

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

**Judge Sang-Hyun Song  
President of the International Criminal Court**

**Keynote Address**  
*International Parliamentary Seminar on Justice and Peace  
in the Democratic Republic of Congo and the Great Lakes Region*

*[check against delivery]*

*Kinshasa, Democratic Republic of Congo  
10 December 2009*

Mr Speaker,

Honourable Members of Parliament,

Excellencies

Ladies and Gentlemen,

It is an honour to be here in the National Assembly of the Democratic Republic of Congo to address you today. I am grateful to the Speaker of this National Assembly, Évariste Boshab, and to the Speaker of the Senate, Léon Kengo Wa Dondo, for hosting me. I would also like to thank Parliamentarians for Global Action for organising this important conference. In particular, I would like to acknowledge PGA President, Senator Bassey Ewa-Henshaw of Nigeria, and the President of the PGA National Group here in the DRC, the Honourable Emmanuel Adubango Ali.

There could be no more appropriate forum to address issues of justice and peace. And there could be no more appropriate participants in this conference than the Members of Parliament from the DRC and around the Great Lakes region. The question of justice and peace is an abstraction for nobody in this hall. Rather, you have gathered here, from across this vast country and sprawling region, to discuss an issue that has tangible consequences for the people you represent.

As President of the International Criminal Court, I am deeply aware of the suffering that has plagued this region for far too long. I have seen similar suffering in my own country, South Korea. Korea was colonized for years. When I was nine years old, I tasted the bitterness of war, and lived in a climate of impunity.

For too long, the victims of the gravest of crimes against your peoples have not seen their tormentors held accountable. In recent years that has begun to change. The ICC is a young institution and its work is still in the early phases. This includes its contribution to justice in this country and two of its neighbours: Uganda and Central African Republic. I am confident that over time, justice – whether delivered by the ICC or through national proceedings – can contribute to peace throughout the region.

I am sure that there are many others here today who share the view that justice contributes to lasting peace. After all, three governments in this region have referred situations in their countries to the ICC. Another one, Kenya, has committed to fully cooperate with the Court if the ICC judges approve the Prosecutor's request to open an investigation there. In some countries, including this one, war crimes prosecutions have begun within national jurisdictions.

But I know too that there are still sceptics. Justice is not necessarily the first need that springs to mind in time of war. Security, food, water, shelter, employment – these are the immediate needs of populations yearning for peace. The urgency of providing these most basic human requirements is clear. This urgency raises concerns that warring factions may not seek peace if their leaders are vulnerable to prosecution. Some people conclude from this that the interests of justice and peace are incompatible. Those holding this view may conclude that justice should be delayed so that immediate needs can be met. This view is perfectly understandable. It is true that you cannot eat justice, and justice will not shelter your family from the rain.

But this is not the full picture. Weighed against the potential for any fleeting benefit from justice delayed or denied is a crushing accumulative cost – the cost of a climate of impunity. And there is no single

region in the world that has paid a higher price for a legacy of impunity than has the Great Lakes region of Africa. The tragic story is familiar to everyone here:

- It is a story of families decimated over centuries by slave traders who enriched themselves on this continent's flesh and blood without ever being held to account.
- It is a story of a foreign king who never set foot here, but treated the Congo as his private property. A king whose greed resulted in some ten million Congolese deaths. He was never held to account.
- It is a story of colonial leaders who continued to exploit your peoples and steal the wealth of their lands. They too got away with it.
- It is a story of a war between two superpowers that may have been cold for them, but which spilled the blood of Africans by the hundreds of thousands. The leaders behind this regarded themselves as brilliant foreign policy strategists, and were never called to account.
- It is a story of African inter-state and inter-ethnic disputes exploited and exacerbated by colonialists and Cold-Warriors. Long after colonialism and the Cold War ended, governments and warlords fought on, their lands awash in weaponry. Without mechanisms of justice, mass atrocities continued. The scale of suffering in this country alone since 1997 is almost incomprehensible: millions dead, millions more displaced, rape and sexual violence inflicted on this country's mothers, sisters and daughters at unprecedented rates, and children victimized by being forced to fight, and become perpetrators themselves.

This is the legacy of impunity. This is the price of justice denied.

But how is it that justice can end the cycle of impunity and atrocities? How is it that justice contributes to sustainable peace? There are two main ways that this happens:

- The first can be traced to a fundamental truth of human nature: that we all weigh the potential costs and benefits of our actions. For leaders of governments and rebel factions, of course this is no different. Some leaders of armed factions perceive benefits in ordering or tolerating atrocities by their forces. For example, they may exhort their followers to eliminate a rival ethnic group in order to consolidate power within their own. They may try to maintain control of a piece of land rich in gold, diamonds or coltan by terrorizing the population. Or such leaders may believe they can maintain troop loyalty by ordering or allowing their fighters to rape women and girls. If there is little chance of paying a price for committing such atrocities, it should surprise no one when more atrocities occur. Justice can affect the balance of this calculation by introducing substantial cost into the initial equation. The greater the likelihood of being charged and apprehended for committing such acts, the fewer such acts will be committed.
- A second way that justice can contribute to peace is by addressing the needs of victims. For someone who has had a father killed, a daughter raped, a son abducted, or who has lost their home, it is only natural to have a desire for revenge. Where whole communities have been attacked, the rage is multiplied. When attacks have been nationally or ethnically motivated, hatred toward not just the individual perpetrators, but the entirety of their national or ethnic group can result. Where there is no functioning justice mechanism, victims of atrocities have no options for punishing their tormentors except for one: violent retribution. Cycles of violence between states, communities and ethnic groups are the result. However, justice provides another path. It is a path that acknowledges victims' pain, lets them tell the stories of what was done to them, and lets them see the individuals responsible for their suffering arrested and put on trial. This does not guarantee that victims will not seek violent revenge or develop hatred for the nationality or ethnicity of the perpetrators. But the more that victims can have some satisfaction that justice has been done, the fewer will resort to violence.

These are the advantages of justice. This is how justice can contribute to lasting peace. But this still is not the full picture. The extent to which justice contributes to peace is also determined by other factors:

- First, and above all, justice must be fair. Only justice that is fair can contribute to revealing the truth about atrocities that have been committed. Fair proceedings will be more widely accepted. The community of someone ultimately punished by a court is less likely to strike out violently if that person has had their rights fully protected in the process. A victim community that understands through a fair process why an accused person is found not guilty is less likely to strike out in anger after the acquittal.

At the ICC, beyond protecting the rights of the accused, fairness also means that justice must be free from political influence. In the lead-up to the Rome Conference in 1998 that gave birth to the Court, this was a primary concern raised by African states. It was a concern born of experience with colonialism and exploitation. These states developed or supported a number of proposals to ensure the Court's judicial independence and the independence of the Prosecutor. These proposals were approved and are now part of the Statute. The 18 independent Judges and the Prosecutor are all elected to one nine-year term. With no re-election possible, any State wishing to exert political influence on the judicial process would find it much more difficult. The Rome Statute establishes that the Judges are elected with due regard to diversity of geographical distribution, gender, and legal background. A diverse bench is a bench that is much less likely to show political regional or gender bias. Some critics of the Court, perhaps for their own reasons, have accused it of having an anti-African bias. But this is hardly possible when five of the 18 judges are themselves African. And there is yet another check against any possible potential for political bias. The Chambers of the Court are divided into three divisions. Any case that works its way through to a final verdict will have gone through proceedings before three judges of the pre-trial division, three different judges in the trial division, and finally five different judges in the appeals division.

- Related to the issue of fairness, there is a second factor that determines the extent to which justice can contribute to peace. A fair justice process must be understood by affected communities to be fair.

This means that communities must understand the judicial process. The ICC does what it can to explain the Rome Statute system. Through our field offices, we conduct outreach in each of the three situation countries in this Great Lakes region. The Court's outreach staff show videos of the proceedings, listen and answer questions about the Court, and interact in other ways with affected communities. I hope to make a small contribution to this effort in the coming days when I visit Ituri.

- And finally there is a third important factor that affects the extent to which justice contributes to peace. That is predictability. When the potential perpetrator really expects to be caught, he is less likely to commit the crime. Victims who really expect that they can rely on justice to punish their tormentors are less likely to seek violent revenge. Simply put, there must be more capacity for prosecutions and trials, and arrest warrants must be enforced. This country and this region have shown great leadership in many aspects of increasing the predictability of justice. Many countries in this region are States Parties. Three have referred their own situations to the ICC. And the DRC has delivered three suspects for trial in The Hague. The ICC can play a central role in creating an expectation of justice by trying cases against the top alleged perpetrators. Communities who see powerful, once untouchable figures made to answer before the law will perhaps develop greater admiration for the law's reach.

Here, however, I must make plain that the ICC alone cannot bring full justice to the DRC, let alone the entire Great Lakes region. A Court with a global mandate and limited resources will only be able to bring a limited number of cases related to any one country or region. And in any case, under the Rome Statute system it is the primary responsibility of States to investigate and prosecute war crimes, crimes against humanity and genocide.

As officials and legislators, there is much that you can do to increase the predictability of justice in this region. First, there are five fugitives from the ICC still at large in the region. It is my hope that this country can soon hand over Bosco Ntaganda for trial. And all of the countries in the region can cooperate to assist in finally bringing the four suspects from the Lord's Resistance Army to justice. These additional arrests would reinforce expectations that the ICC's warrants can and will be effectively enforced. As legislators you can adopt implementing legislation that facilitates cooperation with the ICC.

You can also take actions to increase the sheer numbers of prosecutions. Even where the ICC is active, as it is here in the DRC, there is scope for a division of labour to close the impunity gap. While the ICC focuses on the biggest fish, national jurisdictions can still pursue investigations and fair trials for lower level suspects. In the immediate term, much remains to be done to protect the brave judges, lawyers and witnesses who are participating in these processes. As an important component to the conduct of fair trials at the domestic level, this country, Uganda, and others in the region should adopt another aspect of implementing legislation. This legislation domesticates ICC crimes in your national law. In the short term it would aid the conduct of fair trials at the national level. Over the longer term, domesticating ICC crimes in your legal codes would mark an important step toward reassertion of state responsibility to deliver justice for the worst of crimes. As parliamentarians, it is in this area that you can perhaps best show your dedication to the fight against impunity. You are in a position to lead in passing implementing legislation without further delay.

For everyone in this room, whether working at national or international levels, much work remains to consolidate the Rome Statute system. The ICC always will offer a last hope for justice in response to humanity's deepest depravity. We must work toward the day when there is a realistic chance of justice for every atrocity. Then the ICC will underpin a system that fulfils justice's promise to deter crime. Few will then doubt that justice sustains peace.

Thank you.