

The Hague, 20 July 2012

Re: The role and importance of communication for a fair, effective, independent and efficient ICC

Excellency,

In the week that we celebrate International Justice Day, 17 July, I write to you on behalf of the Coalition for the International Criminal Court ('Coalition') to call for your government's active and vocal support for the communications activities of the International Criminal Court (ICC) in 2013 and beyond.

In the ICC's historic 10th anniversary year, which will see the completion of its first trial, the Coalition perceives a growing threat to one of the crucial aspects of the Court's operations, outreach and public information. This letter sets out to illustrate the importance of these Court activities in ensuring justice is visible and in maintaining an open dialogue with those most affected by its judicial processes, and further underlines the benefits brought by this engagement to the Court's overall cost-effectiveness, efficiency and fair and independent functioning, as well as to the broader objectives of the Rome Statute.

Since its establishment, the ICC has achieved substantial progress in the development and implementation of its communications activities—which include external relations, outreach and public information¹—from the establishment of its Outreach Unit to the implementation of programs tailored to specific constituencies (affected communities, journalists, legal professionals, academia) to the production of audiovisual materials in various languages. These activities are crucial to the Court upholding its legal obligation to ensure the publicity of its judicial proceedings.² Indeed, many lessons have been learned and more effective strategies are now ready to be deployed. Civil society will continue to play an active role in the development and implementation of the Court's communication strategies.

Knowledge of the ICC and the crimes over which it has jurisdiction has increased to the extent that wherever widespread violence and crimes against humanity are occurring, the ICC is being invoked by victims, governments, United Nations institutions and civil society. Yet, ignorance of and misinformation about the Court's role and processes persist even in areas where it is most active, hindering its ability to fulfill the unique and unprecedented mandate to end impunity and deliver justice to victims of the gravest crimes. In this respect, direct Court engagement with stakeholders has reinforced its perceived independence, allowing it to address some of these challenges effectively.

¹ICC outreach activities are carried out by the Registry and are defined in the ICC Integrated Strategy for External Relations, Public Information and Outreach,

http://www.iccpi.int/Menus/ICC/Structure+of+the+Court/Outreach/Integrated+strategy/Integrated+Strategy+for+External+Relations_+Public+Information+and+Outreach.htm

² Rule 96, ICC Rules of Procedure and Evidence, http://www.icc-cpi.int/NR/rdonlyres/F1E0AC1C-A3F3-4A3C-B9A7-B3E8B115E886/140164/Rules_of_procedure_and_Evidence_English.pdf

With this in mind, the Coalition has become increasingly concerned of reports of some ICC states parties intensifying efforts to make cuts to certain aspects of the Court’s work—in this case public information and outreach—at this year’s 11th session of the Assembly of States Parties (ASP) in the context of a “zero-growth” policy towards the budget of the Court. Of greater concern is that these attempts are being undertaken by seeking to minimize the importance of public information and outreach, in direct contradiction to the policy direction that has been provided by the ASP since its sixth session, and as underlined during the Review Conference in Kampala in 2010.

Civil society organizations are acutely aware of the severe financial constraints that most states parties are at present experiencing. However, when developing your government’s policy towards the Court’s budget this year, I respectfully urge you counter this tendency to see the communications activities of this maturing institution as being somehow supplementary. Outlined below are a number of points demonstrating the extent to which outreach facilitates many aspects of the Court’s operations and the role it plays in assisting the Court to fulfill its overall mandate. Any reduction in resources devoted to ICC communications hinder its independence and will further limit the court’s ability to explain its mandate and address misrepresentations and rumors. As demonstrated below, this has the potential to affect the overall functioning of the Court, and could conversely result in additional costs.

Ensuring that affected communities have access to accurate information about judicial proceedings at the ICC is at the very heart of the court’s mandate to reverse impunity, strengthen confidence in the rule of law and prevent future crimes.

COMMUNICATIONS CREATES CONDITIONS CONDUCIVE FOR ICC OPERATIONS

In the simplest terms, outreach activities are designed to promote understanding of and support for the Court’s mandate in ICC situation countries, thereby managing expectations and enabling affected communities to follow and understand ICC processes, by engaging them in a two-way dialogue.

However, outreach is also vital to creating conditions conducive to supporting the Court’s operations more generally, such as: ensuring the necessary cooperation for conducting investigations in the field and carrying out trials; preventing or stemming the spread of misinformation; reinforcing complementarity initiatives; facilitating participation and legal representation of victims in ICC proceedings; explaining due process rights; facilitating redress for affected communities; and creating an enabling and supportive environment for field engagement and presence. In short, the smooth implementation of the ICC’s mandate depends on a range of interrelated functions, of which outreach is crucial element.

Outreach can also provide objective information on complex topics such as the criteria for selecting cases, sequenced investigations, or delays in proceedings, putting them in context and allowing people to evaluate them for themselves. Outreach also diffuses misunderstandings and hostility towards the Court, reducing the need for costly protection measures for its staff members.

Outreach that clarifies the difference between victims, victims participating in ICC proceedings, and witnesses can help minimize the risks to those perceived as ICC witnesses and consequently the need for costly protection measures.

COMMUNICATIONS FACILITATES EFFICIENT IMPLEMENTATION OF VICTIMS’ RIGHTS

Early outreach also helps ensure the cost efficient implementation of the ICC legal mandate with regards to victims’ participation. It is indeed essential to explain the court’s procedure in this matter, in order to

ensure that applications by victims to participate are complete and fall within scope of the ongoing proceedings. Such outreach lays the groundwork for the Court's Victims Participation and Reparations Section. The downsizing of the ICC field presence in Uganda in the past two years has sent out a negative message to victims and affected communities, and has also left an information vacuum with regards to the ICC processes, such as victims' participation, which in turn is creating additional work and costs for the court. This trend has created new outreach challenges for the Court and undermined much of the informational gains it had made to date in explaining its mandate and work.

Also with regards to victims' participation, the Court has recently instituted a collective approach for victims to apply to participate in the Gbagbo case, which aims at being a cost saving/efficiency measure, and which it is now considering for other situations. Outreach is essential for the dissemination of information related to this measure so that it is well understood and implemented. In addition, as of the last publicly available information, male victims are the majority of victims applying to the Court. Outreach activities designed to reach potential female applicants are essential in ensuring an equitable gender representation among participating victims.

This year, ICC judges will act on the Rome Statute's groundbreaking reparations provisions for the first time, following the sentencing of Thomas Lubanga to 14 years imprisonment for the conscription, enlistment and use of children as soldiers in eastern Democratic Republic of Congo (DRC) in 2002-2003. There is a direct legal obligation for the Court to give adequate publicity of the reparation proceedings to victims, interested persons and interested states.³ This stems from the great need for the delivery of specific information on upcoming reparations decisions in order to manage wide-ranging expectations in affected communities in the DRC.

COMMUNICATIONS REINFORCES THE IMPACT OF THE ICC

For the ICC to be truly a successful institution, it is essential that it be able to have an impact in the communities most affected by the crimes it is trying. Trials in The Hague, which are not known of or well understood, are unlikely to strengthen respect for the rule of law and human rights at the national level, encourage further domestic prosecutions and deter future crimes. To effectively promote the rule of law is it fundamental that the ICC not only acts as independent institution, but is perceived to be so. This is something that must be achieved through its capacity to address its stakeholders directly and without intermediaries, be they NGOs or states.

The guilty verdict pronounced against Thomas Lubanga sends a stark warning across the world to those engaged in the recruitment use of child soldiers. However, for the deterrent effect of the verdict to have maximum impact, also in contributing to ending the terrible cycles of violence in the DRC, it must be carried by the ICC outreach team to victims and affected communities in remote areas beset by poor communications infrastructure. Early reactions from Ituri, eastern DRC, also suggest that the sentence against Thomas Lubanga may be misunderstood or perceived as too short, which could also have consequences on the impact of this case in the DRC unless it is discussed with affected communities. ICC suspect Bosco Ntaganda, also wanted for recruitment and use of child soldiers, still eludes justice and allegations continue to be reported that forces under his control are committing grave human rights abuses in eastern DRC. The costs—both human and financial—will be even greater should the Court's message go unheard.

³ Rule 96, ICC Rules of Procedure and Evidence, http://www.icc-cpi.int/NR/rdonlyres/F1E0AC1C-A3F3-4A3C-B9A7-B3E8B115E886/140164/Rules_of_procedure_and_Evidence_English.pdf

EARLY, COURT-LED OUTREACH DELIVERS FAIR AND CREDIBLE JUSTICE

Court-led outreach is essential for the meaningful delivery of fair and credible justice, as there are certain messages and activities that can only be delivered by the ICC itself. Launching ICC outreach programs as soon as—or preferably before—an investigation is opened maximizes the Court’s impact and contributes to cost-saving in the longer-term, as there will be fewer and less-well entrenched misconceptions to address. Experience has shown that early Court interaction with populations and direction of local partners leads to greater efficiencies in investigations and in any subsequent judicial processes. These are lessons learned from the ad hoc and hybrid tribunals.

In the absence of the Court’s outreach activities, local media and civil society would find it impossible to effectively engage affected communities on the Court’s work, especially in countries where accused persons are powerful political actors with support of the government and whose access to resources is immense.

Meanwhile, over-reliance on the media as a means of communication can often lead to a distortion of the Court’s messaging, which can result in the expenditure of scarce outreach time and resources in clarifying and counteracting well-established misinformation and misperceptions. Challenges have emerged in some of the Court’s most recent investigations—Cote D’Ivoire, Libya and Kenya—in this respect. In Côte d’Ivoire, political figures in the current government are commenting prominently in the media about the ICC, distorting its messages and past events, to their own political advantage. In Kenya, objective information at the grassroots is needed to counter a growing politicization of the ICC process, which will only intensify in the run-up to and during the Kenyan presidential elections in 2013.

The Coalition understands that one proposal made is to remove ICC communications activities from the main ICC budget and fund it through voluntary funding. This approach runs counter to lessons learned from previous international tribunals and courts. Subjecting outreach to voluntary funding suggests that it is a dispensable item and sends the wrong signal to communities most affected by the crimes the ICC is seized with. Previous experiences also suggest that finding voluntary resources will be a difficult and time-intensive task and will likely lead to under-resourcing of activities critical to the smooth functioning of the Court. To resort to voluntary funding for any aspects of the Court’s work would be a dangerous precedent to set.

RECOMMENDATIONS

- Maintain principled support for outreach in discussions and decisions throughout the Working Groups of the Bureau of the Assembly of States Parties
- Ensure that the allocation of the Court’s budget this year supports the need for Court communications activities.
- Mainstream the need for effective communication of the mandate of the ICC and wider Rome Statute system during debates related to the protection of civilians, women and children at the United Nations.

It is not enough that justice is done; it must also be seen to be done to be effective and efficient. The Court will only be viable if the victims and communities affected by the crimes it is judging understand its justice. Not only would a reduction in communications activities reduce the Court’s ability to provide up-to-date and impartial information to those who need it most, it would also prove detrimental to all other aspects of the Court’s operations and undermine efforts to increase this emerging Court’s efficiency and effectiveness.

The ICC and the victims it serves need the vocal support of states such as yours in ensuring that all actors understand the central role played by communications in ensuring that the ICC is fair, effective, independent and efficient.

We are grateful for your consideration of this matter.

With Highest Regards,

A handwritten signature in black ink that reads "William R. Pace". The signature is written in a cursive style with a prominent flourish over the letter 'P'.

William R. Pace
Convenor
Coalition for the International Criminal Court