

CHILDREN AND INTERNATIONAL CRIMINAL JUSTICE*

Keynote Address

*Fatou Bensouda***

Ladies and Gentlemen, Dear Colleagues,

Let me begin by extending my deepest gratitude to the University of Georgia, School of Law for graciously hosting this important conference on children and international criminal justice, and for inviting me to address you here today. Thanks are also owed to the many sponsors that have made this event possible.

I would like to thank, in particular, my Special Adviser on Children in and affected by Armed Conflicts, Professor Diane Marie Amann for her commitment and her immensely valuable work in this area. I know that Diane, along with her hardworking team here at the law school, have worked tirelessly for the past few months to realize this event—I am grateful for their efforts and humbled by their dedication.

They are certainly deserving of our utmost praise and a round of applause.

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** Honorable FATOU BENSOU DA is the Prosecutor of the International Criminal Court. She was ICC Deputy Prosecutor (Prosecutions) from 2004 to 2012. Before that, she served as Legal Adviser and Trial Attorney at the International Criminal Tribunal for Rwanda in Arusha, Tanzania, rising to the position of Senior Legal Advisor and Head of the Legal Advisory Unit. The Prosecutor's international service followed a distinguished career in her home country, The Gambia. Upon earning a master of laws degree from the International Maritime Law Institute in Malta, she was the first Gambian expert in international maritime law and the law of the sea. Between 1987 and 2000, she was a government lawyer, beginning as Senior State Counsel and eventually becoming Attorney General and Minister of Justice; in the last capacity, she was the chief legal advisor to the Gambian President and Cabinet. She took part in negotiations on the treaty of the Economic Community of West African States, the West African Parliament, and the ECOWAS Tribunal, and served as a delegate to U.N. conferences on crime prevention, to Organization of African Unity Ministerial Meetings on Human Rights, and to the Preparatory Commission for the International Criminal Court. Her many honors include the 2009 ICJ International Jurists Award, presented by Indian President P.D. Patil, as well as honorary doctorates from Middlesex University-London and the Vrije Universiteit-Brussels. In 2012, Time named her one of the 100 Most Influential People in the World; in 2013, Foreign Policy named her a Leading Global Thinker; and in 2014, Jeune Afrique named her one of twenty African women whose actions and initiatives advance the African continent.

The Great Nelson Mandela once said: “We owe our children, the most vulnerable citizens in our society, a life free of violence and fear.” These few simple but profoundly important words reflect the reasons and aspirations behind why we are all gathered here today.

We must indeed pool our efforts, expertise, and energies to advance the rights of children and to shield them from harm in times of conflict.

It is truly heartening to see such an impressive gathering of practitioners and academics, all committed to this worthy cause, and I feel privileged to be a part of today’s rich discussions.

The highly toxic effects of conflict and violence on children, both directly and indirectly is one of the gravest problems in need of redress today.

In most armed conflicts, the recruitment of child soldiers, sexual slavery, attacks on schools, or forced displacement are regrettably common occurrences. These heinous crimes are not only repugnant to our collective conscience but simply devastating to children’s lives, and their families and communities—they should not be tolerated, but rather met with the full force of the law.

Fighting impunity for crimes against children worldwide should be at the forefront of the global agenda.

History has taught us that peace is simply a respite between wars. This new century alone has already witnessed countless conflicts erupt in different theatres around the world, with serious repercussions for children.

While wars may be inevitable, we have an obligation to curb the destructive impact human conflicts can have on children.

My Office is firm in its commitment to stand against the commission of crimes against children during conflict.

Where our jurisdiction permits, rest assured that we will robustly investigate and prosecute perpetrators of these crimes to the full extent of the law.

We are also committed to respecting the rights of children with whom we interact in the course of our investigative and prosecutorial work, including their right to be heard and to have their best interests treated as a primary consideration.

Ladies and Gentlemen, Dear Colleagues,

Allow me to share with you our perspective from the Office of the Prosecutor of the International Criminal Court on how the Rome Statute, our founding treaty, can protect and promote the rights of children.

In 1998, in part due to the efforts of a robustly active NGO, the Children’s Caucus, crimes against children were the subject of extensive

negotiations at the Rome Diplomatic Conference, where States negotiated the provisions of what would become the Rome Statute.

This served to highlight the important role that civil society plays in upholding the rights of children and other vulnerable groups. Thanks to very active actors, states and NGOs alike, the importance of the issue ultimately found legal backing in the provisions of the Rome Statute.

As such, charges regarding crimes against children are explicitly foreseen within each of the Rome Statute's core crimes.

For instance, one of the five acts that may constitute genocide is forcibly transferring children of a protected group to another group.

The Statute specifies that a crime against humanity of enslavement encompasses trafficking of children.

Conscripting or enlisting children under the age of fifteen years into an armed force, or using them to actively participate in hostilities constitute war crimes.

Furthermore, the Rome Statute's sensitivity towards children's issues is clearly demonstrated in relation to the protection of victims and witnesses. Article 68(1) of the Rome Statute explicitly states that the Court must "have regard to all relevant factors, including gender and the nature of the crime, in particular, where the crime involves sexual or gender violence or violence against children."

Addressing crimes against the most vulnerable members of society is a priority for my Office and the International Criminal Court. Article 54(1) of the Rome Statute thus requires that "the Prosecutor shall . . . take into account the nature of the crime, in particular where it involves . . . violence against children."

When I assumed Office as Prosecutor in 2012, I categorically stated that in addition to focusing on "children who are forced to carry arms," we must also address the issue of "children who are affected by arms."

This was a clear signal that the issue is critically important for me and my Office, and emphasized my pledge that such egregious crimes and their victims will not be ignored.

To this end, I have elevated this issue to one of the six key strategic goals in my Office's Strategic Plan for 2012–2015.

Similarly, I have elevated fighting impunity for sexual and gender-based crimes to the same status, as it has become increasingly evident through my experience as Prosecutor that these acts in tandem create, perhaps, one of the greatest menaces to the security and welfare of our societies.

Furthermore, in order to reinforce our in-house expertise in this crucial area, in December 2012, I appointed Professor Amann as my Special Adviser on Children in and affected by Armed Conflicts. Professor Amann has provided and continues to provide my office with invaluable support since her appointment, including advising on the development of the Office's Children's Policy, and creating awareness on children's issues as they arise in situations involving war crimes, genocide and crimes against humanity.

Ladies and Gentlemen, Dear Colleagues,

It is important to recognize that the issue of children in armed conflict has also become a cornerstone of the ICC's early jurisprudence.

In our first case against Thomas Lubanga Dyilo, the former rebel leader in the Democratic Republic of Congo, we focused on charging him with the conscription, enlistment and use of children under the age of fifteen to participate actively in hostilities.

This is a clear demonstration of the importance we attached to crimes against children from the inception of our work and we continue to do so. The guilty verdict against Mr. Lubanga in 2012 was a landmark decision for the Court and I believe for the whole Rome Statute system.

Even before the verdict was pronounced, the Lubanga trial helped trigger much needed global debate on the recruitment of children into armed forces, including in Colombia and Sri Lanka.

The case also highlighted various issues, including the impact of crimes against children on whole communities, the specific issue of girl child soldiers, and the devastating effect that such crimes can have on the right of children to education.

There can be no doubt that the crimes which Lubanga was convicted of, interrupted, delayed and denied education to children in the Ituri region of the Democratic Republic of the Congo.

For some children, denial of education took the form of recruitment as child soldiers. Young boys and girls were made to carry guns instead of their school books.

Others were forced to work in the camps, or to be sex slaves for the commanders and soldiers. Families and entire communities suffered from the traumatic experience, with a constant threat and fear of being attacked, harmed or abducted.

This was the reality for children living in the Ituri region of the Democratic Republic of the Congo. As a result, an entire generation of children was deprived of the right to education and an environment

conducive to learning. What hope—we must ask ourselves—is there for such communities?

The Judges of the Court recognized this fact in their comprehensive decision regarding the principles and procedures for victims' reparations. They ruled that decisions granting compensation to victims must take into account lost opportunities, including those relating to employment and education. They also recognized that rehabilitation of the victims of child recruitment should include measures aimed at facilitating their reintegration into society, including the provision of education and vocational training.

It bears noting that we have worked to expand the focus from the specific issue of child soldiers and to holistically consider the many different ways in which children are affected in situations of conflict.

This expanded focus is reflected in the way in which the charges were framed in the Second Arrest Warrant against Bosco Ntaganda, the alleged former deputy chief of the staff of the Forces Patriotiques pour la Libération du Congo.

In June of this year, Pre-Trial Chamber II of the Court confirmed all the charges against Bosco Ntaganda. These charges include not only war crimes of conscription, enlistment and use of children, as in Lubanga, but also charges of sexual slavery and sexual violence against children who formed part of Ntaganda's own militia—this is a milestone decision.

During the confirmation of charges, the Office argued that the protections afforded by international humanitarian law extends to children generally and were not lost by those recruited into Ntaganda's own armed group. A Conviction in respect of these charges will represent an important, pioneering clarification of the protection international humanitarian law offers to children and the victims of sexual violence in situations of armed conflict.

Nearly every charge against Bosco Ntaganda also speaks to the effects of armed conflict and related violence on children; for example, the war-crimes charges related to pillage and to attacks on protected objects, such as schools.

Ladies and Gentlemen, Dear Colleagues,

Our subject today is of critical importance. We all recognize the urgency with which we need to fight impunity for crimes against children worldwide.

It is now the time to engineer a unified, cohesive, effective, global approach and implement the principle of complementary envisaged in the Rome Statute.

To that end, it is necessary to identify the many actors involved, at the local, the regional, and international levels in order to coordinate our efforts and maximize our potential.

In the Rome Statute system, the national authorities of the Court's 122 States Parties form the first line of defense in addressing mass crimes, including those against children. They shoulder the primary responsibility for the investigation and prosecution of perpetrators of these crimes, through both individual efforts and mutual support.

As a Court of last resort, the ICC is only authorized to step in, in the event that a State is unwilling or unable to conduct genuine national investigations and prosecutions.

This is one of the major strengths of the Rome Statute system: its capacity to contribute to the fight against impunity either directly through the Court's proceedings, or by incentivizing and mobilizing action at the national level.

The work done by the Court can maximize the impact—including the preventative impact—of the work of other actors.

For example, the former Special Representative of the UN Secretary-General on children and armed conflict, Mrs. Radhika Coomaraswamy, capitalized on our Lubanga case, even before the completion of the trial, by using it to campaign around the world, to demobilize child soldiers, including in Nepal, which as you know is not a State Party. This is an example of how the law can be employed to prevent crimes, and how the "shadow of the Court" can have an impact and reach beyond the contours of its jurisdictional limitations.

Complementarity and prevention will be key aspects of my Office's new Policy Paper on Children for which consultations have already started.

The Policy Paper on Children will be a comprehensive elaboration of how my Office handles, and intends to systematically approach children's issues in all aspects of its work. It will address, not only issues relating to crimes against children, but also those relating to our interaction with children: for instance, taking into account their views, issues of protection and support of children who are witnesses and victims, as well as children of adult witnesses.

I hope that this Policy Paper, once adopted, can also serve as a guide for States and other relevant actors in their work to combat crimes against children and to address children's issues in the judicial process.

The rich discussions during this conference are extremely important and will feed into the drafting of this policy paper. I invite all those who are

interested to provide input on this Paper once the draft is circulated for comments and suggestions.

Ladies and Gentlemen, Dear Colleagues,

Allow me to conclude by observing that crimes against children in conflict destroy the individual, shatter the family unit, and tear violently at the social fabric of society.

Indeed, they rob children of their innocence, childhood, and often, tragically, of their lives. They rob society of its future potential and of its greatest resource. These reprehensible acts must be confronted with a robust and unified response.

We must join our efforts and work in concert to send a clear, firm, and consistent message that humanity stands united in its belief that crimes committed against children in conflict will neither be tolerated nor ignored. Only with collective and unified action can we truly make a difference.

Let us stay committed to the cause and do what needs to be done, no matter how formidable the challenges. History will judge us not by our words, but by our lasting conduct. The victims of these horrendous crimes will not find solace in our promises, but in what we manage to deliver in concrete terms.

Rest assured that my Office will certainly do its part, and we look forward to working with you in an integrated and coordinated fashion to achieve our common goal.

A crime against a child is an offense against all of humanity; it is, to be sure, an affront to our basic tenets of human decency.

We must end the scourge of violence against children during conflict, and I'm confident, together, we can.

Thank you.