



**Cour
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**International
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Court**

Le Bureau du Procureur
The Office of the Prosecutor



Ms Fatou Bensouda

Prosecutor, International Criminal Court

“Without Fear or Favour”: Reflections on my term as Prosecutor of the International Criminal Court

Farewell end of term statement

15 June 2021

I have been humbled by the generosity and the outpouring of support and expressions of gratitude I have received, in particular in these last few weeks, as I worked hard with my team to complete my mandate as Prosecutor of the International Criminal Court (“ICC” or the “Court”).

This past week starting with the farewell events, emails and calls I have been receiving from staff to public and private expressions of thanks, from my last briefing before the United Nations Security Council to internal events with staff, have truly been overwhelming and incredibly moving.

What we have lived through in the past decade has been quite unique, and what the international justice community has managed to accomplish together, really tremendous.

I am sincerely humbled by the graciousness, kindness and support that has been extended to me by my colleagues and other members of the Rome Statute family and its supporters during my mandate.

In the past nine years, we, as a Court, have achieved much together and have overcome incredible challenges with courage, integrity and resilience as an institution. We found strength and courage in the truth of our convictions and the righteousness of our cause.

We found comfort and refuge in our solidarity and common purpose when placed under the most outrageous attempts at political interference and personal threats due to the Court’s legitimate judicial work.

We overcame fear and threats with the force of our unity, humanity and strict professionalism. In short, we overcame vice with virtue.

Together, we, supported by the Court’s States Parties, members of civil society and other friends of the ICC, have taken the Court to the next level in the past decade, expanded its work and enhanced its relevance, legitimacy and credibility. Set-backs were encountered with professional seriousness, managed and lessons learned, all with a view and purpose to do things better and more effectively.

Notwithstanding the realities of the political arena and the changing tides of politics, I truly believe that the Court today and the Rome Statute system are stronger and more relevant than they were a decade ago. That is not to say there isn't room for improvement. Of course there is, but we have done much and have much to be proud of.

In this final statement as Prosecutor, I wanted to thank all who have joined me and my Office on this journey and the road we have travelled together.

As some may be aware, I have been decorated by the Government of Senegal, and most recently, my own country, The Gambia, has also announced that they will be awarding me the country's highest civilian honour. Along with the Office, we have also been nominated for 2021 Nobel Peace Prize.

I wanted to seize this occasion to state what I have already stated publicly in response to such gracious recognitions: these recognitions are not singular to me; in fact, they are a recognition of our collective achievements and the impressive work we have been able to accomplish together; they are a tribute, first and foremost, to my able colleagues in the Office and across the Court more broadly for their devotion and achievements in the service of the Rome Statute.

These recognitions also send a clear message, to me at least, that ultimately, and again irrespective of political posturing, humanity wants the Court to succeed, humanity wants the Court to rise above the status quo, cultivate the rule of law and speak truth to power and bring the promise of "Never Again" and "Law, Not War" closer to reality.

They signal to me that our collective work has not been in vain, and that we all value and hold as important virtues the goal of advancing the cause of international criminal justice with dedication, integrity and great *respect*; *respect* for the Court's important mandate under the Statute, *respect* for each other as colleagues and as parties and participants in the Court's proceedings and activities, and first and foremost, for the victims and affected communities for which this institution was fundamentally created.

Nine years ago, I was sworn in as the ICC's second Prosecutor, following a unanimous vote of confidence bestowed upon me by the Assembly of States Parties and the wider international community, and the support of The Gambia and the African Union for my candidature.

Nine years ago, I had no illusions about the enormity of the task ahead. The job of the Prosecutor is an incredibly complex and demanding one. With this mandate comes great responsibility, requiring focus, often self-sacrifice and fortitude.

Nine years ago, I stated that justice, real justice, is not a pick-and-choose system, and that to be effective, to be just and to be a real deterrent, the Office of the Prosecutor's activities and decisions must be based solely on the law and the evidence. We may operate in a political environment but our work must be shielded and free from the winds and whims of politics when those trends are not aligned with our collective obligations under the Rome Statute.

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

I have strived, throughout my term, to honourably and with integrity discharge a complex multi-faceted mandate, with independence and impartiality.

I have made my decisions, with careful deliberation - but without fear or favour.

Even in the face of adversity.

Even at considerable personal cost.

I have sought to focus not on the words and propaganda of a few influential individuals whose aim is to evade justice but – rather – to listen to the millions of victims who look to the Court as a beacon of hope, as the last bastion of justice and accountability for atrocity crimes, where the law – their protector – has otherwise fallen silent.

These are not empty words.

Two weeks ago, during my mission to Sudan and the Darfur region, in meeting with victims and affected communities such as those at Kalma Camp, I was again able to see just how important our work really is and how much is riding on the promise of the ICC.

“Welcome, welcome ICC”, the crowd enthusiastically chanted as we entered the camp.

It was a stark reminder that justice matters but that we must work together to deliver on that promise through effective collaboration and cooperation. We all have a role to play for the Rome Statute system to work as efficiently as possible.

Let the resilience, the courage and the quest for justice of the Darfurians be an inspiration to all of us to redouble our efforts to advance a culture of accountability for atrocity crimes, the world over.

Providing justice and a sense of hope to those who seek the protection of the law for the harm they have suffered was the very inspiration behind my decision as a teenager to study law. Since then, it has informed every step of my professional career.

It is with this same sense of duty and desire to make a difference for those most vulnerable, that I decided to run, in 2011, for the position of Prosecutor, after having served for eight years as the Court's Deputy Prosecutor.

Sweeping changes in the Office

Since assuming office as Prosecutor, the changes we have undertaken at the Office have been sweeping. We announced and quickly moved to take a number of initiatives concerning strategic direction, organisational management, and internal office culture. We adopted a new prosecutorial strategy with a major shift in how we investigate and build our cases. We 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* and instituting the *Core Values* of "Dedication, Integrity, and Respect." We have encouraged the establishment for a Focal Point for Gender and saw it through; we have instituted gender awareness training and have embarked on related initiatives, which can only be built upon and strengthened. Many other initiatives and accomplishments have been achieved which are beyond the scope of this statement. In short, we have strived to strengthen an Office that is accountable at all levels, both in terms of performance and professional conduct.

We have since secured important successes in court and issued important policy papers on strategic priorities we have set from sexual and gender-based crimes to the protection of cultural heritage. We have lived these policies in practice.

Policies & policies in action

It is by no coincidence that I elevated the effective investigation and prosecution of sexual and gender-based crimes and crimes against children as strategic goals when I took the Office in 2012.

The policy papers my Office developed on these topics should be understood, not as mere pieces of writing on paper, but as seminal guiding documents, strengthening the consistent application of, and protection offered by, the Rome Statute framework to the victims of these heinous crimes.

This has been an defining feature of my tenure, during which we have attempted to give direction and meaning to important principles underpinning the Rome Statute and to explore the full potential of its provisions.

It is by virtue of this approach that we found success in Court decisions, such as the ruling delivered in the Myanmar/Bangladesh situation confirming the Court's jurisdiction over the alleged deportation of Rohingya people, and the appellate ruling on head of State immunity in the Al Bashir case in the Darfur, Sudan situation.

It is through this approach that through the conviction of Mr Bosco Ntaganda on all counts – including, for the first time in the Court's history, for the crime of sexual slavery as well as the crime of rape against women and men – we contributed to emerging jurisprudence by extending the protection under international humanitarian law to also cover crimes committed by an armed group against members of their own group.

Earlier this year, we obtained an important conviction in the Ongwen case, for the brutal and terrifying campaigns of attacks on the civilian population, sexual slavery, forced marriage and forced pregnancy, murder, mutilation, torture, pillaging, abduction and other atrocities by the Lord Resistance Army with Mr Ongwen as one of its senior leaders – rendering accountability for the horrific consequences of his actions for the civilian population in Uganda, including for women and children. In May of this year, he was sentenced to 25 years of imprisonment.

Moreover, through the case against Mr Al Mahdi, we sent a clear message that the intentional attacks against historic monuments and buildings dedicated to religion is a serious crime under international law.

My Office's Policy on Cultural Heritage, which we just issued solidifies this message. I have been encouraged by the great interest and support received during the consultation phase of this policy by States and a variety of stakeholders and international actors, including our institutional partner, United Nations Scientific and Cultural Organisation ("UNESCO"). Cultural heritage constitutes a unique and important testimony of the culture and identities of peoples and the degradation and destruction of cultural heritage constitutes a great loss to those communities which are directly affected, as well as to the

international community as a whole. It is the repository of the human experience throughout the ages. To protect it, is to pay homage to the basic fabric of civilisation and civilizational practice. We must protect cultural heritage and this policy equips us to stay committed to that necessary cause.

An important aim of the policy paper, like others before it, is to raise awareness about, and seek collaborative efforts to address, specific forms of prevailing criminality.

Similarly, our recently finalised and published Policy on Situation Completion is an important development that will serve the Office greatly by providing transparency, clarity and helpful guidance to the complex questions arising from the winding down of activities in relation to a situation under investigation and how best to respond. Again, I welcome the interest shown to this policy initiative and for all the feedback received during the consultation phase which have enriched the final policy as adopted and released.

The policies are but one avenue we have used to give further meaning to the Rome Statute's principles of complementarity and cooperation, as we have sought during my term to enhance, through a dynamic approach, our interactions and relations with partners at the international, regional and domestic level.

It was my plan to also have a policy on Modern Slavery within the Rome Statute framework finalised before the end of my term but due the unfortunate COVID circumstances and with countless priorities and constraints of resources, we could not advance this project in time. The Rome Statute is an important legal tool that must be employed to its full potential to address the heinous crimes that shock the conscience of humanity, and modern slavery is one area where more work is, in my view, warranted.

Preliminary examinations

Preliminary examinations are one of the core activities of my Office. Through the independent and impartial analysis we conduct, based on various sources available to us, we seek to establish the facts regarding various allegations of Rome Statute crimes my Office receives, and to see whether a criteria is met for my Office to open an investigation in a given situation. We have undertaken this crucial work with vigour and with complete independence and objectivity across the situations under preliminary examination.

During my term, we have increased the transparency of our preliminary examination work, engaging openly with all stakeholders and issuing an annual report to provide up to date information on the status of different preliminary examinations undertaken by the Office.

Last year, it is to be recalled that I concluded the preliminary examinations with respect to the situations in the UK/Iraq. In our lengthy report, we explained that despite identifying several over-arching concerns at how the UK authorities had conducted relevant investigations, my Office was not satisfied that it could demonstrate, in the context of article 18 proceedings before the Court that would inevitably ensue, that the investigative actions and/or the prosecutorial decisions taken by the competent domestic authorities evidenced shielding or persons, within the meaning of article 17(2) of the Statute. At the same time, we noted several pressing concerns about the pending consideration of domestic legislation that would have created in the UK a statutory presumption against prosecution of current and former service personnel after five years. I was heartened earlier this year that through the active engagement of voices on all sides, offences amounting to ICC crimes were ultimately excluded by the UK government from the scope of the proposed legislation

Last year, we also concluded the Palestine preliminary examination and announced the opening of investigations, having obtained a judicial ruling on the scope of the Court's territorial competence.

During 2020, my Office also concluded its preliminary examination into the Situations in Nigeria and Ukraine, with the determination that the criteria for opening investigations in both situations are met. As you know, in making my announcements, I stressed that due to operational challenges brought on by the COVID-19 pandemic, on the one hand, and by the limitations of our operational capacity due to thin and overextended resources, on the other, we could not immediately roll out both investigations as we intend to. Indeed, I stressed that the Court was again confronted with the clear mismatch between the resources afforded to my Office and the ever growing demands placed upon it. Since December, we have continued, within our means, to prepare and plan ahead for potential investigations into both situation, including taking necessary measures to ensure the integrity of future investigations, in advance of lodging the necessary article 15 applications. Both situations are on stand-by for the next stage. It will be for the incoming Prosecutor to take the necessary strategic and operational decisions on the prioritisation of the Office's workload moving forward.

With respect to the Philippines, we filed our article 15 request earlier last month following a lengthy process of planning and preparing and taking measures to preserve evidence - a process that had been operationally impacted by the onset last year of COVID-19, but we were in a position to finalise during 2021. I know that some will have questions on the sequencing of this filing relative to our announcements last December concerning Nigeria and Ukraine, which are yet to be filed. I must stress that the Philippines preliminary examination has been at an advance stage now for over a year, well before the December announcements. There were, however, some concrete evidence preservation opportunities related to the Philippines situation which we felt it was our responsibility to pursue. It was necessary to complete some of those activities before making any public announcement, to ensure the integrity of the evidence, and those preservation activities were completely only recently. This is why we filed the application when we did, in May 2021, initially confidentially, and made public yesterday. Nonetheless, with respect to both Nigeria and Ukraine, as mentioned, the goal remains to prepare latter two applications to the Pre-Trial Chamber, as guided by the decisions of the incoming Prosecutor.

With respect to Venezuela I, I had committed to reaching a final determination, to the extent possible, during the remainder of my term. Perhaps in anticipation of that outcome, as you may have seen reported in the media, the Pre-Trial Chamber was seized with a filing by the Government of Venezuela requesting the Chamber to exercise judicial control over the conduct of our preliminary examination. These filings were submitted confidentially, so I cannot refer to them in detail, although the fact of their submission has been publicly referred to by the Venezuelan authorities themselves. All I can say at this stage is that I had in fact reached a final determination on the preliminary examination, and had been preparing to announce our conclusions in response to the group States Parties referral, but that in due deference to the Pre-Trial Chamber, whose competence had been seized, I decided to wait for the Chamber's determination on Venezuela's request before making any further announcement. Those proceedings and their outcome currently remain classified as confidential, although we anticipate they will be made public shortly. Given the elapsed time, all that I can do at this stage is to hand over my determination which has been completed, together with the basis for it, to the incoming Prosecutor for his consideration and ultimate decision-making.

With respect to Colombia, as you have seen, we have just issued our promised report, which I committed to publishing before the end of my term. The reports explains why the Situation in Colombia remains under preliminary examination and what remains to be done before the Prosecutor reaches a final determination: either to open investigations,

or to conclude the preliminary examination subject to its re-opening upon a change in circumstance. In particular, it examines the role the Office should play in a preliminary examination that faces long-term, multi-layered domestic accountability processes and proposes the development of a benchmarking framework moving forwards. This framework has been introduced in skeletal form to invite an open and inclusive process, for consideration and finalisation by the incoming Prosecutor.

I have intended a similar report for Guinea, which has also been drafted, but time has caught up with us and I am handing this over also to the incoming Prosecutor for his review and consideration.

With respect to the remaining preliminary examinations, Venezuela II and Bolivia, I had also intended, as far as was possible, to reach a determination on subject-matter jurisdiction during my term. Our simultaneous engagement across multiple situations, and our overstretched resources and staff, have meant that these two assessments, while they have made significant progress, will also fall to my successor.

Finally, during the past six months my staff has undertaken significant work, within available means, to advance our assessment on several so-called 'Phase 1' assessments - i.e. the initial filtering assessment as part of the preliminary examination process. Last December, I announced our hope that during 2021 decisions could be reached either to dismiss or proceed, including with respect to Mexico, Cyprus (settlements), Yemen (arm exporters), Cambodia (land grabbing) and Syria/Jordan (deportation). Despite progress made on a number of these assessments, made significant progress I will again be handing these over to the incoming Prosecutor to consider and decide upon, as he deems appropriate.

Today, preliminary examinations are more integrated into the lifeblood of the Office than ever, and have become more effective and effective in the taking of advance measures to ensure the integrity of possible future investigations. They retain their essential gatekeeper function, while at the same time helping ensure that the Court's finite resources are best prioritised - by ensuring, through partnership and vigilance, that wherever genuine efforts can be galvanised, that such crimes are investigated and prosecuted first and foremost at the national level, and that the ICC acts only where the primary duty of States has not been realised.

Cooperation and building support

As we have undertaken our duties under the Statute, we have benefitted greatly from the support of our States Parties, in diplomatic and operational terms.

Without the tangible and effective cooperation during my Office's investigations and prosecutions, we would not have been able to meaningfully implement our mandate.

We have in turn also endeavoured to respond positively where possible to the increasing number of requests for information which my Office has been receiving from States Parties.

We are proud of the relationship of trust that we have built and expanded partnerships we have created with States Parties and other actors during my term. I am thankful for all the support that has been extended, not only to the institution, but also to me personally.

States Parties, alongside civil society representatives and other supporters of the Court have defended my decisions and protected the Court's integrity and independence when it was most needed, through vocal public statements and through meaningful silent actions and quiet diplomacy.

Judicial and prosecutorial independence

May we continue to dispel dishonest attacks or deliberate misrepresentations of the Court's work and mandate.

May we continue to recall and come together in our resolve that the commission of mass atrocities as merely politics by other means will no longer receive a pass, and that perpetrators – irrespective of rank or official status – must answer for their crimes.

Today, what is required, is more justice and accountability - not less. The ICC is here to stay and deserves our joint commitment and efforts.

I have done my part in my role as Prosecutor and will continue to advocate for and defend the Court's crucial mandate in whatever capacity will be my next.

Looking to the future

My successor, the Prosecutor Elect, Mr Karim Asad Ahmad Khan will now take over the baton to advance the goals and values of the fundamentally important Rome Statute.

He will inherit a vastly improved office, with many dedicated and resilient staff who are eager to serve him as they have me in the service of the Rome Statute. They stand ready to continue to faithfully, and with a sense of pride, fulfil their duties and provide support and advice. I am sure my learned colleague, Mr Khan, will build on what has been accomplished and take the Office to the next level as I have done with my term.

My term was not a personal journey; it was a collective story. It is what we, as a collective dedicated to goals and values of the Rome Statute, have accomplished together in the past nine years in particular, all in our respective roles.

Whatever I did achieve, I could not have done so without the dedicated support of my colleagues at the Office, across the Court, indeed, all of you, States Parties, civil society, and followers and supporters of the Court.

I would be remiss if I did not thank my team at the Office. I am forever grateful to my team of great professionals across the Divisions and Sections of the Office who have been working, day in day out, to advance the mandate of the Office under the Statute, and who stood by me even when facing significant challenges.

I could not ask for a more able, skilled and committed senior management team. I am grateful to all of them and my entire Office for their support and their contributions.

I would be remiss if I did not thank the Court's President and the Presidency and the Registrar for their own personal support and contributions and those of their dedicated teams. These are not merely niceties; it has been an absolute pleasure working with my counterparts across the organs and their own teams – both incumbents and colleagues who have since left the Court – throughout the years. I believe we have demonstrated the spirit of the One-Court principle in the administration of the Court in practice, and I have been a personal witness to great inter-organ collaboration and collegiality; the best in the Court's history to date. I am grateful to colleagues at the other organs of the Court your dedicated service, for your friendship and support.

Finally, I wanted to thank my beloved family for all their support all these years and the sacrifices they have made as I embarked on my journey of pragmatic idealism to do some good in our transient world.

It has been an absolute privilege to serve and to be on this journey together with all of you.

It has certainly not been easy, but we have stayed the course and have tried to bring to life the goals and values of the Rome Statute.

Where I may have fallen short, I can assure you, it was not for lack of trying.

With all your support, the Office and the Court can drive the international criminal justice project even further, fully equipped for the years and decades to come. Together, we can ensure the ICC's ability to deliver justice, wherever needed, to victims of the most heinous crimes.

I often state that the creation of the ICC must surely be one of humanity's proudest moments. It is, because it represents an awakening rooted in great human suffering throughout the ages, culminating in the recognition that lawless wars and conflict must no longer be allowed, without consequence, to cause human carnage.

We have come a long way together indeed, but we have miles to go before we sleep.

As I vacate the role of the Prosecutor, I leave with one fundamental parting advice: let us remain firmly principled and vigilant in the service of the Rome Statute. We must stay resilient and impervious to political games and posturing. The future and legitimacy of the Court depends on it. It is as simple as that. Do not let anyone deceive themselves or you to think otherwise.

I have earnestly tried to do my part to the best of my abilities against all odds and great challenges. I will not judge my own report card. That is for all of you. That time has now come for me to bid farewell. I wish the Court and its important mission continued success in the delivery of justice. The victims deserve nothing less. | OTP