



EDITORIAL

MIND THE GAP

Good intentions are famously dangerous. History is full of them and newspapers are filled with accounts of their terrible consequences. But the case of the International Criminal Court seems to defy the advocates of caution and circumspection. The ICC, its supporters say, is a landmark achievement in international justice; one which promises hope for the wronged and a sticky ending for those who commit the most serious crimes. Where national systems of justice fail, the international system will provide a sort of judicial dole. In short, the ICC will fill the gap.

There is much evidence in favour of this view. The ICC has been set up in record time; attracted capable and respected staff; overcome significant financial and diplomatic obstacles; and held its first few meetings without crisis or incident. All this has been achieved, it appears, with quiet efficiency and great care. Which is more than can be said of many other international organisations. Africa, so often at the back of the queue, is first in line for the Prosecutor's attention. Even now, representatives of the ICC have begun to monitor Ituri, a volatile region in the Democratic Republic of the Congo where the first official investigation might begin. An observer of these events is bound to conclude that this is an organisation that matches words with deeds, and plans to make good all its promises. Any criticism of the ICC is surely mean-spirited or motivated by ignorance, cynicism or envy.

But how to tell the well-meaning from the genuinely helpful? How to know whether the consequences will match the intentions?

African citizens have first-hand experience of others' good intentions. The programmes and protocols that promise prosperity or peace are a currency without value in most African communities. Though the ruling elites might disagree, some citizens could be forgiven for a lack of enthusiasm at the prospect of yet another slick organisation promising to end impunity and begin a new era of international justice. Certainly, the participation of many African states in drafting the Rome Statute has been positive and this should be encouraged. But citizens in Africa are more often than not isolated from the international debate on these important issues. Agreements reached in meeting rooms in New York and The Hague will be tested in the villages and cities of Africa. The gap between those two arenas and their respective views of international justice may be bigger than expected.

The Special Court for Sierra Leone and the Criminal Tribunal in Rwanda are good lessons for Africa. By focusing their attention on specific cases of aggression and genocide they have highlighted the weaknesses that exist. But these courts are ad hoc solutions; they are working to a deadline and will eventually pack up and leave. Despite doing very good work, they are not a lasting solution. The task of building national judicial systems is a difficult one. A whole generation of judges, advocates, attorneys, clerks and judicial officers needs to be encouraged and trained. The only lasting judicial systems will be those that are trusted and respected by African communities. The *gacaca* community courts in Rwanda, while not perfect, are a good example of this.

One aim of this edition of the African Security Review is to promote debate and provide information on the ICC. The ICC is about more than abstract legal issues. It has very serious implications for African states and citizens. States who are party to the agreement will be asked to co-operate with ICC investigations. The ICC will, in effect, begin to decide whether amnesties granted to individuals are acceptable and whether African states have acceptable judicial systems. It is important that African states and citizens are ready to co-operate with, but also to critically assess, the work done by officials of the ICC.

Much has been made of the American decision not to become a party to the Rome Statute. This has all but drowned out other views and debates. Many officials and supporters of the Court seem fixated with this single state. The participation, or not, of states in Africa and other world regions where the Court may be operating as soon as next year has not attracted much attention. Even in Africa, the debate tends to ignore events in Lusaka, Harare, Cairo and Dakar, and follow this absurd focus on the United States. Presumably, this imbalance will be rectified once Mr Moreno-Ocampo and Mr Serge

Brammertz, the Prosecutor and Deputy respectively, begin the real work in the DRC next year.

Max du Plessis' article in this issue gives a broad introduction to the Court and the Rome Statute. He points out the implications of being a party to the agreement and explains the limits of the Courts jurisdiction which must be understood if African states want to use the Court to act upon their commitment to the principle of individual criminal liability for those responsible for the most serious crimes.

In politics, the details are often lost in the hurly burly of vigorous debate. In legal matters, however, small details count and the Rome Statute is no different. Taking South Africa as an example, Anton Katz explains how states must be careful to ensure that their domestic laws do not prevent them from co-operating with international courts.

The ICC is not the only form of international justice that Africans need to be aware of. The Special Court for Sierra Leone is just beginning, and the Tribunal in Rwanda is rushing to complete its work. Andreas O'Shea has worked in both of these courts and gives some insights into how they operate and the problems they face.