



Statement : 25 November 2015

# Remarks by ICC Prosecutor Fatou Bensouda at Fourteenth Session of the Assembly of States Parties – Launch of the 2015 Annual Report on Preliminary Examination Activities

Good afternoon.

Thank you all for your interest and for this strong attendance.

This OTP specific side event is part of our attempts and commitment to make information regarding our preliminary examination activities more readily available and understood, of course with full respect for the confidentiality requirements of the Rome Statute.

I am therefore delighted to see so many of you present here this afternoon.

I hope you'll find the session informative and helpful. Following this afternoon's presentations, we very much look forward to your questions and comments.

Allow me at the outset to also thank the seven States Parties which have so graciously sponsored this side-event: our thanks are owed to Australia, Finland, Japan, Norway, Peru, Switzerland and Tunisia. We are grateful to you for your interest in our work and for your continued support.

The specific purpose of today's event is to present my Office's annual Report on Preliminary Examination Activities, which we published two weeks ago, on November 12th. My Public Information Unit has ensured you have bounded copies of this comprehensive report for your ease of reference.

This 60 + pages report provides a summary of the current status of each of the nine situations that have been under preliminary examination this year.

For each situation, the report provides an overview of my Office's analysis with regard to issues of jurisdiction and admissibility, as well as the activities carried out in 2015 in order to further this work.

My Office began releasing these annual reports in 2011, making this the fifth such report we have published. It is not a report to the ASP *per se*, but rather for the public at large, and its publication is timed to coincide with the ASP.

We adopted the practice of publishing these annual reports in order to promote public awareness and transparency regarding the Office's preliminary examination process. For this purpose, as of last year, I have also adopted the practice of notifying the report through a press release.

I believe these practices, together with the Policy Paper on Preliminary Examinations that I published in 2013, are significant indicators of the improvements we have brought about in the conduct of preliminary examinations, based on our belief and commitment to this critical aspect of our work and the lessons learned from the first ten years.

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 examinations 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.

Preliminary examinations are one of my Office's three core activities, alongside investigations and prosecutions. It is an activity I am required to conduct under the Statute, through which I decide whether to open new investigations. That decision is based on the statutory requirements of jurisdiction, complementarity, gravity and the interests of justice.

Allow me to emphasise a point I made during my remarks at the opening plenary: 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 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*, and will take the necessary legal decisions to either open investigations where we're mandated to do so, or close preliminary examinations where our statutory legal requirements so dictate. We will do so without fear or favour.

Preliminary examinations are probably the least understood part of my Office's work. This is because preliminary examinations are – by definition – the earliest stage of proceedings at the Court. Additionally, the Statute contains far less detail regulating the conduct of preliminary examinations than it does for investigations and prosecutions.

To help address some of these misunderstandings, in our policy paper on preliminary examinations, we divide the process into four phases, corresponding to the statutory criteria that must be met before a situation proceeds to investigation.

These phases are not rigid, but there is a certain logic to them. We first need to determine whether there is a reasonable basis to believe that a crime within ICC jurisdiction has been committed.

We do this based on the information available, in the absence of a formal investigation – that is to say, on the basis of publicly available information, and information that is voluntarily provided to my Office on

a confidential basis.

Over the past year, as detailed in the report, we gathered available information and conducted this legal analysis in relation notably to the situations in: Honduras, Iraq, Palestine and Ukraine.

Only if there is a reasonable basis to believe that a war crime, crime against humanity or genocide within ICC jurisdiction has been committed, do we then go on to examine whether those crimes have been investigated and prosecuted by national authorities in a genuine manner.

We do not examine whether a national judicial system is capable or willing to address such crimes in the abstract. We analyse the conduct of national proceedings only in relation to specific cases identified during the previous phase of analysis.

This analysis is being conducted in relation to the situations in: Afghanistan, Colombia, Guinea and Nigeria.

Our report provides an update on our analysis of potential cases and related national proceedings conducted in those countries. During this phase, we also examine the gravity of the identified cases, applying the criteria set forth in ICC jurisprudence, namely, the scale, nature, manner and impact of the crimes.

I would also briefly highlight our analysis and activities related to sexual and gender-based crimes during the preliminary examination stage. These relate both to the gathering and analysis of information on alleged crimes, and also on national proceedings, in furtherance of our Policy Paper on Sexual and Gender-Based Crimes.

In Guinea and Colombia, for instance, national proceedings for sexual and gender-based crimes have been a focus of both preliminary examinations.

I have taken various steps to help ensure that the national judicial authorities in each country do not overlook these crimes – as is too often the case – and that these investigations are treated with the attention and care that they require.

In Nigeria and Afghanistan, we are analysing gender-based persecution as potential crimes against humanity; and in Iraq, we have received allegations of sexual violence against detainees, which are currently under analysis.

Over the years, I have sought to improve the ways in which we conduct preliminary examinations.

In addition to standardization and transparency improvements set forth in our 2013 policy paper, we are also further developing our practices to increase the added value of preliminary examinations for the Office's future investigations and prosecutions.

The work done at the preliminary examination stage greatly facilitates future investigative work, for example, through systematic exploitation of open source data; building networks of cooperation partners; and identifying potential cases.

I have also strived to further increase the visibility, transparency and public understanding of my preliminary examinations. This year, over half of the 36 press statements I issued were related to preliminary examinations. Over the past three years, the proportion of media interviews focused on preliminary examinations has increased from 6% to 30% of the total conducted by me and my staff.

All of our public engagements are purposeful and carefully deliberated upon to ensure that our intervention is constructive and helpful to the preliminary examination process.

We choose our words very carefully, and the purpose of such interviews is to simply provide accurate information, highlight the principled manner by which we conduct our work, to clarify misperceptions and as mentioned, provide further transparency.

Preliminary examinations represent one of the most cost-effective areas of the Court's work, because of their potential to obviate the need for ICC investigations, prosecutions and trials, through prevention and complementarity. Increasing the impact of preliminary examinations in these two areas has therefore also been a focus of mine.

In terms of prevention activities over the past year, I would highlight the actions I took in the lead-up to the presidential election in Nigeria, independently but in close consultation with international and national partners. Despite an extremely tense pre-election environment, to my great relief, violence was in the end relatively limited and the election resulted in a smooth transition of power from President Jonathan to President Buhari.

In terms of complementarity, I have highlighted progress made by national authorities in Colombia and Guinea over the past year in our report. I am lending the full support of my Office to the prosecutorial and judicial authorities in these two countries, as they continue with the difficult work of investigating and bringing to justice those most responsible for crimes against humanity committed in their countries. Investigations and prosecutions of such complex, systematic crimes require time to complete, whether at the national level or at the ICC.

At the same time, as the Georgia situation demonstrates, where the efforts of the national authorities fall short of our Rome Statute requirements, I will not hesitate to execute my mandate.

Until recently, the competent national authorities of both Russia and Georgia were engaged in conducting investigations against those who appeared to be most responsible for crimes committed during the 2008 armed conflict. More recently, however, national proceedings in Georgia have stalled. With no foreseeable resumption apparent, I decided to seek the Pre-Trial Chamber's authorisation last month.

I would like to conclude by stressing again the critical importance of preliminary examination activities for my Office and for the ICC as whole, not only because "PEs", as we call them, lay the ground for future investigations but also because they illustrate the universal reach of our fight against impunity.

I am firmly committed to continuing to fulfil my mandate, including with respect to our preliminary examination work, with utmost professionalism, independence and impartiality. I consider these virtues as inviolable and crucial to our work and to the credibility of the Court as a whole. I will not allow them to be compromised. I request your full support for our crucial work.

With those remarks, I would now like to turn the floor to Emeric.

Emeric, as many of you know already, is the Head of the Situation Analysis Section – the unit in my Office that conducts preliminary examinations and prepares the dossiers for decision making by ExCom and ultimately myself. He manages a team of 12 committed and talented analysts that performed all of the work described in this report. I wanted to take this opportunity to publically acknowledge and thank them for their impressive work.

I have asked Emeric to go into a bit more detail about our activities over the past year, the challenges we are facing, and the steps we are taking to further hone our work.

I have also asked my Deputy, James to join me for this session. Following Emeric's remarks, we will then open the floor to questions and comments. The three of us very much look forward to the discussions, and to engaging with you.

Thank you. Emeric, you have the floor.

Source : Office of the Prosecutor