



# Human Rights Watch Memorandum for the Seventh Session of the International Criminal Court Assembly of States Parties November 2008

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## Introduction

This year's seventh session of the International Criminal Court's Assembly of States Parties (ASP) comes only a few months after the court's supporters celebrated 10 years since the historic adoption of the court's founding treaty and five years since the court began its operations. Anniversaries offer opportunity for reflection, and 2008 has proved to be a tumultuous year for the court during which both its achievements and the magnitude of the challenges that lie ahead have been on full display.

Since the sixth ASP session, proceedings at the International Criminal Court (ICC) have continued to advance in many respects. Charges against two additional defendants have been confirmed in the Democratic Republic of Congo (DRC) situation, and the first defendant in the Central African Republic (CAR) situation, Jean-Pierre Bemba, a former vice-president of Congo, was transferred to ICC custody in July. Under the leadership of a new registrar, Silvana Arbia of Italy, who took office in April, court programs for witness protection and outreach continue in the field, often under challenging conditions, and victim participation in ICC proceedings continues to be facilitated.

Disappointingly, however, the court has not yet seen the start of its first trial; proceedings in the Thomas Lubanga case (DRC situation) remain stayed conditionally following the trial chamber's decision that fair trial standards could not be met in light of the inability of the prosecutor to disclose potentially exculpatory documents protected under confidentiality agreements. The appeals chamber has yet to deliver key decisions on the terms of victim participation in the situation phase in appeals pending since the early months of this year. No substantial progress has been made to execute the court's outstanding arrest warrants, including in the Uganda situation, where those wanted by the court are reported to have committed attacks on civilians in the DRC, CAR, and southern Sudan this year. The prosecutor's request for the court's first warrant of arrest against a sitting head of state, President Omar al-Bashir of Sudan, was decried by Sudan and its allies as a dangerous development.

The court's setbacks stem from a mix of challenges, some that come from within and some imposed by external factors. This year's anniversaries should offer the opportunity for honest appraisal of these challenges and for a renewal of commitment by the court and its supporters to facing these challenges and building the court to which the world community aspired in Rome in July 1998. In the same way that the realization of a half-century of hopes

was far from inevitable that summer night, neither is the success of the institution, which rather must be built steadily day-to-day. Together, the court, its states parties, and civil society each have a role to play, reinvigorated this anniversary year by recalling the highest ends to which the court aims: a check against impunity; delivery of meaningful justice to victims of the world's worst crimes; and impact among affected communities by deterring future crimes and encouraging accountability.

We identify in this paper what Human Rights Watch sees as the key external and internal challenges that the court faces now and make recommendations for concrete actions to be taken by states parties during this ASP session and beyond. Recommendations specific to this ASP session are bullet-pointed below. These external and internal challenges are of course fundamentally connected: a court that is doing well—and seen to be doing well—will provide little ammunition for those whose aim is to undermine its legitimacy and authority. Addressing these challenges will take time, and for victims of mass killings and rape there is no time to lose.

## **I. Facing Up to External Challenges**

As the ICC's operations increase, its mandate faces new challenges. This is particularly so where the court acts in its unprecedented role as a permanent tribunal tasked with investigation of crimes during ongoing hostilities. The court's mandate, it is claimed, risks conflict with other important diplomatic objectives, including peacekeeping and peace negotiations.

Genuine contradiction between the work of the court and these other objectives is likely to be rare. For example, many have characterized the question of whether to defer ICC proceedings against President al-Bashir of Sudan—a matter discussed in more detail below—as a “peace versus justice” issue. To do so would be, in our view, a clear distortion of the facts on the ground: peace efforts have been stalled in Darfur since October 2007 for reasons unrelated to the ICC and the requested warrant for President al-Bashir. Peace and justice are not contradictory but complementary objectives that should be allowed to proceed in parallel.

Claims of a contradiction between peace and justice are being used by some as a convenient weapon against the court for those who would see justice marginalized and their own impunity entrenched. The ICC will continue to face unprincipled challenges to its mandate driven by opposition to accountability and the court. Such challenges may appear

under different rhetorical disguises, but will have the common aim of undermining the strong diplomatic and political support that the ICC needs to succeed.

The court and its supporters, including its states parties, will need to answer such challenges convincingly. We identify two of the most pressing challenges facing the court today: the prospect of an article 16 deferral in the Darfur situation, and particularly in the context of the debate over that deferral, the accusation by some that the ICC is anti-African. In addition, we address here an enduring challenge for the court made only more difficult in the absence of adequate diplomatic and political support: the continuing need for increased international cooperation toward arrests.

## **A. Resisting political interference in the court's independence: Article 16 and Darfur**

On July 14, 2008, the ICC prosecutor requested an arrest warrant for Sudan President Omar al-Bashir on charges of genocide, crimes against humanity, and war crimes for being responsible for the abusive counterinsurgency campaign in Sudan's Darfur region.<sup>1</sup> As documented in our December 2005 report, "Entrenching Impunity: Government Responsibility for International Crimes in Darfur,"<sup>2</sup> Human Rights Watch found that the highest levels of the Sudanese leadership, including President al-Bashir, were responsible for the creation and coordination of the Sudanese government's counterinsurgency policy that deliberately and systematically targeted civilians in Darfur in violation of international law.

The announcement by the ICC prosecutor triggered a wide-ranging diplomatic campaign by the Sudanese authorities to secure a deferral from the United Nations (UN) Security Council of the proceedings under article 16 of the Rome Statute in the interests of "international peace and security." Sudan has subsequently taken some steps required by international law to create the appearance of attempting to hold accountable some of the alleged perpetrators of serious crimes in Darfur.

In August 2008 Sudan appointed a special prosecutor and legal advisers in each of Darfur's three states to investigate crimes that occurred from 2003 onward. In October, Sudanese justice officials announced that the new special prosecutor had completed an investigation

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<sup>1</sup> The prosecutor's request for an arrest warrant remains under consideration by a pre-trial chamber of the ICC at this writing.

<sup>2</sup> Human Rights Watch, *Sudan-Entrenching Impunity: Government Responsibility for International Crimes in Darfur*, vol. 17, no. 17(A), December 2005, <http://hrw.org/reports/2005/darfur1205/index.htm>.

into allegations against Ali Kosheib, a militia commander who is wanted by the ICC for war crimes and crimes against humanity, but they have not indicated what steps will be taken next in his case. There are conflicting reports as to whether Kosheib is in custody, and Sudanese authorities also have not publicly specified which charges they are investigating, although a justice official said that the investigation relates to “killing and looting” by Kosheib and two others. Kosheib was previously in custody in Sudan but was released for lack of evidence.<sup>3</sup>

While the Sudanese government has repeatedly said that its courts can prosecute those responsible for crimes in Darfur, so far no one has been charged for a single atrocity committed. In addition to the arrest of Kosheib, past attempts by Khartoum to thwart ICC proceedings have included the establishment of the Special Criminal Courts on the Events in Darfur (SCCED), just one day after the prosecutor announced the opening of investigations in Darfur. While these courts were designed to demonstrate the government’s ability to handle prosecutions domestically, they have tried only 13 cases of ordinary crimes, such as possession of stolen goods, theft, or individual murders unrelated to larger attacks.

Moreover, even if the Sudanese authorities were serious about prosecuting Kosheib and others, a number of legal obstacles, which the government has done little to address, make it very difficult in Sudan for there to be accountability for the grave human rights violations in Darfur. These obstacles include the absence of provisions in the criminal law making crimes against humanity an offense, or that provide for command responsibility;<sup>4</sup> broad immunity provisions for members of the police and armed forces; and significant barriers to prosecution of rape and sexual violence (including the threat of victims being charged with adultery).

In light of this poor track record on accountability, Human Rights Watch believes that the purported investigations are part of the larger attempt by Khartoum to generate support for an article 16 deferral. By packaging together a series of apparent concessions, Khartoum apparently hopes that its policies will seem to have changed, and hence an interruption of the legal proceedings against President al-Bashir is an appropriate quid pro quo. But

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<sup>3</sup> Kosheib was arrested previously in an effort to raise an admissibility question before the ICC. The ICC prosecutor was informed that Kosheib was arrested on November 28, 2006, in relation to crimes in Darfur that were not covered by the prosecutor’s application to the court. The prosecutor was unable to provide the ICC judges with any document or information relating to Kosheib’s arrest or the investigation against him. The court found that the case appeared admissible. In early October 2007, government officials announced that Kosheib had been released from custody due to lack of evidence against him.

<sup>4</sup> Certain amendments to Sudan’s Criminal Code that would allow for crimes under the Rome Statute to be tried in Sudanese courts are only now under consideration by the Sudanese legislature.

Khartoum has time and again made commitments, including to the Security Council, that have proved to be worthless.

Although the African Union and the Organization of The Islamic Conference initially rallied to Sudan's side, asking the Security Council to grant an article 16 deferral of ICC proceedings for 12 months, no motion for a deferral has yet been tabled at the Security Council. And efforts by Sudan to use the general debate at the UN General Assembly to marshal support for a deferral were unsuccessful. Apart from Sudan, support for a deferral or criticism of the prosecutor's request was mentioned explicitly only in statements by a handful of countries and in the African Union statement. Some countries that were expected to raise the issue did not.

Nonetheless, we anticipate that the issue of a deferral may be raised in the Security Council in the coming months. The stakes are extremely high for the victims of atrocities in Darfur, where Sudanese authorities continue to carry out attacks on civilians.<sup>5</sup> They are equally high for the ICC's global efforts to curtail impunity for the most serious crimes: although an article 16 deferral has never been granted, the provision has already been mentioned in connection with three of the four ICC situations under investigation (Darfur, Uganda, and most recently the Central African Republic<sup>6</sup>). Suspending ongoing judicial activity could set a very dangerous precedent with implications that will reach far beyond Darfur. If it bartered away accountability for the most serious crimes under international law, the Security Council would give encouragement to all those alleged to be responsible for major atrocities to combine threats and negotiation, as Khartoum is now attempting to do, to void the rule of law. It also would be a renunciation by the Security Council—which itself referred the situation in Darfur to the ICC prosecutor—of its own commitment to bring justice to Darfur.

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<sup>5</sup> See, for example, "Sudan: New Darfur Attacks Show Civilians Still at Risk," Human Rights Watch news release, October 24, 2008, <http://hrw.org/english/docs/2008/10/24/sudan20061.htm>.

<sup>6</sup> In the Uganda situation, the Ugandan government, as part of the Juba peace talks, committed in a February 2008 agreement with the Lord's Resistance Army (LRA) to seek an article 16 deferral of cases against LRA leaders while national accountability efforts are pursued. See Agreement on Implementation and Monitoring Mechanism, Juba, Sudan, February 29, 2008, unpublished document on file with Human Rights Watch. This agreement remains in limbo as LRA leader Joseph Kony did not appear as anticipated to sign a final peace agreement. In the CAR situation, various media outlets have recently printed the text of an August 2008 letter by the CAR president to the UN secretary-general requesting an article 16 suspension of any ICC activities in the north of the country. See, for example, "Grossière tentative de Bozizé d'échapper aux griffes de la CPI," post to Centrafrique-Presse.com (blog), September 25, 2008, <http://centrafrique-presse.over-blog.com/article-23115615.html> (accessed October 31, 2008). Human Rights Watch's research indicates that government troops—particularly those in the presidential guard—have carried out hundreds of unlawful killings and have burned thousands of homes during the counterinsurgency campaign there. Human Rights Watch, *Central African Republic – State of Anarchy: Rebellion and Abuses against Civilians*, vol. 19, no. 14(A), September 2007, <https://www.hrw.org/reports/2007/car0907>.

At a time when the independence and integrity of the court is at risk, we believe that it is imperative for states parties to speak forcefully against impunity and on behalf of the ICC's mission. States parties should take the opportunity presented by the general debate during the ASP to articulate strong support for the ICC. In their statements during the general debate, states parties should:

- Confirm that justice is a necessary component of lasting peace and an important objective in its own right;
- Affirm the importance of maintaining the ICC's independence from political interference; and
- Convey commitment to ending impunity for the most serious international crimes, including those that are ongoing in Darfur.

We also encourage states parties' delegates to

- Attend a discussion on cooperation and article 16 that will be held as a side meeting during the ASP.

## **B. A court for Africa**

Related to Sudan's efforts to exchange impunity for some political concessions, some—including those in key positions of influence within Africa—have accused the court of exhibiting an anti-African bias and imposing a European conception of justice that has no connection to African experience. For evidence, critics cite what they consider the court's exclusive focus on Africa, that is, that its active investigations all concern African countries. While this charge has been leveled in the context of a possible article 16 deferral in the Darfur situation—providing leverage to Sudan in its targeting of African members of the UN Security Council for support—it has also been conflated with and echoes a similar drive against the use of universal jurisdiction to prosecute Africans.<sup>7</sup>

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<sup>7</sup> See Peace and Security Council of the African Union, "Communique of the 142nd meeting of the Peace and Security Council," July 21, 2008, PSC/MIN/Comm (CXLII), [http://www.iccnw.org/documents/AU\\_142-communique-eng.pdf](http://www.iccnw.org/documents/AU_142-communique-eng.pdf) (accessed October 31, 2008); Assembly of the African Union, "Decision on the Report of the Commission on the Abuse of the Principle of Universal Jurisdiction, June 30-July 1, 2008, Assembly/AU/Dec.191(XI), [http://www.africa-union.org/root/au/Conferences/2008/june/summit/dec/ASSEMBLY%20DECISIONS%20193%20-%202007%20\(XI\).pdf](http://www.africa-union.org/root/au/Conferences/2008/june/summit/dec/ASSEMBLY%20DECISIONS%20193%20-%202007%20(XI).pdf) (accessed October 31, 2008).

The ICC is a court *for* Africa. Certainly, it is not a court exclusively for Africa, but it does respond to a genuine hunger for justice on a continent that has experienced many of the world's worst atrocities since the 2002 entry into force of the ICC statute. Chronically weak national judicial systems across Africa are often unable to meet the need for accountability.

Indeed, African states played a key role in making this court possible. The unexpectedly swift entry into force of the Rome Statute was driven by ratification among African countries: with 30 states parties, Africa has more members of the ICC than any other region.<sup>8</sup> Three of the four situations under investigation were voluntarily referred by African governments. And national coalitions for the ICC are active in 21 African countries, including, in many places, to advocate the adoption of domestic ICC implementing legislation that could eventually promote accountability and justice initiatives at the national level.<sup>9</sup>

If the court were unwanted and unwelcome in Africa, African victims and witnesses would not be stepping forward, as so many have, often at personal risk, to participate in court proceedings and to provide testimony vital to prosecution and conviction.

Accusations of bias on the part of the ICC have a superficial appeal, in part because they are rooted in some legitimate communication shortcomings on the part of the court. Although the court has several situations under analysis in jurisdictions outside of Africa—including Georgia, Colombia, and Afghanistan—until recently it had been slow to explain this fact, let alone its process of analysis, in a manner that would convey its serious focus on non-African victims and perpetrators. Limited knowledge and a lack of clarity about the jurisdiction of the court and the process by which it selects and prioritizes situations—including, for example, that restrictions on its temporal jurisdiction exclude many non-African situations from its remit—allow perceptions of bias or unfair targeting of Africans to go unchecked. More generally, the court has suffered from insufficient resources and poor strategy in its public information efforts in Africa beyond individual situation countries.

The court and its supporters must counter accusations that the ICC is anti-African with concrete action designed to foster broader understanding of the court—among government officials, civil society, the media, and the general population—and to amplify the voices of African victims and the many African supporters of the court.

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<sup>8</sup> Coalition for the International Criminal Court (CICC), "Factsheet: States Parties to the Rome Statute of the ICC, according to the UN General Assembly Regional Groups," July 18, 2008, [http://www.iccnw.org/documents/RatificationsbyUNGGroup\\_18\\_July\\_08.pdf](http://www.iccnw.org/documents/RatificationsbyUNGGroup_18_July_08.pdf) (accessed October 31, 2008).

<sup>9</sup> CICC, "Regional and National Networks," <http://www.iccnw.org/?mod=networks> (accessed October 31, 2008).



We welcome preliminary discussion among ICC organs on a strategy for Africa, which could include establishing a more permanent presence at the African Union and increasing public information campaigns to raise awareness on the continent of the court outside the situation countries. This is an important and timely initiative, and it underscores the necessity of supporting extended outreach and communications efforts. To facilitate ongoing discussion, in the omnibus resolution of this session, the ASP should:

- Invite the court to include relevant public information aspects of its strategy for Africa in its “Integrated Strategy for External Relations, Public Information, and Outreach;”<sup>10</sup> and
- Provide a mandate for a facilitator from the New York Working Group on the court’s strategy for Africa to facilitate discussion and future plans. Appointment of a facilitator from the New York Working Group will ensure the fullest possible consultation among African states parties in light of the greater representation of those countries in New York.

In addition, in their statements during the ASP general debate, states parties should:

- Underscore their shared commitment to international justice.

Beyond the ASP, states parties should consistently raise support for the ICC in contacts with and among African governments, including through specific initiatives like the European Union (EU)-Africa Partnership and multilateral associations such as L’Organisation internationale de la Francophonie, the Commonwealth, and the Organisation of The Islamic Conference. The creation of a Friends of the ICC group in Addis Ababa analogous to those that already exist in New York and The Hague would create another forum for supportive exchange and discussion on ICC issues. In addition, we urge states parties that are also members of the African Union to work as swiftly as possible toward the conclusion of a cooperation agreement between that body and the ICC.

### **C. Practical assistance and political support for arrests**

Without its own police unit to execute its arrest warrants, the ICC remains wholly dependent on the assistance of governments—sometimes regimes responsible for the very crimes at

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<sup>10</sup> See ICC, “Integrated Strategy for External Relations, Public Information and Outreach,” [http://www.icc-cpi.int/library/cases/ICC-PIDS-WB-OR-03-07-070402\\_IS\\_En.pdf](http://www.icc-cpi.int/library/cases/ICC-PIDS-WB-OR-03-07-070402_IS_En.pdf) (accessed November 4, 2008). We recommend updating the subsidiary “Strategic Plan for Outreach.” See below in section II.C.3.

issue—to apprehend accused persons. While there has been some cooperation on arrest—in 2008, for example, Belgian authorities arrested Jean-Pierre Bemba on the basis of an ICC arrest warrant and transferred him to ICC custody, and the DRC authorities have continually provided cooperation toward the arrest of those individuals under warrant of arrest in the DRC situation—overall the court currently faces a troubling position with respect to arrest and surrender. To date, most ICC arrest warrants have not been executed and several arrest warrants have been outstanding for years.

In the Darfur situation, President al-Bashir’s overt flaunting of the ICC’s two existing warrants of arrest for Kosheib and State Minister for Humanitarian Affairs Ahmed Haroun was reinforced by Security Council silence in its meetings with members of the Sudanese leadership in 2007. To its credit, on its mission to Sudan this year, the Security Council did raise Khartoum’s repeated obstruction of justice as one of several pressing items, and on June 9, 2008, the Security Council adopted a presidential statement calling on Sudan to cooperate with the court.<sup>11</sup> The European Union also adopted language earlier this year indicating an openness to impose targeted sanctions against Sudanese officials for non-cooperation with the court.<sup>12</sup> But there has been little pressure on Sudan with regard to arrests since the prosecutor’s July application for a warrant against President al-Bashir.

Compelling arrest and surrender of individuals by a recalcitrant government is one of the most difficult tasks for the court. It highlights the broader limitations of a still fledgling system of international justice.

Despite the difficulties, experience from the 15 years of international criminal tribunal practice shows that efforts by states to wield their combined political, diplomatic, and economic clout can be decisive for arrest and surrender. At the International Criminal Tribunal for the former Yugoslavia (ICTY), for example, Serbia’s surrender of 20 indicted persons in 2005 and two indictees each in 2007 and 2008 (including Radovan Karadzic) was directly related to diplomatic pressure around negotiations over its prospective accession to the European Union.<sup>13</sup> In 2006 increasing diplomatic pressure by states, including the United

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<sup>11</sup> UN Security Council, Statement of the President of the Council, S/PRST/2008/21, <http://daccessdds.un.org/doc/UNDOC/GEN/No8/384/05/PDF/No838405.pdf?OpenElement> (accessed October 31, 2008).

<sup>12</sup> Council of the European Union, “Council Conclusions on Sudan,” 2879<sup>th</sup> External Relations Council Meeting, Luxembourg, June 16-17, 2008, [http://www.eu2008.si/en/News\\_and\\_Documents/Council\\_Conclusions/June/0616\\_GAERC-Sudan.pdf](http://www.eu2008.si/en/News_and_Documents/Council_Conclusions/June/0616_GAERC-Sudan.pdf) (accessed October 31, 2008).

<sup>13</sup> The EU similarly made cooperation with the ICTY a precondition to accession negotiations with Croatia, which helped lead to the arrest of Croatian commander Ante Gotovina in the Canary Islands, Spain, in December 2005.

Kingdom and the United States, helped lead to the surrender of former Liberian president Charles Taylor for trial at the Special Court for Sierra Leone.

These examples underscore the value of principled and active use of diplomacy. To this end, states parties should regularly raise arrest and surrender in bilateral contacts with non-cooperative states, in interactions with influential third-party states, in meetings at regional and international intergovernmental organizations, and at ASP sessions. States parties should also be creative in identifying and utilizing relevant political and economic leverage as appropriate, such as sanctions. Such efforts may not lead to immediate action but are crucial to stigmatization and, ultimately, surrender.

The situation in Uganda presents a more complicated picture, where the present difficulty appears to be capacity to execute arrest warrants. The Lord's Resistance Army has established bases in a remote corner of the DRC and has renewed attacks on civilians, including forced recruitment through abduction (see below).

These circumstances create special challenges for states parties and the court that are likely to repeat themselves in other situations. Where capacity is inadequate, states parties should be willing to share in the burden of executing arrest warrants as a key component of their cooperation obligations. States parties should consider a variety of assistance that they can provide—including the strategic planning for arrests—and could do so through intergovernmental and regional organizations.

We recognize that this goes a step beyond what most states currently understand to be their obligations to the ICC and will require real development and deepening of those obligations. But where a territorial state in which ICC suspects are located is unable to carry out arrests, it cannot simply become no one's responsibility at all. Instead, responsibility must be shared between states parties.

Particular attention is required to the urgency of executing arrest warrants in the Uganda situation. Between February and May 2008, the Lord's Resistance Army, three of whose top commanders are under ICC arrest warrant, carried out at least 100 abductions, and perhaps many more, in CAR, DRC, and Southern Sudan, according to credible information obtained by Human Rights Watch from foreign observers and domestic authorities in the region.<sup>14</sup> More recently, there are consistent reports, including from UN sources, that the LRA has attacked

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<sup>14</sup> "Uganda: LRA Regional Atrocities Demand Action," Human Rights Watch news release, May 19, 2008, <http://hrw.org/english/docs/2008/05/19/uganda18863.htm>.

villages and abducted people in the Dungu region of DRC, although Human Rights Watch has not conducted a fact-finding mission to verify these reports. The UN Security Council and the European Parliament have called attention to recent attacks.<sup>15</sup>

In light of the coordination likely required for successful arrest operations, in statements during the general debate at this ASP session, states parties should:

- Underscore the need for states to cooperate with the ICC, particularly with regard to arrests; and
- Make particular mention of the urgent importance of international and regional action toward the execution of the ICC arrest warrants for the LRA.

We note that a cooperation adviser in charge of arrest has recently begun work in the Office of the Prosecutor (OTP). This is an important step, as it will better equip the OTP to play a coordinating role with states and international and regional organizations on arrest efforts. In this session's omnibus resolution, the ASP should:

- Acknowledge the creation of this position, welcome the OTP's initiative in this regard, and pledge the full support and cooperation of states parties with the cooperation adviser in charge of arrests.

Human Rights Watch also joins in the Coalition for the International Criminal Court team paper on cooperation. The paper highlights the important mandate of the focal point on cooperation appointed at the sixth ASP session, Ambassador Yves Haesendonck of Belgium, and notes his work over the past year. Notwithstanding his appointment, it is unclear what concrete steps have been taken by states parties to implement the ASP Bureau report on cooperation issued in 2007.<sup>16</sup> We urge the focal point and states parties to intensify their efforts toward implementation of the report's recommendations. We also recommend that the focal point work closely with the OTP's cooperation advisor in charge of arrest to identify where his diplomatic offices could be of particular use.

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<sup>15</sup> UN Security Council, Statement of the President of the Council, S/PRST/2008/38, <http://daccessdds.un.org/doc/UNDOC/GEN/No8/562/79/PDF/No856279.pdf?OpenElement> (accessed October 31, 2008); European Parliament resolution of 21 October 2008 on the indictment and bringing to trial of Joseph Kony at the International Criminal Court (provisional edition), P6\_TA-PROV(2008)0496, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2008-0496+0+DOC+XML+Vo//EN&language=EN> (accessed October 31, 2008).

<sup>16</sup> Assembly of States Parties to the Rome Statute of the International Criminal Court (ASP), "Report of the Bureau on Cooperation," ICC-ASP/6/21, October 19, 2007, [http://www.icc-cpi.int/library/asp/ICC-ASP-6-21\\_English.pdf](http://www.icc-cpi.int/library/asp/ICC-ASP-6-21_English.pdf) (accessed October 31, 2008).

## II. Building an Effective and Credible Court

In the context of the significant external challenges to the court's legitimacy and authority set out above, it is more important than ever that all possible efforts are made by the court and its states parties to build an effective, fair, and credible institution.

As documented in our recent report, "Courting History: The Landmark International Criminal Court's First Years,"<sup>17</sup> the court's accomplishments are many. The prosecutor has opened four investigations and brought criminal charges against 13 alleged perpetrators of the world's worst crimes, including genocide; four suspects are in ICC custody in The Hague; and three have been committed for trial. Against many odds and in the face of innumerable difficulties, the Registry has established field offices in unstable environments; provided protection to witnesses; facilitated the participation of increasing numbers of victims in ICC proceedings; and provided defense lawyers with a court-funded, independent office to provide essential legal support in service of fair trial rights.

The court has experienced a number of disappointing delays in its proceedings in 2008. A confirmation of charges hearing in the Katanga and Ngudjolo case went forward in June only after a number of adjournments, and a confirmation of charges hearing in the Bemba case planned for November has been postponed by one month at this writing.

As noted above, proceedings in the Lubanga case, which was to be the court's first trial, have been stayed conditionally. Because of the prosecution's over-reliance in its investigations on article 54(3)(e), a key provision in the Rome Statute that permits the prosecution to enter into important confidentiality agreements with information providers, the prosecution had in its possession over 200 documents containing potentially exculpatory material that could not be turned over to the court or the defense because the information providers did not consent. The trial chamber felt that the OTP's inability to disclose this information may have compromised Lubanga's right to a fair trial, leading it to stay the proceedings.<sup>18</sup> The appeals chamber recently affirmed the trial chamber's decision

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<sup>17</sup> Human Rights Watch, *Courting History: The Landmark International Criminal Court's First Years*, July 2008, <http://hrw.org/reports/2008/icc0708>.

<sup>18</sup> See *Prosecutor v. Lubanga*, ICC, Case No. ICC-01/04-01/06, Prosecution's Application for Leave to Appeal "Decision on the consequences of non-disclosure of exculpatory materials covered by Article 54(3)(e) agreements and the application to stay the prosecution of the accused, together with certain other issues raised at the Status Conference on 10 June 2008," June 23, 2008.

to impose a conditional stay of the proceedings,<sup>19</sup> and the prosecutor continues to seek a solution to disclosure that would satisfy the trial chamber's fair trial concerns and would permit the trial to commence.<sup>20</sup>

Given the Rome Statute's many innovations, and, in particular, its mix of common and civil law traditions with a bench of judges drawn from these different traditions to match, it is perhaps inevitable that there have been some delays in the court's first proceedings.<sup>21</sup> At the same time, we encourage court officials to continue to assess whether the efficiency of proceedings can be improved.

Not surprisingly, in grappling with the enormous challenges of setting up an unprecedented judicial institution, ICC officials have made mistakes. Increased efforts by states parties and by the court itself are required to consolidate progress and to make improvements in several areas, including increasing investigative capacity; outreach and public information efforts, especially on the part of the Office of the Prosecutor in coordination with the Public Information and Dissemination Section of the Registry; and field engagement in situation countries. This will obviously require ongoing support from states parties, including financially.

In "Courting History," we discuss in more detail both the court's progress and its failings, making recommendations throughout aimed at improving the court's fairness and effectiveness. We focus in this present memorandum on four areas in which states parties can have a particular role to play in building a more effective court: insisting on reinforcing the "One Court" principle; providing the court with the most highly qualified judges; ensuring adequate resources for the court's work, while preserving at all times its independence in judicial and policy decisions; and establishing an independent oversight mechanism. In addition, we join in the team papers prepared by the Coalition for the

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<sup>19</sup> *Prosecutor v. Lubanga*, ICC, Case No. ICC-01/04-01/06, Judgment on the appeal of the Prosecutor against the decision of Trial Chamber I entitled "Decision on the consequences of non-disclosure of exculpatory materials covered by Article 54(3)(e) agreements and the application to stay the prosecution of the accused, together with certain other issues raised at the Status Conference on 10 June 2008," October 21, 2008.

<sup>20</sup> See, for example, *Prosecutor v. Lubanga*, ICC, Case No. ICC-01/04-01/06, Prosecution's Application for Trial Chamber to Review all the Undisclosed Evidence Obtained from Information Providers, October 13, 2008. The prosecutor also continues to appeal the trial chamber's September decision refusing its application to lift the stay. See *Prosecutor v. Lubanga*, ICC, Case No. ICC-01/04-01/06, Prosecution's Document in Support of Appeal against Decision on the Prosecution's Application to Lift the Stay of Proceedings, October 6, 2008.

<sup>21</sup> See, for example, Judge Adrian Fulford, "Reflections from the Bench," speech to the Friends of the ICC, The Hague, February 20, 2008, unpublished document on file with Human Rights Watch ("[One reason for delay in the start of the Lubanga trial] is that this, of course, is a Brave New Court—every step we take is on untrodden ground. We have no internal precedents; we are constructing our jurisprudence from scratch...").

International Criminal Court on budget and finance, the independence of Committee on Budget and Finance (CBF) members, communications, the Trust Fund for Victims (TFV), establishment of an independent monitoring mechanism, the review conference, and, as already indicated above, cooperation.

## A. Reinforcing the “One Court” principle

Following early concerns expressed by the Committee on Budget and Finance and observers about division and a lack of coordination, the court’s organs committed themselves in 2004 to a “One Court” principle prioritizing coordination between them while respecting each’s independence. Concrete steps taken by the court’s president toward implementing the “One Court” principle have included increasing the frequency of meetings of the Coordination Council—a body composed of the president, prosecutor, and registrar which facilitates administrative coordination—and establishing inter-organ working groups, such as the Strategic Plan Project Group and the Victims’ Participation Working Group.

While the independence of the prosecutor and chambers must be respected, internal coordination is key to meeting the court’s unique responsibilities, particularly in areas including outreach and field operations where those responsibilities overlap. Tensions and duplications may be inevitable in a developing institution working out complicated issues of policy and practice, but as the court matures, a lack of inter-organ coordination continues to manifest itself. There have been some examples in recent months that have emerged in the public domain.

For example, the Office of the Prosecutor and the Registry have been engaged in extensive litigation before the chambers over where responsibility for protection of prosecution witnesses should lie, leading at one point to the withdrawal of key sexual violence charges in the Katanga and Ngudjolo case. While the resolution of the issue lies now with the appeals chamber and the sexual violence charges were reinstated, enlarged, and recently confirmed by the pre-trial chamber,<sup>22</sup> this dispute is a disappointing setback given that there had been agreement previously between the two organs that the Registry would be responsible for witness protection, a decision with which Human Rights Watch strongly agreed.<sup>23</sup>

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<sup>22</sup> *Prosecutor v. Katanga and Ngudjolo*, ICC, Case No. ICC-01/04-01/07, Decision on the confirmation of charges, September 30, 2008, pp. 211-212.

<sup>23</sup> For discussion of the importance of maintaining neutrality in the court’s protection programs by entrusting them to the Registry, see Human Rights Watch, *Courting History*, pp. 168-172.

Disagreements between the Registry and the Secretariat of the Trust Fund for Victims over administrative matters have held up the implementation of projects approved by the chambers in February and March 2008. A facilitator has been appointed from The Hague Working Group on the implementation of the TFV's regulations. The CBF in its report on the court's 2009 proposed budget also called attention to "some internal discussions about the relationship of the Secretariat to the Registrar for the purposes of administration" and noted "that there appeared to have been some functions created in the Secretariat which ought to be performed by the Registry and it requested the Court to review these arrangements."

These examples represent some of the ways in which a lack of coordination within the court is hampering its development. And, in the context of external challenges to the court's legitimacy, they convey a sense of internal disorder that detracts from the good progress in many areas and leaves the court vulnerable to unprincipled attack. In their dialogue with court officials—whether through the informal New York and The Hague Working Groups or in bilateral contacts—states parties should reinforce the importance of the "One Court" principle to the institution's success.

During this ASP session, states parties should:

- Explicitly reference the importance of the "One Court" principle in their statements during the ASP general debate; and
- Support strengthening existing language on the "One Court" principle in the ASP omnibus resolution to give the principle more prominence.

## **B. Election of judges**

In January 2009, ICC states parties will vote to elect six new judges to the ICC. Human Rights Watch attaches the greatest importance to the nomination and election of the most highly qualified candidates. As the ICC develops, the bench needs to build the credibility of the court. These new judges will be elected to nine-year terms and will greatly influence the work of the ICC for many years. States parties, in turn, as the nominators and electors of judges, have the greatest opportunity to influence the success of the court by providing it with the best possible bench.

The nominations period for judicial candidates remains open at this writing; thus far, there are 17 candidates. At this point of the development of the court, the nomination (and subsequent election) in particular of "List A" candidates, that is, those candidates with



criminal law expertise and prior experience in criminal proceedings as judges, prosecutors, or defense lawyers, is particularly important. Court proceedings are picking up in speed and volume at the ICC; the practice of other international and hybrid criminal tribunals indicates that seasoned practitioners are needed on the bench to conduct proceedings in the most efficient manner. Human Rights Watch urges states parties to nominate additional candidates in the time remaining, particularly those candidates with criminal law expertise and prior experience in criminal proceedings.

Many elections at the United Nations and other international institutions have been characterized by “vote-trading,” where states agree to support one another’s candidates with minimal regard to the individual’s qualifications. Vote trading over ICC positions could lead to the election of poorly qualified judges, and hence to a bench that will not be the most skilled and representative. Looking forward to elections in January, Human Rights Watch urges states parties to put aside narrow interests and vote only for the most highly qualified judges.

Human Rights Watch asks the President of the ASP Bureau to appeal again to states parties to refrain from using vote-trading in respect of the election of judges of the court.<sup>24</sup> In addition, we recommend that the ASP

- Include in the omnibus resolution of this session language underscoring the importance to the court’s success of the election of only the most highly qualified judges in January 2009.

## **C. Ensuring adequate resources and the court’s independence**

### *1. Overview of issues raised by the 2009 budget proposal*

As funders of the ICC, states parties have an obligation to ensure that the court has resources adequate to the task set by the Rome conference. We recognize that the difficult economic conditions presently experienced around the world create real hardships for states parties in their national budgets and that the court shares responsibility to ensure efficiency in its operations and to properly manage its resources. At the same time, however, this

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<sup>24</sup> See, for example, ASP, “Proceedings,” *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, First session, New York, September 3-10, 2002*, ICC-ASP/1/3, Part I, para.27 (“In order to ensure the integrity of the electoral process, the Bureau also appealed to States Parties to refrain from entering into reciprocal agreements of exchange of support in respect of the election of judges of the Court.”).

cannot be a license for denying the court resources necessary to its mandate, particularly those essential to ensuring fair proceedings and the court's impact within affected communities.

Indeed, the Committee on Budget and Finance in its report on the work of its eleventh session—while indicating that the court must increasingly find ways to live within the means available to it—recognizes that “there [is] decreasing room to contain costs through the rigorous analysis of each year's estimates.”<sup>25</sup> Instead the court's costs are driven by evolving judicial and policy decisions on “length of proceedings, legal aid for the accused, legal aid for victims, protection of witnesses and victims, and participation of victims.”<sup>26</sup> These “cost drivers” come from the trial of complex cases, facilitation of effective victim participation, and rigorous adherence to fair trial guarantees, all of which are intimately related to the very “raison d'être” of the ICC—providing quality and fair justice in a meaningful way—and cannot be compromised.

While we very much agree with the CBF's assessment that there “would be risks if decisions within the Court continued to push costs up without a corresponding understanding and acceptance in the Assembly of the need to fund those costs,”<sup>27</sup> and we too encourage continued dialogue between the court and states parties, we wish to emphasize that states parties should understand that ultimate judicial and policy decisions belong to the court.

The CBF also recommends that the Registry “provide a statement of financial implications to chambers on matters under consideration, preferably prior to decisions being taken” and that “the Presidency advise chambers of the need to take appropriate account of costs in their deliberations.”<sup>28</sup> The independence of the court, including its judges, must be maintained. While concerns of efficiency can and do underlie judicial and policy decisions, we believe that it should be up to the judges to decide when financial information would be of use to their decision making on a specific issue before them.

We join in the recommendations advanced in the Coalition for the International Criminal Court team paper on budget and finance. Accordingly, we address here only three further issues with budgetary implications: institutional support for the defense, outreach, and

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<sup>25</sup> ASP, “Report of the Committee on Budget and Finance on the work of its eleventh session,” ICC-ASP/7/15 Advance Version, October 7, 2008, [http://www.icc-cpi.int/library/asp/ICC-ASP-7-15\\_English.pdf](http://www.icc-cpi.int/library/asp/ICC-ASP-7-15_English.pdf) (accessed October 31, 2008) (“CBF Report”), paras. 51-52.

<sup>26</sup> *Ibid.*, para. 53.

<sup>27</sup> *Ibid.*, paras. 52-53.

<sup>28</sup> *Ibid.*, para. 54.

family visits for indigent defendants.

## *2. Institutional support for the defense*

Fair trials, including full respect for the rights of defendants, are paramount for the court's credibility. In practice, respecting fair trial rights begins with ensuring equality of arms between the defense and the prosecution. The ICC has worked diligently to develop and implement an innovative approach to legal aid and the facilitation of the effective representation of defense interests. In doing so, the ICC has built on lessons learned from experience at other international tribunals.

An illustration of this is the practice of the Office of Public Counsel for the Defence (OPCD), which provides substantive support to the defense, operating independently of the Registry. The OPCD carries out its mandate in three primary ways: by assisting defense counsel who appear before the court; by supporting, and in some instances, representing the interests of the defense during the situation phase of proceedings; and through advancing the rights of the defense within and outside of the ICC.

When it comes to the OPCD's assistance of defense counsel who appear before the court, we understand that some have questioned whether there may be unnecessary and costly overlap where defense counsel is funded through the legal aid system. Defense counsel practicing before the ICC are not necessarily specialists in international criminal law,<sup>29</sup> however, and it is our strong view that the OPCD plays an essential role in increasing their efficiency and efficacy. For example, the OPCD maintains a database of template motions on standard procedural issues, which can be particularly helpful during the initial stages of representation. The OPCD also operates as an institutional memory for defense issues—including through the preparation of memoranda on issues ranging from victims' participation and a defendant's provisional release through to disclosure and the ICC's jurisdiction; that institutional memory can be shared with multiple defense teams. Where defense teams are funded by legal aid, their time saved, as well as the court's time saved through counsel properly instructed in its procedures and case law, can ultimately reduce the burden on the court's budget.

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<sup>29</sup> The court's policy is to permit defense counsel to maintain a domestic practice while appearing before the ICC. Prohibiting defense counsel from doing so was considered undesirable for a number of reasons, including: it is not in conformity with legal texts of the court dealing with the qualifications of counsel; it would limit the way in which law is practiced before the court as it prevents the system from benefiting from the richness of experience acquired through domestic practice; and it favors certain counsel and does not guarantee diversity and representation from various regions and legal systems of the world. See The Registry, ICC, "An ICC Strategy for Counsel: Underlying principles, Achievements and the Future Direction," (draft), unpublished document on file with Human Rights Watch, paras. 29-36.

To help ensure efficient and effective legal representation, the OPCD must be adequately resourced. Account must be taken that, as indicated above, the OPCD carries out a number of other tasks beyond assistance to individual defense teams, including acting as court-appointed ad hoc counsel during the situation phase and in some limited instances as duty counsel (that is, a provisional attorney assigned to a defendant by the court until he or she chooses permanent counsel), saving funds otherwise paid out to defense counsel from the legal aid budget. We support the recommendation of the Committee of Budget and Finance to allocate to the OPCD a much-needed P-4 Legal Adviser/Counsel on a General Temporary Assistance basis for one year.<sup>30</sup> This modest addition would, for example, double the office's capacity to appear in court as necessary. Accordingly, we urge the ASP to

- Support the addition of a P-4 Legal Adviser/Counsel for the OPCD.

Further, we note that the CBF has indicated that “[t]he need for this post beyond 2009 should be assessed following the Assembly’s consideration of the relationship between the legal aid scheme and OPCD and the most cost-effective means of providing ad hoc and duty counsel.”<sup>31</sup> In our view, the considerable value of the OPCD in assisting defense teams at the ICC and its overall contribution to the efficiency of proceedings would merit renewing this post in the future. We recommend that the ASP:

- Include language in the budget resolution underscoring the importance of effective and efficient legal representation for the defense during proceedings before the ICC; and
- Indicate a willingness to consider funding this P-4 position on a permanent basis.

We also welcome the dialogue between The Hague Working Group and the court on legal aid, including especially the work of the facilitator on legal aid. We hope that this has helped to clarify for states parties a number of aspects regarding legal aid for defendants, and, in light of this experience, we recommend that the ASP:

- Express support in the omnibus resolution for the work of The Hague Working Group facilitator on legal aid and encourage continued discussions on legal-aid related issues, including legal aid for victims’ legal representatives.

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<sup>30</sup> ASP, “CBF Report,” para. 94.

<sup>31</sup> *Ibid.*

### *3. Outreach*

Robust outreach and public information campaigns are of critical importance to ensure the relevance of the court’s work to affected communities—often located far from the court’s seat—and to foster wider understanding of the court through the dissemination of objective information about its mandate, its operations, and, equally important, its limitations. The latter can be particularly important to build support for the court where the court’s detractors are engaged in spreading misinformation about the court to suit their own purposes.

While initially slow to recognize the importance of outreach and public information, the court, particularly the Public Information Dissemination Section (PIDS) in the Registry, has made impressive strides in the past two years. Accomplishments include an ever-increasing range of outreach activities and the use of more field-based staff to devise and implement the court’s strategic plan for outreach.<sup>32</sup> At the same time, however, it is clear that there is much room for improvement, particularly in developing more targeted and tailored outreach campaigns with greater impact on the ground.

In light of the court’s progress and the challenges still ahead, there are a number of steps states parties can take in aid of the court’s outreach programs.

We supported the additional resources requested this year by PIDS to produce audio-visual materials on the upcoming trials and judicial proceedings, to be shown to local communities. We note, however, that the CBF recommended that the additional resources not be approved given the level of unutilized capacity in PIDS; the Committee recommended instead that PIDS meet its changing needs by redistributing its currently unused capacities.<sup>33</sup>

As also expressed in team papers of the Coalition for the International Criminal Court, the effectiveness of audio-visual materials depends on having sufficient field staff to broadcast the materials and to organize effective outreach presentations in which the materials can be presented to remote communities. We would oppose redeploying resources within PIDS at the expense of much-needed staff resources in the Court’s field offices or of any other key outreach resources.

Accordingly, the ASP should:

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<sup>32</sup> ASP, “Strategic Plan for Outreach of the International Criminal Court,” ICC-ASP/5/12, September 29, 2006, [http://www.icc-cpi.int/library/asp/ICC-ASP-5-12\\_English.pdf](http://www.icc-cpi.int/library/asp/ICC-ASP-5-12_English.pdf) (accessed November 4, 2008).

<sup>33</sup> ASP, “CBF Report,” para. 91.

- Request the Registry to fund the additional audio-visual producer position requested by PIDS through redeployment of non-field resources available to PIDS, through temporary redeployment of resources for field-based positions while those positions are under recruitment, or by reallocating other Registry resources to PIDS for this purpose, subject to informing the Committee and the Assembly of such reallocations; and
- Urge PIDS to immediately recruit for the posts yet to be filled that are critical to the effective implementation of the Court’s outreach strategy, in particular, the field positions.

In addition, an updated outreach strategy would be timely in light of the court’s experience gained during the last two years of outreach activities. In this session’s omnibus resolution, the ASP should:

- Invite PIDS to prepare an updated “Strategic Plan for Outreach of the International Criminal Court” for presentation to the eighth session of the ASP.

To better inform themselves about the court’s outreach activities, states parties’ delegates should:

- Attend the outreach meeting to be organized by the court in the margins of the ASP.

#### *4. Family visits*

As a standard bearer for international justice, the ICC is obliged to uphold the highest standards of criminal justice administration. This obligation—while relevant to the court’s many and varied responsibilities—takes on importance during pre-trial detention, where the court acts to deprive of their liberty persons who are presumed to be innocent.

The right of all detained persons to family visits is well recognized.<sup>34</sup> It bears at least on the right to family life in addition to established detention standards. The ICC’s rules state that a “detained person shall be entitled to receive visits,” and the Regulations of the

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<sup>34</sup> See, for example, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles), adopted December 9, 1988, G.A. Res. 43/173, annex, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988), principle 19 (“A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations.”).

Registry state that the “Registrar shall give specific attention to visits by family of the detained persons with a view to maintaining such links.”<sup>35</sup>

In most cases, however, realizing this right at the ICC without financial and other assistance will be impossible for indigent pre-trial detainees and their families. In light of the ICC’s vast territorial jurisdiction, persons detained at the seat of the court in The Hague will likely find themselves held far from where their alleged crimes have been committed and their families are located. Lengthy pre-trial proceedings—sometimes coupled with detention by national authorities before surrender to the ICC—mean that pre-trial detention, during which time detainees enjoy a presumption of innocence, may stretch for a period of several years. Without court-paid family visits, indigent ICC detainees may go for several years without in-person contact with their family members.

Under the circumstances, Human Rights Watch supports the court’s proposal to fund family visits for indigent ICC detainees awaiting trial. At this ASP session, states parties should:

- Approve a policy of funding of these visits, as well as the corresponding resources required in the court’s regular budget.

## **D. Establishing an independent oversight mechanism**

Under article 112(4) of the Rome Statute, the ASP “may establish such subsidiary bodies as may be necessary, including an independent oversight mechanism for inspection, evaluation and investigation of the Court, in order to enhance its efficiency and economy.”

Human Rights Watch joins in the Coalition for the International Criminal Court team paper on the establishment of an independent oversight mechanism. The court cannot presume to be immune from the scandals, bad practices, and corruption well-known to international institutions, and states parties should take every opportunity to protect the court by ensuring adequate oversight. Those seeking to undermine the court’s credibility will be hard-pressed where the court avoids giving good grounds to do so.

We encourage the ASP to move forward purposefully toward the establishment as soon as possible of an independent oversight mechanism uniquely suited to the ICC, and we

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<sup>35</sup> Regulations of the Court, International Criminal Court, ICC-BD/01-02-07, June 14 and November 14, 2007, <http://www.icccpi.int/library/about/officialjournal/ICC-BD-01-02-07-ENG.pdf> (accessed October 31, 2008), reg. 100; Regulations of the Registry, International Criminal Court, ICC-BD/03-01-06, revised September 25, 2006, [http://www.icc-cpi.int/library/about/officialjournal/ICC-BD\\_03-01-06\\_English.pdf](http://www.icc-cpi.int/library/about/officialjournal/ICC-BD_03-01-06_English.pdf) (accessed October 31, 2008), reg. 179.1.

welcome the work done by the ASP Bureau facilitator and the court to put forward proposals thus far.<sup>36</sup> As part of their discussions, we ask states parties and court officials to examine the court's existing governance structure. Unlike the court,<sup>37</sup> we doubt that these existing structures, even if improved or enhanced, would provide an adequate substitute for a wholly independent oversight mechanism, particularly where criminal misconduct is alleged. At the same time, however, we agree with the CBF that evaluating existing governance structures would be useful,<sup>38</sup> both to highlight gaps in oversight to be met by any new mechanism and with a view toward strengthening those structures to provide increased oversight of management performance.

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<sup>36</sup> "Report to the Bureau of the Assembly of States parties to the Rome Statute of the International Criminal Court by the Facilitator for the establishment of an independent oversight mechanism of the International Criminal Court," New York, July 24, 2008, unpublished document on file with Human Rights Watch; "Court's Non Paper on the independent oversight mechanism," July 15, 2008, unpublished document on file with Human Rights Watch.

<sup>37</sup> "Court's Non Paper on the independent oversight mechanism," para. 17.

<sup>38</sup> ASP, "CBF Report," paras. 36, 40.



## Recommendations in Summary

In their statements during the **general debate** at the Assembly of States Parties of the International Criminal Court, states parties should:

- Confirm that justice is a necessary component of lasting peace and an important objective in its own right;
- Affirm the importance of maintaining the International Criminal Court's independence from political interference;
- Convey commitment to ending impunity for the most serious international crimes, including those that are ongoing in Darfur;
- Underscore their shared commitment to international justice;
- Underscore the need for states to cooperate with the International Criminal Court, particularly with regard to arrests;
- Make particular mention of the urgent importance of international and regional action toward execution of the International Criminal Court arrest warrants for the LRA; and
- Explicitly reference the importance of the "One Court" principle.

With regard to the **omnibus resolution**, the Assembly of States Parties should:

- Invite the court to include relevant public information aspects of its strategy for Africa in its "Integrated Strategy for External Relations, Public Information, and Outreach;"
- Provide a mandate for a facilitator from the New York Working Group on the court's strategy for Africa to facilitate discussion and future plans. Appointment of a facilitator from the New York Working Group will ensure the fullest possible consultation among African states parties in light of the greater representation of those countries in New York;

- Acknowledge the creation of the position of cooperation adviser in charge of arrests within the Office of the Prosecutor, welcome the Office of the Prosecutor's initiative in this regard, and pledge the full support and cooperation of states parties with the cooperation adviser in charge of arrests;
- Support strengthening existing language on the "One Court" principle to give the principle more prominence;
- Include language underscoring the importance to the court's success of the election of only the most highly qualified judges in January 2009;
- Express support for the work of The Hague Working Group facilitator on legal aid and encourage continued discussion of legal aid-related issues, including legal aid for victims' legal representatives; and
- Invite the Public Information Dissemination Section to prepare an updated "Strategic Plan for Outreach of the International Criminal Court" for presentation to the eighth session of the Assembly of States Parties.

With regard to the **budget resolution**, the Assembly of States Parties should:

- Include language underscoring the importance of effective and efficient legal representation for the defense during proceedings before the International Criminal Court;
- Support the addition of a P-4 Legal Adviser/Counsel for the Office of Public Counsel for the Defence, and indicate a willingness to consider funding this P-4 position on a permanent basis;
- Request the Registry to fund the audio-visual producer position requested by the Public Information Dissemination Section through redeployment of non-field resources available to the section, through temporary redeployment of the section's resources for field-based positions while those positions are under recruitment, or by reallocating other Registry resources to the Public Information Dissemination Section for this purpose, subject to informing the Committee on Budget and Finance and the Assembly of States Parties of such reallocations;

- Urge the Public Information Dissemination Section to immediately recruit for the posts yet to be filled that are critical to the effective implementation of the court's outreach strategy, in particular, the field positions; and
- Approve a policy of funding of family visits for indigent pre-trial detainees at the International Criminal Court, as well as the corresponding resources required in the court's regular budget.

We encourage **states parties' delegates** to

- Attend the discussions on cooperation and article 16 and on outreach, organized as side meetings during this session of the Assembly of States Parties.