

OBJECT: International Justice Day Report
AUTHOR: ASF Uganda Mission International and Transitional Justice Team
DATE OF MEETING: Wednesday July 17th 2013
DATE OF REPORT: Thursday July 18th 2013

GOAL: The purpose of the public dialogue was to celebrate International Justice Day and the 11th Anniversary of the International Criminal Court (ICC) by providing a platform for key stakeholders to share their views on the relationship of the ICC with African States. A press conference also took place on the morning of 17th July 2013, during which ASF and its partner the Uganda Coalition on the ICC (UCICC) made a press statement and fielded questions from the journalists.

SUMMARY: At the public dialogue, the Head of Mission set the stage for a very heated debate on the issue of the ICC's turbulent relationship with the AU. The panelists provided their views on this relationship, as well as their recommendations and solutions for its future improvement. The participants also engaged in the discussion by posing pertinent and controversial questions.

REPORT: The following is a summarised record of the press conference and public dialogue:

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The events

1. Morning Press Conference

The morning press conference was attended by about 30 journalists from a number of news outlets and radio stations including The Independent and the Daily Monitor newspaper. ASF and the UCICC read a press statement to commemorate International Justice Day 2013. (See attachment—joint press statement)

2. The Public Dialogue

Approximately 100 participants attended the public dialogue entitled "*The African Union's Turbulent Relationship with the ICC: Towards Withdrawal or Cooperation?*" ASF co-organized the event with Human Rights Network-Uganda, the Uganda Coalition on the International Criminal Court (UCICC) and the Uganda ICC Field Outreach Office. (See attachment—Opening remarks by Head of Mission, ASF Uganda)

Opening Remarks, Ismene N. Zarifis, ASF HOM

In her opening remarks, ASF's Head of Mission Ismene Zarifis welcomed the participants to the public dialogue to mark the ICC's 11th anniversary. She highlighted the importance of holding this event in Uganda; ten years after the ICC launched its first investigation in the country in 2003.

Ms. Zarifis launched the dialogue by stating:

"The common question arising in the region is whether the ICC's actions are indeed racially influenced or whether this has been misinterpreted given certain actions by the Court that have been seen to have adverse effects on Africa's political stability, including issues of peace and security in the region."



She noted that the AU's 2013 draft resolution calling for the withdrawal of its 34 member states from the ICC poses one of the biggest threats to the Court's existence, and threatens its mandate to fight impunity for war crimes across the globe.

Panel Discussion

The panel was moderated by Mr. Nicholas Opiyo, an Advocate from the Uganda Law Society.

Dr. Brian Kalenge, Uganda Christian University, Faculty of Law Lecturer

In his analysis of the tensions between the AU and ICC, Dr. Kalenge, a lecturer at Uganda Christian University, spoke of how African States had played a significant role in the creation of the ICC. In 1998, the then Organization of African Unity (OAU) laid out the reasons why it was important for the ICC to be formed. The OAU had emphasized the atrocities that had taken place on the continent and how such a court could serve to prosecute those crimes.

"To say that the Court is racist is defeated by the actual people who are sitting on it," stated Mr. Kalenge, as he proceeded to list the Africans currently serving at the ICC including five judges and the Prosecutor Fatou Bensouda.

Mr. Kalenge noted that the African Union's leaders are the problem and are undermining the ICC, explaining that the recent public statements by certain African leaders is more a reaction to the possible threat of ICC indictments against them or their peers for crimes falling within the ICC mandate. As such, there has been a shift from all-out support for the mechanisms to suspicion and criticism when African leaders understood that they are not above the law but are equally subject to investigation and accountability before the world court. He also provided some solutions to improve the Court's effectiveness:

1. Amend Articles 13(b) and 16 of the Rome Statute, which give the UN the power to refer cases to the ICC through the Security Council. Mr. Kalenge noted that these articles make a judicial institution a political one.

2. Increase publicity and outreach so that people know about the ICC
3. African leaders should be discouraged from making bilateral immunity agreements.
4. Donors should put pressure on African States Parties to abide by their commitments to the ICC.
5. The Court should push States Parties' to domesticate the Rome Statute

Mr. Dismas Nkunda, International Refugee Rights Initiative Executive Director

Mr. Nkunda noted that it is important for us to look at the reasons why the ICC is perceived as an institution issuing selective justice. In his opinion, the former Prosecutor of the Court, from the beginning, made the work of the ICC look political. He however pointed out that the views on the ICC's bias are largely put across by individuals who have committed crimes in their own backyard. He encouraged the public to consider the actions of the new prosecutor, Ms. Bensouda, highlighting the fact that she has not adopted a politicized approach to her work and has remained true to her role/mandate as a prosecutor. This should go a long way in the Court's ability to regain public confidence in the Court's role in the region.

Ms. Ruth Sebatindira, Uganda Law Society President

The President of the Uganda Law Society (ULS) Ms. Ruth Sebatindira emphasized the goodwill of Uganda to support the work of the ICC. She commended Uganda for its efforts to support the international justice process through domesticating the Rome Statute and establishing the International Crimes Division to try serious crimes nationally.

With regard to the alleged selectivity of the UN Security Council referrals, Ms. Sebatindira noted as follows, "Do we want to do away with the ICC because of the tension with African nations? I think not,"

Ms. Sebatindira noted many concerns and questions regarding the establishment of an African Criminal Chamber. "Will it undermine the ICC process? Will it effectively

prosecute sitting officials in African states?" Furthermore, she highlighted the need to consider the financial aspect of this decision considering that funding for the AU does not even come from African States themselves. She emphasized this financial reality and that undermining the ICC by setting up other institutions would not be an affordable solution.

Ms. Sebatindira also highlighted the need for improved communication between the ICC and African States. "I think that the ICC is a very good thing but more needs to be done to improve the relationship between the Court and the African States," she said.

Mr. J.B. Kakooza, Advocate and New Vision Columnist

Advocate and New Vision Columnist Mr. J.B. Kakooza began by stating that while he is a friend of the ICC and international justice, he would not say good things about the Court. He focused on how international human rights and politics are inseparable, and that African leaders have a point when they criticize the ICC because it has slowly moved away from its judicial mandate and been hijacked by the super powers.

Mr. Kakooza strongly emphasized how the ICC forces African leaders to take positions dictated to them by Western nations to their benefit in international politics and economics. He gave the example of Charles Taylor's indictment for supporting rebels in Sierra Leone, and how the real truth was that it had been spurred by a disagreement Mr. Taylor had had with oil companies in Liberia. "Who is now supporting rebels in Syria?" he asked the participants. "According to the BBC, the situation in Syria has reached Rwanda 1994 proportions. And who was supporting the contras in Nicaragua?" he asked rhetorically.

Mr. Kakooza sarcastically asked the ICC when it would issue an arrest warrant against Tony Blair for his intervention in Iraq. The UK is not a State Party to the Rome Statute, but neither was Sudan. Mr. Kakooza noted that if the ICC does not go back to its original mission of being a judicial institution, and continuously lends itself to be used against weak 3rd world countries, there will be consequences.

Ms. Sarah Kihika, International Centre for Transitional Justice Programme Associate

Ms. Sarah Kihika, Programme Associate at the International Centre for Transitional Justice, cleared up confusion that had arisen during the discussion regarding the ICC, particularly on the principle of complementarity and the three modes of case referrals to the ICC. Ms. Kihika noted that the AU's decision not to cooperate with the ICC on the arrest of President al-Bashir was both legal and political, and ultimately undermined efforts to restore peace and security. The legal question was whether the Rome Statute could override the immunity of a country that is not a State Party. Since this has yet to be cleared up, Ms. Kihika noted that the AU is planning on referring this to the International Court of Justice for its opinion.

Ms. Kihika noted that the tensions between the AU and ICC have been exacerbated by a number of issues. Firstly, all of the ICC's situations are in Africa. Secondly, there is a tension between the different understandings of how to proceed in debates of peace and justice. Ms. Kihika noted that the western understanding generally involves resorting to military intervention, while the AU prefers a sequenced approach that prioritizes peace. These tensions have also created conflict. She gave the example of Libya and how the attempts made by the South African President to find a peaceful resolution to the conflict ended when the UN Security Council issued a referral. Thirdly, Ms. Kihika noted that indictments have been issued on only one side of the conflict.

"We should not throw the baby out with the bath water," emphasized Ms. Kihika. "The ICC can provide a useful remedy for thousands of victims in conflict and can deter crimes and contribute to peace and security."

Ms. Kihika therefore recommended as follows:

1. Serious consideration should be given to the global governance system, especially the United Nations Security Council and its membership. A review must be undertaken regarding the role of the UNSC and its referrals to the ICC.

2. Actors should not shy away from asking critical questions, particularly when it relates to the powers of the UNSC vis-à-vis the ICC.
3. The ICC should be more transparent about its preliminary examinations so as to make the public more aware of the efforts it is making in investigating situations beyond Africa
4. A more nuanced approach to outreach is also required particularly in light of the backlash against the Court.

Charles M., the moderator, then opened up the floor to questions from participants.

Plenary

The plenary was moderated by Mr. Charles Mwangushya, Daily Monitor Journalist who opened the floor to the participants for questions.

The key comments and recommendations arising from the plenary included the following:

- a) There is need for African governments to show genuine support for the work of the ICC on the continent given that by ratifying the Rome Statute they have made a legal commitment to uphold its values and aspirations.
- b) The ICC should to the greatest extent possible adopt an independent stand as a judicial institution dedicated to the fight against impunity. To this extent, the Court should learn lessons from past mistakes and keep out of the political arena.
- c) The key question that all players should asked is whether grave crimes have been committed in different parts of the African continent and how the needs of victims in these respective areas should be addressed.
- d) African countries should prioritize complementarity initiatives within their respective countries. In the same breath, efforts to cloth regional courts with the mandate to try international crimes should be carefully assessed to ensure that they are feasible both legally and financially.

- e) National laws on amnesties should be reviewed because these have an implication on the capacity of African countries to try those most responsible for committing international crimes.

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WELCOME REMARKS OF ISMENE ZARIFIS, HEAD OF MISSION ASF

Good afternoon ladies and gentlemen.

On behalf of ASF, I want to warmly welcome you to this important event which marks the ICC's 11th Anniversary of its existence. ASF has co-organised this event for the past several years, but this year we focus on a topic that has stirred much controversy of late—**Africa's relationship with the ICC**. A number of actions taken by the ICC of late have closely affected the fate of key leaders and political developments in the region; these actions have been interpreted by certain sectors as being racially motivated, throwing suspicion onto the ICC and the rationale for its interventions in Africa. So the common question arising in the region is whether the ICC's actions are indeed racially influenced or whether this has been misinterpreted given certain actions by the Court that have been seen to have adverse effects on Africa's political stability, including issues of peace and security in the region.

Given the divergent views on the ICC's involvement in African nations, we have brought together a variety of illustrative panellists knowledgeable on issues of international criminal law and the Court's role in Africa to critically interrogate this question, and to better understand the reason behind this notable shift in

position by the AU from political support of the ICC establishment and mandate, to its firm opposition.

It is particularly relevant that we hold this discussion here in Uganda, ten years after the ICC launched its first investigation of the self-referred Situation of Uganda in 2003.

We kick off the ICC's 11th Anniversary following reports of the AU's draft resolution calling for the withdrawal of its 34 member states from the ICC. This not only poses one of the biggest threats to the Court's existence, but also threatens its mandate to fight impunity for war crimes across the globe.

African countries have engaged with and supported the Court since its establishment in 2002. Of the eight cases¹ currently being investigated by the ICC, five were referred voluntarily by African States and two were referred by a UN Security Council resolution with the support of the majority of African members sitting on the Security Council at the time.²

Despite the support and early engagement by African countries with the Court, the relationship with the AU soured in July 2008 when the Court issued an arrest warrant for Sudanese President

¹ Uganda, Democratic Republic of the Congo (DRC), Central African Republic (CAR), Darfur, Kenya, Libya, Côte d'Ivoire and Mali

² The last case was at the ICC prosecutor's request

Omar Al-Bashir. The AU and its leadership has increasingly criticized the Court for its apparent bias and unfairness towards African nations. The recent indictments in Kenya have contributed to this view.

Despite the recent appointment of Ms. Fatou Bensouda as the first African Prosecutor, this has done little to lessen the negative attitudes towards the Court. Earlier this year, the Chair of the African Union proclaimed at the Summit in Addis that the ICC "is targeting Africans on a racial basis," to which Ms. Bensouda replied that ***a few powerful individuals are spreading propaganda about the Court at the expense of justice for millions of victims.***

We at ASF, support the establishment of institutions and mechanisms that allow access to independent and impartial justice, and that guarantee the protection of fundamental rights. In particular, ASF supports a victim-centered approach, meaning that we view and approach issues of international justice from the victims' position, ensuring that mechanisms are not only functioning well but that they are responsive to victims' rights to truth, justice and reparations. Among our programmes, our International Justice project seeks to promote the application of the Rome Statute in Uganda, enhance the effectiveness of the ICC in the field with emphasis on promoting the complementarity

principle through institution strengthening capacity building and technical assistance.

It is important to note that the ICC is the only world court with the mandate to bring to justice individuals deemed '*greatest responsible*' for war crimes, genocide and crimes against humanity. With the current context in the region still characterized by gross violations of human rights, armed conflict and violent outbreaks resulting in such crimes, an independent and impartial accountability mechanism that is beyond political manipulation and bias is still very necessary. The popular view towards the ICC risks weakening this mechanism and jeopardizing the reason for its establishment in the first place. It is therefore important to fully understand the background to recent developments in the region and to provide constructive arguments and feedback that will seek to strengthen this mechanism to allow it to continue exercising its very important mandate of pursuing justice for the most heinous crimes.

In light of recent actions by the Court in the region and the various effects of such actions, it certainly has not been a smooth ride for the Court of late. However, I hope today's discussion will serve to generate a rich discussion that will help us better appreciate the recent developments, and identify strategies on improving relations so as to maintain and enhance the Court's

role in pursuing international criminal justice in the fight against impunity.

Once again, I wish to thank you all for honouring our invitation today, as well as our excellent panelists who will surely engage you in what is a very topical and critical debate with an obvious impact on the future of Africa's relationship with the ICC, the only world Court that is charged with bringing those with the greatest responsibility for war crimes to justice.

I would also like to thank our partners, the UCICC and ICC Field Outreach Office for their contributions towards organising this event.

11 YEARS SINCE THE CREATION OF THE INTERNATIONAL CRIMINAL COURT: CALLING UPON THE AU TO SUPPORT THE WORK OF THE ICC

Kampala, 17th July, 2013 – Today we mark International Justice Day and consequently the 11th Anniversary of the International Criminal Court (ICC). It is, therefore, both timely and relevant for us to engage in a discussion of the Court's major challenge since its creation, to wit, the tense relationship between the ICC and the African Union (AU).

On 17th July 1998, the Rome Statute was adopted with the support of 100 countries, intergovernmental agencies and civil society organisations, and entered into force on 1st July 2002.¹ The Rome Statute established the ICC, the world's first permanent treaty-based court to end impunity for grave crimes. The Court prosecutes those "most responsible" for committing such crimes and brings justice to the victims.

With a membership of 122 countries and with eight investigations currently underway in African countries, the ICC has been influential in the field of international criminal justice. However, top leaders of the AU, which boasts a membership of 134 African nations, have accused the ICC of "*targeting Africans on a racial basis.*"² The AU has furthermore called upon its Assembly members not to cooperate in the arrest and surrender of the indicted Sudanese President Omar al-Bashir.

In light of these challenges, The Uganda Coalition on the International Criminal Court (UCICC), Human Rights Network Uganda (HURINET-U) and Avocats San Frontières (ASF) declare as follows:

¹ <http://www.iccnw.org/?mod=icchistory> (accessed on 11-07-2013).

² See Al Jazeera, "African Leaders accuse ICC of "Race Hunt" Found at <http://www.aljazeera.com/news/africa/2013/05/201352722331270466.html>> (accessed on 16th July 2013)

- 1) **WE CALL** upon the AU to revisit its commitment to the ICC and grant it due co-operation in order to live up to its objectives enshrined in Article 3 (e) of the Constitutive Act of the African Union which provides, among others, that one of the objectives of the AU shall be to *"encourage international cooperation, taking due account of the Charter of the United Nations and the Universal Declaration of Human Rights."*

WE FURTHER CALL upon the AU to seek the guidance of the principles enshrined in Article 4 of the Constitutive Act prior to taking decisions with a likely impact on the fight against impunity on the continent. Specific clauses of Article 4 call upon the AU to function, among others, in accordance with the principle of ***"the right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity"***; ***"respect for democratic principles, human rights, the rule of law and good governance"*** and ***"respect for the sanctity of human life, condemnation and rejection of impunity..."***

- 2) **WE REITERATE** the view that the AU and the ICC are two independent institutions with cross-cutting mandates that should complement each other and, therefore, work towards a common goal of fighting impunity and above all promoting post-conflict justice for victims of serious crimes. We implore the AU member states to prioritize the needs of victims of grave crimes by promoting their right to truth and reparations and establishing strong national institutions to genuinely prosecute perpetrators.
- 3) **WE CONTINUE** to call upon all Government leaders and institutions, fellow civil society actors and the general public to support the ICC in executing its mandate to fight impunity on the globe.
- 4) **WE COMMEND** the ICC on its achievements thus far and continue to encourage the Court to play an impartial role in the fight against impunity.

5. WE URGE the African leaders to closely monitor the work of institutions such as the African Court on Human and People's Rights and the East African Court of Justice respectively to assess their ability to carry out the judicial mandate of fighting against impunity. Therefore, decisions to expand their jurisdiction to include Rome Statute crimes should serve justice rather than shield perpetrators of such crimes.

Dated in Kampala this 17th day of July, 2013



Mr. Mohammed Ndifuna
Chairperson Steering
Committee

**Uganda Coalition on the
International Criminal
Court (UCICC)**



Ms. Ismene N. Zarifis
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