



COMMUNICATIONS TEAM

COALITION FOR THE INTERNATIONAL CRIMINAL COURT (CICC)

COMMENTS AND RECOMMENDATIONS¹ TO THE 11th SESSION OF THE ASSEMBLY OF STATES PARTIES

14-22 NOVEMBER 2012, THE HAGUE

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This paper, prepared by the Coalition's Team on Communications (Team), highlights key aspects of the communication activities conducted by the International Criminal Court (Court) in 2012 and further underlines the vital role of states parties and the Assembly of States Parties (ASP) in its 11th session in supporting these crucial functions of the Court.

External communications functions of the Court include: a) external relations; b) outreach; and c) public information. These are defined in the Court's Integrated Strategy for External Relations, Public Information and Outreach.² This team paper covers recommendations on the latter two, **outreach and public information.**

The views of the Team are framed within the consensus existing within the ASP about the importance of outreach and public information activities. **Lessons learned—including from the ad hoc tribunals—clearly demonstrate that early, Court-led outreach is essential for the meaningful delivery of fair and credible justice.** After first providing some additional background on the Court's outreach and public information activities, the Team outlines below comments and recommendations for delegates at the ASP and looks forward to discussing them further in the run up to and during the 11th session of the ASP.

Summary of Recommendations to the 11th ASP

1. The ASP should ensure the continued inclusion of references in the **Omnibus Resolution** to the importance of, as well as the need to improve, Court outreach and public information activities, by early outreach from the outset of the Court's involvement, including during the preliminary examination stage;
2. The ASP should ensure that the 2013 budget allocation supports the need for outreach and

¹ The present paper has been produced by those Coalition members most active on the issue of Communication and reviewed by the Coalition's wider membership who is given the opportunity to comment and provide input. The present paper however, should not be construed to represent the views of all members of the CICC. Since the Rome Diplomatic Conference, Coalition members have organized themselves into thematic teams to follow issues addressed by the ASP or its subsidiary mechanisms and by the ICC. Teams provide a forum within which interested members discuss issues and follow ASP discussions and with a view to developing advocacy. All Coalition members are welcome to join any team and apprised of the work of the teams. For further information, feel free to contact the Communications Team leader, Alison Smith, Legal Counsel for No Peace Without Justice, on asmith@npwj.org or the Team's coordinator, Niall Matthews, CICC Communications Officer, on matthews@coalitionfortheicc.org

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

public information activities through the **regular budget of Court**;

3. States parties should express principled support for outreach and public information during the General Debate and in other forums, including side events, by:

i. Vocally **defending outreach and public information as integral to the Court's objective of providing justice to victims**;

ii. Underlining how **early and direct ICC communications ensures a fair, effective, independent and efficient Court**;

iii. Encouraging all Court organs and officials, to increasingly work with the Registry to achieve greater level of coordination of **"Court-wide" messaging**, including around **reparations proceedings, situations under preliminary examination, and gender-related issues**;

iv. Noting the positive impact of celebrations of the **10th anniversary** of the entry into force of the Rome Statute in 2012 undertaken by all actors and by the Court within the framework of its public information strategy;

v. Informing the Assembly of any plans to raise awareness of the Rome Statute's provisions on sexual violence on the **International Day for the Elimination of Violence Against Women** on 25 November.

4. The ASP should encourage the Court to develop comprehensive plans for **maintaining a presence and legacy** in situations where downsizing or exit strategies might be considered.

1. AN OVERVIEW OF OUTREACH AND PUBLIC INFORMATION

The Court's Registry, through its **Public Information and Documentation Section (PIDS)**, is the organ responsible for developing and implementing **outreach and public information activities designed to deliver accurate, timely and neutral information about and on behalf of the Court as a whole, as well as certain messages about and on behalf of individual Court organs and units**. The importance of neutral outreach and public information disseminated via the Registry cannot be underestimated as they are **fundamental to realizing the objectives of the Rome Statute, and play a leading role in enhancing the Court's overall cost-effectiveness, efficiency and fair and independent functioning**.

PIDS public information activities include distributing information about the principles, objectives and activities of the Court to the public at large and to target audiences directly (through the ICC website or personal engagement) or indirectly (through media organizations), and developing numerous tools (the ICC website, audiovisual summaries of proceedings). **These activities are targeted to an audience broader than directly affected communities**, and aim at increasing general understanding and awareness about the Court. **There is a direct link between increased levels of knowledge of the Court globally and its mandate to greater support for it and the Rome Statute system**, be it in the form of cooperation,³ prosecutions of international crimes at the national level, or in increasing ratifications of the Statute.

³ At the ninth ASP session and at the Review Conference in 2010, states made the link between broader awareness of the Court and effective cooperation, requesting that the Assembly "in its future consideration of the issue of cooperation [...] examine how to enhance public information on, and promote an understanding of, the mandate and

PIDS' Outreach Unit carries out activities designed to promote understanding of and support for the Court's mandate in **ICC situation countries and other directly affected communities**, thereby managing expectations and enabling **victims and affected communities** to follow and understand ICC processes, by engaging them in a **two-way dialogue**. These activities provide information, promote understanding and, hence, support for the Court's work, and provide access to judicial proceedings. The purpose of such a two-way dialogue is to allow victims and affected communities to provide feedback to the Court, thereby integrating their views and perceptions into its activities and processes. **Outreach is also vital to creating conditions conducive to supporting the Court's operations more generally in situation countries. Direct Court engagement with stakeholders has reinforced its perceived independence**, allowing it to meet effectively challenges arising from ignorance of and misinformation about its role and processes.

PIDS' public information and outreach materials and activities are often complementary. For example, in many situations, media is used as the primary means to reach victims and affected communities. This work is crucial to the Court upholding its legal obligation to ensure the publicity of its judicial proceedings, particularly given the great distance between the courtroom and affected communities.

During the past seven years, on the basis of the recognition granted by the ASP, PIDS has achieved **substantial progress in the development and implementation of its communications activities**. Indeed, **many lessons have been learned and more effective strategies are now ready to be deployed**. The Team notes activities undertaken by the Court, within the framework of the 2011-2013 Public Information Strategy, as well as by states and other stakeholders, around the **celebrations for the 10th anniversary of the entry into force of the Rome Statute**.

The Team stresses that activities described as "reaching out," or even as "outreach," by other Court organs or offices are separate to the very specific work of the PIDS Outreach Unit with victims and affected communities. This work is not subject to duplication in other Court organs or units. Other Court organs and offices may reach out to various constituencies, but these are not to be confused with the distinct activities of the Outreach Unit. For example, the Office of the Prosecutor (OTP) might "reach out" to victims and affected communities to disseminate specific information or messages on its mandate and work. The OTP also conducts public information activities, often in conjunction with travel opportunities of key OTP officials. Again, however, OTP public information is not presented from a neutral standpoint on behalf of the entire Court.

Meanwhile, the Presidency's "external relations" functions are defined as "a dialogue between the Court and states parties, non-states parties, international organizations, NGOs and other key partners that have direct roles in the activities and the enabling environment of the ICC. This process aims towards building and maintaining support and cooperation." These are different and separate to the communications activities described above.

This said, the Team below calls **all Court organs and officials to increasingly work through PIDS in order to achieve a greater level of coordination of "Court-wide" messaging when appropriate, noting the ASP's Committee on Budget and Finance's (CBF) suggestion that the**

operations of the Court." Declaration on cooperation, Declaration RC/Decl.2, paragraph 11, 8 June 2010, http://icc-cpi.int/iccdocs/asp_docs/Resolutions/RC-Decl.2-ENG.pdf

Court increase synergies in its public information activities in particular,⁴ while maintaining support for the specific communications needs of the different Court organs.

2. STATES SHOULD VOCALLY DEFEND PUBLIC INFORMATION AND OUTREACH AS INTEGRAL TO THE COURT'S OBJECTIVE OF PROVIDING JUSTICE TO VICTIMS

Providing justice for victims is the ultimate mandate of the Court. No such justice can be delivered if those most affected by Court processes are left out of touch. The Omnibus Resolution "*Strengthening the International Criminal Court and the Assembly of States Parties*", to be adopted by the ASP at the 11th session, must therefore continue to include references to the importance of, as well as the need to improve, Court outreach and public information activities including by early outreach from the outset of the Court's involvement, including during the preliminary examination stage.⁵ **The Team calls on individual states parties to vocally defend the integral nature of outreach and public information to the Court's objective of providing justice to victims** in the Omnibus Resolution discussions, in their General Debate statements and in other forums.

The ASP and states parties have repeatedly attached great importance to the Court's outreach and public information activities, with positive references having been made in each Omnibus Resolution since the fourth ASP session in 2005, in the 2010 Kampala Declaration and stocktaking exercises⁶, and by endorsing the Court's strategic documents on public information and outreach, and in ASP general debate statements. **Outreach and public information also have strong mandates throughout ICC legal documents**, from the statutory requirement to ensure the publicity of proceedings as a fair trial right, to the Regulations of the Court and the Rules of Procedure and Evidence. The Team welcomes what it observes to be improvements in state party appreciation for the importance of outreach activities over the past year, following difficult discussions in the run-up to the last ASP, and the recognition of public information and outreach in the CBF report this year.

The Team also underlines the **increasing judicial recognition of the need for public information and outreach activities**. In the context of the landmark decision on reparations principles and processes in the Lubanga case, **ICC judges stated that "outreach activities are essential to ensure that reparations have broad and real significance,"**⁷ and that "victims are to enjoy equal access to any information relating to their right to reparations and to assistance from the Court, as part of their entitlement to fair and equal treatment throughout the proceedings."⁸ Judges have also called for information campaigns towards the population and affected communities of Kenya, Cote d'Ivoire and Libya.

⁴ Report of the Committee on Budget and Finance on the work of its eighteenth session, ICC-ASP/11/5, <http://bit.ly/QtwSj7>

⁵ Strengthening the International Criminal Court and the Assembly of States Parties, Resolution ICC-ASP/9/Res.3, http://www.icc-cpi.int/iccdocs/asp_docs/ASP9/OR/ICC-ASP-9-20-Vol.I-Part.III-ENG.pdf

⁶ The impact of the Rome Statute system on victims and affected communities, Resolution RC/Res.2, June 2010, http://www.icc-cpi.int/iccdocs/asp_docs/Resolutions/RC-Res.2-ENG.pdf

⁷ Decision establishing the principles and procedures to be applied to reparations, ICC Trial Chamber I, Case The Prosecutor v. Thomas Lubanga Dyilo, ICC-01/04-01/06-2904, paragraph 205 pp. 72 <http://www.icc-cpi.int/iccdocs/doc/doc1447971.pdf>

⁸ Decision establishing the principles and procedures to be applied to reparations, ICC Trial Chamber I, Case The Prosecutor v. Thomas Lubanga Dyilo, ICC-01/04-01/06-2904, paragraph 188 pp. 68, <http://www.icc-cpi.int/iccdocs/doc/doc1447971.pdf>

3. STATES SHOULD UNDERLINE HOW EARLY AND DIRECT COURT COMMUNICATION WITH VICTIMS AND AFFECTED COMMUNITIES ENSURES A FAIR, EFFECTIVE, INDEPENDENT AND EFFICIENT COURT.

In General Debate statements and relevant other Assembly discussions, as well as in language in the omnibus resolution, **states parties should underline how early and direct Court communication with victims and affected communities helps ensure a fair, effective, independent and efficient Court.** Lessons learned from the ad-hoc and hybrid tribunals have shown that early and direct Court interaction and communication with populations and direction of local partners leads to greater efficiencies and cost-effectiveness in investigations and in any subsequent judicial processes.

Direct Court communication reinforces the Court's perceived independence, allowing it to explain its mandate and address misrepresentations and misconceptions as soon as—or preferably before—an investigation is opened. Although the Court makes use of its networks and partners to strengthen the dissemination of information about its mandate, **certain messages and activities can only be delivered by the Court itself**, so as to ensure that its messaging is accurate and balanced and in line with its own strategic opportunities and priorities.

In the absence of Court 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 Côte d'Ivoire, Libya and Kenya in this respect.

Early and direct outreach **creates conditions conducive to supporting the Court's operations** by 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 Court proceedings; explaining due process rights; facilitating redress for affected communities; and creating an enabling and supportive environment for field engagement and presence.

As outlined in the Kampala Declaration, outreach ensures that applications by victims to participate are complete and fall within the scope of the ongoing proceedings, laying the groundwork for the Victims Participation and Reparations Section and avoiding delays further down the line. In the **Lubanga reparations decision**, judges put an obligation on the Court "to provide information in a form that is comprehensible for the victims and those acting on their behalf."⁹

To give an example where **a lack of outreach has created inefficiencies**, the Court's recently instituted a **collective approach for victims to apply to participate in the Gbagbo case**—which aims at being an efficiency measure and which it is now considering for other situations—but

⁹ Decision establishing the principles and procedures to be applied to reparations, ICC Trial Chamber I, Case The Prosecutor v. Thomas Lubanga Dyilo, ICC-01/04-01/06-2904, paragraph 214 pp. 74, <http://www.icc-cpi.int/iccdocs/doc/doc1447971.pdf>

remains widely misunderstood. **This is due in part to delays in opening the planned Court field office in Côte d'Ivoire.** Meanwhile, the **downsizing of the Court's 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 Court processes, which in turn is creating **additional outreach challenges and costs for the court.**

Outreach **provides objective information on complex topics** such as the criteria for selecting cases, sequenced investigations, or delays in proceedings. Delays in the confirmation of charges hearing in the Gbagbo case have allowed his supporters to portray them as evidence of his innocence. Outreach can also clarify the difference between victims, victims participating in ICC proceedings, and witnesses, **minimizing the risks to those perceived as Court witnesses and consequently the need for costly protection measures.** In diffusing misunderstandings and hostility towards the Court, outreach also reduces the need for costly protection measures for its staff members.

Early and direct communications also maximize the Court's impact in **strengthening respect for the rule of law and human rights at the national level**, encouraging further domestic prosecutions and deterring future crimes. Indeed, the Lubanga reparation decision stated that "the wide publication of the judgment may serve to raise awareness about the use of child soldiers, and this may help deter crimes of this kind."¹⁰ However, for this to happen, the message must be carried by the ICC outreach team to remote areas beset by poor communications infrastructure.

4. STATES SHOULD ENSURE THAT THE 2013 BUDGET ALLOCATION SUPPORTS THE NEED FOR PUBLIC INFORMATION AND OUTREACH

The Team calls upon states to **maintain their commitment to Court outreach and public information activities for 2013 by granting the Court the financial means requested for 2013 through the regular budget of the Court.**

Zero-growth in the Court's budget has resulted in an over-stretch in the limited resources available for PIDS, whose budget is the same for seven situations as it is was for three. Due to budgetary constraints, **the Court has suspended several public information projects** such as the campaigns "Calling African Female Lawyers" and "Calling Arab Lawyers." PIDS has had to shuffle resources – both human and material – available for outreach around to meet the increasing demand. One staff member is now covering outreach in Libya, as well as Sudan. This year, two staff members will be redeployed from the DRC to cover Côte d'Ivoire, while one staff member has been redeployed from the DRC to The Hague. The section has been **forced to focus primarily on cases at trial and reparations phases**, and in 2013 will give priority to outreach in Central African Republic, Kenya, Côte d'Ivoire and Libya. There will be **fewer activities in Sudan, Uganda and DRC.**¹¹ No outreach has been carried out on the ground in Libya.

This narrowing of remit means that PIDS cannot fully implement the Assembly's request as defined in the Omnibus Resolution to continue to improve and adapt outreach activities,

¹⁰ Decision establishing the principles and procedures to be applied to reparations, ICC Trial Chamber I, Case The Prosecutor v. Thomas Lubanga Dyilo, ICC-01/04-01/06-2904, paragraph 238 pp. 80, <http://www.icc-cpi.int/iccdocs/doc/doc1447971.pdf>

¹¹ Proposed Programme Budget for 2013 of the International Criminal Court http://www.icc-cpi.int/iccdocs/asp_docs/ASP11/ICC-ASP-11-10-ENG.pdf

particularly through early outreach from the outset of the Court’s involvement, including during the preliminary examination stage. The Team notes the CBF’s recommendation for “the transfer of a P-2 level from OTP to PIDS in order to strengthen the section and help achieve the objectives outlined in the Public Information Strategy 2011-2013,”¹² as an **acknowledgement that PIDS needs more staff to implement its mandate as requested by the Assembly**, underscoring the need for appropriate resources to be allocated to PIDS next year.

The Team underlines that if the Assembly imposes cuts to the Registry budget needs this year, the already-stretched section will hit breaking point. PIDS should be ring fenced from cuts if such a situation transpires. The present budget allows PIDS only to have the minimum number of staff necessary to maintain a network of partners—including civil society—who actually implement the activities in many situations. **The return on the investment in PIDS is much greater than might be appreciated.** However, these networks are not pre-existing or self-sustaining and need to be led by Court staff.

The Team notes suggestions in the budgeting process this year to move outreach to a bi-annual budget system or a “zero-based budgeting” approach. **PIDS budgeting should be the same as all other Court activities**, allowing it to respond to cases and situations as they arise. The Team underlines once again that **a voluntary funding approach runs counter to lessons learned from previous international tribunals and courts** and a dangerous precedent to set for other aspects of the Court’s work. Experience also shows that finding voluntary resources is difficult and time-intensive and would lead to under-resourcing of activities critical to the smooth functioning of the Court.

5. STATES SHOULD ENCOURAGE COURT ORGANS AND OFFICIALS TO ACHIEVE GREATER “COURT-WIDE” MESSAGING

The Team underlines **the need for states parties to encourage all Court organs and officials to increasingly work through PIDS in order to achieve a greater level of coordination of “Court-wide” messaging**, using its own **Integrated Strategy for External Relations, Public Information and Outreach**, which “highlights the importance of an integrated approach to external relations, public information and outreach,”¹³ as a basis for action.

The Team notes the example of the **Special Court for Sierra Leone** in this respect, whose success was based on backing and investment from all Court organs and officials for the unit responsible for outreach and public information.

The Team notes that the CBF “expressed concern that a “One Court” approach was not being applied to Public Information activities”¹⁴ and **welcomes the suggestion that coordination between PIDS and OTP is increased in relation to public information activities.** As the neutral organ of the Court, the Registry is best placed to carry messages on behalf of all Court organs. This requires a coordinated strategy between the OTP and the Registry and adequate management decisions for the deployment of resources. However, the Team also stresses that the OTP has its own communication needs and the public information component of the OTP

¹² Report of the Committee on Budget and Finance on the work of its eighteenth session, ICC-ASP/11/5, <http://bit.ly/QtwSj7>

¹³ ICC Integrated Strategy for External Relations, Public Information and Outreach, available at: http://www.icc-cpi.int/NR/rdonlyres/425E80BA-1EBC-4423-85C6-D4F2B93C7506/185049/ICCPIDSWBOR0307070402_IS_En.pdf

¹⁴ Report of the Committee on Budget and Finance on the work of its eighteenth session, ICC-ASP/11/5, <http://bit.ly/QtwSj7>

needs to be sufficiently resourced to carry out its own very specific messaging. The Team also stresses the need for increased levels of coordination by PIDS with victims' representatives, the Trust Fund for Victims and the OTP with respect to **messaging around reparations proceedings**.

In the framework of the PIDS public information strategy, **the OTP should coordinate with PIDS to a greater extent to develop specific public information programs to reach populations in situations under preliminary examination**. The sooner the Court can begin engaging victims and populations in countries that are under preliminary examination, the easier it will be to ensure accurate information is disseminated and to manage expectations about what the ICC can and cannot do. In addition, **a lack of communication around the progress, or other otherwise, in preliminary examinations threatens to undermine the Court's credibility**. Colombia is a case in point, where there has been no update in six years of examination. The Team also notes the lack of communication around the OTP decision in April 2012 not to proceed with its preliminary examination in Palestine, following three years of analysis.

6. STATES SHOULD REQUEST THE COURT TO DEVELOP COMPREHENSIVE COURT-WIDE COMMUNICATIONS STRATEGIES TO DISSEMINATE GENDER-SENSITIVE INFORMATION

The Team calls on states to ensure that the Court develops **gender-sensitive outreach and public information strategies and activities** that will allow women and girls to receive information appropriate to their needs in a timely fashion. This should include: implementation at the earliest stage possible, working with local NGOs, victims' and women's organizations to ensure reaching women and girls who may not have easy access to outreach programs, and developing comprehensive plans for maintaining a presence and legacy on the fight against sexual and gender-based violence in situations where downsizing or exit strategies might be considered.

Outreach is also an essential means of informing women and girl victims of their right to participate in proceedings. As of the last publicly available information, male victims are currently the majority of victims applying to the Court, making outreach activities designed to reach potential female applicants vital in ensuring both women and men have the opportunity to be heard by the Court. The Team notes that this year, the first Court decision on victims' reparations, in the Lubanga case, adopted **a gender inclusive approach for the design of the principles and procedures and the applications of reparations**. **Such an approach needs to be fully integrated into the Court's outreach and public information strategies and activities**.

The Team welcomes, and encourages states to adopt, the proposed language in the draft **ASP 11 resolution on victims and reparations which calls on states to play an active role in sensitizing communities on the rights of victims in accordance with the Rome Statute in general and victims of sexual violence in particular**. However, the Team stresses that this must be a **complementary approach**, and is not one that can replace the direct engagement of the Court with victims and affected communities. In this respect, the Team also calls on states to inform the Assembly on any plans to raise awareness of the Statute's unique provisions on sexual violence on the **International Day for the Elimination of Violence Against Women on 25 November**.