



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

Keynote speech at Event marking Day of International Criminal Justice

CHECK AGAINST DELIVERY

The Hague, 26 June 2015

Excellencies,

Dear fellow judges and colleagues of the ICC and other tribunals and courts,

Ladies and Gentlemen,

I would like to thank the co-facilitators on Strategic Planning, Ambassador Borkowski of Poland and Eduardo Rodríguez of Bolivia, for convening this event to mark the Day of International Criminal Justice. It is a pleasure to be here and to address you on this occasion.

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Last month, Ms Zainab Bangura, the UN Secretary-General's Special Representative for Sexual Violence in Conflict, visited the ICC at my invitation to hold a roundtable meeting with the Court's judges.

She told us truly harrowing stories of unimaginable suffering.

She spoke about her recent travels to Iraq, Syria and elsewhere. We heard about a girl who was sold 22 times as a sex slave. We heard about victims whose only choice was between rape or death, and about those who would have rather chosen death than to go through the horror of sexual violence again and again, but were not allowed to die even if they wanted to.

The meeting was very important to all of us. As judges, we must focus on our judicial proceedings but so often in our daily work we get so entangled in procedural and technical discussions that we risk forgetting why we are here in the first place. This conversation with Ms Bangura was a powerful reminder of why the ICC is here and why we must do what we do.

The ICC is here to address atrocious crimes committed against our fellow human beings. And it is our job to make sure that this is sound, meaningful justice that has a real impact in helping to restore and maintain a stable peace.

In the broadest sense, the ICC's impact is global.

International crimes are by definition acts that are of concern to the international community as a whole, and their prosecution must make a contribution to the international rule of law and the universal deterrence of the most atrocious acts.

However, the positive impact of international justice should start with the immediate sphere of people impacted by the crimes – the victims, their families and the affected communities.

Victims may not be the Court's only stakeholders, but they are our primary concern and must have a central position in what we do. The confidence in the ICC by victims and affected communities is an essential precondition for building the legitimacy of the Court.

Participation and reparations of victims are indeed key elements of the ICC's legal system. The Court is now moving, together with the Trust Fund for Victims, into the implementation of the first court-ordered reparations. This is an important development and an opportunity to emphasise that justice at the ICC is not only about retribution. We must also seek to repair the damage that crimes have caused.

In addition to the role offered to victims in the context of criminal proceedings, the ICC must engage broadly with victims and find appropriate forms of reaching out to them. The Court must be out there where the people affected by the crimes under our jurisdiction are. We must have robust, professional and sufficiently senior staff presence in the field for this purpose, and we must be actively responding to the communication needs of victim communities. This is a recommendation that has emerged strongly in discussions that we have recently had with civil society as well as international experts.

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Excellencies, ladies and gentlemen,

I have always said that the most difficult questions for our global Court are:

- Where to investigate; and
- Who to prosecute

The way these questions are answered can have a significant impact on the legitimacy of the Court, legitimacy being understood here as the perception that its decisions are justified and not biased.

The selection of cases and situations not only should be, but should also be *seen* as being neutral and non-discriminatory. I am pleased that after my remarks, a panel discussion will follow on this important issue by touching on the “*criteria for opening preliminary examinations and investigations by the Office of the Prosecutor*”.

Obviously the selection of situations and cases is the task of the Prosecutor, and that is why the Prosecutor’s role is so incredibly important – there is a heavy responsibility on her shoulders. However, upon this selection, it is for the whole Court to ensure expeditious and fair proceedings, which is essential to the credibility and effectiveness of the ICC, or any other court, for that matter.

In this respect, I am fully aware that our proceedings are perceived as being too lengthy and not as efficient or effective as they should be. There is room for improvement and it is for me a priority to implement the necessary reforms to that effect. Some important reforms are already underway in all organs of the ICC, including the Judiciary.

Just a week ago, all judges of the Court held a two-day private retreat in Nuremberg to discuss a broad range of questions that have been identified as key to expediting proceedings.

I am truly delighted to tell you that we made excellent progress at the retreat. We had very constructive exchanges in a collegial atmosphere, and we were able to agree on a number of concrete measures aimed at harmonising practices and improving working methods in order to enhance efficiency. A detailed report on these measures will be submitted to the Assembly of State Parties in the coming months.

As we implement reforms at the ICC, let us also remember that many factors that affect our proceedings are beyond our powers to resolve. To a large extent the Court's efficiency and effectiveness depends on external cooperation and support. To be effective, the ICC needs States parties and not parties to provide full cooperation, and react effectively at the most critical moments.

The prevention and sanction of international crimes require not only the support and cooperation of governments but also of the global community as a whole. We have seen the important role that national judges and civil society as a whole can play in the global movement for accountability.

Non-governmental organisations were crucial for the establishment of the ICC and continue to play a vital role in the Rome Statute system with their advocacy and expertise. NGOs conduct in-depth research and formulate recommendations on key questions - this is a great wealth that we should make use of. The regular dialogue that takes place between the Court and civil society is extremely helpful to our work.

Excellencies, ladies and gentlemen,

Judges and courts have a central role to play in implementing the rule of law, whether in a national setting, or internationally.

The quest to end impunity for the worst crimes does not focus on a particular region. It is a universal goal, and we have seen international criminal justice progress through legal proceedings in all regions of the world.

It started in Europe, with the Nuremberg trials of Nazi Germany's leaders after the Second World War, followed by proceedings at the Tokyo Tribunal.

And the international justice project continued again in Europe 50 years later, with the Tribunal for the former Yugoslavia, and right after that in Africa with the Rwanda Tribunal.

Later we saw the creation of many hybrid tribunals, or national courts with international assistance, for instance in Timor Leste, Cambodia, Lebanon, Sierra Leone, Bosnia and Herzegovina, and most recently, in the Central African Republic.

In parallel with these international and mixed efforts, national judges of different parts of the world have continued to exercise jurisdiction on similar crimes on the basis of national or extraterritorial jurisdiction.

Among other efforts, proceedings against Augusto Pinochet, Hissene Habré, Alberto Fujimori, or the Argentine military juntas are examples of national actions taken against state officials of the highest rank for alleged atrocities of international concern committed against civilians.

On the occasion that we celebrate – the Day of International Criminal Justice – it is important to recognize these decisive steps undertaken by national judges that have greatly contributed to the progress of international criminal justice.

In this context, I would like to emphasize as well the importance of national systems for the effective operation of the International Criminal Court. The ICC is a court of last resort based on the premise that the primary responsibility for investigating and prosecuting serious crimes of international concern lies with States. National judges under the Rome Statute system continue to be the main torchbearers of justice and the rule of law.

That is why the adoption of adequate implementing legislation by states that adhere to the Rome Statute is fundamental for the effective functioning of the system. Implementing legislation is crucial to promote national investigations and prosecutions, to ensure full cooperation with the Court's activities and to allow the enforcement by national courts of judicial orders and decisions of the ICC. This also applies to other international courts, such as the tribunals for the former Yugoslavia and Rwanda.

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Excellencies, ladies and gentlemen,

Some factors affecting the ICC's legitimacy and effectiveness are largely beyond the Court's control.

One of the frequent reasons for criticism we hear is the fact that the ICC has not investigated some of the worst crimes that reportedly have been or are being committed in the world.

Unless the Security Council refers a matter to the Prosecutor, the ICC can only address crimes committed in situations within the parameters of the Statute. Universal participation in the Rome Statute is therefore essential in order to allow the Court to exercise its global mandate and avoid perceptions of selective justice.

While each state needs to consider national interests in deciding whether to accede to a treaty, it is to be hoped that many more states will come to recognize that their long-term national interests would be served by adhering to the common goal of suppressing the most serious international crimes, no matter where they take place.

As the Polish physicist and Nobel Peace Prize laureate [Joseph Rotblat](#) said in his Nobel acceptance [lecture](#) in 1995, *“safeguarding our common property, humankind, will require developing in each of us a new loyalty: a loyalty to mankind”*.

For me, this is very much the spirit in which we should celebrate the 17th of July, the Day of International Criminal Justice.

Thank you for your attention.