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The ICC Registrar's speech at the opening of the seminar on the protection of victims and witnesses

Excellencies,

Ladies and Gentlemen,

Dear colleagues,

I am very happy to welcome you all at the seat of the Court today in order to discuss the crucial issue of the protection of victims and witnesses.

I would like to start by thanking Finland for its support in organising this seminar. Its objective is twofold. We first want to present to you the system of protection at the ICC but also to put it in perspective with other existing protection systems at the international and national level. The format of the seminar will however not be a succession of presentations but rather debates that should enable us to think together of solutions and strategies, and to combine our efforts and be more efficient.

The Court relies on the cooperation of States for a number of key protection issues. States are also the main stakeholders in the Court. As such, we very much look forward to hearing your views and suggestions on how to move forward on this key matter.

As you are well aware, the protection of victims and witnesses is first of all a right recognised by the Rome Statute for the benefit of these voluntary, brave and central actors of the legal proceedings when they face risks as a result of providing us with their testimony. The Court therefore has a corresponding obligation to take appropriate measure to protect their safety, physical and psychological wellbeing so as to mitigate the risks they face.

If the Court wants to retain the confidence of victims and affected communities, as well as maintaining its reputational capital, it is important that it pays particular attention to this delicate issue. Bluntly put, cases rely on evidence, and it is witnesses that provide the bulk such evidence.

If witnesses appearing before it were to come in harm's way before their testimony, or were not able to give their testimony with dignity and in a safe environment, our cases may not be able to efficiently move forward. The court relies on witnesses, and in turn they rely on us to ensure that they are not harmed as a result of their interaction with us. We therefore have to ensure that their interaction with the Court is a successful one.

What does protection entail? Protection in the framework of the justice system may be distinguishable from the type of protection provided by UN agencies or civil society in the field as it involves taking mitigating measures to address a risk faced by witnesses. We have representatives from the UN system and they may be able to elaborate further in this respect.

The variety of mitigating measures at our disposal will be explained in more details during the first panel. They can take the form of operational measures monitored and implemented by our staff in the field, such as the respect of good practices by investigators when meeting with witnesses or establishing a relationship with local partners when this is possible. It can also involve relocating them away from the source of the risk, something we never take lightly. They can also take the forms of procedural, in-court protective measures: closed sessions, redactions, non-disclosure of identity.

The implementation of any such measures does not come without its challenges, and I will enumerate just a few here.

- *The respect of the right of the defence*

The first challenge that the Court has to keep in mind is the difficult balance to achieve between the rights of the defence and the protection of witnesses and victims. It goes without saying that an accused has a right to have adequate information to prepare his case, to cross examine prosecution witnesses with full knowledge of who these witnesses are and also to know the identity of participating victims in so far as they may be authorised to put questions to witnesses for example. The Statute and the Rules of Procedure and Evidence take into account this delicate balance when dealing with redactions for example and it is the role of the Chamber to ensure that this balances is reached throughout the trial.

It is worth noting that the Victims and Witnesses Unit, as a neutral actor, services both prosecution and defence teams and provides similar services to all parties to the proceedings. By

way of illustration, the Registry does not differentiate between victims, prosecution or defence witnesses when negotiating relocation agreements.

- *The impact on the victims and witnesses themselves*

The experience of participating in the proceedings as a victim, and that of giving testimony to the Court can be both liberating and a difficult ordeal. Special support measures are taken by the Court to lessen the trauma that such an experience can provoke and to accompany witnesses during this tense period.

Similarly, when looking at suitable protective measures to take, the Registry considers that relocation measures should be used as a measure of last resort as they have big impact on the life of the persons concerned. Relocation is synonym of leaving your extended family, starting a new life, in an unknown area with no immediate possibility of going back home or to contact the people with whom you had relationships. Relocation also means to be suddenly immersed in a country with a different language and culture. For this reason, and to the extent possible, regional solutions should be favoured in that they have less impact on the life of these persons.

An important element in facilitating the integration of a witness in a relocating state is what is technically known as the "hand over" of witnesses to national authorities. We will have the occasion to discuss this topic in the last part of this seminar and we can look for ways to make the difficult transition away from home for a relocated witness that much easier,

- Limited resources

The most important challenge of all, however, once a protective measure has been decided upon by the Court, taking into account the rights of the defence and what is best for the witness, is in its implementation.

First, the Court works in countries with on-going conflicts, often in areas that are difficult to access, and it is therefore often not possible to rely on national structures.

Second, the Court relies entirely on the cooperation of States to implement its decisions, including the authorisation for the Court to open a field office from which it will be able to operate, to obtain passports and visas for the witnesses to be able to travel, and also to relocate

witnesses in the territory of any State Party. This includes both our States Parties, who have an obligation to cooperate with the Court under Part 9 of the Statute, States that have accepted the jurisdiction of the Court such as Cote d'Ivoire as well as the territory of Palestine, and this is without prejudice to its claim of statehood, and non-State Parties with whom the Court can sign ad hoc agreement on cooperation or other arrangements.

The Court has currently signed Framework Agreements with 10 States Parties which permits the Court to request these States to consider accepting a witness on their territory. In other words, out of 114 States Parties, only 10 accepted to even consider the matter. How can we explain these low numbers? Maybe a lack of protection programme at the national level? The difficulties for existing protection programmes to welcome non-nationals? Is it the lack of resources? the lack of structures? These are all questions which I hope today's seminar will begin addressing.

The Registry has tried to find innovative solutions to fill in the gap. A Special fund has been created to collect funds to allow cost neutral relocations in regional states, where we look for synergies with development partners so as to develop a protection program in the state concerned. States were also approached to enter into "sponsorship" agreements by which they accept to finance the protection of victims or witnesses in a third State. These innovative solutions present the advantage of supporting States in building national capacity, and thus bridging a crucial complementarity gap.

I think that your attendance today will provide us with a good opportunity to explore how to promote the issue of protection. During our last seminar organised in January 2009, the UN Office of the High Commissioner for Human Rights discussed the possibility of establishing a joint international authority on protection issues. We can also discuss the possibility of organising training workshops for interested national authorities, as well as considering reinforcing the protection angle in implementing legislation. I look forward to your views on these possible initiatives.

I will now leave the floor to the Director of the Division of Court Services, Marc Dubuisson, who will play the role of our facilitator for the day.

Thank you for your attention.