



**Cour
Pénale
Internationale**

**International
Criminal
Court**



**Judge Silvia Fernández de Gurmendi
President of the International Criminal Court**

Presentation of the Court's annual report to the UN General Assembly

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Mr President,

Distinguished delegates,

It is an honour to be here today to present the annual report of the International Criminal Court to the United Nations General Assembly.

Quisiera aprovechar esta oportunidad para presentar mis respetuosos saludos a las delegaciones de habla hispana antes de continuar con la presentación de mi informe en los dos idiomas de trabajo de la Corte, que son el francés y el inglés. [I would like to present my respectful greetings to the Spanish-speaking delegations, before continuing my presentation in the two working languages of the Court, which are French and English.]

This reporting period has been a very busy year for the ICC, with unprecedented judicial activity.

A new chapter has opened for the Court, with transition to its new, purpose-built permanent premises. We were very honoured to have Secretary-General Ban Ki-moon speak at the opening ceremony in April.

I would like to start this presentation by expressing my deep sense of gratitude to Mr Ban Ki-moon for his unwavering, principled and strong support of the Court throughout his mandate as Secretary-General. I am also highly appreciative of his dedicated service to the international community and his enormous efforts in the furtherance of peace, justice, tolerance, the rule of law and the protection of human rights.

I also take this opportunity to extend my warm congratulations to Mr António Guterres for his appointment as the next Secretary-General. The Court looks forward to working together with him.

As always, the Court highly appreciates the cooperation it receives from the United Nations. This ranges from logistical assistance in the field to administrative and personnel arrangements, judicial assistance and the provision of services such as those relating security, satellite communications or the use of conference facilities. In accordance with the Relationship Agreement with the United Nations, the Court reimburses the organization for the assistance that it receives.

Earlier this year, the Court was pleased to conclude a Memorandum of Understanding with United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic, in line with previous MoUs concluded with other UN peacekeeping missions, in order to facilitate modalities for cooperation. The Memorandum of Understanding provides for assistance to all parties and participants to the judicial proceedings.

Mr President,

The past year has been very eventful in terms of judicial developments at the ICC. Three judgements have been issued since my last report, two trials were held in their entirety, two trials are ongoing and another one is set to start soon. Following convictions, reparations proceedings are underway in four cases.

In the situation in the Central African Republic, Mr Jean-Pierre Bemba was convicted in the first instance for failure to punish or prevent crimes committed by his subordinates. He was sentenced to a term of imprisonment of 18 years for rape as a war crime and a crime against humanity, to be served concurrently with a sentence of 16 years in relation to murder as a war crime and a crime against humanity, and the war crime of pillaging. The Trial Chamber stressed that the especially grave nature and consequences of sexual crimes, in particular against children, was acknowledged by the States Parties in the Rome Statute. The Trial Chamber further found that the instances of rape were of utmost gravity, having regard to both the cultural context and the lasting damage to the victims, their families and communities. Both the judgement on conviction and the sentence are currently appealed before the Appeals Chamber. Reparations proceedings have begun.

The Court held its first trial in relation to the situation in Mali, which lasted only three days after the accused admitted his guilt. Mr Ahmad Al Mahdi, who used to be a prominent figure of a splinter group of Al Qaeda, pleaded guilty to the war crime of attacking protected objects in relation to the destruction of ten buildings of a religious and historical character in Timbuktu, Mali. He was sentenced to 9 years of imprisonment, and this sentence has now become final since it was not appealed.

In rendering its sentence, the Trial Chamber held that crimes against property are generally of lesser gravity than crimes against persons. However, the crime for which Mr Al Mahdi was convicted was of significant gravity, taking into consideration the symbolic and emotional value of the buildings in addition to their religious character, as well as the discriminatory religious motive invoked for the destruction.

From September 2015 to April 2016, the Court held its first trial on charges of offences against the administration of justice, in the *Bemba et al.* case. On 19 October, the Trial Chamber found the five accused guilty of various offences against the administration of justice, including corruptly influencing witnesses. Penalties will be pronounced at a subsequent date. The verdict is not yet final.

We have also commenced the first trial in the situation in Côte d'Ivoire, against Mr Laurent Gbagbo and Mr Charles Blé Goudé. The two co-accused are charged with the crimes against humanity of murder, rape, persecution and other inhumane acts allegedly committed during post-election violence between December 2010 and April 2011.

In the situation in Uganda, Pre-Trial Chamber II confirmed a total of 70 charges of war crimes and crimes against humanity against Dominic Ongwen of the Lord's Resistance Army, relating to alleged acts of murder, rape, sexual slavery, torture, use of child soldiers and other crimes. The trial is set to start on 6 December. This is a significant development, more than ten years after arrest warrants were issued against Mr Ongwen, Mr Joseph Kony and others.

In another new development for the Court, for the first time we have sent convicted persons to serve their sentences in one of our States Parties. Mr Thomas Lubanga and Mr Germain Katanga both expressed preference to serve their sentences in their home country, the Democratic Republic of the Congo, and this was made possible through the conclusion of *ad hoc* agreements with DRC for this purpose, for which we are grateful.

Mr Katanga's sentence was concluded during the reporting period, after a panel of the Appeals Chamber decided to reduce it following a mandatory review after two thirds were served. The judges concluded that there were several factors in favour of reducing the sentence, including Mr Katanga's early and continuing willingness to cooperate with the Court in its investigations and prosecutions, as well as the fact that he had repeatedly and publicly taken responsibility for the crimes for which he was convicted, and expressed regret for the harm caused to the victims by his actions.

Mr President,

On 27 January this year, Pre-Trial Chamber I granted the request of the Prosecutor to open an investigation into the situation in Georgia, in relation to crimes against humanity and war crimes allegedly committed between 1 July and 10 October 2008. The Chamber recalled that its decision had the purpose of ensuring judicial control over the Prosecutor's *proprio motu* power to open an investigation, in the absence of a referral by a State Party or by the Security Council of the United Nations.

The Chamber's decision makes it clear that the authorisation is not limited to any specific incidents or alleged crimes, but rather it is precisely the purpose of the investigation to discover proper evidence to determine which crimes, if any, may be prosecuted. Any future prosecution of specific individuals would be again subject to judicial control of the Pre-Trial Chamber, both at the stage of issuing arrest warrants or summons, as well as the confirmation of charges.

The process that preceded the Pre-Trial Chamber's decision provided an early opportunity to give a voice to victims in the Court's proceedings. In accordance with the Rome Statute, the Chamber took into consideration representations on behalf of more than six thousand victims in relation to the proposed investigation. The submission of these representations

was facilitated through a field mission by victim participation experts from the Registry of the Court.

Mr President,

The Court has continued its work related to its unique mandate to order reparations to victims following convictions in the Lubanga and Katanga cases and it has initiated the reparations proceedings in the Bemba and Al Mahdi cases.

At the same time, the Trust Fund for Victims has continued activities under its assistance mandate, which is separate from the judicial proceedings before the Court. Together with its locally based implementing partners, the Trust Fund has been assisting victims in northern Uganda and the Democratic Republic of the Congo. It is now also planning expansion of its assistance activities to four other situations before the Court, and the Board of Directors has approved an initial budget for this purpose.

The Trust Fund for Victims plays a key role in implementing the principles of reparative justice enshrined in the Rome Statute, but to do this effectively, it needs resources. I call upon all States and other donors to support the Trust Fund, so that it may expand and sustain assistance mandate programmes, as well as maintain and increase the financial reserve to complement the payment of Court-ordered reparations awards.

Mr President,

In total, there are currently ten situations under investigation by the Court, of which five were referred to the Prosecutor by the States concerned. On 21 September, the Prosecutor received a new referral, from the Government of Gabon, concerning the situation in Gabon since May 2016. The Prosecutor is currently conducting a preliminary examination to determine in order to establish whether the criteria under by the Rome Statute for opening an investigation are met. The Prosecutor is also conducting nine other preliminary examinations on different continents.

The assistance and cooperation of States remains crucial for the Court's ability to conduct its mandate. In accordance with the Rome Statute, States Parties are obliged to cooperate fully with the Court's investigations and prosecutions. Furthermore, the resolutions of the Security Council referring the situations in Darfur, Sudan, and Libya to the Prosecutor have imposed an obligation on the two States in question to cooperate fully with the Court in the context of those situations and urged all other States to do so.

Cooperation from all States, parties and non-parties, is essential to enable impartial and effective investigations. Access to crime scenes and all relevant evidence, victims and witnesses is crucial for the process of justice.

The Court is tremendously appreciative of the active support that numerous States provide. We endeavour to nurture this relationship through various initiatives, including cooperation seminars and workshops. There are many priority areas for the Court, but I would highlight in particular the continued need for relocation of witness under threat, assistance with financial investigations and the arrest and transfer of suspects. It is of great concern that requests for arrest and transfer issued by the Court remain outstanding with respect to 13 individuals, some of them for more than ten years.

Mr President,

Improving the efficiency and effectiveness of the Court's operations remains my main priority as President of the institution.

All organs of the Court have embarked in reforms to improve its performance. We have already seen very concrete results from these efforts, including the collective efforts of the judges to expedite judicial proceedings.

I have just returned from the second judges' retreat, where we have taken our reforms further by tackling this time trial issues as well as questions of legal representation of victims. Again, by analysing and comparing our experiences, we have identified common ground and best practices, and I am confident that the results will soon become visible.

In parallel, as part of the overarching effort to improve efficiency, the Court has made significant progress in developing qualitative and quantitative indicators to measure performance. A report on this progress will be submitted in the coming days to the Assembly of State Parties.

We have also seen developments that are not initiated by the Court but which contribute to the strengthening of an effective system of justice under the Rome Statute. In this respect, I welcome the establishment of the ICC Bar Association, which was created by counsel for defence as well as victims with the aim of reinforcing the independence of counsel, strengthening the equality of arms and enhancing the quality of justice at the Court.

I fully agree with these objectives. Professional counsel and an effective defence are essential to a fair and efficient system of justice. In this respect, I also urge all States to consider

favourably requests for cooperation emanating from defence teams in the ICC's proceedings.

Mr President,

Since my last report, we have welcomed a new member to the family of ICC States Parties. I reiterate my warmest congratulations to El Salvador for its historic decision to join the Rome Statute, which is a decision in favour of justice, peace and global solidarity. I was delighted to facilitate the process personally by participating in detailed technical discussion on the Rome Statute with Salvadorian parliamentarians.

I also welcome the accession of Samoa to the Agreement on the Privileges and Immunities of the Court, bringing the total number of parties to the Agreement to 75. I encourage all remaining States Parties and other interested States to consider joining this agreement.

Finally, since my last report, six States have ratified the Kampala amendments to article 8 of the Rome Statute, and eight States have ratified the amendments on the Crime of Aggression, bringing the total number of ratifications for both amendments to 32.

On 26 June 2017, the amendments on the crime of aggression will have entered into force for 30 States. The activation of the Court's jurisdiction over the crime of aggression will require a decision by a two-thirds majority of the Assembly of States Parties, to be taken after 1 January 2017.

Mr President,

I would now like to refer to the recent announcements of withdrawals from the Rome Statute, the founding treaty of the Court. In this regard, I wish to reaffirm the importance of the continued commitment of States and the international community to investigate and prosecute the most serious crimes and to protect victims across the world.

The last two decades have witnessed huge progress in the consolidation of international criminal justice as a fundamental part of the international community's response to conflicts and mass atrocities.

In 1998, the ICC was created by countries and with the support of civil society from all continents to investigate and prosecute perpetrators of genocide, crimes against humanity

and war crimes by whomever committed. Over the years additional States have continued to join the Court and contributed to its effectiveness by cooperating with its activities.

In creating the Court as a permanent and independent judicial institution, States recognised the link between justice, peace, and sustainable development, and reaffirmed their commitment to fight impunity. Most recently, Agenda 2030 and Sustainable Development Goal 16 demonstrate these connections. The ICC can contribute to the goal of providing access to justice for all and building effective, accountable and inclusive institutions.

The Court was not created to replace or compete with States. On the contrary, States have the duty and indeed the right to investigate and prosecute these crimes themselves in the first place. The role of the Court is to provide justice only when States fail to do so.

Since its creation, the Court has made significant achievements in addressing crimes of concern to the international community as a whole such as the use of child soldiers, sexual violence in conflict, attacks on civilians and the destruction of cultural property.

Crucially, the creation of the ICC has given a voice to victims, who have the possibility to participate in the Court's proceedings and to request reparations. The Trust Fund for Victims associated with the Court has already assisted more than three hundred thousand victims with physical and psychological rehabilitation as well as material support.

The Court is doing its work and has embarked in a number of important reforms to enhance the speed and quality of prosecutions and judicial proceedings. The important results achieved this year are a clear demonstration of the Court's commitment to deliver high quality justice.

The work of the Court continues. In order to bring perpetrators of crimes to justice and protect victims across the world equally, it is essential that support for the Court remains strong and States' participation in the Rome Statute is maintained and enlarged.

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