



Seminar Report

The International Criminal Court: Working for Africa

**Institute for Security Studies
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On 3 June 2009 the ISS had the privilege of hosting the President of the International Criminal Court (ICC), Judge Sang-Hyun Song, at a public seminar in Pretoria. The seminar was chaired by Justice Kate O'Regan, a judge at the Constitutional Court of SA, and Festus Aboagye, senior research fellow at the ISS, was the respondent. The seminar was well attended with over 50 delegates – including government officials, members of the diplomatic community, academics, non-governmental organisations, and the media – participating enthusiastically in the question and answer session.

President Song made the following key points:

- The ICC has made many strides since its inception: 108 states have ratified the Rome Statute, four investigations have been initiated, the ICC judges have issued 13 warrants of arrest and have clarified fundamental parts of the Rome Statute. This indicates that the ICC is a fully functional judicial system.
- In terms of its goals, there are signs that the Court is having a deterrent effect with regard to international crimes. The ICC's work must also contribute towards reconciliation, and in this regard it is essential that justice be seen to be done among people in affected communities.
- With regard to the attention and criticism that the ICC's work has generated, it is essential that there is a good understanding of "what the Court is, and what it is not." The ICC is a court of last resort, and as such, it is not an overbearing institution. Rather, the Rome Statute reaffirms the core principles of state sovereignty and the ICC's mandate is quite distinct from the notion of universal jurisdiction. It is also important to recognise that the Court is a "judicial institution operating in a political world". As such, the ICC must keep politics separate from legal procedures. In this regard, "there is no room for politics at the ICC" and "the ICC will not get involved in political debates." Instead, those who created the Court – the 108 States Parties – along with civil society organisations, should take action to "shield" the ICC from political pressure that may arise from its work.
- In order to facilitate the work of the ICC on the continent, the Court is exploring the option of opening a liaison office in Africa.

In his response to the President, Festus Aboagye made the following key points:

- Based on statements and decisions from the African Union, the AU is unlikely to cooperate fully with the ICC in the near future. Where the practice of international criminal justice (by the ICC or another tribunal) on the continent has resulted in the arrest (or issuing of a warrant of arrest) for sitting heads of state (such as Charles Taylor and Omar al-Bashir), this has caused significant discomfort for African leaders. Such developments are regarded as “un-diplomatic”, and in both the cases above, critics cited concerns about the impact that the arrests would have on peace and stability in the respective regions. Such fears have largely been unfounded.
- Resistance to international criminal justice and the ICC, and the request by the AU to the UN Security Council for a deferment of the al-Bashir matter for one year, suggests that a “fault line” exists in regional policies on rule of law and good governance. Indeed, the African justice architecture (the African Court of Justice, the African Court of Human and People’s Rights, and the proposed Court of Justice and Human Rights which would merge the two) is the weakest link in the overall African peace and security architecture.
- Against this background, the ICC does have a role in Africa considering: the complexity of Africa’s humanitarian emergencies; the discordance between political rhetoric and policy implementation with regards to justice; the synergies that exist between the ICC and regional rule of law mechanisms; that an effective ICC would obviate problems around UN Charter Use of Force Principles (Chapter VII); that the ICC could serve as an inhibitor of gross violations; and that in time, international criminal justice would obviate large deployments and costs of Peace Support Operations, vis-à-vis Western minimalist engagement policies in Africa. In this sense, the ICC could serve as a lever, or compensation, for the lack of western military presence in Africa, and as a cost-effective intervention tool.
- The ICC is a potential force for good on the continent and as such the AU should see the ICC as a partner in upholding the rule of law and protecting human rights. Having said this, tensions between technical and political approaches need to be addressed. In this regard, institutionalised mechanisms for consultations are needed, which could include a liaison office in Africa.