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OpenForum 2012: Money, Power and Sex: The Paradox of Unequal Growth

*Open Society Africa Foundation*

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Distinguished Ladies and Gentlemen,

Thank you all for being here today. Allow me to thank the Open Society Africa Foundation for inviting me to speak to you. I look forward to our discussions.

Today, on Power Day, 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: this idea is that of law as a global tool to contribute to the world's peace and security.

I believe the power of law consists in its ability to redress the balance between the criminals who wield power and the victims who suffer at their hands.

I believe in law as power for all; it is the ultimate weapon that the weak have against the strong.

Indeed, when implemented equally and fairly, the law sets one standard for everyone; it empowers all peoples and provides justice for all. It does not allow any individual or any segment of society to override or manipulate it, if it is backed by good institutions. As the great Greek philosopher Aristotle once said: *"law is order, and good law is good order"*. Good order can only be brought about by good institutions. In order to create order in our societies, 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 global 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.

The Rome Statute that created the International Criminal Court is 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. To quote William Sloane Coffin: *"we must be governed by the force of law, not by the law of force"*.

I believe in the power of the law as a potent tool to stop and prevent violence. Peace, lasting peace, is a result of law and order; and as Justice William Douglas said: "*law is essential if the force of arms is not to rule the world.*"

I will thus suggest that law is a three-pronged power tool: it has the power to protect citizens and territories; it has the power to redress the wrongs done to victims; and it has the power to define behaviours, criminal behaviours that cannot lead to power.

Let me start with the notion of law as power to protect.

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

Similarly, with the advent of the ICC, the individuals that are nationals of States Parties 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.

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

The make-up of the States Parties of the Court is quite revealing of its fundamental functions. Our 121 States Parties 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 a matter of principle: it is a matter of realism.

These regions have suffered from massive crimes and eventually learnt that a national State acting alone cannot protect its citizens from these crimes. Genocide, crimes against humanity, war crimes: these are massive crimes that cross borders.

Europe has seen how massive crimes spilled over during the Nazi regime and the Balkan conflicts, whereas South America and Africa witnessed similar atrocities throughout the Cold War. Africa also suffered the Rwandan Genocide, which resulted in the death of almost one million people and flows of refugees into Tanzania and Congo. This exodus was the root of the Congo wars, which killed four million people, and even today sexual violence reaches unspeakable levels. Today, avoiding repetition of these experiences is a strategic priority of States within these regions.

A few years ago, the Ambassador of Costa Rica to the UN explained why his country was so active in the Security Council on the issue of Darfur and why Costa Rica had shown leadership on an issue apparently so far from its interests: *“There are 26 countries with no armed forces in the world; Costa Rica is the biggest among them”*. Thus, Costa Rica perceives promoting the rule of law on an international level as a matter of domestic security.

Similarly, Christian Wenaweser, the Ambassador of Liechtenstein to the UN and former President of the ICC Assembly of States Parties, stated: *“States Parties are under the protection of the Court”*, indicating the main concept, the fundamental cornerstone of the international criminal justice system: the rule of law as protection.

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 Congo, Central African Republic, Darfur, Kenya, Libya and Côte d’Ivoire. The Office is also engaged in preliminary examinations in Honduras, the Republic of Korea, Afghanistan, Nigeria, Guinea, Colombia and Georgia. These cases reverberate across the world.

For instance, quite recently, the Court rendered its decision on Thomas Lubanga Dyilo and found him guilty of enlisting and conscripting children under the age of 15. Even before the final decision, the trial process had helped triggering debates on child soldiers and child recruitment in countries far from DRC 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, a perfect example of how the law can be used to prevent crimes.

The Jean-Pierre Bemba case is also illustrative of the preventive impact of the Court. This is the first time the international criminal justice system has addressed a situation where allegations of sexual crimes far outnumbered the allegations of killings. It is also the first trial before the Court that concerns command responsibility. A commander’s failure to act can result in unimaginable atrocities that deeply shock the conscience of humanity.

Allow me to emphasize this point: gender crimes are prominent in our prosecutions 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, or defining them in legally improvable ways. In other settings, it was as if there were a tacit agreement to look the other way while women and children were sexually abused – minimizing, trivializing, denigrating, and silencing the victims, destroying their credibility and further violating their dignity, so abusers could continue unimpeded. The body of the ICC's first cases, however, signals to the world that here, at least, this deal is off.

According to our evidence, Jean-Pierre Bemba clearly failed his responsibility to stop and prevent his militia forces from using rape as a primary weapon of war. In terms of impact, this trial is a significant opportunity. Unlike any other court, the ICC's decision will influence the behaviour of thousands of military commanders from the 121 States Parties, and beyond. The decision will establish the difference between a military commander and a criminal based on the respect for the law.

Ladies and Gentlemen,

When efforts to prevent massive crimes fail, the law is 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.

The Rome Statute recognizes the rights of victims of massive crimes and gives those individuals, previously ignored, an opportunity to be represented against powerful individuals, wielding substantial military and political control.

On this basis, the Rome Statute effects two landmark evolutions:

(1) first, it contains a 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 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, in the Prosecution's view, 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 only passive subjects of the law, and granting them specific rights.

This is what we have been doing for millions of victims of ICC 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 Parties, and we have benefited from the commitment and support of our partners within African civil society.

However, this is unfortunately 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 "African Court". Anti-ICC elements have been working very hard to discredit the Court and lobby for non-support, doing this 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 quick we are to focus on the words and propaganda of a few powerful, influential individuals, and to forget about the millions of anonymous people that suffer from their crimes.

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.

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, 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.

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, abstract notion. This African commitment to ending impunity is a reality, and we have to find the 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, had 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 Zuma in 2009. Botswana and President 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. These countries, these leaders are showing leadership.

The ICC sets a very clear and basic limit: violence cannot be used 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.

It is important here to recall the complementarity principle that underpins the actions of the ICC. Indeed, the Court is intended to complement, not to replace, national systems.

The Court should therefore handle a limited number of cases. The strength of the system lies in the possibility for shared responsibility and complementary action between the Court and domestic judiciaries.

In Prosecutor Moreno-Ocampo’s statement at the ceremony for his solemn undertaking as Prosecutor of the ICC, he said: *“As a consequence of complementarity, the number of cases that reach the Court should not be a measure for its efficiency. On the contrary, the absence of trials before this Court, as a consequence of the regular functioning of national institutions, would be a major success.”*

However, as those who are primarily responsible for investigating and prosecuting the crimes defined in the Rome Statute, States Parties have a fundamental role to play within the Rome Statute system. Throughout our activities, the OTP has always endeavored to work in full respect of national proceedings, promoting understanding, coordination and exchanges when applicable, and only seeking to intervene as a measure of last resort. The Court is a back-up system.

As early as 2003, the Prosecutor noted that a major part of the external relations and outreach strategies of this Office would be to encourage and facilitate States to carry out their primary responsibility of investigating and prosecuting crimes.

Today, we can already see the positive effect of the Court's activities in practice. They are affecting the behaviour 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.

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 don't receive consistent and strong support from actors that shape the international relations, such as political leaders, international and regional organizations as well as civil society organizations, the Court will not be able to fulfil 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, 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 next 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.