

International Criminal Court critique

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The International Criminal Court

Please visit the site below to complete the tasks 1 and 2.

www.icc-cpi.int/en_menus/icc/situations%20and%20cases/Pages/situations%20and%20cases.aspx

1. Name the 8 situations where the ICC is involved in investigation/prosecution of international crime
2. Select ONE situation and explain the reasons for the involvement of the ICC
3. Go <http://www.iccnw.org/> and outline the role of this organisation.
4. Visit <http://www.hrw.org/topic/international-justice/international-criminal-court> and find one situation where the website is critical of the ICC and explain their perspective.
5. Refer to the article "***The international criminal court's many flaws can't simply be glossed over***" and "The enforcement gap: How the International Criminal Court failed in Darfur" and with reference to examples, assess the effectiveness of the ICC in protecting the community from international crime. (fond on next page)
6. With reference to Hot Topics Vol 69 2009, pages 15-19 (www.legalanswers.sl.nsw.gov.au/hot_topics/pdf/international_69.pdf) evaluate the effectiveness of measures which deal with international law. In your answer consider:
 - the extent to which law reflects moral and ethical standards
 - issues of compliance and non-compliance in regard to criminal law
 - the extent to which the law balances the rights of victims, offenders and society

The International Criminal Court's many flaws can't simply be glossed over

By Toby Cadman – *The Guardian*, Thursday 28 June 2012

Serge Brammertz recently wrote about the international criminal court, which now has a new chief prosecutor, Fatou Bensouda (Now for Kony and Bashir, 14 June, found @ <http://www.guardian.co.uk/commentisfree/2012/jun/13/international-criminal-court-kony-bashir>). "As Bensouda begins her term, we should reaffirm our support for the court's work," he said. But the ICC has many flaws which Brammertz simply glossed over.

Mainly funded by European nations, the ICC has cost over \$1bn to deliver a single verdict – against Thomas Lubanga, (found @ <http://www.guardian.co.uk/law/2012/mar/14/congo-warlord-thomas-lubanga-icc>) a Congolese warlord – in nine years. Brammertz accepts that "complaints are frequently levelled at the ICC for focusing too much on African cases" and, indeed, the fact that only black Africans have been brought before this European-funded court has opened it to accusations of racism. Yet it is primarily the ICC's reliance on evidence-gathering and witness sourcing by local NGOs and incumbent politicians that has put its credibility at stake. Without investigating directly, the ICC has had to adopt a position of willful blindness when it comes to the crimes of those political leaders with whom it has had to curry favour in order arrest those individuals it seeks to try.

This means, time and again, the cases before the court have directly benefited certain African political leaders against their opponents. In Democratic Republic of the Congo this has benefited Joseph Kabila against Jean-Pierre Bemba; in Kenya the prime minister, Raila Odinga, has seized the initiative over the deputy prime minister, Uhuru Kenyatta, his likely opponent in the forthcoming presidential elections. In the eyes of many African commentators this is clear evidence the ICC is merely a European-sponsored service delivering "victors' justice", enabling incumbent African leaders to remove political opponents. This cannot continue if the court is to remain credible.

So what is to be done? While there might be good reason to expect that Bensouda will attempt to assert some independence from her sponsors, she might achieve this best through using the start of her term to review all cases passed on by her predecessor, Luis Moreno Ocampo.

In the Kenyatta case this means that far more robust evidence must be gathered on the ground by the ICC itself. And if there is more evidence – or indeed evidence against others – then the case should be heard in Africa, where internationally sponsored tribunals such as the international tribunal for Rwanda have successfully fused international legal expertise with appreciation for African dignity.

This week, the ICC held its status conference to determine the trial dates for the Kenyan 'Ocampo Four.' The outgoing Chief Prosecutor admitted that the cases may be heard after next years elections. It is hoped that this stems from a desire for the trials not to unsettle next years vote, especially after the welcome attempts at reconciliation that have taken place within Kenya. However, you do not have to be a legal expert to acknowledge that Mr Ocampo may well have realised that going to trial on the current evidence would be madness. It remains to be seen if he is protecting peace in Kenya or simply protecting what little is left of his reputation.

Eleanor Roosevelt once said "Justice cannot be for one side alone, but must be for both". Sadly, the way the ICC is operating means it is delivering one-sided justice based too often on politically motivated evidence, and flying in the face of countries such as Kenya who are willing to conduct cases themselves. Without trials based on robust and unbiased evidence there can be no justice. If the ICC's practices continue it will be time for the financial sponsors of the court to question its very existence.