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*Presentation of the 2018 Annual Report on Preliminary
Examination Activities*

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Opening remarks

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Good afternoon, Excellencies, Ladies and Gentlemen, dear colleagues.

Thank you all for being here in such large numbers. This is a clear reflection of your keen interest in Preliminary Examinations, which is one of the core activities of the Office of the Prosecutor (“OTP” or “Office”) alongside investigations and prosecutions.

Allow me at the outset to express my sincere appreciation to the nine States Parties that have so graciously co-sponsored this side-event, namely Bulgaria, Czech Republic, Finland, Niger, Norway, Senegal, Slovenia, Tunisia and Uruguay. We are grateful for your continued support.

Today’s event marks the release of my Office’s eighth annual Preliminary Examinations Report. These annual reports are not only aimed at Court-watchers but the public at large, and their publication is timed to coincide with the Assembly of States Parties (“ASP”).

As in the past, this event is part of my Office’s continuing efforts to enhance understanding of this core activity of Preliminary Examinations and is in furtherance of my commitment to transparency regarding the crucial work undertaken in the course of its Preliminary Examination activities.

I believe these annual reports, together with the Policy Paper on Preliminary Examinations that I published in 2013, are indicators of the significant improvements we have made in the conduct of Preliminary Examinations, based on our strong belief and indeed, commitment to this critical aspect of our work and the lessons learned from the first ten years of operational practice.

As I have previously mentioned, since assuming office as Prosecutor, I have made Preliminary Examinations a strategic priority and have placed emphasis on the need to process and prepare Preliminary Examinations dossiers to facilitate legally and factually sound decision making – one way or the other – as efficiently, effectively, and thoroughly as possible in accordance with the requirements of the Rome Statute.

In accordance with the Rome Statute, I am required to independently conduct a Preliminary Examination in each situation that deserves to be looked into irrespective of how such situation comes before my Office. In each situation, the purpose of a Preliminary Examination is to determine whether or not there is a reasonable basis to open an investigation. That determination is only reached after a rigorous analysis of all available information to determine whether the statutory requirements of jurisdiction, complementarity, gravity and the interests of justice are met. If all legal criteria are met, I am required by the Statute to open an investigation.

Similarly, if the criteria are not met, no investigation will be opened and the Preliminary Examination will be closed. Political and geographical factors are never considered and/or taken into account in deciding whether or not to open an investigation in any given situation; neither does my Office take instructions from anyone in making its determinations. I place great importance on the Office's independence and impartiality, and that principled position and expectation, indeed, duty is well known to the Office.

To date under my tenure, **nine** Preliminary Examinations have been completed, five of which led to my decision to proceed with an investigation with respect to situations in Burundi, Central African Republic II, Georgia, Mali, and Afghanistan – the latter as you know is pending judicial authorisation. A further four Preliminary

Examinations led to a decision not to proceed. These are with respect to Honduras, Korea, the Union of Comoros *et al.* and Gabon.

Over the same six-year period, my Office has initiated **11** Preliminary Examinations such as Palestine, Iraq/UK, Ukraine, Philippines, Venezuela, and Bangladesh/Myanmar.

A considerable amount of effort has gone into each one of our preliminary examinations, notwithstanding the limited resources of my Office's Situation Analysis Section ("SAS"), which carries out this crucial work.

There are several lessons to be drawn from the number of Preliminary Examinations handled by my Office so far:

First, my Office's level of activity is a sign of the state of the world where war, conflict and violence result in reported gross human rights violations and atrocities. Every year or so, a new crisis situation erupts that requires my Office's scrutiny and involvement in accordance with its mandate under the Rome Statute.

Since 2012, new conflicts broke out in Mali, in Ukraine, in the Central African Republic, in Gaza and new violent crises erupted in Gabon, the Philippines, Venezuela, Myanmar, and so forth. Each time a crisis erupts, the question asked is: "what is the International Criminal Court ("ICC" or "Court") doing about this?"

There is no reason to believe that this trend will see a redirection in the coming years, we - not only my Office, but the Court, the States Parties, the NGO community – need to be ready to face the upcoming challenges.

The ICC will continue to be needed in the future, and I will need the support of all, States Parties included, for the Court to succeed in meeting these demands for justice as well as the challenges that come with our work.

Second, Preliminary Examinations involve a very dynamic process and each situation has to be assessed and looked at on its own merits. While there is no prescribed time limit for the duration of Preliminary Examinations, a number of factors impact the duration of each Preliminary Examination, namely:

-) The complexity of the situation to be examined. Some Preliminary Examinations like Ukraine, Palestine or Nigeria include in fact several situations in one;

-) The extremely limited resources available for Preliminary Examinations (slightly over one analyst full time per Preliminary Examination). The SAS which is composed of a dozen or so has had to cope with the ever increasing workload and yet managed to complete as many Preliminary Examinations as possible each year. More resources could assist with a quicker turnaround time for completing the Preliminary Examinations process, and I take the opportunity here to stress this point in particular at a time States Parties will be discussing the Court's budget proposal for 2019;

J) In addition to being a gatekeeper, the Preliminary Examination process also sets the stage for possible future investigations and greatly helps prepare the ground for future investigations. Time spent on Preliminary Examinations is therefore not wasted; it is invested in future investigations. Not only do we define potential cases at the Preliminary Examination stage, but as an office, we increasingly seek to build further synergies with our investigative work, by amongst others, taking early measures in advanced Preliminary Examinations, to preserve and protect sources of evidence.

Additionally, it must be recognised how effective the Office, in particularly the SAS is, in coping with our ever increasing caseload. With constant and limited resources, we nonetheless manage to complete as many Preliminary Examinations, as we have to initiate, if not on a yearly basis, at least over the duration of my mandate.

Third, beyond budget discussions, which as you know constitute a great part of the ASP deliberations, millions of victims around the world have put their hopes on the ICC and have high expectations on what it should deliver. As Prosecutor, I find it extremely difficult to prioritise among victim groups and affected communities. The Rome Statute actually provides me with neither authority nor guidance for doing so: article 53(1) stipulates clearly that I *shall* initiate an investigation where I determine that there is a reasonable basis to do so.

I call on State Parties to consider the implications of this obligation seriously. Conversely, when I make a *final* determination not to proceed, it ought to be considered as such in accordance with the Statute.

As many of you are already aware, my Office's annual Report on Preliminary Examination Activities was published last Wednesday and is accessible on the Court's official website in both English and French. On the website, specific chapters are also available in Arabic, Spanish, and Russian.

A limited number of bound copies of this comprehensive report are also available in this room, in English and French, should you wish to obtain a hardcopy.

This 76-page report provides a summary of the current status of each of the 10 situations that have been under preliminary examination this past year. For each situation, the report provides an overview of my Office's analysis with regard to issues of jurisdiction and admissibility, as well as the activities carried out in 2018 in furtherance of this work.

As you will note from the Report, 2018 has been another busy year, with no less than three new Preliminary Examinations pertaining to the situation in the Philippines, the situation in Venezuela and the alleged deportation of the Rohingya people from Myanmar to Bangladesh. We also completed the Preliminary Examination in Gabon and made significant progress on others.

The Preliminary Examination on the Philippines focuses on the crimes allegedly committed in the country since at least July 2016 in the context of the anti-drug campaign. As you are aware, the Philippines Government has taken the regrettable step to withdraw from the ICC by March 2019, a decision which is currently under constitutional review. The Court can nonetheless exercise its jurisdiction over any Rome Statute crimes committed until the withdrawal and this could include thousands of alleged extra-judicial killings.

The situation in Venezuela was referred to my Office by a group of six States Parties in September of this year. This constitutes the first multi-state party referral to my Office. The situation in Venezuela was already subject to a preliminary examination by my Office for several months when the referral was made. That process will follow its course until I am in a position to make a final determination in the exercise of my independent and impartial mandate under the Statute.

The preliminary examination on the alleged deportation of the Rohingya was initiated following the jurisdictional ruling of Pre-Trial Chamber I, which I had requested, and which confirmed that the Court may exercise jurisdiction over crimes committed *in part* on the territory of a State Party. The preliminary examination of the situation in Bangladesh/Myanmar therefore focusses on the conduct connected to the alleged crime of deportation of the Rohingya to Bangladesh, taking into account any coercive act committed in Myanmar itself which may have resulted in the mass deportation of the Rohingya.

Each of these Preliminary Examinations raises specific challenges but my Office is working hard to make progress as quickly as possible.

Meanwhile, we have made *very significant progress* in two other situations that also require urgent action, namely the situation in Ukraine and the situation in Palestine.

Both are extremely complex in regard to their scope, the sheer number and variety of the crimes alleged, and the applicable legal instruments pertinent to the law of armed conflict and the law of occupation. In both situations, the

Office has carried out unprecedented analyses of conduct of hostilities issues in order to reach complex factual and legal determinations. We now have a much better sense of the potential cases that my Office could investigate, should all other criteria, in particular complementarity, be met. My hope is that I will be in a position to bring these long-lasting Preliminary Examinations to an end soon.

We attach great importance to our preliminary examination work and our files will not take more time than required to complete our thorough and independent internal assessment of the statutory criteria.

As just mentioned, the assessment of the complementarity criteria is a core part of our preliminary examinations since, as you are aware, the ICC cannot exercise jurisdiction if the competent national authorities already conduct relevant investigations or prosecutions *genuinely*.

Complementarity is often the most important factor having a bearing on the duration of preliminary examinations, either because the assessment of national proceedings is rendered complex by the information provided (or lack thereof) or because the mechanisms in place require time to actually deliver.

To further this assessment, my Office systematically reaches out to the relevant authorities to seek information on national proceedings, and also, in some cases, to encourage them to fulfil their primary responsibility under the Statute.

This year, for instance, we have requested and obtained information from the authorities of the United Kingdom (“UK”) (with respect to national investigations into abuses allegedly committed by UK forces in Iraq) and information from the Government of Nigeria (with respect to proceedings

relating to crimes allegedly committed by both Boko Haram and the Nigerian security forces). In requesting such updates, I, as ICC Prosecutor, do not claim to exercise any supervisory role over State authorities, but I do require such information for the purpose of fulfilling my mandate under the Rome Statute. We also consult other independent sources that may have appropriate information on the conduct of national proceedings.

In some cases, this necessity turns into a virtue where the mere fact of inquiring into a given situation has the effect of catalysing accountability efforts at the national level.

I am heartened to see that in Guinea, after my Office's painstaking and persistent efforts, the national investigation into the 28 September 2009 events was finally completed and concrete steps are being taken to hold a trial in Conakry as soon as possible.

Likewise, in Colombia, my Office has followed closely the establishment of the Special Jurisdiction for Peace ("SJP") pursuant to the peace agreement signed between the Government of Colombia and the FARC. We look at the SJP as a promising and innovative mechanism to bring to account perpetrators from all parties to the armed conflict, and we will continue to give it our vigilant support guided by the requirements of the Rome Statute, while encouraging the Attorney General of Colombia to pursue the cases under his jurisdiction.

Following several visits to both Guinea and Colombia by either me or my Deputy as well as my staff, I have reasons to believe that my Office played an important role in these positive developments in each of these countries, a sentiment which is shared by domestic constituents and civil society.

This is the Rome Statute in action. For this “positive approach to complementarity” to work, however, it requires time and above all, the support of all relevant actors, especially States, civil society and the broader international community.

I would like to conclude this overview with a few words on sexual and gender-based crimes (“SGBC”) and crimes against children. As you are aware, my Office adopted two policies focused on these thematic issues, and such policies are implemented in my Office as early as the preliminary examination stage.

By way of examples, this year alone, we have gathered information concerning the commission of rape and other forms of sexual violence in Myanmar (in the context of the alleged deportation of the Rohingya); sexual abuses against male and female detainees in Ukraine and Venezuela; as well as various allegations of sexual violence against women and girls in IDP camps in Nigeria. Across all situations, my Office also seeks to assess the relevance of victims’ gender in the commission of crimes. At the same time, we have followed up on investigations or prosecutions relating to SGBC at the national level, such as in Colombia, Guinea or the UK.

With respect to crimes against or affecting children, unfortunately, most if not all situations under preliminary examination bear signs of this worrying phenomenon. For illustrative purposes, my Office has examined allegations concerning the killing of teenagers during anti-drug operations in the Philippines, the destruction of educational facilities and kindergartens during armed hostilities in Ukraine, the abduction of schoolgirls in Nigeria, the killing

of children at the Gaza border with Israel in the context of demonstrations as well as the indiscriminate firing of rockets into Israel.

These alleged crimes are by no means exhaustive and you will find further examples in the report. But this sample is, I believe, a stark reminder of the serious crimes which are considered by the ICC, of the relevance of this Court and of the critical importance of our preliminary examination activities.

I take this opportunity to publicly acknowledge and thank my tireless and devoted colleagues from the Office's SAS for their impressive work and commitment.

Allow me to close my opening remarks here so that we can more swiftly open the floor to questions and comments. I thank you once again for your interest and attention. | OTF