



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

Le Bureau du Procureur
The Office of the Prosecutor

Mrs Fatou Bensouda
Prosecutor of the International Criminal Court

19th session of the Assembly of States Parties

Opening plenary

Remarks

Checked against delivery

Mr President of the Assembly,
Mr Vice-President of the International Criminal Court, Judge Perrin de Brichambaut,
Mr Registrar,
Honourable Ministers,
Excellencies,
Distinguished Delegates,
And representatives of Civil Society,
Dear friends from near and far, whether present here physically or participating virtually,

It is an honour to address this Assembly of States Parties (“Assembly” or “ASP”) at the opening of this exceptional 19th session.

We meet at the end of a particularly eventful and unprecedented year.

If I were to describe the theme for the International Criminal Court (“ICC” or the “Court”) in 2020, it is one of resilience and commitment in the face of great adversity.

To begin with, the COVID-19 global health crisis that commenced early in the year has profoundly impacted the way we work and communicate. Across the Court, we have had to quickly adapt to the new circumstances and adjust our work methods to secure business continuity while ensuring the safety and wellbeing of our staff and all others with whom we interact. The resilience the Court has demonstrated in the face of this global pandemic alone is noteworthy.

However, the pandemic would not be the only challenge that unduly occupied our time, energy and resources in 2020. As we are all aware, the Court, and my Office, in particular, were subjected to unprecedented and wholly unacceptable threats, attacks and sanctions this past year for honourably serving the Rome Statute.

Hence, 2020 also stands as a fundamentally important year in the historical record of this institution when our shared values and commitments under the Rome Statute were tested by potent forces determined to undermine the Court in order to shield themselves from legitimate legal scrutiny the Statute demands. Here again, I believe the Court and the Rome Statute system as a whole have demonstrated resilience in the face of such tactics.

While grappling with these historical firsts and their multifaceted dimensions, the Court has also seen an extremely active and busy year with efforts and activities related to the Independent Expert Review and core mandate functions with seven cases in different stages of the proceedings.

This year alone, we saw the transfer to the Court of Mr Abd-Al-Rahman as well as Mr Gicheru, the ongoing preparations for trial in the *Yekatom and Ngaïssona* case, the start of trial in the *Al Hassan* case, and the nearing conclusion of trial in the *Ongwen* case, with a verdict scheduled for February 2021. We hope that on the strength of our cases, we continue to build on the convictions we have secured in the *Katanga, Ntaganda* and *Al Mahdi* cases – all of which have followed the strategic course my Office set at the beginning of my term, and the changes and improvements we have put in place since, with a focus on quality to secure successes in court.

Additionally, the progress my Office has made in situations under active investigation, including the cooperation prospects in Sudan following the Prosecution's first visit to Khartoum since 2007, as well as the number of preliminary examinations recently concluded or nearing finalisation, and additional developments in the pipeline, have demonstrated my Office's tenacity and commitment to produce results. We are preparing the ground as best as possible for a smooth hand-over to my successor by mid-2021.

Mr President,

This is my last opening address to the Assembly as ICC Prosecutor.

Some nine years ago this month, when I was elected by consensus as ICC Prosecutor, I had no illusions of the enormity of the task. The job of the Prosecutor is an incredibly complex and demanding one. With this mandate comes great responsibility and fortitude.

To my successor, whomever that may be, and those electing him or her, I would like to stress that assuming office as Prosecutor means an unyielding devotion to the pursuit of international criminal justice, without fear or favour, even in the face of adversity, and a commitment to honourably and with integrity discharge a complex multi-faceted mandate, one that is largely without precedent with investigations and preliminary examinations covering situations spanning the globe.

During my tenure, I have done my utmost to live by these convictions in the service of the Rome Statute.

I am often asked, what has been the most significant challenge during my term. While one important challenge has been the political environment and other external conditions in which the Office operates, another great challenge might well be the incompatibility of the mandate with the resources allocated to it.

I say this with the greatest of candour – and you have me on record every year on this matter – offering an honest reflection on the Court's foundational goals, including expectations of States, civil society, and victims, among other stakeholders, as well as my real concerns about managing a dilemma that will only intensify going forward unless it is properly addressed.

This tension merits an urgent and strategic discussion, including with States Parties, that should go beyond notions of completion and prioritisation – while recognising that both are important concepts, and also subject of my Office's ongoing thinking.

The predicament we are confronted with due to capacity constraints underscores the clear mismatch between the resources afforded to my Office and the ever growing demands placed upon it.

We cannot wish away this tension or pretend it does not exist.

It is a situation that requires not only prioritisation on behalf of the Office, to which we remain firmly committed, but as mentioned open and frank discussions with the Assembly of States Parties, and

other stakeholders of the Rome Statute system, on the real resource needs of my Office in order to effectively execute its statutory mandate. The current trajectory is simply not sustainable.

My Office's forthcoming policy paper on completion will detail under what circumstances, in the context of my broad statutory discretion as Prosecutor, the Office will complete its work in situations where the Court is exercising its jurisdiction. This may in turn contribute to enhancing the predictability of forecasting resources required in a situation, and inform the transfer of resources to other situations, to alleviate capacity concerns.

But the policy is no panacea, and decisions on completion cannot be made on a whim, in particular in situations where proceedings remain ongoing or arrest warrants are pending. Indeed, the prolonged nature of the residual activities associated with the various cases arising from a situation means that considerable time may pass before the situation can truly be regarded as complete.

In this same vein, I wish to raise our preliminary examinations.

Last year before the Assembly, I announced my intention to bring to a conclusion as many preliminary examinations as possible before the end of my term. As you would have noted with recent announcements I have made concerning the situations in Iraq/UK, Nigeria and Ukraine, this resolve is very much on track. The Office's 2020 preliminary examination activities report will also be issued very shortly providing you with further details of the intense level of activity that has gone into this crucial aspect of our work. We will have the opportunity to discuss the details during my Office's virtual side-event scheduled for tomorrow.

In relation to the recently completed preliminary examinations in Nigeria and Ukraine, we will need to take several strategic and operational decisions on the prioritisation of the Office's workload in the light of the operational capacity of the Office to roll out new investigations and the fact that several preliminary examinations have or are approaching the same stage. As mentioned, our resource situation is dire and needs to be rectified.

I also intent to discuss these matters with the incoming Prosecutor, once elected, as part of the transition discussions I intend to have. In the interim, the Office will continue to take measures to ensure the integrity of any future investigation.

My goal, in this regard and others, is to put my successor in the best possible position to carry forward the work and what we have in place.

Mr President,

I consider it an important part of my legacy to hand over an Office that is accountable at all levels, both in terms of performance and professional conduct.

Such is achieved firstly through well-thought through strategies and policies, based on lessons learned and concrete experience, that are being implemented and respected in practice. My Office's consecutive Strategic Plans since 2012 are reflections of this goal, as are the various policies

promulgated by my Office, including on preliminary examinations, case selection and prioritisation, sexual and gender-based crimes, crimes against or affecting children, in addition to forthcoming policies on completion of situations and the protection of cultural heritage within the Rome Statute framework.

In addition, we have enhanced our quality control mechanisms, streamlined and strengthened our administrative procedures, improved transparency in how we conduct our work, and made significant efforts to build a positive office culture, including by adopting a Code of Conduct for the Office with mandatory trainings, and instituting the Core Values of “Dedication, Integrity, and Respect.” We have taken a systematic and committed approach to ensuring that the Office upholds itself to the highest ethical standards, and have taken concrete and consistent action to investigate, and where justified, hold those who breach those standards accountable in accordance with the Court’s legal framework governing staff conduct.

I have always believed in the importance of ethics as the bedrock on which a prosecuting office, not least one with such a crucially important mandate, must be built and carry out its work. We have put that belief into practice. The record bears out these facts.

Allow me now to turn to the Independent Expert Review.

From the outset, I, along my Office, have viewed this process as a necessary initiative in the life of the ICC, and one that we considered to be very much in line with our own philosophy and commitment to take the Office and the effective discharge of our mandate to the next level.

We are looking to the report of the Independent External Experts for inspiration and fact-based actionable recommendations which we can then carry forward with this overall objective in mind.

The idea of a continuous improvement is deeply rooted in our thinking – my one regret with the expert report is that it has selected not to document and report upon all that is working and in place at the Court, which could have provided greater context and been of value to our stakeholders as areas in need of improvements are assessed and processed.

Following internal review, my Office is currently making an inventory of priority recommendations that can be implemented in the short and long term, and identify those that we objectively believe based our direct experience will not result in efficiency and effectiveness but quite the opposite. Even where certain recommendations may not be adopted, we will look to the underlying reasons why they were made to see if there is legitimate basis to process improvements. A full report will be shared in the first quarter of 2021.

We are committed to dialogue with States Parties as well as the civil society, as key proponents of the review, to take the process forward.

If you will indulge me, I do hope that the next steps in the review process will also incite a productive discussion amongst States Parties on how they can, in their own right, more effectively and efficiently support the work of my Office and the Court more broadly, such as through efforts to

ensure more tangible cooperation, including to the Office's operations, in relation to a wide range of assistance types and sources of evidence.

The work of the Office of the Prosecutor is indeed not only shaped by its own decisions.

Throughout my term as Prosecutor, I believe we have fostered and enjoyed a relationship of trust and mutual respect with the Assembly and its States Parties, as well as civil society representatives. We have benefitted mutually from transparency and informed dialogue.

We have spoken at various occasions this year about the attacks and threats to the Court.

All here present have recognised the unacceptable nature of the measures taken by the United States ("US") administration. I'm grateful to the ASP President and to all those who have spoken out on the matter, through joint statements, individual expressions of support, or otherwise supported the Court and me personally.

The measures do not only constitute an attack on the Court and the Rome Statute system but a direct political affront to States Parties and a dangerous precedent for a rules-based international system.

It is my sincere hope that the US reverses its aggressive policy of antagonism towards the Court. No one wins from such tactics. Until such time, it is crucial that States Parties remain vigilant and keep close tabs on the matter, especially as further escalation remains on the table.

Mr President,

As I conclude my last address as Prosecutor to this august body, I recall the words of my election speech.

I said that, whilst I was presented as the consensus candidate of the African Group, I would be the Prosecutor of all the States Parties, executing my mandate with dedication and resolve in an independent and impartial manner.

During my term as Prosecutor, I have done everything in my power to honour the trust and the responsibility bestowed upon me by implementing the crucial prosecutorial mandate to the best of my ability, always in accordance with legal confines of the Rome Statute, with integrity, independence and impartiality and the plight of victims and affected communities in mind.

We are not perfect – show me a prosecuting office that is – but as an Office, we have strived to learn and improve continuously to enhance the effectiveness of our working methods, operations and efforts to fight against impunity.

When objectively observed, the Office today is a vastly improved iteration of what it was some nine years ago, and it has to its credit secured important achievements on the strength of the quality of its staff, the tenacity of our spirit and clarity of purpose. I am proud of what we have built together as an Office and the path to continuous improvement on which we have embarked upon.

I am also proud that we have demonstrated through deed and word that we, as an Office, always pay homage to the Rome Statute and its laudable goals *without fear or favour*, and that we will not allow the cause of international criminal justice to be sacrificed at the altar of political expediency.

Let us continue to benefit from the Assembly's honest commitment to the goals and values of the Rome Statute, and through its decisions drive the international criminal justice project forward, fully equipped with your support for the years and decades to come.

Thank you for the opportunity to serve as your Prosecutor and for your continued support. | OTP