



*Seeking Reparation for Torture Survivors*

# Your Rights and the International Criminal Court

## A Guide for Victims of international crimes in Darfur

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The Redress Trust  
87 Vauxhall Walk, 3<sup>rd</sup> flr  
London, SE11 5HJ

[www.redress.org](http://www.redress.org)

[info@redress.org](mailto:info@redress.org)

Tel: +44 (0)20 7793 1777;

Fax: +44 (0)20 7793 1719

## INTRODUCTION

This Booklet is for victims of the worst atrocities in Darfur, and those that are assisting them. It is intended to provide basic information about:

- Why the International Community is interested in what is happening in Darfur;
- The role of the International Criminal Court and the arrest warrants it has issued against Ahmad Muhammad Harun ("Ahmad Harun") and Ali Muhammad Al Abd-Al-Rahman ("Ali Kushayb");
- How Sudanese victims can use the International Criminal Court.

This Booklet uses a question and answer style. It tries to answer questions raised by members of the public, by victims and those that assist them. It also covers issues which have arisen during discussions with civil society groups in Sudan.

For more information, please consult REDRESS' more detailed companion Guide, available in both Arabic and English:

**REDRESS. *"Accountability and Justice for International Crimes in Sudan: A Guide on the Role of the International Criminal Court"*, May 2007.**

Contact details for organs and units of the International Criminal Court are located at the back page of this Booklet.

# PART I: THE INTERNATIONAL COMMUNITY AND DARFUR

## What is happening in Darfur?

In Darfur, men, women and children have been attacked, killed and tortured. Many have suffered greatly. They have lost relatives, suffered serious injuries and many have had their houses destroyed and cattle stolen. Young girls and women have been raped and assaulted.

These attacks are not simply what can be expected during a time of fighting. Killing innocent people, torturing, raping, looting and driving people from their homes are recognised as among the most serious crimes. These are crimes that need to be punished.

## Why isn't more being done to stop the violence?

People around the world have called on the Government of Sudan to do more to stop the violence. The Government has said that it is taking action, but the violence continues.

The African Union has sent troops to Darfur to help stabilise the region. The United Nations has also offered to send troops, but the Sudanese Government has not yet given permission for the troops to come.

## PART II: THE INTERNATIONAL CRIMINAL COURT EXPLAINED

### What is the International Criminal Court?

The International Criminal Court (ICC) is a court supported by more than 100 countries around the world, including 29 countries in Africa. It has the power to bring to justice the persons that are believed to be responsible for some of the worst possible crimes: genocide, crimes against humanity and war crimes.

The United Nations asked the Prosecutor of the ICC to investigate the crimes taking place in Darfur. The Prosecutor's investigators collect information about the crimes from witnesses, victims and other sources.

Normally, the ICC will only be able to consider crimes that relate to countries that agreed to the authority of the ICC. One of the exceptions, is when the United Nations Security Council decides that a case is so serious that it must be dealt with by the ICC, even if the country does not give its consent. This is what happened in the case of Darfur. The Sudanese Government has not yet agreed to the authority of the ICC, but the United Nations, acting to preserve peace and security, has sent the case to the ICC, and asked the Prosecutor to investigate.

### Who can be brought before the International Criminal Court?

The role of the ICC is to prosecute those responsible for the most serious crimes. This will probably include leaders and

commanders who have given orders or committed very serious and widespread crimes.

The ICC's mandate is limited as follows:

**TIME:** It can consider crimes that are said to have taken place from July 2002, the time when the Court formally came into existence.

**PLACE:** The ICC can only consider crimes that relate to Darfur, because this is the focus of the United Nations' request to the ICC.

**TYPE OF CRIME:** The ICC can only try individuals for three specific crimes: genocide, crimes against humanity or war crimes. The definitions of these crimes are complex, but in essence, the ICC is limited to considering the most serious cases of murder, rape, torture, looting or similar mass violence.

## How does the ICC relate to National Courts in Sudan?

The ICC respects local courts; it is the first international criminal court to recognise that justice should be done at the national level first. The ICC will only judge persons if the Sudanese justice system has failed to fully investigate and prosecute the persons locally.

The Sudanese Government has set up Committees and Special Courts in Darfur to try those responsible for serious crimes. The courts have punished some soldiers, janjaweed and rebels for murder and rape. They have also punished others for crimes such as armed robbery.

However, Sudanese courts so far have not prosecuted and punished commanders and leaders most responsible for serious crimes: many of those responsible for crimes such as murder, rape and torture are still free. The ICC Prosecutor is focusing on such cases for this very reason.

Even if the International Criminal Court judges some persons, it cannot prosecute everyone who has committed serious crimes in Darfur. The Sudanese Government must also investigate serious crimes and prosecute those responsible.

## What is the ICC doing about crimes in Darfur ?

The Prosecutor of the ICC is currently investigating the situation in Darfur. The Prosecutor wants to find out what serious crimes have been committed and who is responsible. The Prosecutor is gathering evidence. His office has a number of investigators who work to find out what happened and who is responsible. The investigators interview victims, witnesses and suspects.

A witness can be anybody who has either suffered a crime, seen the crime or knows something about a crime. In the Darfur investigation, the Prosecutor has interviewed victims and witnesses in at least seventeen countries.

The Prosecutor has travelled to Sudan to meet and interview officials and has an office in Chad where over a million displaced Darfurians are living as refugees.

Recently, as a result of the Prosecutor's investigations, the Court issued arrest warrants against two Sudanese individuals for crimes they are said to have committed in Darfur:

- i. Ahmad Muhammad Harun ("Ahmad Harun") former Minister of State for the Interior; and
- ii. Ali Muhammad Al Abd-Al-Rahman ("Ali Kushayb") a Janjaweed leader

The charges concern crimes committed against people in the village of Kodoom and several towns in West Darfur in 2003 and 2004. The crimes include rape, murder, persecution, forcible transfer, destruction of property and other inhumane acts.

## Who will carry out the arrests?

The judges have requested that Sudanese authorities arrest the two persons and bring them before the ICC, which is based in the Netherlands, in Europe. So far, the Government of Sudan has refused to hand them over, even though Sudan is obligated to comply with the request.

The ICC itself has no army or police to enforce its orders. The United Nations and the International Community more generally will have to decide what action to take to make sure that the suspects can be brought to the ICC for trial.

Trials against those accused of international crimes, including in Darfur, will normally be held before the ICC Trial Chamber in The Hague. The trial is public and anyone can attend. Some hearings may be held behind closed doors if necessary, such as for the protection of witnesses.

## How will the trial take place?

Once the accused persons are sent to The Hague for trial, there are a number of steps that will take place.

1. First, the Prosecutor will need to provide the defence lawyers information about the charges so that the accused persons fully understand why they have been charged and can prepare their response. The judges will need to decide whether there is enough evidence to sustain the charges, and will set a date for trial.
2. During the trial, the Prosecutor will put forward all the evidence it has collected against the accused persons and the defence counsel will be given an opportunity to present a different picture of the evidence or to provide new or different evidence. After this, the judges consider all the evidence and decide whether the

accused is guilty or not guilty of the charges. The judges can only convict if they are absolutely certain that the accused is guilty. The judges can impose a maximum sentence of life imprisonment and a fine. There is no death penalty before the ICC. The judges can also decide that the convicted person should pay reparation to the victims.

A full trial will probably take several years.

3. The Prosecutor and the Defence can appeal the verdict and the sentence. In case of appeal, five Appeal judges review the earlier decision. This means that different judges rule on whether or not the decision by the trial chamber was correct. If they agree with the trial chamber, the ICC can carry out the punishment.

## PART III: YOUR ROLE AND RIGHTS AS A VICTIM OR WITNESS

Many individuals and communities have suffered great harm and hardship in Darfur. They are all victims of the war.

There are a number of ways in which victims can become involved in the work of the ICC:

### ➤ Giving information to the Prosecutor

The Prosecutor is currently investigating crimes in Darfur. Giving information to the Prosecutor's investigators can help to bring out the truth of what happened.

**If you wish to give information to the Prosecutor, you should:**



- **Try to minimise the risks - be discreet** - there will be some who would prefer if the information did not reach the Prosecutor and you should take all necessary precautions to make sure that as few people as possible know that you have been in touch with investigators;
- If you are providing information about people other than yourself, be sure that they agree and explain the risks to them with utmost discretion;
- If you wish to provide the information confidentially, so that only the Investigators and Prosecutor can see it, you should state this clearly. However, in some circumstances, the Prosecutor has to give information to the defence lawyers, and you should ask the Prosecutor for advice before you give the information;
- Think carefully about whether you would want or be able to testify (give evidence) in Court about the information you have provided. If you might be interested, you may ask the Prosecutor to explain the risks involved and protective measures available;
- **Be very clear** - just say what happened, no more, no less
- **Don't expect an immediate response** - the investigators cannot respond to every piece of information they receive, and will probably only get in touch if the information you provide relates directly to an investigation they are pursuing. Don't despair - it is important for the Prosecutor to receive your evidence to get a full picture of what happened, even if he does not choose to use this information in the trial.

**If you give information to the Prosecutor, what will happen next?**

- It is possible that you will be contacted by the investigators who may want more information;

- It is possible that you will be asked to be a witness in a trial. If this happens, you might be asked to travel to The Hague to give your evidence to the judges. The defence counsel will be given the opportunity to question you as well;
- It is possible that nothing further will happen. This does not mean that the information you provided was not useful. It is up to the Prosecutor to decide which crimes to investigate. Even where you have suffered terribly from a crime, the Prosecutor's investigation might not prosecute those responsible for it. There could be many reasons for this but it does not mean that your suffering is not important.

Contact details for the Office of the Prosecutor are at the back of this Booklet.

## ➤ Testifying as a witness at trial

If you are asked to appear as a witness before the Court, there is a special Victims and Witnesses Unit in the ICC that is designed to assist. It helps all victims and witnesses involved in Court proceedings. It will contact you and will make all the practical arrangements to bring you to testify before the judges. You may have to travel to The Hague in the Netherlands to give evidence. You may have to stay there for several weeks and the Court will pay for your stay.

Giving evidence in a courtroom is not easy. This is why the Court has the Victims and Witness Unit to support you. They can help you in getting psychological counselling and care if you need it. If you feel threatened, you should ask the Court for protection. The judges may decide that you don't have to testify in public but only to the judges. It may even be possible that you give evidence somewhere else. The judges may also decide that you can use a false name (pseudonym) to protect your identity but your real identity may be disclosed later to the defence lawyers.

Normally, during the trial, the prosecution, the defence lawyers, any lawyers representing victims and the judges may ask you questions. If asked, you should tell the truth as you remember it. You can say if you cannot remember something or are not sure about what exactly happened. The information you give will be used by the judges, in particular to decide whether the accused is guilty or not guilty.

## ➤ Keeping Safe

- If you are worried that someone wants to attack you because they think you are a victim or a witness, you may contact the ICC for help.
- You can also contact local or international organisations in the area where you live or other persons you trust to get advice.
- The investigators should not interview you if you do not want to be interviewed. If you are interviewed, the interviewer should let you know how to be in touch if there are problems or risks.
- As a matter of course, the Court will treat information received from or about you as confidential as possible.
- There is a special Victims and Witnesses Unit in the ICC that helps victims and witnesses involved in Court proceedings. It makes all the practical arrangements to bring victims and witnesses to testify before the judges, and is also responsible for special protection measures and providing access to psychological counselling and care. You or your lawyer might ask the judges to order special measures of protection or support.

## **What has the International Criminal Court done to protect victims and witnesses in Darfur?**

The Prosecutor has tried not to put victims and witnesses at risk. He says that the best way to do this is not to contact victims in Darfur directly. Others disagree and say that it would be better for the Prosecutor to come to Darfur because it would provide more protection. So far, the Prosecutor has not asked the Sudanese Government for permission to come to Darfur, and it is not clear whether it would agree to such a visit.

Those working with victims in Darfur told REDRESS that:

“Last year the Prosecutor asked to go to Khartoum and he was allowed. Now he should come here. He should ask for permission. If the government could accept that would be a miracle. The investigators could then come to Darfur and collect evidence. This would not create a danger as long as they are given permission... The presence of the ICC in Sudan, and especially in Darfur is really needed. It will not be easy, as there are many obstacles as we all know.”

## **Can the ICC guarantee full protection?**

No. The ICC can take some measures but it does not have an army or police to enforce its orders. There is always a chance that the perpetrator(s) or others find out about the identity of victims or witnesses, and intimidate or hurt them. If you are a victim or witness and decide to give evidence, you must be aware of this danger.

## **How could and does the ICC help you if you are a victim of sexual violence?**

In Darfur, there are a large number of victims of rape and other forms of sexual violence. Women and girls but also some men and boys have been raped or sexually assaulted. Many suffer from shame and trauma, are called names and do not trust others, in particular men.

During proceedings, lawyers need to make sure that victims testifying are not questioned insensitively or inappropriately about your intimate life. Some lines of questioning have been made redundant to protect victims. For instance, you may not be asked about your sexual conduct before the crime took place.

### **How could the ICC help if you are a child victim?**

Many children in Darfur have been killed, tortured and sexually abused. Many children also experience loss or harm of their parents and loved ones because of crimes and suffer terribly.

If you are a child, you have the right to tell the ICC what you think and feel about the crimes. You also have the right to be protected and supported when participating in a case and giving evidence. The ICC has an obligation to take account of your different needs, and that you will respond in other ways than adults, for example when asked questions by strangers. They need to make sure that you are supported and feel comfortable in any situation to do with your case.

## **➤ ‘Participating’ in the Criminal Process as victims independent of the Prosecutor**

Certain victims of crimes in Darfur will be able to ‘participate’ in the criminal process before the ICC. The ICC has a new and special procedure that allows victims to present their views and concerns to the judges at different stages of the process. Victims can have a separate voice in the process, alongside the Prosecutor and the Defence, so that they are able to pursue their own independent objectives in the process and make their aims and concerns heard.

Victims may participate through a legal representative who can appear before the Court to make statements on their clients' (the victims) behalf.

### **Who can participate?**

In order to participate, victims will have to satisfy the following criteria:

- Complete an application to participate that is accepted by the relevant judges (the way to do this is explained below);
- Show that they have suffered harm (physical injury, moral suffering or loss of property);
- Show the harm is directly connected to and resulting from a serious crime (such as murder, torture, rape, looting and similar crimes recognised as genocide, crime against humanity, war crimes) that took place in Darfur after 1<sup>st</sup> July 2002.

### **What is the advantage of participating?**

- Victims can play an active role in the process and may be in a position to give information to the Court on the situation in Darfur;
- Victims can share their concerns about any measures or decisions before the Court. For example, victims might provide their views on whether the relevant crimes have been investigated by the Court. Victims may also explain the challenges they face and their fears of further violence. They might also speak about how they perceive the crimes, and the importance of addressing particular violence such as sexual crimes.
- If your case comes to trial you may put questions to a witness or experts who give evidence before the Court, but only with the permission of the judge. The judges may also allow you to ask the accused questions to do with the crime.

The ICC should listen to you. However, the judges may decide that it is not possible to do everything you ask. This is also because the accused also has rights: he is presumed innocent until proven guilty. The Court needs to make sure that the investigations and trials are fair. It is also in your interest as a victim that only the person who has actually committed the crime is punished, and not someone else who is innocent.

### **Is it safe to participate?**

If you apply and are granted the status of victim before the Court, you become a participant to legal proceedings. This means that eventually information about who you are and about what you suffered may become known to the accused, the Prosecutor, and potentially the public. Initially it will be possible for you to participate anonymously using a pseudonym (usually a code number). However, the accused also has a right to defend himself and to know who alleges to be his victim. At some point, details of what you have said will be passed to the accused. In principle the accused and his lawyers will be prohibited in communicating your details to anybody: only those participating in the trial will know and your pseudonym will continue to be used in all public records. However, the system is not fail-proof, and people may find out that you are participating in the trial, and claim to have been raped, for example. This can cause you problems because persons may start troubling you or your family. It is important that you avoid any risks to you and your family as much as possible.

### **WHAT YOU SHOULD KNOW AND DO:**

- You and those persons close to you should not tell anyone other than your lawyers or trusted human rights organisations or the ICC about the application. The vast majority of victims that have been exposed in international trials have in fact exposed themselves by telling too many people about their involvement.
- While the accused and his lawyers may have to know your identity at some point, this can be delayed as much

as possible. Also, you can ask the judges to order that information about you be protected:

- This can include where you live and other facts that might identify you. If the Court has ordered this protection, your name and other facts will be taken out of all the public records. Even the video recordings of the hearings will be edited to take the information out.
  - The judges may decide that the parties should not contact you directly, but only through your lawyer.
  - If some of the protected information is given to the accused, he and his lawyers will not be allowed to communicate the protected information either. If they do, they can be held in contempt of Court and can be made to pay a penalty. The lawyers of the accused have to abide by a code of professional conduct that does not allow them to go against the Court's orders; and communications by the accused may be monitored. However, the system is not fail-proof.
- If you have applied to participate and you are threatened and feel at risk you may contact the Court for help or ask your lawyer to do so.

### How can you participate?

- **WRITTEN APPLICATION:** You have to write to the ICC if you want to participate. You can do this yourself or ask others for help. Local human rights groups, lawyers and the ICC itself can help you to apply.
- **APPLICATION FORM:** The ICC has developed a written form for applications. The form is only available in English or French but may be available in Arabic in the future. The form is free but is very long. You or anyone helping you to make an application may use the form.



You should make sure that you include all information needed; if the Court does not receive all information, it may have to contact you again and this will delay your participation.

- **WHERE TO SEND THE APPLICATION/ FORM:** You should send the application form and documents (regarding your identity) to the Victim Participation and Reparation Section (VPRS) at the ICC. You may fill in the form in English. If you want to submit the information in Arabic, it is best to contact the Court first and ask for advice whether it is possible. If someone else sends it for you, you need to sign that you have asked them or agree with them to send the application for you.
- **WHAT TO EXPECT NEXT:** The Court will tell you that it has received the application and give you a reference number. You or your lawyer should use this number when writing to the ICC or talking with ICC officials. It is likely that officials from the Victim Participation and Reparations Section (VPRS) will need additional information, so be sure that they have a way to contact you, and keep them informed of any change of address.
- **WILL YOUR APPLICATION BE ACCEPTED?** The judges have to decide whether or not you can take part in the proceedings. The judges may accept where they believe that your application shows that you have suffered harm from a serious crime and that your personal interests are affected. There must also be a connection between what you suffered and the crimes being considered by the Court.
- Even where you have suffered harm, the judges may decide that you cannot participate. This can for example be the case because the ICC is not considering the crime from which you suffered. If this happens, it is best to discuss this matter with a lawyer who can help you.
- **HOW LONG WILL IT ALL TAKE:** The whole procedure will usually take at least a few months (or more) from the

time you apply to the final decision by the Court. The Court will inform you and your lawyer of the decision.

### **Can you obtain legal assistance to participate?**

Yes. You are free to choose a lawyer or a legal representative.

- You can ask a lawyer or human rights organisation to help you with your application, and if necessary, to help you to find a lawyer.
- A lawyer or others can only represent you formally before the Court if he or she is accepted on the ICC's list of lawyers, which means that they have a recognised level of skill and competence. Any lawyer with the required 10 years of experience may apply to be put on the list. You can ask the Victim Participation and Reparations Section (VPRS) or a human rights organisation for help to put you into contact with lawyers on the ICC list.

### **Can you get legal aid?**

- If you do not have enough money to pay for a lawyer, the ICC may be able to assist, though its' budget is limited.
- You need to show the Court that you do not have enough money to pay for a lawyer on your own. In such a case, the Court may help, and may give you money to pay the costs for a lawyer. If there are other victims, the judges may ask you to form a group, in which case you may be able to benefit from a common legal representative paid for by the Court.
- The Court has an Office of Public Counsel for Victims. This office provides legal services for free. The Office is an independent body that can advise you and your lawyer(s) on any legal questions to do with participation. This office may also be appointed by the judges to represent you.

## ➤ Applying for Reparations

Reparation means that your suffering is recognised and the wrong is acknowledged. In Sudan, this can be Dia (blood money) and or an apology by those guilty of crimes. It is possible for victims to apply for reparation before the ICC. The ICC will consider claims for restitution (restoring as much as possible the situation before the crime, for example, getting your property back), compensation (money) and rehabilitation (such as medical treatment).

There is also a Trust Fund for Victims connected to the ICC which has the possibility to provide assistance and support to victims and their communities, and will have a role in assisting the ICC to implement its reparations orders.

### Who can apply for Reparations?

- You can apply for reparations to make sure that the Court will consider your application when it makes its decisions.
- The Court can only make an award for reparations against an individual that is convicted of a crime by the ICC. -This means that only persons who suffered harm as a result of a crime for which the accused has been convicted can receive reparations from that accused;
- If the Accused has no funds, or the Court was not able to collect any assets that he had, then it can ask the Victims Trust Fund to allocate funds to help meet the award;

### How to apply?

- You or your lawyer can make a written application at any time before the Court makes an order on reparations at the end of the Trial. You and those working with you can use the official reparations form (the English and French versions of the form can be obtained from the Court).

This is the best way to make sure that the Court receives all the information it needs.

**NOTE:** The form for reparation is not the same form used for participation.

The essential information to provide is as follows:

- ❖ Identity and address = Who you are and where you live;
- ❖ Description of injury, loss, harm = What happened to you, what injury have you got and what have you lost because of the crime;
- ❖ Location and date of incident and to the extent possible identify of persons responsible (When and where did the crime happen and who did it);
- ❖ Where you seek restitution, description of items = if you ask to get your property back you have to describe exactly what and how much you lost;
- ❖ Claims for compensation = how much money are you claiming and for what damages;
- ❖ Claims for rehabilitation and other forms of remedy = medical treatment or social services.

You should also send any documentation that you have to show who you are and what damages you suffered. This should include names and addresses of witnesses as well as medical reports if possible.

### **What happens next?**

- The ICC Trust Fund for Victims can operate in special circumstances to assist victims and their communities from the moment that an investigation has been opened. The Trust Fund is developing its procedures and will in future have programmes for victims of crimes in Darfur.

- For victims who have applied for reparations before the Court, it is important to note that the applications will only be decided at the end of the Court process after a conviction. Once there is a conviction, the ICC has the possibility to consider the claims it received from victims and more generally, and to make an award for reparations.

### **What are the types of awards that the ICC may make?**

There are a large number of victims in Darfur. Many have lost their relatives, homes, property and cattle. After a conviction, the Court may order that he returns stolen or occupied property or, if not, compensates you and/or other victims. Where the perpetrator has no money or property, or where the numbers of victims is very high that it makes individual awards inappropriate, the ICC may:

- Request that some of the funds from the ICC Trust Fund are applied towards its awards;
- Decide to order a ‘collective’ reparations award, meaning that instead of providing individualised awards to victims, the ICC may award measures designed at assisting the entire group of victims.

The Court might be able to provide some kind of reparation for you. However, it will most probably not be able to give reparation for all victims; it will definitely not be able to order or award full compensation for all of your losses. It is important for you and other victims to tell the Court what kind of reparation you want and need.

### **Other remedies**

- You may be able to obtain reparation from individual perpetrators or the Government of Sudan, using Sudanese courts. Once established, you would be able to

apply to the commission that the Government promised to establish under the Darfur Peace Agreement.

- You will need legal advice from lawyers and/or human rights organisations who can tell you what can be done in your case.

## Contacting the ICC

You may want to contact the ICC for a number of reasons:

- Telling the Prosecutor about crimes
- Finding out how to participate or how to apply for reparation
- Asking for protection and/or support
- Obtaining information about what the Court is doing.

You can write to the ICC. You cannot contact the Court in Darfur because there are no offices or contact persons. There is an Office in Chad.

## USEFUL ADDRESSES

General contact details for the International Criminal Court

**Postal Address:**

Po Box 19519  
2500 CM, The Hague  
The Netherlands

Tel: + 31 (0)70 515 8515 (Switchboard: If you want to contact an office, unit or section at the Court whose number is not listed below, it is best to call this number and ask the operator to be put through to the relevant office)

Fax: +31 (0)70 515 8555

**Office of the Prosecutor**

Email: [otp.informationdesk@icc-cpi.int](mailto:otp.informationdesk@icc-cpi.int)

**Victims Participation and Reparations Section**

Email: [vprsapplications@icc-cpi.int](mailto:vprsapplications@icc-cpi.int)

[vprs@icc-cpi.int](mailto:vprs@icc-cpi.int)

**Trust Fund for Victims:** [trust.fund@icc-cpi.int](mailto:trust.fund@icc-cpi.int)

**Office of Public Counsel for Victims**

Tel.: + 31 (0)70 515 81539084

Fax: + 31 (0)70 515 8855

Email: [OPCV@icc-cpi.int](mailto:OPCV@icc-cpi.int)

**Outreach Unit**

Public Information and Documentation Section

Telephone +31 (0)70 515-8514

Fax: +31 (0)70 515-8555

Mobile +31 (0)625221177

Email address: [iccoutreach@icc-cpi.int](mailto:iccoutreach@icc-cpi.int)