



Cour
Pénale
Internationale
International
Criminal
Court

Le Président
The President

Remarks at Ceremony for Opening of Judicial Year

by

Judge Chile Eboe-Osuji

President, International Criminal Court

Friday, 18 January 2019

Chers Collègues et amis,

Au nom de tous les juges, des responsables élus et du personnel de la Cour, je vous souhaite la bienvenue à cette cérémonie solennelle qui marque formellement l'ouverture de l'année judiciaire 2019 de la Cour pénale internationale. Et je vous remercie d'avoir accepté d'être des nôtres.

La transition d'une année calendaire à une autre ne change pas le mandat de la Cour pénale internationale.

But it should afford us regular occasion for periodic reflection. So that we may, among other things:

- recall the responsibility that we bear;
- restate our commitment to the mission we have; and
- renew and reset the vigour and the clarity of vision with which we approach both our responsibility and our mission.

A key aspect of that clarity of vision often requires specific focus on the role of the Court and of the various operators whose own roles assist the Court to fulfil its mission and responsibility.

For the ICC, this requires clarity of vision as regards the mandate of the Court as stated or reasonably implied in the various provisions of the Rome Statute. Although that goes without saying, it is also true that the truism cannot be overemphasised.

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Allow me here, to focus on the over-arching – and defining – mandate of the Court, expressed in both explicit terms and reasonable implication.

That defining and over-arching mandate is accountability.

But what does accountability really mean?

Some may say that it simply means that a person must be punished for a crime that he or she commits. That would indeed be true.

But that simple proposition often does not tell the whole story of the meaning of accountability.

In its fuller import, accountability means first and foremost an assurance that no one is above the law. It means primarily that everyone, regardless of their station in life, must answer to the law.

This may sound prosaic and trite at times. But is it really so? We only need to consider that not so long ago, there was no permanent global mechanism – at the international level – through which individuals could have been compelled to answer to the whole world for their actions: when it was entirely impermissible to ask them such questions of accountability at home; because they were – to all intents and purposes – above the law. To a large part of humanity, beyond the ratification frontiers of the Rome Statute, that remains a matter of rueful reality.

Against that background, the dispensation of accountability then presents the counter-norm, which requires everyone – regardless of station or stature – to answer questions in the manner of reasonably founded allegations of wrongdoing made against them. And the exercise engages the due process of a transparent and fair trial.

In that exercise of accountability, all the various operators (present and represented in this Courtroom) have their respective important roles to play. Here, I particularly acknowledge the presence of the Prosecutor and the President of the International Criminal Court Bar Association (representing Counsel who appear both for the Defence and for the Victims).

- The Prosecutor has an important role in the process. She kicks off the process, by asking those questions of accountability that must be answered.
- The Defence Counsel have an equally important role. They assist the suspects and the accused in providing full answer and defence to the questions of accountability that the Prosecutor asks, by making sure that the questions of the Prosecutor and the manner in which they are asked are both fair and consistent with the law.
- Counsel for Victims also play an important role, in ensuring that the views and concerns and interests of victims are never overlooked.
- And, last, but not least, the judges have their own role to play as independent and impartial arbiters. They decide whether the Defence has satisfactorily answered the questions that the Prosecutor asked.

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And, here, it is important to stress a few things. First, in the judicial process of accountability, the Rome Statute does not require the questions of the Prosecutor to be given greater weight than the answers of the Defence.

Second, the Rome Statute does not require any particular outcome as a consequence of the judicial process at the ICC. The outcome must follow the process of the law. And here, the pivotal question is whether the evidence shows that the accused

person was proven guilty beyond a reasonable doubt. Proof beyond reasonable doubt does not ask whether the concurrence of news reports leads us to conclude that the accused person is guilty. It means – more exactly – that a reasonable person who has actually, fully and fairly reviewed the evidence on a first-hand basis, would simply walk away with a settled feeling in their hearts that the accused, a fellow human being, had committed the crimes as charged.

Third, the Rome Statute does not express the mandates of the Prosecutor, the Defence Counsel or the Judges in the manner of a promise, let alone a guarantee, of a conviction or an acquittal at the end of the day. It is enough that the prosecution was done with unstinted vigour tempered by due sense of fairness and responsibility; that the defence was mounted with resoluteness; that Counsel for Victims was given ample opportunity to present the views and concerns of the victims; and, that the judging was done impartially and according to the judicial conscience of each judge directed by their individual appreciation of the evidence and the law.

In the end, the Prosecutor, the Defence Counsel, the Victims' Counsel and the Judges would have discharged the responsibilities that the Rome Statute imposed upon them – regardless of the verdict.

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Ladies and gentlemen, it is incorrect to consider that the Prosecutor has failed or succeeded, depending on the outcome.

Indeed, beyond the normative appreciation of the meaning of accountability as described above, it is especially incorrect – as a practical matter – to take the view that an accused person has escaped with impunity if he or she was acquitted at the end of the judicial process of accountability that I have described above.

Indeed, such a view may overlook much too much. We may begin by accepting that the average trial of international crimes does not last a very short time. This is so, not only before international criminal courts, but also before such domestic courts as have made the effort.

In the meantime, the accused must endure not only the opprobrium of the indictment for such crimes: but also a general restriction of liberty in every case, even when the accused was not in detention during the process. And, quite naturally, the restriction of liberty is particularly onerous, if the accused was in detention for the duration of the trial.

Notably, all these encumbrances must be endured by the accused persons – even if he or she is defended on legal aid. But, imagine the weight of the burden if he or she must bear the legal costs of his or her own defence.

When all these are fully considered, it becomes doubtful that the reality truly warrants the view that the accused person had walked away with impunity, if he or she was not convicted at the end of it all.

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Ladies and Gentlemen, as we reflect on the mandates prescribed in the Rome Statute, we always take care at the ICC to underscore the mandate of the Trust Fund for Victims. That mandate underscores, in turn, the importance that the founders of the Rome Statute placed on reparative justice for victims of violations, even when the rigours of punitive justice norms make it difficult to convict anyone for the harm that the victims evidently suffered.

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In the same vein I must underscore the critical part that the Registrar and the staff play in the work of the Court. They keep the wheels of this institution running, often behind the scenes, unseen and unheard.

Their roles are too varied and too numerous to list here. It is enough to acknowledge their crucial importance – one and all.

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With these important roles in mind, I have invited the Registrar, the Prosecutor and the President of the ICC Bar Association to address us today.

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[REMARKS BY OTHER SPEAKERS; MUSICAL INTERLUDE]

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On behalf of my colleagues, I thank you once more for honouring us with your presence. It really does matter to us.

I now declare the ICC Judicial Year 2019 formally open.

The Court is adjourned.

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