



Fédération internationale des ligues des droits de l'Homme  
International federation of human rights  
Federacion internacional de los derechos humanos  
الفدرالية الدولية لحقوق الانسان

## Position Paper n°10 International Criminal Court

### Recommendations to the Fourth session of the Assembly of States Parties to the International Criminal Court 28 November – 3 December 2005

<b>INTRODUCTION.....</b>	<b>2</b>
<b>PART I - RECOMMENDATIONS TO THE FOURTH SESSION OF THE ASSEMBLY OF STATES PARTIES.....</b>	<b>2</b>
I - A justified increase in the budget.....	2
1 - The ICC is currently conducting investigations in three countries.....	3
2 - Situations under analysis by the ICC.....	3
II - Ensuring the implementation of Victims' Rights before the ICC.....	4
1 - Victim and Witness Protection.....	4
2 - Victim Participation and Legal Representation .....	5
3 - The Trust Fund for Victims.....	7
III - Strengthening outreach and communication activities.....	9
IV - Strengthening the presence of Court in the field.....	11
V – The ICC’s reliance on local intermediaries.....	12
VI - Draft Code of Professional Conduct for Counsel.....	13
<b>PART II - RECENT FIDH ACTIVITIES ON THE ICC .....</b>	<b>15</b>
I – National campaigns for ratification and implementation of the ICC Statute.....	15
II - Technical Assistance Program on the Implementation of the Rome Statute into domestic law....	16
III – Training sessions for representatives of national NGOs on victim’s rights and the ICC and dialogue with the ICC in The Hague.....	16

## INTRODUCTION

The fourth session of the Assembly of States Parties (ASP) to the Statute of the International Criminal Court (ICC) will be held in The Hague from 28 November to 3 December 2005.

Seven years after its creation, and only two and a half years after its establishment, the International Criminal Court is leading three investigations, and the number of States parties to the Rome Statute is increasing, with the recent 100<sup>th</sup> ratification by Mexico.

However, the ICC is still far from being universal as almost no progress has been made in the ratification process in some regions of the world, for instance in countries of the League of Arab States and the Asian continent. In that respect, FIDH believes that the continued opposition of the USA has had a detrimental effect on the pace of the ratification campaign.

Furthermore, FIDH continues to urge states to implement the Rome Statute in their domestic law in order to allow their national jurisdictions to exercise the principle of complementarity with the Court.

## PART I - RECOMMENDATIONS TO THE FOURTH SESSION OF THE ASSEMBLY OF STATES PARTIES

*FIDH is concerned that the time allocated to the ASP is seriously inadequate. Therefore, the organization encourages States to focus attention on the issues on the agenda, such as the budget of the Court, and to bear in mind the need for a long-term vision and broad support in order to strengthen the International Criminal Court.*

FIDH is an active member of all the thematic teams of the Coalition for the International Criminal Court (CICC), and thus fully supports the reports of the Teams, available at <http://www.iccnw.org/documents/asp/asp4.html>.

FIDH believes that the significant increase in the ICC budget is justified (see I). However some efforts need to be made to strengthen the implementation of victims' rights before the Court (see II), as well as its outreach and communication programs (see III). FIDH addresses the very important need for strengthened presence of the Court in the field (see IV), and raises the important issue of the ICC's intention to rely on local intermediaries (see V). Finally, FIDH addresses some concerns on the draft Code of Professional Conduct for Counsel (see VI).

### I - A justified increase in the budget

The ICC has made many significant advances in the last year, in the course of its ongoing operational phase.

## 1 - The ICC is currently conducting investigations in three countries

The Office of the Prosecutor (OTP) opened its first investigations in the Democratic Republic of the Congo (DRC) and Uganda, in June and July 2004 respectively. Following a historic Security Council resolution referring the Darfur situation to the ICC on 31 March, 2005, the Office of the Prosecutor announced the opening of its third investigation in Sudan on 6 June 2005.

Concerning investigations in **Uganda**, the Court, in its report to the General Assembly of August 2005<sup>1</sup>, explained that *“investigating the situation in Uganda, (...) involves allegations of large-scale abductions, killings, torture and sexual violence. The majority of alleged abductees are children.(...) The Office has conducted over 50 trips to the field; interviewed crime base witnesses, overview witnesses and others; and collected documents, videos, photographs and other materials. The Office concluded a cooperation agreement with the Government of Uganda and benefits from excellent cooperation from the Government and other cooperation partners.”*

The first arrest warrants of the ICC were issued in respect of the Uganda situation on 8 July 2005, and were unsealed on 13 October 2005, against five high commanders of the Lord's Resistance Army (one of them has since been reported to have been killed) for alleged crimes including rape, murder, enslavement, sexual enslavement and forced enlisting of children.

Regarding the situation in the **Democratic Republic of Congo (DRC)** the Court explained that the investigation *“involves allegations of thousands of deaths by mass murder and summary execution since 2002, as well as large-scale patterns of rape, torture and use of child soldiers. There are many areas of extreme insecurity and ongoing conflict, with no effective State presence. Numerous armed groups active in the Democratic Republic of the Congo are allegedly involved in crimes. Given the scale of the situation, the investigation of cases in the Democratic Republic of the Congo will proceed in sequence. One or two cases, selected on the basis of gravity, are prioritized in 2005, while other cases will be developed subsequently. The first investigations are progressing well. The Office has carried out over 50 trips to the field; collected over 11,000 documents; interviewed over 60 persons; and collected documents, videos, photographs and other materials (...) The Office has concluded a cooperation agreement with the Government; however, the Government faces great logistical challenges and many areas are not under effective control, so inability to rely on effective cooperation remains a great challenge for the investigation. Cooperation from MONUC will be essential, as will be cooperation from others with relevant information. (...)”*

In the case of **Sudan**, the Court reported that, *“investigating the situation in Darfur, Sudan, (...) involves allegations of the killing of thousands of civilians and the widespread destruction and looting of villages, leading to the displacement of approximately 1.9 million civilians, as well as allegations of a pervasive pattern of rape and sexual violence and persistent targeting and intimidation of humanitarian personnel (...) Following the referral, the Office collected more than 2,500 items from the International Commission of Inquiry on Darfur, as well as over 3,000 documents from other sources (...) The Office has been in contact with authorities from the Sudan, the African Union, the United Nations and other partners to discuss cooperation.”*

## 2 - Situations under analysis by the ICC

Two African states have referred situations to the Prosecutor:

<sup>1</sup> [http://www.icc-cpi.int/library/organs/presidency/ICC\\_Report\\_to\\_UN.pdf](http://www.icc-cpi.int/library/organs/presidency/ICC_Report_to_UN.pdf)

In December 2004, the **Central African Republic**, under article 14 of the Rome Statute, referred the situation of the crimes committed on its territory since the 1<sup>st</sup> of July 2002 to the Court. FIDH has been sending information on this situation to the OTP since February 2003. The OTP led its first analysis mission in November 2005.

In February 2005, the OTP made official the declaration of the **Ivory Coast** accepting, on the basis of article 12, paragraph 3, the ad hoc jurisdiction of the Court over the situation in respect of crimes committed on its territory since 19 September 2002.

Additionally, the OTP has reported that it continues to receive communications from individuals, NGOs, victims and others, based on article 15. In total the OTP has received almost 1500 communications.

The Court has recently opened field offices in Kampala and Kinshasa, with a presence in Bunia in the eastern DRC, and has established a presence in Chad to investigate the Darfur situation.

Three Pre-Trial Chambers have been constituted, under the Regulations of the Court, and have been assigned the four situations referred by State Parties to the Prosecutor. Since February 2005, Pre-Trial Chamber I has issued several decisions, including on the protection of victims and witnesses and on the participation of victims from DRC.

The Office of the Prosecutor has stated that it is analysing eight other situations and expects to begin a fourth investigation in 2006. The Court anticipates that a trial in one situation will begin in May 2006, and a trial in a second situation in July 2006. Because of this increase in its activities and accordingly to the workload of the Court in the coming year, the proposed budget for 2006 reflects an increase of 23.3% over 2005.

**FIDH encourages the Assembly of States Parties to take into account the significant evolution of the judicial and field activities of the Court and to approve the proposed increase to the budget, especially in relation to situation based costs.**

## **II - Ensuring the implementation of Victims' Rights before the ICC**

The Statute of the ICC recognizes, for the first time in history, the rights of victims to participate in proceedings and receive reparation. A Trust Fund for Victims (VTF) has been set up to complement the reparative mandate of the Court.

To fulfil its mandate concerning victims, the ASP should provide adequate resources for the ICC to strengthen its activities in respect of **Protection, Participation, Legal Representation and Reparation** for victims and should adopt the draft Regulations of the **Trust Fund for Victims**.

### **1 - Victim and Witness Protection**

The protection of victims and witnesses is a central concern of all organs of the Court and should be a major concern for States parties. The ASP should approve the budget as requested to enable the Court to fulfil its program activities.

The credibility of the Court will depend on its capacity to effectively protect victims and witnesses, throughout the proceedings, from the investigation to the implementation of the Courts' judgments and reparation orders.

In the last year, the Pre-Trial Chamber conducted hearings and took several decisions concerning victim and witness protection. Victim protection was dealt with through joint missions organised by the Registry and the OTP. These activities will undoubtedly increase as investigations progress.

FIDH welcomes the substantial increase in the draft budget of the Victims and Witnesses Unit (VWU), and especially of situation related resources for the expansion of the Unit's field presence. This increase partly redresses previous under-investment. However, FIDH is concerned that the location of staff (mostly in capitals) far away from the location of the investigation and from victims and witnesses, as well the low level of the posts requested, may weaken the capacity of the Court to build effective protection and support programs as well as its capacity to react.

FIDH urges the Assembly of States Parties to reject the recommendation of the Committee on Budget and Finances (CBF)<sup>2</sup>, to cut two P2 posts of the Victims and Witnesses Unit (VWU), which are intended to cover work in the field across a number of situations. This recommendation results from a misunderstanding. The CBF proposed that the two P2 field officers for the Victims Participation and Reparations Section (VPRS) should also cover the functions of the VWU. These functions cannot be merged because of the different mandates of the VWU and the VPRS, and the corresponding expertise and level of confidentiality required. The VPRS is required to provide information and assistance to non-governmental organizations, victims' representatives and victims only in relation to issues of participation and reparation, while the VWU is to provide protection and support for victims and witnesses.

**Therefore FIDH urges:**

- **All States Parties and especially 'situation countries' to cooperate fully with the Court to protect victims and witnesses, in accordance with article 93 of the Rome Statute;**
- **The international community, and notably the Security Council, following the referral of the Sudanese situation to the ICC, to ensure the cooperation of Sudan with the ICC and the adequate protection of civilians and victims.**

**FIDH recommends that the Assembly of States Parties:**

- **Adopts the Draft Budget presented by the Court;**
- **Emphasises the provisions on protection in the Omnibus Resolution;**
- **Rejects the CBF's recommendation (at paragraph 64 of the CBF Report), to cut 2 P2 posts in the Victims and Witnesses Unit.**

## **2 - Victim Participation and Legal Representation**

The Rome Statute recognizes the right of victims to participate in all stages of proceedings, not only as witnesses of the crimes within the jurisdiction of the ICC, but as persons with a valid interest in the outcome. Victims are entitled to be represented in proceedings, including by a common legal representative where there are large numbers of victims. In order to deliver fair and equitable justice, it is essential to ensure that victims can give their views and defend their interests.

---

<sup>2</sup> ICC-ASP/4/27, paragraph 64

The Victims Participation and Reparation Section (VPRS) has responsibility for the design and implementation of public information and outreach campaigns to victims; and the processing of applications for participation and reparations. In the past few months, the VPRS has organized training in Uganda, mostly in Kampala, for lawyers and legal aid providers, as well as in Kinshasa, and has taken part in NGO events in other parts of the DRC. The first applications from victims to participate before the Court have been made before Pre-Trial Chamber I, in the context of the DRC situation, and a hearing took place on 12 July 2005.

Victims' participation before the ICC will only be effective if victims are well informed of their rights and are adequately represented.

Victims will be represented by a legal representative of their choice, entitled to legal aid, or in some cases by the Office of Public Counsel for Victims (OPCV), set up on 19 September 2005.

FIDH considers that the OPCV and the Office of Public Counsel for the Defense (OPCD) have radically different mandates, clients and structures. The OPCV will represent large numbers of persons collectively, usually residing far from the Hague. They may also be displaced, dispersed within or between different countries or living in remote areas, with no access to modern means of communication, and they may be illiterate.

FIDH therefore recommends that the ASP considers the budgets of the OPCV and the OPCD separately and does not follow the CBF's recommendation that *"the amounts allocated respectively to defense and victim's representation should be more balance"*.<sup>3</sup>

FIDH is concerned that the legal aid budget is not sufficiently detailed. It is included under the heading "Contractual services including training", which also covers the organisation of three training seminars and other resources foreseen for the publication of materials.<sup>4</sup> Furthermore the legal aid budget will cover two external teams of legal representatives of victims for only two situations. This is incompatible with paragraph 442 of the Budget, which acknowledges that "victims can apply to participate from the earliest phase of the proceedings," and with the intention of the Court to examine four situations in 2006.<sup>5</sup> Accordingly, FIDH recommends that the legal aid budget should at a minimum cover the representation expenses connected to all ongoing investigations.

The budget for legal aid and for the OPCV must be sufficient to enable the Court to manage potential conflicts of interests between victims, since these two means of representation are expected to benefit different groups of victims.<sup>6</sup>

Furthermore a cut to the legal aid budget will impact on the ability of the two legal aid representatives provided for in the contractual services budget request for the VPRS, to provide effective legal representation; it will not impact on the number of victims unless an insufficient budget for legal aid makes it impossible for victims to participate, which cannot be the outcome sought by the Court. It has been explained to FIDH that such a cut would result in the suppression of one team of legal representatives.

This proposal seriously threatens the efficiency of legal representation of victims, the implementation of the victims' right to participate before the ICC, and therefore the entire credibility of the Court.

---

<sup>3</sup> CBF report, §50.

<sup>4</sup> Proposed Budget, §451-452

<sup>5</sup> Proposed Budget, §442 and 10.

<sup>6</sup> Proposed Budget, § 452.

For all these reasons, FIDH urges the Assembly of States Parties to reject the CBF's recommendation to cut the legal aid budget by 10 %.<sup>7</sup> The Committee stated that it based its recommendation on "ambitious assumptions of the participation of witnesses and victims." However, the Court only anticipated that there would be 170 *witnesses* participating in 2006; this estimate does not specify the number of *victims* expected to participate and who will therefore be entitled to legal aid.<sup>8</sup>

**Therefore FIDH recommends that the Assembly of States Parties:**

- **Adopts the Draft Budget presented by the Court;**
- **Stresses the importance of the role of victims and their right to participate and be legally represented at all stage of the proceedings before the ICC in the Omnibus Resolution;**
- **Rejects the CBF's recommendation to cut 10% of the legal aid budget;**
- **Allocates sufficient funds to the legal aid budget to cover the legal representation of victims in all ongoing investigations.**

### **3 - The Trust Fund for Victims**

As a member of the Victims Rights Working Group (VRWG), and as Coordinator of the Victims Trust Fund Team of the CICC, FIDH endorses their concerns and recommendations.<sup>9</sup> FIDH emphasises the need to adopt the draft Regulations of the VTF at the fourth session of the ASP and to support the draft budget for the Secretariat of the VTF submitted by its Board of Directors.<sup>10</sup>

#### **a) The need to adopt the Draft Regulations of the VTF**

The establishment of the Trust Fund for Victims is an unprecedented measure for the recognition of the rights of victims before the Court. The Trust Fund, established by the Assembly of States Parties (ASP) in September 2002, has two roles: firstly, executing the Court's reparation orders; secondly, determining the appropriate use of voluntary contributions for providing assistance to the victims of crimes coming within the jurisdiction of the Court, and their families (according to the Rule 98.5 of the Rules of Procedure and Evidence and its *travaux préparatoires*).

In accordance with Article 79 of the ICC Statute, Rule 98 of the Rules of Procedure and Evidence and ASP Resolution 6 (ICC-ASP/1/Res.6), the Board of Directors prepared draft Regulations for the Fund, which lay down how funds (reparation orders, the proceeds of fines and confiscated property and voluntary contributions) may be received, managed and used by the Board of Directors and provide for a Secretariat to be established to assist the Board (ICC-ASP/3/14).<sup>11</sup>

---

<sup>7</sup> CBF report, §69.

<sup>8</sup> Proposed Budget, Annex III.

<sup>9</sup> VRWG, *Comments on the Proposals Submitted by Australia, Canada, Croatia, Japan, The Netherlands, New Zealand, Norway, and the United Kingdom*, September 2005; *Submission to the second meeting of the Bureau's Working Group on Regulations of the Trust Fund for Victims*, 3-4 August 2005, August 2005 ; *The Draft Regulations for the Trust Fund for Victims: Questions & Answers*, July 2005; *The Trust Fund for Victims: A Brief Introduction*, July 2005, *Comments on the Draft Regulations of the ICC Trust Fund for Victims*, February 2005 and *The need to adopt the Draft Regulations of the Victims Trust Fund* ", Karine Bonneau permanente delegate of FIDH before the ICC, in Bulletin, Issue 4, p.7, available on [www.vrwg.org](http://www.vrwg.org) .

<sup>10</sup> Report to the Assembly of States Parties on the activities and projects of the Board of Directors of the Trust Fund for Victims for the period 16 July 2004 to 15 August 2005, ICC-ASP/4/12 29 September 2005, Corr125 October 2005.

The ASP was unable to adopt the Draft Regulations in 2004 and established a States Parties Working Group to revise the Draft, but the Working Group also failed to find a compromise. A number of States support the present Draft. However, Australia, Canada, Croatia, Japan, The Netherlands, New Zealand, Norway and the United Kingdom have submitted a joint proposal aimed at limiting the scope of beneficiaries of the Trust Fund and the timing of its intervention, and at prohibiting the earmarking of voluntary contributions.

FIDH is very concerned by this proposal, which if accepted would seriously undermine the capacity of the Fund to take action for the benefit of victims of crimes within the jurisdiction of the Court, and their families.

Firstly, the proposal suggests that the Court should control the use of voluntary contributions collected independently by the Fund (the Court cannot collect these contributions, which are distinct from the proceeds of confiscation and reparation orders). Such control by the Court would violate the mandate of the Court, its independence and that of the Victims Trust Fund. Moreover, this proposal severely limits the role and powers of the Board of Directors, whose members have been elected for their internationally recognized personal competence, and not to implement the Court's orders. Linking the jurisdiction of the VTF to the issuance of arrest warrants or, even worse, to convictions, will tie the VTF to the choices of the Prosecutor and put the mandate of the VTF even on voluntary contributions, under the Court. This would exclude victims of the situations under investigation, in respect of whom independent action by the Fund was considered to be in accordance with Rule 98 (5) of the Rules of Procedure and Evidence. Reducing the range of potential beneficiaries of assistance from the VTF to the victims of crimes which have been prosecuted would create damaging divisions among groups of victims and within societies in general.

The co-sponsors of the proposal maintained that activities of the VTF prior to conviction would interfere with the judicial work of the Court and would risk violating the right to a fair trial. FIDH reiterates that, according to well-established rules of international law, the definition of victims applies irrespective of the identification and punishment of the authors of the crimes. Furthermore safeguards are contained within the draft Regulations themselves, which clearly provide that any assistance would be for the benefit of groups of victims and not individuals.

As His Eminence Archbishop Desmond Tutu stated during the inauguration of the Board of Directors, the VTF should not purport to be a humanitarian fund, it will merely be capable of pouring salve on victims' wounds.

Secondly, prohibiting earmarking ignores the practical reality of voluntary contributions. FIDH believes that authorizing partial earmarking will strengthen the means and the capacity of the Trust Fund. This would be more attractive to donors; the limited mandate of some donors will oblige them to earmark their donations in order to contribute to the VTF; it will also exclude the "negative earmarking" applied informally to other funds. FIDH endorses the VRWG proposal to allow partial earmarking provided that, in accordance with Resolution 6 of the ASP and the current Draft Regulations provide, earmarking will be controlled so as to avoid any manifestly inequitable distribution among different groups of victims.

Since, *"the lack of approved regulations of the Trust Fund for Victims, in particular of regulations pertaining to the activities and projects of the Trust Fund (Part III), makes it difficult for the Board of Directors to proceed with the planning of concrete activities and projects for 2006"*,<sup>12</sup> FIDH urges the ASP to adopt the draft regulations this year.

---

<sup>11</sup> The Fund is managed by a Board of Directors elected by the ASP for a three-year term. It is currently chaired by Madam Minister Simone Veil (France) and made up of Her Majesty Queen Rania Al-Abdullah of Jordan, His Excellency Dr. Oscar Arias Sánchez from Costa Rica, His Excellency Mr. Tadeusz Mazowiecki from Poland, and His Grace Archbishop Emeritus Desmond Tutu from South Africa.



## **b) The secretariat of the VTF**

FIDH supports the CBF recommendation to the ASP to adopt the budget proposed by the Board of Directors and, in particular, the creation of the post of Executive Director. This position will be crucial to ensure the day-to-day activities of the Trust Fund, in accordance with the Board of Directors' instructions.

**Therefore FIDH recommends that the Assembly of States Parties:**

- **Stresses the importance of the VTF in the implementation of reparation orders and in developing assistance for victims of crimes under the jurisdiction of the Court and their families in the Omnibus Resolution;**
- **Encourages governments, individuals, corporations and other entities to make voluntary contributions to the Trust Fund;**
- **Adopts the Draft Regulations of the Trust Funds for Victims in a manner that preserves the full range of victim beneficiaries and the independence of the VTF;**
- **Adopts the full budget requested for the Secretariat of the Trust Fund for Victims.**

## **III - Strengthening outreach and communication activities**

The International Criminal Court was created to put an end to impunity for the most serious crimes, and thus to contribute to the prevention of such crimes. The complementarity regime, the implementation of the Rome Statute and of the Court's decisions by States Parties will certainly strengthen the impact of the Court. But as a permanent and universal institution, the Court will necessarily apply a narrow prosecution and indictment strategy. Therefore the mandate of the Court will not be fulfilled by independent, impartial investigations and fair trials alone, but only by reaching those most affected by the crimes, the victims and society at large. The ICC must focus on benefiting those most affected and must make sure that justice is done and seen to be done.

In order to achieve its mandate, to receive the needed cooperation and support, to gain people's confidence and receive testimonies, the International Criminal Court must develop an outreach and communication program from the very outset.

The ICC operates in countries divided by hate and wars, where violent opposition will threaten the re-establishment of the rule of law and the prosecution of criminals. The Court will need to build up its legitimacy, since it intervenes over a short period of time to prosecute the most serious crimes, applying an entirely new legal system and conducting proceedings in languages that most of its beneficiaries will not understand.

Although the Court will never be able to create a consensus, it should work at establishing a real dialogue to communicate key messages. Outreach aims at developing an interaction between the Court and the communities concerned by its investigations and prosecutions, in order to promote mutual understanding and correct misperceptions. In this way the ICC will be able to meet expectations of victims who have been recognized new rights before the ICC.

The ICC needs to develop special materials aimed at all those concerned, including, for example, video, theatre and workshops. Direct contact will also be necessary. The ICC needs to target civil society in general,

---

<sup>12</sup> Report to the Assembly of States Parties on the activities and projects of the Board of Directors of the Trust Fund for Victims for the period 16 July 2004 to 15 August 2005, ICC-ASP/4/12, §2.

journalists and lawyers but also illiterate people, groups of victims, paying special attention to children and victims of sexual violence, and focusing on specific issues including on child soldiers, who might be both offenders and victims. The Court will need to take into account the specificity of each situation in developing and adapting its methods.

The need to develop an outreach program from the outset, as core activities of the ICC is clearly demonstrated by the experience of the ad hoc Tribunals. It is even more important for the ICC, as the absence of such program will have a high cost for the acceptance and therefore effectiveness of the Court, and unlike the Tribunals, the Court will not remain in one country long enough to mitigate errors made at the outset :

*“The International Criminal Tribunal for the former Yugoslavia (ICTY), created in 1994, did not start its outreach activities until late 1999 (...) Unfortunately, by the time Outreach Programme started to function it was already late 1999, and the Tribunal has had to pay a heavy price for this delay: it is much more difficult to dismantle already established misperceptions and propaganda than it would have been to start from the outset with updated and accurate information about the Tribunal. Also, possibly because it was not seen as crucial from the outset, Outreach has never become part of the Tribunal's main budget. This has limited the scope of outreach activities and has placed a heavy fundraising burden on the staff of the section. It is difficult to assess how much more successful in communicating its message the Tribunal would have been if Outreach had been established from the outset, but it is certain that it would not have to fill a 6-year information gap. We can only hope that other international justice institutions, like the ICC, will learn from our mistakes and conduct extensive public information and outreach activities from the outset (...) We consider all of these activities to be crucial in communicating the achievements and the work of the Tribunal and thus increasing popular understanding of its work. It is only by such initiatives that the Tribunal can truly fulfil its primary mandate of contributing to the restoration and maintenance of peace in the region.”<sup>13</sup>*

FIDH acknowledges the outreach activities led by the Court in Uganda and DRC. As an example of these activities, the Registrar held a series of information meetings, aimed at lawyers, legal aid providers and journalists, were held in Kampala last October. Prior to this, in August, the ICC held an informative workshop in Entebbe for delegates from local councils in the nine districts affected by the conflict in northern Uganda. In the DRC, the Registry organized meetings for lawyers, and representatives of the ICC took part in NGOs' activities. The Registry also prepared some materials in national languages.

FIDH encourages the Court to significantly strengthen its outreach activities. The experience of FIDH has revealed that the lack of communication since the announcement of the opening of investigations has created a great deal of confusion. The hope for justice and the initial support of the ICC are slowly disappearing and basic knowledge about the Court's mandate is still lacking. Without a clear message from the Court, States referrals may also create the impression that the ICC will not act independently from governments, but will focus its investigations on targeting rebel groups. In DRC, many Congolese NGOs already had the perception that the ICC “favoured” the investigation in Uganda, and the release of arrest warrants against Ugandan rebels, without any communication strategy in DRC, reinforced this perception, especially since the three ongoing investigations are interconnected. In Ituri, where investigations are ongoing, very few people know about the ICC. While, on the other hand, in Darfur the Security Council referral was very positively received in the internally displaced persons' camps, the lack of outreach since then has resulted in disillusionment, and for some a belief that the investigation has been dropped.

---

<sup>13</sup> Olga Kavran, Deputy Outreach Coordinator, International Criminal Tribunal for the Former Yugoslavia, *Interview in the Bulletin of the Victims Rights Working Group*, Issue n°4, October 2005, p.3.

As the Communication team of the CICC stressed, without a clear outreach and communication program from the outset, the transparency and credibility of the Court will be threatened, and the Court's ability to carry out its mandate of providing justice will be limited.

The role of States Parties is essential to support the ICC in the adoption and implementation of a communications and outreach strategy, to ensure sustained core financial support for the communications functions of the Court.

FIDH is concerned that the outreach and communication programs allocated will not be sufficient to permit effective outreach in situation countries and, in particular, that additional cuts have been recommended by the CBF.

Only 210 000 euros are allocated to field activities to cover seminars, meetings with community leaders and journalists, printed material and production of radio programs.<sup>14</sup> This reflects the low priority ascribed to such activities.

The proposals for staff are inadequate, providing for few posts at a junior level. This may mean that the necessary authority to effectively conduct outreach activities in the field is lacking.

Moreover, the CBF has recommended reducing the number of public information assistants and administrative assistants within the Public Information and Documentation Section in the field offices, from eight to five. The Draft Budget and the CBF Report do not take into account the critical importance of outreach. FIDH believes that the adoption of such a budget would send the wrong message to the affected communities, to the first beneficiaries of the Court, and would compromise the effective implementation of a policy of communication and outreach where investigations take place.

**Therefore FIDH recommends that the Assembly of States Parties:**

- **Adopts the Draft Budget presented by the Court;**
- **Stresses the importance of outreach activities in the Omnibus Resolution;**
- **Rejects the recommendation of the CBF (at paragraph 60 of the CBF Report) to cut three posts in the Public Information and Documentation Section;**
- **Requests the Court to report on its past outreach activities in a public report to the ASP.**

## **IV - Strengthening the presence of Court in the field**

FIDH welcomes the opening of field offices in Kampala and Kinshasa, as well as the staff increase. However, FIDH believes that the Court must significantly strengthen its presence in the field.

The field offices must represent the different organs of the Court and be composed of high-level staff, with decision-making power. They should be open to the public and provide information about the Court's structure and activities. Permanent field presence should not be limited to capital cities, but in order to facilitate the Court's mandate should extend to remote areas, where many affected communities live.

FIDH calls on the Court to conduct pre-trial activities *in situ* as provided for in Article 3, paragraph 3 of the Rome Statute. FIDH strongly supports the budget requested by the Chambers to conduct site visits in 2006 to

<sup>14</sup> Proposed Programme Budget for 2006 (Draft Budget) ICC-ASP/4/5, 24 August 2005, §419

each of the three situations, so as “to ensure that essential evidence which is at risk of being lost is gathered, with the necessary guarantees, so as to secure its admissibility at any subsequent stage of the proceedings or for other purposes that the Chambers may deem appropriate”.<sup>15</sup>

Based on the experience of FIDH, it is clear that a lot more must be done to provide essential information to victims and ensure effective access to justice. It is only by expanding its activities and presence in the field and not restricting presence to capitals, which may be far away from victims and witnesses, that the VPRS will be able to reach victims to adequately inform them of their rights.

FIDH welcomes the increase in the budget for field operations, but remains very concerned about the inadequacy of the requested funds. Indeed the provision of only seven field based-staff for three situations as large and as complex as those before the Court might be insufficient to enable the Court to effectively fulfil its mandate.

**Therefore FIDH recommends that the Assembly of States Parties:**

- **Increases the budget for field operations;**
- **Calls on the Court to conduct pre-trial activities *in situ* as provided for in Article 3, paragraph 3 of the Rome Statute.**

## **V – The ICC’s reliance on local intermediaries**

Although FIDH fully supports the view that the ICC needs to cooperate with international and national intermediaries, these cannot be substitutes for the Court's work and its primary responsibility for the implementation of its mandate.

Indeed, throughout the budget, there seems to be too much reliance on local intermediaries and in particular NGOs in the implementation of the following mandates of the Court: Victims Participation, Outreach and Protection.

FIDH is concerned that there is no provision in the draft Budget or in any other ICC document addressing the capacity, the resources, the methods and the potential risks for such intermediaries.

**With regards to enabling victims to participate before the Court**, the proposed budget states that “*strategies for informing victims, disseminating standard application forms, and ensuring appropriate assistance to victims in making their applications and throughout the proceedings necessarily depend on developing and maintaining relations with intermediaries on the ground, and on effective use of field offices.*”<sup>16</sup>

FIDH recognizes the necessity for the Court to work closely with intermediaries including national NGOs, who may have better access to victims and may have already earned their confidence. However, FIDH is very concerned that no budget has been allocated to support the work of local intermediaries in achieving that task.

---

<sup>15</sup> Proposed Budget, §38.

<sup>16</sup> Proposed Budget, § 441

**With regards to outreach,** FIDH is very concerned about the policy of the Court that “in conducting outreach activities the Registry relies on local actors”<sup>17</sup> which lead the CBF to base its recommendation on an understanding that the Public Information and Documentation section “would rely to a large extent on the non-governmental organisations (NGOs) present in the field to increase the outreach activities to the local population primarily in the countries where field offices are located.”<sup>18</sup>

The Court needs to take primary responsibility for its own outreach and must therefore increase its presence and resources in the field. FIDH strongly believes that NGOs cannot replace an effective and independent ICC communication. Clearly some messages can only be given by the Court. Relying too much on local intermediaries could place them in a difficult position and, if they were to be assimilated the Court in the field, could threaten their independence.

Furthermore, many national and local NGOs face a serious lack of resources and the Court has not requested specific funding in its budget to support such activities. NGOs already work in very dangerous conditions and are on the front line; such cooperation might put them more at risk.<sup>19</sup> For example, Human Rights defenders have been recently killed or forced to flee from DRC. The Sudanese Organisation Against Torture, affiliated league of FIDH in Sudan, face unwarranted proceedings, and the provisional Presidential Decree entitled “Organisation of Humanitarian Work Act, 2005” of 4 August, 2005, if passed by Parliament, could prevent NGOs to work in the gathering of information in support of the ICC.

**With regards to protection,** the Court explained the extent to which it relies on local intermediaries to assist in providing protection:

*“where witness protection is required, the Registry worked closely with the Office of the Prosecutor to find partners willing and able to provide witness protection. This involved efforts to improve local capacity to provide protection”*.<sup>20</sup>

While such cooperation from local actors may be necessary, they must never be substitutes for ICC officials. For security and confidentiality to be ensured, the Court must clarify the criteria chosen to select such local partners, to evaluate the confidentiality offered, the level of cooperation required from them, making sure that such partners have sufficient means and infrastructures, and do not put themselves at risk. FIDH further urges the Registry to set up a protective program for such local intermediaries.

## **VI - Draft Code of Professional Conduct for Counsel**

FIDH welcomes the work of The Hague Working Group on the draft code of conduct.

However, FIDH, together with the Legal Representation Team of the CICC, is concerned by current article 22 on the issue of fee splitting.

---

<sup>17</sup> Report on the activities of the Court, op.cit, §77.

<sup>18</sup> Report of the Committee on Budget and Finance, 21 October 2005, ICC-ASP/4/27, §68

<sup>19</sup> Defenders on the Front Line, Publication of the annual report 2004 of the Observatory for the Protection of Human Rights Defenders (FIDH / OMCT ), [http://www.fidh.org/rubrique.php3?id\\_rubrique=414](http://www.fidh.org/rubrique.php3?id_rubrique=414)

<sup>20</sup> Report on the activities of the Court, 16 September 2005, ICC-ASP/4/16, §76.

FIDH believes that fee splitting should be absolutely prohibited before the Court and that a strict disciplinary mechanism should be applied in case of violation. However, FIDH considers that the obligation placed on lawyers entitled to receive legal aid to denounce any attempts of fee splitting by the client is in clear violation of privilege and legal representative-client confidentiality.

## PART II - RECENT FIDH ACTIVITIES ON THE ICC

### I – National campaigns for ratification and implementation of the ICC Statute

- **MOROCCO (Rabat), *Fight against impunity in Morocco: Equity and Reconciliation Commission and the International Criminal Court*, 1-3 October 2004:** The round table in Morocco was organized by FIDH in cooperation with the *Moroccan Organization for Human Rights* (OMDH), the *Moroccan Association for Human Rights* (AMDH), the *Forum for Truth and Justice* (FVJ), the *Coalition for the International Criminal Court* (CICC) and the *International Human Rights Law Institute* (De Paul University, Chicago). The report is available in French and Arabic on the FIDH website.
- **DEMOCRATIC REPUBLIC of the CONGO, December 2004:** FIDH organised a round table in cooperation with *ASADHO*, *Groupe Lotus*, the *Ligue des électeurs* and victims' groups.
- **CAMBODIA (Phnom Penh), *Articulation between the ICC and the Khmer Rouge Tribunal: a victim's perspective*, 2-3 March 2005:** This round table was organized in cooperation with the Cambodian based NGOs *Cambodian Human Rights and Development Association* (ADHOC) and the *Ligue Cambodgienne de défense des droits de l'Homme* (LICADHO) with the support of the CICC. A report on this mission is available in English, French and Khmer.
- **TUNISIA (Tunis) *Tunisia and the International Criminal Court: ratification and implementation*, 23-24 April 2005:** In cooperation with the *Tunisian League for Human Rights* (LTDH), the *International Human Rights Law Institute* (De Paul University, Chicago) and the CICC, FIDH organized a round table on the ICC in Tunisia. A follow-up mission will be organized next year.
- **IRAQ (Jordan, Amman), *The ICC and the Iraqi Special Tribunal: access to justice and the place of victims*, 27-28 May 2005:** Mainly for security reasons FIDH, in collaboration with its affiliated organizations in Jordan the *Amman Center for Human Rights Studies* and *Mizan* as well as with the *International Human Rights Law Institute* (De Paul University, Chicago) and the CICC, organized a round table on the ICC for Iraqi lawyers and representatives of Iraqi civil society in Amman, Jordan.
- **TURKEY (Istanbul/Ankara), *Ratification and Implementation of the ICC in Turkey*, 16-17 June 2005 :** FIDH organised, in cooperation with the Turkish based NGOs *Insan Haklari Dernegi* (IHD) and *Human Rights Foundation of Turkey* (HRFT) and the Turkish Coalition for the ICC, a round table on the ICC. A follow-up mission is planned to take place mid-December 2005.
- **YEMEN (Sanaa), *Follow-up mission to a January 2004 round table on the ICC*, 11-21 August 2005:** After a round table on the *Ratification and Implementation of the ICC Statute* in Sanaa, FIDH organized a follow-up mission, in collaboration with *Sisters' Arab Forum for Human Rights* (SAF) and the CICC, in August 2005 to analyze the implementation of the recommendations adopted during the round table.
- **CENTRAL AFRICAN REPUBLIC (Bangui), *Central African Republic and the International Criminal Court*, 19-23 September 2005:** FIDH in cooperation with the *Ligue Centrafricaine des droits de l'Homme* and the United Nations Office for Central Africa Republic (BONUCA) organized training on the ICC and victims' rights.

- **BAHRAIN (Manama), Follow-up mission to a June 2004 round table on the ICC, November 5-11, 2005:** After a round table on the ratification and implementation of the ICC Statute in Bahrain, FIDH organized a follow-up mission in collaboration with the *Bahrain Human Rights Society* and the CICC.
- **SUDAN (Khartoum), *Ratification and implementation of the ICC Statute in Sudan: access to justice and the place of victims*, 2-3 October 2005:** For the first time since the referral by the Security Council of the Darfur situation to the ICC, a round table on the ICC was organized in Khartoum early October 2005 by the FIDH, in collaboration with the *Sudan Organization Against Torture* (SOAT), the *Khartoum Center for Human Rights and Environmental Development* (KCHRED) and the support of the *International Human Rights Law Institute* (De Paul University, Chicago) as well as the CICC. The report of the roundtable is available in English on the FIDH website. A follow-up mission will take place next year.

## **II - Technical Assistance Program on the Implementation of the Rome Statute into domestic law**

- **MOROCCO 2005 (ongoing):** Four- month mission composed of three Moroccan lawyers and academics to analyze domestic law relevant to the ICC Statute and identify the main problems and challenges that need harmonization, transposition and/or a review of domestic law to be in accordance with the ICC Statute.
- **CAMBODIA 2005 (ongoing):** Three- month mission composed of two Cambodian PHD law students to analyze domestic law relevant to the ICC Statute and identify the main problems and challenges that need harmonization, transposition and/or a review of domestic law to be in accordance with the ICC Statute.

## **III – Training sessions for representatives of national NGOs on victim's rights and the ICC and dialogue with the ICC in The Hague**

The FIDH permanent delegation based in The Hague aims to organize training sessions on the International Criminal Court for the representatives of national human rights NGOs members or partners of the FIDH in countries that have ratified the ICC Statute and for victims groups supported by those NGOs.

- **LATIN AMERICA :** Representatives of national NGOs from Argentina (*Comité de acción jurídica, CAJ*) Brasil (*Movimento nacional de direitos humanos, MNDH*), Chile (*Corporación de promoción y defensa de los derechos del pueblo, CODEPU*), Colombia (*Comité permanente por la defensa de los derechos humanos, CPDH*), Mexico (*Liga Mexicana por la defensa de los derechos humanos, LIMEDH*), Peru (*Asociacion pro Derechos Humanos, APRODEH*).
- **REPUBLIC OF CONGO (Brazzaville):** Representatives of national NGOs from Congo (*Observatoire Congolais des droits de l'Homme, OCDH*), *Association pour les droits de l'homme et l'univers carcéral (ADHUC)*.



- **CENTRAL AFRICAN REPUBLIC:** Representatives from *Ligue centrafricaine des droits de l'Homme* (LCDH), *Organisation pour la compassion et le developement des familles en detresse*, (OCODEFAD) and the UN Office for CAR.
- **IVORY COAST**, 8 April 2005: Representative from *Mouvement Ivoirien des Droits de l'Homme* (MIDH).
- **IRAQ**, 9-12 May 2005 : Representatives from *Human Rights and Democracy Organization* in Iraq.
- **COLOMBIA**, 28 –29 June 2005: Representatives of *Corporacion Colectivo de Abogados Jose Ivar Restrepo*, *Comité permanente por la defensa de los derechos humanos*.
- **SUDAN**, 7-11 November 2005: Representatives of *Sudan Organization against Torture* (SOAT), *Khartoum Centre for Human Rights and Environmental Development* (KCHRED), *Amel Center* and representatives of human rights organizations from Darfur and Khartoum.