

Our Ref. ACN/ICC/11-21/01

1st November 2021

The President,
Bureau of the Assembly of state Parties
International criminal court
Oude Waalsdorperweg 10
2597 AK The Hague
The Netherlands.
Tel: +31 707996500
Fax: +31 70515 8376
Email: asp@icc-cpi.int
F.A.O Ms. Silvia Fernández de Gurmendi

Dear Madam,

RE: PETITION TO INTRODUCE COUNTERFEITING OF GOODS AND SERVICES AS A CRIME AGAINST HUMANITY UNDER THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT . (ROME STATUTE)

1.0 Introduction

1.1 The **Anti Counterfeit Network Africa** (ACN Africa) is a not for profit, non-state organization which provides a platform for multiple stake holders in the private and public sector who affect and are affected by counterfeits, to fight counterfeits through various interventions.

1.2 Over the years, **ACN Africa** has gained considerable insights into the phenomenon of global counterfeiting which has now penetrated all channels of international commerce and trade.

1.3 The underlying reflections which are advanced in this petition are numerous and varied. We have however summarized these reflections as follows;

- i. All human suffering is painful and all human death is permanent.
- ii. Granting a higher status to human death and suffering resulting from political and military conflicts derogates the inalienable right to life.
- iii. Economic crimes like counterfeiting which cause indiscriminate and widespread death and bodily injury to large sections of the consumer public should be subjected to dual governance under existing intellectual property legislation under TRIPS* and the ROME statute.



**The Agreement on Trade Related Aspects of Intellectual Property Rights 1995*

- iv. Whereas global counterfeiting is treated as an inconvenient infraction or a soft crime by many, it is a slow and patient killer that probably accounts for more human deaths and bodily injuries, than any other crime in the world.
- v. Fighting counterfeiting has become more difficult and expensive for intellectual property holders, state regulators and consumers alike.
- vi. Global counterfeiting has severely distorted and impeded international trade. This is endangering the sustainance, wealth, health and security of states and their citizens.
- vii. Presently, global counterfeiting which has the attributes of a serious crime of international concern does not carry any fear and stigma associated with serious international crimes.
- viii. Global counterfeiting is compounding all human problems and tragedies. It is a major hampered to all United Nations Sustainable development goals (SDGs).



ix. The fight against global counterfeiting is the collective fight of every state and citizen of the world. It is personal to everyone!

1.4 **ACN Africa** takes the view that the above reflections merit a careful interrogation by the Assembly of state parties of the ROME statute.

1.5 We are also of the considered view that it is now time for your august Assembly to add the chorus of its voice, to the public outcry against the unrelenting menace of counterfeits in the world.

1.6 In order to address the serious problem which this petition intends to address, we shall highlight and discuss just but a few of the concerns raised by the above reflections.

2.0 Counterfeits are undermining Global Health care and the fight against the COVID 19 pandemic.

2.1 The World Health Organisation (WHO) target of ensuring that 40% of the world population in low and middle income countries by the end of this year has already been slowed

down by various counterfeits which pervade the health care systems of many countries.

2.2 The persistent uncertainties surrounding the reliability of Covid 19 test results and certifications continue to gather a storm of low public confidence in the much needed efforts to fight covid 19.

2.3 The few reported cases of fake Covid 19 vaccines are also doing a lot to increase public apprehension towards the disease and its vaccination.

2.4 Covid 19 test kits/diagnostics, protective gear | equipment, masks, hand sanitizers have not been shielded from counterfeiting. Moreover many national health programmes targeting covid 19 have a dearth of any meaningful anti-counterfeit strategies.

2.5 Even the well intentioned efforts led by India and south Africa for a TRIPS waiver of patent protections involving Covid 19 treatments, is being entrapped by the burgeoning global business in counterfeit medicines.

2.6 Needless to say, the absence of a recognizable and robust anti-counterfeit strategy at the international level appears to



be countermanding this TRIPS waiver campaign in subtle ways.

2.7 The WHO estimates that there are over 1 million deaths annually, which are caused by counterfeits and substandard drugs. This in turn is estimated to cause a negative Global economic impact of more than US \$ 20 billion!

2.8 Currently there are 40 armed conflicts taking place in the middle East, North-west Asia, sub-Saharan Africa. This is the traditional breeding ground for crimes against humanity which the ICC investigates and prosecutes.

2.9 The irony however is that in the last 3 years, all these armed conflicts combined are not responsible for 1/2 of the civilian deaths caused in one year by counterfeit and substandard medicines.

2.10 It is significant that the ICC is determined to put an end to impunity of the perpetrators of unimaginable atrocities against millions of children, women and men around the world but it is significant that the perpetrators of atrocious counterfeiting have still eluded its grip.

2.11 **ACN Africa** cannot discount the commendable efforts of the ICC to investigate and cause the prosecution of

politically motivated crimes against humanity in Darfur-Sudan, Eastern Congo or northern Uganda etc, where thousands of civilian deaths have been registered.

2.12 But It will certainly be another welcome commendation for the ICC to investigate and prosecute the perpetrators of dangerous counterfeiting who remain free to enjoy the illicit proceeds of their crimes.

3.0 Counterfeits are undermining global food security and sovereignty.

3.1 The United Nations sustainable development goal No. 2 has the noble objective of fighting global hunger without degrading the environment.

3.2 According to the World Food Programme (WFP), 690 million people in the world, many whom are children and women, are facing serious hunger. This figure is expected to exceed 840 million people by 2030.

3.3 Counterfeits may probably be the only thing in the world which is contributing to global hunger and degrading the environment at the same time. It is an incredible double jeopardy!



3.4 The reality is that counterfeits have entered all major food supply chains in the world.

3.5 In 2019, the WFP suffered the humiliation of procuring and supplying contaminated food to the people who faced a severe famine in north Eastern Uganda at the time. Media reports indicated that this counterfeit food claimed the lives of 3 people and left 250 others nursing serious ailments. (<https://eagle.co.ug/2019/03/23/anti-counterfeit-network-takes-wfp-to-court-over-poisoned-food-supplies-in-karamoja.html>).

3.6 Counterfeit animal feeds and vaccines, acaricides, coupled with counterfeit seeds, herbicides or pesticides are endangering plant and animal health. Additionally, they are degrading the environment by damaging the soil and polluting water sources.

3.7 As a result, the world has seen a heightened prevalence of food and water contamination which has generally increased the food borne disease burden in the world.

3.8 The WHO estimates that 600 million people which is almost 1 in 10 people across the world, fall sick after eating contaminated food. Of these, 420,000 people die every year as a result of eating contaminated food.

3.9 **ACN Africa** contends that the above statistics must be concerning to all men and women of good will. We can never underestimate the good will of the 760 staff of the ICC and the representatives sitting in the Assembly of state parties of the ICC.

4.0 Counterfeits are threatening the economic sustenance of state parties and the International Criminal Court itself.

4.1 The ICC annual budget of about \$140m is funded by voluntary contributions mainly from state parties and international organisations.

4.2 The financial contributions of the state parties must be generated through legitimate public taxation of global international trade and commerce.



4.3 **ACN Africa** believes that in the coming years, the growing illicit activity of counterfeit trade will present the 164 member countries of the World Trade Organisation (WTO) with one of the biggest threats to the global system of trade its self.

4.4 The above proposition is informed by the fact that the present value of world trade stands at US \$ 6.45 trillion, but incredibly

trade in counterfeits accounts for more than \$ 1.2 trillion of that value. When these figures trickle down, they leave many vulnerable and distorted national economies in their wake.

4.5 It is worrying that counterfeit trade is growing faster than legitimate trade. Increased global online sales due to the advent of the covid 19 pandemic in 2019/2020, have just made a bad situation worse.

4.6 In the midst of these problems, the world is yet to identify and install the fundamental building blocks of a successful anti counterfeit trade strategy which is known to effectively combat the vice.

4.7 So legitimate international trade may shrink in the face of increased counterfeit trade and with the shrinkage, the economies of the state parties may suffer contractions which will constrain the level of their financial contributions to worthy causes like the ICC.



4.8 Whereas the WTO under TRIPS provides for civil and criminal remedies against counterfeiting, these remedies struggle to check the rampaging growth of counterfeit trade activity.


4.9 **ACN Africa** proposes therefore that the punitive criminal sanctions employed by the ICC can come to the rescue of international trade and make global counterfeiting more risky

to the perpetrators than it is at the moment. This is possibly the deterrent we have all been waiting for.

4.10 The assembly of state parties of the ICC can lend its weight to this noble cause by receiving and acting upon this petition in a manner which is endeared to our collective human survival.

5.0 The request.

5.1 The humble request of **ACN Africa** through the esteemed leadership of the Bureau of the Assembly of state parties is to cause the sponsorship of an amendment of the ROME statute under Articles **121 and 122** thereof by;

- 
- i. **Amending Article 7 of the ROME statute** to widen the scope of **crimes against humanity** to include the economic crime of counterfeiting which involves the commission of acts of widespread and indiscriminate murder of sections of the consumer public.
 - ii. Alternatively, to **amend article 7(1)(k)** of the **ROME statute** by expounding on the meaning of other inhumane acts to include counterfeiting of trade goods and services which cause indiscriminate and

widespread death, bodily harm and injury to sections of the consumer public.

5.2 Finally, the Assembly may wish to consider an amendment to **part 4 of the ROME statute** to create a special division within the organs of the ICC to specifically try the crimes against humanity arising from counterfeit trade so as to facilitate the contemporaneous exercise of a commercial jurisdiction.

5.3 **ACN Africa** is available to clarify, substantiate or supplement on any matter(s) raised in this petition. For this purpose, we can submit further memoranda or materials in support of the petition whenever required.

5.4 We hope you will find this petition deserving of your favourable consideration and timely action.

Yours Faithfully,



Fred Muwema
Director Legal and Corporate Affairs
ACN AFRICA

Copies 1. The Secretary General
United Nations.

2. The Vice Presidents
Bureau of the Assembly of State Parties ICC.

3. All Elected members
Bureau of the Assembly of State Parties.