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Special Session: *Effective Responses to War Crimes***

Talking points: ICC Deputy Prosecutor Nazhat Shameem Khan

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I. Introduction

- I am honoured to speak on behalf of the Office of the Prosecutor of the International Criminal Court at this conference of fellow-prosecutors.
- In the traditional greeting of my own country, bula vinaka.
- Following my inauguration as Deputy Prosecutor of the ICC in March of this year, this occasion represents my first participation in this forum since my time serving as Director of Public Prosecutions in Fiji. I am delighted to be here again.
- I wish to thank the leadership of the International Association of Prosecutors, Mr Cheol-Kyu Hwang [IAP President], as well as Mr Han Moraal [IAP Secretary-General] for inviting me. I was pleased to meet you in The Hague earlier this year.

- I extend my gratitude to our Georgian hosts, in particular to the Prosecutor General of Georgia, Mr Irakli Shotadze.
- Tbilisi offers an inspiring venue for the conference, not only as a city of cultural diversity and historical significance, but also as a place where the ICC has been working over the past years, with the cooperation of the Georgian authorities, to advance a degree of accountability for atrocity crimes.
- I am glad that we can enjoy the city's hospitality in a conducive environment for this exchange. That does not mean we can rest in our quest for justice. In fact, as also evidenced by events in other countries, including places not far from this theatre, there is a real need today to hold fast to the law.
- There is too much suffering in the world, with children, women and men, young and old, living in terror or in poor conditions as the result of mass violence. With violence and conflict, inevitably, comes the collapse of the institutions which we as prosecutors have committed to protect and uphold, such as the judiciaries, the police and law enforcement bodies, the prosecution offices and the corrections services. When the fabric of the State collapses, the criminal justice system is used and instrumentalised to protect power, to destroy dissent and opposition, and to punish those who offend the power structures of authority. We as prosecutors in the international justice system, have seen again and again, prisons which hold inmates without trial and for no transgression of the criminal law, trials which afford none of the protections of human rights conventions and constitutional law, and the removal of entire judiciaries.

- In such time, as the ICC Prosecutor Karim A.A. Khan QC has said in multiple occasions, the law cannot be a spectator. The law is meant to protect and uphold principles that are essential for humanity.
- With the devastation of people's hopes and futures, in Ukraine and elsewhere, has come the realisation by many that it is time for a reinvigoration of the law. All of us in this room play an essential role in this quest.
- It is incumbent on us – the international community at large – to ensure we usher in a new era of accountability, with the law applied with ever greater consistency and respect across the globe, for it to serve as an anchor for stability and security.
- On 1 July this year, the International Criminal Court commemorated the 20th anniversary of the entry into force of its founding treaty, the Rome Statute.
- The establishment of the world's first permanent international criminal court with jurisdiction to prosecute individuals responsible for the most serious crimes under international law, is an important achievement for the international community and a significant milestone in the global fight against impunity.
- While recognizing its various achievements since the ICC began operations, Prosecutor Khan commenced his term in June 2021 with the conviction that the Office of the Prosecutor, and the ICC as a whole, can and must perform better.
- Driven by the goal to ensure a more effective delivery of justice, more commensurate to the expectations of victims and survivors of atrocity crimes, the Prosecutor has been leading efforts to refocus and

reenergise the Office of the Prosecutor, by taking a bold approach to its functioning and its relations with States, international organisations, civil society, and other stakeholders.

- Developments in Ukraine and the efforts undertaken by the Office and its partners have further accelerated this approach.
- I will highlight a few specific aspects of the Office's strategy and notable developments in recent months.

II. Strength through diversity

- I will firstly speak about diversity as a driver for enhanced performance.
- The Office, following the initiative of the Prosecutor, is now working under a new organisational structure, with as a critical feature the allocation of situations and resources to two central pillars under the responsibility of the two Deputy Prosecutors; Deputy Prosecutor Niang and myself.
- Under the Prosecutor's overall guidance, we directly oversee the work of the Office's Unified Teams working on the various preliminary examinations, investigations and cases, while benefitting from the support provided by different specialized units, such as for forensics, security, gender and children, and external affairs.
- The purpose of the restructuring is improved efficiency in investigative and prosecutorial activities. However, it is also to ensure that the work we do is conducted in a safe and respectful environment. We are already a diverse team at the Office of the Prosecutor but there is always a need for greater geographical representation.

- Having staff – of all genders – from all regions of the world will inject ever greater linguistic, cultural and substantive expertise into the work of the Office, as well as knowledge of the regions in which we operate. Diversity also brings many benefits at the investigative and trial stages of proceedings and underline the common heritage and common ownership of the law we apply.
- This, I believe, is an important feature to highlight in this forum. We strongly welcome the contribution of skilled domestic prosecutors, who can support our work in many ways, including through multilateral and bilateral exchanges, regular job openings at the Court, through the Court’s Visiting Professional programme, or through secondments to our Office via their releasing national authorities.
- In the latter regard, I observe the positive response our Office received following its call to States Parties in March this year to consider the secondment to our Office of national experts, by way of injecting expertise and capacity in relation to specific areas of the Office's work.
- We have already been welcoming a number of national experts – trial lawyers, investigators, SGBC specialists, analysts and others – who, for a time restricted period, will help to boost our Office’s work across our investigations and to effectively meet the challenges faced in conducting investigations across all situations addressed by the Office.
- It is my firm belief that the Court and its organs are stronger if there is a strong sense of identity with all parties and all regions. In turn, all parties, regions and legal systems will have the ability to shape the jurisprudence and character of the Court and its decisions. Diversity

in participation must continue to be one of our greatest strengths. The Court after all, belongs to the world.

- But there are more ways through which we can jointly ensure the effective investigation and prosecution of atrocity crimes.

III. Complementarity through cooperation

- The Office is focused on its mandate under the Rome Statute, and collaborates and coordinates closely with other accountability actors at the domestic and regional levels to ensure there is no impunity for Rome Statute crimes.
- We recognise that the most powerful and compelling way to show what has happened to victims and survivors is ensuring that their voices can effectively be heard, through a justice process that caters for their needs and respects their environment.
- It is for this reason that the Prosecutor has emphasised the strategic need to work closer to affected communities and in partnership with national prosecution authorities.
- Already, through visits to situation countries, the Office has made efforts to meet with Government representatives, prosecutorial and judicial authorities, to talk to victims and civil society representatives.
- We are convinced that, to ensure the embrace of the law by all, we must operate closer to the affected communities, to listen and learn from victims and survivors whose stories we are telling in court. To better communicate and manage expectations.

- We need to change the paradigm, mindful that the law is not imposed, and does not belong to The Hague or to the West; rather it is the property of all of humanity.
- Translated to this forum: prosecutors think alike everywhere, and international criminal law is as relevant to me, as it is to all of you.
- We are therefore enhancing our regional engagement and seeking to increase field presence to build more meaningful dialogue, to assess developments, to collect and share evidence, and to solidify cooperation.
- For the Office of the Prosecutor, it ultimately does not matter whether crimes of atrocity are prosecuted domestically or at the ICC. Indeed, domestic prosecutions are often preferable. Such prosecutions are owned by the State and its judicial system and increase understanding of Rome Statute offences by the communities most directly affected.
- The dialogue between the Prosecutor and a situation country is in itself part of a valuable journey to strengthen the universal values underlying the Rome Statute.
- The Office's work across situations under investigation shows the value of enhanced partnerships.
- In view of the scales of criminality we deal with in our investigations, our Office is engaged in close coordination with a variety of international, regional and domestic actors that are also active in relation to the collection of information and evidence.
- The ICC is not a panacea, and the Office is exploring various novel ways of working together with partners:

- For example, we are benefitting from the secondments to the Office of domestic experts in the areas of CSI, EOD, ballistics, aerial imagery, and others. With this expertise, the Office is deploying forensic missions in Ukraine, and as a model for future action in other situations too, through mobile teams comprising staff of the Office and seconded experts, who are assisting the Office on the basis of a rotational model we are developing.
- In a same vein, the Office is enhancing cooperation with domestic prosecutorial authorities by participating, where appropriate, in joint (investigation) teams, such as in Ukraine and in Libya, to facilitate the sharing of information.
- The Office is investing in modern technology, in partnership with Microsoft, and with generous financial support of other partners, to develop cutting-edge solutions and revolutionise the ability of the Office to draw on big data, including through cognitive services, artificial intelligence, automated transcription and translation tools, and facial and voice recognition. This will not only enhance the Office's collection and analysis capacity in all situations it is investigating, but in turn also increase its ability to make information available more effectively to other accountability actors.
- Building on lessons from other situations, such as those in Cox's Bazar, in the Bangladesh situation, the Office has developed guidelines with Eurojust for civil society and for domestic authorities in relation to the gathering of information, to avoid over-documentation and unnecessary re-traumatization of victims and witnesses.

- These are some examples of the Office's efforts that are part of its strategy to move the Office from working as a detached apex, to a hub in the centre of the Rome Statute system of international criminal justice.
- I will recall here in parenthesis that, not only does the Office strives to share information with domestic authorities where possible, those same authorities also have obligations vis-à-vis the Court, in particular as it concerns the cooperation with its investigation and prosecution of crimes within the jurisdiction of the Court.
- Those obligations apply regardless of the circumstances and concern notably orders for the arrest and surrender of a person, as well as other forms of cooperation that are relevant for the Court's operations.
- The obligation extends to the duty of States Parties to ensure that all procedures are in place, available under their national laws for all of the forms of cooperation.
- The Court must be able to rely on this cooperation for the Rome Statute system to work.

IV. Conclusion

- Let me conclude by emphasizing that only through effective collaboration and complementary action can we ensure that the law fulfils its purpose in the many dire situations that demand our urgent attention.
- Your roles as prosecutors are crucial to safeguard future generations from the cruelty and crimes that unfortunately too many continue to suffer from today.

- I thank you for your attention, and look forward to our exchange. | **OTP**