Statement by the ICC Prosecutor at the Opening of the 14th Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court

November 18, 2015

Office of the Prosecutor

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Excellence, M. le Président de l'Assemblée,

Excellence, M. président élu du Conseil de direction du Fonds, M. Motoo Noguchi,

Madame la Présidente de la Cour Pénale Internationale,

M. Le Greffier de la Cour,

Distingués Délégués,

Mesdames et Messieurs,

Ever 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 examination dossiers to make them ripe for decision making – one way or the other – as efficiently and effectively as possible in accordance with the requirements of the Rome Statute.

As you may be aware, in October of this year, I submitted a request to the Pre-Trial Chamber seeking authorisation to open an investigation into the situation in Georgia to investigate alleged war crimes and crimes against humanity in relation to the August 2008 armed conflict in that country.

Should I receive authorisation, my Office stands ready to proceed with a full investigation during which we will be investigating alleged crimes committed by all sides. As with all the activities of my Office, such an investigation will be conducted with full independence and impartiality.

In the same eventful month, I also closed the preliminary examination of the situation in Honduras. I wish to benefit from this opportunity to stress that this decision does not in any way minimise the crimes committed in Honduras or their impact on the victims. However, the Rome Statute's definition of crimes against humanity imposes strict legal requirements that distinguish this category of crimes from a context of general, chronic and structural violence. As such, on the basis of the information available, I concluded that, at this stage, the legal requirements to open an investigation into the situation in Honduras have not been satisfied.

My team has just returned from Honduras and as anticipated, I know that this decision was difficult for local civil society and victims' groups to accept. My job is a difficult one, but tough decisions will have to be made when the Statute so requires.

With regard to Ukraine, I opened a preliminary examination in 2014 following Ukraine's first declaration pursuant to article 12(3) of the Statute, which was limited to the time period of the so-called "Maidan events." Subsequently, on 8 September 2015, the Government of Ukraine lodged a second declaration accepting ICC jurisdiction over alleged crimes committed on its territory from 20 February 2014 onwards, with no end date specified. On this basis, my Office has extended the temporal scope of the existing preliminary examination to include any alleged crimes committed on the territory of Ukraine from 20 February 2014 onwards.

The preliminary examination in Palestine is also running its course, following the lodging of an article 12(3) declaration by the Government of Palestine and accession to the Rome Statute earlier this year. The ongoing first phase of preliminary examination focuses on gathering and analysing information from all reliable sources. My Office continues to engage with all sides to the conflict as it progresses in its collection and analysis of information.

Allow me to emphasise that the decisions we have taken on our preliminary examinations and the manner by which those decisions are taken should amply demonstrate my firm commitment and that of my Office to apply 'the black letter of the law' in strict conformity with the Rome Statute, and to carry out this crucial work with complete independence and impartiality. We will continue with this principled modus operandi.

Work has also progressed unabated in the nine situations where we have opened investigations.

In the situation of the Democratic Republic of the Congo, the Bosco Ntaganda trial commenced on 2 September. This is an important trial, not least because my Office is advocating for an interpretation of international humanitarian law that will allow the inclusion of sexual crimes committed by an armed group against children under the age of 15 who have been unlawfully recruited into that same armed group.

Final preparations are ongoing for the confirmation of charges hearing in the Dominic Ongwen case in the situation of Uganda. This is yet another important case demonstrating my Office's determination to implement its Sexual and Gender-Based Crimes Policy, which was launched at the last session of the Assembly.

In September of this year, my Office informed the Court's Pre-Trial Chamber of its intention to bring additional charges against Dominic Ongwen. These include forced marriage, torture, rape, and sexual slavery. We are also seeking to highlight the gender-related aspects of other crimes, namely, domestic labour and household duties in the context of enslavement.

On 29 September, another trial opened with respect to the Situation in the Central African Republic against Jean-Pierre Bemba and four other co-accused concerning alleged offences against the administration of justice, mainly corruptly influencing witnesses. While these so-called article 70 cases are resource-intensive, it is my firm conviction that it is important to send a clear message that tampering with witnesses will have consequences, and that perverting the course of justice will not be tolerated.

In the Mali situation, a major breakthrough has been the surrender of the suspect, Ahmad Al Faqi Al Mahdi to the custody of the Court by the authorities of Niger. The confirmation of charges hearing is currently scheduled for January 2016. This is the first case arising from on-going Mali investigations which focusses on the deliberate destruction of religious and historic monuments. Our message is unequivocal: these are serious crimes, an affront to humanity as a whole, and must not go unpunished.

We are delighted to have the esteemed presence of the Minister of Justice and Human Rights of Mali with us at this Assembly, and I take this opportunity to acknowledge with profound gratitude the impressive level of cooperation of the Malian authorities as well as Niger in the case. The support and cooperation received have been exemplary and a shining example of the strong operational support we receive from States. This support is of course critical for carrying out our mandate.

Additionally, we continue, despite severe security difficulties, to investigate crimes allegedly committed in Central African Republic.

We also pursue leads in our investigations of the situation in Darfur, Sudan. We do all we can with the resources at our disposal in the situation in Libya. I reported very recently to the United Nations Security Council on the situation in Libya and would refer you to critical points I raised before the Council, including the necessity for my Office to undertake additional investigations in the country and the need for sufficient resources to do so.

Excellencies,

Ladies and Gentlemen,

While States have been generally supportive of the Court, the increase in our cases in past years is yet to be matched by a similar increase in resources.

I am fully aware and sensitive to the difficult economic situations of States, which is why my Office tabled a conservative, carefully justified budget for 2016. We also worked with the Committee on Budget and Finance to develop a budget package that would be acceptable and affordable for States Parties.

Resource constraints simply impede my Office's ability to conduct the desired full investigations in many situations.

I reiterate here my call to States Parties to adequately fund my Office's mandated activities, and to also devise innovative and effective strategies and action plans on how to give meaning to the provisions of article 115(b) of the Rome Statute, in accordance with which funds of the Court can be provided by the United Nations, in particular in relation to situations referred to my Office by the Council.

Support from States Parties for adequate resources is critical to carry out quality preliminary examinations, investigations, and prosecutions. Investing in justice is sure to pay dividends for peace, stability and economic growth, while the return on that investment in human terms is incalculable.

As part of my continuing efforts to provide more predictability in budget planning, I have provided the Committee on Budget and Finance and States with what I consider a Basic Size for the Office to carry out its mandate.

The Basic Size will ensure that we have the sufficient depth to absorb new work as well as a flexible ability to respond to the estimated demands made upon it.

We will always have to set priorities, but we must have the capacity to respond effectively and efficiently.

I look forward to addressing this issue as well as the approach my Office has taken towards increasing the efficiency and efficacy of its activities, including through the newly adopted Strategic Plan covering the period of 2016 to 2018, during the specific plenary session dedicated to this item.

Allow me also to add that we will of course work with the other organs of the Court to estimate the budgetary implications of the Basic Size concept for the whole Court and will report accordingly to the Committee on Budget and Finance in April 2016.

Excellencies,

Ladies and Gentlemen,

Let me reiterate for the public record that as Prosecutor, I cannot and will not shy away from my duties and responsibilities under the Rome Statute, and I must exert prosecutorial independence in the discharge of that mandate.

We must recall that the ICC was created because a large number of States decided that such an institution was necessary to put an end to the most serious crimes of concern to the international community as a whole, as they endanger the peace, security and well-being of the world.

The ICC will continue to need the committed support of States Parties, as custodians of the Rome Statute, to succeed and to reach its full potential.

State cooperation as well as financial and principled political support are essential.

I must emphasise that cooperation and political support also means safeguarding the Court's independent judicial functions against any threat of subverting the course of justice.

The integrity of the Court's proceedings continues to be challenged.

Matters that are either sub judice, or have already been adjudicated, must not be undermined by virtue of discussions and decisions of States Parties.

States Parties must stand firm by their commitments to the object and purpose of the Rome Statute.

Discussions and decisions of the States Parties must respect the separation of powers and the constitutional framework of the ICC in a manner that fully protects the Court's independent judicial process and integrity.

To be sure, States Parties have an important oversight function over the institution as prescribed by the Statute, but they have an equally important role to play in ensuring that the course of justice is always respected in accordance with the treaty obligations under the Rome Statute.

I want to assure you of my Office's commitment to continue to apply the law, without fear or favour, as well as to actively engage in frank and open dialogue, within the scope of our mandate and of the Rome Statute, to clear any misperceptions and enhance confidence and support for my Office's work.

Mr. President,

The Assembly is an annual forum where, in the spirit of 1998, States ought to focus debate on how to support and further strengthen the Court and the promise of the Rome Statute system to end impunity for the world's most heinous crimes. That is the ultimate purpose of these venerable proceedings.

The hopes and expectations of victims of atrocity crimes must weigh heavily on our collective conscience, and compel us to stay ever committed to the cause of international criminal justice.

History will surely stand witness to the tenacity of our will and ability to deliver on that sacred duty.

I look forward to fruitful deliberations and a successful outcome of this Assembly.

I thank you, Mr. President, Ladies and Gentlemen, for your kind attention.