



**Cour
Pénale
Internationale**
**International
Criminal
Court**

Le Bureau du Procureur
The Office of the Prosecutor



Mrs Fatou Bensouda
Prosecutor of the International Criminal Court

18th session of the Assembly of States Parties

Opening plenary

Remarks

Mr President of the Assembly,
Mr President of the International Criminal Court,
Mr Registrar,
Honourable Ministers,
Excellencies,
Distinguished Delegates,
Colleagues,
Ladies and Gentlemen,

It is an honour to address this Assembly at the opening of its 18th session. I welcome those who have travelled from near and far to the World Forum; this is surely a testament to the importance we all attach to the Court and its mandate, and the crucial issues that will be discussed today and in the days to come.

I look forward to fruitful exchanges, both during the plenary discussions as well as the many side-events and bilateral meetings organised in the margins of this gathering.

This Assembly convenes against the backdrop of our shared vision and strong desire to strengthen the functioning of the International Criminal Court (“ICC” or the “Court”) and the Rome Statute system of which the Court and States Parties constitute integral yet distinct parts. Each part, and its performance, is critical to the overall functioning of the system.

You have before you a number of critical decisions to take, including the Court’s 2020 budget, and the review process. These decisions will contribute to shaping the future course of the Court. Without adequate resources, performance will fall short of expectations. And without the review process resulting in strengthening the Rome Statute system as a whole, again, I would submit, we would not meet the expectations duly raised.

This past year has again been extremely hectic and eventful with successes and disappointments for my Office.

The acquittal decision, by majority, in the *Gbagbo & Blé Goudé* case, and the rejection of my request to initiate investigations into the Situation of the Islamic Republic of Afghanistan are two distinct examples.

We have appealed both decisions, and hope for positive outcomes.

As recently as the 14th of November, Pre-Trial Chamber III authorised my Office to commence investigations of allegations of crimes committed concerning the Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar.

The Chamber agreed with the 6th of September 2018 ruling of Pre-Trial Chamber I that the Court may exercise jurisdiction over crimes when part of the criminal conduct takes place on the territory of a State Party.

We responsibly endeavoured to explore how the Rome Statute legal framework could attempt to address the alleged atrocities committed in the context of the deportation of the Rohingya from Myanmar, and are most pleased with the progress made to date.

I have designated a team to prepare and commence work without delay in what will be another challenging situation before this Court. We count on the support of States Parties, the UN and other partners in the pursuit of international criminal justice as we advance our work in this situation.

You will also be aware that on the 7th of November, Trial Chamber VI unanimously sentenced Bosco Ntaganda to a total of 30 years of imprisonment. This followed the Chamber's earlier decision, in July, finding Mr Ntaganda guilty, beyond reasonable doubt, of 18 counts of war crimes and crimes against humanity, committed in the Democratic Republic of the Congo.

The importance of this conviction can not be overstated: it is the first time the ICC convicts an accused for crimes relating to sexual slavery and violence against child soldiers who were within the ranks of the accused's own force. It is also the longest sentence issued by the Court, reflective of the gravity and scale of the crimes for which he was convicted.

In the context of our work in Mali, on 30th of September, Pre-Trial Chamber I issued a unanimous decision confirming the charges of war crimes and crimes against humanity, including the crime of persecution on the ground of gender, brought against Mr Al Hassan. Mr Hassan will soon stand trial for these charges.

In May of this year, the Appeals Chamber upheld the Pre-Trial Chamber's finding with respect to the arrest and surrender of then President Omar Al-Bashir, confirming that immunities are not a bar to the exercise of the Court's jurisdiction.

These decisions are only the latest, visible outcomes stemming from my Office's diligent efforts over the past years to refine its investigation and prosecution strategies, and to strengthen its organisational capabilities to carry out its core activities applying experiences and lessons learned from past successes and disappointments. The recently released Kenya external expert review and lessons learned is an example of those efforts. Our strategic plans, another. In other words, the revised and refined approaches to investigations and prosecutions we have adopted since 2012 are producing tangible results.

We continue to witness real progress as a result of the important strategic changes adopted since, and we are consolidating these in on-going as well as future cases.

On the strength of such efforts, we hope for and anticipate positive results in the *Ongwen* case, in which closing statements begin on the 10th of March 2020, as well as the *Yekatom and Ngaïssona* case, in which a Pre-Trial Chamber decision will be rendered shortly following the confirmation hearing held in September.

Important appeals hearings have also been concluded in other cases for which seminal decisions will issue in due course on important matters. These include the question of *ne bis in idem* and amnesties in the *Saif al-Islam Gaddafi* case, as well as on the *interests of justice* test which arose in the context of the Afghanistan Situation.

Beyond the work in court, progress has also been made in all of my Office's on-going active investigations, such as those relating to Libya, Darfur and Georgia, which we have diligently progressed, notwithstanding significant security and resource challenges.

I am aware of States' desire to be provided with details of progress in on-going investigations. However, as in any other national jurisdictions, investigations are confidential in nature and are not always visible to the public in order to protect their integrity. The results of all investigations will be made public at the right moment.

Work on on-going preliminary examinations is also steadily progressing. This past year, various milestones were reached and significant progress was made in preliminary examinations in situations spanning the globe from Colombia, Venezuela, Guinea, Nigeria, Ukraine, Palestine, Iraq/UK, and the Philippines.

Each of these situations are at different stages of the preliminary examination process and some have significantly advanced to a stage where final decisions are likely to be reached in the near future.

Details of activities carried out in each situation in 2019 will be published imminently in our annual preliminary examination activities report. I take this opportunity to cordially invite you to a side-event being held this Friday where I will present the report.

Mr President,
Dear Delegates,
Friends and colleagues,

My Office has remained focussed on achieving high success rate in court, and all our efforts are geared towards this goal.

Strengthening the quality control mechanisms within the Office; optimising preliminary examinations; reviewing and further improving investigative and prosecutorial standards and practices, including with partners; further deepening our ability to investigate in complex environments; and contributing and adapting to jurisprudential developments in court are some of the measures we have taken to achieve this goal.

We are implementing the Office's 2019-2021 Strategic Plan adopted this past summer. This Plan builds on two predecessor plans and aims to consolidate achievements and positive results of the past.

To achieve the strategic goals' full implementation, we have identified and carefully thought through a number of critical challenges faced by the Office. We hope to engage in open and frank dialogue with States Parties and other stakeholders to identify strategies, and the assistance that may be required to address some of these challenges.

Issues identified for such discussions include the desirable size of an international (global) prosecution office with an ever increasing workload but without commensurate resources. As I have stated previously, there is a direct correlation between resources and performance. Other topics include a common understanding of prioritization, and the meaningful practical application of the complementarity principle in strict conformity with the Rome Statute; the development of completion strategies; and the turn-around time for preliminary examinations to reach conclusion.

One key question which my Office will need to tackle in the coming period is the reality that a number of preliminary examination situations will likely progress to the investigation stage, but we will not have the operational capacity to absorb them all. As such, we are considering how prioritisation might apply across different situations and potential cases once an investigation has been opened, applying the principles outlined in our case selection and prioritisation policy paper.

At the same time, as we work on developing a policy on completion strategies, we will need to conceptualise the steps that need to be taken to bring our prosecutorial programme in each of our existing situations and cases to a workable conclusion.

Some of these issues already feature in the Matrix developed by States Parties with input also from the Court and other stakeholders. We look forward to engaging in constructive discussions aimed at finding long-term solutions for these issues.

In this regard, my Office and the Court as a whole welcome the timely and important review exercise to further strengthen the performance of the Court and the Rome Statute international criminal justice system *writ large*. Commendable work and effort have already gone into the thinking of this process.

We have contributed to this thinking and will remain available to continue to constructively engage with States Parties and the experts to be selected to assist with the process to strengthen the system that is so crucial to the fight against impunity for atrocity crimes, and to which we all have a duty to support in our respective capacities.

There is every reason to believe that this process will yield useful recommendations for all to consider, and especially, recommendations that we, in the Court and the Office, can independently consider for implementation to improve effectiveness and efficiency.

Much work has already been done by my Office on some of the issues identified for review and we trust that the review process will recognize measures already in place to improve performance. More work remains to be done, and we are committed to the task.

The effectiveness of the Court depends on both internal and external factors, the latter being out of the Court's control. There is no point in fixing one part of the engine if the other essential supporting parts are not working optimally. States are a key component of the Rome Statute system, hence the need for the review to also pay close attention to this component of the system.

The question to ask is whether outside factors which impact the Court's effectiveness can continue to be addressed through *business-as-usual* facilitations of the ASP, as commendable as such efforts have been to date.

Consider the importance of cooperation.

The ASP co-facilitators, France and Senegal, have done a remarkable job in the past years facilitating important discussions on such varied topics such as financial investigations, voluntary agreements, and arrests.

At the same time, the Court continues to face serious challenges in all these areas. For my Office, more arrests translate into more prosecution cases, and for the Court as a whole, a greater ability to develop its jurisprudence, thus enhancing its efficiency and effectiveness, and indeed, ability to consistently deliver on its mandate. The effectiveness of the Office in bringing before the Court well-investigated cases ready for trial is undermined if those cases then languish for years due to lack of arrests.

Failure to arrest also erodes victims' hopes and trust in the institution and the Rome Statute system of international criminal justice. Perpetrators become emboldened to continue committing crimes. We see practical examples in Libya where Mr Al Werfalli allegedly continues to commit crimes despite two arrest warrants issued against him.

I hope we can delve deeper into these issues during the cooperation plenary on Thursday.

Mr President,
Your Excellencies,
Ladies and gentlemen,

Today, more than ever, greater support is needed for the Office and the Court in the face of the ever increasing assaults to undermine our credibility and tarnish our independent and impartial work and the international rule of law more generally.

I wish to echo President Chile Eboe-Osuji's clarion call for State Party support for the Court at a time when it is under attack.

It is precisely at times like these when international criminal justice and indeed efforts to address gross human rights violations, are under assault; when we are witnessing a clash and crisis of fundamental values, that courage and conviction must guide our actions to protect our common values and goals.

And to give all of us, legal professionals and flagbearers of the rule of law, who are in the trenches, who are assuming personal risk to do this crucial work, *hope*.

Hope in the knowledge that we stand united in the defence of international criminal justice and the international rule of law applied *as the law so demands it*.

States Parties, in particular, as custodian of the Rome Statute, amongst other stakeholders invested in the success of international criminal justice, must discuss and coordinate proactively to see how they can better protect and support the Court against attacks aimed at undermining its work and independence.

An attack on the Court, as a treaty based judicial body, is an attack on all of us, including on States Parties.

The Court and its mandate are too important to allow the costly gains we have made together to regress.

We should anticipate that attacks on the Court and efforts to undermine it will only continue to be stronger as our work progresses and our activities expand to new and ever more sensitive situations.

Inaction and silence in such times cannot be explained away as tactical silence. The unthinkable cannot be allowed to become the new normal.

What the Court needs in these challenging times is more robust, strong and united voices from the States Parties, and private principled diplomatic engagement in full support of the Court and the Rome Statute, which you brought into existence. The mandate you entrusted to the Court in 1998 remains as crucial and even more relevant today than it was then, hence the need to resist any undue pushbacks on the gains we have made over the years since the start of our operations.

My Office is acutely aware of the responsibility it carries towards the victims who have put their faith in us and in the Court. I am confident that all States Parties also fully understand and support our duties under the statute.

We have a responsibility to be responsible in the execution of our mandate to ensure consistent success and longevity of the Court.

The only defensible and durable way to achieve that is to remain true to the Rome Statute and apply its provisions, without fear or favour.

Under my watch, we will continue to do that, and I count on States Parties to firmly stand by our side as guardians of the Rome Statute and in the staunch defence of international criminal justice.

I thank you for your attention and wish you productive deliberations. | oTP