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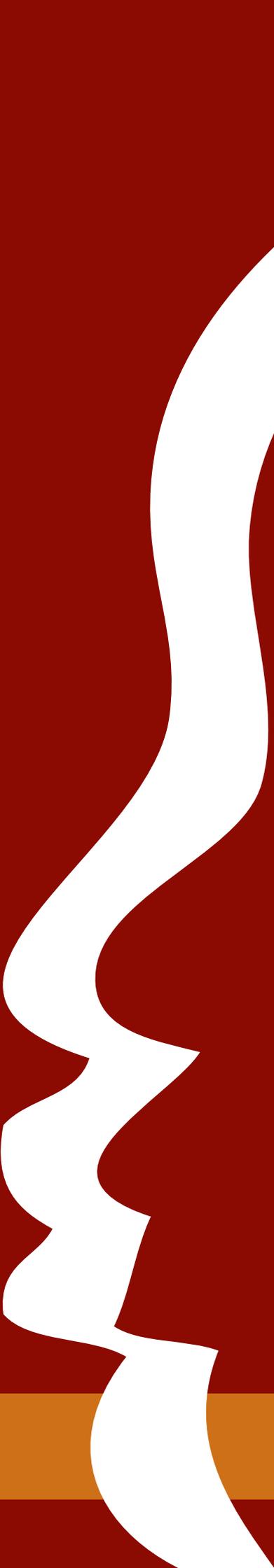
Speech at the African Leadership Centre's Simulation Seminar:

“A Season of Changes in Africa:
Is Africa's Voice Getting Louder?”

Ms. Fatou Bensouda

ALC Keynotes

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Fatou Bensouda is a Lawyer and former civil servant from the Gambia.

ALC Keynotes offer critical insights by eminent scholars and policy practitioners about Africa in relation to the rest of the world.

The **African Leadership Centre** (ALC) was founded by the Conflict, Security and Development Group at King's College London. It was established in Nairobi in June 2010 as a joint Initiative of King's College London and the University of Nairobi through its Institute for Development Studies. The overall goal of the ALC is to build a new community of leaders generating cutting-edge knowledge for peace, security and development in Africa. To that end, it works to build the capacity of individuals, communities and institutions across Africa, which can contribute to peace and stability.

Jacaranda Avenue, PO Box 25742, Nairobi

+254 (0) 20387022500603

info@africanleadershipcentre.org

www.africanleadershipcentre.org

No:

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**ALC KEYNOTE,
22nd Feb 2012:**

By Ms. Fatou Bensouda

Deputy Prosecutor of the International Criminal Court

**Speech at the African Leadership Centre's
Simulation Seminar:**

**“A SEASON OF CHANGES IN AFRICA: IS
AFRICA’S VOICE GETTING LOUDER?”**

Biography

Fatou Bensouda is a Lawyer and former civil servant from the Gambia. She has served as Deputy Prosecutor at the International Criminal Court since 2004. Prior to this, she held positions of Legal Adviser and Trial Attorney at the International Criminal Tribunal for Rwanda (ICTR). She holds a Masters degree in International Maritime Law and Law of the Sea.

Introduction

I am delighted to be in London to contribute to important discussions today that will help shape efforts to achieve transformative change in Africa .

I would like to discuss with you how the work of the International Criminal Court can contribute to this change; in particular how the Court can help prevent massive crimes, which we thought would never happen again, only to see them occur, again and again, before our eyes: genocide, crimes against humanity and war crimes.

How can we ensure that the crimes committed in Guinea and Côte d'Ivoire are not repeated? How can we stop current crimes in Darfur? How can we prevent a new cycle of violence during the next elections in Kenya scheduled for December 2012?

I will say one word: institutions. In our countries, the Congress, the Police, the Prosecutors and the Courts are the basic institutions to establish law and order. The Rome Statute that created the International Criminal Court is building the same idea internationally: judicial institutions are created to contribute to prevent and manage massive violence.

The Rome Statute added an independent and permanent component to the world's efforts to achieve peace and security. It offers a solution, creating global governance without a global Government but with international law and courts. Accountability and the rule of law provide the framework to protect individuals and nations from massive atrocities and to manage conflicts. It was built upon the lessons of decades when the world had failed to prevent massive atrocities and to manage conflicts. It was built upon the lessons of decades when the world had failed to prevent massive crimes. The decision of Africa, Europe and South America to build an International Criminal Court was not just a matter of principle; it was a matter of realism. For these regions it is a strategic priority to avoid a repetition of experiences such as the Rwanda Genocide, which resulted in the death of one million people and floods of refugees to Tanzania and the DRC.

In 1998, this was just an idea on paper. In 2012, we have put it in motion. The International Criminal Court has become a recognized institution that is part of the international landscape. The unanimous referral by the UN Security Council of the situation in Libya in 2011, which included the positive votes from 3 none States Parties, in a confirmation of that. It makes clear that the Rome Statute consolidates a new trend: no more impunity for alleged perpetrators of massive crimes. In the Rome Statute Community, leaders using massive violence to gain or retain power will be held accountable.

The ICC and Africa

We have seen that during summits of the African Union, international criminal law is regularly put to a test. Past AU summit decisions included the refusal to cooperate with the ICC in the arrest and surrender of President Al Bashir of Sudan, and the refusal of an ICC liaison office at the AU in Addis Ababa. Anti-ICC elements have been working hard to discredit the Court and lobby for non-support, with complete disregard for legal argument.

However, what is often understated 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 the Office of the Prosecutor has 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. Over 70 per cent are met with a positive response.

Let me give you just some examples of positive African engagement and dedication to ending impunity for the most serious crimes:

- 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. Recent polls indicate that some 70 per cent of the citizens welcome the Court's proceedings.
- UNSC Resolution 1593, which referred the situation of Darfur to the Court, included positive votes of Benin and Tanzania and an abstention of Algeria.
- I already mentioned the unanimously adopted UNSC Resolution 1970 on Libya which 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.

This is what we should keep in mind.

Let me also remind you that African institutions and African people are largely responsible for building the system of international justice designed by the Rome Statute of the International Criminal Court.

In 1998, the then President of Senegal, Abdou Diouf, currently Secretary- General for la Francophonie, facilitated meetings in Dakar leading up to the Rome Conference. In February 1999, Senegal became the first State Party to ratify the Rome Statute.

Currently, 33 out of 54 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 24. All of them are Africans, that is true. You would ask why? Because the Rome Statute says that we should select the gravest situations under our jurisdiction and there are 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; and thousands of African victims raped.

You are probably 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 legal criteria to select situations to investigate, relating to jurisdiction, admissibility and the interests of justice.

These criteria apply irrespective of the manner in which the investigation is triggered: a State party referral or a UN Security Council referral does not bind the Prosecutor into opening an investigation into a situation.

With regard to jurisdiction, the Office of the Prosecutor assesses whether the alleged crimes are committed on the territory of States Parties or by nationals or State Parties; whether these crimes have been committed after the entry into force of the Rome Statute on 1 July 2002 (or later if the relevant State ratified later); and whether the alleged crimes fall within the Court's subject matter jurisdiction which covers crimes against humanity, genocide and war crimes.

This jurisdictional limitation is the main reason why the Office cannot investigate or monitor situations in non States Parties such as Syria or Somalia. This can only be repaired by a referral of the UN Security Council or through acceptance of jurisdiction by the State concerned, such as in the case of Côte d'Ivoire. Naturally, a State could also decide to join the Rome Statute.

With regard to admissibility, the Office has a duty not to investigate when there are genuine national investigations or prosecutions, pursuant to the principle of complementarity. The ICC is a court of last resort.

The Statute also requires that the crimes reach a threshold of gravity. For instance, the Office conducted a preliminary examination of alleged crimes committed in Iraq by nationals of 25 States Parties involved in the military operation there. We found cases of willful killings and torture but they were not committed “as part of a plan or policy or as part of a large-scale commission”. So the Office could not open an investigation because the cases did not reach the gravity threshold established by the Statute. In addition, the States concerned were conducting domestic investigations and prosecutions.

Finally, in accordance with the Statute, the Prosecutor should not proceed with an investigation or prosecution if it is not in the “interests of justice”. It would however be exceptional to decide that an investigation would not be in the interest of justice, and the victims. I should stress here that the “interests of justice” must not be confused with the interests of peace and security, which falls within the mandate of other institutions, notably the UN Security Council. The Court and the Office of the Prosecutor itself are not involved in political considerations.

We have to respect scrupulously our legal limits. The prospect of peace negotiations is therefore not a factor that forms part of the Office’s determination on the interests of justice or any other assessment of the Court. Also, geographical factors are not a consideration under the Rome Statute.

It is on the basis of these legal criteria - and these criteria only - that the Office of the Prosecutor has opened investigations in the Democratic Republic of Congo, Uganda, Central African Republic, Darfur, Kenya, Libya and Côte d’Ivoire.

The world today 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.

Impact

In Rome, States made a conscious decision to create a justice system that could stop or prevent violence rather than an ad hoc creation acting a posteriori. New rules were created that other actors must adjust to, that need to be implemented.

We can already see the effect of the Court's activities in practice. It is affecting the behavior of Governments and political leaders; armies all over the world are adjusting their operational standards; conflict managers and peace mediators are refining their strategy taking into account the work of the Court, respecting the legal limits.

One Court's ruling can affect a multiplicity of cases; this what the Secretary-General of UN has referred to as the "shadow of the Court", and this shadow should be considered as the most important impact of any court.

Our first trial against Thomas Lubanga, even before the final decision, has helped trigger debates on child recruitment in countries like Colombia or Sri Lanka, and child soldiers were released in Nepal. The Special Representative of the UN Secretary-General on children and armed conflicts immediately factored in such potential and used us as a tool to campaign around the world, and secure even more releases.

Our trial against Jean-Pierre Bemba Gombo, is the first time that the international criminal justice system will address a situation where allegations of sexual crimes far outnumbered alleged killings. It is also the first trial before the Court which concerns command responsibility. A commander's failure to act can result in unimaginable atrocities that deeply shock the conscience of humanity. In this case, Bemba clearly failed his responsibility to stop and prevent his MLC forces from using rape as a primary weapon of war.

I should highlight here that gender crimes are prominent in most of our prosecutions, in particular because they are prominent in the contexts being prosecuted. This only becomes remarkable against the backdrop of the prior, and still prevalent, norm of denying their existence, ignoring them, shaming their victims, and or defining them in legally improvable ways. In other settings, it has been as if there was a tacit agreement to look the other way as women and children were sexually abused - minimizing, trivializing, denigrating, and silencing the victims, destroying their credibility and further violating their dignity, so that abusers can continue unimpeded. The body of the ICC's first cases, however, signals to the world that here, at least, this deal is off.

Conclusion

The Mandate Of The ICC Is To Go Up The Chain Of Command To Investigate And Prosecutor Those Most Responsible For Massive Crimes; To Those Who Ordered And Financed The Violence. For The Mid-Level Perpetrators, For The Executioners, We Need To Empower Local Courts And Authorities.

By Setting An Example, Supporting Institution-Building, And Through Multi-Leveled Interface And Cooperation, Together We Can Transform The Public Response To Massive Crimes, Including Sexual Violence In National Jurisdictions In And Outside Africa.

I Look Forward To Hearing What You Have To Say In This Regard During The Simulation Seminar.