



Fédération Internationale des Ligues des Droits de l'Homme  
International Federation for Human Rights  
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الفدرالية الدولية لحقوق الإنسان

# **Position Paper No. 12**

## **International Criminal Court**

### **Recommendations to the sixth session of the Assembly of States Parties to the Statute of the International Criminal Court**

**30 November - 14 December 2007**

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## INTRODUCTION

Five years after the entry into force of the Rome Statute, the Court is investigating crimes committed in four situations (Uganda; Democratic Republic of Congo; Darfur, Sudan and the Central African Republic) and currently preparing to start its first trial. In addition, the Office of the Prosecutor continues to analyse situations in various continents, including the situations in Côte d'Ivoire and Colombia. The Chambers have issued eight public arrest warrants, but only two people have been surrendered to the Court as of November 2008<sup>1</sup>. The Chambers have rendered key decisions on major aspects of the procedure before the Court, including the application of the principle of complementarity, the participation and legal representation of victims, the disclosure of evidence to the defence and the confirmation of charges. Victims are participating in the proceedings and some groups victims are already receiving assistance from the Trust Fund for Victims.

The Court's major accomplishments in 2007 include the opening of an investigation in the Central African Republic (CAR) with a particular focus on gender-based crimes, announced on 22 May 2007; the surrender of the second suspect, Mr. Germain Katanga, on 18 October 2007; the first official visit to Colombia by the Prosecutor himself in the context of the preliminary analysis undertaken by his office; an increase in the number of victims who have requested to participate in the proceedings as well as the number of filings by legal representatives and decisions of the Chambers interpreting victims' rights under the Statute; the implementation of the outreach strategy; and the commencement of the operations of the Secretariat of the Trust Fund for Victims.

The sixth session of the Assembly of States Parties (Assembly or ASP) to the Statute of the International Criminal Court (Court or ICC) will be held in New York from 30 November to 14 December 2007.

This session of the ASP will look at the issue of cooperation, in the light of the report prepared by the Bureau, and should make decisions on appropriate follow-up mechanisms. The Assembly will also look at the advances made in respect of the Court's strategic planning process, including by considering a report on the progress of the Court's victims' strategy as well as the implementation of the Court's outreach strategy. The

ASP will play a crucial role in deciding how the Court will increase its impact and its presence in the field. The Assembly will also make decisions on the proposed amendments to the Regulations of the Trust Fund for Victims. In addition, this session of the ASP will discuss matters related to the budget of the Court for 2008, including the revised legal aid scheme. In deciding upon the budget, the ASP will determine what the Court's activities will be in the coming year. Other issues on the agenda include the date, duration and venue of the Review Conference and follow-up discussions on the definition of the crime of aggression. Finally, the Assembly will elect three judges and six members of the Committee of Budget and Finance. It will also make recommendations to the judges on the appointment of the Registrar.

In 2007, FIDH undertook a range of different activities in relation to the ICC, including activities related to the promotion and implementation of the Rome Statute; facilitating contacts between the Court and field-based and victims organisations coming in particular from situation countries; and monitoring the Court's institutional and judicial work. In particular, FIDH organised training sessions for local NGOs at its Permanent Delegation to the ICC and monitored the various aspects of the work of the Court and, in particular, the implementation of its victims' mandate. Through its Legal Action Group, FIDH also provided legal representation for the 18 victims from Democratic Republic of Congo (DRC), whom FIDH assisted to file applications to participate in the proceedings. FIDH also continued to submit communications to the Office of the Prosecutor, for example on the implementation of the Peace and Justice Law<sup>2</sup>. FIDH welcomed in particular the opening of the investigation in CAR, focusing especially on gender-based crimes, and for which it had advocated since 2003. In April 2007, FIDH published its Guide on Victims' Rights before the ICC, a Guide for victims, their legal representatives and NGOs. Annexe I lists all public documents published by FIDH since the fifth session of the Assembly.

In this paper, FIDH puts forward specific recommendations to the sixth session of the ASP. In addition, as an active member of the thematic teams of the Coalition for the International Criminal Court (Coalition or CICC), FIDH fully endorsed the CICC Teams' Papers to which it contributed. The CICC Teams' Papers are available at: <http://www.iccnw.org/?mod=asp6>

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1. Arrest warrants have been issued against Joseph Kony, Vicent Otti, Okot Odhiambo and Dominic Ongwen in the situation in Uganda (July 2005) and Ahmad Muhammad Harun and Ali Muhammad Abd-Al-Rahman in the situation in Darfur, Sudan (April 2007). Thomas Lubanga and Germain Katanga, both allegedly responsible for crimes committed in the Democratic Republic of Congo, were surrendered to the Court in March 2006 and October 2007 respectively.

2. FIDH Report, "La desmovilización paramilitar: en los caminos de la Corte Penal Internacional", 2 October 2007, [www.fidh.org/spip.php?article4751](http://www.fidh.org/spip.php?article4751)

## I. FURTHER COOPERATION WITH THE COURT NEEDED

### A. The Bureau's report on Cooperation

State Cooperation is absolutely key for the success of the ICC. During the fifth session of the Assembly, States Parties reaffirmed their commitment to cooperate with the Court. In particular, in the omnibus resolution, the Assembly requested that the Bureau address the issue of cooperation and reported back to it at the sixth session<sup>3</sup>. During 2007, States Parties had extensive discussions among themselves and with all three organs of the Court to identify the Court's needs and the types of assistance that States could offer. The Bureau's report on cooperation makes concrete recommendations on the actions that States Parties can undertake to assist the ICC<sup>4</sup>.

FIDH believes that the consultations held during 2007 have helped advance the discussions on the issue of cooperation, and welcomes the Bureau's report. FIDH strongly calls upon States Parties to implement the recommendations outlined in the report, without further delay. As demonstrated by the report, States have an enormous potential to support the Court, both through political action and by providing technical assistance, and both in its bilateral relations with the Court as well as through action in regional or international organisations.

FIDH understands that a hearing on cooperation will probably be organised during the sixth session of the Assembly. FIDH encourages states to convene and participate to this hearing, in order to hold discussions on the practical implementation of these recommendations and on possible adequate means of evaluating progress made by States in the area of cooperation, including the establishment of follow-up mechanisms. In this regard, the Bureau's report suggests the appointment of a focal point on cooperation<sup>5</sup>. FIDH supports this initiative. However, the organisation believes that more needs to be done so that follow-up of the report can be effective. For example, States should report on their capacity to implement the recommendations, as well as on progress made by their government in the field of cooperation with the ICC.

#### **FIDH calls on States Parties to:**

**Continue to affirm their strong commitment to cooperation in their statements during the General Debate.**

**Implement the recommendations outlined in the report, without further delay**

**Convene and participate to a hearing on cooperation, to discuss the practical implementation of the recommendations made in the Bureau's report and the establishment of follow-up mechanisms.**

#### **FIDH recommends that the ASP:**

**Endorse the Report of the Bureau on Cooperation, continue to stress the absolute importance of State cooperation with the Court in the omnibus resolution and establish effective follow-up procedure.**

### B. The Court's specific challenges with regard to the lack of cooperation regarding the arrest and transfer of suspects from Uganda and Darfur

FIDH welcomes the cooperation efforts made during 2007 and highlights, in particular, those made in relation to the transfer to The Hague of the second suspect, Germain Katanga, on 18 October 2007. However, the organisation recalls that six accused remain at large. FIDH also recalls that the past year has been particularly challenging for the Court in terms of cooperation with respect to the situations in northern Uganda and Darfur.

Following a referral by the Government of Uganda, the Prosecutor opened an investigation into crimes committed in the north of the country in 2004. In July 2005, the Pre-Trial Chamber II issued arrest warrants against the Lord's Resistance Army (LRA) top commanders. These arrest warrants have not been executed to date. In July 2006 the Government of Uganda and the LRA initiated peace negotiations to end a 20-year conflict. As a condition for a peace deal, the LRA has repeatedly demanded that the arrest warrants against the top LRA commanders be dropped by the ICC. The peace talks continued throughout 2007 and the ICC proceedings continued to be one of the main points of discussion. On 29 June 2007, the Ugandan government and the LRA signed an Agreement on Accountability and Reconciliation.

The so-called "peace and justice dilemma" will be a constant feature of all the situations where the Court currently operates or will operate in the future, in particular in the context of serious situations which require urgent and short-term answers to long-standing conflicts. The ICC has been created so that "the most serious crimes of concern to the international community as a

whole [do] not go unpunished” and “to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes.”

According to FIDH, the situation in northern Uganda provides a unique opportunity for States to express their support to the ICC, by affirming that any solution in northern Uganda must include a justice component. Experience has shown once and again that no lasting peace can be attained in societies divided by massive crimes, if accountability, justice and redress for victims and the entire society are not attained.

The Agreement on Accountability and Reconciliation agreement sets a series of principles, whose implementation - unclear at this stage - could undermine the ICC. The agreement introduces the possibility for Uganda to try the LRA commanders at the national level. Although FIDH strongly supports national trials when the relevant State has both the willingness and capacity to carry out such trials, the organisation wishes to emphasise that such trials might be genuine, in accordance with the principles established by article 17 of the Rome Statute<sup>6</sup>. All efforts must respect the obligations assumed by States to fight against impunity for the perpetrators of the most serious crimes of concern to the international community as a whole.

With respect to the situation in Darfur, on 27 April 2007, the Pre-Trial Chamber I issued arrest warrants against two suspects, namely: Mr Ahmad Harun, former Minister for the Interior of the Government of Sudan and current Minister for Humanitarian Affairs, and Ali Muhammad Al Abd-Al-Rahan (alias Ali Kushayb), Janjaweed militia leader. The Government of Sudan publicly announced that it would not cooperate with the Court, despite the fact that it is under the obligation to do so according to Security Council Resolution 1593 (2005), which referred the Darfur situation to the ICC. But not only did the Government of Sudan publicly make such announcement, it also continued to encourage impunity of the most serious crimes by nominating Ahmed Harun as co-chair of a committee in charge of investigating human rights abuses in the country<sup>7</sup>, and by releasing Ali Kushayb from detention<sup>8</sup>. FIDH has strongly condemned these acts and has repeatedly urged the Government of Sudan to cease these types of actions, cooperate with the ICC and arrest and hand over the two suspects of war crimes and crimes against humanity. The

Prosecutor has also underscored that the Sudanese suspects must be arrested and surrendered to the Court, and is likely to report on Sudan's lack of cooperation during his briefing to the Security Council on 5 December 2007. FIDH calls on all States Parties to support the Prosecutor's urgent appeal for cooperation by continuing to exert pressure on the government of Sudan, both through their bilateral diplomatic relations and their positions in discussion at multilateral bodies, including at the Security Council. FIDH also recommends that the ASP considers this issue and adopts a resolution condemning Sudan's refusal to cooperate.

#### **FIDH recommends that States Parties:**

**Consider addressing in their statements during the General Debate that holding perpetrators of international crimes accountable is an essential condition for lasting peace.**

**In the specific context of the situation in northern Uganda, support all efforts made to achieve sustainable peace, which are compatible with their commitment and the international obligations to prosecute international crimes.**

**Cooperate with the Court in order to execute the outstanding arrest warrants in the situations Uganda and Darfur.**

**Support the Prosecutor's urgent appeal for cooperation by continuing to exert pressure on the government of Sudan, both through their bilateral diplomatic relations and in discussion at multilateral bodies, including at the Security Council.**

#### **FIDH recommends that the ASP:**

**Include in the omnibus resolution a paragraph on the need for peace and justice to go hand-in-hand<sup>9</sup>.**

**Adopt a resolution strongly condemning Sudan's refusal to cooperate with the Court in accordance with its obligations under resolution 1593, and the protection afforded by the Government of Sudan to the two Sudanese suspects.**

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3. ICC-ASP/5/Res.3, Strengthening the International Criminal Court and the Assembly of States Parties, [http://www.icc-cpi.int/library/asp/ICC-ASP-5-32\\_Part\\_III\\_Resolutions\\_pages\\_337-384\\_English.pdf](http://www.icc-cpi.int/library/asp/ICC-ASP-5-32_Part_III_Resolutions_pages_337-384_English.pdf), [hereinafter “Omnibus Resolution 5th session”], para. 36.

4. ICC-ASP/6/21, Report of the Bureau on Cooperation, [http://www.icc-cpi.int/library/asp/ICC-ASP-6-21\\_English.pdf](http://www.icc-cpi.int/library/asp/ICC-ASP-6-21_English.pdf), [hereinafter “Report of the Bureau on Cooperation”]

5. *Id.*, paras. 9 and 78.

6. FIDH Press Releases on the situation in northern Uganda: "Crimes committed in Uganda must not go unpunished", 17 July 2007, <http://www.fidh.org/spip.php?article4488>; "Open Letter to Mr. Luis Moreno Ocampo, Prosecutor of the International Criminal Court", 4 December 2006, <http://www.fidh.org/spip.php?article3885>; "No Sustainable Peace without Justice", 4 September 2006, <http://www.fidh.org/spip.php?article3597>
7. FIDH Press Release, "Sudan: A new step towards impunity", 10 September 2007, <http://www.fidh.org/spip.php?article4679>
8. FIDH Press Release, "When will the insults against the victims of crimes committed in Darfur end?", 3 October 2007, <http://www.fidh.org/spip.php?article4757>
9. "Convinced also that there can be no lasting peace without justice and that peace and justice are thus complementary requirements", preambular paragraphe 3, Omnibus resolution 5th session, supra note 3.

## II. RECOMMENDATIONS IN RELATION TO VICTIMS AND AFFECTED COMMUNITIES

### A. Outreach

#### 1. Strategy and activities

At its fourth session, the Assembly recognised the importance for the Court to engage in dialogue with the affected communities, in order to promote understanding and support for its mandate, and accordingly encouraged the Court to intensify its outreach activities and requested that it prepared a strategic plan on outreach<sup>10</sup>. In compliance with the ASP request, the Court produced a Strategic Plan for Outreach<sup>11</sup>, which was endorsed by the Assembly at its fifth session<sup>12</sup>. The ASP highlighted the need for the Court to intensify its outreach activities in 2007. The Assembly showed its strong commitment to outreach by providing the Court with all the resources it had requested for the implementation of the Outreach Strategy.

The Assembly's increased investment has led to some progress in the Court's outreach activities.

In Uganda, the Court moved in 2007 from organising outreach activities targeting civil society networks and clan leaders towards conducting broader outreach activities, targeting grass root groups most directly affected by the conflict and the internally displaced communities of northern and north-eastern regions of the country.

In the DRC, following the confirmation of charges hearing in the Lubanga case, the Court's outreach activities have focused mainly on Ituri. The Court organised activities addressed to the general public, including radio broadcasts with Radio Okapi, as well as to target groups such as local NGOs, local and traditional leaders, lawyers, journalists and demobilised children.

The Court has also undertaken efforts in relation to the situation in Darfur: materials tailored to the situation in Sudan are being prepared; activities were organised in refugee camps in Chad around May 2007 and several workshops for representatives of the Sudanese society took place outside Sudan in the second-half of the year.

With regard to the situation in the CAR, the Court organised only one outreach activity since the opening of the investigation in May 2007. Unfortunately, some events

related to this single activities had to be cancelled because the same outreach team had to cover the arrest of Germain Katanga, which occurred at the same time. In its Position Paper to the fifth session of the ASP, FIDH noted with concern that the Court had neither made specific plans nor requested resources for outreach activities in the CAR, despite the fact that the OTP had announced that a fourth investigation would be opened in 2007<sup>13</sup>. The lack of planning and request of relevant resources for outreach in the fourth situation, hindered the Court in organising outreach activities in the CAR. FIDH had recommended that this information gap be avoided as experience demonstrates that delaying flow of information can negatively impact on the work of the Court.

FIDH welcomes the progress made in relation to the situation of Uganda, DRC and Sudan, but believes, however, that yet much remains to be done to effectively reach out to the local population in the situation countries, and in particular to victims. The Court must pursue its efforts to engage in constructive interaction with the affected communities, in order to explain the Court's mandate and, considering the increasing judicial activity, the Court's decisions and the evolution of the proceedings.

Such efforts need to be strengthened also in light of the forthcoming specific challenges that the Court will face in 2008. In DRC, the Court will need to engage in real dialogue with the Congolese population about the developments regarding the first ICC trial. The Court will also need to explain why the leaders of two rival militias have been charged with different types of crimes (giving a bring about wrong perceptions about the gravity and types of crimes committed by each party during the conflict in Ituri) and address the perception of ethnic bias and political manipulation. In Uganda, outreach activities must to address the role of the ICC with regard to the peace negotiations, in particular the perception that the Court is against peace in northern Uganda. The Court will also need to pursue its efforts to reach out to certain levels of the population in the DRC and to areas seriously affected by the conflict in northern Uganda, where outreach activities have been limited due to security constraints. Security will also continue to be a challenge for outreach on the situation in Darfur. In addition, the work initiated in the refugee camps in Chad needs to be followed-up on. With regard to the situation in Darfur, the Court will need to



explain what its efforts to obtain more cooperation and to make sure that the suspects will be brought before the ICC are. Otherwise, and given of the strong opposition of the Sudanese government to the ICC, the risk of perception that the ICC has dropped the case will increase. FIDH also encourages the Court to continue to find creative solutions to reach out to the population inside Darfur, in the line with the proposals made to the ICC by the Sudanese participants to FIDH training in The Hague. In CAR, the Court will need to explain the Prosecutor's policy and strategy about the crimes other than gender-based crimes, committed during the conflict of 2002/2003, and on the current situation in the north of the country. FIDH encourages the Court to take into consideration the recommendations put forward by the participants to FIDH latest training in The Hague<sup>14</sup>.

## **2. Requested budget**

For 2008, the Court has requested two Field Outreach Coordinator positions for Darfur and the CAR<sup>15</sup>. FIDH welcomes this initiative to reinforce field staff of the Public Information and Documentation Section (PIDS), as it believes that proximity to the local population is essential for the organisation of outreach activities. FIDH also welcomes the recommendation made by the Committee of Budget and Finance (committee or CBF) to approve those resources and calls upon the ASP to endorse such recommendation.

During its last session, the Assembly requested that the Court developed performance indicators which would guide the Court in evaluating its work. FIDH notes that the Court has made progress in the development of performance indicators and evaluation methods for outreach activities. However, as noted by the CBF during its last session, further work is needed on developing effective evaluation tools and meaningful performance indicators<sup>16</sup>. In addition, due to the changing nature of the situations where the Court operates, regular review and update of the Court's outreach plans is critical to re-orientate the Court's outreach efforts.

### **FIDH recommends that the ASP:**

**Continue to stress the critical importance of outreach and express political support to outreach activities, in the general debate and the omnibus resolution.**

**Welcome the progress made by the Court in the organisation of outreach activities and the development of performance indicators during 2007, and encourage it to pursue its efforts.**

**Encourage the Court to regularly review and update its Outreach Strategy and to include, in particular, outreach plans for the situation in the CAR.**

**Endorse the CBF recommendation to approve resources for field positions in respect of the situations in Darfur and the CAR.**

## **B. Victims' Strategy**

Following a request of the Committee of Budget and Finance at its fourth session in 2005, the Court developed the Strategic Plan of the International Criminal Court<sup>17</sup>, which it presented to the Assembly at its fifth session. In its Position Paper to the fifth session of the ASP, FIDH welcomed the development of such an instrument but, nevertheless, expressed concern at the Strategic Plan lacked vision with respect to victims and their rights.

"The recognition of the rights of victims is a historical achievement of the Rome Statute: their right to participation, legal representation and reparations in the context of international criminal proceedings, as well as their entitlement to protection, is a unique feature of the ICC. Yet, the mission statement of the Strategic Plan fails to recognise that the ICC is a forum for victims to express their independent views and concerns. It is by providing a forum for the victims to be heard and by the award of reparations that the Court will leave a meaningful legacy in the affected communities. The issue of victims' rights is central and should be part of the vision shared by all organs of the ICC<sup>18</sup>."

Accordingly, the fifth session of the Assembly recommended that the Court further developed the Strategic Plan and focused in particular on the "position of victims"<sup>19</sup>.

In 2007, the Court started holding internal discussions on the development of a "court-wide victims' strategy". However, the Court will not have finalised the document for presentation at this session of the ASP and will only present a progress report<sup>20</sup>. Although FIDH regrets that the final document will not be presented at this session of the Assembly, it encourages the development of the strategy



on victims. Given the particular expertise on victims issues gained by members of the non-governmental and civil society organisations, FIDH believes that it is critical that members of the civil society are given the opportunity to comment and provide input on the strategy.

**FIDH recommends that the Assembly:**

**Welcome the report presented by the Court.**

**Encourage the Court to pursue the development of the victims' strategy in 2008, in consultation with the Bureau and also with civil society groups.**

**Request that the victims' strategy be presented at the next session of the Assembly.**

**C. Victims Participation and Reparations Section**

In relation to the Court's victims mandate, FIDH is concerned about the Court's deliberate decision not to request field positions for the Victims Participation and Reparations Section (VRPS), whose mandate includes reaching out to victims of the crimes within the jurisdiction of the Court. VRPS has field staff in Uganda and DRC but not in Chad (for the situation in Darfur) and the CAR, which means that its field team is incomplete. Therefore, request of further resources would have been justified. FIDH is concerned that lack of VRPS field staff in these two situations will affect organisation of outreach activities vis-à-vis victim communities and dissemination of information on victims' rights.

In addition, FIDH is concerned that out of approximately 500 victims' applications for participation, only 17 victims have been granted victims' status. It is particularly concerning that a large number of the remaining more than 480 have not yet received a response to their applications.

As of now, victim participation has not affected or caused delays to the judicial proceedings. In order to prevent such a negative impact in the future, it is urgent and imperative that the Court set up the necessary systems, including databases and other similar tools, to handle, process and provide timely responses to large numbers of victims' applications. Otherwise, there will be a serious risk that the unprecedented rights of victims recognised in the Rome Statute will become a dead letter.

It should be reminded that large number of victims is a characteristic which is inherent to nature of the crimes over which the Court exercises jurisdiction. Therefore, the Court should have the necessary mechanisms in place to face and handle that.

**FIDH recommends that the ASP:**

**Encourages the Court to take these issues into consideration in the development of the victims' strategy.**

**D. Trust Fund for Victims**

The Board of Directors of the Trust Fund for Victims was established in 2002<sup>21</sup> following the entry into force of the Rome Statute, in accordance with article 79(1) of the Rome Statute. A Secretariat of the Trust Fund was established in 2004<sup>22</sup>, but its staff was not recruited until 2007.

Since the last session of the Assembly, the Trust Fund has become fully operation and has progressed significantly. Part of this progress is described in the report of the Board of Directors to the Assembly<sup>23</sup>. The Secretariat has developed a programmatic and financial framework, which defined the criteria for acceptance of projects and voluntary contributions. It has also developed programme guidelines, held consultations on a broad scale and conducted a number of field missions with the aim to assess victims' needs and interact with potential local partners.

FIDH welcomes the rapid development of the Trust Fund and the fact that it has already commenced assistance projects in Uganda and DRC and is in the process of selecting further projects. FIDH welcomes, in particular, the specific attention accorded by the Trust Fund to the most vulnerable victims, especially to victims of gender-based crimes.

During the sixth session, the Assembly will consider a number of issues in relation to the Trust Fund:

**1. The Secretariat's budget**

FIDH supports the budget proposal presented by the Secretariat of the Trust Fund for 2008 and endorsed by the CBF at its ninth session<sup>24</sup>. Assessment of the Secretariat's needs had been done in the past by the Registry in cooperation with the Board of Directors. Having become

operational in 2007, the Secretariat reassessed its needs and concluded that further resources were required for it to carry out its tasks, in particular during the set-up phase. FIDH believes that the funds requested in the proposed Budget for 2008 are reasonable. They fit into the overall strategy of the Secretariat and would give the Secretariat the flexibility it needs in the early stages of implementing its mandate. Therefore, FIDH supports the request for increase in the Secretariat's resources for 2008.

FIDH would like to highlight, in particular, the strategic importance of the requested position of the Field Programme Officer to be based in Kampala. This position would ensure technical support and oversight on projects in the field. Such control and oversight are crucial for the good management of projects and will ensure that the resources of the Trust Fund are handled properly.

The Secretariat also requests a considerable increase of travel resources. Last year, the CBF recommended to the Assembly not to approve the requested increase for travel in 2007. At the time, the Secretariat was not operational yet and it was difficult to foresee how those resources would be used. This year, however, the situation has changed dramatically as the Trust Fund has been progressing at great pace.

Both the new permanent position requested as well as the increase in travel resources aim to enable the Trust fund to have major involvement in the field. Such investment is essential to bring the Trust Fund closer to the victims it is mandated to assist.

## 2. Amendments to the Regulations

The Regulations of the Trust Fund were adopted at the fourth session of the Assembly<sup>25</sup>. Since then, the Fund has become operational and it has identified a number of amendments that it suggests the Assembly should make to the Regulations<sup>26</sup>. Such amendments aim to give the Trust Fund further flexibility and independence in its work. The amendments proposed by the Board of Directors are:

**Regulation 19** establishes an obligation for the Trust Fund Secretariat to consult the Registry. "Bearing in mind the independence of the Secretariat, it shall consult the Registrar on all administrative and legal matters for which it receives the assistance of the Registry." The amendment proposed aims to facilitate the Secretariat's basic daily decision-making process by acknowledging that, as an

independent body, it will only need to conduct such consultations when that is needed.

**Regulation 27** establishes that voluntary contributions from governments cannot be earmarked, while and that voluntary contributions from other sources may be earmarked by the donor for up to one third of the contribution for an activity or project. However, a fundraising reality is that donations or pledges of non-earmarked funds are unusual and hard to obtain, because of the restrictions imposed by donor's own internal regulations. The amendment proposed maintains the prohibition but allows for a waiver to this restriction when **"the funds have been raised at the initiative of the members of the Board of Directors and/or the Executive Director"**. This amendment would permit the Trust Fund to adapt to the reality of donors' (including States) programmes, who most frequently can only donate funds for specific projects or activities.

FIDH understands that the reason behind the prohibition in Regulation 27 is the imperative that some groups of victims should not be privileged over others, and the need that the Trust Fund's selection of projects be "need-driven" rather than resource-driven. The amendment proposed by the Trust Fund suggests an interesting approach, because it would allow the Fund to accept earmarked funds only after the Board of Directors or the Executive Director have made a positive decision on the needs of the group of victims at hand and on the readiness of the Fund to support the relevant project.

However, given the risk of uneven distribution of funds that earmarking implies, FIDH recommends that the ASP encourage the Trust Fund to develop transparent and clear procedures for accepting earmarked funds, including mechanisms to avoid that acceptance of earmarked funds results in an unequal distribution of funds and property among different groups of victims.

## 3. Voluntary contributions

According to the information presented to the Assembly, the Trust Fund had collected approximately 2.6 million euros as of 30 June 2007. The Fund has indicated that it has already started to fund projects by using voluntary contributions. The development of fundraising strategies has been one of the priorities of the Secretariat during 2007. The projects and activities to be implemented by the Trust Fund will require further contributions from all sectors, including States.

FIDH recalls that there is a precedent for calls for contributions to the Trust Fund by the Assembly<sup>27</sup> but regrets that such a call has not been renewed annually by the Assembly by introducing a relevant paragraph in the omnibus resolution. FIDH recommends that such a call be introduced in this year's omnibus resolution and be reproduced every year.

Finally, FIDH also takes this opportunity to call upon individual States to make voluntary contributions and encourages States to make regular rather than occasional contributions. In particular, FIDH also invites States to consider pledging funds in their statements during the General Debate.

**FIDH recommends that the Assembly:**

**Adopt Major Programme VI of the Budget for 2008 as requested by the Court and approved by the CBF.**

**Encourage the Trust Fund to develop transparent and clear procedures for accepting earmarked**

**funds when the restriction is waived, including mechanisms to avoid that acceptance of earmarked funds results in an unequal distribution of funds and property among different groups of victims.**

**Adopt the amendments proposed by the Board of Directors of the Trust Fund.**

**Make a call for contributions in the omnibus resolution.**

**FIDH also:**

**Calls upon States Parties to make voluntary contributions to the Fund and, in particular, to make regular rather than occasional contributions.**

**Encourages States Parties to pledge funds in their statements during the General Debate.**

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10. ICC-ASP/4/Res. 4, Strengthening the International Criminal Court and the Assembly of States Parties, [http://www.icc-cpi.int/library/asp/PartIII\\_-\\_Resolutions.pdf](http://www.icc-cpi.int/library/asp/PartIII_-_Resolutions.pdf) [hereinafter "Omnibus resolution 4th session"], para. 22.

11. ICC-ASP/5/12, Strategic Plan for Outreach of the International Criminal Court, [http://www.icc-cpi.int/library/asp/ICC-ASP-5-12\\_English.pdf](http://www.icc-cpi.int/library/asp/ICC-ASP-5-12_English.pdf)

12. Omnibus resolution 5th session, *supra* note 3, para. 20.

13. FIDH Position Paper No. 11 – International Criminal Court. Recommendations to the Fifth session of the Assembly of States Parties to the Statute of the International Criminal Court, [http://www.fidh.org/IMG/pdf/icc\\_asp112006a.pdf](http://www.fidh.org/IMG/pdf/icc_asp112006a.pdf) [hereinafter "FIDH Position Paper No. 11"], p. 13 and 20.

14. FIDH Press Release, "Crimes of sexual violence: Overcoming taboos, ending stigmatisation, fighting impunity", 31 October 2007, <http://www.fidh.org/spip.php?article4846>.

15. ICC-ASP/6/8, Proposed Programme Budget for 2008, [http://www.icc-cpi.int/library/asp/ICC-ASP-6-8\\_English.pdf](http://www.icc-cpi.int/library/asp/ICC-ASP-6-8_English.pdf) [hereinafter "Proposed Budget for 2008"], para. 364.

16. ICC-ASP/6/12, Report of the Committee on Budget and Finance on the work of its ninth session, [http://www.icc-cpi.int/library/asp/ICC-ASP-6-12\\_English.pdf](http://www.icc-cpi.int/library/asp/ICC-ASP-6-12_English.pdf), [hereinafter "CBF Report 9th session"], para. 71.

17. ICC-ASP/5/6, Strategic Plan of the International Criminal Court, [http://www.icc-cpi.int/library/asp/ICC-ASP-5-6\\_English.pdf](http://www.icc-cpi.int/library/asp/ICC-ASP-5-6_English.pdf)

18. FIDH Position Paper No. 11, *supra* note 13, p. 10.

19. ICC-ASP/5/Res.2, Strategic Planning Process of the Court, [http://www.icc-cpi.int/library/asp/ICC-ASP-5-32\\_Part\\_III\\_Resolutions\\_pages\\_337-384\\_English.pdf](http://www.icc-cpi.int/library/asp/ICC-ASP-5-32_Part_III_Resolutions_pages_337-384_English.pdf)

20. This report was not yet available at the time of writing.

21. ICC-ASP/1/Res.6, Establishment of a fund for the benefit of victims of the crimes within the jurisdiction of the Court, and of the families of such victims, [http://www.icc-cpi.int/library/about/officialjournal/basicdocuments/asp\\_records\(e\).pdf](http://www.icc-cpi.int/library/about/officialjournal/basicdocuments/asp_records(e).pdf)

22. ICC-ASP/3/Res.7, Establishment of the Secretariat of the Trust Fund for Victims, [http://www.icc-cpi.int/library/asp/ICC-ASP-3-25-III\\_English.pdf](http://www.icc-cpi.int/library/asp/ICC-ASP-3-25-III_English.pdf) [hereinafter "Resolution on the Establishment of the Secretariat of the Trust Fund"].

23. ICC-ASP/6/11, Report to the Assembly of States Parties to the activities and projects of the Board of Directors of the Trust Fund for Victims for the period 1 July 2006 to 30 June 2007, [http://www.icc-cpi.int/library/asp/ICC-ASP-6-11\\_English.pdf](http://www.icc-cpi.int/library/asp/ICC-ASP-6-11_English.pdf) [hereinafter "Report of the Board of Directors"].

24. CBF report 9th session, *supra* note 16, para. 82.

25. ICC-ASP/4/Res.3.

26. Report of the Board of Directors, *supra* note 23, paras. 17 and 19, and annexe B.

27. "The Assembly [...] Calls upon governments, international organizations, individuals, corporations and other entities to contribute voluntarily to the Fund, and expresses its appreciation to those that have done so this year", Resolution on the Establishment of the Secretariat of the Trust Fund, *supra* note 22, para. 9.

### III. RECOMMENDATIONS ON THE COURT'S PROPOSED BUDGET FOR 2008

FIDH has reviewed the Proposed Programme Budget for 2008<sup>28</sup> and has noted that the presentation of the budget has improved considerably. The advances made reflect a more responsible management of resources by the Court. Nevertheless, FIDH believes that the budget process can still be improved to further enhance transparency in the request of resources and to facilitate dialogue on the proposed budget between the Court and the States Parties<sup>29</sup>.

The sections below outline FIDH's specific comments with regard to resources for legal aid, translations and protection of witnesses and victims.

#### A. Legal Aid

According to the Rome Statute, the Rules of Procedure and the Regulations of the Court, indigent accused and victims are entitled to receive legal assistance paid by the Court. Provision of an effective and comprehensive legal aid system is crucial to guarantee effective participation by victims and fair proceedings. In 2004, the Registry established the ICC legal aid scheme<sup>30</sup>. In 2007, the Registry decided that the legal aid system needed to be reviewed to take into consideration the experience gained by the Court during the first proceedings. The Registry elaborated a proposal for the adjustment of the legal aid system, in consultation with relevant bar associations and other relevant organisations. FIDH was invited to provide input on the Registry's proposal.

##### 1. Concerns regarding Legal Aid for Victims

In March 2007, FIDH submitted its concerns with regard to the adjustment of the legal aid system regarding victims<sup>31</sup>. FIDH welcomes the provision of a core team for the trial phase and an expanded core team for the reparations phases, as well as the inclusion of a budget for investigations. However, FIDH remains deeply concerned that the legal aid system for victims is still loose and that this could provoke uncertainty among victims and lead to lack of transparency in the management of the system. The Registry argues that:

"owing to the absence both of established and confirmed jurisprudence on the procedures for participation by victims applying for legal aid paid by the Court and of sufficiently reliable parameters relating to this, it seems most appropriate to refrain, for the time being, from establishing a

legal aid system specifically for victims in the pre-trial phase. For the trial phase, it is proposed in principle that legal aid paid by the Court should cover a core team, which will be reduced or increased at the Registrar's discretion in the light of the actual participation procedures decided by the Chambers and other relevant factors<sup>32</sup>."

Although such a cautious approach could seem wise, in practice this amounts to a denial of victims' right to legal representation at the pre-trial phase and to the risk of inadequate representation at the trial phase, thus undermining the possibility for victims to participate effectively in the proceedings. It is critically important that a comprehensive legal aid system for victims be put in place without any further delay and that such a system can be adapted to specific needs following Chambers' decisions on modalities to participate. In addition, FIDH argues that the system put in place by the Registry fails to take into consideration the specific needs of legal representation of victims. FIDH encourages the Court to continue to develop a system which properly takes into account the situation of victims of the crimes under the jurisdiction of the Court. In particular, criteria on common legal representation and on grouping victims should be developed.

##### FIDH recommends that the ASP:

**Request the Court to continue to work on the legal aid system regarding victims in order to guarantee victims' effective access to justice and fair proceedings.**

##### 2. Recommendation by the CBF

As explained above, the Registrar elaborated a proposal for adjustment of the Court's legal aid scheme, which was submitted to the CBF in April 2007<sup>33</sup>. The initiative to amend the legal aid scheme was motivated by the lessons learned during the initial proceedings in the first case, which proved that resources originally estimated by the Registry were insufficient. During its eighth session, the CBF considered and endorsed the amendments proposed by the Court<sup>34</sup>. However, during its ninth session, the Committee recommended that the increase of the budget which derives directly from the amendments, not be approved<sup>35</sup>. The Committee explained that the reason for this recommendation was the underspending by the Division of Victims and Counsel during 2007.

FIDH has consulted with the Court on this issue and understands that such underspending was caused mainly by the delay in the beginning of the first trial. This delay was due to a number of factors that the Court could not have been foreseen when it drafted the budget for 2007, including the resignation of the counsel for the defence and delay in appointing his successor. FIDH notes that for the purpose of the legal aid scheme, the trial started in September 2007<sup>36</sup> and will continue throughout 2008. A further reason for underspending was the non-recruitment of several positions. FIDH understands that most of these positions have been filled or will be filled between December 2007 and February 2008. It is, therefore, unlikely that the Division of Victims and Counsel will have flexibility to absorb the additional costs in 2008.

Although FIDH had advocated for further amendments to certain aspects of the legal aid system and wishes, in particular, that more resources would have been allotted to victims' legal representation teams, the organisation believes that it is imperative that at least the adjustment proposed by the Registry and approved by the CBF be implemented as soon as possible. If the recommendation of the CBF is maintained, this could seriously undermine the implementation of such adjustment. The cut would affect both victims' and defence legal representation teams. Such a cut would be particularly damaging for the Court at a time when the Chambers are making decisions that will set precedents for the future of the ICC, which underscores the need for both victims and accused to be adequately represented.

**Therefore, FIDH recommends that the ASP:**

**Review the CBF recommendation and approve the additional resources requested by the Court to implement the adjustment to the legal aid scheme.**

## **B. Translations**

FIDH is concerned that non-translation of decisions could affect the rights of the defence, as well as the rights of victims to access justice and to be informed about the proceedings. Lack of and delays in translations limit the public's ability to access the Court and to understand its proceedings, and trigger perceptions of lack of transparency and lack of legitimacy. It can affect outreach activities, as well as knowledge and appropriation of the ICC.

According to article 50(2) of the Rome Statute, the working

languages of the Court are English and French. Regulation 40(3) of the Regulations of the Court states that the Registry shall ensure translation of all decisions and orders by the Chambers into the other working language. Additionally, according to article 50(1) of the Rome Statute and regulation 40(1) of the Regulations of the Court, the Registry must translate decisions resolving fundamental issues before the Court into all official languages (i.e. Arabic, Chinese, English, French, Russian and Spanish).

FIDH has noted that the pace and number of translations has improved in 2007. However, the organisation is concerned that some decisions and orders of the Chambers have not been translated into the other working language, and some of them are only translated after several weeks. Furthermore, none of the decisions resolving fundamental issues have been translated into any of the other four official languages. In addition, although some progress has been made in relation to translation of documents related to the Darfur situation into Arabic, FIDH believes that still more decisions, reports and outreach material should be available in this language.

The Proposed Budget for 2008 requests further resources for translation<sup>37</sup>. However, the Court admitted in the Budget document that even if all resources were allocated, the Court would still face a shortfall in translations in French<sup>38</sup>. The Court did not explain why it made a deliberate decision to request fewer funds than those necessary to cover the Court's translations needs.

The CBF recommended that resources related to translation should not be approved by the Assembly and made further recommendations to the Court on management of translations<sup>39</sup>. FIDH is concerned that the Court's deliberate decision to request less funds than necessary and the recommendation not to approve resources, could further affect the Court's translation work, at least pending implementation of the other CBF recommendations.

FIDH calls on the ASP to review this issue at the sixth session and to seek clarification from the Court on the Court's policy on translations.

**FIDH recommends that the Assembly:**

**Review the issue of the Court's work on translations and the resources allocated to it, and request clarification from the Court on the Court's policy on translations.**



## C. Protection of victims and witnesses

Effective protection of both witnesses and victims is not only a major responsibility of all the organs of the ICC, but also a serious challenge given that the Court operates in on-going and volatile conflict situations. Protection needs will certainly increase in 2008 due to the start of the first trial, the preparations for a second trial and the progress of investigations in four situation countries. Further needs might arise in 2009.

The Court has requested further resources for protection of victims and witnesses<sup>40</sup>. The resources requested by the Court were endorsed by the CBF at its ninth session. FIDH recommends that States Parties continue to show political support to the Court's protection mandate, by allocating adequate resources.

**FIDH recommends that the Assembly:**

**Endorses the CBF recommendations on the resources requested by the Court for the Victims and Witnesses Unit.**

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28. Proposed Budget for 2008, *supra* note 15.

29. CBF Report 9th session, *supra* note 16, paras. 31-32.

30. ICC-ASP/3/16, Report to the Assembly of States Parties on options for ensuring adequate defense counsel for accused persons, [http://www.icc-cpi.int/library/asp/ICC-ASP-3-16-\\_defence\\_counsel\\_English.pdf](http://www.icc-cpi.int/library/asp/ICC-ASP-3-16-_defence_counsel_English.pdf)

31. *Observations de la FIDH sur le « Projet d'ajustement du système d'aide judiciaire »*, 15 March 2007, [http://www.fidh.org/IMG/pdf/note\\_aide\\_judiciaire\\_FIDH\\_mars\\_2007.pdf](http://www.fidh.org/IMG/pdf/note_aide_judiciaire_FIDH_mars_2007.pdf)

32. ICC-ASP/6/4, Report on the operation of the Court's legal aid system and proposals for its amendment, [http://www.icc-cpi.int/library/asp/ICC-ASP-6-4\\_English.pdf](http://www.icc-cpi.int/library/asp/ICC-ASP-6-4_English.pdf), [hereinafter "Report on the amendment of the legal aid system"], para. 55.

33. *Id.*

34. ICC-ASP/6/2, Report on the work of the Committee of Budget and Finance on the work of its eighth session, [http://www.icc-cpi.int/library/asp/ICC-ASP-6-2\\_English.pdf](http://www.icc-cpi.int/library/asp/ICC-ASP-6-2_English.pdf), para. 80.

35. CBF report 9th session, *supra* note 16, para. 74.

36. For the purpose of the legal aid system, the trial phase is deemed to start with the first status conference to prepare for the trial. See Report on the amendment of the legal aid system, *supra* note 32, annexe IV.

37. Proposed Budget for 2008, *supra* note 15, paras. 325-345.

38. Proposed Budget for 2008, *supra* note 15, table 73, p. 99.

39. CBF report 9th session, *supra* note 16, paras. 68-70.

40. Proposed Budget for 2008, *supra* note 15, paras. 346-357.



## IV. REVISION OF THE STATUTE

### A. Review Conference

According to article 123(1) of the Rome Statute “[s]even years after the entry into force of th[e] Statute the Secretary-General of the United Nations shall convene a Review Conference to consider any amendments to th[e] Statute.” At its fifth session, following a preliminary paper by the focal point on the issue of the Review Conference<sup>41</sup>, the Assembly requested the Bureau to start preparation of the Review Conference, in particular on the issues of rules of procedure applicable to the Review Conference and on practical and organisational issues, in particular the date and venue, and report to the next session of the Assembly<sup>42</sup>.

During 2007, the issue of the Review Conference has been discussed by the Bureau's Working Group in New York. The Working Group has prepared the draft rules of procedure that would apply to the Review Conference and has looked at the issue of date and venue. In its report to the Assembly, the Bureau recommends that the sixth session make a decision as to the date, duration and venue of the Review Conference<sup>43</sup>.

A decision on the date of the Review Conference by this session of the ASP, would help advance preparations in relation to the venue, budget and other practical arrangements. With regard to the venue of the Review Conference, FIDH aligns itself with the position of the CICC Review Conference Team, of which it is a member. Given the strong political implications of the location of the Review Conference (potential effect on ratification, international perception of the Court, support to the ICC), FIDH recommends that, at its sixth session, the ASP decide to postpone the decision on the venue of the Review conference and adopt a procedure for selecting such venue, by establishing objective criteria that the host country should meet.

#### **FIDH recommends that the Assembly:**

**Take note of the report of the Bureau and request the Bureau to continue to prepare the Review Conference.**

**Make a decision as to the date of the Review Conference.**

**Postpone the decision on the venue of the Review conference and adopt a procedure for selecting such venue.**

### B. Crime of aggression

According to article 5(2) of the Rome Statute “[t]he Court shall exercise jurisdiction over the crime of aggression once a provision is adopted in accordance with article 121 and 123 defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to that crime [...]” A Special Working Group on the Crime of Aggression (SWGCA) was established by the ASP at its first session<sup>44</sup>. The SWGCA met during the second, third, fourth and resumed fifth session of the ASP, as well as in inter-sessional meetings in June 2004, June 2005, June 2006 and June 2007 in Princeton, New Jersey.

The ASP decided at its fourth session that the SWGCA should be allocated at least 10 days of meetings in New York during resumed session and hold inter-sessional meetings as appropriate<sup>45</sup>. Accordingly, the SWGC has been allotted three days of meetings during the resumed fifth session of the ASP and at least three days during the sixth session of the Assembly and four days during the resumed session to be held in New York in the first-half of 2008.

The SWGCA has decided that it will conclude its work at least 12 months prior to the Review Conference<sup>46</sup>, in order to give States sufficient time to conduct consultations. As explained above, a Review Conference should be held seven years after the entry into force of the Statute. It was initially foreseen that the Review Conference would be held in 2009 and it was, therefore, estimated that the SWGCA should work in 2008. However, it is both possible and likely that the Review Conference will be held in early 2010<sup>47</sup>. Should the Assembly make such a decision, it should allocate further time to the SWGCA since the Working Group has indicated that it would not be desirable to have no work done on the crime of aggression between June 2008 and early 2010<sup>48</sup>.

FIDH welcomes the involvement and commitment of some States Parties to reach an agreement in the definition of the crime of aggression. FIDH notes that the most contentious area in the discussions is the item on the conditions for exercise of its jurisdiction. In particular, FIDH is seriously concerned about the proposal that the Security

Council should make a pre-determination on the existence of a crime of aggression in order for the Court to be able to exercise jurisdiction. FIDH believes that the independence and impartiality of the Court must be preserved and, therefore, any political interference must be avoided. In this regard, FIDH calls upon States Parties to orientate discussions to options which would fully respect the integrity of the Rome Statute and which would in no way infringe the independence of the Court.

**FIDH recommends that the Assembly:**

**Allocates additional meeting time after June 2008 for discussions within the SWGCA, if it decides to hold the Review Conference in 2010.**

**Continue to seek in good faith to agree on a definition of the crime of aggression, including on conditions for the Court to exercise jurisdiction over that crime which fully respect the integrity of the Rome Statute and the independence of the Court.**

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41. ICC-ASP/5/INF.2, Review Conference: scenarios and options – Preliminary paper by Mr. Rolf Einar Fife, [http://www.icc-cpi.int/library/asp/ICC-ASP-5-INF2\\_English.pdf](http://www.icc-cpi.int/library/asp/ICC-ASP-5-INF2_English.pdf)

42. Omnibus resolution 5th session, *supra* note 3, para. 47.

43. ICC-ASP/6/17, Report of the Bureau on the Review Conference, [http://www.icc-cpi.int/library/asp/ICC-ASP-6-17\\_English.pdf](http://www.icc-cpi.int/library/asp/ICC-ASP-6-17_English.pdf)

44. Continuity of work in respect of the crime of aggression, ICC-ASP/1/Res.1, [http://www.un.org/law/icc/asp/1stsession/report/english/part\\_iv\\_res\\_1\\_e.pdf](http://www.un.org/law/icc/asp/1stsession/report/english/part_iv_res_1_e.pdf)

45. Omnibus resolution 4th session, *supra* note 10, paras. 37 and 45.

46. ICC-ASP/4/32, Report of the informal inter-sessional meeting of the Special Working Group on the Crime of Aggression from 13 to 15 June 2005, [http://www.icc-cpi.int/library/asp/SWWGCA-annex\\_II\\_A\\_-\\_English.pdf](http://www.icc-cpi.int/library/asp/SWWGCA-annex_II_A_-_English.pdf)

47. ICC-ASP/6/SWGCA/INF.1, Informal inter-sessional meeting of the Special Working Group on the Crime of Aggression, held at the Liechtenstein Institute on Self-Determination, Woodrow Wilson School, Princeton University, United States, from 11 to 14 June 2007, from 11 to 14 June 2007, [http://www.icc-cpi.int/library/asp/ICC-ASP-6-SWGCA-INF.1\\_English.pdf](http://www.icc-cpi.int/library/asp/ICC-ASP-6-SWGCA-INF.1_English.pdf), para. 63.

48. *Id.*, para. 65.

## V. ELECTIONS

During its sixth session, the Assembly will elect three judges and six CBF members. It will further make recommendations regarding the election of the Registrar by the judges. As a member of the CICC, FIDH has contributed to the Coalition's campaign to promote fair and transparent elections. FIDH does not take a position on individual candidates.

### A. Election of Judges

Since the last session of the Assembly, three judges of the Court have resigned prior to the end of their terms: Maureen Harding Clark of Ireland, Karl T. Hudson-Phillips of Trinidad and Tobago and Claude Jorda of France. During this session, the Assembly will elect three judges to fill the judicial vacancies.

According to article 36(3) and 36(5), the judges were to be nominated from among persons of high moral character, impartiality and integrity who possess the qualifications required in their respective States for appointment to the highest judicial offices. Every candidate for election to the Court should also have an excellent knowledge of and be fluent in at least one of the working languages of the Court. Two lists have been established:

- List A - Candidates having established competence in criminal law and procedure, and the necessary relevant experience, whether as judge, prosecutor, advocate or in other similar capacity, in criminal proceedings.
- List B - Candidates having established competence in relevant areas of international law such as international humanitarian law and the law of human rights, and extensive experience in a professional legal capacity which is of relevance to the judicial work of the Court.

Five candidates have been nominated: Mr. Daniel David Ntanda Nsereko of Uganda (List A), Ms. Jean Angela Permanand of Trinidad and Tobago (List A), Ms. Fumiko Saiga of Japan (List B), Mr. Bruno Cotte of France (List A), and Ms. Graciela Dixon of Panama (List A).

According to article 36(8) of the Statute, States shall, in the selection of judges, take into account the need, within the membership of the Court, for: i) the representation of the principal legal systems of the world; ii) equitable geographical representation; and iii) a fair representation of female and male judges.

For the purpose of this election, there are no minimum regional or gender requirements. The single voting requirement is that two of the three judges elected must have been nominated under List A<sup>49</sup>.

The elected judges must be the most qualified jurists and must have experience in dealing with the most serious crimes as well as with victims of such atrocities. The ICC is the first permanent tribunal dealing with massive crimes of an international nature. It is also the first international criminal court in which victims are allowed to participate in the proceedings and to claim for reparations. The procedure before the Court is different from that of other international tribunals and is also particularly complex, as shown by the experience of the initial proceedings of the first case. This is why it is critical that the elected judges have the qualifications and expertise to face such a challenge. FIDH recommends that States Parties take these requirements into consideration when electing judges to the bench of the ICC.

The CICC elaborated questionnaires that it has made available to each candidate in order to promote transparency in the process by making candidates' qualifications more accessible and by giving each candidate an opportunity to expand on his or her experience. It has also conducted interviews with some of them. The candidates' replies to the questionnaires and notes taken during the interviews can be found at: <http://www.iccnw.org/?mod=electionjudges2007>

### B. Election of CBF members

The Committee of Budget and Finance consists of 12 members, who are elected by the ASP for a period of three years. Six members will be elected at this session of the Assembly. The elected members should be experts of recognized standing and experience in financial matters at the international level, and should be elected on the basis of equitable geographical representation<sup>50</sup>. Accordingly, the distribution of seats for the upcoming elections is as follows: African States (1 seat); Eastern European States (1 seat); Group of Latin American and Caribbean States (1 seat); and Western European and Other States (3 seats). Nine states parties have nominated candidates: Burundi, Estonia, France, Germany, Italy, Mexico, Uganda, United Kingdom and Venezuela<sup>51</sup>.

The CICC Budget and Finance Team has prepared a set of criteria based on both the resolutions governing the nomination and election of the Committee members and the experience gained about the work of the Committee in its first years<sup>52</sup>.

In addition, the CICC requested each candidate to reply to a questionnaire. The candidates' replies to the questionnaires can be found at:  
<http://www.iccnw.org/?mod=electionasp2007>

### C. Recommendation on the appointment of the Registrar

According to article 43(4) of the Statute, the Registrar is elected by the judges taking into account any recommendation by the ASP. The Registrar shall be a person of high moral character, be highly competent and have an excellent knowledge of and be fluent in at least one of the working languages of the Court. The Registrar is responsible for the non-judicial aspects of the administration and servicing of the Court. Among other tasks, the Registrar oversees the following core functions of the Registry:

- Protection of victims and witnesses.
- Outreach activities.

- Processing victims' applications to participate in the proceedings and to request reparations.
- Providing assistance to accused and victims for selection of counsel.
- Management of the legal aid system.
- Management of Court's records.
- Organising the Court's translation and interpretation services.
- Security of the Court.
- Logistics of field offices.

The five-year term of the current Registrar, Mr. Bruno Cathala, expires on 3 July 2008. In order to fill this position, the Court has conducted an initial selection process, through the standard recruitment channels of the ICC, and has short-listed nine candidates<sup>53</sup>.

The CICC has also asked each shortlisted candidate to reply to a questionnaire. Candidate's replies to the questionnaire can be found at:  
<http://www.iccnw.org/?mod=electionregistrar>

#### FIDH recommends that:

**States vote and make recommendations on officials bearing in mind the candidates' qualifications.**

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49. ICC-ASP/6/15, Election of judges to fill three judicial vacancies of the International Criminal Court, [http://www.icc-cpi.int/library/about/officialjournal/basicdocuments/asp\\_records\(e\).pdf](http://www.icc-cpi.int/library/about/officialjournal/basicdocuments/asp_records(e).pdf). See also ICC-ASP/3/Res.6, Procedure for the nomination and election of judges of the International Criminal Court, [http://www.icc-cpi.int/library/asp/ICC-ASP-3-25-III\\_English.pdf](http://www.icc-cpi.int/library/asp/ICC-ASP-3-25-III_English.pdf)

50. ICC-ASP/1/Res.4, Establishment of the Committee of Budget and Finance, [http://www.icc-cpi.int/library/about/officialjournal/basicdocuments/asp\\_records\(e\).pdf](http://www.icc-cpi.int/library/about/officialjournal/basicdocuments/asp_records(e).pdf), para. 2.

51. ICC-ASP/6/9, Election of the members of the Committee of Budget and Finance, [http://www.icc-cpi.int/library/asp/ICC-ASP-6-11\\_English.pdf](http://www.icc-cpi.int/library/asp/ICC-ASP-6-11_English.pdf)

52. CICC Budget and Finance Team, Recommended criteria for States Parties to nominate the highest qualified candidates to the International Criminal Court's Committee of Budget and Finance, [http://www.iccnw.org/documents/CICC\\_CBF\\_Nomination\\_Criteria\\_English.pdf](http://www.iccnw.org/documents/CICC_CBF_Nomination_Criteria_English.pdf)

53. ICC-ASP/6/16, Election of the Registrar of the International Criminal Court, [http://www.icc-cpi.int/library/asp/ICC-ASP-6-16\\_reissued\\_English.pdf](http://www.icc-cpi.int/library/asp/ICC-ASP-6-16_reissued_English.pdf)

## ANNEXE I

### FIDH public documents on the ICC issued since the fifth session of the ASP

#### Reports and position papers

- CAR: "Forgotten, stigmatised: the double suffering of victims of international crimes", 1 February 2007, <http://www.fidh.org/spip.php?article3992>
- *Observations de la FIDH sur le "Projet d'ajustement du système d'aide judiciaire"*, 15 March 2007, <http://www.fidh.org/spip.php?article4887>
- FIDH Guide for Victims, their Legal Representatives and NGOs on Victims' Rights before the ICC, April 2007 (in English, Spanish and soon in French), <http://www.fidh.org/spip.php?article4208>
- Colombia: "Paramilitary Demobilisation in Colombia: On the road to the International Criminal Court", October 2007 (in Spanish and soon in English), <http://www.fidh.org/spip.php?article4760>
- Sudan, "We want security, we want justice" (in English and French), October 2007, <http://www.fidh.org/spip.php?article4828>

#### Press releases

- CAR: "*Un criminel de guerre présumé revient à Bangui en toute impunité*", 6 February 2007, <http://www.fidh.org/spip.php?article4003>
- Sudan: "The Prosecutor of the International Criminal Court requests judges to summon two individuals allegedly responsible for crimes committed in Darfur", 27 February 2007, <http://www.fidh.org/spip.php?article4072>
- Colombia: "Llamado a indagatoria de 56 militares: un primer paso importante", 28 February 2007, <http://www.fidh.org/spip.php?article4074>
- Yemen: "Yemen ratifies the Statute of the International Criminal Court", 23 March 2007, <http://www.fidh.org/spip.php?article4141>
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- Colombia: Speech delivered by Souhayr Belhassen, President of FIDH, in Bogota, 4 October 2007, <http://www.fidh.org/spip.php?article4768>
- DRC: "A second case before the International Criminal Court on the situation in Democratic Republic of Congo: Germain Katanga transferred to The Hague", 19 October 2007, <http://www.fidh.org/spip.php?article4805>
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# FIDH represents 155 Human Rights organisations

## 155 organisations

**ALBANIA** - ALBANIAN HUMAN RIGHTS GROUP  
**ALGERIE** - LIGUE ALGERIENNE DE DEFENSE DES DROITS DE L'HOMME  
**ALGERIE** - LIGUE ALGERIENNE DES DROITS DE L'HOMME  
**ALLEMAGNE** - INTERNATIONALE LIGA FÜR MENSCHENRECHTE  
**ARGENTINA** - CENTRO DE ESTUDIOS LEGALES Y SOCIALES  
**ARGENTINA** - COMITE DE ACCION JURIDICA  
**ARGENTINA** - LIGA ARGENTINA POR LOS DERECHOS DEL HOMBRE  
**ARMENIA** - CIVIL SOCIETY INSTITUTE  
**AUTRICHE** - ÖSTERREICHISCHE LIGA FÜR MENSCHENRECHTE  
**AZERBAIJAN** - HUMAN RIGHTS CENTER OF AZERBAIJAN  
**BAHRAIN** - BAHRAIN CENTER FOR HUMAN RIGHTS  
**BAHRAIN** - BAHRAIN HUMAN RIGHTS SOCIETY  
**BANGLADESH** - ODHAKAR  
**BELARUS** - HUMAN RIGHTS CENTER VIASNA  
**BELGIQUE** - LIGUE DES DROITS DE L'HOMME  
**BELGIQUE** - LIGA VOOR MENSCHENRECHTEN  
**BENIN** - LIGUE POUR LA DEFENSE DES DROITS DE L'HOMME  
**BHUTAN** - PEOPLE'S FORUM FOR HUMAN RIGHTS IN BHUTAN  
**BOLIVIE** - ASAMBLEA PERMANENTE DE LOS DERECHOS HUMANOS DE BOLIVIA  
**BOTSWANA** - THE BOTSWANA CENTRE FOR HUMAN RIGHTS – DITSHWANELO  
**BRASIL** - CENTRO DE JUSTICA GLOBAL  
**BRASIL** - MOVIMENTO NACIONAL DE DIREITOS HUMANOS  
**BURKINA** - MOUVEMENT BURKINABE DES DROITS DE L'HOMME & DES PEUPLES  
**BURUNDI** - LIGUE BURUNDAISE DES DROITS DE L'HOMME  
**CAMBODGE** - LIGUE CAMBODGIENNE DE DEFENSE DES DROITS DE L'HOMME  
**CAMBODIA** - CAMBODIAN HUMAN RIGHTS AND DEVELOPMENT ASSOCIATION  
**CAMEROUN** - LIGUE CAMEROUNAISE DES DROITS DE L'HOMME  
**CAMEROUN** - MAISON DES DROITS DE L'HOMME  
**CANADA** - LIGUE DES DROITS ET DES LIBERTES DU QUEBEC  
**CHILE** - CORPORACIÓN DE PROMOCIÓN Y DEFENSA DE LOS DERECHOS DEL PUEBLO  
**CHINA** - HUMAN RIGHTS IN CHINA  
**COLOMBIA** - ORGANIZACIÓN FEMININA POPULAR  
**COLOMBIA** - COMITE PERMANENTE POR LA DEFENSA DE LOS DERECHOS HUMANOS

**COLOMBIA** - CORPORACION COLECTIVO DE ABOGADOS  
**COLOMBIA** - INSTITUTO LATINO AMERICANO DE SERVICIOS LEGALES ALTERNATIVOS  
**CONGO** - OBSERVATOIRE CONGOLAIS DES DROITS DE L'HOMME  
**COSTA RICA** - ASOCIACIÓN SERVICIOS DE PROMOCIÓN LABORAL  
**COTE D'IVOIRE** - MOUVEMENT IVOIRIEN DES DROITS DE L'HOMME  
**COTE D'IVOIRE** - LIGUE IVOIRIENNE DES DROITS DE L'HOMME  
**CROATIE** - CIVIC COMMITTEE FOR HUMAN RIGHTS  
**CUBA** - COMISION CUBANA DE DERECHOS HUMANOS Y RECONCILIACION NACIONAL  
**DJIBOUTI** - LIGUE DJIBOUTIENNE DES DROITS HUMAINS  
**ECUADOR** - CENTRO DE DERECHOS ECONOMICOS Y SOCIALES  
**ECUADOR** - COMISION ECUMENICA DE DERECHOS HUMANOS  
**ECUADOR** - FUNDACION REGIONAL DE ASESORIA EN DERECHOS HUMANOS  
**EGYPT** - EGYPTIAN ORGANIZATION FOR HUMAN RIGHTS  
**EGYPT** - HUMAN RIGHTS ASSOCIATION FOR THE ASSISTANCE OF PRISONERS  
**EL SALVADOR** - COMISION DE DERECHOS HUMANOS DE EL SALVADOR  
**ESPAÑA** - ASOCIACION PRO DERECHOS HUMANOS  
**ESPAÑA** - FEDERACION DE ASOCIACIONES DE DEFENSA Y DE PROMOCION DE LOS DERECHOS HUMANOS  
**ETHIOPIAN** - ETHIOPIAN HUMAN RIGHTS COUNCIL  
**EUROPE** - ASSOCIATION EUROPEENNE POUR LA DÉFENSE DES DROITS DE L'HOMME  
**FINLANDE** - FINNISH LEAGUE FOR HUMAN RIGHTS  
**FRANCE** - LIGUE DES DROITS DE L'HOMME ET DU CITOYEN  
**GEORGIE** - HUMAN RIGHTS CENTER  
**GRECE** - LIGUE HELLENIQUE DES DROITS DE L'HOMME  
**GUATEMALA** - CENTRO PARA LA ACCION LEGAL EN DERECHOS HUMANOS  
**GUATEMALA** - COMISION DE DERECHOS HUMANOS DE GUATEMALA  
**GUINEE** - ORGANISATION GUINEENNE POUR LA DEFENSE DES DROITS DE L'HOMME  
**GUINEE-BISSAU** - LIGA GUINEENSE DOS DIREITOS DO HOMEN  
**HAITI** - COMITÉ DES AVOCATS POUR LE RESPECT DES LIBERTÉS INDIVIDUELLES  
**HAITI** - CENTRE OCEANÉMIQUE DES DROITS DE L'HOMME

**HAITI** - RÉSEAU NATIONAL DE DÉFENSE DES DROITS HUMAINS  
**INDIA** - COMMONWEALTH HUMAN RIGHTS INITIATIVE  
**IRAN** - DEFENDERS OF HUMAN RIGHTS CENTER  
**IRAN** - LIGUE IRANIENNE DE DEFENSE DES DROITS DE L'HOMME  
**IRAQ** - IRAQI NETWORK FOR HUMAN RIGHTS CULTURE AND DEVELOPMENT  
**IRLANDE** - COMMITTEE ON THE ADMINISTRATION OF JUSTICE  
**IRLANDE** - IRISH COUNCIL FOR CIVIL LIBERTIES  
**ISRAEL** - ADALAH  
**ISRAEL** - ASSOCIATION FOR CIVIL RIGHTS IN ISRAEL  
**ISRAEL** - B'TSELEM  
**ISRAEL** - PUBLIC COMMITTEE AGAINST TORTURE IN ISRAEL  
**ITALIA** - LIGA ITALIANA DEI DIRITTI DELL'UOMO  
**ITALIA** - UNIONE FORENSE PER LA TUTELA DEI DIRITTI DELL'UOMO  
**JORDAN** - AMMAN CENTER FOR HUMAN RIGHTS STUDIES  
**JORDAN** - JORDAN SOCIETY FOR HUMAN RIGHTS  
**KENYA** - KENYA HUMAN RIGHTS COMMISSION  
**KIRGHIZISTAN** - KYRGYZ COMMITTEE FOR HUMAN RIGHTS  
**KOSOVO** - CONSEIL POUR LA DEFENSE DES DROITS DE L'HOMME ET DES LIBERTES  
**LAOS** - MOUVEMENT LAOTIEN POUR LES DROITS DE L'HOMME  
**LEBANON** - PALESTINIAN HUMAN RIGHTS ORGANIZATION  
**LEBANON** - FOUNDATION FOR HUMAN AND HUMANITARIAN RIGHTS IN LEBANON  
**LETTONIE** - LATVIAN HUMAN RIGHTS COMMITTEE  
**LIBAN** - ASSOCIATION LIBANAISE DES DROITS DE L'HOMME  
**LIBERIA** - LIBERIA WATCH FOR HUMAN RIGHTS  
**LIBYA** - LIBYAN LEAGUE FOR HUMAN RIGHTS  
**LITHUANIAN** - LITHUANIAN HUMAN RIGHTS LEAGUE  
**MALAYSIE** - SUARAM  
**MALI** - ASSOCIATION MALIENNE DES DROITS DE L'HOMME  
**MALTE** - MALTA ASSOCIATION OF HUMAN RIGHTS  
**MAROC** - ASSOCIATION MAROCAINE DES DROITS HUMAINS  
**MAROC** - ORGANISATION MAROCAINE DES DROITS HUMAINS  
**MAURITANIE** - ASSOCIATION MAURITANIEENNE DES DROITS DE L'HOMME  
**MEXICO** - COMISION MEXICANA DE DEFENSA Y PROMOCION DE LOS

DERECHOS HUMANOS  
**MEXICO** - LIGA MEXICANA POR LA DEFENSA DE LOS DERECHOS HUMANOS  
**MOLDOVA** - LEAGUE FOR THE DEFENCE OF HUMAN RIGHTS IN MOLDOVA  
**MOZAMBIQUE** - LIGA MOCANBICANA DOS DIREITOS HUMANOS  
**NETHERLAND** - LIGA VOOR DE RECHTEN VAN DE MENS  
**NICARAGUA** - CENTRO NICARAGUENSE DE DERECHOS HUMANOS  
**NIGER** - ASSOCIATION NIGERIENNE DES DROITS DE L'HOMME  
**NIGERIA** - CIVIL LIBERTIES ORGANISATION  
**NOUVELLE CALEDONIE** - LIGUE DES DROITS DE L'HOMME DE NOUVELLE CALEDONIE  
**OCCUPIED PALESTINIAN TERRITORIES** - RAMALLAH CENTRE FOR HUMAN RIGHTS STUDIES  
**OCCUPIED PALESTINIAN TERRITORIES** - AL HAQ  
**OCCUPIED PALESTINIAN TERRITORIES** - PALESTINIAN CENTRE FOR HUMAN RIGHTS  
**PAKISTAN** - HUMAN RIGHTS COMMISSION OF PAKISTAN  
**PANAMA** - CENTRO DE CAPACITACION SOCIAL  
**PERU** - ASOCIACION PRO DERECHOS HUMANOS  
**PERU** - CENTRO DE ASESORIA LABORAL  
**PHILIPPINE** - PHILIPPINE ALLIANCE OF HUMAN RIGHTS ADVOCATES  
**POLYNESIE** - LIGUE POLYNESIENNE DES DROITS HUMAINS  
**PORTUGAL** - CIVITAS  
**RDC** - ASSOCIATION AFRICAINE DES DROITS DE L'HOMME  
**RDC** - GROUPE LOTUS  
**RDC** - LIGUE DES ELECTEURS  
**RÉPUBLIQUE CENTRAFRICAINE** - LIGUE CENTRAFRICAINE DES DROITS DE L'HOMME  
**RÉPUBLIQUE CENTRAFRICAINE** - ORGANISATION POUR LA COMPASSION ET LE DÉVELOPPEMENT DES FAMILLES EN DÉTRESSE  
**RÉPUBLIQUE DOMINICAINE** - COMISION NACIONAL DE LOS DERECHOS HUMANOS  
**RÉPUBLIQUE TCHÈQUE** - HUMAN RIGHTS LEAGUE  
**ROUMANIE** - LIGUE POUR LA DEFENSE DES DROITS DE L'HOMME  
**RUSSIA** - CITIZEN'S WATCH  
**RUSSIA** - MOSCOW RESEARCH CENTER FOR HUMAN RIGHTS  
**RWANDA** - ASSOCIATION POUR LA DEFENSE DES DROITS DES PERSONNES ET LIBERTES PUBLIQUES

**RWANDA** - COLLECTIF DES LIGUES POUR LA DEFENSE DES DROITS DE L'HOMME  
**RWANDA** - LIGUE RWANDAISE POUR LA PROMOTION ET LA DEFENSE DES DROITS DE L'HOMME  
**SENEGAL** - RENCONTRE AFRICAINE POUR LA DÉFENSE DES DROITS DE L'HOMME  
**SENEGAL** - ORGANISATION NATIONALE DES DROITS DE L'HOMME  
**SERBIE** - CENTER FOR PEACE AND DEMOCRACY DEVELOPMENT  
**SUDAN** - SUDAN HUMAN RIGHTS ORGANISATION  
**SUDAN** - SUDAN ORGANISATION AGAINST TORTURE  
**SUISSE** - LIGUE SUISSE DES DROITS DE L'HOMME  
**SYRIA** - DAMASCUS CENTER FOR HUMAN RIGHTS STUDIES  
**SYRIE** - COMITE POUR LA DEFENSE DES DROITS DE L'HOMME EN SYRIE  
**TAIWAN** - TAIWAN ALLIANCE FOR HUMAN RIGHTS  
**TANZANIA** - THE LEGAL & HUMAN RIGHTS CENTRE  
**TCHAD** - ASSOCIATION TCHADIENNE POUR LA PROMOTION ET LA DEFENSE DES DROITS DE L'HOMME (ATPDH)  
**TCHAD** - LIGUE TCHADIENNE DES DROITS DE L'HOMME  
**THAILAND** - UNION FOR CIVIL LIBERTY  
**TOGO** - LIGUE TOGOLAISE DES DROITS DE L'HOMME  
**TUNISIE** - ASSOCIATION TUNISIENNE DES FEMMES DÉMOCRATES  
**TUNISIE** - CONSEIL NATIONAL POUR LES LIBERTES EN TUNISIE  
**TUNISIE** - LIGUE TUNISIENNE DES DROITS DE L'HOMME  
**TURKEY** - HUMAN RIGHTS FOUNDATION OF TURKEY  
**TURKEY** - INSAN HAKLARI DERNEGI / ANKARA  
**TURKEY** - INSAN HAKLARI DERNEGI / DIYARBAKIR  
**UGANDA** - FOUNDATION FOR HUMAN RIGHTS INITIATIVE  
**UNITED KINGDOM** - LIBERTY USA - CENTER FOR CONSTITUTIONAL RIGHTS  
**UZBEKISTAN** - HUMAN RIGHT SOCIETY OF UZBEKISTAN  
**UZBEKISTAN** - LEGAL AID SOCIETY  
**VIETNAM** - COMMITTEE ON HUMAN RIGHTS & QUE ME : ACTION FOR DEMOCRACY IN VIETNAM  
**YEMEN** - HUMAN RIGHTS INFORMATION AND TRAINING CENTER  
**YEMEN** - SISTERS' ARABIC FORUM FOR HUMAN RIGHTS  
**ZIMBABWE** - HUMAN RIGHTS ASSOCIATION

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