



Address to the Assembly of States Parties

14 November 2008

**Mr. Luis Moreno-Ocampo
Prosecutor of the International Criminal Court**

(English version only)

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Excellencies, Ladies and Gentlemen,

I have the honor to report to the Assembly of States Parties on the work of my Office during 2008 and on our plans for 2009.

Based on the proprio motu power of the Prosecutor, the Office proactively analyzes available public sources to collect and assess data on crimes within our jurisdiction and on related national proceedings. We have also received and analysed 4248 communications on purported crimes in 2008 so far.

Situations in four continents are under analysis: Colombia, Georgia, Kenya, Cote d'Ivoire and Afghanistan. I led a mission to Colombia in August and I requested information to states in the Americas and Europe on domestic investigations on networks of support to groups such as the FARC.

The Office received officials of the Georgian Government. We are analysing reports from Georgia and over 3,000 documents were received through the Russian Government, a non state party. We have already sent our first mission to the field.

The Office requested information to the Afghan Government and Afghan human rights bodies and two weeks ago, I met with an Afghan delegation to foster support for the Office activities.

The Office is following the situation in Kenya where an independent Commission was established to assess crimes that could fall in our jurisdiction. There are intense discussions in Kenya on possible domestic proceedings.

As we anticipated during the last assembly, our investigations in CAR and Darfur progressed. We requested an arrest warrant in the case of Mr Bemba in May. We requested an arrest warrant in the case of Mr Al Bashir in July.

In September, in the DRC, we started our third investigation which will focus on the Kivus.

In November, Pre Trial Chamber I confirmed the charges against for crimes committed against the civilian population of Bogoro, in DRC.

Next week we will request new arrest warrants, for the attack against African Union peacekeepers in Haskanita. This is our third Darfur investigation.

To collect the evidence needed in all these cases, my staff conducted 137 missions to 15 countries.

Today the top leaders of four armed groups are detained at Scheveningen. In previous years, Mr Lubanga and Mr Katanga, when transferred to the Court, were already in national custody. In 2008, for the first time, two persons were arrested following the decision of the International Criminal Court. Mr Ngudjolo Chui was a Colonel in the DRC Army and Jean-Pierre Bemba was arrested in his Brussels' house. States cooperated intensively. DRC and Belgium performed the arrest. Portugal worked for months to prepare for the arrest, before Mr Bemba moved to Belgium. Portugal, DRC and Belgium facilitated search warrants. Others provided timely information.

I would like to highlight now some aspects of the Office's work this year.

1 – First, security for witnesses and persons who may be at risk

We investigate massive crimes, focussing on those most responsible, in unsecure environments. This carries many challenges, but protection of witnesses and persons at risk is the most challenging of all. Last months, members of the "FRPI" and other forces tried to re-take Bogoro, leading to mass displacement. Supporters of Mr Bemba resorted to violence in the DRC and in Europe after his arrest.

Despite these difficulties in four years of investigations no ICC witness has been attacked, wounded or killed. Intermediaries are also receiving protection in accordance with the decision of the Appeal Chamber of May 2008 extending the possibility of protective measures to all persons at risk on account of Court's activities. This careful approach to the security of witnesses and others is an ethical and legal obligation; it is also the cornerstone of our efficiency. We must draw lessons

from the Haradinaj case at the ICTY which illustrated how lack of protection can have a detrimental impact for justice. Any mistake will cost lives and will substantially affect the work of the Court. We have to increase our efficiency in the face of such challenges to maintain the current level of security. All of you can contribute. The relocation of witnesses is a last resort measure. Other contributions, such as the development of assistance for setting up witness protection programmes in situations countries, are also valuable. Such cooperation can benefit our investigations, but it can also help territorial States to carry out national proceedings.

2 – Second, Legal developments.

The Rome Statute is an innovative legal design. As the Prosecutor I have to apply this new law, I have to make daily decisions and, as many other parties, I need clarity.

In 2008, the Court was able to provide certainty on key legal concepts.

Regarding victims participation, the challenge for the Court was to address all issues in a consistent manner. Victim participation "*is a right accorded to victims by the Statute*". As the Prosecutor, I believe that as many victims as possible may participate to express their views and concerns, presenting a different social dimension of the crimes and obtaining respect and reparations. I have requested clarity on the modalities of participation. The Appeal Chamber in its decision of 11 July 2008 started to define such modalities. Victims can tender evidence within confined limits, consistent with the role assigned to the Prosecutor and with the rights of the accused and a fair trial. We expect such enhanced clarity will allow victim's participation to proceed efficiently. The completion of a Courtwide Strategy for victims in 2009, under the leadership of our new deputy registrar, is one of our five strategic goals.

The Court was able also to settle the tensions between duties of confidentiality and disclosure of exculpatory information. On 21 October 2008, the Appeals Chamber made a seminal decision : the Trial Chamber as well as any other Chamber of the Court will have to respect confidentiality agreements concluded by the Prosecutor under Article 54 (3)(e). In accordance with the decision, no Chamber of the Court can

order the disclosure of Article 54(3)(e) materials to the defence without prior consent of the information provider. This is a guarantee for those who cooperate with the Court.

In the case of Lubanga, such legal certainty has been key to reassure information providers and the Prosecution has been able to place all relevant material before the judges, unredacted and for the duration of the proceedings. Trial Chamber I is now reviewing the information and will render its decision shortly.

Time spent on such discussions has been a worthwhile investment. The Court has to act as an impartial judicial institution. Certainty of a fair trial is a cornerstone of the Court's legitimacy.

3 – Third, management

This is a complex area. I have the mandate to act independently with full authority on my Office, but at the same time we rely on services provided by the Registry and the cooperation provided by states, international organizations and other stakeholders.

I appreciate the CBF comments welcoming the flexible approach of the Office through rotation of resources according to needs. I remind the Assembly that the use of GTA contracts has allowed us to manage unforeseen events in the past. With this caveat, I agree with the CBF that we have the size needed to conduct our work.

With the Registry, we have a commitment to finalize by the end of the year Service Level Agreements to consolidate working practices in different areas. The implementation of the independent oversight mechanism which will address misconduct including internal sexual harassment/abuse is also a shared priority.

Two years ago the Office presented its prosecutorial strategy for 2006-09 aiming to facilitate our interaction with other organs in the context of the Court strategic plan, and with other actors. We are planning to update the prosecutorial strategy for the following three years. You will be invited to comment.

