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Court



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Remarks to the 23rd Diplomatic Briefing

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Your Excellencies, Ladies and Gentlemen:

Thank you for being here today.

It is a privilege for me to appear on behalf of the Prosecutor, Fatou Bensouda, to brief you, for the first time, as Deputy Prosecutor of the International Criminal Court. The Prosecutor apologises for her absence today and extends her greetings to all of you.

The Court faces formidable challenges, but it is also a time of great promise for the development of the Rome system of international criminal justice. We are in an evolutionary period as we embark upon the second decade of the Court's existence. Learning from our past experiences, we, in the Office of the Prosecutor, are adjusting our plans and methods to meet the challenges of the future.

The Preamble to the Rome Statute of the International Criminal Court recognizes that grave crimes threaten the peace, security, and well-being of the world. The Court was established to deal with war crimes, crimes against humanity, and genocide, which are the most serious crimes of concern to the international community as a whole, and to put an end to impunity for the perpetrators of these crimes. In this way, it is hoped, such crimes may be deterred in future.

The Office of the Prosecutor, acting independently as a separate organ of the Court, is responsible, under the Prosecutor's direction, for the conduct of impartial investigations and prosecutions for these crimes, where national authorities are either unable or unwilling to do so.

In April, the Prosecutor circulated for comment the draft OTP Strategic Plan for 2013-15. In the coming days we hope to refine this plan and to provide a fresh vision for the future. In essence, the strategic plan places the emphasis upon the achievement of high performance standards to ensure that we obtain results. Our goal is to secure good results based on the thorough investigation of well-conceived cases that are skilfully presented before the Chambers.

The objective that the ICC Statute assigns to the Court, and so necessarily to the Prosecutor, is to end impunity for the perpetrators of the worst crimes known to humanity. In pursuing this ultimate goal, the Prosecutor has set out for her Office in the draft OTP Strategic Plan related objectives that are designed to ensure success.

These objectives include the conduct of high-quality investigations and prosecutions, the encouragement of effective domestic responses to the commission of the most serious crimes of concern to us all, sensitivity to the needs of the victims of these crimes, deterrence of potential perpetrators, and a transparent and predictable approach to issues.

The two key concepts that the Prosecutor is promoting in her strategic plan for the next few years are “quality” and “efficiency”, as these concepts relate to all of the operations of her Office.

With respect to investigations, this means that, building on the experiences of the past, we are placing our emphasis on the initial investment of sufficient resources to develop our cases as fully as we can even before we engage the judicial process. Our aim is to be as “trial-ready” as possible by the time we come to the hearing for confirmation of charges. This should allow us to move speedily to trial following confirmation. Careful planning and investment of sufficient resources at the outset should ensure that we obtain a successful outcome in eventual trial proceedings.

The ideal of being trial-ready by the time of confirmation of charges, however, must be tempered by reality. Our investigations may have to continue even after confirmation of charges. Some evidence may simply not be available to us before confirmation. Witnesses may die or change their minds about cooperating with us; others may come forward. State cooperation may be more forthcoming, or less so. There can be many reasons to continue the search for evidence that will illuminate the truth.

We must, of course, have the means to do our work.

The Court, including the Prosecutor, will shortly be making its submissions to the Committee on Budget and Finance and to the Assembly of States Parties respecting its 2014 operating budget.

I believe it is generally accepted that the OTP will need robust budgetary support for its work. All of us recognize that we are living in times of economic constraint, even hardship. Governments are stretched. The Prosecutor will therefore justify her request for resources on a reasonable

basis inspired by experience and common sense, even while she recognizes the constraints that exist in the current economic situation. She accepts the need for transparency and accountability.

I will speak briefly about the need for resources, and the requirement that they be used efficiently and effectively, as a function of *capacity, processes, and engagement*. Our focus is upon achieving results that have credibility and command respect because they are the product of independent and impartial investigations that are effective and of trials that are fair.

As I mentioned before, well-conceived cases that are thoroughly investigated and skilfully presented before the Chambers will produce good results. To this end, we need to enhance our *capacity*. The capacity of the OTP to perform to a high standard may be enhanced in several complementary ways, including:

- acquisition of sufficient resources;
- promotion and recruitment of skilled, committed staff;
- staff training to develop excellence and create a cohesive culture;
- effective performance management; and
- creation of a productive work environment.

Resources form one part of the equation, but an extremely significant part.

To improve the efficiency and effectiveness of our *processes*, we are re-examining our methods of investigation and standards of evidence, and how we develop our cases. We are currently engaged, along with other organs of the Court, in an examination of our organizational structures and methods of operation, and the identification of ways to improve our efficiency.

Given the importance of our disclosure obligations toward the defence, we have also been re-examining our systems for gathering, processing, storing, disseminating, and disclosing information and evidence. We are attempting to institutionalise within our Office the implementation of lessons learned and are working with the Court's Office of Internal Audit to enhance our compliance with rules governing key features of our operations.

Effective *engagement* involves our collaborative interaction with many others, particularly the other organs of the Court, and most notably the Registry, which provides vital services to the OTP. The OTP enjoys an excellent relationship with the Registrar and with other key actors within the Court. This can only enhance the efficiency and efficacy of our operations.

Prosecution counsel are also working to earn the trust of the Chambers. We recognize that we have to fulfil our obligations to the defence and to the judges, if trials are to be fair and efficient. Our aim is to prosecute our cases vigorously, but fairly, and to assist the judges in the accomplishment of their vital judicial responsibilities.

We are also seeking to engage productively with the Assembly of States Parties and its Working Groups, and to achieve a mutually supportive relationship. In this regard, we are grateful for the support and commitment of President Tiina Intelmann and of our many friends within the Diplomatic Community.

We have important relationships with many other organisations and agencies, including the UN Security Council and the African Union. Such relationships can, on occasion, present difficulty, but we endeavour to overcome such difficulty and advance the cause of human rights entrusted to us. I will not list all of the many organisations with which we interact practically on a daily basis.

Of crucial importance, of course, if we are to succeed in our work, is our ability to secure the effective and timely cooperation of States Parties and others. Such cooperation is necessary, not only with respect to the execution of arrest warrants issued by the Court, but especially in relation to the response to our requests for assistance. We are seeking to develop focal points in government ministries, contacts within national and international law enforcement communities, and sound relationships with States Parties and others in order to facilitate our work. In this regard, our engagement with NGOs and civil society remains of fundamental value.

By seeking to enhance our capacity, improve our processes, and engage effectively, we hope to deliver high quality investigations and prosecutions so that we meet the legitimate expectations of our true constituency, namely, the victims and communities affected by the most serious crimes. We also seek to satisfy the expectations of the Chambers of the Court and of the international community.

I will cite only a few examples of our work, which is, in any event, generally already familiar to you. **Mali** is the first investigation that Fatou Bensouda opened as Prosecutor. It was an education for me, as the new Deputy Prosecutor, to see how that investigation was rolled out and the complex logistical and diplomatic work that opened the way.

Right now, the investigation, which really amounts to two investigations given the circumstances and the vastness of the country, focuses upon two major matters: the destruction of UNESCO World Heritage shrines at Timbuctu and the massacre of Malian soldiers at Aguelhoc. Other atrocities, including gender-based violence and the use of child soldiers, may provide yet a third focus. To build our team we have had to seek resources from the Contingency Fund and in the meantime absorb the costs in our regular budget.

In March **Bosco Ntaganda** walked into the US Embassy in Kigali expressing his wish to surrender to the ICC. With the assistance of the American, Dutch, and British Ambassadors, and the quiet cooperation of the Rwandan authorities, the accused was brought to The Hague.

The *Ntaganda* case illustrates how the old rotational model worked and the stress it has now put on our resources. Much of the team had been re-assigned to where they were needed on other cases, but then these cases had to be stripped of re-assigned personnel so that the *Ntaganda* team could be reconstituted and the case revived. Reviving the case involves a huge amount of work, since the accused had been at large evading arrest for almost seven years. A great deal has had to be done to re-contact witnesses, develop new leads, process and disclose existing evidence, collect new evidence, and prepare the case for confirmation. These tasks, which must be accomplished within tight time frames, are all labour-intensive, requiring skill and energy.

The *Gbagbo* case arising out of serious post-election violence in **Côte d'Ivoire** that cost many lives is another matter that continues to be the focus of intensive investigations, even as we await the decision of the Pre-Trial Chamber on confirmation of the charges of crimes against humanity that we brought against former President **Laurent Gbagbo**. Our investigations continue so that we may present the best possible evidence at any eventual trial to assist the Trial Chamber in its determination of the truth.

At the current pre-trial stage of the proceedings, we are required to satisfy the Pre-Trial Chamber that there are "substantial grounds to believe" that the person charged committed the crimes alleged. We have presented our case to the Pre-Trial Chamber in support of that conclusion, but it is, of course, up to the Chamber to decide whether it is satisfied that the test for confirmation is met. We hope to have a decision soon.

We are preparing for trial in the two cases involving Kenyan accused. I will not comment in this briefing on the controversy surrounding those cases. I

will only say that the sole concern of the Prosecutor is to apply the provisions of the ICC Statute, in an independent and impartial fashion, on the basis of the evidence that is available to her. Justice should be allowed to take its course.

Overall, we are pursuing seven active investigations. We are operating within the confines of the 2013 budget. We have done so by applying resources where they are most urgently needed, but this means that we necessarily take resources away from other matters for the time being.

We also have seven trial matters involving eight accused at various procedural stages: two matters are in trial now, one in the defence phase and one mostly completed but with further defence evidence perhaps to be expected; three matters are in preparation for trial; one matter is in preparation for the confirmation hearing; and one is awaiting the decision on confirmation.

Our Appeals Section is also active, handling matters of significance for the law and practice of the Court. For example, with respect to the Prosecution appeal against the acquittal of **Ngudjolo**, the Appeals Chamber will have to consider issues relating to the application of the criminal standard of proof beyond reasonable doubt and the approach a Trial Chamber should take to the evaluation of the credibility and reliability of witness testimony.

Preliminary examinations of a number of situations are an important part of the work of the OTP. Preliminary examinations are the prerequisite to any decision by the Prosecutor whether, or not, to open a new investigation. They also have a potentially preventive impact upon would-be perpetrators of crimes and they foster complementarity, hence obviating costly intervention by the Court.

I will stop there.

The Court faces many challenges, but, as I said at the outset, is also embarking on a period of great promise. We intend to realize on that promise. To do so, however, the cooperation of States Parties and the international community as a whole will be essential.

Thank you.