**How National Nongovernmental Organizations Can Work with the Court**

**The Interaction between NGOs and the Court**

**What role can NGOs play vis-à-vis the Court?**

NGOs can play a central role before, during, and even after an investigation. Their contributions fall into three main categories:

**Telling others about the Court**

NGOs can play an important role in informing the media and the general public about the Court. They can do this through radio, leaflets, posters, conferences and information sessions. They may want to use materials produced by the Court itself or this guide.

**Providing information to the Court**

NGOs can inform the Office of the Prosecutor about crimes committed, a specific case, the historical and political context of human rights abuses, or the capacity or will of a state to investigate or prosecute crimes. This information could help the Prosecutor decide whether or not to open an investigation.

**Serving as a link between the Court and victims and witnesses**

NGOs are often close to the victims and witnesses. They can play an important role by accompanying victims and witnesses throughout the process of providing evidence to the Office of the Prosecutor.  They can inform victims and witnesses about procedures at the Court and prepare their work with the Court for example by informing them about security risks, helping them to take action collectively, and putting their information into a form most easily used by the Office of the Prosecutor.

**How can NGOs submit information to the Court?**

Ordinarily persons from outside the Court will be in touch with the Office of the Prosecutor rather than other branches of the Court. They can send information on a number of issues, illustrated below. Sometimes NGOs send information directly to other branches of the Court. In particular, they can send submissions to the any of the Chambers in a legal document called an Amicus Curiae. NGOs may also directly address the Court in order to represent victims. Moreover, NGOs can also apply to participate to the proceedings when they have suffered a crime themselves. In addition, NGOs can represent victims who want to submit information regarding the Prosecutor’s decision not to investigate a case.

NGOs can also send case information to a government that is party to the Rome treaty, or even to the U.N. Security Council, and ask them to refer a case to the Court.

**Can NGOs help in launching proceedings before the Court?**

Yes. NGOs regularly publish reports on human rights crimes that may fall under the jurisdiction of the International Criminal Court. If NGOs believe that the abuses they have documented are serious enough to merit investigation by the Court, they should send the most solid reports on the most serious crimes to the Prosecutor. NGO reports have already played a role in spurring the investigation in DRC. The Prosecutor received six communications regarding the situation in Ituri, among them “two detailed reports from nongovernmental organizations.”  Evidently, the reports from the NGOs prompted the Prosecutor to identify the situation in Ituri as “the most urgent situation to be followed.” However NGOs should refrain from sending the Office of the Prosecutor every piece of information they have, in order to avoid the Prosecutor getting swamped and paying less attention to reports he receives.

**What information should NGOs send to the Office of the Prosecutor?**

NGOs can send information on crimes regarding individual cases or patterns, providing as much detail as possible. In addition, NGO reports could explain the historical and political context of the crimes investigated, in order to provide the Prosecutor with a better understanding of the situation. By reporting on the capacity or will of a state to investigate or prosecute crimes, NGOs can also help the Prosecutor determine whether a case falls under the jurisdiction of the Court or should be left to the national courts. NGOs could also inform the Prosecutor about the practical feasibility of investigations.

It is not possible to give a precise list of all the kinds of information that NGO reports might include, but when an NGO sends information about human rights crimes, it should include the following:

•           Location (in DRC: province, territoire, collectivité, groupement; in Uganda: district, county, sub-county),

•           Time, date, and duration of the incident

•           Chronology of the incident

•           Nature of crime (i.e. torture, rape, killings), and methods used

•           Possible reasons for the incident

•           Identity of alleged perpetrators (the army, armed group, or individuals involved)

•           The identity of the victim (name, age, gender, occupation, address, relevant information about ethnicity, religion, or other affiliation)

•           A list of evidence available such as photos, written records. However do not send the evidence itself unless requested by the Prosecutor.

When sending information to the Court, the NGO should always ensure that they have one copy of their communication in their own files.

**What should NGOs do with other evidence they might have, such as photos, video films, documents, medical certificates, or even objects?**

They should provide the Office of the Prosecutor with a list of all such evidence in their possession and keep it safe until they hear from his office. They should not send the evidence itself unless requested by the Prosecutor, as it could otherwise get lost, damaged, or be overlooked.

**Should NGOs work like criminal investigators?**

No. NGOs can provide information on crimes which they gather in the course of their normal work. They are not expected to be “mini-prosecutors.” In fact it is the role of the Office of the Prosecutor alone to develop solid evidence that can be used in Court.

**Do NGOs have to follow a specific format when sending information to the Office of the Prosecutor?**

No. NGOs can submit their own reports to the Prosecutor and do not need to fill in forms or fulfill other formalities. However, as noted above, those reports should include specific information.

**Will NGOs get a reply from the Prosecutor’s Office when they send information?**

In principle the Office of the Prosecutor must send a reply to all communications received, if only to acknowledge receipt. However, in practice, they might not always have the capacity to do so. The Office of the Prosecutor will probably just receive the information and use it as wishes, unless it has a specific question for the NGO. In that case, the Prosecutor’s Office will contact the NGO.  NGOs submitting information to the Prosecutor should avoid raising expectations among the victims and other possible witnesses, as they cannot know what the response of the Prosecutor will be. The Prosecutor may well decide not to proceed farther with the information, taking into account a variety of factors.

**How can NGOs submit information in an Amicus Curiae?**

In addition to factual information NGOs can provide to the Court, they can also submit legal analysis or policy arguments in an Amicus Curiae, a legal document accepted by one of the Court chambers (it means “Friend of the Court”). A Court Chamber can invite a state, organization, or individual to submit a written statement on a specific topic, a so-called Amicus Curiae brief. The Amicus Curiae is prepared by an organization that has a professional interest in the topic. It presents the issue at stake in a concise manner and makes suggestions to the Court how to settle the matter. The Amicus Curiae gives NGOs the opportunity to be heard on a number of legal and practical issues, for example, the competence of national courts to prosecute a case. NGOs can also contact a Chamber and propose to submit an Amicus Curiae.

**Can representatives or members of NGOs be called to testify?**

Yes. The Prosecutor or the defence lawyers can call anyone to testify in Court. NGOs might have to answer questions about the information gathered on crimes or about the circumstances of their research. Such testimony might include elements of information collected by researchers that were not previously made public – and NGOs could potentially be forced to disclose information that they intended to keep confidential.

**The Court will only be able to prosecute a few cases – what does that mean for NGOs?**

Because the Court will prosecute only a small number of cases, NGOs should think strategically about which are the most important cases to submit, and not expect that “their” case will necessarily be prosecuted. Where possible, NGOs should coordinate among themselves and decide to push jointly for a particular case or situation to be investigated.

**Should NGOs send only material on the geographic areas in which the Prosecutor has expressed a special interest – Ituri in DRC and northern Uganda?**

In the DRC, the Court is likely to concentrate on Ituri for a while. But that does not mean that NGOs should limit their submissions to Ituri. When the Prosecutor announced the launch of the investigation in DRC in June 2004, he made clear that the scope of the investigation would cover the whole territory of the DRC. If NGOs have relevant information about crimes committed in other parts of DRC, they should send this to the Office of the Prosecutor.

In Uganda, the Prosecutor will concentrate on the north as requested by the Ugandan government. Hence NGOs should concentrate on sending information on the crimes committed by all sides in relation with the conflict in northern Uganda.

**Will the Court intervene on behalf of human rights defenders who are threatened, arrested, or face danger because of their submission of information to the Court?**

NGOs should not expect to be protected by the Court. The Court will take all possible measures to ensure the safety of those assisting it, but it will not be able to protect everyone who brings it information.   Human rights defenders should therefore develop their own strategies for protection and not wait for the Court’s help. Nevertheless it would be important to inform the Court of any attacks on human rights defenders resulting from their contribution of information to the Court.

**NGO Assistance to Victims and Witnesses**

**What can NGOs do to assist victims and witnesses in contacting the Court?**

NGOs can become a bridge between victims and witnesses and the Court:

•           They can send information gathered from victims and witnesses to the Court

•           They can inform victims and witnesses about different possibilities of participation in the Court proceedings, and assist them in this participation

•           They can help victims and witnesses get legal representation

•           They can represent victims at any stage of the trial

•           They can help victims and witnesses organize themselves in groups

•           They can help victims apply for reparations

•           They can inform victims and witnesses about the security risks involved and help them take measures for their protection

**Who are victims and witnesses under the Court rules?**

The Court rules define victims as “persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court” Organizations such as NGOs that have “suffered direct harm” can also be victims. Witnesses are persons called by the Prosecution or the Defence to give testimony to the Court, including victims, persons who saw a crime committed, experts, or relatives of a suspect.

**What is the difference between participating in Court proceedings as victim and as witness?**

Victims can ask the Court to allow them to express their views and concerns in the proceedings. This is quite an unusual and innovative element for an international court. It means that there is a real opportunity to bring the viewpoint of the victims to the Court.  Victims who participate will probably have legal representation. They will not be asked to tell their story in Court; rather, their legal representatives will have to answer specific questions. The role of victims in the ICC is somewhat similar to the role of the partie civile in the civil law system which is in place in the DRC. When victims come to participate in this way, they have to pay their own expenses. The Court might not cover the costs for the legal representation either.

The Prosecutor or the Defence might call some victims as witnesses to testify in Court. When that happens, they must answer questions from the Prosecution, the Defence, and the legal representatives of the other victims. If victims are invited as witnesses, the Court covers their costs and organizes their stay for them. Victims cannot apply to become witnesses. The Prosecution or the Defence decides whom to call as witnesses.

**How should NGOs present their relationship with the Court to victims and witnesses?**

When talking to victims and possible witnesses, NGOs need to make clear that they are not working as agents of the Court. They collect their information independently, as part of their own work, although they might later submit some or all of this information to the Court.

**Should NGOs send statements from victims and witnesses to the Court?**

No. When speaking to victims and witnesses about alleged crimes, NGOs should avoid taking statements that contains word by word what the victims and witnesses are saying (these are called verbatim statements).  They should record a summary of the information provided by the victim or witness. Only the Prosecutor’s Office should decide what questions to ask victims and witnesses and in what form to take down their answers. Since NGOs are not part of the Prosecutor’s office, they might make mistakes in interviewing witnesses that would complicate the work of the Prosecutor. This is why they should just take a summary of the information and provide it to the Prosecutor’s office, along with information about how the victim or witness can be contacted in the future. Of course the NGO must seek the agreement of the victims and witnesses when doing so.

But if victims or witnesses insist on making formal, verbatim statements or if the NGOs have already collected such statements in the past, NGOs can send the statements to the Prosecutor. When doing so, NGOs must make sure not to comment on, alter, or edit any statements made by victims and witnesses or any documents that they want to submit to the Prosecutor’s Office.

**How can NGOs help victims to decide if they want to apply to participate in a case?**

First of all, NGOs can help victims assess the security risks that might arise for the victim from participation in a case. They can also take protection measures on the local level.

Secondly, the NGOs should explain to victims the different stages of examination and formal investigation. NGOs should encourage those victims to apply whose cases are connected with the situation under investigation; and they should discourage others from making contact with the Court.

Finally NGOs can assist victims in filling in the forms needed to apply for participation in a case. The forms are not yet available but should become available during 2004 on the Court’s website, at www.icc-cpi.int. Victims can apply for participation when a formal investigation has been launched or even before that if the Prosecutor has launched an investigation on his own initiative.

Victims will apply to the Registrar of the Court who will pass the form onto the relevant Chamber. The Chamber will decide whether and how victims can participate. It can reject the application if (i) it considers that the applicant is not a victim, if (ii) the victim has no personal interest in the proceedings or if (iii) it determines that the participation of the victim would be contrary to the rights of the Defence and the requirements of a fair and impartial trial. A victim whose application has been rejected by the Chamber may file a new application later in the proceedings.

**How can NGOs help victims participate before an investigation is formally launched?**

NGOs can assist victims in providing evidence to the Office of the Prosecutor (see above). In addition, NGOs can also help victims in applying to the Pre-Trial Chamber to be heard when the Prosecutor has decided that it is in the interest of justice not to prosecute a case. They can also assist the victims in presenting their views.

**How can victims participate in the trial itself?**

Once the trial has started, victims can ask to be heard and express their views through their legal representatives.

Victims might also be invited to give their view in Court on a number of issues. For example, victims might be invited to express a view when Court decides whether to judge a group of accused together or separately.

The Registrar should notify the victims regularly of developments and decisions by the Court. Particularly important steps are:

•           The decision of the Prosecutor not to initiate an investigation or not to prosecute

•           The Pre-Trial Chamber’s decision to hold a hearing to confirm charges against the accused

•           The progress of the proceedings, in particular the date of hearings and any postponements, and the date of the judgment

•           Requests, submissions, and motions that are important for the case.

**How can NGOs assist victims with legal representation?**

NGOs can assist victims in identifying qualified, trusted lawyers who can represent them at the Court. They can also propose lawyers to the Court itself, which can choose legal representatives for the victims in some situations.  There will be an office of Public Counsel within the Registry of the ICC. The office will provide support and assistance to the legal representatives of victims or victims, including legal research and advice or appearing in Court.

Furthermore, NGOs can help victims organize themselves in groups and seek common legal representation. This will be important to ensure effectiveness in situations when there are many victims. The Court itself can decide to group victims and designate a common legal representative.

**Does the Court keep the information provided by victims and witnesses confidential?**

The Court rules require the Prosecutor to protect the confidentiality of the information he has received and collected. This means he cannot release the names of his sources publicly. However under due process rules, the Prosecutor must provide the Defence with the names of witnesses he intends to call. The accused has a right to know who is testifying against him or her.

If there are security concerns, a Court Chamber may decide to prohibit the public disclosure of the name or location of a victim or witness, or even of another person who is neither victim nor witness. In certain cases victims and witnesses can be heard in closed sessions (in camera), or they can be given pseudonyms. Sometimes their testimonies might be presented with technologies that alter their voice or image in order to keep their identity confidential. But there is no guarantee that this will happen in all cases where victims might wish for it to happen.

Under certain circumstances the Court has to respect the confidentiality of information, and cannot force disclosure of the information as evidence. This is the case with information that was given by representatives of the International Committee of the Red Cross (ICRC), to the legal representative of an accused person, medical doctors, or others in professional confidential relationships. Other information is not protected and might hence be used – and disclosed – in Court.

Protective measures can also be requested by the Prosecutor, the defense or victims and witnesses themselves. The Victims and Witnesses Unit can make recommendations in this sense to the Chambers.

**What other measures are available to protect victims and witnesses?**

The Victim and Witnesses Unit within the Registry of the International Criminal Court is in charge of the security and well-being of the victims and witnesses. The Court’s rules define this role in general terms such as planning for their protection, providing them with medical and psychological assistance, and ensuring that victims of gender-based violence receive necessary help

However in practice, it is likely that there will be a number of problems and the Victim and Witness Unit might not be able to protect all victims and witnesses. Each case will probably involve a high number of victims and witnesses; but the funds allocated to victim’s and witness protection are very limited.

**How can NGOs ensure the safety and confidentiality of victims and witnesses?**

NGOs can closely observe the progress of the trial to ensure that the Court respects its own rules. They should help the victims understand the limitations of the Court in protecting them, while also pushing for better protection measures where possible. Victims and witnesses who want to testify or otherwise participate need to be told about risks to their security, as well as the protection measures that are available.

NGOs themselves should take precautionary measures to ensure that a victim’s or witness’ identity is protected. If an NGO wishes to send information from victims or witnesses to the Court, it must inform those persons about the Court’s proceedings and about the possible security implications. Only after doing that should the NGO seek the agreement of the victim or witness for sending on information to the Prosecutor’s Office. They should only transmit documents from victims and witnesses to the Prosecutor’s Office if the victims and witnesses expressly agree to this being done.

When planning to contribute information to the Court, NGOs should carry out a security assessment and decide on a strategy for protecting their own staff and others in contact with them. In some cases, discretion is the best strategy; in others, openness may work better (though that does not mean divulging the identity of victims and witnesses).

There is a range of measures NGOs can take to protect the confidentiality of information:

•           regularly carry out risk assessments

•           join national and international human rights networks

•           build channels with security officers

•           ensure security of the office premises and control the flow of visitors

•           recruit people you can trust

•           be discreet about  your interactions with the International Criminal Court

•           always be careful about what you say on the phone, in emails, faxes, and letters; possibly using code words for sensitive information or using encryption.

•           use the addresses of other trusted organizations for sending and receiving mail

•           interview victims and witnesses without other persons present

•           interview victims and witnesses in a location and in circumstances that do not arouse the interest of outsiders

•           ask a local contact to interview the victim or ask the victim to come to you, in order to avoid raising suspicion through your visit

•           change plans where necessary, for example if you realize you are being followed

•           store the information about the interview safely, i.e. use passwords and encryption

•           keep notebooks in safe locations

•           delete the name of the source of information from your notes

•           avoid using information that could easily betray the identity of the informant

(some of the suggestions are taken from Amnesty International/ CODESRIA: “Ukweli, Monitoring and Documenting Human Rights Violations in Africa, A Handbook,” Amsterdam/ Dakar 2000).

**Can victims obtain reparation from the Court?**

Yes. Victims or their close relatives can obtain reparation, including restitution of property and compensation for losses. The compensation granted to the victim can come from the funds of an accused. The states that founded the Court also created a trust fund to give reparations to victims and the Court may decide to give victims money from this fund. The judges of the Court determine the amount of compensation. The Court can determine the amount of compensation without a specific request from the victim when it finds that the victim is unable to claim reparation. In order to allow the greatest number of victims to obtain reparation, the Court rules require the Registrar to give adequate publicity of the reparation proceedings before the Court. The Court can also allow collective reparation that is, reparation to a whole group of victims – if the number of victims is too high for individual reparation or if the provision of individual reparation is too difficult.