



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

Le Bureau du Procureur  
The Office of the Prosecutor



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## **Meeting with African, Caribbean, and Pacific Group of States (ACP)**

Speaking note for intervention

24 January 2019

*Venue:* ACP House, Brussels | *Time:* 11h00 – 12h00

## Introduction

- ) I express my gratitude to the Secretary General of the African, Caribbean and Pacific States, Dr Patrick Ignatius Gomes, and his team. It is my pleasure to address this esteemed assembly to discuss the work of the International Criminal Court (“ICC” or the “Court”).
- ) I note with appreciation that 51 ACP States *[out of 79]* are party to the Rome Statute.
- ) I encourage others to join the fight against impunity through joining the Rome Statute system; it is my sincere belief that there is great benefit in greater membership of the Court, for instance, when considering the extreme forms of violence which plague our societies and sadly cause enormous suffering to the civilian population, from loss to human and cultural life, to sexual and gender-based violence and recruitment of child soldiers.
- ) There are too many situations in the world today where grave crimes appear to be committed outside the Court’s jurisdictional reach, leaving victims often with no recourse to justice.
- ) As we undertake our work, it may be clear, that we face challenges and, at times, serious setbacks. Certain Court decisions, such as the recent acquittal of Messrs. Laurent Gbagbo and Charles Blé Goudé in relation to alleged crimes committed in Ivory Coast, are indeed hugely disappointing for my Office or for the victims and affected communities. However, and while noting that we are seeking to appeal the decision, they also show the impartiality and independence of the Court and its judicial proceedings, where every individual is given a fair trial and meaningful defence.
- ) Ultimately, each situation is unique, and building strong prosecution cases against powerful people, in difficult, politically volatile circumstances, with many interests at stake, and with limited resources, is a complex and daunting task.
- ) We therefore continuously look to build on experiences, identifying and honing best practices and strategies to improve efficiency and ensure optimal impact over matters we exercise control. We believe this is part of

our professional duty. We encourage such an approach.

- J Justice for victims of crimes committed in these situations should never be sacrificed at the altar of political expediency.

### **Engaging the ACP**

- J Exchanges such as the one we are having today assist to raise awareness and increase understanding of international humanitarian law and international justice, including the ICC and its functioning. It is critically important to address persistent misperceptions, and facilitate dialogue thereon.
- J The Rome Statute establishing the ICC affirms in its preamble that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation.
- J Let me recognize in this context the important historical contributions of the ACP regions to the creation of the ICC:
  - o E.g., in 1989, Trinidad and Tobago, on behalf of the Caribbean Community, called upon the 44<sup>th</sup> session of the United Nations General Assembly to consider the establishment of an International Criminal Court; and
  - o Africa's support in the period leading up to and during the Rome Conference, without which the ICC would not have been borne. In fact, in February 1999, it was Senegal that became the first State Party to ratify the Rome Statute. This was a historically important step and a hugely important one symbolically, which was soon followed by other States around the world.
- J In the Cotonou Agreement between the EU and the ACP, I have noted that the ICC is rightly recognised as "an important development for peace and international justice."

- ) Furthermore, in Article 11, paragraph 7, Parties are encouraged to take steps towards ratifying and implementing the Rome Statute, in addition to sharing experiences in the adoption of required legal adjustments.
- ) While my Office cannot and does not have resources to provide direct advice on domestic legislative initiatives or acts, we stand ready to provide information on our work and functioning, and cooperate in concrete criminal cases with the national authorities, where possible in accordance with the Office's mandate.
- ) In general, my door is always open for a dialogue regarding all questions and concerns that States may have when it comes to the work of the ICC.

### **Collaborative approach**

- ) Indeed my Office's open and interactive attitude is informed by the Rome Statute's guiding principles.
- ) First, complementarity, meaning that States retain their primacy of jurisdiction and bear first responsibility to investigate and prosecute atrocity crimes, and to which my Office defers guided by Rome Statute obligations.
- ) Second, cooperation, requiring all States that have joined the Statute to comply with the Court's requests for assistance and support in the context of its investigations and prosecutions.
- ) These two key features make the Rome Statute system unique and dynamic, with the Court interacting at various levels and in both bilateral and multilateral settings with a myriad of actors, including national law enforcement agencies and judiciaries, networks of specialised organisations, courts and tribunals, other rule of law actors, conflict mediators, human rights advocates, academics, and beyond.
- ) This interaction starts at the preliminary examination stage, which allows the Office to assess if there is a reasonable basis to proceed with an investigation into a situation pursuant to the criteria established by the Rome Statute.

- As part of this process, my Office determines issues of material, temporal and territorial jurisdiction; issues of admissibility, which relate to the question whether national authorities are dealing with the alleged Rome Statute crimes, and the gravity of the situation; and the matter of the interests of justice.
- ) In certain situations under preliminary examination – but by no means all – the need to assess the efficacy of national proceedings has led to the approach we term “positive complementarity”.
- Colombia and Guinea are examples of situations where either war crimes or crimes against humanity have been committed but where my Office, through its engagement with national authorities, and in conjunction with other regional and international actors, has been encouraging domestic proceedings into these crimes. Through this engagement, we hope to ensure that the principle of complementarity can be successfully applied in these situations. This may appear to take time, but it is a cost-effective approach that should be ultimately beneficial to victims and other stakeholders, and represent a win-win outcome for all actors concerned.
- ) Even in the situations where the Court does intervene, and where the Office conducts investigations, with a view to gathering the necessary evidence, the Office continues to collaborate with national authorities, and others.
- ) In fact, as one of its strategic objectives, the Office promotes a measure of coordination between the Office and other prosecution or rule of law actors in an effort to close the impunity gap, which is particularly important when considering that atrocity crimes rarely occur in a vacuum but rather in a context of wider criminality, such as transnational organised crime, terrorism, trafficking in persons or natural resources, corruption or financial crimes.
- Libya is a case in point where we are collaborating with prosecution authorities from a number of countries, by sharing information to see who may be best placed to address crimes against migrants.
- ) This dynamic diversity within the Rome Statute system ultimately means that, whilst the Court will do its part to investigate and prosecute crimes

where necessary, its impact and success in actually achieving its goal to establish a culture of accountability for atrocity crimes also depends on the level of political, diplomatic, operational and financial support it receives from its States Parties and other interlocutors.

) Many of the States you represent here today have provided meaningful and tangible support to my Office's activities, for which I'm grateful.

### **Activities of the ICC Office of the Prosecutor**

) As an impression of our current cases and investigations:

- o The Office is currently involved in trial proceedings against the Congolese warlord Bosco Ntaganda, who is awaiting verdict of the ICC Judges, as well as against Dominic Ongwen, the Ugandan Lord's Resistance Army brigade commander, whose Defence is currently responding to the case presented by the Prosecution. Another case, that of Al-Hassan, relating to events in Timbuktu, Mali, is being prepared for a hearing to confirm the charges brought against him by my Office.
- o Active investigations remain ongoing in relation to a number of situations, including Georgia, Burundi, Mali, Côte d'Ivoire, Darfur, Libya and the Central African Republic. We are awaiting a decision of the ICC Judges concerning our request to initiate investigations in Afghanistan.

) Certain of our investigations should, we hope, soon come to the trial phase – depending to a certain extent on whether arrests of those individuals who, with reasonable grounds, are believed to be responsible for the commission of atrocity crimes, can be effected.

- o Examples are the recent arrest or surrender of Mr Yekatom and of Mr Ngaissona in the CAR II situation.

) However, 15 individuals, for whom the ICC judges have issued warrants of arrest upon my Office's application, remain at large to date. Short of implementation of these warrants, we have little chance to achieve the

objectives of accountability and prevention. The victims who long for answers and yearn for justice are those who will ultimately suffer the brunt of such inaction.

- ) Investigations may seem to take a long time – we have in the past estimated that investigations should, on average, take about three years – but many factors affect how quickly we can gather the necessary evidence to bring charges. These factors include the complexity of the situation, security conditions on the ground, the level of support and cooperation we receive, resource constraints, and other matters.
- ) As a relatively young institution, we are investing much time and effort in developing an efficient, professional and sustainable Office, which analyses critically its successes and setbacks; and makes necessary adjustments in order to both learn from its past activities and build on best practices.
- ) I am and remain profoundly committed to end impunity for crimes that shock the conscience of humanity.

### **Conclusion**

- ) The consolidation of peace and stability in a free and democratic society is one of the main ACP objectives. Rome Statute crimes can undermine security and stability both nationally and regionally. In this context, the ICC may play a crucial role in addressing impunity and achieving justice and reconciliation; and assisting States in developing their national legal frameworks in order to address atrocity crimes.
- ) Ultimately, ending impunity and bringing justice to victims of atrocity crimes are not the preserve of any one institution – it is a common goal and aspiration that ties us all together in our shared quest for justice, peace and stability, whether in Africa, in the Caribbean, the Pacific or any other region in the world.
- ) Thank you for your kind attention. | o r r