



**Statement by Human Rights Watch to the General Debate of the
International Criminal Court's 7th Assembly of States Parties**

November 15, 2008

Mr. President and Delegates,

Thank you for the opportunity to present these remarks to this Assembly.

Since the sixth session of the Assembly of states Parties the work of the International Criminal Court has advanced in important respects. Charges against two additional defendants have been confirmed in the Democratic Republic of Congo (DRC) situation, and the first defendant in the Central African Republic (CAR) situation, Jean-Pierre Bemba, a former vice-president of Congo, was transferred to ICC custody in July. Under the leadership of a new registrar, court programs for witness protection and outreach continue in the field, often under challenging conditions, and victim participation in ICC proceedings continues to be facilitated.

However, the court faces a number of challenges in executing its mandate. These challenges stem from a mix of factors, some imposed by external realities and others coming from within the court, and which are addressed below.

Cooperation

Without a police unit to execute its arrest warrants, the ICC remains wholly dependent on the assistance of governments—sometimes regimes responsible for the very crimes at issue—to apprehend accused persons. Compelling arrest and surrender of individuals by a recalcitrant government is one of the most difficult tasks for the court. In terms of external challenges states parties and international organizations have not made progress in executing the court's outstanding arrest warrants, including in the Uganda situation, where those wanted by the court are reported to have committed attacks on civilians in the DRC, CAR, and southern Sudan this year.

Given that the ICC is mandated to investigate crimes during ongoing hostilities, the court's mission is seen by some to be at odds with other important diplomatic objectives, including peacekeeping and peace negotiations. This has tended to undercut political and diplomatic support for the court.

Over the last year cooperation with the court has become a more contentious issue because the court's work has deepened – specifically with the prosecutor's request for an arrest warrant against Omar al-Bashir. The government of Sudan has initiated a wide-ranging diplomatic campaign to secure a suspension of the proceedings by the Security Council under article 16 of the Rome Statute. We anticipate a request for a deferral may be raised in the Security Council in the coming months.

Some have characterized the question of whether to defer ICC proceedings against President al-Bashir as a "peace versus justice" issue. But this does not hold up to careful scrutiny. Peace efforts have been stalled in Darfur since October 2007 for reasons unrelated to the ICC and the requested warrant for President al-Bashir. Moreover, what is driving this are the threats sometimes implicit sometimes explicit by Sudanese authorities of retaliatory violence against UNAMID peacekeepers, humanitarian aid workers, civilians.

With all respect to regional organizations which have seen this differently, we believe for the Security Council to succumb to Khartoum's pressure would be unacceptable. First and foremost it would betray the people of Darfur who are seeking justice. The stakes for them are extremely high as Sudanese authorities continue to carry out attacks on civilians. Suspending ongoing judicial activity could set a very dangerous precedent with implications that will reach far beyond Darfur. If it barter away accountability for the most serious crimes under international law, the Security Council would give encouragement to all those alleged to be responsible for major atrocities to combine threats and negotiation, as Khartoum is now attempting to do, to void the rule of law. It also would be a renunciation by the Security Council—which itself referred the situation in Darfur to the ICC prosecutor—of its own commitment to bring justice to Darfur.

At a time when the independence and integrity of the court is at risk, we believe that it is imperative for states parties to speak forcefully against impunity and on behalf of the ICC's mission. Through the resolutions of this Assembly states parties should take the opportunity presented to articulate strong support for the ICC

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

A Court For Africa

Related to Sudan's efforts to barter impunity for political concessions, some have accused the court of having an anti-African bias and imposing a European conception of justice that has no connection to African experience. These critics cite what they characterize as the court's exclusive focus on Africa, that is, that its active investigations all concern African countries.

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

Indeed, African states played a key role in making this court possible. In September 1997 the South African Minister of Justice convened a meeting of officials from SADC states to formulate what became the SADC principles for a fair, effective and impartial court. One month later South Africa's Ambassador read those principles aloud during the United Nations General Assembly's Sixth Committee debate on the ICC. In February 1998, in Dakar, nearly 20 African ministers of justice gathered at a conference convened by the Senegalese justice minister to adopt the Dakar Declaration on the ICC. The unexpectedly swift entry into force of the Rome Statute was driven by ratification among African countries: with 30 states parties, Africa has more members of the ICC than any other region. Of course, three of the four situations under investigation were voluntarily referred by African governments. And national nongovernmental coalitions for the ICC are active in 21 African countries, including, in many places, to advocate the adoption of domestic ICC implementing legislation that could eventually promote accountability and justice initiatives at the national level.

At the same time, accusations of an anti-African bias on the part of the ICC have a superficial appeal, **in part** because they are rooted in some legitimate communication shortcomings on the part of the court.

Although the court has several situations under analysis in jurisdictions outside of Africa—including Georgia, Colombia, and Afghanistan—until recently it had been slow to explain this fact, let alone its process of analysis, in a manner that would convey its serious focus on non-African victims and perpetrators.

Moreover, limited knowledge and a lack of clarity about the jurisdiction of the court and the process by which it selects and prioritizes situations—including, for example, that restrictions on its temporal jurisdiction exclude many non-African situations from its remit—allow perceptions of bias or unfair targeting of Africans to go unchecked. More generally, the court has suffered from insufficient resources and poor strategy in its public information efforts in Africa beyond individual situation countries.

We believe the court needs to do more: To facilitate ongoing discussion, in the omnibus resolution of this session, the ASP should

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

The Court's Work

The court faces formidable obstacles in fulfilling its mandate and mission. These include the nature of the crimes and the insecure terrain where so many of the crimes were committed. Of course, the court is only one tool in what must be a larger justice and accountability tool box that includes in addition to the ICC, national trials, strengthening of national courts, national efforts at truth telling and societal healing, and also economic development and re-construction.

Not surprisingly, in grappling with the enormous challenges of setting up an unprecedented judicial institution, there have been delays in proceedings. Indeed, Trial Chamber I's June 2008 decision to "stay" the proceedings against Thomas Lubanga—thus suspending, in all respects, the court's first-ever trial—because of the prosecution's inability to disclose to the court and to the defense potentially exculpatory information

collected under the Rome Statute's confidentiality provision emphasizes this point.

We should expect the court --- through the quality of its work --- to build its credibility. Through its sound practice, the court will increase its legitimacy. This will require scrupulously fair trials that are efficiently managed from the bench. This will also require the court to be a model of public administration. In this regard, there are issues of staff turnover and management that are of concern to us.

But in addition to these tasks, difficult enough to perform in a national court, we believe that the ICC must cross another threshold if it is to fulfill its mission and mandate: it must strive to maximize its impact in the communities most affected by the crimes. This is a lesson we draw from the experience of the two ad hoc tribunals.

While progress has been made in the court's outreach to affected communities to answer questions about the court and to explain its work, we believe that the ICC should embark on a more robust, tailored, and targeted outreach campaign to increase its impact. This will very likely require additional resources, which we urge states parties to provide as needed.

We urge the court to enhance its level of field engagement. This includes making field offices more accessible to communities most affected. It also means increasing the involvement of field-based staff in devising and developing outreach and other strategies that implicate members of affected communities, such as victims' participation and witness protection. We believe it is essential for the ICC to consider holding in situ proceedings. These steps taken together are essential in moving beyond the legacy of the ad hoc tribunals.

Moving forward, we believe ICC officials to apply the lessons learned from past experience to improve the court's fairness and effectiveness, but also to make its work relevant to the communities most affected by the crimes in its jurisdiction.

The victims deserve nothing less.

Thank you

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