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## Reflections from the International Criminal Court Prosecutor

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## LECTURE

# Reflections from the International Criminal Court Prosecutor

**2012 Jonathan I. Charney Distinguished Lecture in  
Public International Law**

Presented at Vanderbilt University Law School on August 24, 2012

*Fatou B. Bensouda\**

Distinguished Ladies and Gentlemen,

Thank you all for being here today. Allow me to thank the Vanderbilt University Law School for inviting me to speak to you. I look forward to our discussions.

Today I would like to introduce the idea of a new paradigm in international relations, which was introduced by the work of the drafters of the Rome Statute and the establishment of the International Criminal Court (ICC): this idea is that of law as a global tool to contribute to the world's peace and security.

This idea first surfaced with the belief that the power of law has the capacity to redress the balance between the criminals who wield power and the victims who suffer at their hands. Law provides power for all regardless of their social, economic, or political status; it is the ultimate weapon that the weak have against the strong.

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\* Prosecutor of the International Criminal Court.

Indeed, when implemented equally and fairly, the law sets one standard for everyone; it empowers all communities and individuals, and provides justice for all. It does not allow any individual or any segment of society to override or manipulate the order for individual gains, if it is backed by sound institutions. In the domestic context, we have created institutions such as parliament, the police, prosecutors, and courts to establish law and order.

But what about the international context? How are we supposed to counter and prevent massive crimes of an international character such as genocide, crimes against humanity, and war crimes, like those that were committed in Darfur, Libya, or Côte d'Ivoire?

Again, we need institutions: more comprehensive institutions of international character.

States that participated in drafting the Rome Statute created the ICC as a reflection of this idea: a judicial institution to contribute to the prevention of massive atrocities by adding an independent and permanent justice component to the world's efforts to achieve peace and security. In order to "*be governed by the force of law, not by the law of force*" as once said by William Sloane Coffin, we need such institutions to act as an enforcer of the fight against massive crimes.

I believe in the power of the law as a potent tool to stop and prevent violence. Peace, lasting peace, is a consequence of law and order.

I will thus suggest a model of law as a three-pronged tool for achieving lasting peace: it is a tool to protect citizens and territories; a tool to redress the wrongs done to victims; and a tool to define unacceptable behavior, criminal behavior that cannot lead to maintaining or acquiring power.

Let me start with the notion of law as a tool of protection.

The most important function of the rule of law, both in the international and domestic contexts, is to provide protection to individuals. In the domestic setting, citizens are protected by laws established by domestic institutions.

With the advent of the ICC, the individuals that are nationals of States Party are protected not only at the domestic level, but also at the international level. Today, 2.4 billion people are under the protection of the Rome Statute system of global justice against oppression and repression by the powerful.

However, it is important to note that states themselves benefit from the protection and the activities of the ICC as well.

The composition of the court's States Party reveals the fundamental benefits it provides. Our 121 States Party come from the three regions that have taken the lead in terms of international justice efforts: Africa, Europe, and South America. Their decision to promote the international rule of law is not just based on idealism: it is a matter of realism.

These regions have suffered from massive crimes and have eventually come to realize that a national state acting alone cannot protect its citizens from these crimes. Genocide, crimes against humanity, war crimes: these are massive crimes that cannot be confined within national borders.

Europe has seen how massive crimes spilled over during the era of the Nazi regime and the Balkan conflicts, whereas South America and Africa witnessed similar atrocities throughout the period of the Cold War. Africa suffered the Rwandan Genocide, which resulted in the death of almost 1 million people and flows of refugees into Tanzania and Congo. This exodus was the root of the Congo wars, which caused the deaths of almost 4 million people. Even today sexual violence that occurs as a result of these conflicts reaches to unspeakable levels. Today, preventing repetition of these experiences is of utmost importance and a strategic priority for the states within these regions.

In order to tap the full potential of the court, we have to maximize its preventive impact around the globe. The answers to the questions of how to stop the genocide in Darfur, or how to prevent a new cycle of violence during the next elections in Kenya, lie with the preventive impact of the court.

Since the inception of the ICC, the Office of the Prosecutor has opened investigations and brought cases in seven situations: Uganda, the Democratic Republic of the Congo, Central African Republic, Darfur, Kenya, Libya, and Côte d'Ivoire. The Office is also engaged in a number of preliminary examinations: in Honduras, the Republic of Korea, Afghanistan, Nigeria, Guinea, Colombia, Georgia and most recently in Mali, where the Government of Mali requested the court's intervention. The effects of these cases reverberate across the world.

For instance, in March of this year, the court rendered its decision on Thomas Lubanga Dyilo and found him guilty of enlisting and conscripting children under the age of fifteen. Even before the final decision, the trial process had helped to trigger debates on child soldiers and child recruitment in countries far from the Democratic Republic of the Congo, like Colombia and Sri Lanka. The effects of the verdict in the Lubanga case were, indeed, global, as Nepal and Somalia started taking measures against the conscription of children.

This is the effect of what UN Secretary-General Ban Ki-Moon has depicted as "the shadow of the Court," its preventive impact, and is a perfect example of how the law can be used to prevent and deter crimes.

Ladies and Gentlemen,

When efforts to prevent massive crimes fail, the law can be used as a fundamental tool to redress the rights of victims. The court and the Office of the Prosecutor have been actively working for victims since the start of our activities; they are our primary beneficiaries, and their well-being is our utmost concern.

The Rome Statute recognizes the rights of victims of massive crimes and provides these individuals, who have been ignored so far, with an opportunity to be represented against powerful individuals, wielding substantial military and political control.

On this basis, the Rome Statute paved the way for two landmark developments:

- (1) First, it contains the commitment of the international community to take responsibility for the protection of victims of the most serious crimes, should national states fail to uphold their responsibility to do so. To achieve this goal, the Statute gives a mandate to an independent Prosecutor to investigate and prosecute the crimes, protecting the rights of the victims, respecting their interests, and contributing to reparation.
- (2) Second, it empowers victims as actors in the international criminal justice system, with a right to express their views and concerns independently by giving them a voice in proceedings where their personal interests are affected.

The framework thus established in the Rome Statute regarding victim participation represents a key innovative feature of this court and is a milestone in international criminal justice. It is part of a consistent pattern of evolution in international law, including but not limited to international criminal law, which recognizes victims as actors and not simply passive subjects of the law, and grants them specific rights.

This is what we have been doing for millions of victims who suffered massive crimes, in Uganda, the Democratic Republic of Congo, Central African Republic, Darfur, Kenya, Libya, and Côte d'Ivoire. We have done it with the strong cooperation of African States Party, and we have benefited from the commitment and support of our partners within the African civil society.

However, this unfortunately is not the story relayed in the media. Again and again, we hear criticism about our so-called "focus on Africa" and about the court being an "anti-African Court." Anti-ICC elements, who often have personal reasons for trying to discredit

the court, have been working very hard to damage the court and its work by lobbying for nonsupport, with complete disregard for legal arguments.

With due respect, what offends me the most when I hear criticism about this so-called “Africa bias” is how easily we are distracted with the words and propaganda of a few powerful, influential individuals, and forget about the millions of anonymous people that suffer under their oppression.

Indeed, the greatest affront to victims of these brutal, unimaginable crimes—women and young girls raped; families brutalized, robbed of everything; entire communities terrorized and shattered—is to see those powerful individuals responsible for their sufferings trying to portray themselves as the victims of a “pro-Western”, “anti-African” court. As Desmond Tutu poignantly stated, leaders need to choose their sides, whether they are on the side of the victims or the oppressors. The court has chosen the side of the victims.

Justice, real justice, is not a pick-and-choose system. To be effective, to be just, and to have a lasting impact, justice has to be guided solely by the law and the evidence. Our focus is on individual criminal behavior against innocent victims.

My focus is on Joseph Kony, Bosco Ntaganda, Ahmed Harun, and Omar Al-Bashir.

The Office of the Prosecutor will go where the victims need us. In the words of Governor Roy Barnes, “*law is a shield for the powerless, not a club for the powerful.*”

No one will divert me from the course of justice and service to the victims.

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 idea. It is a reality that affects the everyday lives of millions of Africans. Consequently, the African commitment to ending impunity is a reality, and we have to find a way to focus our attention on that.

Indeed, international justice gives power of leadership to small and medium countries, to principled states, those who are determined to use the power of the law, not the power of arms, to protect their citizens and their territories.

Political leaders can lead efforts for international justice in the global arena by supporting the ICC. Senegal was the first country to ratify the Rome Statute in 2002, after then-President of Senegal, Abdou Diouf, facilitated meetings in Dakar in 1998, which led to the Rome Conference establishing the ICC.

South Africa refused to invite President Omar Al-Bashir to the inauguration of President Jacob Zuma in 2009. The government of Botswana and its president, President Ian Khama, have consistently expressed their strong support for the work of the court. Just recently, the Foreign Affairs Minister of Zambia stated that President Al-Bashir would “*regret the day he was born*” if he tried to go to Zambia. The last African Union summit, which was to be held in Malawi, was reorganized to be held in the African Union Headquarters in Addis Ababa due to the Malawian President Joyce Banda’s commitment to arrest Al-Bashir in case he stepped foot on Malawi territory. These countries, these leaders, are leading the pursuit of international justice.

The ICC sets a very clear and basic limit: violent means cannot be employed against civilians to gain or retain power. These leaders have understood this and factored it into their relations with others. Cases in Kenya and Côte d’Ivoire are sounding a warning.

Ladies and Gentlemen, let me conclude.

The ICC is a powerful new tool to control violence in the world, to deter crimes, to promote national proceedings, but it can only be successful if we never yield to political considerations.

We are a new tool, a judicial tool, not a tool in the hands of politicians who think they can decide when to plug or unplug us.

If we do not receive consistent and strong support from actors that shape international relations, such as political leaders and international and regional organizations, as well as civil society organizations, the court will not be able to fulfill its mandate, and prospects of ending impunity and realization of international justice will become unlikely.

As we celebrate our ten-year anniversary, the Rome Statute is extending, building a network of actors around the world, in order to maximize the prevention of massive crimes and enforce common standards in situations where massive crimes falling within our jurisdiction are committed.

Step by step, the Rome Statute system is moving ahead and creating a new international dynamic, impacting other institutions and changing international relations forever. The Rome Statute system is changing the balance of power between those few powerful individuals who thought they could get away with massive crimes, and their victims.

As the Prosecutor of the International Criminal Court, I will continue to solidify this change. My office will continue to work towards putting an end to impunity and contributing to the prevention of future crimes.

We will use the full power of the law and will be guided only by evidence and legal criteria. I hope to count on the support of all of you present here today to achieve this change.

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