They knew that the new legal design would profoundly impact the way international relations are governed. Accountability and the rule of law would be the framework.

Under the Rome Statute, substantive law has been codified into one detailed text; States have reaffirmed their duty to prosecute the worst criminals; an independent, impartial and permanent International Criminal Court has been established; and authority has been vested in the Court to intervene if States fail to carry out their own responsibility to conduct genuine proceedings, while at the same time providing an incentive to States to assert their own responsibilities in the cause of international justice. The Court is complementary to national jurisdictions. But let us understand well the meaning of complementarity: if the States do not prosecute those most responsible, the ICC will do it. Impunity is not an option.

Furthermore, the drafters of the Rome Statute clearly recognized the intrinsic link between justice and peace. As stated in the Rome Statute Preamble, by putting an end to impunity for the perpetrators of the most serious crimes, the Court can and will contribute to the prevention of such crimes, thus having a deterrent effect.

As you may know, 30 African States are States Parties to the Rome Statute, which clearly demonstrates the high level of responsibility expressed by African States. In February 1999, Senegal became the first State Party to ratify the Rome Statute. Africa's commitment to the ICC, and to the cause of international justice, has never decreased.

In Rome, the Nigerian Attorney General and Minister of Justice, H.E. Mr. Alhaji Abdullahi Ibrahim, stressed this new vision of a fundamental link between justice, accountability, and international peace: *"We are convinced that the establishment of an effective international criminal system complementary to national criminal justice systems would contribute towards the maintenance of international peace and security."*

The South African Minister of Justice stressed this new vision of a fundamental link between justice, accountability, and international peace: *"We believe that the establishment of such a court would not only strengthen the arsenal of measures to combat gross human rights violations, but would also ultimately contribute to the attainment of international peace."*

As an African deputy Prosecutor, I regret that commentators too often present the AU position as opposing the Court and promoting impunity. I regret the rumors spread on African disengagement or even withdrawal from the Statute. I often remind my interlocutors of Tanzanian President Kikwete remarks when, as President of the AU, he stated at the UN General Assembly that *"when we talk about deferment, we should not in any way be perceived as condoning impunity. Justice is a matter of essence"*. A similar position was

expressed to me personally by the former President of Botswana, Festus Mogae.

Following the Judges' decision on 4 March on the Prosecutor's application for an arrest warrant against Omar Al-Bashir, the African Union has continued to pursue efforts to ensure that justice is done for Darfur. The AU has played and must continue to play a leading role.

During its 12th ordinary session from 1 to 3 February 2009, the AU Assembly expressed *"its deep concern at the indictment made by the Prosecutor of the ICC against the President of the Republic of The Sudan"*, but it also decided to *"reiterate AU's unflinching commitment to combating impunity [...] throughout the entire Continent, in conformity with its Constitutive Act, [and to] condemn the gross violations of human rights in Darfur, and urges that the perpetrators be apprehended and brought to justice"*. Last month, twelve African countries proposed African candidates to be judges in the Court.

ICC core values are consistent with African norms. As the Tanzanian delegation stated at the last Assembly of States Parties in The Hague last November, on behalf of the AU, the ICC also reflects African forms of justice.

As Mr. Phakiso Mochochoko, Senior Legal Officer at the ICC, noted: *"No other continent has paid more dearly than Africa for the absence of legitimate institutions of law and accountability, resulting in a culture of impunity. Events in Rwanda were a grim reminder that such atrocities could be repeated anytime. This served to strengthen Africa's determination and commitment to the creation of a permanent, impartial, effective and independent judicial mechanism to try and punish the perpetrators of these types of crimes whenever they occur"*.

Ladies and Gentlemen,

Today, humanity is learning. After the Holocaust, the atrocities of the Khmer Rouge, and the Rwanda genocide, we are creating a global community based on respect for the law.

Today, the OTP has opened investigations into four different situations: Uganda, the DRC, Darfur, and CAR. These situations were referred to the Prosecutor, either by the State Parties concerned or the UN Security Council. The Prosecutor is also monitoring situations on four continents, including Colombia, Georgia, Kenya, Afghanistan and Palestine, with a view to determining whether or not to open an investigation on the basis of the Prosecutor's proprio motu powers.

The four situations where we have opened investigations represent the most serious crimes under the jurisdiction of the Court of concern to the international community. For the Prosecutor and myself, our mandate is clear. We have to apply the law.

As a result of the application of the law, we are prosecuting Thomas Lubanga for recruiting child soldiers.

We are prosecuting Joseph Kony and other leaders of the LRA for abducting children and transforming them into sexual slaves and killers.

We are prosecuting Germain Katanga and Matthew Ngudjolo for killing and raping civilians.

We are prosecuting Jean-Pierre Bemba, for a campaign of rapes and pillages.

We are prosecuting Harun and Kushayb for attacking civilians in villages.

We presented a third case in November 2008, regarding the alleged responsibility of 3 rebel commanders for crimes committed against AU peacekeepers in Haskanita on 29 September 2007.

As I mentioned earlier, a month ago, the ICC decided that Omar Al-Bashir should be arrested to stand trial for crimes of rapes, extermination and killings committed against millions of civilians in Darfur.

As a Deputy Prosecutor, and as an African woman, I am dismayed by suggestions that this Court is targeting Africans. This Court has indicted the President of the Sudan because he pursues the extermination of 2.5 million Africans. As the ISS Guide recalls, the struggle to fight impunity is not *"a neo-colonial exercise; it is one that has received support from, and has been shaped by, the people of the African continent"*.

This Court, in liaison with the African Union and the Arab League, two organizations publicly committed to fighting impunity, has examined for years whether the Sudanese authorities have investigated and prosecuted the massive crimes committed in Darfur. They have done nothing. Worse, they have condoned the rape of women and girls for five years, African women, African girls. This Court is defending African victims and will continue to do so.

Former President Mbeki of South Africa, as the leader of the AU panel, is in contact with Prosecutor Moreno-Ocampo. We explained to him that the ICC has conducted investigations against six individuals, including the three rebel commanders. There are no sealed arrest warrants and the Court is not conducting new investigations. President Mbeki has the huge task of moving the process of accountability ahead for all the other individuals involved in the commission of crimes. We are committed to working with him.

Consequently, initiatives to promote awareness and understanding in Africa about the role of international criminal justice, and the specific work of the ICC, such as this seminar, are extremely important. Different challenges are currently faced by international criminal justice, which justify the need for efforts such as this one. Let me briefly name some of them:

1. Cooperation

Cooperation is fundamental to the success of international courts and tribunals and securing cooperation for the implementation of their work is the most important challenge they face. It is necessary, for instance, to secure the service of warrants of arrest and their execution, as well as other measures, which is generally the preserve of the national authorities of the country where the accused persons are currently resident.

2. Reaching the affected communities

International tribunals and courts have been criticized for not reaching out enough to the victims and the communities.

It is a challenge. The majority of the international courts and tribunals operating today are geographically distant from the victims whose interests they represent. But even the ICTR, for instance, situated in Arusha, had to fight this perception that the proceedings are too far removed from the victims and affected communities to assuage the sense of injustice resulting from the crimes or to significantly impact on any initiatives for reconciliation and peace building.

Wherever a court is located, additional measures are needed in order to ensure that victims are well informed of its activities and to give a sense of ownership over the dispensation of justice by the very people whose lives were most affected by the crimes.

Based on the principle of complementarity, the OTP favours the development of African-driven initiatives, such as this IBA seminar for African lawyers, in order to promote awareness, but also to develop the national and local capacity and expertise in terms of justice and accountability. I want to thank the IBA once again for providing us with such an occasion. In our third case in the DRC for instance, we are working on all the groups active in the Kivus region. We are aiming at a coordinated approach whereby national judicial authorities in the region and beyond as appropriate will take over cases in order to ensure that all perpetrators are prosecuted. The possibility for us to

transfer information collected in the course of our investigations will depend on the development locally of protection for witnesses and judges. This is why the interaction of the Court with initiatives such as this one is so important.

In the long term, the success of the Rome Statute will be the effective prosecution of these crimes at the national level and the prevention of such crimes through ending impunity around the world. One of the tasks of the Prosecutor is to make it clear to States that he will do his part, but that a positive understanding of the idea of complementarity is essential. It is the key to the success of the system.

As Africans, we have drawn a universal lesson from the terrible crimes that have plagued our families, our communities, our continent; impunity is not an academic, abstract notion. This is true for Northern Uganda, Eastern Congo, the Central African Republic, Rwanda and Darfur. Impunity and the continuation of crimes are obstacles facing all actors engaged in helping Darfurians.

For our part, as the OTP, we stand ready to discuss mutual concerns and areas of common interest. We have met in several occasions with lawyers in Africa in various fora; lawyers engaged in the promotion of international criminal justice and the need to put an end to impunity for the most serious crimes of concern to the ICC. The OTP has also developed over the years informal cooperation networks with different partners, such as civic organizations, NGOs, academia, lawyers' associations... I have briefed last year the Southern African Development Community (SADC) Lawyers' Association in Botswana, for their annual conference.

In light of what is said in the ISS Guide, "it is imperative that today's African professionals who work in the area of international criminal law make use of the resources of the international criminal tribunals – to learn from the mistakes and the successes of the past, and to create innovative solutions for the future". Much can be done to increase awareness for international criminal justice and contribute to the enforcement of the rule of law.

I would be interested to hear your views on this.
Thank you for your attention.

