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Statement : 24/11/2015

## Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda: 'The ICC is an independent court that must be supported'

*In asking 'Why Africa?' speculation is rife, impassioned and often simply wrong*

That the International Criminal Court ("ICC" or the "Court"), is too focused on Africa has been and remains perhaps the most pervasive – and unfounded – critique of its work. Words such as 'biased', 'targeted' and 'politicised' dominate the public and media narrative. But dramatic headlines obscure the truth and distort the public understanding of what we do.

When the Conference that founded the ICC commenced some 17 years ago, the eyes of the world were on its delegates to herald in a new era of accountability for atrocity crimes. African leaders were among the staunchest advocates for the Court.

Indeed, since its inception, the African continent and African States individually have played a major role in the creation and functioning of the ICC and have supported the institution at each step of its development.

First, as mentioned, African States were extremely supportive and active when the Rome Statute – the founding treaty of the ICC – was being negotiated. This was driven by African Heads of State, civil society, and other stakeholders from the continent recognising that the ICC was an important independent judicial mechanism that could curb mass atrocities, bring justice to the victims, and promote peace and stability. Those same motivations and interests are very much valid today.

The first country in the world to ratify the Rome Statute was Senegal. This historically important and symbolic act was soon followed by countless other states from the continent and around the world. Today, African countries represent the largest regional bloc of states which have ratified the Rome Statute of the ICC.

We must not forget that history.

Africa then led the world of international criminal justice by referring situations of mass atrocities to my Office for investigation; by cooperating with our investigations; by arresting and surrendering individuals sought by the ICC; and by protecting victims and witnesses.

Since the Court became operational in 2002, my Office has received a number of formal requests from African states to investigate allegations of atrocities committed on their territories. Uganda, the Democratic Republic of the Congo, Côte d'Ivoire and Mali, have all invited my Office to step in to investigate and prosecute.

The most recent country to call on my Office to investigate potential crimes committed on its own territory is the Central African Republic – and this, for a second time.

These concrete examples demonstrate the faith of African leaders in the Court and belief in its utility.

It is true that two situations in Africa have been referred to the ICC by the United Nations Security Council: Darfur (Sudan) and Libya. My Office is not bound to automatically accept referrals by the UN Security Council; it will do so independently and only on its own accord when it is satisfied that the necessary legal requirements of the Rome Statute are met, as was done in the two situations cited.

Contrary to the fallacy that the ICC is focused on Africa, our workload is far from exclusive to the Continent. In my Office, we are busy conducting preliminary examinations in Afghanistan, Iraq, Colombia, Palestine and Ukraine, among others. As with everything we do, we are carefully assessing these situations independently and impartially. Let me be clear: I will not hesitate to open investigations in any of these situations to bring perpetrators to justice if our legal criteria allow us to do so. Just last month, I formally asked ICC Judges to authorise my Office to investigate possible war crimes in the 2008 conflict in Georgia.

It must be emphasised that the continued cooperation of the Court's member states is essential to make its work possible. The collection of evidence, witness protection, arrest and surrender of suspects, as well as the enforcement of sentences, are all carried out through the commitment of the Court's member states - 123 of them to date. They are the enforcement arm without which the Court cannot fully meet its mandate.

Nor is the ICC a panacea. Rather, it is the ultimate backstop: addressing the injustices that fall through the gaps when national courts can't or won't step in. Without the ICC, no court would hear the voices of the victims, and no justice would be done. The protection and recognition of victims is a critical element of the ICC's role: it cannot erase the damage caused by mass atrocity, but it recognises victims when no other court will.

As a Gambian and a most proud African, I want to see Africa as most Africans want to see it: a prosperous and more peaceful Continent in which citizen-participation is fostered and the rule of law and human rights are universally respected and advanced.

In a decade from now, I would like to see a Continent emerge that is blessed with continuous economic growth, and ample opportunity for its young population so that they can constructively contribute and secure its future.

Fighting impunity for destabilising atrocity crimes is a fundamental precondition to the rise of a more peaceful and prosperous African Continent. I firmly believe that reinforcing the rule of law and a healthy, well-functioning judicial system are fundamental pre-requisites to political stability and economic growth in any country.

On balance, in this new century, Africa has demonstrated a growing commitment to the rule of law and accountability for atrocity crimes. I believe it will continue to move in this positive direction. As it does, a firm and unwavering commitment to the ICC remains a must.

We owe it to ourselves, our children and to future generations to nurture the ICC so that it carries on with its crucial work around the world to fight against impunity for atrocity crimes and to foster the Rome Statute system of international criminal justice.

Protecting citizenry from the scourge of war and conflict through the vector of the law demonstrates political leadership, not weakness.

*A slightly modified version of this statement was published by the Sunday Times (South Africa) on Sunday 22 November 2015.*

[OTPNewsDesk@icc-cpi.int](mailto:OTPNewsDesk@icc-cpi.int)

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