



**ASP STRUCTURES TEAM**  
**COALITION FOR THE INTERNATIONAL CRIMINAL COURT (CICC)**  
**COMMENTS AND RECOMMENDATIONS<sup>1</sup>**  
**TO THE EIGHTH SESSION OF THE ASSEMBLY OF STATES PARTIES**  
**18 - 26 NOVEMBER 2009, THE HAGUE**

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**1. TEAM RECOMMENDATIONS REGARDING DECISIONS TO BE MADE AT THE EIGHTH SESSION OF THE ASSEMBLY OF STATES PARTIES**

**Review Conference Preparations**

The effectiveness of the Review Conference relies heavily on adequate and timely preparations by both the Assembly of States Parties and individual states. With only a few months to prepare for the Conference, there is a pressing need for states to plan the conference, review proposals for amendments and define the important stocktaking exercise.

**For these reasons, the Team urges the Assembly to set up a follow-up structure in the form of an inter-sessional mechanism mandated to deal with all issues concerning the Review Conference arising between the Assembly's session in November 2009 and the Review Conference in May 2010.**

**Independent Oversight Mechanism**

The Bureau of the Assembly has recommended the establishment of an independent oversight mechanism with the power to initiate its own investigations into incidents of misconduct at the ICC (including criminal conduct) and with a view to provide for a system of checks and balances which does not presently exist at the Court.

The Team calls on the Assembly to establish oversight mechanism and to ensure that it is truly independent and tailored to the specific needs and nuances of the ICC. With the setting up of the investigative operations of the mechanism, the Assembly should now turn its attention to developing the inspection and evaluation responsibilities of the mechanism in accordance with article 112 (4) of the Rome Statute.

**The Assembly's response to the Presidency's decision of funding family visits of one particular detainee**

On 10 March, 2009, the Presidency of the ICC made a judicial decision that in the particular circumstances of a detainee, there was a positive obligation for the Court to fund family visits in order to make a right effective. Further, the Presidency found that this entitlement did not extend to unlimited family visits and that it will be restricted by the resource constraints faced by the Court.

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<sup>1</sup>While the work of the CICC Team on ASP Structures reflects the positions of those Coalition members most active on particular issues and this paper has been prepared in consultation with other Coalition teams, this paper cannot be construed to represent the views of all organizations/members of the CICC.

With reference to the Assembly's role in considering and deciding the budget for the Court, as well as its management oversight function, the Team notes the concerns of states expressed at previous sessions regarding the budgetary consequences of funding such visits. The Team notes that prior to the Presidency's decision the Assembly had mandated ongoing dialogue between the Assembly and the Court, but had nevertheless agreed on an exceptional basis to partially fund family visits, pending a final policy determination of the matter.

The Team acknowledges that the question of the obligation to fund family visits is a sensitive one that has been extensively considered by the Assembly. The Team is however seriously concerned that the ASP, in its draft resolution, seeks to contradict the judicial decision by stating that no such obligation for the Court exists in spite of the Court's finding.

The Team is further concerned that the proposed resolution by the Assembly places the Registrar in a difficult position in implementing the Presidency's decision. More importantly, the draft resolution would undermine the independence of the judiciary - who have been elected by the Assembly. This would set an unwelcome precedent of interference of the ASP with judicial matters.

**The Team calls** on the Assembly not to adopt a resolution that could be interpreted as undermining the judicial independence of the Court.

### Cooperation

As reflected in the CICC Cooperation Team Paper, it is imperative that there be a subsidiary organ of the ASP responsible for overseeing the implementation of the Bureau's Report on Cooperation and in order to capitalize on the gains achieved to date by the outgoing focal point, Amb. Yves Haesendonck. In this regard the Team recommends that the ASP renew the mandate of the focal point and/or in the alternative, establish an intersessional working group on cooperation, with the additional responsibility of:

- preparing the issue of cooperation for the Review Conference in the context of stocktaking.
  - ensuring that the ASP is equipped with the appropriate mechanism and procedures before receiving its first referrals of non-compliance by the Court, pursuant to Articles 87(5)(b),(7) and 112(2)(f) and report on progress made in this regard to the ninth Session of the ASP (as referenced below).
  - To work with ICC officials in assessing the cost implications of non-cooperation as indicated by the Court in its report
  - Promoting the implementation of the Assembly's 66 recommendations on cooperation and the Plan of Action for Universality and Full Implementation of the Rome Statute.
  - Reviewing annual reports of the Court on the status of cooperation to identify key issues where the states parties needs to strengthen cooperation.
2. **TEAM RECOMMENDATIONS REGARDING ISSUES TO BE REFERRED TO THE BUREAU FOR PREPARATIONS FOR THE 9<sup>TH</sup> SESSION OF THE ASSEMBLY.**

### The role of ASP under Article 112(2)(f)

The Rome Statute provides that the ASP shall, in accordance with Article 87(7) consider

any question relating to non-cooperation.

While we hope that such finding from the Court will not be considered necessary, **the Team urges** the ASP to be procedurally prepared to deal with a potential judicial finding in order to avoid that the formation of an appropriate and constructive procedure is tainted by the existence of an actual pending finding and thereby causes unnecessary political division or an undue delay.

### Elections Committee

The Assembly has established a unique judicial elections procedure based on the merits of the candidate, legal diversity, gender balance and geographical representation. The first years of the Court's existence has demonstrated the utmost importance of these factors to the effectiveness and legitimacy of the Court. In order to ensure continued commitment from states to nominate and elect the most qualified candidates, the Team would like to reiterate its previously expressed support for the establishment of an Advisory Committee on nominations, as provided for in Article 36(4)(c) of the Rome Statute. While the nomination of a candidate is a sovereign decision, the elections can only be as successful as the quality of the pool of candidates.

**Thus, the Team urges** the Assembly to mandate the Bureau to consider the establishment of an Advisory Committee on nominations to effectively advise the nominating and other states regarding nominations, elections, terms of serving as well as on the required qualifications of candidates, and to report back to the 9th session of the Assembly of State Parties on the progress made in this regard.

### Elections of the ICC's 2<sup>nd</sup> Prosecutor

In June 2012, the term of Chief Prosecutor Luis Moreno Ocampo expires. The elections of his successor are thus foreseen to take place at the 10<sup>th</sup> session of the Assembly. Any revision of the nomination and elections procedures would therefore need to be initiated at the 8<sup>th</sup> session in order to be adopted at the ninth session. Resolution ICC-ASP/1/Res.2 states that: *"the procedures for the nomination of candidates for judges apply mutatis mutandis to the nomination of the Prosecutor, and a preference is expressed for nominations for the post of the Prosecutor being made with the support of multiple State Parties."*

Notwithstanding the consensus achieved in the first election, **the Team would like to call** on the ASP to mandate the Bureau to assess, with the lessons learned from the first elections, whether this nomination procedure is the most appropriate one in terms of generating a pool of available candidates in a transparent manner.

### Role of the Bureau in preparation for the stocktaking exercise at the Review Conference

The need for preparatory discussions cannot be over-emphasised insofar as they are essential to ensuring a legitimate, effective and efficient stocktaking process at the Review Conference. With a view to the limited timeline of the Conference, the CICC believes that sufficient preparation by the Assembly and states may alone mean the difference between success or failure of the stocktaking procedure.

For these reasons, the Team calls on the Assembly to mandate the relevant Bureau facilitators to assess -in coordination with the proposed inter-sessional mechanism- ways in which the issues identified for the stocktaking exercise could be considered at the Review Conference as well as possible achievable objectives.

### **ASP and Management Oversight**

The Team also calls on the ASP to consider whether the current management oversight structures of the ASP and the Bureau are sufficient to meet its obligations under article 112. While the current team of Working Group coordinators and facilitators are doing their utmost to bring the issues forward, they are presented with immense tasks with minimal support, working within informal structures with a large membership.

The team calls on the Assembly to mandate the Bureau to consider a restructuring of the means through which the Assembly carries out its oversight functions regarding the administration of the court in order to ensure effective and expert guidance the Court while respecting the independence of the Court as a judicial institution. This restructuring should include procedures and time plans that are conducive both to the Court's and the governments' agenda. This should also include consideration of a few standing committees, as in the governing bodies of other international organizations, to oversee the work of the major organs of the Court and to evaluate the performance of those organs without imposing on their independence.



**BUDGET AND FINANCE TEAM**  
COALITION FOR THE INTERNATIONAL CRIMINAL COURT (CICC)  
**COMMENTS AND RECOMMENDATIONS ON THE 2010 BUDGET<sup>1</sup>**  
**TO THE EIGHTH SESSION OF THE ASSEMBLY OF STATES PARTIES**  
18 - 26 NOVEMBER 2009, THE HAGUE

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The Budget and Finance Team (Team) of the Coalition for the International Criminal Court (CICC) was established at the sixth session of the Preparatory Commission and its members have followed and contributed to the drafting of the Financial Regulations, Financial Rules, the Remuneration of Judges, the Budget for the First Financial Period and the Programme Budgets for 2004 to 2009. In this paper, the Team sets out - for the Assembly's consideration - comments and recommendations on the Proposed Budget for 2010<sup>2</sup> and the Report of the Committee on Budget and Finance (Committee) on its thirteenth session<sup>3</sup> which examines the Proposed Budget and makes a series of recommendations to the Assembly.

*General comments*

The Team welcomes generally the manner in which the 2010 budget process has been conducted to date. The Team acknowledges the Court's Proposed Budget and the detailed review of the document conducted by the Committee, as reflected in its report. In particular, the Team welcomes the fact that, to our knowledge, thus far there have been no proposals to return to the flawed budgetary approach adopted last year and go beyond the Committee's report by making additional arbitrary cuts. Should such proposals be made, we remind the Assembly of its commitment last year that the decision was made exceptionally and urge states parties to ensure that it is not repeated.

The Team however remains concerned that last year's decision has placed the Court under significant pressure not to increase costs, even though it is expected to conduct at least two additional trials next year. We were particularly concerned that the Court has proposed only consecutive trials for 2010, despite the fact that the budget document recognizes that "the likelihood of parallel trials during 2010... is increasing significantly."<sup>4</sup> The approach could result in trial delays and ultimately go against the advice of the Committee that "the Court should aim to complete the trials expeditiously, and this would result in savings for the budget."<sup>5</sup> Although the Court indicates that it will use the Contingency Fund if necessary, the Team is not convinced that the need for parallel trials is not foreseeable and the costs cannot be estimate at this time.

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<sup>2</sup> Proposed Programme Budget for 2010 of the International Criminal Court, ICC-ASP/8/10.

<sup>3</sup> Report of the Committee on Budget and Finance on the work of its thirteenth session, ASP/8/15.

<sup>4</sup> Proposed Programme Budget for 2010 of the International Criminal Court, ICC-ASP/8/10, para.61.

<sup>5</sup> Report of the Committee on Budget and Finance on the work of its eleventh session, ICC-ASP/7/15, 25 September 2008, para. 47.

The Team acknowledges the efforts made by the Committee this year and is grateful for the time it allocated to consult with civil society. The Team however remains concerned that the workload of the Committee - which currently meets twice a year for a total of 13 days - is extremely high. In addition to reviewing the annual budget, the Committee is increasingly being asked to review other matters. For example at its 13<sup>th</sup> session some twenty-eight reports, including the budget proposal itself were presented to the Committee for consideration. The Team is particularly concerned that the excessive workload makes it difficult for the Committee to spend the time necessary to review the Budget and to engage with the Court throughout its session to fully understand all aspects of its proposal. Below, the Team identifies a number of recommendations this year, which it is concerned would undermine key areas of the Court's work if implemented. The Team urges the Assembly to consider the Committee's workload in its decision making this year and urges the Committee and the Court to explore ways to ensure adequate communication through future budgetary reviews.

### *Comments and Recommendations on the Committee's Report*

The Team has reviewed the Committee's Report on the 2010 Proposed Programme Budget and agrees with many of its findings and recommendations, notably the recommendation that legal aid for both defence and victims representation be identified as distinct budget lines in their respective sub-programs. However, the Team has serious concerns that regarding the Committee's recommendations:

- to cut legal aid for both defence and victims representation;
- not to approve a new associate legal officer for the Victims Participation and Representation Section (VPRS) in Central African Republic;
- not to approve the conversion of two key positions in the Victims and Witnesses Unit and Public Information and Documentation Section from General Temporary Assistance to new, permanent posts.

The Team also comments on the Committee's recommendations on the issue of field offices, the Independent Oversight Mechanism; the African Union Liaison Office and the replenishing of the Contingency Fund.

### *Concern relating to cuts in legal aid*

The Committee has recommended that the budget for legal aid for the defence should be reduced by 7% and that the budget for legal representation of victims should be reduced by 15%. The Committee justifies its recommendation on "the current trends in expenditure."<sup>6</sup> The Team is concerned that recommendations made by the Committee to reduce the legal aid budget for both defence and victims' representatives, could undermine the vital work of both types of counsel.

In relation to legal aid for defence, the Team has been informed that the Court expects an actual overspend in its 2009 legal aid budget. This is contrary to the trend relied upon by the Committee. The Team is therefore concerned that a cut to a budget which may already be insufficient could undermine the resources available for the defence.

In relation to legal aid for victims' representation, the Team is informed there has been a significant underspend in the legal aid budget for victims' representatives in 2009. Given the amount of activity by victims' representatives this year on situations and cases, the reason for the underspend is unclear. The Team is concerned that the existing legal aid scheme at the Court does not allow for the allocation of resources to victims legal representatives in a manner that best reflects their needs. The Team recalls that the scheme for legal aid for victims was created at a

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<sup>6</sup> Report of the Committee on Budget and Finance on the work of its thirteenth session, ICC-ASP/8/15, paras. 95 and 96.

time when the Court had little experience with respect to the role of victims in proceedings, the understanding of which is gradually evolving as the Court's activity level increases. The Team therefore calls on the Court to conduct an urgent review to determine the reasons for the low level of implementation of the 2009 budget and to address any problems that are identified. More generally, the Teams calls on the Court to continue to review the structure of victims' legal aid and adjust it as necessary to allow legal representation teams to perform their duties, in accordance with the modalities for victim participation established by the relevant Chambers.

Moreover, while there has to date been an underspend in relation to victims' legal representation so far in 2009, given the expected increase in trial activities next year, this is likely to change in 2010. In particular, if the Court convicts Thomas Lubanga, the reparations proceedings - the most active phase for victims - could commence next year. The Team further notes that, in the proposed 2010 budget, the Court had already implemented a reduction of approximately 20% in legal aid for victims' representatives from the 2009 level. The Team is therefore concerned that sufficient resources will not be available to meet the amount of activity that will be required of victims' representatives.

*Recommendation:* In relation to both cuts the Team urges the Assembly to review the Committee's recommendations together with information supplied by the Court to ensure that, if implemented, the cuts would not undermine the ability of the Court to fund the defence or victims representatives in 2010. If the Assembly determines that the cut would risk underfunding either form of counsel, it should decide either not to implement the Committee's recommendations or to reduce the percentage to a more appropriate level.

***Redeployment of Victim Participation and Reparations Section (VPRS) Associate Field Officer***

The Team is concerned that the Committee has recommended that the Assembly not approve an additional P-2 associate field officer for the VPRS in the Central African Republic (CAR) situation on the basis that the P-2 field officer currently based in Kampala, Uganda could be redeployed to the CAR situation. The recommendation does not appear to take into consideration that the Kampala-based P-2 field officer is responsible for both the Uganda and Darfur situations. In the Team's view, stretching this position to cover three of the four ICC situation countries is not practicable given the geographic and linguistic scope such a position would require. The recommendation may have underestimated the ongoing work with victim participants and intermediaries in the Uganda situation and the increase in judicial activities in both the CAR and Darfur situations.

*Recommendation:* The Assembly should review the Committee's recommendation, and seek further information from the Court as to the implications of redeployment of an existing position rather than the creation of a new post. If the Assembly determines that the re-deployment would undermine the VPRS's work, the Team urges the Assembly to approve the addition of a new position.

***Non-Conversion of Victims and Witness Unit (VWU) and Public Information and Documentation Section (PIDS) Posts***

The Team notes that the Committee has decided not to recommend conversion of two critical positions in the Registry from GTA to established posts: the psychologist/psychological trauma expert in the VWU and the audiovisual producer in the PIDS.

The Team is concerned that the Committee's recommendation as the VWU post may not have taken into account that the Rome Statute requires the VWU to have staff with expertise in trauma, as well as the increasing frequency with which psychological services have been

requested to facilitate witness testimony. The Team considers that given the projected increased number of trials before the Court, the need for permanent specialized expertise will increase.

Concerning the audiovisual producer, the Committee indicated that it “questioned the need to create permanent in-house capacity at this point”. This may have underestimated the importance of audiovisual materials to the Court’s outreach and public information activities, including screening and broadcasting information about proceedings to remote, affected communities.

*Recommendation:* The Assembly is urged to approve the Court’s request to convert the posts of psychologist/psychological trauma expert and audiovisual producer from GTA to permanent posts.

### *Field Offices*

At the seventh ASP session, the Assembly called on the Court to “continue to optimize its field presence and contacts with affected communities.”<sup>7</sup> The Team welcomes the attention given by the Committee to the issue of Field Offices and its review of the Court’s report on enhancement of the Registry’s field operations.<sup>8</sup> The Team notes that the Committee has approved many of the structural changes proposed by the Court for Field Offices and has identified a number of areas in the Court’s report where further strategic thinking is required, including with regard to the reclassification of four field office managers from P-3 to P-4. The Court had requested these reclassifications to enhance its capacity for strategic planning, coordination, and representation of the Registry in the field. The Committee has requested the court to complete its strategic planning and indicated that it will review the issue again at its fourteenth session.

*Recommendation:* Given the importance of the Court’s field offices to supporting and implementing a range of court activities, as well as to bridging the geographical gap between the seat of the court in The Hague and affected communities, the Team urges the Assembly to continue to engage in this important discussion and to recognize the continued positive development of the court’s field presence. Alongside the Committee’s reconsideration of the issue at its fourteenth session, states parties should seek to inform themselves about the Registry’s strategic review of field operations and the justifications for seeking additional investment in the court’s field presence.

### *Independent Oversight Mechanism*

As explained in more detail in a separate paper by the Coalitions Independent Oversight Mechanism Team, the Team is concerned that the Committee’s recommendation in relation to the new mechanism calls for the “Court to reduce the costs of servicing the new mechanism by pooling resources, such as support and infrastructure for securing documents and evidence, with other units, in particular the Office for Internal Audit.”<sup>9</sup> Given the importance of the independence of this mechanism and its need to protect the confidentiality of many aspects of its investigations, the Team urges the Assembly to ensure that any efficiency measures relating to its subsidiary body do not undermine its work.

*Recommendation:* The Team urges the Assembly to affirm that while efficiency is encouraged, measures taken to enhance efficiency must not undermine the independence and confidentiality of the mechanism.

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<sup>7</sup> “Strengthening the International Criminal Court and the Assembly of States Parties,” Resolution ICC-ASP/7/Res. 3, November 21, 2008, para. 13.

<sup>8</sup> Report of the Court on the Enhancement of the Registry’s Field Operations for 2010, ICC-ASP/8/33

<sup>9</sup> Report of the Committee on Budget and Finance on the work of its thirteenth session, ICC-ASP/8/15, para. 121.

### *African Union Liaison Office*

The Team notes that the Committee has recommended that should the African Union ('AU') Liaison Office be approved by the Assembly the resources dedicated should not exceed those of the New York (UN) Liaison Office.<sup>10</sup> The Team however is not convinced that simply applying the New York model to the AU liaison is an effective approach. Four of the current situations presently before the Court relate to crimes committed in continental Africa with a further three situations under preliminary examination. The need to develop effective working relations with the African Union is imperative. To do so the Court must be able to appoint a representative with sufficient seniority to perform their functions at the AU and to appoint with support staff for the office to operate effectively.

*Recommendation:* The Team urges the Assembly to approve the creation of an AU Liaison Office and with sufficient resources that will enable the creation of constructive multilateral and bilateral dialogue with the AU and States in the region.

### *Replenishing the Contingency Fund*

The Team notes the Committee's recommendation to consider replenishment of the Contingency Fund if it decreased below €7 million.<sup>11</sup> The Team does not believe that this reduction of the level of the fund from €10 million is problematic. However, the Team is concerned that the Committee's recommendation does not provide for the automatic replenishment of the fund each year. The consequences of this decision could result in protracted (not to mention costly) discussions on whether to replenish each time it falls below the €7 million threshold. Furthermore, it could result in undesirable decisions where the resources of the Fund are reduced to offset annual increases in the budget. With consensus on the need for the contingency fund, a separate process to replenish it when it is used is unnecessary - although the level should be reviewed periodically, taking into account its use.

*Recommendation:* The Team urges the Assembly to ensure that the Financial Regulations and Rules are amended to provide for the automatic replenishment of the Fund each year.

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<sup>10</sup> Report of the Committee on Budget and Finance on the work of its thirteenth session, ICC-ASP/8/15, para. 130.

<sup>11</sup> Report of the Committee on Budget and Finance on the work of its thirteenth session, ICC-ASP/8/15, paras. 135-138.



**COOPERATION TEAM**  
**COALITION FOR THE INTERNATIONAL CRIMINAL COURT (CICC)**  
**COMMENTS AND RECOMMENDATIONS<sup>1</sup>**  
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Following the submission of its previous paper to the seventh session of the Assembly of States Parties ('Assembly'), the CICC Cooperation Team ('Team') wishes to reiterate the importance of cooperation and support by States Parties to the Rome Statute, the level of which will determine the success of the Court. The Team recalls that the Court lacks its own enforcement mechanism and as such relies extensively on States in order to fulfill its mandate. In this regard and in light of the imminence of the 2010 Review Conference the team once again urges States Parties to reaffirm their commitment to the Court and international justice during the general debate at the eighth session of the Assembly. In particular the Team encourages States Parties to commit to fully cooperating with the Court, including the arrest and surrender of all persons charged. States Parties should also use this Assembly session to make specific commitments to enhance cooperation between States Parties and the Court. We make the following recommendations in this regard:

**A. Improving Institutional Support for Cooperation**

The Team looks forward to a dedicated forum at this Assembly session for discussion of cooperation. The forum provides an ideal opportunity to review the reports of the Focal Point on Cooperation as well as the cooperation report prepared by the Court to assess future goals. We urge States Parties to make full use of this forum to continue to build on the Bureau Report on Cooperation and the work of the Focal Point on Cooperation over the past two years and recommend the following steps.

*(1) Renewal of the mandate of the Focal Point on Cooperation*

The Team welcomes the work of the Focal Point, Ambassador Yves Haesendonck and recognizes the valuable contribution he has made to what remains an essential issue for the court's effective functioning. It is imperative that the Assembly capitalise on the achievements made to date by renewing the mandate of the Focal Point or vesting such responsibility in an alternative mechanism such as a Facilitator, to ensure continued oversight of the implementation of the Bureau Report on Cooperation. By the Focal Point's own admission and that of the Court's, as reflected in their respective reports on cooperation, considerable work needs to be done, not least the need for progress by States Parties in

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enacting implementing legislation that would facilitate cooperation with the Court as well as the conclusion of witness protection and sentencing enforcement agreements. The Team wishes to stress that the absence of such agreements has the effect of turning a decision of the Court into a paper tiger and impeding the execution of rights enshrined in the Rome Statute and reiterates the need for progress in this regard.

The Team previously set out in its paper to the Seventh Session of the Assembly some of the responsibilities that the Assembly could vest in the mandate of the focal point:

- To prepare the issue of cooperation for the Review Conference and necessarily along the lines indicated in paragraph (C) below.
- To ensure that the ASP is equipped with the appropriate mechanism and procedures before receiving its first referrals of non-compliance by the Court, pursuant to Articles 87(5)(b),(7) and 112(2)(f) and report on progress made in this regard to the ninth Session of the Assembly. While the Assembly has as of yet not been seized with such a matter, The Team believes that it is imperative that a transparent mechanism be established in time for such an eventuality so as not to perpetuate a delay and avoid unnecessary politicization of the actual formation of a mechanism and procedure.
- To work with ICC officials in assessing the cost implications of non-cooperation as indicated by the Court in its report

### *(2) Creation of a Working Group on Cooperation*

While the Team advocates for the renewal of the Focal Point mandate, it also recommends that the Assembly establish a standing Working Group on Cooperation headed by the Focal Point or Facilitator. The existence of both a Focal Point/Facilitator and Working Group that could meet intersessionally, would not be a duplication of efforts, but would increase the Assembly's capacity to address all cooperation issues beyond what can be accomplished by any individual acting alone, regardless of the level of his or her commitment, ensuring that this critical issue receives adequate attention and resources. While the ASP would have to consider the details in establishing the mechanism including the crucial question of its composition, its formation would provide the Focal Point/Facilitator with renewed and added vigour and the ability to better assess the implementation of the full range of the 66 recommendations contained in the Bureau's report on cooperation. Although the Focal Point has made progress in this regard as already duly noted, the full realisation for the vast majority of recommendations will require sustained and increased efforts.

As a starting point, the prospective intersessional working group could be tasked to prepare and undertake the research on the issue of cooperation for the Review Conference (see paragraph C below) as well as to assist the Focal Point/Facilitator in carrying out the mandated activities suggested above. The Working Group would also be best placed to respond to pronouncements or declarations of non-cooperation that are political in nature by States or organisations.

### *(3) Regular reporting from the Court to the Assembly*

The Team welcomes the report from the Court on cooperation and the fruitful dialogue that has been generated as a result between the Court and States Parties through the Focal Point. The Team recommends, therefore, that this system of reporting be institutionalised, with the Court reporting to the Assembly on an annual basis updating the Assembly on the

successes and challenges it has had with respect to cooperation. The Team further recommends that the reports be submitted to the prospective Working Group or Focal Point/Facilitator on cooperation for initial consideration.

## **B. Cooperation with International and Regional Organisations**

The Team welcomes the strong working relationship established with the United Nations based on its relationship agreement and subsidiary agreements with UN Agencies and organs. Undoubtedly the UN Liaison Office in New York has greatly contributed the fostering of strong links. In this regard the Team strongly urges the Assembly to approve the establishment of the African Union Liaison Office, which would come at a critical time in the work of the Court, with all four situations presently before the Court on continental Africa. Given the crucial role that the African Union plays with regard to galvanizing the cooperation of its Members with the Court, it is imperative that the Court has a presence at the seat of the organization with a view to fostering a cordial and fruitful working relationship. In light of the importance of that working relationship, consideration should be given to ensuring that the African Union Liaison Office is headed by a person with the appropriate level of responsibility and experience.

## **C. Review Conference and Stocktaking**

With the Review Conference fast approaching the Team firmly believes that the issue of cooperation must be addressed and in this regard the Review Conference presents an invaluable opportunity to take stock of the progress made to date since the inception of the Court. The Team, aligning itself with a separate submission to the Assembly from the Coalition's Team on the Review Conference and the recommendations contained therein, urges the Assembly to fully reiterate its commitment to the issue of cooperation by including it on the Review Conference agenda as a key issue to be discussed in the context of stocktaking. The team specifically urges the Assembly to address the following non-exhaustive list of issues:

- the extent to which States Parties have complied/followed the 66 recommendations of the Bureau
- Challenges preventing implementation of those recommendations
- Steps needed to facilitate success in implementing recommendations
- Participation of the Court in describing the challenges it has faced and likely to face and what it requires in terms of support.
- Lessons learned with respect the ICTY; ICTR and other ad hoc Tribunals, not least with respect securing the apprehension of wanted persons and other forms of request for international legal assistance.



**GENDER JUSTICE TEAM**  
**COALITION FOR THE INTERNATIONAL CRIMINAL COURT (CICC)**  
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**Overview of Key Gender Issues – ASP 2009**

**Implementing Legislation**

- States need to advance implementing legislation that fully reflects the provisions and standards of the Rome Statute including its robust gender provisions.

**Independent Oversight Mechanism**

**Recommendations to States Parties:**

- The Team notes the Report of the Bureau on the establishment of an independent oversight mechanism<sup>2</sup> and urges the Assembly of State Parties ('ASP') to proceed with the establishment of the mechanism at its Eighth Session. The mechanism should be mandated to begin its work as soon as possible so that it can investigate any incidents of misconduct by ICC staff - including criminal offences - such as fraud, corruption, waste, sexual violence and harassment and exploitation.
- The Assembly should provide full oversight and support of the Oversight Mechanism, including: ensuring that it has adequate resources to conduct investigations, including in the field; ensuring that ICC staff found to have committed acts of misconduct or criminal acts are held accountable, including ensuring that immunities are waived for all criminal conduct.

**Recommendations to the Court:**

- All staff should be provided with training so that there can be no misunderstanding regarding conduct that is not acceptable and the potential consequences of such misconduct.
- Develop and implement effective outreach programmes to local communities to explain the ICC's policy against sexual violence/abuse and harassment and provide effective mechanisms to enable individuals to make complaints in a confidential setting.

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<sup>1</sup>While the work of the Gender Justice Team reflects the positions of those Coalition members most active on particular issues and this paper has been prepared in consultation with other Coalition teams, this paper cannot be construed to represent the views of all organizations/members of the CICC. Since the Rome Diplomatic Conference, Coalition members have organized themselves into teams, one to follow each working group or theme of the intergovernmental process. Coalition teams now follow issues addressed by the Assembly of States Parties or its subsidiary mechanisms and by the International Criminal Court. Teams provide a forum within which interested members discuss issues, follow developments, elaborate relevant research and positions in response to developments, and elaborate and implement advocacy strategies in relation to those positions. All Coalition members are welcome to join any teams and all Coalition members are regularly apprised of the work of the teams.

<sup>2</sup> ICC-ASP/8/2.

- Undertake a review of the ICC internal sexual and other harassment policy to ensure it fully covers the relevant issues; provide training for staff and managers about the policy; appoint 'focal points' for staff to report harassment; ensure new staff are given adequate orientation to this and other policies of the ICC.

## Recruitment

### Current Status<sup>3</sup>:

- In 2009, for the first time, the gender balance in professional posts at the Court was equal, a figure largely reached by significant changes in the composition of the judiciary. The OTP greatly increased its number of women appointed to professional posts, narrowing the 16% gap between men and women in 2008 to a 4% gap in 2009. Despite these improvements, the gap between men and women appointed to posts across the Court grew to 6% (53% to 47%) from 4% in 2008. In addition, women continue to be appointed to lower-level professional positions (P1-P2), particularly within the OTP, while men greatly outnumber women in the higher-level posts (P3-P5).
- The number of appointments from the WEOG region also increased by 3% in 2009 to a total of 61%. The distinguishing feature in the current composition of the Court is a 59% increase in the number of French nationals appointed over the past 12 months.

### Recommendations to the ASP:

- The ASP should continue to implement the detailed recommendations contained in the 2007 report of the Bureau on Geographical Representation and Gender Balance.<sup>4</sup>

### Recommendations to the Court:

- The ICC should form an inter-organ committee to develop a three-year plan towards addressing imbalances in gender and geographical representation in the Court through active recruitment and promotion strategies across each organ.

## Legal Aid Scheme and Legal Representation

The ICC is obligated under Rule 90(4) to 'take all reasonable steps to ensure that in the selection of common legal representatives, the distinct interests of victims, particularly as provided in article 68(1)<sup>5</sup>, are represented and that any conflict of interest is avoided.' The *composition* of the List is crucial to ensure it includes Counsel with the necessary experience, expertise and skills to effectively represent the range of victims of crimes, including gender-based crimes, within the jurisdiction of the Court.

### Current Status:

- Of the 302 lawyers on the List of Legal Counsel, 57 (19%) are women, while 245 (81%) are men. Despite a 1% increase in the number of women appointed this year, there

<sup>3</sup> Information provided by the Human Resources Section of the ICC and current as of 31 July 2009.

<sup>4</sup> ICC-ASP/6/22. These recommendations were reaffirmed in the 2008 Report of the Bureau. ICC-ASP/7/21.

<sup>5</sup> Article 68 (1) obligates the Court to take 'appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. ... [t]he Court shall have regard to all relevant factors including age, gender...and the nature of the crimes, in particular but not limited to, **where the crime involves sexual or gender violence or violence against children**' (emphasis added).

remains four times as many men as women on the List. 67% of lawyers on the List of Legal Counsel are from WEOG, while the number of Counsel appointed from Africa, the site of the Court's four active Situations, remains stagnant at 28%.

#### Recommendation to the Court and States Parties:

- The Division of Victims and Counsel (DVC) should seek information about candidates' experience representing victims of gender-based crimes on the application form for the List of Legal Counsel.
- The Registry and States should encourage applications from lawyers with experience representing victims of gender-based crimes by promoting the List of Counsel and the List of Assistants to Counsel amongst women's organizations and networks, women lawyers associations and other judicial associations such as national bar associations, the IBA, ICB and IAP, particularly in countries with situations before the ICC and countries under-represented at the ICC.

#### Recommendation to the Court:

- Develop a Legal Aid system for victims that operates under clearer and more predictable criteria and modalities than the one currently in place. The Victims' Protection and Reparations Section should better inform communities and intermediaries about how the Legal Aid Programme operates, its eligibility criteria, and how to both apply for Legal Aid and choose an appropriate Counsel. The Court should have clear and transparent guidelines readily available for victims and Counsel, and widely promote the legal aid scheme to ensure victim/survivors can access this important mechanism.

### Trust Fund for Victims

#### Current Status

- During 2009, the Trust Fund Secretariat started to implement 34 Trust Fund projects, and a total of €1,655,145 from the Fund was spent on victim-related activities. It is estimated that these projects will benefit, either directly or indirectly, 226,000 victims (72,000 in Uganda and 154,000 in DRC) by the end of 2009.<sup>6</sup> Three projects in Uganda (17%) and eight projects in the DRC (50%) provide direct support for women and girl victims/survivors.
- The Sexual Violence Fund, the global appeal launched by the Board of Directors in 2008 to assist 1.7 million victims of sexual violence under the jurisdiction of the Court over three years, currently has €702,481 in committed funds (including pledges), well short of its target goal of €10 million. At present these funds are being used for approved activities in Uganda and DRC.
- The Trust Fund's priorities for 2010 are the continued support of the projects in DRC and Northern Uganda. The Board has also approved the expansion of the Fund's activities to the CAR in 2010 to focus exclusively on support and assistance to victims of sexual violence.

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<sup>6</sup> The total number of direct beneficiaries is 39,000 (14,000 in northern Uganda and 25,000 in DRC), while it is estimated that 187,000 persons (59,000 in northern Uganda and 128,000 in DRC) will benefit indirectly from the projects. The TFV defines direct beneficiaries as the primary recipients of physical and psychological rehabilitation and material support, and indirect beneficiaries as these direct recipients' families and communities.

#### Recommendation to States:

- The Team calls upon States Parties to increase their financial contributions to the Fund, especially now that assistance projects are underway and the Court is preparing for reparations orders.
- The Team also calls, in particular, for an increase in contributions to the Sexual Violence Fund to meet its target of €10 million. The earmarked contributions in response to the appeal launched in September 2008 for victims of sexual violence should be complemented by other substantive donations by States Parties.

#### Recommendations to the Trust Fund:

- The Team encourages the Trust Fund to further strengthen transparency and visibility by making further communication efforts about its strategic priorities, the procedures for the selection of assistance projects and the relevant evaluation mechanisms in place, and by sharing the results of the projects currently supported.
- In 2010, the Board of the Trust Fund together with the Secretariat should further develop and implement effective fundraising strategies for the Trust Fund as a matter of urgency. The Team is particularly concerned that the amount of €3,149,950 currently in the Trust Fund may be inadequate to provide assistance to victims and, at a later stage, for reparations.
- Through promotion of the Trust Fund and raising global awareness of the challenges faced by victims of war and armed conflict, the Secretariat should aim to 'leverage' other resources in support of the special appeal for victims of sexual violence.

#### Protection Issues

##### Recommendation to the ASP:

- Approve the Court's request to convert the post of psychologist/psychological trauma expert (P3) within the Victim and Witness Unit (VWU) into a permanent post. The Team is concerned that the recommendation of the Committee on Budget and Finance not to convert this post to a permanent position fails to take into account the Rome Statute provision requiring the VWU to have staff with expertise in trauma or the increasing frequency with which psychological services have been requested to facilitate witness testimony. The Team considers that given the projected increased number of trials before the Court, the need for permanent specialized expertise will increase.

##### Recommendation to the Court

- Develop a comprehensive security framework inclusive of witnesses, victims and intermediaries to ensure that protection mechanisms are tailored to their particular status, level of risk and specific circumstances.
- Ensure that protection and support measures are sensitive to the particular circumstances of women in conflict situations and ensure that women and girls who are recognized as 'victims' by the Court benefit from protection procedures.



LEGAL REPRESENTATION TEAM<sup>1</sup>  
COALITION FOR THE INTERNATIONAL CRIMINAL COURT (CICC)

COMMENTS AND RECOMMENDATIONS  
TO THE EIGHTH SESSION OF THE ASSEMBLY OF STATES PARTIES  
18 - 26 NOVEMBER 2009, The Hague, Netherlands

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*The Legal Representation Team ("Team") is part of the CICC NGO team structure and is a group of non-governmental organizations and lawyers' organizations with expertise in issues related to the legal representation of defendants and victims. The Team has been following the development and implementation of the Court's legal aid system since the early stages.*

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This position paper addresses the following areas:

I) Victims' Legal Representation: The International Criminal Court (ICC) and Assembly of States Parties' (ASP) Bureau Reports on "Legal and financial aspects of funding victims' legal representation before the Court"

- 1) Basis for funding victims' legal representation
- 2) External and internal counsel

II) ICC Strategy in Relation to Victims

III) Legal Aid Budget for 2010 (defence and victims)

<p>I) "Legal and financial aspects of funding victims' legal representation before the Court"- Considerations on the Reports submitted by the Court and the ASP Bureau</p>
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At its previous session in November 2008, the Assembly of States Parties invited the Court to present to the Assembly at its eighth session an updated report on the "legal and financial aspects for funding victims' legal representation before the Court" and to "engage in a constructive dialogue with States on this issue". In the course of 2009, members of CICC's Legal Representation Team were actively involved in consultations with the Court as well as with the Hague Working Group. Furthermore, NGOs addressed the Committee of Budget and Finance (CBF) during its thirteenth session in August 2009 to present their views on the issues under discussion.

The CICC Legal Representation Team would like to put forward the following considerations in relation to the analysis and recommendations contained in the ASP Bureau's and the Court's final reports<sup>2</sup> on "Legal and financial aspects of funding victims' legal representation before the Court".

### 1. Basis for funding victims' legal representation

The Team supports the conclusion of the Court and the Hague Working Group that legal representation for indigent victims must be funded in order to give effect to their rights to participate in the proceedings.

The drafters of the Rome Statute clearly intended to establish an International Criminal Court which gave victims the right to participate in proceedings (Article 68) and to claim reparations (Article 75) and recognised the importance of victims' legal representation for the exercise of those rights. In fact, it would be impossible for victims to participate in any meaningful way in

proceedings without legal representatives. Since its establishment, the Court in its judicial and administrative work has affirmed both the right to participate and the right to legal representation. Victims will rarely come in person to The Hague and as expressed by Trial Chamber 1 in the Lubanga Case, participation requires technical knowledge of legal and procedural matters best provided by legal representatives, which can also represent large groups of victims in the interests of justice. Given the overwhelming indigence of victims, denying legal assistance provided for in Regulation 83 of the Regulations of the Court would in practice devoid victims of their right to participate.

*->The Team therefore strongly recommends to adopt the language proposed by the Hague Working Group for inclusion in the ASP resolution "Strengthening the International Criminal Court and the Assembly of States Parties" ("omnibus resolution")*

## 2. External and internal counsel

An issue that has come to the forefront of discussions surrounding the legal representation of victims in proceedings before the ICC are the respective roles external and internal counsel (ie counsel from the Office of Public Counsel for Victims - OPCV).

Following a recommendation of the CBF at the 12<sup>th</sup> session to consider further possible uses of the OPCV in relation to victims' representation, the Court analyzed the advantages and disadvantages of external and internal representation in its report to the ASP.

The Court concluded that there were strong policy reasons for retaining the involvement of both external and internal lawyers in the representation of victims (para. 40 of the Court's report<sup>3</sup>). The Team concurs with the Court's conclusion but with the understanding that victims should be primarily represented by external counsel and that the OPCV should remain in a role akin to that of the OPCD (ie to assist counsel and to represent victims only as a temporary measure or one of last resort) as reflected in Regulation 81 of the Regulations of the Court, which establishes OPCV.

In this respect, the Team would like to recall some of the reasons why it is strongly advisable that external counsel continue to represent the interest of victims and that victims be offered an opportunity to choose them:

- External counsel help bridge the gap between international and national proceedings in relation to the crimes covered in the Rome Statute. Participation of external counsel helps train lawyers from different legal systems in ICC law and proceedings, thus contributing to the reinforcement of the relevant country's capacity to organize domestic trials for crimes under the jurisdiction of the Court, under the complementarity principle.
- External counsel bring a wide array of experience and practice to the Court and contribute to making the Court an "international" Court: they contribute to creating an outward looking ICC
- External counsel often have easier access to victims due to their understanding of the local context. They usually have networks already in place in the country where their client resides, including in situations where the victims happen to live outside their countries of origin, enabling them to contact their client at minimal costs and in a discrete way necessary to ensure their protection, safety and security. Independent lawyers are best placed to conduct numerous activities necessary to victim representation, such as locating victims and potential intermediaries.
- Last but important, as indicated by Trial Chamber I, in its decision of 6 March 2008<sup>4</sup>, there is a potential risk of conflicts of interest and duplication of functions with respect to the dual role of OPCV; given its limited resources, the core role of the Office should

be providing *support and assistance* to legal representatives of victims and victims themselves.

### Cost of legal representation

The CBF in its latest report<sup>5</sup> observed that the information provided by the Court did not allow for a full comparison between the OPCV and external counsel costs. The CBF noted that “in the absence of a common baseline for calculation, the figures provided were highly unreliable and could lead an unwary reader to conclude that choosing the OPCV was automatically the most economical option without proper justification” (para.128 CBF Report). The Team agrees with this observation as well as with the CBF’s recommendation that the Court should report back with more detailed information including common parameters allowing for a proper cost comparison. The Team calls on the Court to include and explain the increasing resources that would be needed by the OPCV should internal representation be the only possible option (increased travel budget, further personnel in The Hague, local staff, etc). At the same time, the Team would like to stress that even if the calculation of internal representation is ultimately less costly than external representation, the budgetary advantages will have to be carefully balanced with other concerns and advantages.

## II) Draft ICC Strategy in Relation to Victims

The Team welcomes the revised “Draft ICC Strategy in Relation to Victims” and its commitment to “ensur[ing] that victims obtain high quality legal representation before the Court” as a key objective. The revised draft strategy represents progress in the Court’s approach to victims’ legal representation and victim participation more broadly. The Team believes that in finalizing the strategy, further efforts are required to identify specific targets for its implementation.

*->The Team encourages the Assembly to recognize in this session’s omnibus resolution the Court’s progress in revising the “ICC Strategy in Relations to Victims” and to call for the inclusion of specific targets in an update of the strategy to be presented to the ninth Assembly session.*

## III) Legal Aid Budget for 2010

### Concern relating to cuts in legal aid

The Committee has recommended that the budget for legal aid for the defence should be reduced by 7% and that the budget for legal representation of victims should be reduced by 15%. The Committee justifies its recommendation on “the current trends in expenditure.”<sup>6</sup> The Team is concerned that recommendations made by the Committee to reduce the legal aid budget for both defence and victims’ representatives, could undermine the vital work of both types of counsel.

In relation to legal aid for defence, the Team has been informed that the Court expects an actual overspend in its 2009 legal aid budget. This is contrary to the trend relied upon by the Committee. The Team is therefore concerned that a cut to a budget which is already insufficient could undermine the resources available for the defence.

In relation to legal aid for victims’ representation, the Team is informed there has been a significant underspend in the legal aid budget for victims’ representatives in 2009. Given the amount of activity by victims’ representatives this year on situations and cases, the reason for the underspend is unclear, though may be related to security risks linked to the novelty of the first trial and consequently reduced travel expenditure. The Team is concerned that the existing legal aid scheme at the Court does not allow for the allocation of resources to victims’ legal representatives in a manner that best reflects their needs and the obligations of counsel under the ICC code of conduct to maintain regular contact with their clients. The Team recalls that the scheme for legal aid for victims was created at a time when the Court had little guidance on the role of victims in proceedings and that legal aid was disbursed cautiously in accordance with the developing procedural rights of victims. As the Courts’ jurisprudence has now established

more clearly the role of victims and the importance of more linkages between counsel in the Hague and their clients in the field, the Team calls on the Court to conduct an urgent review to determine the reasons for the low level of implementation of the 2009 budget and to address any problems that are identified. More generally, the Teams calls on the Court to continue to review the structure of victims' legal aid and adjust it accordingly, in order to allow legal representation teams to duly exercise their duties in accordance with the modalities for victim participation established by the relevant chambers.

Given the expected increase in trial activities next year, as well as increasingly clear jurisprudence on the role and expectations of legal representatives, the cautious expenditure and limited trial activity of 2009 is due to change. An encouraging number of victims have been recognized in the second case,<sup>7</sup> Furthermore, potential reparations proceedings in the Lubanga case in 2010 will generate significant activity. Reparations proceedings are the most active phase for victims, who may be required to provide evidence of their harm in the form of medical or psychosocial reports, and most likely satisfy higher standards of proof than for participation.

The Team further notes that, in the proposed 2010 budget, the Court had already implemented a reduction of approximately 20% in legal aid for victims' representatives from the 2009 level. The Team is therefore concerned that resources will be insufficient to meet the obligations of counsel representing victims.

*->In relation to both cuts the Team urges the Assembly to review the Committee's recommendation together with information supplied by the Court to ensure that, if implemented, the cuts would not undermine the ability of the Court to fund the defence or victims' representatives in 2010. If the Assembly determines that the cut would risk underfunding either form of counsel, it should decide either not to implement the Committee's recommendations or to reduce the percentage to a more appropriate level.*

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<sup>1</sup> While the work of the CICC Legal Representation Team reflects the positions of those Coalition members most active on particular issues and this paper has been prepared in consultation with other Coalition teams, this paper cannot be construed to represent the views of all organizations/members of the CICC. Since the Rome Diplomatic Conference, Coalition members have organized themselves into teams, one to follow each working group or theme of the intergovernmental process. Coalition teams now follow issues addressed by the Assembly of States Parties or its subsidiary mechanisms and by the International Criminal Court. Teams provide a forum within which interested members discuss issues, follow developments, elaborate relevant research and positions in response to developments, and elaborate and implement advocacy strategies in relation to those positions. All Coalition members are welcome to join any teams and all Coalition members are regularly apprised of the work of the teams.

<sup>2</sup> <http://www.icc-cpi.int/NR/rdonlyres/C65E4F3A-BAF7-4FFA-B6CE-0718AD495873/0/ICCASP838ENG.pdf>

<sup>3</sup> <http://www.icc-cpi.int/NR/rdonlyres/B57B2475-5B57-49DD-8037-791E20A7D127/0/ICCASP825ENG.pdf>

<sup>4</sup> Decision Trial Chamber I, of 6 March 2008, ICC-01/04-01/06-1211

<sup>5</sup> <http://www.icc-cpi.int/NR/rdonlyres/93F7C5C4-6DF0-41B3-BCA5-C34B417F115A/0/ICCASP815ENGAdvance.pdf>

<sup>6</sup> Report of the Committee on Budget and Finance on the work of its thirteenth session, ICC-ASP/8/15, paras. 95 and 96.

<sup>7</sup> Figures for Katanga/Ngudjolo 345 as opposed to 101 in Lubanga case



INDEPENDENT OVERSIGHT MECHANISM TEAM  
COALITION FOR THE INTERNATIONAL CRIMINAL COURT (CICC)

COMMENTS AND RECOMMENDATIONS<sup>1</sup>  
TO THE EIGHTH SESSION OF THE ASSEMBLY OF STATES PARTIES  
18 - 26 NOVEMBER 2009, THE HAGUE

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The Coalition for the International Criminal Court's Independent Oversight Mechanism Team (Team) was formed in 2008 to follow the development of an oversight mechanism. With the increase of the ICC's overall operations, including field activities, the necessity of such a mechanism has become increasingly important to address potential allegations of serious misconduct that cannot be addressed by current procedures. The Team wishes to underscore the important role that oversight mechanisms play in enhancing the transparency and accountability of institutions such as the ICC, as well as the public confidence that such mechanisms engender.

In this regard the Team welcomes the extensive work of the Bureau Facilitator, Mr. Akbar Khan, former Legal Adviser to the British Ambassador to The Netherlands, whose report as adopted by the Bureau recommends the establishment of an independent oversight mechanism with *proprio motu* investigative powers. The Team also notes with appreciation the previous work in the context of the New York Working Group facilitated by Ambassador Andreas D. Mavroyiannis of Cyprus.

The Team notes the Report of the Bureau on the establishment of an independent oversight mechanism<sup>2</sup> and urges the Assembly of State Parties ('ASP') to proceed with the establishment of the mechanism at its Eighth Session. The mechanism should be mandated to begin its work as soon as possible so that it can investigate any incidents of misconduct by ICC staff and elected officials, including fraud, corruption, waste, sexual violence, harassment and exploitation, and liaise as appropriate with national jurisdictions where investigations reveal the possible commission of criminal offences. While the Team generally supports the recommendations contained in the Report, it does so with the following important caveats and additional recommendations:

**(i) Independence of the prospective Oversight Mechanism**

The oversight mechanism should be truly independent, that is separated both physically and bureaucratically from the Court. This would entail separate resources and staff, **secure office space accessible only by the mechanism's staff** and the creation of a separate major program in the Court's annual budget. In this regard the Team takes note of the Bureau's

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<sup>1</sup>While the work of the Independent Oversight Team reflects the positions of those Coalition members most active on particular issues, this paper cannot be construed to represent the views of all organizational members of the CICC. Since the Rome Diplomatic Conference, Coalition members have organized themselves into teams, one to follow each working group or theme of the intergovernmental process. Coalition teams now follow issues addressed by the Assembly of States Parties or its subsidiary mechanisms and by the International Criminal Court. Teams provide a forum within which interested members discuss issues, follow developments, elaborate relevant research and positions in response to developments, and elaborate and implement advocacy strategies in relation to those positions. All Coalition members are welcome to join any teams and all Coalition members are regularly apprised of the work of the teams.

<sup>2</sup> ICC-ASP/8/2

recommendations to grant the prospective mechanism financial independence by establishing a major program budget to cover the start-up and ongoing costs associated, a recommendation that the Team itself advocated for. Conversely, the Team is concerned by the recommendation that the office for the oversight mechanism be “co-located” with the Office of Internal Audit (OIA). The Team is concerned that the term “co-locate” may be subject to misinterpretation and requires clarification so as to ensure that there is no risk of compromising the mechanism’s operational and perceived independence or an exchange of culture and practices between the respective offices. The Team’s view is that, given the independence and confidentiality of the mechanism is vital to its effective operation, the mechanism must, at a minimum, have its own secure office space, filing and IT systems. To ensure that there is no breach of the confidentiality of the mechanism, it would be inappropriate for the mechanism to share support staff with other offices. The Team is, therefore, strongly opposed to the recommendation of the Committee on Budget and Finance to pool resources, such as support staff and infrastructure for securing documents and evidence.

The Team is also concerned about the mechanism’s independence regarding the reporting lines recommended by the Bureau’s report. Article 112(4) of the Rome Statute envisions the mechanism as a subsidiary body, thus it should report directly to the ASP or a committee of it. Reporting through the Bureau without any provision for full, direct reporting to the ASP may lead to questions about and the appearance of a lack of transparency and independence. The full ASP should be entitled to receive complete, non-consolidated reports of the mechanism.

#### **(ii) Tailor-made Mechanism**

The oversight mechanism must be established with the Court functions and processes in mind. While the Team does not in principle oppose the recommendation of the Bureau to second staff from the UN Office of Independent Oversight Services (OIOS) to set up the mechanism in its first year, the secondment of expertise should not result in a simple ‘cut and paste’ of the practices of its UN counterpart. Nor should the Addendum to the Bureau’s Report, which states that “*[s]trong consideration...be given to seconding the head of the office from the OIOS during the first year of the office, with a view to transferring knowledge and experience to the staff member to be recruited by the Court*”, be construed in the same vein.<sup>3</sup> The International Criminal Court is an independent and unique institution and the development of the mechanism should be tailored specifically to the Court. The staff member recruited by the Court to work with the person seconded by OIOS should acquire technical knowledge relevant to the establishing the ICC’s mechanism and investigation of it as a single-purpose organization, and not to carryover of the UN’s institutional culture or the OIOS’s approach to investigating the UN’s far-reaching and multi-purpose organizational structure. The draft memorandum of understanding to be negotiated with the UN and the corresponding terms of reference for the seconded staff should clearly indicate this.

#### **(iii) Funding and Resources**

The Team notes that the CBF have endorsed the recommendations of the Bureau in its report on its thirteenth Session, acknowledging that the ultimate decision to establish the mechanism rests with the ASP. It is imperative that the mechanism, which is envisaged by

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<sup>3</sup> ICC-ASP/8/2/Add.2, Report of the Bureau on the establishment of an independent oversight mechanism, Addendum, 29 July 2009, para. 12 (italics connote an amendment to the original report).

the Article 112(4) of the Rome Statute as a key oversight mechanism, be established as soon as possible and not delayed for budgetary purposes. Furthermore, it should be allocated the necessary resources to perform its functions, including investigations in the field. The Team opposes any system where the Court is vested with the authority to alter the costs of the mechanism. As an independent body, the mechanism should prepare its own budget which may then be consolidated into the budget in accordance with the Financial Rules and Regulations.

#### **(iv) Achieving the full mandate of the mechanism**

The Team notes that the investigative role of the mechanism represents only part of the mandate envisaged by the drafters of Article 112(4). This is also recognized in the Bureau's Report, which states that additional tasks of inspection and evaluation should be added "in due course."<sup>4</sup> To ensure that the development of its full mandate remains on the agenda of the Assembly, the Team urges the Assembly to reaffirm its commitment to establish the other elements of the mechanism specified in the Rome Statute, and, as a first step, to mandate a study to consider the additional tasks that the mechanism could perform.

#### **(v) Rules and Regulations**

As specified in Recommendation 3 of the Bureau's report, the mechanism will be expected to develop the rules governing its work, to be approved by the ASP. These rules should support the existing rules and regulations providing for investigation, disciplinary proceedings and measures for misconduct.

The Team reminds the ASP that staff members found to have committed criminal offences or other serious misconduct must be held accountable (including, if appropriate, termination of employment). The Staff Rules and the Staff Regulations should therefore ensure that all staff be provided with training so that there can be no misunderstanding regarding conduct that is not acceptable and the potential consequences of such misconduct. "Serious misconduct" in this regard should be defined in applicable rules and regulations to expressly include, but not be limited to sexual violence, rape, abuse and harassment.

The rules of the mechanism, to the extent possible, should be explicit about its relationship to national authorities and its obligation to refer cases to jurisdictions where the acts in question would be considered criminal, particularly in relation to sexual violence given the variations in national jurisdictions regarding the definition of rape.

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<sup>4</sup> ICC-ASP/8/2, para. 43 (a).



COMMUNICATIONS TEAM  
COALITION FOR THE INTERNATIONAL CRIMINAL COURT (CICC)

COMMENTS AND RECOMMENDATIONS<sup>1</sup>  
TO THE EIGHTH SESSION OF THE ASSEMBLY OF STATES PARTIES

18 NOVEMBER - 26 NOVEMBER 2009, The Hague

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1. This paper prepared by the NGO Team on Communications (“the Team”) aims at highlighting key aspects of the activities conducted by the Court in 2009 with respect to communications, and the role that States Parties and the Assembly of States Parties (ASP) have to play at the eighth session of the ASP for these important Court functions.

2. ICC external communications functions include a) external relations, b) outreach and c) public information. These functions are defined in the Court’s Integrated Strategy for External Relations, Public Information and Outreach.<sup>2</sup>

3. Public information is a process of delivering accurate and timely information about the principles, objectives and activities of the Court to the public at large and target audiences, through different channels of communication, including media and communications materials such as the ICC website.

4. Outreach aims at promoting understanding and support for the Court’s mandate, managing expectations and enabling affected communities to follow and understand the international criminal justice process. Outreach aims not only at sensitising or simply providing information but engaging those communities in a two-way dialogue.

5. The work of the ICC on communications and outreach is the quintessential non-judicial function of the Court. It is vital to conducting investigations successfully in the field by creating conditions conducive for cooperation with the Court and preventing or stemming the spread of misinformation; to facilitating participation and legal representation of victims in the proceedings; to explaining due process rights; to facilitating redress for affected communities; and to creating an enabling and supportive environment.

6. In 2005, States Parties recognised the importance of outreach as a function of the Court, encouraged the Court to intensify its outreach activities and requested the Court to present a detailed strategic plan in relation to its outreach activities.

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<sup>1</sup> This document was prepared by members of the CICC Communications Team and does not represent the views of all organisations/members of the Coalition for the ICC. The work of the Team reflects the positions of those Coalition members most active on particular issues; however their work cannot be construed to represent the views of all organisations/members of the CICC. For further information, feel free to contact the Communications Team leader, Alison Smith, Legal Counsel for No Peace Without Justice, on [asmith@npwj.org](mailto:asmith@npwj.org).

<sup>2</sup> ICC Integrated Strategy for External Relations, Public Information and Outreach: <http://www.icc-cpi.int/Menus/ICC/Structure+of+the+Court/Outreach/Integrated+strategy/Integrated+Strategy+for+External+Relations.+Public+Information+and+Outreach.htm>

Accordingly, the Court adopted a general Strategic Plan for Outreach<sup>3</sup> in September 2006 as well as situation-specific strategies and action plans for the Democratic Republic of Congo (DRC), the Central African Republic (CAR), Uganda and Darfur, Sudan.

7. The Team acknowledges that throughout 2009, the Court has achieved substantial progress in the development and implementation of its communications activities. In 2009, the ICC reports<sup>4</sup> to have conducted 314 interactive outreach sessions in the four situation countries targeting 69,363 people. It also estimates 34 million people were regularly exposed to ICC information through local radio and television. Additionally, as described further below, the Team also welcomes the production and e-distribution of weekly written updates on Court activities (in English and French) and the development of a number of audiovisual programmes.

#### I. A strategic Plan for Public information

8. The Team emphasises that ICC outreach work should be coupled with robust public information activities to increase global knowledge of the Court's principles, objectives and proceedings. To facilitate these public information activities, the Team believes that the ICC needs a comprehensive strategic plan for public information to complement its outreach work and the external relations efforts of its organs. Emphasis in this strategy should in particular be placed on an improved framework for the Court's use of traditional and new media; protocols and operation manuals for all organs and Court officials, including Judges with respect to the use of media; and to amplify the Court's efforts through networks of partners.

9. The Team is aware that the Court is currently developing such a strategic document on ICC public information and therefore is looking forward to the completion of a draft in order to involve States and NGOs in consultations to finalise it.

10. In parallel, the Team welcomes the development of a number of ICC audiovisual programmes, including weekly summaries of proceedings, "The ICC at the Glance"<sup>5</sup> and "Ask the Court",<sup>6</sup> in which Court officials respond to questions posed by participants in the Court's outreach activities. Audiovisual summaries of proceedings have been used in mobile screenings for affected communities, while a range of programs have been broadcast through television and radio stations. Audiovisual tools are essential to the Court's media, public information and outreach activities. For the production of these programmes to be sustainable, the approval of a permanent position of P-2 Audiovisual Producer requested by the ICC is essential.

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<sup>3</sup> Strategic Plan for Outreach of the ICC: [http://www.icc-cpi.int/NR/rdonlyres/FB4C75CF-FD15-4B06-B1E3-E22618FB404C/185051/ICCASP512\\_English1.pdf](http://www.icc-cpi.int/NR/rdonlyres/FB4C75CF-FD15-4B06-B1E3-E22618FB404C/185051/ICCASP512_English1.pdf)

<sup>4</sup> Report on the Activities of the Court, ICC-ASP/8/40, 21 October 2009, <http://www.icc-cpi.int/NR/rdonlyres/30DEDD3C-0053-4230-AE19-C14932E0BF7A/0/ICCASP840ENG.pdf>

<sup>5</sup> "The ICC at the Glance": [http://video.google.com/videosearch?hl=en&rlz=1T4DBNL\\_en-GBNL266NL266&q=the+ICC+at+the+glance&um=1&ie=UTF-8&ei=sBzvSqziClrT-Qa0npzrCw&sa=X&oi=video\\_result\\_group&ct=title&resnum=4&ved=0CBqQgwQwAw#](http://video.google.com/videosearch?hl=en&rlz=1T4DBNL_en-GBNL266NL266&q=the+ICC+at+the+glance&um=1&ie=UTF-8&ei=sBzvSqziClrT-Qa0npzrCw&sa=X&oi=video_result_group&ct=title&resnum=4&ved=0CBqQgwQwAw#)

<sup>6</sup> "Ask the Court" programme: <http://www.icc-cpi.int/Menus/Go?id=196c4e16-c487-4ff3-9ee9-622b352ac764&lan=en-GB>

## II. Outreach activities in Uganda and the Review Conference

11. The Team is deeply concerned by the decision reflected in the Court's proposed programme budget to decrease outreach activities in Uganda, where information demands remain high.

12. Although trials for crimes committed in Uganda are not possible until those charged have been arrested and surrendered or are otherwise brought to the Court, there is a continued need for engagement with the affected populations about the work of the Court and dialogue about its efforts to bring those it has charged with crimes against humanity and war crimes to trial, and in continuing the work to help prevent the further commission of crimes.

13. While scaling up outreach activities as judicial activities increase is a sound approach, the absence of judicial activities does not justify the suspension or scaling down of outreach activities, as this absence of trials also creates new outreach challenges that need to be addressed. One can note for example that both the SCSL and the ICTY intend to keep outreach going after their trials have concluded, in light of an assessment that populations will continue to require information and engagement from these tribunals at the same levels in the period immediately after the conclusion of their work.

14. Additionally, and while acknowledging that the Review Conference is an exercise for States Parties and not the Court, the Team also considers that the Review Conference to be held in Uganda will offer opportunities for outreach and public information. Therefore, the Team encourages the Court to develop - and share with its external partners - a communications strategy specific to the 2010 Review Conference.

## III. External communications: A shared responsibility

15. Although ICC communications remains the primary responsibility of the Registry, **all Court organs have a role to play in raising the Court's profile and communicating with its different audiences.** The Presidency, the Office of the Prosecutor, the Office of Public Counsel for Victims and Defence and the Trust Fund for Victims should coordinate their communications activities to maximise their impact. In past years, the External Relations Working Group played a key role in promoting inter-organ coordination. This and other practices such as manuals of procedure and operation before and after external contacts are undertaken should be put into place.

16. Additionally, while communications remains a core mandate of the Court, the Team wishes to highlight that **States Parties also have a responsibility to intervene -individually and collectively including via the ASP- in the public debate around the ICC,** to show public support to the institution, to transmit and disseminate their support to the independence of the Court in its judicial decisions and to dispel misconceptions.

## IV. Early start of outreach activities

17. It is the view of the Team that the ICC has been too slow in starting outreach activities in the four current situations it is investigating. In the CAR, for example, meaningful outreach activities only took off this year, which is two years after the

opening of an investigation by the OTP. Evidence of demands for information support the Team's view that the ICC should be ready to launch its outreach programmes as soon as -- or preferably before -- an investigation is opened. This action requires a coordinated strategy with the OTP and adequate management decisions for the deployment of such resources.

18. Interest in potential ICC action in situations under analysis can be quite high and objective information about the ICC's processes and practices is not necessarily widely available. In this process, the Court should consult local civil society and media at the outset to design tailored communications strategies for situations under analysis, coordinating the efforts of the OTP and the Registry in this regard. To tailor its intervention, a structured communications strategy for situations under analysis should be designed, taking into consideration the mandates of both the OTP and the Registry.

19. In the view of the above-mentioned considerations, the Team makes the following recommendations and looks forward to discussing them further during the eighth ASP:

#### Recommendations to the ASP at its 8<sup>th</sup> Session:

- Reiterate the importance of ICC outreach work through the *Omnibus resolution*;
- Encourage the Court to develop clear communications plans and implement them at an earlier start, through the *Omnibus Resolution*;
- Through the *Omnibus resolution*, stress the importance of public information activities of the Court and strategic planning in this area and to request the Court to report on these activities at the ninth session of the ASP;
- Reiterate the importance of public support by States to the Court through the *Omnibus resolution*
- Grant the position of P-2 Audiovisual Producer as requested by the Court in its proposed budget, in light of the importance of ICC audiovisual materials to support its outreach and public information activities;
- Reiterate the importance of public support by States to the Court through the *Omnibus resolution*;
- Mandate the ASP Secretariat, in charge of the organisation of the Review Conference, to develop a targeted communication strategy for the Review Conference in coordination with the Court and in light of their respective mandates;
- Ensure sufficient financial support to maintain at least current levels of outreach activity in Uganda in 2010 and in the wider communication campaign around the Review Conference.

#### Recommendations to States Parties:

- Deepen their engagement in the public debate around the ICC by reaffirming their support to the principles and decisions of the Court;
- Attend the side-event on outreach and public information organized by the Court at this ASP session.

#### Recommendations to the International Criminal Court:

- Further strengthen internal coordination of communications activities to maximise its impact, including through the External Relations Working Group;
- To finalise a robust court-wide public information strategy and remain open to consultations on the matter;
- Consider the urgency of starting outreach activities at the earliest possible stage and define a clearer communications strategy in situations under analysis or those under investigation, notwithstanding the lack of trials.