

Remarks to the 10th Assembly of States Parties to the Rome Statute New York, December 14, 2011 Delivered by Kelly Askin, Senior Legal Officer

As noted by others here, huge changes are coming to the ICC within the next few months alone. The Court will soon be led by an experienced prosecutor from Africa, six new judges will be sworn in and correspondingly, six judges who have rendered key decisions on issues such as intermediaries, proofing witnesses, victim participation and witness protection, and the confirmation of charges, will be leaving the court; the leadership in the Assembly of States Parties is changing; the Court's first Trial Chamber Judgment will be issued in the Lubanga case; and the court will begin proceedings against its first former head of state. These significant changes could potentially result in the court heading in far different directions than the course that's been charted over the past ten years.

The Open Society Justice Initiative has been working on the ICC since its inception, and in these brief remarks, I'll simply highlight two areas we've been engaged with intensely for several years: intermediaries and complementarity.

Intermediaries are critical to the Courts operations and in fulfilling its mandate, and these individuals or organizations assist various organs of the court. The Justice Initiative began working with and as intermediaries in the Democratic Republic of Congo in 2003. Since that time, particularly as the Lubanga trial unfolded, we have focused considerable attention on the need for guidelines in dealing with intermediaries. To this end, we urge:

- The ASP President to appoint an intermediaries facilitator through The Hague Working Group to assist in finalizing the ICC Intermediaries Guidelines and monitor their implementation to make suggestions for improvement where necessary;
- The ASP to give due consideration to the ICC Intermediaries Guidelines and adopt the Guidelines at the earliest opportunity;
- The ICC to utilize the ICC Intermediaries Guidelines to inform their interactions with intermediaries at least during 2012 pending adoption at a forthcoming ASP and to ensure the Guidelines are subject to an on-going monitoring process, involving both the Court, intermediaries and external experts to ensure the Guidelines are effective achieving their aims in managing the partnership with intermediaries.

Next month, the importance of intermediaries and dealing appropriately with them is expected to be a very fundamental issue in the Lubanga Judgment.

Turning to complementarity, it too is a topic that is critical to the success of the Court and for ending impunity for mass crimes. In 2008, the Open Society Justice Initiative first began working in concrete terms on assisting domestic jurisdictions in their willingness and ability to prosecute atrocity crimes when we began the process of designing and implementing a mobile gender justice court in eastern DRC, to provide some measure of justice to the tens of thousands of women and girls victimized by war and impunity. Since then, the Justice Initiative has been analyzing complementarity options in other places, such as Kenya and Uganda.

On Monday, we launched a handbook on complementarity, titled "International Crimes, Local Justice" which represents an attempt to bridge the gap between international justice and rule of law communities and to demonstrate how complementarity can be implemented once decisions are made to prioritize it. To this end, it is important that the ASP educate development agencies, embassies on the ground, national governments, and civil society about the importance of local justice systems holding fair trials for international crimes. It can convene the relevant actors needed to address complementarity effectively and its secretariat can promote the exchange of information between those on the ground who can best identify complementarity needs with those in capitals most familiar with knowledge of available expertise and resources.

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