



**Mrs. Fatou Bensouda
Deputy Prosecutor of the International Criminal Court**

**Regional Roundtable Discussion on Implementation of the
Rome Statute of the International Criminal Court**

Parliamentarians for Global Action

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Excellencies, Ladies and Gentlemen,

Thank you for being here, and thank you to PGA for this kind invitation.

It is a great pleasure for me to discuss with you in this regional roundtable the Rome Statute of the International Criminal Court, from the perspective of the Office of the Prosecutor.

The International Criminal Court, not to be confused with any of the ad hoc or special tribunals, such as the International Tribunal for the Former Yugoslavia and the Special Court for Sierra Leone, was created in 1998 under the guidance of the then Secretary-General Kofi Annan. He led the conference in Rome that resulted in the conclusion of the founding treaty of the Court, the Rome Statute. It was built upon the lessons of decades when the world had failed to prevent massive crimes. The decision of Africa, Europe and South America to build an International Criminal Court was not just a matter of principle, it was a matter of realism, It is a strategic priority to avoid a repetition of experiences such as the Rwanda Genocide, which resulted in the death of one million people and floods of refugees to Tanzania and the DRC.

In February 1999, Senegal became the first State Party to ratify the Rome Statute. Africa's commitment to the ICC, and to the cause of international justice, has never decreased. Currently, 31 African States are State Parties to the Rome Statute, therewith forming the largest regional group. African judges are 28% of the Court's bench. It clearly demonstrates the high level of responsibility expressed by the African continent.

States in other regions, Canada and Mexico; Japan and South Korea; Jordan and Afghanistan; Australia and New Zealand are also States Parties to the Rome Statute. They all have chosen the law as a tool to protect their citizens and their land. This is the main concept: States Parties are under the protection of the Court.

The Rome Statute offers a solution to massive, border crossing crimes, as a new instrument of peace creating global governance without a global Government but with international law and courts. Accountability and the rule of law provide the framework to protect individuals and nations from massive atrocities and to manage conflicts.

Under the Rome Statute, substantive law has been codified into one detailed text; States have reaffirmed their duty to prosecute the worst criminals; an independent, impartial and permanent International Criminal Court has been established.

The drafters of the Statute also clearly recognized the intrinsic link between justice and peace. As stated in the Preamble of the Statute, by putting an end to impunity for the perpetrators of the most serious crimes, the Court can and will contribute to the prevention of such crimes, thus having a deterrent effect.

The Rome Statute is based on two principles: complementarity and cooperation.

All the States Parties to the Rome Statute committed to investigate, prosecute and prevent massive crimes when perpetrated within their own jurisdiction. They accepted that, should they fail to investigate and prosecute, the ICC could independently decide to step in. Proceedings before the ICC, as Court of last resort, should however remain an exception to the norm. The primary responsibility for the prosecution of the gravest crimes lies within the national jurisdictions. In order to give effect to this responsibility and commitment, it is important that the core values and provisions of the Rome Statute find their way through to domestic law. Only then States will be able to conduct proper investigations and prosecutions and prevent the massive crimes that have plagued their continents.

Under the Rome Statute, States Parties moreover commit to cooperate with the Court whenever and wherever the Court decides to act. The Court can therefore rely on the cooperation of the police of all States Parties to implement its decisions. This is not just an abstraction. Cooperation with the Court is a fact. The DRC surrendered three of their nationals to the Court. Belgian police implemented in one day an arrest warrant against Jean-Pierre Bemba, former Vice-President of the DRC. In October last year, France, cooperating with Rwanda and the Court, did the same with regard to Callixte Mbarushimana, a leader the *Forces Démocratiques pour la Libération du Rwanda* (FDLR). States Parties are required to have procedures available under national law for all the forms of cooperation specified under part 9 of the Rome Statute, relating to international cooperation and judicial assistance. Besides to execute arrest warrants, cooperation is also necessary for instance to assist the Court with the protection of victims and witnesses, the taking of evidence and the tracing and freezing or seizure of property and assets.

The strength of the Rome system lies thus in the possibility for shared responsibility and complementary action between the Court and national institutions.

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These are the concepts defined by the Rome Statute. Let me in short explain how the Office of the Prosecutor puts this system in motion.

The Court's jurisdiction can be triggered in three manners: a State Party may refer a situation where massive crimes appear to have been committed to the Prosecutor; the UN Security Council acting under Chapter VII of the UN Charter may also refer a situation to the Prosecutor; or the Prosecutor can initiate an investigation on his own motion.

It is however important to note that neither a State party referral nor a UN Security Council referral binds the Prosecutor into opening an investigation into a situation.

The Prosecutor must determine whether there is a *reasonable basis* to initiate an investigation based on criteria, precisely laid out in the Rome Statute, which apply irrespective of the manner in which the investigation is triggered. These criteria are jurisdiction, admissibility and the interests of justice.

With regard to jurisdiction, the Office of the Prosecutor assesses whether the alleged crimes are committed on the territory of States Parties or by nationals or State Parties; whether these crimes have been committed after the entry into force of the Rome Statute on 1 July 2002 (or later if the relevant State ratified later); and whether the alleged crimes fall within the Court's subject matter jurisdiction which covers crimes against humanity, genocide and war crimes.

With regard to the admissibility, we have a duty not to investigate when there are genuine national investigations or prosecutions, pursuant to the principle of complementarity of which I spoke earlier. This is why, at the start of our activities, we decided to open an investigation in the DRC and not in Colombia. As opposed to the DRC, in Colombia, the authorities were, and are, conducting national proceedings against guerrilla leaders, paramilitaries and political supporters, and in some cases against members of the police and army.

Furthermore, the Statute requires that the crimes reach a threshold of gravity. For instance, the Office of the Prosecutor conducted a preliminary examination of alleged crimes committed in Iraq by nationals of 25 States Parties involved in the military operation there. We found cases of wilful killings and torture but they were not committed "*as part of a plan or policy or as part of a large-scale commission*". So we did not open an investigation because the cases did not reach the gravity threshold established by the Statute.

Additionally, in all those cases, the States concerned were conducting domestic investigations.

Finally, in accordance with the Statute, the Prosecutor has the authority to decide not to proceed with an investigation or prosecution if it is not in the “interests of justice”. It would be exceptional for a Prosecutor to decide that an investigation is not in the interest of justice, and the victims. The “interests of justice” must of course not be confused with the interests of peace and security, which falls within the mandate of other institutions, such as the UN Security Council. The Office of the Prosecutor shall not be involved in political considerations. We have to respect scrupulously our legal limits.

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Following this legal framework, we have opened investigations in the Democratic Republic of Congo, Uganda, Darfur, Central African Republic, and Kenya. Three of these 5 situations we opened at the specific request of the States themselves, while the situation in Darfur was referred to the Court by the UN Security Council

Besides our investigations, we are also monitoring a number of different situations in all regions of the world: the Office is analyzing alleged crimes in Honduras, Republic of Korea, Afghanistan and Nigeria; the Office is checking if genuine national proceedings are being carried out in Guinea, Colombia and Georgia. Finally, the Office is assessing the ad hoc declarations accepting the jurisdiction of the Court by the Palestinian National Authority and Côte d’Ivoire.

In the various situations under investigation, we have had six cases enter into proceedings before the Court, including our first case against Thomas Lubanga, charged with the war crimes of enlisting and conscripting children under the age of fifteen years and using them to participate in hostilities in the DRC; and the case against Jean-Pierre Bemba, as leader of the Movement for the Liberation of Congo allegedly responsible for hundreds of rapes and pillaging in the Central African Republic. In addition, we have submitted with the judges of the Court two applications requesting the issuance of summonses to appear for 6 individuals for their alleged responsibility in the commission of crimes against humanity in Kenya.

Importantly, the Court has also issued various arrest warrants which have not been executed, including against Joseph Kony and other leaders of the Lord’s Resistance Army and against President Al Bashir.

All of them Africans, that is true. Why? Because the Rome Statute says that we should select the gravest situations under our jurisdiction and there are also more than 5 million African victims displaced, more than 40.000 African victims killed, hundreds of thousands of African children transformed into killers and rapists, thousands of African victims raped.

The Rome Statute says that the Court shall only step in when the domestic authorities do not pursue accountability themselves. And in all the cases we selected, there were no such proceedings. When the legal criteria are met, the Office of the Prosecutor shall open investigations, wherever that is.

The outstanding arrest warrants of the ICC show the importance of cooperation with the Court and the need for engagement of a broad array of actors.

There is a need for a consistent approach. The Court might be the face of justice, but it is only as strong as the commitment of States and the larger international community. Massive crimes require a careful plan. Certainty that these crimes will be investigated and prosecuted will modify the calculus of the criminals, will deter the crimes, and will protect the victims. Effective implementation of Rome Statute crimes in domestic legislation will add to this certainty.

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We have to realize that there is now a new international justice system. In Rome, States made a conscious decision to create a justice system that could stop or prevent violence rather than an *ad hoc* creation acting *a posteriori*. New rules were created that other actors must adjust to, that need to be implemented.

Practice shows that the international community increasingly understands the role of the Court.

In Guinea for instance, immediately following the announcement of the Prosecutor that the events of 28 September 2009 in Conakry were being examined, the Guinean Minister of Foreign Affairs visited the Court on two occasions, dedicated to ensuring that justice would prevail in partnership with the Court. The Court has sought to encourage and cooperate with national and international efforts to conduct genuine national proceedings, thereby ensuring that the commission of new massive crimes is prevented in new election periods.

Similarly, the ICC Prosecutor issued statements with regard to the situation in Côte d'Ivoire following the presidential elections in November 2010, including warning against inciting people to violence, putting individuals on notice and thus contributing to the prevention of future crimes.

In Colombia the prospect of the ICC attaining jurisdiction was mentioned by prosecutors, courts, legislators and members of the Executive Branch as a reason to make policy choices in implementing the Justice and Peace Law, thus ensuring that the main perpetrators of crimes would be prosecuted.

Even before a judgment is rendered in the case against Lubanga, the issue of child recruitment has triggered debates in far-flung countries such as Colombia, a State Party, and Sri Lanka and Nepal, two non States Parties.

This is the way forward. Our Court will deal with only a few cases over the years, but the deterrent impact of its cases and rulings, will extend to at least 114 States which are Parties to the Rome Statute, and even beyond, to reach non States Parties. This is where the true relevance of the Rome Statute lies. It depends on political leaders, the military, diplomats and conflict managers, parliamentarians, victims and ordinary citizens. They all have a central role to play.

Thank you.