

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