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Le Bureau du Procureur
The Office of the Prosecutor

Mrs Fatou Bensouda
Prosecutor, International Criminal Court

Fourth Plenary Meeting: Complementarity

*The Office of the Prosecutor's Policy Paper on Sexual and Gender-Based
Crimes: One Year after*

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Madame Chair,
Your Excellency, President Kaba,
Distinguished Attorney Generals of Guatemala and Botswana,
Dr Molokomme and Ms Aldana,
Distinguished Director of Public Prosecutions of Uganda, Mr Chibita,
Dear Brigid,
Excellencies,
Ladies and Gentlemen,

Thank you for this opportunity, and I am delighted to see so many distinguished speakers and participants gathered here today to address the important topic of complementarity, which lies at the heart of the Rome Statute system.

At the outset, I wish to commend Botswana and Sweden for your efforts as co-focal points on complementarity.

Given the importance of the matter for discussion, I am particularly pleased with the focus placed on the topic of sexual and gender-based crimes in this year's facilitation.

Allow me to also welcome the recommendations developed by IDLO in preparation for our discussions today. Many of those recommendations will only assist in reinforcing my Office's work in this regard.

As you know, the effective investigation and prosecution of sexual and gender-based crimes has been *and continues to be* a key strategic goal for my Office since 2012 when I assumed office as Prosecutor.

In fact, the first policy developed during my term is my Office's Policy Paper on Sexual and Gender-Based Crimes, which was formally launched at the thirteen session of the Assembly of States Parties.

As I have stated repeatedly, a policy is only as good as its implementation. Today, I will share with you a few words about the progress we have made on the implementation of this Policy.

As a first step since the adoption of our Policy, we established an Inter-Divisional Working Group, coordinated by the Legal Advisory Section of my Office, to manage implementation.

Representatives of all three Divisions within my Office – the Investigation, Prosecution and the Jurisdiction, Complementarity and Cooperation divisions – participate in this Working Group.

An implementation plan has been developed by the Working Group with the helpful insights of my Special Gender Adviser, Brigid Inder.

Allow me to briefly outline three concrete examples of the Policy's implementation.

First, in the policy, we have committed to integrating a gender perspective and gender analysis into all areas of our work.

Now what does this mean?

It means that as part of our contextual analysis of potential crimes, we will examine various factors, including societal practices that pertain to gender relations and roles within a given context.

This knowledge will allow us to understand whether the issue of gender is, or may be, a factor in the patterns of the commission of crimes, to understand why certain forms of violence exclusively or disproportionately affect men, or women, or boys or girls.

We have also developed a set of guidelines on how to conduct such a gender analysis.

The team conducting the investigation in our Central African Republic-2 case is piloting its use. This requires the team to conduct the necessary research, collect information and evidence, undertake the analysis and prepare a report specifically on the gender dimensions of alleged crimes. These guidelines are a living document, and will be revised and honed on the basis of our experience.

Additionally, my Office now systematically gathers and analyses information on sexual and gender-based crimes allegedly committed in situations under preliminary examination. Our work with respect to the situation in Nigeria is a case in point.

In the context of our preliminary examinations, we also seek information on national investigations and prosecutions of such crimes, an issue to which I will return later.

The incorporation of a gender perspective also affects my Office's approach to sentencing and reparations.

The second area I wish to highlight is investigations of sexual and gender-based crimes.

In line with our Policy, my Office will undertake investigations into sexual and gender-based crimes *concurrently* with investigations into other crimes.

Notably, our investigation plans must now include a specific component of such crimes. This means that the preparation of every investigation plan must carefully consider the investigation of sexual and gender-based crimes.

If a decision is made *not* to investigate these crimes, sound justification for that decision must be noted internally and brought to my attention.

As indicated in my Office's Strategic Plan for 2012-2015, and in our new Strategic Plan for 2016-2018, we are committed to being innovative in the investigation and prosecution of these serious crimes, for instance by relying on different forms of evidence, including forensic or documentary evidence, in addition to witness statements and testimony.

A third important aspect of implementation concerns our charging strategy.

As a result of our focused strategic approach on this issue, my Office will systematically ensure the inclusion of charges for such crimes in our cases wherever there is sufficient evidence to support such charges.

In September for example, my Office informed the Court's Pre-Trial Chamber of its intention to bring additional charges against Dominic Ongwen. These additional charges include forced marriage, torture, rape, and sexual slavery.

Pursuant to our Policy, we decided to bring charges for sexual and gender-based crimes explicitly as crimes *per se*, in addition to charging rape as a form of torture. We did this to reflect the severity and multi-faceted character of these crimes.

We are also seeking to highlight the gender-related aspects of other crimes, namely, domestic labour and household duties in the context of enslavement.

These three examples of implementation – gender analysis, investigations, and charging – can only truly take root in my Office’s activities if they are complemented by relevant training and honing of expertise, and support from external actors, including States.

We continue to invest in the training of staff in the investigation and prosecution of sexual and gender-based crimes as well as dealing with victims of such crimes, with the limited budget we have, as well as the recruitment of experts to complement our in-house expertise and experience in this area.

In this regard, I wanted to acknowledge and express my gratitude to our partners, such as UN Women and Justice Rapid Response, for providing my Office assistance in the form of *pro bono* expertise or opportunities for training.

We also continue our efforts to promote a greater gender balance among our staff, including in the field.

Excellencies,
Ladies and Gentlemen,

As acknowledged in IDLO’s recommendations, coherent action and partnerships between stakeholders is crucial.

Insufficient or inadequate cooperation from States will make the implementation of our sexual and gender-based crimes policy challenging.

Exploring processes through which we can overcome these challenges will remain critical. We at the Court, and in particular my Office, are attempting to do our part in our common aim to end impunity for such egregious crimes, but our work needs to be reinforced by other actors within the Rome Statute and beyond.

This brings me to the core of today’s topic.

Under the Rome Statute, States have the primary responsibility to investigate and prosecute sexual and gender-based crimes.

Supporting and enhancing domestic capacities, in particular their ability to address sexual and gender-based crimes is of utmost importance.

As I have stated before, it is our hope that my Office's Policy Paper on Sexual and Gender-Based Crimes can serve as a reference document for national jurisdictions in their efforts to adopt, formulate or amend domestic legislation and refine their practices, where deemed necessary to better equip themselves to confront this scourge.

My Office encourages various initiatives and actions, most notably those by States Parties, to address sexual and gender-based crimes, including in relation to universality, and the adoption of domestic legislation incorporating the Rome Statute crimes and procedures.

As you know, my Office takes a positive approach to complementarity by combining our efforts to prosecute those most responsible with proceedings at a national level against other potential perpetrators. We will particularly encourage relevant national authorities and other entities to address barriers to genuine proceedings and to provide support for the victims of such crimes.

Following our Policy, during the preliminary examination phase, my Office gathers information on domestic proceedings for sexual and gender-based crimes. We also aim to encourage domestic investigations and prosecutions of these serious crimes. We are doing this, for instance, in Guinea in relation to the 28 September 2009 massacre.

Excellencies,
Ladies and Gentlemen,

I welcome platforms for discussion and exchange of ideas on how to confront the challenge of sexual and gender-based crimes, as the one I am privileged to be a part of today.

It is my sincere hope that States Parties, the Court and other stakeholders continue to think creatively how we can move this conversation forward and take practical steps towards greater harmonisation of our efforts to fight this scourge.

The victims of such devastating crimes will not find solace in our words and promises, but in what we manage to deliver *in concrete terms*.

We *must* end sexual and gender-based crimes.

Our efforts are strongest when they merge in a supportive and complementary fashion.
That is when we can have a real impact and make a difference.

Thank you. | OTF