



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

*Remarks to the United Nations General Assembly delivering the Court's annual report*

*Check against delivery*

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Mr President,

Excellencies,

Distinguished delegates,

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 am honoured to address this assembly to present the Court's annual report to the United Nations for the third and last time as my mandate as President and Judge of the International Criminal Court will expire in March next year.

When I first addressed you two years ago, following my election as President, I emphasized that the main priority I had set for my mandate was to enhance the Court's effectiveness and efficiency.

I thought then and remain convinced today that cooperation is linked to performance. The Court must constantly strive to improve its governance as well as the speed and quality of the justice that it delivers in order to enhance its credibility and foster support.

I am glad to say that much effort has been put into this in all organs of the Court and much progress has been made.

The judges have sought to improve and accelerate judicial proceedings through a collective assessment of the legal framework and methods of work. Three retreats of judges have been a central vehicle to foster the development of a more cohesive judicial culture among the judges of the Court, who come from different backgrounds, legal systems and traditions. They have served to channel collegial discussions across chambers and divisions, allow them to revise entire phases of the judicial cycle and generate a number of concrete initiatives to amend where necessary the legal framework, practices and methods of work.

The third and last retreat took place in Krakow, Poland this year, focusing on appeals issues. The two previous ones respectively held in 2015 and 2016 in Nuremberg, Germany, and Limburg, the Netherlands, had focused on pre-trial and trial issues.

These collective discussions were unprecedented. For the first time at the Court, all judges accepted that judicial independence within their respective cases and chambers was in no way incompatible with exchanging views and experiences with a view to identifying best practices and recommending common response to some challenges. These ground-breaking efforts have generated a number of initiatives and produced several concrete outcomes. A publicly available Chambers Practice Manual seeks to harmonize the approach to certain matters by spelling out how certain procedural phases should be carried out. To the extent possible, judges have sought to improve the Court's work through practice rather than amendments to the legal framework, which should remain exceptional. However, certain specific amendments have been introduced to the Rules of Procedure and Evidence and Regulations of the Court. We have also improved the structure of the legal support staff at the Court.

The reforms we have put in place are already having a visible impact in our courtrooms and cases, including a clear and drastic reduction of the time required for some phases or aspects of proceedings.

We have also made progress in the development of performance indicators and a third report will be produced at the end of this year which will be accompanied by a fuller set of data, which, we hope will help illustrate the work of the Court across cases.

Enhancing the efficiency of Court becomes critical at a time in which the Court is very busy at various stages of proceedings, and the heavy workload is likely to continue in the future. As said, much progress has been achieved in this regard although, of course, much more is required. The Court is not perfect. But it is working, it has matured, and it is delivering.

As part of improving its governance, we have also sought to strengthen the safeguards to ensure that officials and staff members of the Court uphold the highest standards of integrity and professionalism in the exercise of their functions. I would like to emphasize in this regard that a system of disclosure of financial information for certain elected officials and senior managers is in place since 2015, that the Independent Oversight Mechanism created by the Assembly of State Parties is now fully operational, and that a new policy for the protection of whistleblowers is being developed at the Court. We have also started a review of all relevant existing legal provisions, including codes of ethics. We consider it is important to assess the adequacy of this legal framework in order to identify any lacunae, introduce amendments if necessary and make recommendations to the Assembly of States Parties, if appropriate.

Mr. President,

As I indicated, the Court is now confronted with a heavy workload that it is likely to continue next year.

At the start of the reporting period, convictions or sentences were issued in two trials against a total of six persons. The first one concerns Mr Al Mahdi for the destruction of world heritage property in Timbuktu, Mali. The second one was brought by the Prosecutor against Mr Jean Pierre Bemba and four co-accused for offences against the administration of justice related to the alleged corruption of witnesses in the main case against Mr Bemba. The conviction and sentences in this second case are now being considered on appeal.

Three trials are currently ongoing before the Chambers of the Court.

The latest one is the trial against Mr Dominic Ongwen, which started on 6 December 2016. More than ten years elapsed since the arrest warrants of the Court were issued against him, together with Mr Joseph Kony and others, for alleged crimes against humanity committed by members of the Lord's Resistance Army in Northern Uganda. Mr Ongwen finally surrendered of his own will and was transferred to the Court on 17 January 2015, thus allowing judicial proceedings to start. The trial it is now progressing at high speed. It is a huge development that a trial is now finally conducted before our judges. It illustrates, however, the enormous challenges that the Court needs to confront for its cases to reach the court-room. While the Court is doing its best to accelerate the pace of proceedings, many of the difficulties are beyond its control and can only be overcome with the cooperation of the international community. Without army and without police, the arrest of suspects remains the most notable single challenge of the Court, among many others.

Another illustration of a similar problem is the ongoing trial against Mr Bosco Ntaganda accused of war crimes and crimes against humanity allegedly committed in the Ituri district of the Democratic Republic of the Congo. Mr Ntaganda was under an arrest warrant from 2006 until 2013, when he finally also surrendered voluntarily and was transferred to the Court. Trial hearings are expected to finish early next year.

The third trial in progress is the case of Messrs Laurent Gbagbo and Charles Blé Goudé, both accused of crimes against humanity allegedly committed during post-election violence in Cote d'Ivoire between December 2010 and April 2011. The Prosecution is currently presenting its evidence and the trial is expected to continue throughout next year.

Mr President,

Trials are the most visible and also the most resource intense work at the Court. However, a lot is also happening in the Pre-Trial and Appeals divisions. Some of it may go unnoticed or be in fact under seal, as shown by the unsealing of the arrest warrant against Mr. Al-Tuhamy Mohamed Khaled earlier this year. He is suspected of crimes against humanity and war crimes allegedly committed on Libyan territory from February to August 2011.

The work of the Pre-Trial and Trial divisions impacts on the workload of the Appeals Division which is now dealing with interlocutory appeals, appeals relating to reparations proceedings and, most notably, the appeals against the final conviction and sentences issued in two cases.

One of these is the case I have already referred to, against Mr Jean Pierre Bemba and four co-accused for offences against the administration of justice. The other one is the main case against Mr Bemba for failure to punish or prevent crimes of rape, murder and pillaging allegedly committed by his subordinates in the Central African Republic in 2002 and 2003. The Appeals Chamber is expected to issue its judgement in these two cases in the first quarter of next year.

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Monsieur le Président,

Comme je viens de le décrire, la Cour est saisie de plusieurs affaires qui se déroulent à différentes étapes du processus judiciaire. Le Procureur poursuit également ses enquêtes dans dix situations de même que ses examens préliminaires dans dix pays sur quatre continents.

Aucune de ces activités ne serait possible sans la coopération des États – parties et non-parties – de même que celle d'organisations. Je voudrais saisir cette occasion pour reconnaître l'excellente coopération dont nous bénéficions de la part d'un grand nombre d'États, incluant celle de la plupart de pays où des enquêtes sont en cours.

En même temps, il est très préoccupant que plusieurs suspects demeurent en fuite malgré l'existence de mandats d'arrêt délivrés par la Cour. Comme je l'ai déjà mentionné, l'arrestation des suspects demeure le principal défi auquel la Cour est confrontée. Au total, quinze personnes dans six situations différentes font l'objet de demandes d'arrestation et de remise délivrées par la Cour encore non exécutées.

Dans le cadre de nos efforts pour rendre justice, il est essentiel que ces personnes soient remises à la Cour. J'appelle tous les États à contribuer à ces efforts. J'exhorte également le Conseil de sécurité, qui a déferé au Procureur les situations au Darfour et en Libye, de prendre des mesures pour garantir une pleine coopération avec la Cour.

Le mandat d'arrêt le plus récent, qui n'a pas encore été exécuté, a été délivré le 15 août de cette année à l'encontre de M. Mahmoud Mustafa Busayf Al-Wefalli dans le contexte de la situation en Libye. Ce dernier est suspecté d'avoir commis et ordonné la commission de meurtres en tant que crimes de guerre en rapport avec des événements ayant eu lieu à Benghazi ou dans les alentours entre juin 2016 et juillet 2017.

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M. le Président,

Traduire en justice les auteurs présumés des crimes les plus graves qui touchent la communauté internationale est la mission fondamentale de la Cour pénale internationale. La Cour a en effet été créée avec la conviction que ces crimes constituent une menace pour la paix et la sécurité. La Cour a également été créée avec la conviction que mener des enquêtes et engager des poursuites pour ces crimes aidera à prévenir de nouvelles atrocités et contribuera ainsi à une paix durable.

Ce faisant, la Cour ne cible pas des États ou des régions, mais aspire à protéger les victimes de tels crimes. Il est donc essentiel de s'assurer que les victimes comprennent le travail de la Cour et s'approprient suffisamment les efforts menés pour rendre justice.

Le Statut de Rome reconnaît cela. Il contient, pour la première fois, des éléments qui cherchent à donner une voix aux victimes à toutes les étapes de la procédure, comme participants à part entière, et non pas seulement comme témoins des crimes. Le Statut de Rome permet aux victimes de transmettre de l'information au Procureur et de participer au processus judiciaire pour exprimer leurs vues et préoccupations.

Les victimes sont au cœur de notre travail. Parmi les mesures prises pour améliorer notre performance, nous avons beaucoup fait pour améliorer la manière dont nous communiquons et sensibilisons les victimes, de façon à ce qu'elles connaissent suffisamment notre travail ainsi que leurs droits dans nos procédures.

Dans l'affaire *Ongwen*, par exemple, les audiences sont diffusées régulièrement lors de séances de visionnement organisées dans les communautés touchées par les crimes. En

République centrafricaine, les moyens supplémentaires du bureau extérieur de la Cour permettent d'organiser des activités de sensibilisation dans plusieurs endroits au-delà de Bangui. En Côte-d'Ivoire, des émissions radiophoniques et de télévision sont diffusées régulièrement.

Presque treize mille victimes participent aujourd'hui aux différentes procédures de la CPI par l'entremise de représentants légaux, notamment plus de quatre mille victimes dans la plus récente affaire *Ongwen*. Le nombre sans cesse croissant de victimes désirant participer à nos procédures démontre que la Cour a réussi à améliorer l'accès des victimes à la justice. Ce nombre croissant reflète aussi l'énorme défi à surmonter.

En effet, la participation de parfois plusieurs milliers de victimes soulève plusieurs défis juridiques et opérationnels, dans la mesure où cette participation doit être réelle et significative sans porter atteinte au droit des accusés à un procès équitable et rapide.

Aussi, étant donné que les victimes participent aux procédures par l'entremise de représentants légaux, l'un des défis consiste à assurer que les conseils canalisent véritablement les voix des victimes. Les chambres ont mis en œuvre différents systèmes à cette fin mais davantage de réflexion est nécessaire à cet égard.

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La réparation du préjudice subi est un autre aspect crucial de l'attention que la CPI porte aux victimes.

Comme vous le savez, le Statut de Rome est le premier instrument du genre à prévoir la possibilité d'octroyer des réparations aux victimes en cas de condamnation.

Des procédures de réparations se déroulent à présent dans quatre affaires dont les procès sont terminés.

L'an dernier, des réparations ont été ordonnées dans l'affaire de M. Germain Katanga, condamné pour des crimes commis durant l'attaque contre le village de Bogoro en République démocratique du Congo. La chambre de première instance a accordé des réparations individuelles et collectives aux victimes des crimes pour lesquels M. Katanga a été condamné. La chambre a déterminé que la portée de la responsabilité de M. Katanga se chiffrait à un million de dollars. L'ordonnance de réparation fait l'objet d'un appel.

Plus récemment, des réparations collectives et individuelles de même que certaines mesures symboliques ont été ordonnées dans l'affaire de M. Al Mahdi, qui concernait la destruction d'édifices à caractère religieux et historique à Tombouctou, au Mali. Le représentant légal des victimes a interjeté appel de l'ordonnance de réparation.

Dans le cadre du système de réparations, les États parties au Statut de Rome ont mis en place un fonds au profit des victimes, financé par des contributions volontaires d'États et autres donateurs. Le fonds peut contribuer financièrement à la mise en œuvre des ordonnances de réparation dans le cas où la personne condamnée est en situation d'indigence. Il peut aussi fournir de l'assistance plus large pour des dommages subis par les victimes des crimes relevant de la compétence de la Cour au-delà des affaires spécifiques.

Dans le nord de l'Ouganda, par exemple, le Fonds mène des activités depuis déjà dix ans, travaillant avec des ONGs locales sur des projets visant à réhabiliter les victimes aux plans mental et physique. J'ai eu l'occasion de me rendre plus tôt cette année sur les lieux de certains de ces projets et constater directement, en discussion avec les victimes qui en bénéficient, l'importance de l'assistance que le fonds leur fournit.

Les réparations et l'assistance dépendent de contributions volontaires au fonds. Je voudrais souligner l'importance de ces contributions au succès du système et saisir cette occasion pour remercier tous les États qui ont déjà fait un don au fonds, notamment les contributions versées cette année.

Monsieur le Président,

Comme je l'ai déjà souligné, la Cour fait face à de nombreux défis et difficultés qui ne peuvent être surmontés qu'avec une pleine coopération des États, des organisations et de la société civile.

Même si la Cour ne fait pas partie des Nations Unies, elle partage ses objectifs et valeurs et doit souvent intervenir dans des situations qui touchent aussi l'organisation. Comme vous le savez, la CPI et les Nations Unies sont formellement liées par un accord régissant leurs relations. La coopération continue des Nations Unies est cruciale pour le travail de la Cour Pénale Internationale. Je suis reconnaissante du support manifesté à la CPI par le Secrétaire général, M. Antonio Guterres, et son prédécesseur, Ban Ki-moon. La Cour apprécie aussi grandement les excellentes relations qu'elle maintient avec le conseiller juridique et d'autres hauts responsables des Nations Unies, ainsi qu'avec plusieurs de leurs programmes, fonds et agences spécialisées.



La coopération des Nations Unies avec la Cour prend plusieurs formes. Elle inclut de l'assistance logistique et de sécurité sur le terrain, de même que de l'assistance judiciaire, telle que la divulgation de documents et la mise à disposition de membres du personnel de l'ONU pour être interrogés et témoigner.

Toutes ces formes de coopération, fournies moyennant remboursement, sont fort précieuses pour la Cour.

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Mr President,

In the last thirty years, the concept of accountability has been put firmly in the global agenda. It is now widely accepted that there is an obligation to end impunity for the most serious crimes of concern to the international community: genocide, war crimes, and crimes against humanity. The emergence of this principle as a norm under international law has changed the parameters for the pursuit of peace.

There is now an expectation that there will be accountability for the most serious crimes and the conviction that this is necessary for sustainable peace. The question is no longer whether to pursue justice, but rather when and how.

The International Criminal Court is playing a central role in the international criminal justice system, and it is making important contributions to accountability for the gravest international crimes.

However, despite all the progress there are still huge gaps where impunity continues to flourish. These can only be addressed through the joint justice efforts of international, regional and national systems. No single jurisdiction alone can deal with this type of crimes, which involve multiple perpetrators as well as thousands or hundreds of thousands of victims.

It is essential to emphasize, in particular, that each State has the primary responsibility to prevent, investigate and prosecute genocide, crimes against humanity and war crimes. International and regional jurisdictions can only supplement but never replace the actions of States.

The International Criminal Court has been explicitly created as a complementary, last resort mechanism, intended to address only situations in which the relevant states fail to act. As a

positive result of this complementary system, an increasing number of States have updated their national legislation to be able to investigate and prosecute international crimes at the domestic level. Others have also established specialized units within their justice system in order to deal with these types of crimes.

All these initiatives are commendable and necessary to establish an effective system of global justice. That is why it is also important to deploy all efforts to enhance national capacity to investigate and prosecute massive crimes. While capacity building as such is not the task of the ICC, we can assist in the reflection on the way forward and make our expertise available, where necessary. Just last week, the Court convened a regional seminar in Niger with particular emphasis on complementarity.

It is also important to deploy efforts to enhance membership in the ICC system. To this effect we cooperate closely with other actors promoting universality of the Rome Statute such as States Parties to the Statute, international and regional organisations, and civil society.

Promoting the universal participation in the Rome Statute is of fundamental importance in order to enhance the effectiveness and the legitimacy of the institution and its capacity to contribute to the rule of law, justice, and sustainable peace and development.

We have undertaken this year a number of initiatives that foster both the cooperation with the Court and the universality of the Rome Statute. I would like to mention in particular two important seminars that took place this year, one in Trinidad and Tobago the other one in the Republic of Korea.

The Court is grateful to the European Commission and all others that have financially supported these as well as other events organised by the Court to advance dialogue with States and other key partners. I would also like to specially thank the hospitality of all the states that accepted to host meetings of the Court.

Last month, I had the privilege to attend the Pacific Islands Forum Leaders' Meeting in Samoa, where we held an ICC workshop and engaged in fruitful discussions with many of the leaders present. There was wide recognition of the importance of the ICC and the rule of law for the protection of small and medium-sized countries, in particular. I am deeply grateful to the government of Samoa and the Secretariat of the Forum for facilitating my participation in this meeting. It was a unique opportunity to reach out to heads of state and heads of government from the region and encourage greater participation of Pacific Island States in the ICC.

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Mr President,

The quest for accountability is work in progress. There is much to celebrate but more concerted efforts are required to investigate and prosecute international crimes at all levels. To achieve effective deterrence, we must create a consistent pattern of accountability. Despite the historic achievements in the fight against impunity, we are not there yet.

We also need concerted efforts to improve the quality of international criminal justice. As I have explained, the ICC has achieved concrete results in improving its efficiency. But more work is needed here, too – and it should not be done in isolation.

The International Criminal Court was created on the belief that an international system cannot be associated with a particular legal system or a particular set of values. A truly international system incorporates elements of legal systems and traditions of the world and represents values that resonate across the globe.

This premise continues to be valid today. There is no particular legal system that is per se more apt for investigating and prosecuting this type of crimes. We must strive to identify the best tools of each system in order to improve the quality of our work. We did it together at the ICC among all judges, and we are now extending the dialogue to other courts and tribunals.

A step forward was taken two weeks ago in Paris, where a meeting of presidents and judges from several international criminal tribunals and mechanisms was held for the first time. As they experience similar challenges, there is need to engage in a dialogue on how best to solve them. I thank *l'Ecole Nationale de la Magistrature*, the French National School for the Judiciary, for hosting this extremely important and unprecedented event.

Indeed we must take stock of the achievements – and mistakes – of the past three decades in order to identify together the best tools for an effective system of international criminal justice for the 21st century.

Thank you.

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