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"Lessons from Africa"

International Conference: 10 years review of the ICC. Justice for All? The International Criminal Court

Introductory remarks

Sydney
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Excellencies,
Ladies and Gentlemen,

Allow me to say a few introductory remarks before the start of what I am sure will be a very interesting panel discussion on the ICC and lessons from Africa.

It is no secret to all of you in this room that during recent African Union summits, international criminal justice has been put to the test. Past AU decisions included the refusal to cooperate with the ICC in the arrest and surrender of President Al Bashir and even the refusal of an ICC liaison office at the AU in Addis Ababa. Anti-ICC elements have been working very hard to discredit the Court and lobby for non-support, with complete disregard for legal arguments.

However, what is often under-stated, is that the practice clearly shows that engagement and cooperation of individual African states with the ICC has not diminished.

Over the last 9 years that we have been operational, African states have consistently helped us at each step of our activities: in the opening the investigations, in conducting the investigations, in pursuing and arresting individuals sought by the Court, in protecting our witnesses, etc. These are not just words. African States receive more than 50 per cent of our requests for cooperation. 85 per cent are met with a positive response.

I can give you examples of positive African engagement include:

- Uganda, DRC and CAR all referred their situations to the Court, requesting its intervention, thereby helping to start investigations without any controversy.

- All segments of Kenyan society have welcomed the Court's investigation into the post-election violence.
 - UNSC Resolution 1593, which referred the situation of Darfur to the Court, included positive votes of Benin and Tanzania and an abstention of Algeria.
 - UNSC Resolution 1970, which referred the situation of Libya unanimously to the Court, included positive votes from Gabon, Nigeria and South Africa.
 - In May 2011 President Ouattara of Côte d'Ivoire confirmed his wish for the Office of the Prosecutor to conduct independent and impartial investigations into the most serious crimes committed since 28 November 2010 on the territory of Côte d'Ivoire. At last December's Assembly of States Parties, Prime Minister Soro reiterated that statement and indicated Côte d'Ivoire's commitment to ratify the Rome Statute very soon.
 - In our Libya situation, we have received very good cooperation from the Libyan authorities, and we visited Tripoli at the end of last year.
- Let me remind you that African institutions and African people are largely responsible for building the system of international justice designed by the Rome Statute. The experience of centuries of suffering, including by the inaction of the international community in the 1990's with regard to the genocide in Rwanda and the Congo wars, made African states lead the discussions on the Rome Statute with the goal to end impunity for those grave crimes they suffered.
 - In 1998, the then President of Senegal, Abdou Diouf, facilitated meetings in Dakar leading up to the Rome Conference. As you know, Senegal became the first State Party to ratify the Rome Statute.
 - In Rome, the ICC was built, under the guidance of Kofi Annan, the then Secretary-General of the UN, as a matter of realism and as a form of protection.

- The same ideas are contained in African seminal norms. The Constitutive Act of the AU provides that the organization shall function consistently with the “condemnation and rejection of impunity”, among other principles and - quite extraordinarily - also provides for the right of the AU to intervene in a Member State in the event of war crimes, genocide and crimes against humanity. This is a unique provision in the founding document of an intergovernmental organisation.
- Currently, 33 African states are States Parties to the Rome Statute, therewith forming the largest regional group. African Judges are 28% of the Court’s bench. This clearly demonstrates the high level of responsibility expressed by African states.
- The total number of individuals subject to proceedings before this Court is 23. All of them Africans, that is true. Why? Because the Rome Statute says that we should select the gravest situations under our jurisdiction and there are also more than 5 million African victims displaced, more than 40.000 African victims killed, hundreds of thousands of African children transformed into killers and rapists, thousands of African victims raped.
- You are still asking why? Because the Rome Statute says that the Court shall only step in when the domestic authorities do not pursue accountability themselves. And in all the cases we selected, there were no such proceedings. When the legal criteria are met, the Office of the Prosecutor shall open investigations.
- The Rome Statute provides the Prosecutor with precise criteria to select situations to investigate; these are jurisdiction, admissibility and the interests of justice. They are explained in great detail in our prosecutorial strategies and our policy papers. I invite you all to consult these documents.

- It is the Prosecutor's independent determination that these three factors are met, which is the basis for a Prosecutor decision to start an investigation. In doing so, the Prosecutor does not take into account any political considerations. These, we continue to say, belong to other institutions, notably the UN Security Council. We as an Office of the Prosecutor, have to respect scrupulously the legal limits. Our policy is never to stretch the interpretation of the norms adopted in Rome. If the evidence says we should move, we will move, regardless of the situation or person involved, bearing in mind the Statute and our policy of focused investigations.

Ladies and gentlemen,

The world increasingly understands the role of the Court; Africa understood it right from the start. As Africans, we know that impunity is not an academic, abstract notion.

This African commitment to ending impunity is a reality and we have to find the way to focus our attention on that.

I look forward to hearing what the three distinguished panellists that will now address you have to say in this regard.

Thank you