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IBA/ICC Monitoring and Outreach Programme

# **The Quest for a Public Face:**

**the public debate on the International Criminal Court and its efforts to develop a vision and coherent strategy on external communications**

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# **The Quest for a Public Face: the public debate on the International Criminal Court and its efforts to develop a vision and coherent strategy on external communications**

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# List of Abbreviations

ASP	Assembly of States Parties
AU	African Union
CAR	Central African Republic
DRC	Democratic Republic of Congo
ECHR	European Convention on Human Rights
IBA	International Bar Association
ICAP	International Crime in Africa Programme
ICC	International Criminal Court
ICJ	International Court of Justice
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
ISS	Institute for Security Studies
JCCD	Jurisdiction, Complementarity and Cooperation Division
LRA	Lord's Resistance Army
NGO	Non-governmental organisation
OTP	Office of the Prosecutor
OSISA	Open Society Initiative for Southern Africa
PIDS	Public Information and Documentation Section (of the Registry)
RPE	Rules of Procedure and Evidence (of the Assembly of States Parties)
UN	United Nations
UNSC	United Nations Security Council
UPC	<i>Union des Patriotes Congolais</i>
SADC	Southern African Development Community
SADC LA	Southern African Development Community Lawyers Association





# Executive Summary

The challenge of making international tribunal proceedings accessible and visible to the global public involves peculiar difficulties due to the geographical gap between these courts and the affected communities, as well as the extensive, potentially infinite, number of beneficiaries of international justice. However, the context in which international criminal tribunals operate today implies public scrutiny to a considerably higher degree than that of national courts. A lack of effective external communications can diminish cooperation and jeopardise the credibility of these institutions.

In the past year the climate in which the International Criminal Court (ICC) operates has dramatically changed. After the indictment of a sitting head of state, President Omar Al-Bashir of Sudan, the position of the ICC in the landscape of international justice has become more prominent, but the Court has also experienced prolific criticism. As a result the ICC is faced with the considerable challenge of managing the tension between the judicial nature of the institution – demanding full independence and impartiality – and the competing need for proactivity in engaging with the global community.

In keeping with its role and objectives, the International Bar Association (IBA) carried out research into the ICC's external communications mandate to assess whether the Court is ensuring complete and effective publicity for its proceedings. In particular, the IBA has considered external relations, public information and outreach activities during the reporting period of September 2008 to September 2009, with specific attention given to the roles of the different ICC organs.

This IBA report notes that in the course of the years the Court has reached out to thousands of victims in the situation countries, and further progress has been made this year through the development of audiovisual tools, targeted work plans and a standard methodology around specific and important moments of the proceedings. However, the outreach work of the ICC Registry still faces limitations. Achievements to date could be optimised by putting integrated communication strategies in place in each situation country, merging outreach, public information and external relations activities. To date a similar practice has been developed by the Public Information and Documentation Section (PIDS) in relation to specific moments or stages of the proceedings in The Hague, where strategies have been developed to publicise these events using outreach and public information tools. However, in general the three areas of intervention are misaligned, and fail to build on each other's results.

At present the greatest deficiencies are evident in the Registry's public information work, principally because of the very limited resources allocated, but also because of the lack of a strategic framework. 2009 presented some unique public information opportunities for the Court: namely the start of its first trial, and a decision to indict a sitting head of state for war crimes and crimes against humanity. Although the PIDS put considerable effort into maximising the media impact of key moments of the proceedings, it failed to drive the debate around the ICC in the media. A cross-organ coherent media strategy is lacking, and overall the approach to public information has not been sufficiently proactive, leaving scope for misinformation to be spread.

The ICC's Office of the Prosecutor (OTP) has allocated resources and delivered effective and accurate messages to communicate its mandate and work. However, the OTP's communication efforts are not a substitute for those of the Registry. Indeed, the Registry is the only organ which is in a position to provide unbiased information. Unfortunately, in the absence of effective public information from the Registry, the Office and the person of the Prosecutor have become the only face of the ICC in the media. The IBA recommends that the Registry and the Presidency should increase public information work to ensure greater balance in the messages delivered to the public from the different organs, in order to safeguard the perception of independence and neutrality of the institution of the ICC.

In light of the current climate this IBA report also discusses the need and appropriateness of Court's organs' responses to unfounded criticism or misinformation in the media. It is found that the ICC could proactively engage in the ongoing debate in the media without compromising its independence and impartiality.

Building the credibility of the ICC as an impartial and fair institution of justice requires considerable effort and the engagement of as many actors as possible. In addition to the ICC Registry and the OTP, an analysis of the role of other actors both within and outside the ICC shows that many can be instrumental in disseminating information, correcting misinformation and making the ICC mandate fully understood. Examples are given in this IBA report in relation to States Parties and the Assembly of States Parties (ASP) as well as the ICC Presidency, ICC judges and ICC List of Counsel.

In its efforts to reach out to lawyers in different jurisdictions and tackle the current debate surrounding the ICC in Africa, during the reporting period the IBA carried out outreach activities with lawyers from Southern Africa. With funding from the John D and Catherine T MacArthur Foundation the IBA worked with bar leaders in Southern Africa, as well as with lawyers' associations in South Africa and Mozambique, thus facilitating a debate around the relevance of the ICC and international justice to SADC countries.

The debates generated at the IBA conferences and seminars reflected some of the concerns which are generally articulated in media reports from Africa. For example, the perception of selective justice and a sole target on Africa; the role of the United Nations Security Council (UNSC); the apparent dichotomy between peace and justice; and concerns about universal jurisdiction and international justice in Africa. The role of lawyers in SADC was also extensively discussed at these events, together with the opportunities for practitioners to engage with the work of the ICC.

The outreach events organised by the IBA were successful in offering a forum to discuss ICC issues from a lawyer's perspective, and in relation to the specifics of the SADC region. In addition the events encouraged lawyers' associations and individual professionals to become engaged with ICC issues. Indeed, as the debate around the ICC in Africa is shaped by several differing concerns, it is important for professional associations to redefine their position in relation to international justice, and to advocate for the Court.

## Observations and recommendations

The ICC is faced with the considerable challenge of making its proceedings and mandate known to the public without compromising its independence. The tension between the judicial core of the institution and the need for proactive engagement with the public has been resolved, to date, by prioritising a perception of judicial independence over openness. However, as perceptions of the Court have changed and proceedings have commenced in The Hague, public information and external relations should be increased while outreach to the affected communities continues.

The IBA welcomes the consistent outreach methodology developed in relation to key moments of the proceedings, as well as the production of audiovisual materials by the ICC Outreach Unit. Despite a contrary recommendation made by the Committee on Budget and Finance, the IBA urges the ASP to establish permanent posts for an in-house audiovisual team. Audiovisual materials have proved to be effective as a tool for both outreach and public information.

In addition, as the strategic framework for outreach is undergoing revision, the IBA encourages the Registry to establish consistent and lasting partnerships with local actors and to integrate public information and outreach tools in situation countries to maximise the impact of its activities. The IBA also reiterates its earlier recommendation to undertake outreach in situations under analysis. Moreover, the IBA calls on the Registry to use the opportunity offered by the 2010 Review Conference in Kampala to campaign for the ICC in Africa as a whole.

The current debate about the ICC demands a new way of thinking about external communication and redefined priorities. The IBA recommends that the Registry's engagement with the media should be systematic, coherent and mindful of the relations that different media across the globe hold with the Court and other authorities. The ICC Presidency and its judges should also be more open to intervention in the media and more proactive in publicising their decisions. A media strategy should be developed in consultation with different Court's organs and external consultants to transform media work from an ad hoc initiative linked to key stages of the proceedings into a sustainable programme mainstreamed in all ICC activities.

External relations are another important component in the realm of the ICC Presidency and the OTP. As the political environment is different to that experienced by the first ICC Presidency, the IBA welcomes the commitment expressed by President Song to engage more with the media and establish an interactive dialogue with ICC partners. The IBA recommends that the Presidency also demonstrates leadership in developing, in a timely manner, a clear mandate on external communications aiming to reinforce the position of the ICC in the broader landscape of international justice.

Reinforcing public information work currently undertaken by the different organs of the Court, and stimulating an increase in volume, is key. The IBA recommends that the ASP collectively reaffirm and adopt a resolution at its next session urging the Court to consistently disseminate information and publicise its proceedings in a language and manner adequate to reach the global public. The ASP should also recommend, as a matter of urgency, the adoption of a strategic framework for public information consistent with the strategic plan for outreach and external relations objectives.

In addition, States Parties are encouraged to individually promote the ICC at the national level, especially in the media.

In working on ICC-related issues with lawyers in Africa the IBA focused on SADC countries, particularly Mozambique and South Africa. In relation to the latter the objective was to build a momentum around the ICC, and to disseminate information and initiate debate among the South African legal profession in different parts of the country. Seminars organised in Johannesburg and Cape Town also included academics and students. The programme was successful in encouraging lawyers' associations to become committed to the ICC, and in providing an opportunity to inform individual lawyers on the possibilities for legal professionals' engagement with the work of the Court.

In Mozambique the IBA assisted the national bar association in organising a two-day high level international conference in Maputo, in collaboration with the Institute for Security Studies (ISS). The event was widely reported in the local media and was successful in that the Minister of Justice took the opportunity to announce the intention of the executive to ratify the Rome Statute in 2010. The plenary of the conference echoed this statement, urging the ratification of the Statute and entrusting the local bar association to continue to assist civil society in advocating for ratification, and to convene a meeting to review developments.

The debates held at the IBA conferences and seminars reflected some of the concerns generally reported by the media in Africa. The negative perceptions and spread of misinformation surrounding the ICC in Africa are prime examples of the importance of investing resources in raising awareness of the Court and relaying timely and accurate information in an effective and proactive way. The ICC is faced with the challenge of maintaining its credibility and independence as a judicial institution, while engaging with the global public to promote transparency of its proceedings and understanding of its work and objectives. The different organs of the Court are increasing their efforts in this field, yet integrating outreach, public information and external relations strategies remains a key objective. The IBA urges the Court and its different organs to continue to treat its outreach initiative as an urgent priority, and to redouble its initiatives and strategies, in order to fulfil its mandate – to guarantee publicity of proceedings, in the full sense of the term.

# Introduction

## About the Programme

The International Bar Association (IBA), established in 1947, is the world's leading organisation of international legal practitioners, bar associations and law societies. The IBA influences the development of international law reform and shapes the future of the legal profession throughout the world. It has a membership of more than 35,000 individual lawyers and 197 bar associations and law societies spanning all continents. It has considerable expertise in providing assistance to the global legal community.

With the support of the John D and Catherine T MacArthur Foundation the IBA is currently implementing a programme to monitor the work and proceedings of the ICC and to conduct outreach activities. The monitoring component follows and reports on the work and proceedings of the ICC, focusing in particular on issues affecting the fair trial rights of the accused. The outreach component of the programme works in partnership with bar associations, lawyers and civil society organisations disseminating information and promoting debate on the ICC in different jurisdictions across the globe.

Findings of the Programme are documented in regular reports and widely distributed to the Court, the IBA membership, and the global legal community.

## About the Report

With its first trial having started in February 2009 and its first indictment of a sitting head of state, the debate around the ICC is flourishing in the media. Access to and publicity of ICC proceedings is key to the credibility and effectiveness of the institution. Part I of this fourth IBA outreach report looks into developments, activities, achievements and challenges experienced by the ICC in relation to its external communications mandate to ensure publicity of judicial proceedings between September 2008 and September 2009.

In the reporting period the IBA gathered information and consulted with a number of stakeholders including court officials, members of the diplomatic community and civil society. The Programme participated in a number of consultations to discuss ICC strategic policy documents and strategies.

Given the important role played by lawyers in advancing implementation of the Rome Statute, particular attention is paid to the level of awareness and engagement of lawyers and bar associations in different jurisdictions and to the institutional dialogue between the ICC and the legal profession.

IBA outreach work on the ICC in different jurisdictions used tailored programmes and tools spanning from the publication of articles in lawyers' magazines and presentations in meetings to seminars and conferences. In light of the current debate in Africa around the ICC, Part II of this IBA Report describes activities carried out by the Programme and conveys the messages and debates raised about the ICC at the national level.



# PART I – PUBLICITY AND EXTERNAL COMMUNICATIONS

## Introduction

The Rome Statute establishing the International Criminal Court (ICC or ‘the Court’) expressly enounces publicity of its proceedings,<sup>1</sup> mirroring the approach of both the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). The requirement of publicity in criminal proceedings is a principle of judicial transparency featured in most legal systems around the world and well recognised in international criminal law, its significance so self-explanatory as not to require further explanation. To reflect on its meaning it is important to note that fair trial requirements generally include a public hearing, and publicity of proceedings is considered a key guarantee that the rights of the accused are being respected.<sup>2</sup> As a substantial formality of the proceedings, publicity of trials aims at protecting the beneficiaries of justice against secrecy and arbitrariness produced by a lack of public oversight.

The European Convention on Human Rights<sup>3</sup> (ECHR) recognises publicity as a key feature of fair trial guarantees. In the jurisprudence of the ECHR a trial complies with the requirements of publicity if the public and the media are able to obtain information about its date and location, and if this location is easily accessible to the public. In many cases these conditions would be fulfilled simply by the fact that a hearing is held in a regular courtroom large enough to accommodate spectators.<sup>4</sup> Indeed, one of the benefits of a public hearing is to ensure that the trial is fair through allowing the presence of the media. The media reporting on court proceedings is also recognised as having an educational function in the case of international tribunals.<sup>5</sup>

Making the administration of justice visible contributes to building and maintaining confidence in the courts. According to former ICTY President Meron, ‘the reciprocal relationship between public respect for the courts and the judge’s impartial comportment is enhanced by the openness of proceedings and reasoned judgement, which also generate public respect for the courts’.<sup>6</sup> Thus for a court to offer a venue for credible settlement of a dispute it needs to gain public respect as a neutral and independent arbiter.<sup>7</sup> In order to do so ‘justice must not only be done but should manifestly and undoubtedly be seen to be done’, as British jurist Lord Hewart famously stated in 1924.<sup>8</sup>

The challenge of making international tribunal proceedings accessible and visible to the global public involves peculiar difficulties due to the geographical gap between these courts and the affected communities, as well the extensive, potentially infinite, number of beneficiaries of international justice administered in The Hague. However, the context in which international

1 Articles 67, 69 74 and 76 of the Rome Statute of the International Criminal Court (hereafter Rome Statute).

2 See for example Art 14 ICCPR and Art 6 ECHR.

3 [www.echr.coe.int/ECHR/EN/Header/Basic+Texts/The+Convention+and+additional+protocols/The+European+Convention+on+Human+Rights/](http://www.echr.coe.int/ECHR/EN/Header/Basic+Texts/The+Convention+and+additional+protocols/The+European+Convention+on+Human+Rights/) (accessed 22 September 2009).

4 Vladimir Tochilovsky Vladimir, *Jurisprudence of the International Criminal Courts and the European Court of Human Rights, Procedure and Evidence*, (Martinus Nijhoff, 2008) page 308.

5 See ICTY in *Prosecutor v Tadic*.

6 T Meron, ‘Judicial independence and impartiality in international criminal tribunals’, *The American Journal of International Law* (2005) 99,360.

7 Ibid.

8 *Rex v Sussex Justices*, ex parte McCarthy, 1 KB 256, 259 (1924).



criminal tribunals operate today implies public scrutiny and demands credibility of the institution of justice being scrutinised.

In order to tackle the issue of publicity and accessibility of proceedings the ICC developed its Integrated Strategy on External Relations, Public Information and Outreach (hereafter ‘the Integrated Strategy’).<sup>9</sup> The Integrated Strategy was produced in 2005 underlining objectives, definitions and roles related to the Court’s external communication mandate, which formed a common ground to be supplemented by thematic strategies related to its three main components: namely outreach, public information and external relations. In 2006 the Court produced a strategic plan for outreach, while a public information strategy is currently under discussion. No external relations strategy exists or is available as a public document.

The setting of international tribunals based in The Hague but prosecuting crimes committed thousands of kilometres away could be considered problematic, demanding compensatory measures to ensure accessibility for the public. According to the ECHR when the proceedings are held outside of normal court rooms the state is in fact under an obligation to take compensatory measures in order to ensure that the public and the media are duly informed about the place of the hearing and are granted effective access.<sup>10</sup>

Non-governmental organisations (NGOs), including the IBA have long recommended that the ICC adopt additional measures to fill the geographical gap between the Court and its beneficiaries by disseminating information about the Court and facilitating public scrutiny of the proceedings.

Since the three external communication components of the Integrated Strategy differ in scope and target audience, while also implying different levels of engagement by each ICC organ, this part of the Report will analyse each of them separately in the chapters that follow.

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9 Integrated Strategy for External Relations, Public Information and Outreach available at: [http://www.icc-cpi.int/Menus/ICC/Structure+of+the+Court/Outreach/Integrated+strategy/Integrated+Strategy+for+External+Relations\\_+Public+Information+and+Outreach.htm](http://www.icc-cpi.int/Menus/ICC/Structure+of+the+Court/Outreach/Integrated+strategy/Integrated+Strategy+for+External+Relations_+Public+Information+and+Outreach.htm).

10 See above n4, page 308 in *Riepan v Austria*.



# Chapter One – The Court in context: outreach to the affected communities

Communities affected by crimes under investigation at the ICC have a particular interest in accessing the proceedings and understanding the mandate of the ICC. The Registry of the ICC carries the burden of ensuring access to the proceedings for affected communities through outreach activities. The scope of outreach is to establish a dialogue with the affected communities and ensure that they fully understand the judicial proceedings taking place in The Hague. Outreach work is by definition not very visible outside of the situation countries, as its target audience is limited to the particular communities affected.

As proceedings started in The Hague the gap between justice and its immediate beneficiaries was found to be intolerable; outreach was recognised to be an important non-judicial function of the Court and a priority since 2006. Thus the ASP decided to augment the financial resources allocated to the PIDS of the Registry to undertake outreach activities in situation countries. The Strategic Plan for Outreach of the International Criminal Court<sup>11</sup> (hereafter the ‘Strategic Plan for Outreach’) was published in September 2006, and as a result over the past three years outreach activities conducted by the ICC have increased exponentially, with great efforts spent by the Outreach Unit of the Registry in developing effective outreach tools to fit the contexts in which they operate.

## 1.1 Recent achievements

As noted in the 2008 IBA report *Beyond The Hague*,<sup>12</sup> since 2006 the quality of outreach work carried out by PIDS has improved, messages and tools have been refined and an evaluation process has been established to assess the work of the Outreach Unit. In the course of 2008-2009 the two major achievements of the Unit included the development of targeted work plans and a standard methodology around specific important moments of proceedings, such as for example the opening of a trial or a first appearance, as well as the production of audiovisual summaries for the *Lubanga*, *Katanga/Ngugiolo Chui* and *Bemba* proceedings. The IBA welcomes the adopted methodology as well as the production of audiovisual materials by the dedicated team of the Outreach Unit.

### a) Standardised methodology

As the Court entered a more active phase outreach work also moved from general information sharing on the mandate of the Court to explaining judicial processes and proceedings. In relation to significant moments or stages of the proceedings, the Court’s outreach work now follows a standard methodology organised in a preparation phase, during which communities are given background information on the case, followed by live broadcasting transmitted to large groups and/or on national television, and subsequent meetings organised with targeted groups (such as local NGOs and journalists, for example) where audiovisual summaries are played, followed by a discussion.

11 Strategic plan for the outreach of the International Criminal Court. <http://www.icc-cpi.int/Menus/ICC/Structure+of+the+Court/Outreach/Strategic+Plan/> (accessed 22 September 2009).

12 *Beyond The Hague: Forging linkages between the International Criminal Court and Key Jurisdictions*, September 2008, accessible at: [http://www.ibanet.org/Human\\_Rights\\_Institute/ICC\\_Outreach\\_Monitoring/ICC\\_IBA\\_Publications.aspx](http://www.ibanet.org/Human_Rights_Institute/ICC_Outreach_Monitoring/ICC_IBA_Publications.aspx) (accessed 22 September 2009).

The new standardised approach allows the Registry to build on the interest raised by key judicial events and use them as a catalyst for outreach activities in the situation countries. The IBA welcomes the consistent outreach methodology developed by the PIDS which integrates outreach and public information activities in relation to key moments of the proceedings. For example targeted activities for the opening of the *Lubanga* trial in February 2009 included: a sensitisation campaign in Bunia with local stakeholders; a similar campaign in Kinshasa with women and human rights groups; large group meetings in the villages; distribution of an introductory video about the Court to national television channels; and screening of the opening of the trial.

On the occasion of the *Lubanga* trial, the first ever trial before the ICC, a video screening of the television broadcasting of opening of the trial in the *salle polyvalente* was organised in the town of Bunia, where few people have televisions.<sup>13</sup> The Outreach Unit had invited and expected around 40 people, including NGO representatives and journalists, aiming to facilitate a debate among civil society after the screening. On the day 400 people gathered for the event, which had obviously generated great interest among the locals. According to local media tensions arose amongst Union of Congolese Patriots (UPC) supporters in the room and some people who were not admitted to the already packed room threatened to throw stones and cause damage if they were not let in. ICC outreach staff eventually decided to suspend the event for security reasons, cancelling the debate which was scheduled to take place after the screening.<sup>14</sup>

In order to remedy the situation the Outreach Unit, during the following weeks, distributed the CD of the opening of the trial with audio summaries of the hearings to local radio stations and to Hema and Lendu's community leaders for dissemination in their communities. As community radio stations in the Ituri region do not have the equipment to receive a signal or web stream from The Hague, audio summaries distributed by the Outreach Unit proved to be a good alternative, and since then weekly programmes have been maintained by local radio stations during the course of the trial.

In addition large group meetings and informative sessions with projections of videos were carried out in Ituri, Bunia and Kinshasa, while specific briefings and meetings were organised for journalists, legal professionals, students and diplomats. Finally, interviews were given by ICC staff on radio, and CDs and DVDs were distributed to radio and television channels.

## **b) Recruitment of an in-house audiovisual team**

In relation to the second major achievement by the Outreach Unit, the recruitment of an in-house audiovisual team who could follow the proceedings and produce materials for outreach and public information use was long overdue. Already in 2008 the production and use of both audio and visual summaries and programmes proved to be an effective outreach tool, especially for those affected communities with low literacy rates. In November 2008, however, the ASP did not approve the funding of two audiovisual positions within the Outreach Unit and at the beginning of 2009 – with the start of the *Lubanga* trial – the Registrar soundly decided to exercise budgetary flexibility to provide funds to finance one audiovisual producer position on a temporary basis. The IBA endorses

<sup>13</sup> Launch of the information campaign on the opening of the trial of Thomas Lubanga Dyilo in Ituri <http://www.icc-cpi.int/menus/icc/press%20and%20media/press%20releases/launch%20of%20the%20information%20campaign%20on%20the%20opening%20of%20the%20trial%20of%20thomas%20lubanga%20dyilo%20in%20ituri> (accessed 22 September 2009).

<sup>14</sup> <http://www.radiookapi.net/index.php?i=53&l=0&c=0&a=22003&da=&chi=0&of=1&cs=&cm=2&k=0&r=all&sc=0&cid> (accessed 22 September 2009).

this decision and is fully satisfied with the output produced by the audiovisual team.

From March to September 2009 the team produced 132 audiovisual summaries, several versions of the programme called 'Ask the Court', audiovisual materials for television broadcast (both at local and international level), and established video links used for outreach activities around the proceedings. The team is currently composed of one producer and one editor/cameraman who have been recruited on a temporary basis. Regrettably the 15 September 2009 Report of the Committee of Budget and Finance (CBF) recommends to the ASP 'that the post of P-2 Audiovisual Producer not be converted from GTS to an established post. The Committee questioned the need to create a permanent in-house capacity at this point.'<sup>15</sup>

The IBA notes with concern this recommendation from the CBF. The IBA considers that the audiovisual team has contributed much to ICC outreach in the course of 2009 and that the recruitment of a audiovisual producer within the Outreach Unit has been extremely cost-effective, since the materials produced have been used both as outreach and public information tools. The demand for increased public information and outreach activities from the Registry would not be cost-effectively met by outsourcing production of the materials, as only in-house capacity guarantees a timely response to judicial developments and consistency of messages delivered. With the second ICC trial due to start in November 2009, the IBA finds the CBF's reasoning short-sighted and inconsistent given the likelihood that there will be three consecutive trials and a total of four accused before the ICC in 2010.<sup>16</sup> Thus, the IBA urges the ASP not to endorse the CBF recommendation but to approve the establishment of a permanent position of audiovisual producer.

### c) *Staffing of the Outreach Unit*

Other positive developments in the reporting period included the full staffing of the Outreach Unit, the development of situation-related work plans by local staff of the ICC, and the ongoing revision of the Strategic Plan for Outreach. In the 2008 report *Beyond the Hague*, the IBA regretted that the failure to recruit outreach staff in the Central African Republic (CAR) was seriously hampering access to information for the affected communities.<sup>17</sup> The IBA welcomes the recruitment of an outreach coordinator for CAR, as well as the establishment of a fully functioning outreach team in the country. Similarly, the recruitment of a legal outreach coordinator for the Darfur situation – who is expected to start working in October 2009 – is another positive development.

It is to be noted that although the previous problem with staffing of the field office in CAR was not an excuse for the poor engagement with the affected communities, since the outreach coordinator took office in December 2008 a number of activities are reported to have taken place in Bangui and most recently in villages outside of the capital, including broadcasts of 13 episodes of an ICC radio programme in the local language.

The IBA welcomes the progress but encourages the Outreach Unit to further intensify its work in CAR. As it is, the Outreach Unit maintains the same number of permanent staff (19) as last year, although discussions around the proposed budget for 2010 seem to suggest relocation of outreach positions from

<sup>15</sup> Report of the Committee on Budget and Finance on the work of its thirteenth session, ICC-ASP/8/15 at page 18 (93).

<sup>16</sup> Ibid at page 11 (41).

<sup>17</sup> [http://www.ibanet.org/Human\\_Rights\\_Institute/ICC\\_Outreach\\_Monitoring/ICC\\_IBA\\_Publications.aspx](http://www.ibanet.org/Human_Rights_Institute/ICC_Outreach_Monitoring/ICC_IBA_Publications.aspx) (last accessed 22 September 2009).

Uganda to other situation countries.<sup>18</sup> While there are fewer judicial developments in relation to the Uganda situation and cases, the fact that Lord's Resistance Army (LRA) Commanders Kony, Odhiambo and Ongwen are still at large generates frustration and disappointment surrounding the work of the ICC in the country, which continues to demand a focused outreach campaign.

#### *d) Review conference*

The IBA notes that in 2010 the first Review Conference on the Rome Statute establishing the International Criminal Court (the 'Review Conference') will take place in Kampala, Uganda. Although this event is being organised by the ASP and not the Court per se, the Review Conference presents a unique opportunity to reach out to affected communities in Uganda, bridging the geographical gap between them, different court organs and States Parties' representatives. 2010 is therefore likely to be a demanding year for outreach in Uganda, when the Registry will not only need to address local perceptions about proceedings in The Hague, but also to explain the scope and objectives of the Review Conference as a forum for discussion on the founding instrument of the ICC.

In light of the above the IBA recommends that outreach staff be maintained in Uganda with the aim of maximising the impact of the upcoming Review Conference on the local population by working with their existing frustrations and concentrating on revision of the Rome Statute. In addition to outreach to Ugandans, the PIDS should use the opportunity to campaign for the Court in Africa as a whole – the region where the Review Conference is taking place as well as the geographical focus of the four investigations ongoing at the ICC.

## **1.2 Challenges**

While the messages and methodologies of the Outreach Unit are at present well defined, reaching out to the affected communities in their entirety is still problematic, especially in the context of the Democratic Republic of Congo (DRC) and the Sudan.

#### *a) Democratic Republic of Congo*

In the DRC, despite efforts to ensure that the affected community is informed about important stages of the proceedings, stakeholders in the field are concerned that interaction between the Court and the people is still very limited. Outreach activities organised by the ICC do not reach all provinces where affected communities are based. Current resources allocated to outreach make it unrealistic to extend coverage outside of the Ituri region and Kinshasa. Also, security concerns are said to be the main obstacle to carrying out completely decentralised outreach work in the country.

The IBA notes that the impact of outreach activities in the DRC is contentious, partly because limiting outreach to some areas necessarily allows for negative impressions to be formed in other parts of the country. Local stakeholders mostly report dissatisfaction from the local population from the Kivu or Lubumbashi regions, which are currently not a target for ICC outreach. Maximising the impact of outreach work in the DRC is critical because all but one suspect before the Court are Congolese nationals and crimes included in the Rome Statute are still being committed on Congolese territory. The geographically-limited approach followed by the Court, although financially sound,

<sup>18</sup> Proposed Programme Budget for 2010, programme 3400: public information and documentation section (335).

greatly hampers the ability of the Outreach Unit to tackle concerns and misperceptions in the local population. Rumours, misunderstandings and anti-ICC propaganda have in fact been present in the media and received by the local population.

In the absence of additional resources for outreach and given the current security situation in the DRC, the IBA recommends that the Court invest more in partnerships with local stakeholders including intermediaries and media operating in different provinces and develops a country-wide communication strategy which includes outreach, public information and external relations components exclusively focused on the DRC.

#### **b) Sudan**

In the situation of Darfur, Sudan, outreach to the affected communities continues to be a great challenge for the PIDS given the ICC staff's inability to travel to Sudan. The methodology followed has been to engage with the Sudanese diaspora and disseminate the records of these meetings through selected channels. In addition interviews and radio programmes are broadcast in the refugee camps in Chad, where Court officials also occasionally visit. The impact of these activities on the people of Darfur is limited as well as very difficult to measure. In order to compensate the IBA recommends complementing outreach activities with an intense public information campaign focusing on the Darfur investigation and cases, especially engaging African and Arabic-speaking media.

### **1.3 Outreach in situations under analysis**

At the time of writing the Strategic Plan for Outreach is under revision by the PIDS. A revised strategic framework gives the Outreach Unit the opportunity to refine its strategy, learning from past lessons while being innovative in developing solutions to ongoing challenges. Within this context the IBA wishes to reiterate its recommendation to the Registry to start with outreach work as early as an announcement is made by the OTP of consideration of a situation. Recently the OTP has adopted a more transparent approach to the analysis phase of its work by publicising extensively what situations are under scrutiny. By contrast the disclosure of this information has not generated a change in the outreach work of the Registry and until now no systematic outreach efforts have made in any of the situations under analysis.

For example in Colombia – the situation which has been known to be under analysis for the longest time – the sole outreach efforts made by local and international NGOs have been on an ad hoc and sporadic basis, by inviting Court officials to speak at conferences or seminars. The Registry maintained a reactive approach to this dissemination of information promoted by local stakeholders, yet the Prosecutor and staff of the OTP visited Colombia several times in the course of their work.

Nothing has been planned by the Registry in other situations under analysis such as Afghanistan – where ICC implementing legislation has been pending for years despite a justice system reform programme driven by the international community – or Kenya, which by contrast features a vibrant civil society and a lively domestic debate around the ICC since the establishment of the Waki Commission to investigate the post-election violence of 2007-08.



The benefits of conducting outreach in situations under analysis would be notable not only in terms of prevention of misinformation and misperceptions about the work of the Court at an early stage, but also in the long run, by generating savings for the Outreach Unit and promoting greater collaboration between the ICC and national authorities, possibly by encouraging genuine national proceedings in a real spirit of complementarity. Finally, early outreach would prepare the ground for the opening of a field office in the future, if needed, which could facilitate any investigation work of the OTP, help spread information about the Court across the globe, and contradict misperceptions of bias against particular regions.

The financial implications of consistent outreach work in situations under analysis should of course be considered, especially since the current budget and human resources of the Outreach Unit would not accommodate stretching so far. If additional financial resources would have to be allocated in order to conduct outreach in more situations, much could also be done with a modest increase in resources, and certainly with no need to invest in opening an office. For example, tools such as fact sheets about the ICC and the ICC at-a-glance programme could be made available in different languages and disseminated through local NGOs; participation of senior staff at debates and lectures in situation countries could be encouraged, not simply tolerated; the ICC legal texts and audiovisual materials could be shared with universities and schools; commentaries and articles could be published in local magazines and newspapers, and so forth.

Outreach work will meet the interest of local media and populations in situations under analysis and its benefits would overcome the costs. For these reasons the IBA encourages the Registry to zealously consider the possibility of developing an outreach activities plan and strategy for more (or all) situations under analysis. To this effect the IBA also encourages the ASP to allocate the necessary resources.

## **1.4 Conclusion**

In conclusion, current challenges to ICC outreach work could be better met through increased resources and a refined approach and strategic framework for outreach. This could encourage partnership with local people and organisations, integrate public information tools and expand outside of the four situations currently under investigation. It is reported that the implementation of the Strategic Plan for Outreach has allowed the Court to reach out to thousands of victims in the situation countries; however the achievements to date could be further maximised by putting in place integrated communication strategies in each situation country, thus merging outreach, public information and external relations activities not only in relation to specific moments or stages of the proceedings.

To date the PIDS has worked to integrate outreach and public information tools in relation to major developments in the courtroom which is an encouraging signal. However, the Registry's approach to outreach and public information has been squarely judicial – focusing mainly on the level of awareness of the different phases of judicial proceedings and on the actors in those proceedings. It is important to recall that communication is about audiences, not the source of information. Therefore in order to really address the concerns of local populations and affected communities, outreach efforts have to be integrated with public information tools and coordinated with the external relations efforts of the Presidency, as discussed below.

# Chapter Two – Placing the ICC in the international landscape through public information

## 2.1 The ICC public information function

The Integrated Strategy defines public information as ‘a process of delivering accurate and timely information about the principles, objectives and activities of the Court to the **public at large and target audiences**, through different channels of communication, including media, presentations, and the web site’.<sup>19</sup> ICC legal texts place great emphasis on the role and responsibility of the Registry in relation to public information.

Under the supervision of the Presidency, and without jeopardising the OTP mandate of communicating its own policies and activities, the Registrar ‘shall serve as the channel of communication of the Court’, maintain and publicise its records and the proceedings through broadcasting, and release transcripts, audio and video records of the hearings, as well as through the publication of the website of the Court.<sup>20</sup> Thus the core mandate of the Registry in relation to external communications is making information about the ICC and its proceedings public and accessible to both the affected communities and the general public – public information and outreach being distinct from each other because of their different target audiences and consequently distinct set of tools, messages and counterparts.

### a) *Resource allocation*

Since proceedings started in The Hague, great attention has been paid to outreach, while public information has played a less prominent role. Publicity of the proceedings throughout the world was seen as subordinate to the victims’ right to truth and justice. As a result very limited financial resources were allocated to public information. Within the Registry a Public Information Unit has been established, headed by the ICC spokesperson. However, the position of spokesperson/head of the Public Information Unit remained vacant for over two years, because of problems in identifying and recruiting a suitable candidate. The Court’s budget for 2009 included only two staff members at a professional level (one spokesperson and one web content manager) and a total budget of about US\$50,000, with a very limited travel allowance (US\$7,000) for the head of the Unit and no budget for the ICC website.<sup>21</sup> Notably the proposed budget for 2010 does not include any increased resources for public information work carried out by the Registry.<sup>22</sup>

Consultations held with the PIDS reveal that to meet past and current challenges posed by the lack of human and financial resources dedicated to public information, the staff of the entire

<sup>19</sup> See Integrated Strategy for External Relations, Public Information and Outreach at Part IV (emphasis in the original text).

<sup>20</sup> See Rules 13 and 15 of the Rules of Procedures and Evidence (RPE); Regulations 8 and 21 of the Regulation of the Court; and Regulation 6 and 103 of the Regulations of the Registry.

<sup>21</sup> Proposed programme budget for 2009 (ICC/ASP/8/10) page 113. [http://www.icc-cpi.int/iccdocs/asp\\_docs/ASP7/ICC-ASP-7-9%20English.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/ASP7/ICC-ASP-7-9%20English.pdf) (accessed 22 September 2009).

<sup>22</sup> Proposed programme budget for 2010 (ICC-ASP/8/10) page 115. <http://www.icc-cpi.int/NR/rdonlyres/F945056A-F020-4F6A-A626-B8015D20D925/0/ICCASP810ENG.pdf> (accessed 22 September 2009).

section ought to be reorganised so that the substantive public information work (including following the hearings, and drafting articles and internal documents) could be carried out by three legal outreach officers based in The Hague.

Whilst welcoming the recruitment of the Court's spokesperson/head of Public Information, who took office in March 2009, the IBA is concerned that the human and financial resources allocated for 2010 continues put into serious question the ability of the Registry to implement its public information mandate effectively. No credible public information work could be conducted with the current human and financial resources; indeed, the public information work of the Registry has to date been criticised for its limited output and the lack of a strategic framework.

It is interesting to compare the Registry's resources with those of the OTP, which has a more limited mandate in relation to public information. The OTP maintains a Public Information Unit within the Immediate Office of the Prosecutor, staffed by two people at professional level P-2 and one administrative assistant. The unit is responsible for press and media work under the direct supervision of the Jurisdiction, Complementarity and Cooperation Division (JCCD), which is generally responsible for external communications in relation to the policies and activities of the OTP. Appearances in the media by the Prosecutor and Deputy Prosecutor are frequent and staff of the OTP Public Information Unit travel regularly, accompanying senior officials on missions which almost always include a media component.

Notably the proposed OTP budget for 2010 includes extensive travel allowance for senior OTP staff, as well as a total of 47 missions to be undertaken by staff of the Immediate Office of the Prosecutor on top of situation-related missions. Furthermore the OTP allocated a budget for training on external communications – in fact the two public information officers are now prepared to give media training to content experts within the OTP, thus enhancing the in-house capacity to deal with the media.

The strident contrast between the allocation of resources by the OTP and that of the Registry encourages reflection on the importance attached to public information by the different organs of the Court. The Registry's decision not to allocate more resources for public information – for which it has primarily responsibility – does create the unfortunate impression that it considers it as less of a priority.

#### *b) The one court principle*

The IBA calls into question the impact that this inequality of resources has on the implementation of the one court principle – that the Court presents itself as one cohesive body, whilst respecting the independence of its different organs. It is to be noted that public information activities by the OTP and the Registry are not intended to substitute each other, as messages and approaches might differ. Public information activities at the OTP aim at explaining OTP policies and activities, as well as monitoring and galvanising interest in the media to build support and cooperation for its activities. As such, they should be maintained. However, the Registry as a neutral organ has a broader mandate: to communicate and inform about the Court as whole and disseminate information on the proceedings.<sup>23</sup>

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<sup>23</sup> Integrated Strategy for External Relations, Public Information and Outreach at Part VI.



The two roles are complimentary to each other, although the unbalanced public information activities of the two organs prevent the Court from projecting itself sufficiently as a multi-organ entity, with the risk of creating an impression of partiality or personalisation of the institution. At the same time the one court principle demands that the Court present itself as one cohesive body whilst respecting the independence of its various organs. Mindful of this risk, the Integrated Strategy provided that 'where different roles of organs require different messages, the roles should be explained'.<sup>24</sup> The one court principle could also be maximised through the use of consistent messages across the institution, as well as by a more robust representation of all different organs of the Court and parties to the proceedings in the media, which should both be facilitated by the Registry.

The limited attention given by the Registry to communicating and engaging with the general public is regrettable and it leaves the office and person of the Prosecutor to be the visible face of the Court, despite the fact that their role is not to spread general information about the ICC and its judicial processes in a neutral manner. The Registry should therefore disseminate judicial decisions and other key information about the Court in a timely manner, and simple language, so that the media can more effectively and accurately relay its message to the public at large.

The OTP must also ensure accuracy and consistency of information disseminated to the public. The IBA in its 2008 report *Beyond the Hague* expressed concern that the overlapping of press releases between the two organs resulted at times in fragmented information, and recommended that the Registry take the lead on public information, while encouraging more coordination and information sharing. One year later the IBA finds that progress has been made by the OTP as only one press release in 2009 dealt with matters related to judicial proceedings addressed by the PIDS.<sup>25</sup> The IBA recommends that in similar circumstances a joint press release be issued by the Court inclusive of OTP messages and original quotations in order to inform the public more effectively, without generating confusion.

Finally, the limited scope of the Registry's approach over time generated an information gap in the media, which has on occasion been filled by detractors of the ICC. The debate about the ICC is often manipulated in the media or simply flawed because of inaccuracies and misleading reports which are rarely challenged by the Court. The Registry should strive to answer questions about the Court that are out in the public domain in an effective (and timely) manner. Internal guidelines and talking points developed by the PIDS on how to address controversial issues raised about the Court in the public domain should be shared with other organs in a consultative manner and disseminated proactively by all organs. Finally, statements, speeches and presentations made by all ICC officials should be posted on the ICC website on a regular basis.

## **2.2 The cost of deficient public information**

It is often said that the real risk for the ICC is not the criticism it might face; however, it is important to reflect on the costs associated with the lack of effective public information, which include diminished public cooperation and jeopardy to the credibility of the institution. The IBA agrees that

<sup>24</sup> Integrated Strategy for External Relations, Public Information and Outreach at Part V.

<sup>25</sup> See OTP press release, 'No Temporary Release for Jean-Pierre Bemba', 14 August 2009 (ICC-OTP-20090814-PR444), issued on the same day of the PIDS press release 'Pre-Trial Chamber II renders a decision on conditional release of Jean-Pierre Bemba Gombo', 14 August 2009 (ICC-CPI-20090814-PR443), sending two conflicting messages to the public. The OTP refined its message a few days later with a second press release: 'Releasing Jean-Pierre Bemba would be an Error in Law', 25 August 2009 (ICC-OTP-20090825-PR445), which would have been sufficient.

as a judicial institution the ICC should not be influenced by criticism and should not shape itself to please its audiences. Yet credibility of the institution and cooperation and compliance with the Court's decisions are closely interlinked, and can be shaped by perceptions and misinformation. A total lack of awareness about the existence of the Court would seriously hamper the exercise of its judicial function. However, wide-spread misinformation and criticism can also diminish the support the institution enjoys globally. The latter scenario is far from being a mere speculation given the unsympathetic and polarised debate about the ICC in Africa in the past year.

In the current climate messages and their management become very important. On one hand, perceptions can be shaped by messages delivered by the ICC. On the other hand, information being relayed from the ICC must not only be sound, consistent and as accurate as possible, but it should also propagate as fast and as far as possible, to bring about the support the Court needs to fulfil its mandate.

The Court cannot afford to remain silent in the face of ruthless criticisms and prolific misinformation, but should engage with ongoing debates to ensure that information in the public domain is accurate and that the Court's mandate is fully understood. This could be done without compromising independence or impartiality, and without intervening in debates in the role of a political actor. In fact to ensure compliance of decisions by an institution which does not have an enforcement arm, credibility is fundamental.

Taking a holistic approach to cooperation would also be beneficial, forging a link between public opinion and national governments' compliance with ICC decisions, the media and civil society being the Court's best allies in this respect. Ultimately, greater visibility of the ICC could not only foster credibility and compliance, but could also assist in achieving the aim of being a deterrent, which the Rome Statute promised.

Finally, if a low-key approach to the ICC's visibility was preferred by the Court for other reasons, at present such an option is no longer available. The indictment of President Omar Al-Bashir of Sudan has forced the ICC into the public domain and made it a truly global institution, changing forever the environment in which the Court operates. So today a proactive approach to public information is a compelling reality, to which the Court needs to be alert. It must be more imaginative and forcefully project itself as a multilateral institution in order to inform the 'man on the street' about its mandate, goals and work.

## **2.3 Public information tools and the ICC website**

The impact of the ICC's communication and engagement with the general public remains limited to some extent because of the tools used by the Registry. To date the PIDS has privileged traditional tools, such as press releases and press conferences at key moments of judicial activities, fact sheets about the ICC, and a newsletter. The IBA commends the punctuality and clarity of the press releases issued by the PIDS in relation to the developments in the judicial proceedings. However, at the same time the IBA encourages the Public Information Unit of the Registry to assess and revise traditional tools according to redefined priorities. Tools should be made available to wider audiences and be more visible on the ICC website. More importantly, they should be developed within the framework of a Strategic Plan for Public Information.

In light of the limited resources available the PIDS is currently looking into modern technologies which offer great opportunities for maximising the impact of these tools and disseminating the Court messages at low cost. For example audiovisual summaries are posted on YouTube, including first appearance and confirmation of charges hearings in *The Prosecutor v Jean Pierre Bemba* and *The Prosecutor v Germain Katanga and Mathieu Ngudjolo Chui*; an introductory video on *The Prosecutor v Thomas Lubanga Dyilo* and the programme ‘ICC at-a-glance’, among others.<sup>26</sup> In addition the first edition of a new digital publication ‘The ICC Weekly Update’ was distributed on 16 September 2009 to the members of the ICC mailing list. The publication aims to present the judicial work of the Court as well as other relevant information ‘that will enable the audience a better understanding of the Court today’.<sup>27</sup> Since 31 July, the OTP has also been distributing a weekly briefing.<sup>28</sup> New technologies clearly offer opportunities for raising the profile of the Court in a cost-effective manner, and the IBA commends the above-mentioned initiatives.

#### a) *The ICC website*

In 2005 the Integrated Strategy announced that ‘a revamp of the ICC web site is underway to adapt it to the increase of judicial activities. A key goal of the revised website is to enhance accessibility. It will have an issue based structure and will feature a search engine and greater accessibility, particularly of Court related documents’.<sup>29</sup> A long-awaited development, the launch of the new ICC website took place in February 2009. It was hoped that the new website would allow easier access to court records as well as provide greater capacity for storing data.

In practice the new website represented a face lift but no relevant changes in terms of functions and content. The homepage remains difficult to navigate, even for users familiar with the Court’s main features. The details for contact persons in the different organs are hidden. For example, there is no ‘contact the ICC’ link on the homepage and contact information – including for tours and visits of the ICC – is only on the press and media page, which is not usually searched by the general public.<sup>30</sup> There is no general mailing list that users can subscribe to – the only visible one on the website is said to be reserved for media and press.<sup>31</sup> The website does not have the capacity to post downloadable audiovisual summaries of the hearings or programmes about the ICC, neither does it have features of modern websites such as RSS feed, Twitter messages, a link to Facebook, or interactive sections for the users.

It is to be noted that the launch of the website happened a few days before the opening of the trial of Thomas Lubanga –the first trial before the ICC – possibly the moment of greatest exposure to the public in the life of the Court. The timing of the launch was therefore inappropriate, since it was more difficult for users familiar with the old system, while it hampered access to the website’s full range of information as not all revised pages had been uploaded at the same time.

Besides the initial problems associated with the launch of the new website, challenges were also posed in terms of publicity and accessibility of the trial. Over the past few months, since the trial started,

26 See ICC - *The Prosecutor vs Jean Pierre Bemba* (first Appearance); Introduction to the Jean Pierre Bemba Confirmation of Charges hearing; ICC - Confirmation of Charges Introductory Video; Video introductif / Introduction video Thomas Lubanga Dyilo; 26 January 2009 *Le Procureur c Thomas Lubanga Dyilo*; 27 January 2009 *Le Procureur c Thomas Lubanga Dyilo*; ‘La CPI en un clin d’oeil’ ‘ICC at a glance’ 26.01.2009.

27 See [www.icc-cpi.int/Menus/ICC/Press+and+Media/ICC+Weekly+Update](http://www.icc-cpi.int/Menus/ICC/Press+and+Media/ICC+Weekly+Update)

28 [www.icc-cpi.int/Menus/ICC/Structure+of+the+Court/Office+of+the+Prosecutor/Weekly+Briefings](http://www.icc-cpi.int/Menus/ICC/Structure+of+the+Court/Office+of+the+Prosecutor/Weekly+Briefings)

29 Integrated Strategy for External Relations, Public Information and Outreach at Part VII.

30 See <http://www.icc-cpi.int/Menus/ICC/Press+and+Media/Contact/>

31 Ibid.

the web-using public has had to cope with necessary, but frequent, interruptions in the broadcast of the trial due to closed sessions without any explanation or information about their length being posted on the screen. The PIDS explained that they are not informed by the Chambers of the length of time that closed session hearings may take and that it is therefore difficult to properly inform the public in this regard. This notwithstanding, a simple message of acknowledgment for the temporary interruption of the hearing seems feasible to implement, and would help inform the web-using public who follow the proceedings remotely. In general it is important that the communication between the chambers and PIDS be improved in order that the public are in a better position to follow the proceedings. Finally, the new website seemed to suffer from technical problems which led to difficulties in transmission (for example, on some occasions there was no sound on the English live streaming link or the transmission would appear in French rather than English).

The PIDS has made commendable efforts to include a direct link to the Court schedule on the website's homepage. However, in general changes to the schedule of the hearings are not posted in a timely manner. Apart from the link to the *Lubanga* trial that appears on the home page, accessing the live streaming links to hearings in other cases is often a convoluted process. Further, important information such as the Court's recess dates are not available on the same page where the live streaming link is posted, so that a new visitor would not necessarily know the reasons for not broadcasting during this time.

In general the capacity and search engine seem to be insufficient for the growing pace of proceedings at the Court, while its functions are inadequate to increase accessibility to Court proceedings and disseminate information about the ICC effectively. Summaries of the hearings are not available online and transcripts are posted with considerable delay. Further, several old decisions and filings are missing from the relevant webpage with no explanation as to why.

The posting of confidential filings in particular is problematic. It is never explained why certain documents are classified as confidential, and those which are then disclosed at a later stage are re-numbered with no mention of the new case number next to the original filing. The user will often be confronted with a laconic message reading 'court record not available, confidential document' even when in fact the very same document has been disclosed to the public and is available at the bottom of the page in smaller font with the abbreviation 'Corr' (for corrigenda, NdR) in the numbering.<sup>32</sup> Furthermore, documents are sometimes posted online and classified according to their language but the actual language of the document for download is different from the one indicated by the link, with the result that at times a document could be posted twice in the same language instead of the two official languages, French and English.

In light of the high volume of filings to be posted online, human error is more than a possibility, but an easy (and cheap) solution would be to let the users inform the web content manager via email about problems in finding a document and/or errors on the website in order that they can be corrected promptly. Unfortunately no email address is available on the website to enable users to signal problems with the website.

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32 See for example <http://www.icc-cpi.int/NR/exeres/299240FC-EFAC-490C-A6AA-CAFE363D4B37.htm> (accessed 22 September 2009).

The IBA recommends that the Registry look into innovative solutions to update the website in a more user-friendly manner while identifying ways to attract more visitors, for example through external search engines and links on other websites.

## 2.4 The media

Public information encompasses engagement with the public through the media. This should be based on a coherent media strategy aimed at placing the institution in the public debate, raising its profile, delivering timely and punctual information, and correcting misinformation about the Court where necessary.

To date the Registry has put considerable effort into maximising the media impact of key moments and stages of the proceedings. For example, in February 2009 the opening of the first ever ICC trial, that of Thomas Lubanga Dyilo, was accompanied by a communication strategy which included media components such as press briefings in Bunia and Kinshasa.<sup>33</sup> On the day of the opening the PIDS also facilitated accreditation of journalists in The Hague; distributed a case information and questions-and-answers sheet; and issued a press release.<sup>34</sup> It is, however, regrettable that on the day of the opening of the trial no press conference or interviews with key parties in the proceedings had been organised by the Registry, reportedly because of a lack of interest on the part of the parties and participants in the proceedings.

The PIDS also rented a satellite signal on the day of the opening of the trial, to facilitate television coverage around the world but especially in the DRC. The service was provided by an independent broadcaster upon payment of a high fee by the Court but at no fee for the receivers. Broadcasting on Congolese national television was planned for 26 February, the day when the opening statements were expected to be delivered.

On the day itself, the Congolese national television did not broadcast the entire hearing but only a portion of it. In addition, during the course of the day the bench decided that the opening statement by the defence should be heard on the following day to allow enough time for the victims' legal representatives to make their submissions. Thus the PIDS had to unexpectedly rent more air time and invited the television channel to broadcast the trial for the second day, but although the satellite signal was sent (and paid for by the ICC Registry) the Congolese television channel did not carry out the request. Thus, the opening statement by the defence was not broadcast live on television in the DRC, inevitably generating disappointment because of a potential misrepresentation of the proceedings before the ICC in the eyes of the Congolese audience.

Despite the broadcasting challenges, the opening of the trial was nevertheless widely reported in the media and nearly 70 journalists were accredited in The Hague for the opening. Regrettably only a few journalists from the DRC were present, sponsored by foreign governments. This is a good practice which should be encouraged to expand in order for local journalists, who have an interest in the proceedings and are familiar with the local context, to cover ICC proceedings.

33 Launch of the information campaign on the opening of the trial of Thomas Lubanga Dyilo in Ituri <http://www.icc-cpi.int/menus/icc/press%20and%20media/press%20releases/launch%20of%20the%20information%20campaign%20on%20the%20opening%20of%20the%20trial%20of%20thomas%20lubanga%20dyilo%20in%20ituri> (accessed 22 September 2009).

34 Opening of the first trial of the Court on Monday 26 January 2009: for the first time in the history of international law the victims will fully participate in the proceedings, [http://www.icc-cpi.int/menus/icc/press%20and%20media/press%20releases/opening%20of%20the%20first%20trial%20of%20the%20court%20on%20monday%2026%20january%202009\\_%20for%20the%20first%20time%20in%20the%20history](http://www.icc-cpi.int/menus/icc/press%20and%20media/press%20releases/opening%20of%20the%20first%20trial%20of%20the%20court%20on%20monday%2026%20january%202009_%20for%20the%20first%20time%20in%20the%20history).



Another interesting media opportunity was offered by the Pre-Trial Chamber's decision of 4 March 2009 on the application of the Prosecutor for a warrant of arrest for President Omar Al-Bashir of Sudan. Pre-Trial Chamber I gave ten days' notice announcing that the decision would be made public by posting it on the ICC website and by issue of a press release. Many wondered why the decision was not announced in a public hearing, and what the media impact would have been of announcing the decision in an open court room. This notwithstanding, the Registry organised a press conference at the seat of the Court, with extensive information materials distributed, and interviews with Court officials planned in advance.

The IBA welcomes the PIDS' efforts on the two occasions mentioned above, but it notes that more can be done to facilitate interaction between the Court and the media on a regular basis, so as to enable and stimulate the media to play their important (and continuous) role. Independent reporters complain about difficulties in accessing both ICC premises and staff for interviews, due to long response times and bureaucratic impediments – for example the opening hours of the press centre are said to be inconvenient. Media interest in the work of the Court has also fluctuated over time, posing a challenge to the PIDS. Large international media corporations are attracted at key moments, but do not feature an ongoing debate on the ICC. There is greater media demand and interest for information on the ICC in situation countries and affected communities – and most recently in Africa in general – although this can run hand-in-hand with more difficult access to timely and accurate information.

It is very important that the Public Information Unit of the Registry put in place special measures to reduce the information gap between the ICC and journalists who cannot travel to The Hague – such people are often closer to the real sources of the debate on the ICC. For example, telephone interviews and media briefings could be organised through new technologies, and a robust media component could be included in all missions undertaken by ICC officials. In addition to the existing media centre, press briefings and conferences could be organised at the seat of the Court, other media-friendly tools, such as audiovisual footage of the trials, could be made available for download on the website and, like the United Nations, the ICC should explore options for archiving its historic footage.<sup>35</sup> A press page could be created on the website reflecting on key issues, including quotations and speeches from senior ICC officials and making information on upcoming/past key events at the Court accessible online. The practice of holding press briefings and conferences in situation countries should continue. The IBA also recommends that the Registry invest in training for journalists, as well as sponsor their attendance at Court hearings.

Overall the Registry's engagement with the media should be systematic, coherent and mindful of the relations that different media across the globe hold with the Court and other authorities. To this end media work should cease to be an ad hoc initiative linked to key moments and stages of the proceedings, and should become a sustainable programme mainstreamed in all ICC activities and governed by a media strategy developed in consultation with different Court's organs and external consultants (if necessary).

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<sup>35</sup> <http://www.un.org/webcast/archive.htm> (accessed 22 September 2009).

## 2.5 Public information actors

In the current environment building the credibility of the ICC as an impartial and fair institution of justice requires great effort and the engagement of as many actors as possible. In addition to the Registry and the OTP, others both within and outside the Court can be instrumental in disseminating information, contradicting misinformation and placing the Court in the international landscape.

### a) *Counsel*

The Integrated Strategy reflected on the opportunities offered by different networks pointing out that ‘initiatives are underway to encourage former interns, visiting professionals and staff to work as supporters and multipliers of messages of the Court’.<sup>36</sup>

Existing networks are a useful public information tool, such as parliamentarians, lawyers’ associations, political leaders and ICC staff, among others. For example, human rights NGOs have been at the forefront of ICC advocacy since the Rome Conference and continue to lobby in favour of the ICC.

Networks that could be used to galvanise interest around the ICC also include local bars and the ICC List of Counsel (‘the List’). The IBA has engaged with several bar associations to date, galvanising their support for ICC initiatives. Furthermore, members of the List constitute a privileged group of practitioners that should be more involved in ICC public information efforts. By definition counsel on the List are senior legal professionals familiar with international criminal law and the Rome Statute, who could multiply messages at the national level and improve accuracy of media coverage, also engaging their respective bars and colleagues. This potential has not yet been explored by the Registry and the IBA recommends that it be discussed at the next Annual ICC List of Counsel meeting.

### b) *ICC judges*

ICC officials contribute to the debate in an informed and credible manner, and some of them travel tirelessly to reach as many audiences as possible. Among the most senior officials a distinctive role can be played by ICC judges. The issue of judges’ public speaking divides practitioners. There are those who believe that judges should refrain from public speaking – especially in terms of interventions in the media – and those who encourage public speaking, considering that it does not jeopardise their official capacity.

The ICC RPE provide that the ‘expression of opinions, through the communications media, in writing on public actions that objectively could adversely affect the required impartiality of the person concerned’ is among the grounds for possible disqualification of a judge.<sup>37</sup> ICC judges in the Code of Judicial Ethics have agreed that ‘judges are free to participate in public debate’ and express opinions as long as it does not undermine the standing and integrity of the Court or the judicial independence and the impartiality of the judge.<sup>38</sup>

Judicial independence and the impartiality of judges is critical for a fair trial; maintaining a judge’s reputation of impartiality is therefore fundamental. As far as public speaking is concerned there have been cases before international tribunals in which a judge’s public speech could have been

<sup>36</sup> Integrated Strategy for External Relations, Public Information and Outreach at Part VII.

<sup>37</sup> Rules of Procedures and Evidence (RPE), Rule 34 (1) (d).

<sup>38</sup> Article 9, Code of Judicial Ethics ICC-bd/02-01-05, International Criminal Court.

considered as prejudicial. For example, in the International Court of Justice (ICJ) *Wall* case in relation to Judge Nabil Elaraby's recusation for statements he had previously made in the Palestinian question; or in *Prosecutor v Furundzija* at the ICTY in relation to Judge Mumba's membership in a UN commission which recommended prosecution of mass rapes in the former Yugoslavia, among others. In the case law the tone and language used by the speaker, as well as the context in which the statement is made, can considerably affect the perception of partiality of the judge.<sup>39</sup>

Bearing in mind the importance of public perception, ICC judges' public speaking and interaction with the media cannot be completely excluded. Currently, ICC judges give speeches at conferences and seminars both in The Hague and worldwide on a regular basis. Calibrated and modulated appearances of judges in the media will also help to avoid any personalisation of justice and to generate more media interest. The greatest advantage of the presence of judges in the media is that it makes the judicial process and its actors visible to the public in a credible manner. The image of the ICC will be positively affected as it will show the true heart of the institution, which is, one should not forget, a court of law. The profile of the institution would be raised by being represented by experienced and knowledgeable personalities with different backgrounds and solid reputations.

Public speaking and media interviews are to be considered an opportunity for ICC judges to contribute to better information dissemination about the ICC. Thus it is important that judges, with the help of the Presidency, identify appropriate venues and suitable candidates for public speaking and streamline messages to ensure that consistent lines are delivered by all speakers. Importantly, messages and lines of speaking should be prepared by the Registry and shared, as far as possible, with the OTP to ensure that those who represent the Court in the public arena deliver a similar message across different contexts.

A tension exists between public information needs and other obligations of the bench, as well as in relation to the different functions of each organ under the Statute. However, in the opinion of Judge Meron, judges can enhance the public's understanding of their work in several ways, including correcting egregious error or gross misinterpretation of their judgements by the media.<sup>40</sup> The IBA recommends that judges facilitate better publicity for their decisions, as well as speak to the media in a manner consistent with their judicial function.

The IBA finds that ICC judges could play a more proactive role in ensuring better publicity of proceedings, for example through issuing executive summaries of their decisions in simple and concise language, which could also then be used for public information purposes. At the ICTY, for example, judges read out and distributed a detailed summary of every judgement to the press. It would also be helpful if snap shots of ICC decisions being read could be shown in the media and uploaded onto the ICC website.

### c) *The ICC President*

Among the judges the President, as *primus inter pares*, has a particular responsibility in disseminating information about the Court, promoting universality and acting as the ultimate spokesperson of the institution. The IBA encourages the President to intensify his public and media appearances in

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<sup>39</sup> See above n6 at page 366.

<sup>40</sup> Ibid at page 369.



order to catalyse media interest and present himself as the face of the ICC rebalancing the prominent presence in the media of the Prosecutor. At the same time, the ICC President should encourage judges to proactively promote publicity of the proceedings and support their appearance in the media. In addition the IBA invites the Presidency of the ICC to be proactive in its relations with the media, responding to unfounded attacks against the institution and correcting misinformation.

The newly-elected President Song committed to travel frequently in the coming years to address audiences in different parts of the world. The IBA welcomes this approach and recommends that travel be not only frequent, but also consistent with public information and media strategies of the Registry. To this end the IBA notes with concern the limited travel budget available to the Presidency and calls on the ASP to increase it.

#### **d) States Parties**

All States Parties, in ratifying the Rome Statute, established the ICC to prevent crimes and affirmed their commitment to ‘lasting respect for and the enforcement of international justice’.<sup>41</sup> The mere existence of the Court (and its trials) is believed to contribute to those values that signatory parties have agreed to share. As party to the Rome Statute, it could be argued that states have the responsibility to inform their citizens about the ICC as part of their general obligation to cooperate with the Court, as well as their commitment to ending impunity.

The Integrated Strategy does not elaborate much on States Parties’ role in public information, states being described as key partners and audiences in relation to external relations. The document, however, announces that ‘co-operation agreements with States and institutions will, where appropriate, include a commitment to assist in promoting public understanding about the principles and activities of the ICC’.<sup>42</sup>

Some States Parties have taken a proactive role and initiated public information activities on the ICC through mention in their government’s media briefing, facilitating visits to the Court for officials based in capitals, promoting the internship and visiting professionals programmes at the ICC, publishing articles in academic journals and facilitating lectures on the ICC at universities. In some cases training on international justice and the ICC is given to diplomats at the inception of their career.

In most cases, governments have provided support to civil society organisations campaigning for the ICC, rather than carrying out public statements and government-driven advocacy campaigns on the ICC. Consultations with representatives of governments have revealed that a more proactive engagement in publicising the work of the ICC would be inappropriate and unbalanced, as it is not done for other international organisations.

It could be argued that governments that have referred a situation within their territory to the ICC have a more stringent duty to inform the public about the proceedings (as well as the Court as a whole) for reasons of political accountability. In practice this approach is often challenged by political considerations regarding the government’s interest to publicise its obligations under the Statute or the proceedings in The Hague. Often governments in post-conflict areas do not have the resources to ensure wide dissemination of information. However, it is important that governments of situation

41 Preamble of the Rome Statute of the International Criminal Court.

42 Integrated Strategy for External Relations, Public Information and Outreach at Part VII.

countries fully cooperate with the Registry in delivering accurate information about the Court.

Former ICC President Kirsch stated that States Parties have a primary responsibility to address misperceptions about the ICC.<sup>43</sup> Overall, States Parties could do more in informing their constituencies about the ICC, ensuring that legal obligations and criminal responsibility of their citizens and armed forces under the Statute is widely understood at the national level. For example, they could create platforms to discuss legal obligations springing from the Statute, sensitise local communities and authorities on issues of justice and accountability, allocate air space on their national television and radio channels for ICC programmes, include international justice in military colleges and university curricula and share country media reports on international justice with the Court. More importantly they could also assist in challenging incorrect and misleading information in the local and international media.

The IBA therefore recommends that the ASP members discuss opportunities to better inform the public, and use their Eighth meeting of the Assembly to collectively reaffirm the importance of informing and promoting the ICC at the national level, especially in the media. The IBA also recommends that the ASP encourages the Court to issue a strategic framework for public information, consistent with the strategic plan for outreach and external relations objectives.

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<sup>43</sup> Interview with Judge Philippe Kirsch, former President of the International Criminal Court, *Equality of Arms Review*, July 2009 (IBA), page 14.

# Chapter Three – External relations: from quiet diplomacy to a constructive dialogue

## 3.1 External relations mandate of the Presidency

External relations are often informally described as quiet diplomacy. In the Integrated Strategy the concept of external relations is defined as ‘a dialogue between the Court and States Parties, Non-States Parties, international organisations, NGOs and other **key partners** that have direct roles in the activities and the enabling environment of the ICC. This process aims towards building and maintaining support and cooperation’.<sup>44</sup>

In the complex structure of the Court each organ has been allocated different roles in relation to external relations: the ‘Presidency acts as the “external face” of the Court as a whole, situates the ICC in the international landscape, and through providing information about the Court’s role, mandate and activities, contributes to building acceptance of international justice. The OTP builds support and cooperation for OTP activities and explains OTP policies and activities’.<sup>45</sup> It seems that a specific external relations function is not allocated to the Registry, although it might act on behalf of the Presidency and without jeopardising the independence of the OTP.

There is no specific reference to the Presidency’s external relations function in the ICC legal texts. This function is usually derived from Article 38 of the Statute, pursuant to which the Presidency is responsible for the proper administration of the Court, with the exception of the OTP. Interestingly the Regulations of the Court provide for agreements with non-States Parties to be negotiated in person by the President of the Court, suggesting that the President might have specific diplomatic powers not shared by the Presidency.<sup>46</sup>

Additional elements describing the external relations function of the Presidency are scattered in other ICC official documents. For example, the report on programme performance of the ICC for the year 2004 presented at the Fourth Session of the ASP states that ‘the major objective of the Presidency in the area of external relations is to enhance public awareness and understanding of the Court in the international arena.’<sup>47</sup> In 2007, objectives for external relations by the Presidency included ‘increase[ing] support for the Court through enhancing communication and mutual understanding with stakeholders and stress[ing] the Court’s role and its independence’.<sup>48</sup>

It appears that the main components of the external relations function of the Presidency are the conclusion of agreements on behalf of the Court, as well as the promotion of public awareness and

44 Integrated Strategy for External Relations, Public Information and Outreach at Part IV (emphasis in original text).

45 Ibid.

46 Regulation 107 of Article 38 of the Rome Statute provides: ‘all agreements with any State not party to the Statute or any intergovernmental organisation, setting out a general framework for cooperation on matters within the competency of more than one organ of the Court, shall be negotiated under the authority of the President who shall seek recommendations from the Advisory Committee on Legal Texts. Such agreements shall be concluded by the President on behalf of the Court.’

47 Report on programme performance of the ICC for the year 2004 (pp2-3) [http://www.icc-cpi.int/iccdocs/asp\\_docs/library/asp/ICC-ASP-4-13\\_English.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/library/asp/ICC-ASP-4-13_English.pdf)

48 Report on programme performance of the ICC for the year 2007 (pp13-14) [http://www.icc-cpi.int/iccdocs/asp\\_docs/ASP7/ICC-ASP-7-8%20English.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/ASP7/ICC-ASP-7-8%20English.pdf)

understanding of the institution. The Presidency is responsible for the Court's general external relations and, as the head of the institution, the President himself also has an ambassadorial duty to explain and report upon the work of the Court, which effectively makes him the 'face' of the ICC. The President advocates for cross-cutting issues which are important for the effective functioning of the Court as a whole, such as universality and implementation of the Rome Statute, in full respect of his judicial role and with no reference to the merits of a specific case.

In the execution of his external relations function the immediate past President of the ICC, Judge Philippe Kirsch, maintained 'regular meetings with heads of State, heads of government, ministers, high-ranking officials, representatives of States, international and regional organizations, non governmental organisations and members of the academic community'.<sup>49</sup> Over the years the flow of visitors to the President's office was constant and the volume of individual and group meetings with heads of states and senior government officials was enormous. However, it was not always the case that an exchange of information led to a real dialogue between the participants. In fact effective consultation modules have been hard to develop in addition to the well-established diplomatic briefings.

In general Judge Kirsch's approach to external relations was to refute self-promotion by the ICC. His Presidency did not pursue public campaigning for ratification of the Rome Statute, nor did it proactively engage with misperceptions and prejudices about the Court. It believed that it was important not to enter into the political debate, in order to project the Court as a judicial non-political body.

President Kirsch's quiet diplomacy was the result of the political environment in the first years of the ICC, when many opponents of the Court were nervous of the idea of a court playing international politics. It was successful in that it created an external communications vision centred on the judicial and permanent nature of the institution – the core feature of the ICC – developing key messages to be used across the institution. At the same time this approach presented the Court's external communications as detached from political discourse, thereby failing to drive the debate developing around the Court.

On 11 March 2009 Judge Sang Huyn-Song was elected President of the ICC for a term of three years, together with Fatoumata Dembele Diarra and Hans Peter Kaul as First and Second Vice-President, respectively. The new ICC Presidency is currently in the process of defining its priorities in external relations; however, incremented ratification of the Statute, as well as complementarity-related issues, have been already indicated as priority areas of intervention.<sup>50</sup> In addition the Presidency has expressed a willingness to use its good offices and diplomacy to manage expectations about the Court and enter into a dialogue with regional bodies and individual states on how to increase support for the work of the Court.

The IBA welcomes the revisionist approach of the current Presidency as the current global debate about the ICC demands a new way of thinking about external communication. The political environment in which the Court now operates is different to that faced by the first ICC Presidency, demanding

49 Report on programme performance of the ICC for the year 2004 (page 3) [http://www.icc-cpi.int/iccdocs/asp\\_docs/library/asp/ICC-ASP-4-13\\_English.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/library/asp/ICC-ASP-4-13_English.pdf)

50 During his official visit to African States Parties in June 2009 the President remarked: 'Complementarity is essential in that it underlines the collective responsibility of the world to put a stop to the most serious crimes of concern to the international community. As many countries as possible should adopt legislation to enable credible prosecutions of war crimes'. See <http://www.icc-cpi.int/menus/icc/press%20and%20media/press%20releases/icc%20president%20song%20starts%20his%20first%20official%20visit%20to%20african%20states%20parties> (accessed 22 September 2009).

redefined priorities and a clear external relations strategy. The IBA recommends that the Presidency show leadership in identifying, in an inclusive and timely manner, priorities for external relations and developing new tools that could reinforce the position of the ICC in the broader landscape of international justice.

Following lessons learnt by the previous Presidency, the IBA recommends investing in regular meetings with diplomats, heads of states, senior government officials and other partners with the aim of establishing a transparent flow of information and a constructive dialogue. In addition to diplomatic briefing other modes should be explored. The IBA recommends that the interaction with the heads of regional organisations be intensified and prioritised with the aim of building a rich and mutually beneficial dialogue.

The IBA welcomes the early commitment shown to travel, and recommends that the new Presidency determines the method and timing of visits to capital cities, prioritising regular visits with long advance notice over ad hoc trips. Visits are important to open new channels of communication with states officials, and therefore are conducive to an increased dialogue. However, given the limited resources available it is desirable that official Presidential visits form part of an integrated strategy in which public information work complements external relations objectives and vice versa. Thus in order to raise the profile of the ICC, the objective of visits to capitals should be to reinforce public information messages, while at the same time they should be planned according to analysis and review of media reports and coordinated with that of other organs of the Court.

### **3.2 External relations mandate of the OTP**

Next to the Presidency's prominent role in external relations, the OTP maintains a specific external relations function related to building support and cooperation for the work of the Office – namely preliminary analysis, investigation and prosecution of crimes.

Although no specific provision in the Statute provides for an external relations function of the OTP, over the past three years the Office reflected and carried out considerable work in relation to it. In 2006 Prosecutor Moreno-Ocampo remarked: 'Investigations are not possible without external support, particularly from States. Territorial States are important to enable us to go to the field, to access evidence and to take security measures. Territorial States are uniquely essential for arrest efforts. For effective investigation, it is my duty to seek cooperation from States and other partners who may help'.<sup>51</sup>

The external relations function of the OTP aims at strengthening partnership and cooperation with states. It is therefore quasi-political in nature, posing the problem of safeguarding the independence of the Office as demanded by Article 42 of the Statute. In order to resolve this conflict, the OTP is organised into separate divisions, and has mandated the JCCD to focus on external relations. Interestingly the JCCD is also responsible for public information (see above), demonstrating that the OTP is following a truly integrated approach to communication.

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<sup>51</sup> 6th Diplomatic briefing of the ICC, 23 March 2006. See [http://www.icc-cpi.int/NR/rdonlyres/8DBF8E9E-4124-4196-8C72-66F3EF65D29C/278523/060323\\_Compilation\\_of\\_Statements.pdf](http://www.icc-cpi.int/NR/rdonlyres/8DBF8E9E-4124-4196-8C72-66F3EF65D29C/278523/060323_Compilation_of_Statements.pdf) (accessed 22 September 2009).

At the preliminary stage the OTP may ask states or other actors to provide general information.<sup>52</sup> The dialogue between the OTP and states is exclusive, and uses privileged channels of communications. Rule 176 of the Rules of Procedure and Evidence (RPE) provides that ‘the Office of the Prosecutor transmits the request for cooperation made by the prosecutor and shall receive the responses, information and documents from the requested states.’<sup>53</sup> Thus external relations are used by the OTP at this early stage to create collaborative relations, and secure the necessary information showing the multifaceted nature of the external relations function. The JCCD interacts with states, international and regional organisations as well as NGOs to receive and analyse information, enter into specific agreements and generate support for arrests.<sup>54</sup> For example, since the situation in Colombia has been under analysis, the Prosecutor visited the country several times meeting with different stakeholders. In relation to other situations under analysis in 2008 he received visits from officials of the Georgian Government and representatives of the Palestinian authority.

In addition to information sharing purposes the OTP is authorised to facilitate agreements for judicial cooperation and assistance. According to the report on the OTP’s activities for the first three years ‘the Office has entered into a limited number of State specific agreements... The conclusion of arrangements, particularly for the provision of classified information, often require extensive negotiations in order to provide the necessary assurances to information providers, as well as to ensure that the information is supplied in a manner that can be of optimal use to the Office, as provided for under the Statute.’<sup>55</sup>

It is in the arrest of suspects that diplomatic efforts and a dialogue with states is fundamental, as shown by the complex processes needed, for example, to secure the appearance of suspects before the Court. The extent of the challenge is evident simply through the number of suspects still at large (eight), and the need to lobby for the execution of arrest warrants justifies the intense travel schedule of JCCD staff as well as the frequent media appearances by the ICC Prosecutor. The resources invested in communicating its policies and activities demonstrate that the OTP has understood the important link between communication and cooperation as well as the importance of investing in diplomacy.

In future, the OTP plans to intensify efforts in external relations, namely by arranging more frequent and effective interaction with external stakeholders through developing and formalising channels of communication; continuing to hold diplomatic and ad hoc briefings; and organising working meetings with international organisations. The IBA welcomes a more structured approach to external relations, as in the past this had been criticised for lacking transparency and being based for the most part on informal channels of communication.

The IBA notes with concern that, by contrast, insufficient resources appear to be allocated by the Registry and the Presidency for this crucial function. The imbalance of this compared with the intensity of cooperation and lobby activities undertaken by the OTP creates the undesirable situation that the OTP is always perceived to be speaking for the Court. In addition, the prominence of the OTP in external relations compared to other organs may lead to the unhealthy impression that the OTP is the

<sup>52</sup> Article 15 of the Rome Statute of the International Criminal Court.

<sup>53</sup> Article 15 Rome Statute of the International Criminal Court.

<sup>54</sup> See Annex to the ‘Paper on some policy issues before the Office of the Prosecutor’: Referrals and Communications. See [www.icc-cpi.int/NR/rdonlyres/278614ED-A8CA-4835-B91D-DB7FA7639E02/143706/policy\\_annex\\_final\\_210404.pdf](http://www.icc-cpi.int/NR/rdonlyres/278614ED-A8CA-4835-B91D-DB7FA7639E02/143706/policy_annex_final_210404.pdf) (accessed 22 September 2009).

<sup>55</sup> Office of the Prosecutor Report on the activities performed during the first three years (June 2003 - June 2006) [http://www.icc-cpi.int/NR/rdonlyres/D76A5D89-FB64-47A9-9821-725747378AB2/143680/OTP\\_3yearreport20060914\\_English.pdf](http://www.icc-cpi.int/NR/rdonlyres/D76A5D89-FB64-47A9-9821-725747378AB2/143680/OTP_3yearreport20060914_English.pdf) (accessed 22 September 2009).



ICC. This is problematic as the OTP is a party to the proceedings not a neutral organ of the Court, and therefore OTP messages reflect its mandate and are unsuitable to represent the ICC as a whole.

In order to remedy the situation the IBA calls for better coordination on external relations between Court's organs; increased engagement by the Presidency; and encourages the OTP – to the extent that its mandate allows – to share contacts and strategies with the ICC Presidency.

### **3.3 The role of States Parties**

In creating an enabling environment for the effective working of the Court, together with increasing general support for the ICC, States Parties have an undeniably important role. The Report of the Bureau of the ASP on cooperation (hereafter 'the Report') explicitly indicates that generating political support and mainstreaming court issues within national administrations and other fora is an important factor in facilitating cooperation. The Report defines four critical paths or 'interrelated circles' of support, in relation to national administrations, bilateral activities, regional fora and United Nations-related issues, respectively.<sup>56</sup>

A key recommendation of the Report is for States Parties to pursue the interests of the ICC in all contexts and at all levels. In carrying out this duty states are also encouraged not to compromise the mandate and independence of the Court in the interest of individual or group political considerations.

The bilateral and multilateral diplomatic activities of States Parties influence external relations. At the bilateral level the Report suggests that states demonstrate support for ICC activities and promote the Rome Statute and the independence of the Court.<sup>57</sup> For example, states can address issues related to the enforcement of ICC decisions in meetings with other states; they can inform other governments interested in ratification; and they can also express public support for the Court. Although consultations with states reveal a high degree of discussion (and productivity) in bilateral meetings, and that visits to non-States Parties have been organised to advocate for the ICC, public statements in support of the Court are still rare and represent an area for improvement.

At the multilateral level states can contribute to generating political support for the Court by raising ICC issues consistently and decisively in regional and international fora. It is particularly important in the context of the UN that the mandate of the ICC is understood in its full complexity. The Report suggested concentrating external relations on regular contact between staff of the ICC and the UN, together with high level and working visits to New York.

In light of the external relations role recognised for States Parties, the issue of whether the ASP – as the intergovernmental organ overseeing the ICC, as well as its legislative branch – could perform an external relations role remains ambiguous, especially in the absence of an expressed provision in the Statute. In a recent discussion paper entitled 'The Assembly of States Parties of the Rome Statute: Perspectives on the years ahead – 2009-2011', Ambassador Christian Wenaweser, President of the ASP, remarks that 'while the Court has identified its judicial work in The Hague, it has also entered a more political phase over the past few months... This new phase also affects the role of the Assembly and increases its role in the political

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<sup>56</sup> ICC-ASP/6/21 (19 October 2007) at pp3, 7.

<sup>57</sup> Consultative Conference on International Criminal Justice, 9-11 September 2009 at the United Nations Headquarters, discussion paper by Christian Wenaweser.

arena and in particular in the field of cooperation and non-cooperation'.<sup>58</sup>

Article 112 (2) (g) of the Statute provides for the Assembly to 'perform any other function consistent with this Statute and the Rules of Procedures and Evidence'. Although this clause might be interpreted as recognising an external communications function within the powers of the Assembly, consultations with state representatives and experts reveal that such a role may not be desirable, largely because difficulties would arise in obtaining consensus on an acceptable common denominator.

A viable solution to accommodate the difficulties linked to generating consensus around individual statements could be to allocate a spokesperson/ambassadorial role to the President of the ASP, to comment on current political developments, or clarify the mandate of the Court, in order to help build support for the institution. It is to be noted that in light of Rule 30 of the RPE, the President of the Assembly is not vested with an autonomous political mandate. It seems that general statements in support of the Court could be issued without generating problems for States Parties. In practice advocacy in support of the Court has been carried out by the current ASP, for example with the June 2009 statement in relation to the withdrawal of African States from the Statute as a protest against the indictment of Sudan's President Omar Al-Bashir on charges of war crimes and crimes against humanity.<sup>59</sup>

The IBA welcomes this approach adopted by the President of the Assembly, recommends that the Assembly be more outspoken in supporting the Court and encourages the President to pursue a stronger role for the Assembly in the debate around the ICC.

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<sup>58</sup> Rule 30 reads: 1. 'In addition to exercising the powers conferred upon him/her elsewhere by these Rules, the President shall declare the opening and closing of each plenary meeting of the session, direct the discussions in plenary meetings, ensure observance of these Rules, accord the right to speak, put questions and announce decisions. The President shall rule on points of order and, subject to these Rules, shall have complete control of the proceedings at any meeting and over the maintenance of order thereat. The President may, in the course of the discussion of an item, propose to the Assembly the limitation of the time to be allowed to speakers, the limitation of the number of times each representative may speak, the closure of the list of speakers or the closure of the debate and the suspension or the adjournment of the meeting or the adjournment of the debate on the item under discussion. 2. 'The President, in the exercise of his/her functions, remains under authority of the Assembly'.

<sup>59</sup> See [http://www.icc-cpi.int/iccdocs/asp\\_docs/ASP8/ICC-ASP-PressConference-10June2009.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/ASP8/ICC-ASP-PressConference-10June2009.pdf) and [http://www.icc-cpi.int/iccdocs/asp\\_docs/ASP8/PASP%2017July2009%20press%20conference.21jul1530.ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/ASP8/PASP%2017July2009%20press%20conference.21jul1530.ENG.pdf) (accessed 22 September 2009).



# Chapter Four – IBA recommendations on the external communications mandate of the ICC

Communicating effectively on the scope and the work of the Court is vital to the performance of the ICC core functions; that is, delivering public and transparent justice, as well as contributing to lasting respect for and enforcement of international justice.

The IBA notes that in the past year – and especially since the indictment of President Al-Bashir of Sudan – the ICC has become more prominent in the media world and more visible to the public, resulting in some criticism and misperceptions being expressed, often far away from both the affected communities and the seat of the Court. As a result, managing public scrutiny and increasing understanding of the work of the ICC is a priority for the Court.

In order to meet the current challenges the IBA wishes to make the following recommendations in relation to the external communications mandate of the ICC.

## 4.1 General recommendations

### a) *Develop a court-wide vision on external communications*

As the Court has developed into a more mature institution and the political environment around it has changed, it is important to revise the Court's practice in relation to external communications based on lessons learnt. In particular, ICC organs should share information and learn from each others' good practice more effectively. Thus the IBA recommends the revision of the Integrated Strategy on External Relations, Public Information and Outreach, spelling out a new shared vision and coordinated priorities relating to external communication for the whole Court, effectively integrating those outreach, public information and external relations functions currently carried out by the different organs of the Court.

### b) *Communication strategy around the Review Conference*

In 2010 the Review Conference will take place in Kampala, Uganda offering a unique opportunity to reach to this particular affected community and to campaign for the Court in Africa. Outreach staff based in Uganda should be maintained in order to facilitate outreach to the local population in 2010 while assisting with the wider communication campaign around the Review Conference. To maximise the impact of the upcoming Review Conference, the IBA recommends that a targeted communication strategy be agreed upon and presented at the eighth session of the ASP to engage more closely with States Parties in the months leading to the Review Conference.

## **4.2 Recommendations related to outreach**

### **a) *Establish a permanent audiovisual unit within the PIDS***

Audiovisual tools have proven to be effective in relation to outreach to affected communities. An audiovisual producer and a technician were recruited on a temporary basis in 2008/09. The IBA recommends that a permanent position for an in-house audiovisual producer be established by the ASP to ensure continuity and sustainability in the production of audiovisual materials.

### **b) *Integrate public information and outreach in a country communication strategy for the DRC***

Outreach to selected provinces in the DRC – although sound from a management perspective – has generated criticism and created misperceptions. In the absence of additional human and financial resources for carrying out outreach in the DRC, together with the given current security situation, the IBA recommends investing more in partnerships with local stakeholders and the media operating in provinces not yet covered by ICC outreach. In order to maximise the potential of current resources the IBA also encourages the PIDS to develop a countrywide communication strategy synchronising outreach, public information and external relations activities in the DRC.

### **c) *Intense public information campaign focusing on the Darfur situation***

As it is impossible for ICC staff to travel to Darfur, Sudan, the impact of current outreach activities to the people of Darfur has been very limited, focusing mainly on Sudanese diaspora. In addition, a large portion of the debate around the Sudanese cases is happening in the media. To remedy the situation the IBA recommends shifting the focus from outreach to public information on the Darfur investigation and cases engaging with Arabic speaking media.

### **d) *Outreach in situations under analysis***

The OTP has adopted a more transparent approach to the analysis phase of its work. This could enable the Registry to carry out outreach work with the local population to start before an investigation is officially opened. Until now none of the situations publically known to be under analysis by the OTP have been the subject of systematic outreach efforts, despite the numerous benefits to such an initiative. As in previous outreach reports, the IBA encourages the Registry to consider the possibility of developing an outreach activities plan and a strategy for situations under analysis. To this effect the IBA encourages the ASP to allocate the necessary resources to the Registry.

## **4.3 Recommendations related to public information**

### **a) *Development of a public information strategy***

The PIDS of the Registry initiated consultations on a public information strategy that could complement the Strategic Plan for Outreach. The public information strategy is expected to revise existing public information tools and develop new ones to engage with the media more proactively

and creatively. This is a development welcomed by the IBA, which recommends that the strategy be finalised in the near future and fully coordinated with the external relations plans of the Presidency and the revised Strategic Plan for Outreach.

*b) Engaging Counsel in public information*

The IBA urges the Court to engage more closely with existing networks that could be used to multiply messages delivered by the Court. Further, the IBA stresses the importance of engaging counsel in public information efforts, together with including a defence perspective in all public information activities. The IBA recommends that these issues be discussed at the next ICC List of Counsel meeting.

*c) ICC judges and the public debate*

Although a natural tension exists between public information needs and other obligations of the bench, ICC judges are encouraged to find appropriate ways to participate more in the public debate around the ICC without jeopardising judicial independence and impartiality. For example, they could correct misinterpretation of their judgements in the media, when necessary; they could allow the posting on the ICC website of their speeches from conferences; and they could permit the use of snapshots of ICC decisions for media broadcasting purposes.

Moreover, the IBA finds that the Chambers could be more proactive in ensuring better publicity of ICC proceedings, for example by issuing executive summaries of the decisions in simple and concise language. More coordination with the PIDS in relation to modalities of web-broadcasting of hearings would also greatly improve accessibility of the proceedings for the public.

*d) The ICC website*

The new ICC website was launched in February 2009 constituting a new interface for the Court but with no considerable improvement in usability, navigability or interactive features common to most modern websites. Posting of filings and transcripts is often delayed and error-prone, while the web search engine also continues to be inadequate for the volume of information contained. Because the website is a key public information tool, the IBA recommends that the Registry considers innovative solutions to upgrade the website, making it more user-friendly and identifying ways to attract more visitors.

*e) Engagement with the media*

In order to maximise outreach and external relations efforts it is important for the Court to engage closely with the media, including journalists from situation countries. The IBA encourages the allocation of resources for sponsoring journalists from situation countries to be present in The Hague to cover key moments of the proceedings. Moreover, the IBA recommends developing a court-wide media strategy and messages to be mainstreamed in all ICC programmes, and coordinating cross-organ responses to attacks on the standing of the ICC. In addition, the IBA encourages the new President of the ICC to be proactive in his relations with the media, favouring more appearances in the media and correcting misinformation about the Court where necessary.

#### **4.4 Recommendations related to external relations**

##### *a) A well-defined external relations strategy*

The change in the political environment surrounding the Court demands external relations priorities be revised and encapsulated in a written strategy that could be shared across the institution.

##### *b) Build a constructive dialogue*

The IBA encourages the current ICC President to promote universality and implementation through his good offices and project himself in the media as the neutral face of the ICC. The IBA welcomes the President's commitment to travel and recommends investing in regular meetings with diplomats, heads of states, senior government officials and other partners with the aim of establishing a transparent flow of information and a constructive dialogue. In particular the IBA recommends that interaction with the heads of regional organisations be intensified and prioritised. The IBA further recommends that international visits be not only frequent but also coordinated with that of other organs of the Court. Finally visits to key countries should be selected as to form part of an integrated strategy in which public information work complements external relations objectives and vice versa.

#### **4.5 Recommendations to the ASP**

##### *a) The importance of external communications*

The IBA recommends that the ASP adopt, at its eighth session, a resolution urging the Court to disseminate information consistently and publicise its proceedings in the language and manner most appropriate to effectively reach the general global public. The IBA also calls on the ASP to encourage the Court to promptly issue a strategic framework for public information and to develop a court-wide media strategy.

##### *b) Increment financial resources for public information and external relations*

The IBA laments that the human and financial resources available for public information and external relations put into serious question the ability of the Court to implement its external communication mandate effectively. To remedy the situation the IBA recommends that the ASP allocates an adequate budget for public information within the budget of the Registry and increases the travel budget for the Presidency.

##### *c) Public expressions of support by States Parties*

In the current political environment, public statements of support and diplomatic efforts by States Parties have a key role to play in advancing the Court's goals. The President of the ICC should continue advocating for the Court through public statements and invoke a stronger role for the ASP intervening in the public debate around the ICC. States Parties are encouraged to identify suitable ways and opportunities to effectively inform and promote the ICC in international and regional fora, most notably in the media.

The IBA encourages the ASP to affirm in its Eighth Assembly the importance of public information about the Court and to invite its members to be more outspoken in their support for the Court, also in preparation of the work of the Review Conference.



# PART II – FOCUS ON AFRICA

## Introduction

After the July 2008 request by the OTP for an arrest warrant for the President of Sudan, the interpretation of the work of the ICC in Africa has been nourished by misperceptions and political considerations, as well as by the public relations campaign from the Government of Sudan in the attempt to persuade the international community of its commitment to bring peace and justice to the people of Darfur.

The government rhetoric portrayed the ICC as a western institution targeting African leaders and attacks against the ICC intensified as the decision on the issuance of the arrest warrant by the ICC Pre-Trial Chamber I approached. In September 2008 the Government of Sudan presented a progress report to the African Union (AU) Commission and announced measures – such as the investigation and arrest of the ICC suspect Ali-Kuhayb and the proposed amendments to the national criminal codes – supposed to end impunity for the atrocities committed in Darfur through national proceedings and the hosting of peace talks in Qatar.

Although no progress towards accountability for the crimes committed in Darfur has been achieved, the support for the ICC in Africa seemed to be wavering in 2008. The AU recommended that African States Parties to the ICC meet to discuss their common position on the ICC request of an arrest warrant for President Omar Al-Bashir. Thus African States Parties met in Addis Ababa on 8-9 June 2009 just when the ICC-Africa debate in the media had been reheated by the decision issued by ICC Pre-Trial Chamber I to issue an arrest warrant for crimes against humanity and war crimes for the President of Sudan and the Government of Sudan had in retaliation expelled humanitarian workers from Darfur. The States Parties' meeting in Addis Ababa was charged with a strategic significance and confirmed the African members' commitment to the ICC, while proposals for withdrawal from the ICC were rejected. In the meantime national and international NGOs working in Africa also reiterated their commitment to international justice and the ICC in public statements and meetings.

On 1-3 July 2009 the AU, at its Summit which took place in Sirte, Libya, adopted by unanimous vote a resolution urging member states not to cooperate with the ICC in relation to the execution of the ICC arrest warrant for President Omar Al-Bashir of Sudan. Although the AU decision is inconsistent with the obligations that States Parties maintain under the Rome Statute, in the aftermath of the Summit only the governments of Botswana and Uganda, followed by South Africa at a later stage, issued statements reiterating their commitment to cooperate with the ICC in ending impunity for serious crimes of international concern. On the other hand the AU decision generated vigorous reactions from civil society in Africa and created a bipolarisation of the debate around ICC, showing that positions around the work of the Court vary considerably within the Continent.

### *IBA involvement*

The IBA Strategy for Outreach on the ICC targets general IBA members and bar leaders as well as bar associations which are leaders in their region. Following recent judicial developments at the Court



and the related public debate, the need for outreach in Africa became a stringent priority; the IBA found it important to engage legal professionals from the continent where the debate around the Court was so polarised as well as nourished by misinformation.

The IBA outreach programme had already included practitioners and bar associations from African countries in the course of its past outreach activities; however, during the reporting period it was decided to focus on the southern hemisphere, as the sub-region with the highest number of ICC States Parties in Africa. As usual the methodology followed included a close collaboration with local bar associations and civil society, but to maximise the impact of the activities a media component was also added to accompany participation in IBA events by ICC officials. The IBA also participated in African civil society meetings, such as the Fifth Citizens' Continental conference on the 13th AU summit and the Annual Meeting of the Law Society of South Africa, where the issue of international justice and ICC in Africa was on the agenda.

Because of the particular challenge posed by involving general practitioners and members of the bars in the work of the ICC, outreach events organised by the IBA gave particular attention to encouraging lawyers to register with the ICC List of Counsel. In fact gender representation and geographical balance are still poor within the ICC List of Counsel which is a matter of concern to the IBA.

The activities carried out in each country were tailored to the local context and resulted from intense consultation with local partners since the planning phase. Challenges were posed at times by the lack of resources and capacity of the local bars; however, the IBA found national bar associations to be committed to the issue of international justice and very keen to engage with the ICC.

The details of the IBA activities carried out in South Africa and Mozambique are described in the chapters below.

# Chapter Five – IBA outreach in South Africa

In consideration of the crucial role played by South Africa's legal profession in the Southern Africa Development Community (SADC) during the reporting period the IBA worked with lawyers in South Africa to promote understanding of the Rome Statute and advise individual professionals on how to engage with the work of the Court.

IBA outreach work included the publishing of two articles on the lawyers' magazine *De Rebus*; participation in the annual general meeting of the Law Society of South Africa; and two seminars on the ICC organised in partnership with the General Council of the Bar and the Law Society of South Africa. The overall objective was to build a momentum around the ICC and disseminate information and initiate a debate among the South African legal community in different parts of the country. The IBA events also provided information to lawyers on possibilities for their engagement with the work of the Court and publicised the ICC List of Counsel.

In order to reinforce the impact of our outreach work, the IBA also liaised with academic institutions in South Africa involving students in the organised seminar and promoting a lecture at the University of Pretoria by the Deputy Prosecutor. Interviews with local media were also facilitated on the occasion of visits of ICC officials in the country. In December 2008 the IBA co-hosted a regional meeting in Pretoria with the Institute of Security Studies (ISS) for bar leaders which included representatives of lawyers' associations and civil society from 11 SADC countries.

During the reporting period the IBA also noted that civil society in SADC and South Africa became quite vocal on issues related to international justice with public statements issued by several organisations or groups of organisations – including the 30 July African civil society statement signed by 135 organisations – and a number of meetings organised in the region. In South Africa specifically both the Law Society and the General Council of the Bar put international justice on their agenda and the General Council of the Bar issued a public statement condemning the AU decision not to cooperate with the ICC. Moreover, on the occasion of the inauguration ceremony for the newly-elected President Zuma, civil society pressed the government to take a position in relation to South Africa's obligations to arrest President Omar Al-Bashir should he step foot on the territory of the Republic to attend the ceremony. Activities are planned for next year to further the debate around the ICC within the academic community.

## 5.1 Seminar series bringing the ICC to South African legal professionals

In April 2009 the IBA organised in partnership with the General Council of the Bar and the Law Society of South Africa two seminars on the ICC, to be held on 14 April in Cape Town and 16 April in Johannesburg respectively.<sup>60</sup> The seminars also followed an identical programme and an interactive format. Each of the sessions was allocated ample time for questions from both South African and international experts, including officials from the ICC. The agenda included: a discussion on the role of lawyers at the ICC; opportunities for South African professionals; an extensive discussion on

<sup>60</sup> See programme of the two seminars in Appendix.

Africa's involvement with the ICC; South Africa's obligations under the Rome Statute and South Africa's ICC Act; and universal jurisdiction and international justice in Africa.

The discussion generated at the seminars covered the following issues:

- Individual criminal responsibility and official capacity in relation to the arrest warrant issued for the Sudanese President. The examples of Charles Taylor and Milosevic were put forward as supportive of the possibility of indicting a head of state under international law. Also, in relation to the Sudanese cases it was stated that the ICC is part of a broader solution to the conflict in Darfur.
- The perception of selective justice and apparent targeting of Africa was also debated in relation to the structure of the United Nations Security Council (UNSC) and the ability of the five permanent members, particularly the US administration, to pilot the ICC. In this respect it was said that detractors of the Court have influenced the media, accusing the ICC of being neo-colonialist – an argument which was countered by illustrating the number of African States Parties to the Rome Statute. The risk that the ongoing anti-ICC propaganda could endanger an already fragile institution is great, and such claims should be contested. Finally, it was stated that decisions by the UNSC are not in the remit of the ICC and therefore the Court cannot be considered responsible for any political decisions of the international community.
- The contribution of lawyers in relation to the debate around the ICC was also a subject of discussion. Lawyers were said to have a responsibility to take ownership of and engage in the debate about the ICC, using their expertise to contradict any misperceptions. In the context of South Africa it was argued that the ICC Act offers a unique instrument for practitioners to become actors of international justice. Lawyers have the duty to stand on the side of the law and advocate for the Court in the face of a political debate. In addition, South African practitioners can participate as counsel before the ICC, and work more closely with civil society to bring cases before the Court.
- Concerns about universal jurisdiction and international justice in Africa formed another discussion topic. The possibility of abuse was recognised as real, and the concerns voiced by some scholars related to inequities around international criminal justice. The opinion was voiced that cases could have been referred for political reasons or under the assumption that African states have no capacity to prosecute. The AU was said to have made a laudable attempt to address concerns about universal jurisdiction, setting up the AU-EU commission headed by leading international law experts.
- An additional topic was the role of regional courts. The decentralisation of international justice was said to be important because of cultural sensitivities and political interference with prosecutions. It was observed that the availability of several venues for recourse for victims is beneficial to their interest, especially as long as there are states which have not ratified the statute.

The seminars helped build a momentum around the ICC, disseminate information and initiate a debate among the South African legal profession in different parts of the country. The programme relied on substantial engagement by the General Council of the Bar and Law Society of South on ICC matters. As a result of their engagement with the IBA the Law Society of South Africa included a session on the ICC on the agenda of its 2009 annual general meeting, while the General Council

of the Bar took the initiative, in the aftermath of the AU decision not to cooperate with the ICC in relation to the arrest warrant for President Al-Bashir, to issue a statement recalling the legal obligations binding South Africa under its ICC Act.

In light of the numerous misperceptions about the ICC in Africa it is important for professional associations to redefine their position in relation to international justice. Events like the seminar series in South Africa generate engagement and interest in ICC issues amongst individual professionals. It was successful in encouraging a number of individual lawyers from South Africa to apply to the ICC List of Counsel and offered an opportunity for the media and academics to engage with ICC officials very closely.

## **5.2 Workshop for bar and law society leaders on 'International criminal justice in southern Africa: relevance, lessons and prospects'**

In December 2008 The Institute for Security Studies (ISS), SADC Lawyers Association (SADC LA) and the IBA convened a workshop for bar and law society leaders in southern Africa. Funded by the Open Society Initiative for Southern Africa (OSISA), the meeting aimed to build understanding about international criminal justice and discuss how best to support the involvement of lawyers in related efforts in the southern African region. The 31 lawyers participating in the workshop included law society leaders from 11 SADC countries.<sup>61</sup>

The discussions focused on misperceptions about international criminal justice and the role of transitional justice and peace processes in Africa. Lessons learnt from Uganda, Kenya and Zimbabwe as well as the DRC's self-referral to the ICC were discussed as part of an analysis of the relevance of international justice mechanisms for SADC. Furthermore the workshop participants discussed the importance of complementarity, domestic implementation of the Rome Statute and the role of lawyers in operating and implementing international justice systems.

At the end of the two-day workshop the participants agreed on a joint outcomes statement which expressed 'support for the role of international criminal justice and the rule of law in promoting peace, justice and accountability for serious human rights violations in Africa' and called 'on African countries to support the work of the ICC on the African continent as a crucial component of broader efforts to end impunity for international crimes, which complement national, sub-regional and regional justice efforts'. In addition the statement calls on SADC Member States that have not yet done so to ratify, as a matter of urgency, the Rome Statute of the ICC and to implement legislation and develop specialised capacity among the legal profession and government agencies to enact the legal and related obligations stemming from the Rome Statute.

Significantly, the group of lawyers also expressed 'concern about the extent of the myths and misconceptions around the work of the ICC in Africa' rejecting 'the notion that the ICC is a Western creation, and as African lawyers and civil society organisation representatives'. For this reason the bar leaders requested 'the United Nations Security Council to respect the independence of the ICC and its judicial processes and to exercise caution in the use of Article 16 of the Rome Statute relating to deferrals of proceedings in current and future cases'.<sup>62</sup> The IBA commended the adoption of the outcomes statement in a press release dated 18 December 2008.

<sup>61</sup> See Workshop Agenda in Appendix.

<sup>62</sup> The full text of the statements is available in the Appendix



# Chapter Six – IBA outreach in Mozambique

## 6.1 Context of IBA outreach in Mozambique

Ratification of the Rome Statute has been under consideration in Mozambique since its signature in 2000. The creation of an inter-ministerial committee to study the compatibility of the Statute with the national law, together with the constitutional review process as well as the drafting of a new penal code, initially constituted encouraging signs towards ratification. On 14 October 2002 the delegate from Mozambique at the 6th Committee of the 57th UN General Assembly, HE Ambassador M Isaac Murargy, remarked: ‘The process of ratification of the Rome Statute is underway and soon our country will be joining the family of States Parties to that international legal instrument... Given the genuine purposes pursued by the ICC, Mozambique believes that there is no room for fear and skepticism. In recognizing the principle of complementarity, the Rome Statute safeguards the priority of national sovereignties. For these reasons, we would like to urge all governments of the world to proceed, without any further delay, with the signing and ratification of the Rome Statute.’

The Rome Statute was later included in the Ministry of Foreign Affairs and Cooperation’s recommendatory list of international instruments to be ratified by Mozambique, which was approved by the Council of Ministers in 2004. Despite the good record of ratification of international standards and the encouraging early public statements the Mozambican authorities have maintained a latent position, which has pushed the issue of ratification away from the national parliamentary agenda.

On 2 March 2009 at the opening of the 2009 judicial year the President of the Mozambican Bar Association (*Ordem dos Advogados de Moçambique*, OAM), Gilberto Correia, called for ratification of the Rome Statute to support the international criminal justice system. In recommending that the 2009 judicial year could see an improvement of administration of the justice in the country, President Correia noted that ‘during this judicial year Mozambique would finally ratify the Rome Statute establishing the ICC, joining international criminal justice efforts and the majority of SADC member states on the promotion of peace, justice and accountability for serious human rights violations as well as on the protection and defence of the rights of victims of international crimes’.<sup>63</sup>

This call for ratification made in the presence of the President of the Republic and the highest justice authorities, including the presidents of the Supreme and Constitutional Courts, the Attorney General and the Minister of Justice, was a courageous attempt on the part of the bar association to counterbalance the position of the executive and place the issue of ratification firmly on the agenda.

To initiate a debate on the scope and work of the ICC the Mozambican Bar Association requested the assistance of the IBA to host a high-level conference on the ICC and international criminal justice in Maputo for members of the Mozambican legal community.

Building on the partnership and discussions from the bar leaders’ workshop held in Pretoria in December 2008, the Maputo Conference was organised in collaboration with the International Crime

<sup>63</sup> The full speech of President Correia is available online at: [http://www.ibanet.org/Human\\_Rights\\_Institute/ICC\\_Outreach\\_Monitoring/IBA\\_ICC\\_Outreach\\_Mozambique.aspx](http://www.ibanet.org/Human_Rights_Institute/ICC_Outreach_Monitoring/IBA_ICC_Outreach_Mozambique.aspx) (accessed 22 September 2009).

in Africa Programme (ICAP) of the Institute of Security Studies and the sponsorship of the John D and Catherine T MacArthur Foundation and OSISA.

## **6.2 Conference on the International Criminal Court: prospects for international criminal justice in Mozambique**

### **a) Conference programme**

The conference followed a traditional lecture format with keynote speakers giving presentations to the plenary followed by a question and answer session. Following the opening remarks and a vote of thanks by the organisers, presentations were structured around two main thematic blocks: an introduction to the Rome Statute and the work of the ICC given by eminent international speakers, including ICC officials; and a discussion over the relevance of the ICC to the African continent and to Mozambique, including lessons learnt from domestic implementation of the Rome Statute in other countries.<sup>64</sup> On the last day of the conference the findings were discussed in the plenary and a few recommendations were adopted.

The significance of the event was underscored by the presence of senior government officials, such as the Minister of Justice, and the remarks given by the President of the Constitutional Court of Mozambique Dr Luis Mondlane, also First President of the SADC Tribunal. The ICC was represented by Pre-Trial Judge Sylvia Steiner and Deputy Prosecutor Fatou Bensouda. The President of SADC Lawyers Association, Mabvuto Hara, and Director of the Southern Africa Litigation Centre, Nicole Fritz, were also among the distinguished panellists in attendance. Finally, to maximise its impact within Lusophone countries five lawyers from Angola also participated in the event. The conference ran for two full days in Maputo and was attended by 120 people. The local press was invited to attend the opening of the conference and extensive coverage was also given by national television and local radio.<sup>65</sup>

### **b) The debate – day one**

#### **OPENING PRESENTATION**

On the first day of the conference President Correia opened the event regretting that nine years had passed since Mozambique had signed the Rome Statute, and no further action had been undertaken by the government. He welcomed the open-minded approach of the Minister of Justice, who participated in the the conference. The discussion was aimed at promoting the rule of law and strengthening international cooperation on accountability for international crimes.

The President of the Constitutional Court of Mozambique, Luis Mondlane, introduced the principal topic for discussion at the conference, highlighting the immense challenge of establishing criminal justice for crimes that threaten humanity, and which are not foreign to Mozambique. While Article 11 of the Constitution of Mozambique includes an obligation for the state to protect human rights, possible obstacles to the ratification of the Statute materialise under the statute for life imprisonment, which is against the Mozambican Constitution, together with issues surrounding illegality under

<sup>64</sup> See conference programme in Appendix

<sup>65</sup> 'The List of Counsel: The roster for lawyers representing accused and victims', *De Rebus*, March 2009



the Mozambican penal code of the imprescriptibility of crimes. Luis Mondlane concluded that if, on the one hand, compatibility with the Mozambican Constitution must be pursued in order to allow ratification, the Rome Statute 'represents a qualitative step forward in the prosecution and punishment of crimes against humanity, war crimes and genocide. The Rome Statute also represents a significant step towards the transformation of a culture of impunity to a culture of accountability and above all respect of human life'.

## ROME STATUTE AND THE WORK OF THE ICC

Judge Sylvia Steiner presented on the main features of the Rome Statute, emphasising the treaty-based nature of the ICC and the principle of complementarity. She stressed that ratification is in fact the typical act of exercise of state sovereignty, and defined the ICC as a component of everlasting peace, derived from the just punishment of perpetrators and reconciliation between community members. Judge Steiner also remarked on the impartiality and universal nature of the ICC, noting that the 'ICC implementing legislation is a guarantee against undue interference in the work of national systems' as it allows national courts to try perpetrators of Rome Statute crimes.

## WORK OF THE OTP

ICC Deputy Prosecutor Fatou Bensouda introduced the work of the OTP and gave an overview of the main challenges it faces, which include: the referral and selection of a situation to investigate; concrete investigation modalities in situations of ongoing conflict; execution of the arrest warrants; protection of witnesses and victims during investigation and prosecution; and the interplay between ICC investigation and conflict resolution tools. Deputy Prosecutor Bensouda stressed the great innovation of the Rome Statute in its establishment of a new stable legal regime whose aim is to prevent international crimes.

## IMMUNITY OF HEADS OF STATE

Constitutional Judge Nguenha presented on the issue of immunity of heads of state as a challenge to international justice, emphasising that the challenge is broader than the interpretation of the legal text, but is rooted in political considerations. He covered arguments both in favour of and against the prosecution of heads of states, arguing that the Pinochet case and the trial of Milosevic consolidated the argument in favour of a lack of immunity for heads of state for crimes against humanity.

## THE ICC IN AFRICA

Ample time was allocated to discuss perceptions of the ICC and international criminal justice, as well as the role of lawyers in southern Africa in relation to accountability for international crimes, thus framing the ICC in the context of recent political developments in Africa. Talking about international justice in SADC, Mabvuto Hara emphasised the significant involvement of SADC countries in the drafting of the Rome Statute, together with the high number of ratifications. Current challenges in the region include accountability mechanisms for Zimbabwe; empowerment of national courts through the ICC implementing legislation; and the spread of ignorance about the ICC (a system which, however, provides an opportunity for lawyers to engage in outreach activities).

Godfrey Musila discussed the historical reasons for the misperceptions surrounding the ICC in Africa in light of the current debate on universal jurisdiction. He argued that the perception of Africa as a target for ICC prosecution is not shared by victims and victims groups in countries such as the DRC, and that with only three countries in Africa<sup>66</sup> featuring universal jurisdictions legislation, African victims are prone to seek justice before western courts as there are no local alternatives.

## CLOSING DISCUSSION

The discussion that followed these presentations on the first day of the conference included the following issues:

- Mozambique is to undertake an ordinary review of its constitution, which could also include issues related to ratification of the Rome Statute. However, it was argued that the length of this revisionist exercise is such that it would be desirable for ratification to occur before the review of the constitution.
- Lawyers as a group should work together to lobby governments in different countries to prosecute perpetrators of international crimes nationally.
- The concept of peace through judicial means, together with Mozambique's experience of a peace negotiated through dialogue (in which the void created by the lack of judicial process was filled by traditional practices), generated a debate on the impact of trials on peace negotiations.

### c) *The debate – day two*

## STATEMENT BY THE MINISTER OF JUSTICE OF MOZAMBIQUE

The second day of the conference continued with an update from HE the Minister of Justice Benvinda Levi on the work of the Inter-Ministerial Committee (of which she is Chair) studying the Rome Statute. Levi welcomed the debate taking place at the conference and announced that after many years of study a report assessing the opportunity of ratifying the Rome Statute will soon be presented to Cabinet by the ad hoc Inter-Ministerial Committee. The issues being analysed included the legal framework for surrender to the ICC and the limitation of parliament's power to consider amnesty, as well as the introduction of penal provisions of ICC crimes according to the principle of exclusivity of penal jurisdiction. She concluded by affirming that Cabinet shares the objectives of the conference and is keen to ratify the Statute, possibly as early as 2010.

## RATIFICATION OF THE ROME STATUTE

In relation to the benefits of ratification of the Rome Statute, Professor Paulo Comoane argued that the advantages of ratification of the statute overcome any disadvantages, and gave a comprehensive list of reasons for such a move. These included: promotion of accountability at national and international level; promotion of legal reform and opportunity for technical assistance to be provided by the ICC; increased international prestige; and the deterring impact that ratification would encourage.

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<sup>66</sup> South Africa, Senegal and Kenya (NdR)

Finally, the conference discussed lessons learnt from domestic implementation of the Rome Statute, namely the case studies of South Africa and Brazil. Judge Steiner's presentation on Brazil's ratification of the Rome Statute highlighted considerable similarities with the situation in Mozambique, for example in relation to the distinction between extradition and surrender; the principle of legality of offences, penalties, and life imprisonment sentences under national law; and the apparent contrast between imprescriptibility of Rome Statute's crimes and the provision of national amnesties.

Nicole Fritz from the Southern African Litigation Centre proposed a fresh interpretation of international justice initiatives in Africa, emphasising initiatives in South Africa such as the torture docket case or the universal justice clause of the ICC as examples of ongoing support for the ICC. In particular she highlighted that South Africa's historical demand for accountability included amnesty, but that fundamental to the scheme was prosecution as an incentive to come forward to the Truth and Reconciliation Commission.

### **6.3 Conference recommendations**

Following the announcement made by the Minister of Justice, the plenary of the conference adopted five recommendations by consensus aimed at generating momentum on the issue of ratification of the Rome Statute and drawing a road map for future action.

1. The conference recommends that, nine years having passed since signing, Mozambique ratifies the Rome Statute and develops domestic implementing legislation as soon as possible;
2. The conference urges the Government of Mozambique, if necessary, to use the golden opportunity offered by the ordinary review of the Constitution to make amendments to its text in order to enable a smooth ratification process;
3. The conference recommends that the Mozambican Bar Association continues to assist civil society to keep the issue of ratification on the Government Agenda;
4. The conference welcomes support that the SADC Lawyers Association and other interested parties can give to the Mozambican Bar Association in the form of technical advice to solve the legal issues related to ratification;
5. The conference calls on the Mozambican Bar Association, with its partners, to convene a meeting, within a reasonable timeframe, to review developments on international criminal justice in Mozambique.

### **6.4 Conclusions**

The plenary of the conference confirmed the interest in ratifying the Rome Statute expressed by the government and recognised a leading role in the process for the Mozambican Bar Association. The event was successful in creating momentum on ratification in Mozambique. The conference generated a public debate which was reflected in several articles featured in local newspapers during the event and the weeks that followed. A television interview given by Judge Steiner was broadcast twice and also reproduced in the printed media.

The way forward is now for the bar to engage with the government that will be created after the October 2009 elections, and with the support of civil society, continue advocating for ratification. Support for this initiative by the ICC will be important to reinforce the government's commitment for ratification.

# PART III – CONCLUSIONS

## Observations and recommendations

The ICC is faced with the considerable challenge of making its proceedings and mandate known to the public without compromising its independence. The tension between the judicial core of the institution and the need for proactive engagement with the public has been resolved, to date, by prioritising a perception of judicial independence over openness. Great misinformation about the ICC remains. However, as perceptions of the Court have changed and proceedings have commenced in The Hague, public information and external relations should be increased while outreach to the affected communities continues.

The IBA welcomes the consistent outreach methodology developed in relation to key moments of the proceedings, as well as the production of audiovisual materials by the ICC Outreach Unit. Despite a contrary recommendation made by the Committee on Budget and Finance, the IBA urges the ASP to establish permanent posts for the audiovisual team. Audiovisual materials have proved to be effective as a tool for both outreach and public information.

In addition, as the strategic framework for outreach is undergoing revision, the IBA encourages the Registry to establish partnerships with local partners and to integrate public information and outreach tools in situation countries to maximise the impact of its activities. The IBA also reiterates its earlier recommendation to undertake outreach in situations under analysis. Moreover, the IBA calls on the Registry to use the opportunity offered by the 2010 Review Conference in Kampala to campaign for the Court in Africa as a whole.

2009 presented some unique public information opportunities for the Court: the Registry used traditional tools to publicise unprecedented events with some result, but failed to drive the debate around the ICC in the media. Because no intensive media campaign has been carried out, misleading reports also accompanied these events in the media.

The current debate about the ICC demands a new way of thinking about external communication and redefined priorities. The IBA recommends that the Registry's engagement with the media should be systematic, coherent and mindful of the relations that different media across the globe hold with the Court and other authorities. The ICC Presidency and its judges should also be more open to intervention in the media and more proactive in publicising their decisions. A media strategy should also be developed in consultation with different Court organs and external consultants to transform media work from an ad hoc initiative linked to key stages of the proceedings into a sustainable programme mainstreamed in all ICC activities.

External relations are another important component in the realm of the ICC Presidency and the OTP. As the political environment is different to that experienced by the first ICC Presidency, the IBA welcomes the commitment expressed by Song's Presidency to engage more with the media and establish an interactive dialogue with ICC partners. The IBA recommends that the Presidency also demonstrates leadership in developing, in a timely manner, a clear mandate on external communications aiming to reinforce the position of the ICC in the broader landscape of international justice.

Reinforcing those efforts currently undertaken by the different organs of the Court, and stimulating an increase in volume, is key. The IBA recommends that the ASP collectively reaffirms and adopts a resolution at its next session urging the Court to consistently disseminate information and publicise its proceedings in a language and manner adequate to reach the global public. The ASP should also recommend, as a matter of urgency, the adoption of a strategic framework for public information. In addition, States Parties are encouraged to individually promote the ICC at the national level, especially in the media.

In working on ICC-related issues with lawyers in Africa the IBA focused on SADC countries, particularly Mozambique and South Africa. In relation to the latter the objective was to build a momentum around the ICC, and to disseminate information and initiate debate among the South African legal profession in different parts of the country. Seminars organised in Johannesburg and Cape Town were successful in encouraging lawyers' associations to become committed to the ICC, and in providing an opportunity to inform individual lawyers on the possibilities for legal professionals' engagement with the work of the Court. In Pretoria the IBA co-hosted with the Institute of Security Studies (ISS) and SADC Lawyer's Association a regional meeting for bar leaders which included representatives of lawyers associations and civil society from 11 SADC countries.

In Mozambique the IBA assisted the national bar association in organising a two-day high level conference in Maputo, in collaboration with the Institute for Security Studies (ISS). The event was widely reported in the local media and was successful in that the Minister of Justice took the opportunity to announce the intention of the executive to ratify the Rome Statute in 2010. The plenary of the conference echoed this statement, urging the ratification of the Statute and entrusting the local bar association to continue to assist civil society in advocating for ratification, and to convene a meeting to review developments.

IBA activities carried out in each country were tailored to the local context in full consultation with our partners. Challenges were posed at times by the lack of resources and capacity of the local bars; however, the IBA found national bar associations to be committed to engaging with the ICC and promote international justice. On the other hand civil society in SADC has also proven to be quite vocal, with public statements issued by several organisations or groups of organisations – including General Council of the Bar of South Africa's public statement condemning the AU decision not to cooperate with the ICC.

The negative perceptions and spread of misinformation surrounding the ICC in Africa is a prime example of the importance of investing resources in raising awareness of the Court and relaying timely and accurate information in an effective and proactive way. The IBA engaged with these misperceptions in the course of its outreach activities. In addition to the efforts of NGOs, the ICC has also increased efforts in this field, yet integrating outreach, public information and external relations strategies is key. The IBA urges the Court and its different organs to continue to treat its outreach as a priority, and to redouble its initiatives and strategies on public information and external relations, in order to fulfil its mandate – to guarantee publicity of proceedings, in the full sense of the term.

# Appendices



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## WORKSHOP FOR BAR & LAW SOCIETY LEADERS IN SOUTHERN AFRICA

### INTERNATIONAL CRIMINAL JUSTICE IN SOUTHERN AFRICA: RELEVANCE, LESSONS & PROSPECTS

5-6 DECEMBER 2008, FARM INN, PRETORIA

[[www.farminn.co.za](http://www.farminn.co.za)]

## AGENDA

Facilitator Day 1: Liliana De Marco-Coenen, IBA

Time	Activity	Speakers
8:30	Registration & coffee/tea	
9:00 – 9:15	Opening remarks	Mabvuto Hara, President, SADC LA
9:15 – 9:45	International criminal justice in Africa and its relevance for SADC	Renifa Madenga, Office of the Prosecutor, ICTR
9:45 – 10:15	'An imperialist Western imposition'? Myths about international criminal justice in Africa	Max du Plessis, ISS & UKZN
10:15 – 10:45	Discussion	
10:45 – 11:00	Coffee/tea	
11:00 – 11:45	The ICC in Africa: the importance of complementarity and lessons from current ICC situations	Xavier-Jean Keïta, Office of Public Counsel for the Defence, ICC
11:45 – 12:30	Discussion	
12:30 – 13:30	Lunch	
13:30 – 14:00	Case studies of state referrals to the ICC: The DRC	Godfrey Musila, ISS
14:00 – 14:30	Case study of domestic implementation: SA & the Zimbabwe torture docket	Max du Plessis, ISS & UKZN
14:30 – 15:15	Discussion	
15:15 – 15:30	Coffee/tea	
15:30 – 16:00	Discussion and summary of key points from Day 1	Anton du Plessis, ISS



Time	Activity	Speakers
9:00 – 9:30	Outreach by the ICC and opportunities for lawyers associations	Liliana De Marco-Coenen, IBA
9:30 – 10:00	How can lawyers engage with the ICC?	Xavier-Jean Keïta, Office of Public Counsel for the Defence, ICC
10:00 – 10:30	Discussion & views from SADC lawyers on options for engaging with the ICC	
10:30 – 10:45	Coffee/tea	
10:45 – 12:00	The role of international criminal justice in transitional justice & peace processes: Options and lessons from Kenya, Uganda & Zimbabwe	Tom Ojienda, East Africa Law Society Martha Nanjobe, national co-coordinator, Advocates for Public International Law, Uganda TBC, Zimbabwe
12:00 – 13:00	Discussion	
13:00 – 14:00	Lunch	
14:00 – 14:30	Discussion and summary of key points from Day 2	Anton du Plessis, ISS
14:30 – 15:30	Wrap-up: action steps and recommendations	Mabvuto Hara, SADC LA

## ABOUT THE HOST ORGANISATIONS

### Institute for Security Studies (ISS)

[www.issafrica.org](http://www.issafrica.org)

The ISS is a regional strategic studies institute dedicated to informing and enhancing the debate on human security in Africa in support of policy formulation and decision-making at all levels. With a staff of 120 people, the ISS's head office is in Pretoria with other offices in Cape Town, Nairobi and Addis Ababa. The International Crime in Africa Programme (ICAP), which is hosting this workshop, is one of 13 programmes at the ISS. ICAP works towards enhancing peace, justice and accountability in Africa by raising awareness and building capacity to respond to international crime and terrorism. ICAP's work is motivated by the goals of durable peace building and strengthening the rule of law, both of which are threatened by the culture of impunity and the general lack of criminal justice capacity to respond effectively to these crimes.

### SADC Lawyers Association (SADC LA)

SADC Lawyers Association is an independent voluntary association made up of Law Societies/Bar Associations of the Southern African Development Community (SADC) region. It has been in operation since August 1999. The vision of the SADC LA is to uphold human rights and respect for the rule of law, to promote and support the Independence of the judiciary and to protect fundamental liberties especially for the underprivileged and minority groups.

### International Bar Association (IBA) ICC Monitoring and Outreach Programme

[www.ibanet.org](http://www.ibanet.org)

The IBA is the world's leading organisation of international legal practitioners, bar associations and law societies. The IBA influences the development of international law reform and shapes the future of the legal profession throughout the world. It has a membership of 30 000 individual lawyers and more than 195 bar associations and law societies spanning all continents. In 2005, the IBA commenced an ICC Monitoring and Outreach Programme with funding from the McArthur Foundation. The monitoring component analyses developments at the ICC focusing on the fair trial rights of the accused, the implementation of the 1998 Rome Statute, the Rules of Procedure and Evidence, and related ICC documents. The outreach programme works in partnership with bar associations, lawyers and civil society organisations disseminating information and promoting debate on the ICC. Findings and recommendations from the Programme are fed back to the Court with a view to creating a dialogue between targeted groups and the Court.



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## PRESS RELEASE

16 December 2008

### **Outcomes of a workshop for Bar and Law Society leaders on 'International criminal justice in southern Africa: relevance, lessons and prospects'**

The Institute for Security Studies (ISS), SADC Lawyers Association (SADC LA) and the Monitoring and Outreach Programme of the International Bar Association (IBA) convened a workshop for Bar and Law Society leaders in southern Africa from 5-6 December in Pretoria. Funded by the Open Society Initiative for Southern Africa (OSISA), the meeting aimed to build understanding about international criminal justice and discuss how best to support the involvement of lawyers in related efforts in the southern African region. The 31 lawyers participating in the workshop, which included law society leaders from 11 SADC countries, agreed on the following outcomes statement.

#### **Workshop Outcomes**

We, the participants of the abovementioned workshop on international criminal justice in southern Africa, and as representatives of the Southern African Development Community (SADC) Lawyers Association and African civil society:

1. *Express support* for the role of international criminal justice and the rule of law in promoting peace, justice and accountability for serious human rights violations in Africa.
2. *Call on African countries to support* the work of the International Criminal Court (ICC) on the African continent as a crucial component of broader efforts to end impunity for international crimes, which complement national, sub-regional and regional justice efforts.

3. *Reaffirm the importance* of upholding the rule of law, due process and human rights, and promoting the protection of the rights of victims and the accused in all international criminal justice efforts in Africa, including ICC investigations and prosecutions.
4. *Call on sub-regional, regional and international leaders* to take urgent action on Zimbabwe to end the current crisis and ensure that impunity does not prevail.
5. *Call on SADC member states* that have not yet done so, to ratify as a matter of urgency, the Rome Statute of the ICC. We commend the actions by Botswana, Democratic Republic of Congo, Lesotho, Madagascar, Malawi, Mauritius, Namibia, Republic of South Africa, Tanzania and Zambia which have already ratified the Statute.
6. *Request SADC member states* that are party to the Rome Statute to adopt implementing legislation and develop specialised capacity among the legal profession and government agencies to give effect to the legal and related obligations stemming from the Rome Statute.
7. *Call on all SADC member states* to support the ICC by entering into cooperation agreements that facilitate judicial proceedings, including those that allow for the implementation of provisional release of suspects or accused, and/or the relocation of witnesses.
8. *Express concern about the extent* of the myths and misconceptions around the work of the ICC in Africa. In particular we reject the notion that the ICC is a Western creation, and as African lawyers and civil society organisation representatives, we affirm African involvement in the creation and functioning of the Court.
9. *Offer support to the Southern African Litigation Centre (SALC)* initiative calling on the South African National Prosecuting Authority (NPA) to comply with its obligations under the Rome Statute and South Africa's ICC implementation legislation to institute investigations against perpetrators of international crimes in Zimbabwe.
10. *Applaud the SADC Tribunal's Campbell decision* on land issues in Zimbabwe, express concern regarding the Zimbabwean Government's contemptuous response to the decision, and call on SADC member states to demand compliance by the government of Zimbabwe with the rule of law more generally, and the Campbell decision more specifically.

11. *Recognise the role* of lawyers' associations, civil society and regional/sub-regional organisations in supporting specialised capacity building of criminal justice officials and legal practitioners at a national level.
12. *Request the United Nations Security Council* to respect the independence of the ICC and its judicial processes and to exercise caution in the use of article 16 of the Rome Statute relating to deferrals of proceedings in current and future cases.
13. *Welcome initiatives by the ICC Registry* to reach out to legal professionals and lawyers' associations across the globe to promote better standards for the defence and legal representation for victims in the context of ICC proceedings.



## NEWS RELEASE

### INTERNATIONAL BAR ASSOCIATION the global voice of the legal profession

[For immediate release: Thursday, 18 December 2008]

## **Lawyers from Southern Africa call on African countries and the UN Security Council to support the ICC**

The Southern Africa Development Community Lawyers' Association (SADC LA) today issued a statement reaffirming the importance of international criminal justice efforts in Africa, calling on African countries to support the work of the International Criminal Court (ICC) as a crucial component of broader efforts to end impunity for international crimes and to promote peace.

The Statement follows a two-day workshop organised by the SADC LA, the International Bar Association (IBA) and the Institute for Security Studies (ISS). Focusing on 'International Criminal Justice in Southern Africa: Relevance, Lessons and Prospects,' the workshop brought together Lawyers Association Presidents, academics and leading law practitioners from eleven SADC countries.

The Statement requested the United Nations Security Council to respect fully the independence of the ICC and its judicial processes by exercising caution in requesting article 16 deferrals of prosecutions. In addition, it urged sub-regional, regional and international leaders to take urgent action on Zimbabwe to ensure that impunity does not prevail. Mark Ellis, IBA Executive Director, commented: *'it is critically important that African lawyers speak in one voice to demand full accountability for gross human rights violations and crimes against humanity committed in Zimbabwe.'*

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[www.ibanet.org](http://www.ibanet.org)

The Statement reaffirmed the importance of the ICC's work in Africa and rejected the notion that the ICC is a 'Western creation'; on the contrary, African lawyers and civil society representatives have been actively engaged in the creation and life of the Court. SADC bar leaders called on member states to ratify the Rome Statute and to adopt ICC implementing legislation and cooperation agreements. To date only one country in SADC has in place legislation that meets the requirements enumerated under the Rome Statute.

A key challenge in building support for the ICC is strengthening the capacity of domestic criminal justice officials and legal practitioners. The IBA continues to address this issue, and facilitated a debate on engaging lawyers, lawyers' associations, civil society and regional/sub-regional organisations in this process. Liliana De Marco Coenen, Head of the IBA outreach programme on the ICC, commented: *'This Statement, as well as public interest litigation by lawyers' groups in Africa demanding full implementation of Rome Statute obligations at the national level demonstrate the potential of proactive engagement by lawyers in international justice initiatives. To build a truly complementary system of international justice it is essential for the ICC to nourish its relationship with lawyers' associations around the globe'.*

[Click here for the text of the SADC LA Statement.](#)

[<http://www.ibanet.org/Document/Default.aspx?DocumentUid=ca9d5a0b-9376-44d4-bbae-274b40b373c4>]

**ENDS**

**For further information please contact:**

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### **Note to the Editor**

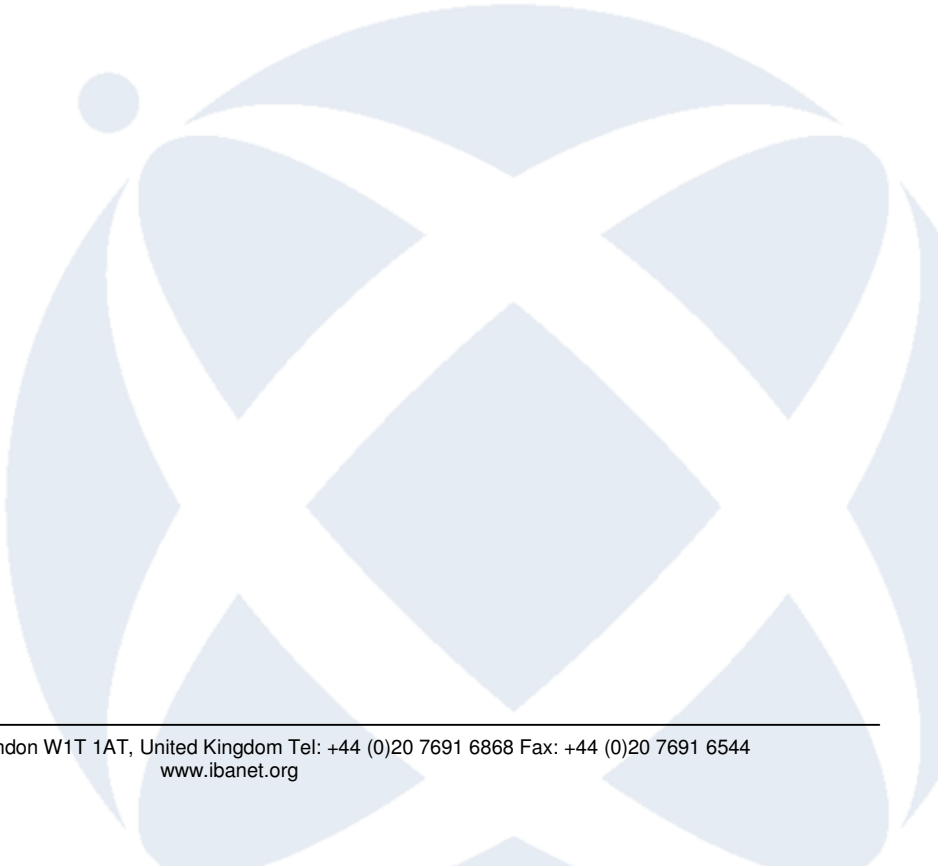
Under article 16 of the Rome Statute of the International Criminal Court, a decision can be made to defer an ICC investigation or prosecution for a period of 12 months upon request by the Security Council. Chapter VII of the UN Charter empowers the Security Council to take measures to 'maintain or restore international peace and security'. Under article 27 of the UN

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Charter a decision to defer an ICC investigation or prosecution under article 16 of the Rome Statute requires an affirmative vote by nine members of the 15-member Security Council.

The **International Bar Association (IBA)** is the world's leading organisation of international legal practitioners, bar associations and law societies. The IBA influences the development of international law reform and shapes the future of the legal profession throughout the world. It has a membership of 30 000 individual lawyers and more than 195 bar associations and law societies spanning all continents. In 2005, the Human Rights Institute of the IBA commenced an ICC Monitoring and Outreach Programme with funding from the John D. and Catherine T. MacArthur Foundation. The monitoring component analyses developments at the ICC focusing on the fair trial rights of the accused, the implementation of the 1998 Rome Statute, the Rules of Procedure and Evidence, and related ICC documents. The outreach component to the Programme works in partnership with bar associations, lawyers and civil society organisations disseminating information and promoting debate on the ICC. Findings and recommendations from the Programme are fed back to the Court with a view to creating a dialogue between targeted groups and the Court.



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The General Council of  
the Bar of South Africa



**Seminar Series**

**BRINGING THE INTERNATIONAL  
CRIMINAL COURT TO SOUTH  
AFRICAN LEGAL PROFESSIONALS**

Tuesday 14 April 2009  
*The Attorneys Fidelity Fund Conference Centre*  
*Cape Town, South Africa*

**Agenda**

<b>Time</b>	<b>Topic</b>	<b>Speaker</b>
0830	Arrival of the participants	
0900	Official opening and welcome remarks	GCB and LSSA Representatives
0930	Overview of the agenda and presentation of the speakers	Liliana De Marco Coenen, Head, IBA Outreach Programme (ICC)
0945	Introduction to the Rome Statute establishing the International Criminal Court (ICC) and Africa's involvement with the ICC	Fatou Bensouda, ICC Deputy Prosecutor
1045	Coffee break	
1100	Overview of situations and cases before the ICC	Fatou Bensouda, ICC Deputy Prosecutor
1130	South Africa's obligations under the Rome Statute and South Africa's ICC Act	Max du Plessis, Advocate, Durban; Senior Research Associate, International Crime in Africa Programme, Institute for Security Studies
1215	Plenary discussion	
1300	Lunch break	
1400	Universal jurisdiction and international justice in Africa	Nicole Fritz, Executive Director, Southern Africa Litigation Centre (SALC)
1430	International crimes in Zimbabwe: is the ICC a viable option?	Sternford Moyo, Former President of the Law Society of Zimbabwe; Vice-Chair, IBA's Human Rights Institute
1500	Plenary discussion	
1545	Role of lawyers at the ICC and opportunities for South African professionals	Liliana De Marco Coenen, Head, IBA Outreach Programme (ICC)
1615	Closing remarks	GCB and LSSA Representatives

*The IBA, LSSA and GCB thank the Attorneys Fidelity Fund for the use of the Conference Centre for this seminar*



The General Council of  
the Bar of South Africa



## Seminar Series

# BRINGING THE INTERNATIONAL CRIMINAL COURT TO SOUTH AFRICAN LEGAL PROFESSIONALS

Thursday 16 April 2009  
*Webber Wentzel Auditorium*  
*Johannesburg, South Africa*

### Agenda

Time	Topic	Speaker
1000	Official opening and welcome remarks	GCB and LSSA Representatives
1030	Overview of the agenda and presentation of the speakers	Liliana De Marco Coenen, Head, IBA Outreach Programme (ICC)
1045	Introduction to the Rome Statute establishing the International Criminal Court (ICC) and Africa's involvement with the ICC	Fatou Bensouda, ICC Deputy Prosecutor
1115	Coffee break	
1130	Overview of situations and cases before the ICC	Fatou Bensouda, ICC Deputy Prosecutor
1200	South Africa's obligations under the Rome Statute and South Africa's ICC Act	Max du Plessis, Advocate, Durban; Senior Research Associate, International Crime in Africa Programme, Institute for Security Studies
1230	Plenary discussion	
1315	Lunch break	
1430	Panel: Universal jurisdiction and international justice in Africa	Sternford Moyo, Former President of the Law Society of Zimbabwe and SADC Lawyers Association; Vice-Chairperson, IBA Human Rights Institute  Nicole Fritz, Executive Director, Southern Africa Litigation Centre (SALC)  Professor Vincent O Nmehielle, School of Law, University of the Witwatersrand; Former Principal Defender of the Special Court for Sierra Leone
1530	Plenary discussion	
1615	Coffee break	
1630	Role of lawyers at the ICC and opportunities for South African professionals	Liliana De Marco Coenen, Head, IBA Outreach Programme (ICC)
1700	Closing remarks	GCB and LSSA Representatives

*The IBA, LSSA and GCB thank Webber Wentzel for the use of the Auditorium for this seminar*



# **Conferência sobre o Tribunal Penal Internacional: Perspectivas para uma Justiça Penal Internacional em Moçambique**

29–30 de Junho de 2009

CENTRO INTERNACIONAL DE CONFERÊNCIAS JOAQUIM CHISSANO

*Maputo, Moçambique*

## **Agenda**

### **DIA 1: Segunda-Feira, 29 de Junho de 2009**

<b>Hora</b>	<b>Assunto</b>	<b>Orador(a)</b>
0815	Chegada e registo dos participantes	
0845	Agradecimentos	Liliana De Marco Coenen – Chefe do IBA Outreach Programme (ICC)  Antionette Louw – Senior Research Fellow - International Crime in Africa Programme (ICAP), ISS
0915	Discurso de Abertura	Gilberto Correia – Bastonário da Ordem dos Advogados de Moçambique (OAM)
0945	Notas introdutórias	Luis Mondlane – Venerando Presidente do Conselho Constitucional de Moçambique
1015	<b>Intervalo</b>	
1045	O Estatuto de Roma que estabelece o Tribunal Penal Internacional (ICC)	Sylvia Steiner – Juíza do Tribunal Penal Internacional (ICC)
1130	O Tribunal Penal Internacional e justiça internacional na região da SADC	Mabvuto Hara – Presidente do SADC Lawyers Association
1215	Debate	
1300	<b>Almoço</b>	
1400	A perspectiva do Procurador: desafios legais e políticos enfrentando o ICC	Fatou Bensouda – Vice-Procuradora – ICC
1430	O ICC em África: percepções actuais e desenvolvimentos políticos	Godfrey Musila, Senior Researcher, International Crime in Africa Programme (ICAP), ISS
1500	Debate	
1530	<b>Intervalo</b>	
1545	Immunity of Heads of State: a challenge to international justice?	João Nguenha, Juíz do Conselho Constitucional de Moçambique
1615	Debate	
1645	<b>Fim do Dia 1</b>	



# Conference on the International Criminal Court: Prospects for international criminal justice in Mozambique

29–30 June 2009

CONFERENCE CENTRE JOAQUIM CHISSANO

Maputo, Moçambique

## Agenda

### DAY 1: Monday 29 June 2009

Time	Item	Speaker
0815	Arrival and registration of participants	
0845	Vote of thanks	Liliana De Marco Coenen, Head Outreach Programme (ICC), International Bar Association  Antoinette Louw, Senior Research Fellow: International Crime in Africa Programme (ICAP), Institute for Security Studies (ISS)
0915	Opening remarks	Gilberto Correia, President, Bar Association of Mozambique
0945	Introductory remarks	Dr Luis Mondlane, President of the Constitutional Court of Mozambique
1015	Coffee Break	
1045	The Rome Statute establishing the International Criminal Court	Judge Sylvia Steiner, International Criminal Court
1130	The ICC and international justice in the SADC region	Mabvuto Hara, President Southern Africa Development Community (SADC) Lawyers Association
1215	Discussion	
1300	Lunch	
1400	A prosecutor's perspective: legal and political challenges facing the ICC	Mrs Fatou Bensouda, Deputy Prosecutor International Criminal Court
1430	The ICC in Africa: current perceptions and political developments	Godfrey Musila, Senior Researcher, International Crime in Africa Programme (ICAP), ISS
1500	Discussion	
1530	Coffee Break	
1545	Immunity of Heads of State: a challenge to international justice?	João Nguenha, Judge, Constitutional Court of Mozambique
1615	Discussion	
1645	End of Day 1	

## Agenda

### DIA 2: Terça-feira, 30 de Junho de 2009

Hora	Assunto	Orador(a)
0815	Chegada dos participantes	
0830	Informe sobre o trabalho da comissão moçambicana Inter-Ministerial que analisa o Estatuto de Roma	Sua Excelência Benvinda Levi – Ministra da Justiça de Moçambique
0900	O Estatuto de Roma: vantagens e desvantagens da sua ratificação para Moçambique	Paulo Comoane – Universidade Eduardo Mondlane, Maputo
1000	Debate	
1030	Intervalo	
1045	Painel de debate: Lições da implementação interna do Estatuto de Roma: análise dos casos do Brasil e África do Sul	Sylvia Steiner – Juíza do ICC Nicole Fritz – Directora – Southern Africa Litigation Centre (SALC), Johannesburg Moderator: Patrício José, Reitor – Instituto Superior de Relações Internacionais
1215	Debate	
1300	Almoço	
1400	Conclusões e recomendações	Gilberto Correia, Bastonário da OAM Liliana De Marco Coenen, Chefe do IBA Outreach Programme (ICC) Antoniette Louw, Senior Research Fellow do International Crime in Africa Programme (ICAP), ISS Mabvuto Hara, Presidente do SADC Lawyers Association
1500	Discurso de encerramento	Sua Excelência Benvinda Levi – Ministra da Justiça de Moçambique
1530	Fim da Conferência	

*A OAM, o IBA e o ISS agradecem o contributo da Fundação John D and Catherine T Mac Arthur, Open Society Initiative for Southern Africa (OSISA), Hidroeléctrica de Cahora Bassa, BCI Fomento, ECO-SIDA, AVIS, Gilberto Correia – Advogados & Associados, Abdul Gani & Associados - Advogados, Liliana Costa – Advogados & Consultores e DDJ LAW, que permitiu a realização da presente Conferência.*

# Agenda

## DAY 2: Tuesday 30 June 2009

Time	Item	Speaker
0815	Arrival	
0830	Update on the work of the inter-Ministerial committee studying the Rome Statute	H.E. Benvinda Levi, Minister of Justice of Mozambique
0900	The Rome Statute: advantages and disadvantages of ratification for Mozambique	Paulo Comoane, Professor of Law, Eduardo Mondlane University, Maputo
1000	Discussion	
1030	Coffee Break	
1045	Panel discussion: Lessons learnt from domestic implementation of the Rome Statute: case studies of Brazil and South Africa	Judge Sylvia Steiner, International Criminal Court  Nicole Fritz, Director of the Southern Africa Litigation Centre (SALC), Johannesburg  Moderator: Patrício José, Director, International Relations Institute of Higher Education in Maputo
1215	Discussion	
1300	Lunch	
1400	Conclusion and recommendations	Gilberto Correia, President, Bar Association of Mozambique  Liliana De Marco Coenen, Head Outreach Programme (ICC), International Bar Association  Antoinette Louw, Senior Research Fellow, International Crime in Africa Programme (ICAP), Institute for Security Studies  Mabvuto Hara, President SADC Lawyers Association
1500	Closing remarks	H.E. Benvinda Levi, Minister of Justice of Mozambique
1530	End of the Conference	

*The OAM, IBA and ISS wish to thank the Open Society Initiative for Southern Africa (OSISA) and the John D and Catherine T Mac Arthur Foundation for their contribution to this Conference as well as our local partners Hidroeléctrica de Cahora Bassa, BCI Fomento, ECO-SIDA, AVIS, Gilberto Correia – Advogados & Associados, Abdul Gani & Associados-Advogados, Liliana Costa – Advogados & Consultores and DDJ LAW.*



## NEWS RELEASE

### INTERNATIONAL BAR ASSOCIATION the global voice of the legal profession

[For immediate release: Friday, 03 July 2009]

## **Mozambique should ratify the Rome Statute says country's lawyers**

A conference in Maputo organised by the Mozambican Bar Association, the **International Bar Association** (IBA) and the Institute for Security Studies concluded with delegates unanimously recommending ratification of the Rome Statute by Mozambique and a call for the Mozambican Bar Association to continue working with civil society to keep the issue on the Government's agenda.

The two-day event on *the International Criminal Court: Prospects for international criminal justice in Mozambique* held on 29 and 30 June brought together 120 senior lawyers, judges and representatives of civil society to discuss advantages and disadvantages of ratification of the Rome Statute establishing the International Criminal Court (ICC).

The conference opened with remarks by the President of the Mozambican Bar, Gilberto Correia, who stated: *'Nine years is enough time to study the Rome Statute and Mozambique – as a democratic country – should join the other SADC countries which have already ratified the Statute.'* Throughout the conference the commitment of the Mozambican lawyers to international justice and the work of the ICC was evident.

Dr Mondlane, President of the Constitutional Court of Mozambique, remarked during his presentation at the conference's opening ceremony: *'Throughout history men have committed*

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*horrible and unimaginable crimes which made one doubt the human nature of men. The Rome Statute represents a significant step forward in the transformation of a culture of impunity into a culture of accountability and above all respect of human life.'*

Also participating at the conference was Her Excellency the Minister of Justice, Bevinda Levi, who provided the meeting with a briefing on the legal issues currently being analysed by the inter-ministerial committee which is mandated to assess compatibility of the Rome Statute with the national legal framework. She reported that the government of Mozambique shares the objectives of the conference and wishes to ratify the Rome Statute. A final decision regarding ratification was said to be due soon. In her closing remarks she commented: *'The conference has met its objectives. We debated technically and without prejudice the issue of ratification of the Rome Statute which makes us conclude that lawyers in our country are eager on this issue.'*

The IBA Executive Director, Mark Ellis, commented: *'We commend the initiative taken by the Mozambican Bar and further encourage lawyers in Mozambique and in the SADC region to work together to support international justice. Ratification and implementation of the Rome Statute offers the opportunity to strengthen national legal systems and in this process the legal profession has a great role to play.'*

**ENDS**

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## **Notes to the Editor**

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The Rome Statute is the international treaty that established the International Criminal Court (ICC). Adopted at the Rome Conference on 17 July 1998, the Rome Statute entered into force on 1 July 2002. As of July 2009, 109 states have ratified the Statute, and a further 30 States have signed but not ratified. The International Criminal Court (ICC) is the first ever international permanent court exercising jurisdiction over individuals accused of war crimes, crimes against humanity and genocide.

In the Southern African Development Community (SADC) region 10 countries have ratified the Rome Statute, but Mozambique, together with Angola, Seychelles, Swaziland, and Zimbabwe, have not. Mozambique is one of the 30 states in the world that has signed the Rome Statute but not ratified. Since its signature in 2000 the Government of Mozambique mandated an inter-ministerial committee, lead by the Ministry of Justice, to study compatibility between the Rome Statute and the Mozambican legal system.

To bring the issue of ratification to the attention of the public, the President of the Mozambican Bar Association, Gilberto Correia, publicly called for ratification of the Rome Statute by Mozambique at the opening of the 2009 judicial year on 2 March. This call was made following the December 2008 meeting by SADC bar leaders and civil society organizations held in Pretoria, where the participants agreed on a joint statement expressing support for international criminal justice, including the ratification of the Rome Statute and the adoption of ICC implementing legislation.

The 29-30 June conference was funded by the John D and Catherine T MacArthur Foundation and the Open Society Initiative for Southern Africa.

### **About the Ordem dos Advogados de Moçambique**

The Ordem dos Advogados de Moçambique (OAM) was established in 1994 with the aim of, among others, defending the rule of law, individuals rights, freedoms and rights of the citizens while collaborating to the good administration of justice and the development of the Mozambican legal culture and improvement of its legal framework. The OAM has a membership of about 500 individual lawyers.

### **About the Institute for Security Studies**

The Institute for Security Studies (ISS) is a regional strategic studies institute that engages on peace and security issues in Africa. The mission of the ISS is to conceptualise, inform and enhance the debate on human security in Africa in order to support policy formulation and decision-making at every level towards the enhancement of human security for all. With a staff of around 120 people, the ISS's head office is in Pretoria South Africa, and other continental offices are in Cape Town, Nairobi and Addis Ababa. The International Crime in Africa Programme (ICAP) is one of 13 programmes currently running at the ISS. Launched in February 2008, ICAP works towards enhancing peace, justice and accountability in Africa by raising awareness and building capacity to respond to international crime and terrorism. ICAP's work is motivated by the goals of durable peace building and strengthening the rule of law, both of which are threatened in Africa by the pervasive culture of impunity and the general lack of criminal justice capacity to respond effectively to these crimes, including war crimes, crimes against humanity, genocide and terrorism.

### **About the International Bar Association** **the global voice of the legal profession**

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The **International Bar Association** (IBA), established in 1947, is the world's leading organisation of international legal practitioners, bar associations and law societies. Its membership includes over 30,000 lawyers and nearly 200 bar associations and law societies spanning every continent. The IBA influences the development of international law reform and shapes the future of the legal profession throughout the world.

The IBA's administrative office is in London; regional offices are located in São Paulo, Brazil and Dubai, United Arab Emirates.

Grouped into two divisions – the **Legal Practice Division** and the **Public and Professional Interest Division** – the IBA offers its members access to leading experts and up-to-date information across all areas of legal practice and professional interest. Through a network of specialised committees, the IBA enables an exchange of information and opinions regarding laws, practices and professional responsibilities pertaining to the practice of law globally. High-quality publications and world-class conferences further provide unrivalled professional development and networking opportunities for legal practitioners and professional associates.

The IBA's **Bar Issues Commission** provides a forum for IBA member bar associations and law societies to discuss any matter relating to law at an international level.

The IBA's **Human Rights Institute** works to promote, protect and enforce human rights under a just Rule of Law, and to preserve the independence of the judiciary and the legal profession worldwide.

In partnership with the **Open Society Initiative for Southern Africa**, the IBA created the **Southern Africa Litigation Centre**, based in Johannesburg, South Africa, to promote human rights and the Rule of Law in Angola, Botswana, the Democratic Republic of Congo, Lesotho, Malawi, Mozambique, Namibia, Swaziland, Zambia and Zimbabwe.

The IBA was instrumental in establishing the **International Legal Assistance Consortium** in Stockholm, Sweden. This global consortium of non-governmental organisations provides technical legal assistance to post-conflict countries.

Through a grant-funded project, the IBA also maintains an office in The Hague which manages the IBA's **International Criminal Court (ICC) Monitoring and Outreach Programme**. This office follows the work and proceedings of the ICC, focusing primarily on the fair trial rights of the accused and the manner in which the Rome Statute and other legal documents of the Court are implemented as well as promoting greater understanding of the work of the Court among the IBA membership network worldwide. It works in partnership with bar associations, lawyers and civil society organisations disseminating information and promoting debate on the ICC in different jurisdictions across the globe. The programme also produces a dynamic news magazine about the ICC called **Equality of Arms Review** or EQ which is available on the IBA website.

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# GENERAL COUNCIL OF THE BAR OF SOUTH AFRICA

*Admitted at The Hague on 21 August 1948  
as a full member of the International Bar Association*

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(For immediate release)

## DRAFT PRESS STATEMENT

### ICC ARREST WARRANT AGAINST PRESIDENT OMAR AL-BASHIR OF THE SUDAN

On 3 July 2009, the 30 member states of the African Union that are signatories to the Rome Statute of the International Criminal Court resolved not to co-operate with the ICC in respect of the arrest and surrender of President Omar Al-Bashir of The Sudan should he enter any of their countries. South Africa is a signatory to the Rome Statute and adopted the AU decision.

President Al-Bashir was indicted by the ICC together with Ahmad Harun, a Minister in the Sudanese Government, and Ali Kushayb, a leader of the Janjaweed militia, for war crimes and crimes against humanity allegedly committed in Dafur. The AU decision of non co-operation with the ICC relates only to President Al-Bashir, not his co-accused.

The AU decision expresses concerns that were raised previously regarding the perceived targeting by the ICC of only African countries and the apparent unique indictment against an incumbent Head of State. The AU decision records its concern about the processes adopted, its effect on what it terms the “*delicate peace process underway in The Sudan*” and on inhibiting a resolution to the Dafur conflict. It also regretted the UN Security Council’s alleged failure to consider an AU request to defer the proceedings initiated against the Sudanese President.

The General Council of the Bar of South Africa is alive to the concerns raised in the AU decision and notes that the text of the AU decision unequivocally reaffirms member states’ commitment to combating the impunity of leaders and of promoting democracy. The GCB however urges that the issues regarding the process and the apparent discrimination against Africa does not obscure the AU’s and our country’s commitment to ensure that leaders, from whichever country in the world, do not enjoy impunity if they are properly triable for gross violations of human rights. It is

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Executive Committee: Patric Mtshaulana SC (chair); Rashid Vahed SC (deputy chair); Seth Nthai SC (vice chair); Soraya Hassim (honorary secretary); Anthea Platt (assistant honorary secretary); Tayob Aboobaker SC; Ashley Binns-Ward SC; Izak Smuts SC; Gerrit Pretorius SC; Kgomotso Moroka SC; Ex officio: Jannie Eksteen SC (past chair); Archie Findlay SC (convenor: NBEB).

recalled that Slobodan Milosevic was the incumbent President of the former Yugoslavia when he was charged by the special International Criminal Tribunal.

The GCB notes that the warrants of arrest were issued against President Al-Bashir and his co-accused pursuant to a referral by the UN Security Council and pursuant to a decision by three Judges of the ICC after considered deliberation. The Judges declined the ICC Prosecutor's request to charge President Al-Bashir with genocide but did allow charges of war crimes and crimes against humanity. The Judges found that there was reason to believe that President Al-Bashir, together with other high-ranking Sudanese political and military leaders, directed, co-ordinated and planned, through the Sudanese armed forces, other State apparatus and the allied Janjaweed militia, acts of ethnic murder, extermination, rape, torture and pillage resulting in the death of as many as 300 000 Sudanese civilians between 2003 and 2008.

The Judges considered separately the necessity of issuing a warrant of arrest against the Sudanese President. They concluded, after considering the most recent UN High Commissioner for Human Rights Report on the situation, that Sudanese forces still appeared to be committing war crimes and crimes against humanity. They accordingly decided that his arrest under the Rome Statute was *"also necessary ... to prevent Omar Al-Bashir from continuing to commit the above-mentioned crimes"*.

The issue of whether or not President Al-Bashir will be subject to arrest and surrender in South Africa should he enter the country, is determined by reference to our laws, including the Implementation of the Rome Statute of the ICC Act and our Constitution.

The political considerations that underlie the AU's concern with the conduct of the ICC and the UN Security Council in relation to Africa should not impede our authorities from performing their express legal obligations under our law should President Al-Bashir enter South Africa.

Chapter 4 of our Implementation of the Rome Statute Act obliges our Central Authority, on receipt of a request from the ICC to enforce a warrant of arrest issued by that Court, , with necessary accompanying documents, to approach a Magistrate who must endorse the ICC's warrant of arrest for execution where the accused is within our borders.

**P M MTSHAULANA SC**  
**CHAIRMAN**  
**GENERAL COUNCIL OF THE BAR OF SOUTH AFRICA**

**BRIAN SPILG SC**  
**CONVENOR : HUMAN RIGHTS COMMITTEE OF THE GCB**

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