

5 November 2015

To: States Parties to the Rome Statute

Your Excellency,

I am writing on behalf of the Coalition for the International Criminal Court to ask your government to consider, on an urgent basis, a voluntary donation to the Trust Fund for family visit for indigent detainees established by the Assembly of States Parties (Assembly) to the International Criminal Court (ICC). The existing resources in the Trust Fund are nearly exhausted, with only €9,876 remaining in the fund (which would allow for only one more visit for three persons) and contributions are needed now in order to ensure that the ICC can safeguard the human rights of its detainees and meet the highest possible standards of criminal administration.

The right of all detained persons to family visits is well recognized.<sup>1</sup> It bears on the right to family life in addition to established detention standards.

In the ICC context, individuals detained at the seat of the court in The Hague are likely to find themselves held far from their country of origin or where their families are located. Lengthy pre-trial proceedings — sometimes coupled with detention by national authorities before surrender to the ICC — mean that pre-trial detention, during which time detainees enjoy a presumption of innocence, may stretch for a period of several years. Without funding for family visits, indigent ICC detainees would go for several years without in-person contact with their family members in violation of their rights.

Indeed, the ICC Presidency, in a March 2009 judicial decision, held that the ICC has a positive obligation to fund family visits of indigent persons in order to give effect to their right to family visits. Although that right is not unlimited, it must be effective. According to the terms of the Presidency's decision, it remains up to the court's Registrar to determine what is necessary to give effect to the right.<sup>2</sup>

As you may be aware, prior to the Presidency's decision, some states parties had objected to the court's existing policy of funding family visits and the issue was placed under the Assembly's consideration. Some states parties were particularly concerned not to recognize a legal obligation to fund such visits that national authorities might be obliged to follow. Once the Presidency issued its March 2009 decision clarifying the ICC's legal obligations, the issue should have been resolved.

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<sup>1</sup> See, for example, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles), adopted December 9, 1988, G.A. Res. 43/173, annex, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988), principle 19 ("A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations."). Regulation of the Court 100 states that "[a] detained person shall be entitled to receive visits," and Regulation of the Registry 179 provide that the "Registrar shall give specific attention to visits by family of the detained persons with a view to maintaining such links."

<sup>2</sup> Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui, ICC, Case No. ICC-01/04-01/07, "Decision on Mr. Mathieu Ngudjolo's Complaint Under Regulation 221(1) of the Regulations of the Registry Against the Registrar's Decision of 18 November 2008," March 10, 2009, <http://www.icc-cpi.int/iccdocs/doc/ICC-ROR217-02-08-8-ENG.pdf>.

However, in November 2009, the Assembly passed a resolution reaffirming many states parties' position "that according to existing law and standards, the right to family visits does not comprise a co-relative legal right to have such visits paid for by the detaining authority or any authority." The Assembly authorized the temporary funding of family visits in the court's ordinary budget, but went on to establish the Trust Fund in 2010 in order to ensure that family visits are now funded entirely through voluntary contributions.<sup>3</sup>

The establishment of the Trust Fund was the result of a regrettable dispute between states parties and the court, which, in the view of the Coalition, risked undermining perceptions of the ICC's judicial independence. As of now, however, the Trust Fund is the avenue chosen by states parties through which the ICC can meet its legal obligations with regard to family visits.

Unfortunately, over the last five years, states parties have not followed through on the creation of the Trust Fund and it appears that it may not prove to be an effective mechanism to ensure the consistent funding necessary to secure the right of accused to family visits.

To date, only two states parties have made voluntary contributions, totaling €180,000. While this has been sufficient to meet the court's obligations from 2011 (in total, 23 visits), suggesting that the overall financial burden on states parties is not high, very limited funds now remain.<sup>4</sup> There is a substantial and real risk that, in the near future, the ICC will not be able to meet its positive obligations with regard to family visits for indigent detainees. This would place the Registry, with its responsibilities to oversee such visits, and the ICC as a whole in an untenable position. States parties should therefore take the immediate step of making contributions to the Trust Fund and, in addition, should consider whether to establish an effective back-up funding mechanism in case the fund is exhausted in the future.

The non-funding of family visits could risk the legitimacy of the institution and undermine respect for the ICC as a standard bearer of international criminal justice. Consistent with their strong support to the court, states parties should take all possible steps to avoid this outcome. We therefore urge your government to consider making a voluntary donation to the Trust Fund for family visit for indigent detainees as soon as possible.

Sincerely,



Convenor  
Coalition for the International Criminal Court

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<sup>3</sup> "Family visits for indigent detainees," ICC-ASP/8/Res.4 ASP, November 26, 2009 [https://www.icc-cpi.int/iccdocs/asp\\_docs/Resolutions/ICC-ASP-8-Res.4-ENG.pdf](https://www.icc-cpi.int/iccdocs/asp_docs/Resolutions/ICC-ASP-8-Res.4-ENG.pdf).

<sup>4</sup> Information obtained from the ICC Registry, on file with the Coalition for the ICC, as of 4 November 2015.