



COALITION FOR THE  
INTERNATIONAL CRIMINAL COURT



**REPORT ON THE  
12<sup>TH</sup> SESSION OF THE  
ASSEMBLY OF STATES PARTIES  
TO THE ROME STATUTE**

20-28 NOVEMBER 2013  
THE HAGUE, THE NETHERLANDS



THE COALITION  
FOR THE  
INTERNATIONAL  
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The COALITION FOR THE INTERNATIONAL CRIMINAL COURT includes 2,500 non-governmental organizations around the world working in partnership to strengthen international cooperation with the International Criminal Court; ensure that the Court is fair, effective and independent; make justice both visible and universal; and advance stronger national laws that deliver justice to victims of war crimes, crimes against humanity and genocide.

This report seeks to give a comprehensive summary of the 12th session of the Assembly of States Parties (ASP) to the Rome Statute, and was compiled by the Coalition for the International Criminal Court Secretariat based on reports from Coalition caucuses, teams and experts, as well as on official ASP documents on each respective subject. The report should not be taken to represent the views of all Coalition members.

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COVER PHOTOS (top-to-bottom): 1. Representatives of the ICC and ASP Presidency during the General Debate on 20 November; 2. Director of FORUM-ASIA Evelyn Balais-Serrano (left) participates at the Coalition Regional Lunch on 23 November. 3. Press Conference with Kenyan Civil Society Organizations on 22 November.

All photos credit unless otherwise stated: CICC/Katharina Tjart

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## I. I. NOTE FROM THE CONVENOR OF THE COALITION FOR THE ICC

THE 2013 ANNUAL session of the Assembly of States Parties (ASP) proved to be one of the most difficult, controversial and politicized sessions in its history and came weeks after an extraordinary meeting of the African Union (AU), whose head of government forum adopted resolutions and decisions to repeal the ability of the ICC to conduct or proceed with investigations and prosecutions of serving heads of state and other serving senior government officials, considered a cardinal element of the founding treaty. The then imminent trial of the president of Kenya motivated the major political confrontations, first in the AU, then at the United Nations (UN) Security Council, and then transferred to the November 2013 meeting of the ASP of the Rome Statute of the International Criminal Court. Discussions on head of state immunity and amendments to the ICC's legal framework dealing with the presence of the accused during trial would therefore dominate discussions at the ASP, after the AU and Kenya government failed to secure an Article 16 deferral of the Kenya cases at the UN Security Council.

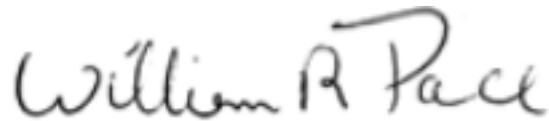
The annual session therefore became a crucial forum for the AU-Kenya proposals. However, for the NGOs and many governments, the 12th annual session was an opportunity to address the plight of victims and indigent accused persons. For the first time in its history, the Assembly held a plenary discussion on *victims* and for the second time a dedicated session on *state cooperation* with respect to victims and witness protection. As politicized as it was, it was also an annual session that recognized the victims-centered approach to the Rome Statute system. NGOs were ever-present at the annual session in its plenary discussions and side events, but also active throughout the year contributing to inter-sessional discussions and the numerous reports and resolutions that would be adopted at the 12th session. As they had done in previous sessions, Coalition members lobbied state party representatives at every turn on language to be included or amended in draft resolutions that would be adopted at the conclusion of the session, particularly with respect to ever-changing language on amendments to Rule 134 of the Rules and Procedure and Evidence that sought to provide certain accused persons the right to be excused during trial.



Coalition Convenor, William Pace

For the NGOs and many governments, the 12th annual session was an opportunity to address the plight of victims and indigent accused persons.

The 12th session would also see the appointment of a new judge to replace Justice—now President—Anthony Carmona of Trinidad and Tobago and would see the first critically important report of the ASP’s Advisory Committee on Nominations scrutinizing nominated candidates from Trinidad and Tobago and Uruguay. Budget discussions would also prove to be contentious with Canada, the only state party of 122 not supporting the consensus to adopt the recommended budget for 2014, deciding to oppose only days before the 12th session commenced. Canada would ultimately accept the consensus after much lobbying by governments, but not without a declaration that the ICC’s budget for 2015 would have to come down. With the 12th session behind us, civil society organizations have an ever important role to ensure that damaging amendments to the legal framework are avoided, while monitoring the implementation of newly adopted amendments and avoiding a repeat of damaging zero-budgetary growth discussions in 2014 that have impacted the court in previous years.

A handwritten signature in black ink that reads "William R. Pace". The signature is written in a cursive, flowing style with a large initial 'W' and 'P'.

William R. Pace

Convenor of Coalition for the ICC

## II. INTRODUCTION

THE PRESENT REPORT is a summary of the 12th annual session of the Assembly of States Parties (ASP) to the Rome Statute of the International Criminal Court (ICC), which took place on 20–28 November at the World Forum Centre in The Hague. The Coalition for the ICC (Coalition) has taken the utmost care to ensure the accuracy of this report. Corrections, clarifications or additions should be addressed to [cicc-hague@coalitionfortheicc.org](mailto:cicc-hague@coalitionfortheicc.org).

Representatives from over a hundred of the 122 states parties to the Rome Statute, who together form the ASP, the ICC's principle management, oversight and legislative body, gathered in The Hague to address issues as diverse as state cooperation with the ICC in relation to the protection of victims and witnesses—victims more generally and amendments to the ICC's Rules of Procedure and Evidence as well as immunities for heads of state. The ASP also elected a judge and six members of the Committee on Budget and Finance and adopted an ICC budget for 2014. While plenary discussions were dominated by the above, the ASP also took important decisions on a number of other issues, including the Independent Oversight Mechanism, the *operationalization* of which had been pending prior to the 12th session. The ASP through its Working Groups and facilitations in The Hague and New York and other subsidiary bodies also engaged actively throughout the year on ICC issues the extent to which was not always reflected in plenary discussions. The present report seeks to address the totality of efforts by the ASP, the ICC and civil society organizations both at and in the build-up to the 12th session.

### III. THE GENERAL DEBATE

THE GENERAL DEBATE commenced on the first day of the 12th session and following key note presentations from Navi Pillay, UN high commissioner for Human Rights and Abdou Diouf, secretary general of La Francophonie. The debate continued on 21 and 26 November. During the debate, states parties, non-states parties, regional and international organizations as well as civil society organizations were given the opportunity to address issues of the day in relation to the ASP's work and the Rome Statute system, and their own contribution in this regard. ASP President Tiina Intelmann encouraged speakers to use the General Debate to bring forward ideas and concrete proposals for enhancing the Rome Statute system, particularly in relation to the impact of the Rome Statute system on victims and affected communities and cooperation, as well as to discuss issues relating to complementarity.

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Navi Pillay, UN high commissioner for Human Rights, during the opening of the 12th session

Sixty-eight statements were delivered by states representatives from Afghanistan, Argentina, Australia, Austria, Belgium, Botswana, Brazil, Canada, Chile, Colombia, the Republic of Congo, Costa Rica, Côte d'Ivoire, Croatia, Cyprus, Czech Republic, Denmark, the Democratic Republic of Congo, Estonia, Finland, France, The Gambia, Georgia, Germany, Ghana, Guatemala, Hungary, Ireland, Italy, Japan, Jordan and Liechtenstein (joint statement), Kenya, the Republic of Korea, Lithuania (on behalf of European Union and its candidate states)<sup>1</sup>, Luxembourg, Mexico, Namibia, the Netherlands (Open joint statement—Argentina, Belgium, Netherlands, Slovenia

and others), New Zealand, Nigeria, Norway, Peru, Philippines, Poland, Portugal, Romania, Samoa, Senegal, Serbia, Seychelles, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, the United Republic of Tanzania, Trinidad and Tobago, Tunisia, Uganda (on behalf of the African Union), the United Kingdom of Great Britain and Northern Ireland, Uruguay, the Bolivarian Republic of Venezuela and the Republic of Zambia. A number of states acknowledged and thanked the Coalition for its work in their respective statements. The Peoples' Republic of China, Cuba, the Russian Federation and the United

<sup>1</sup> Candidate countries: Iceland, former Yugoslav Republic of Macedonia, Montenegro and Serbia; and countries of the Stabilisation and Association Process and potential EU candidates: Albania and Bosnia and Herzegovina; as well as Andorra, Georgia, Republic of Moldova and Ukraine.



States of America also delivered statements as observer states, not party to the Rome Statute. A statement was also delivered by the Council of Europe. The overwhelming majority were delivered orally, with others choosing to circulate their statements in writing only.

Representatives of Civil society organizations then addressed the ASP, including the Coalition and its members; Al-Haq, Amnesty International, Asian Forum, French Coalition for the ICC, International Federation for Human Rights (FIDH), Human Rights Watch, Kenyans for Peace with Truth and Justice, Parliamentarians for Global Action, and the Open Society Justice Initiative. Other NGOs, including the Thai Alliance, the Kenya Human Rights Commission and REDRESS, circulated their statements in writing only during the general debate. All statements can be accessed online.



Nada Kiswanson van Hooydonk from Al-Haq addresses the Assembly during the General Debate.

## RELEVANT DOCUMENTS

(For clickable links, please visit the online version of this document at [http://www.coalitionfortheicc.org/documents/ASP12\\_report.pdf](http://www.coalitionfortheicc.org/documents/ASP12_report.pdf))

[General Debate statements by states, organizations and civil society](#)

[Letter by the ASP President on the General Debate](#)

## IV. DEBATE ON HEAD OF STATE IMMUNITY

### BACKGROUND

ON THURSDAY 21 November the Assembly convened a special segment as requested by the African Union (AU), following its extraordinary summit in October, entitled: ‘Indictment of sitting Heads of State and Government and its consequences on peace and stability and reconciliation’. Moderated by the permanent representative of Jordan to the UN, Prince Ra’ad Zeid Al-Husseini, the panel of speakers included AU Legal Counsel, Ms. Djenaba Diarra, Professors M. Cherif Bassiouni and Charles Jalloh, as well as Kenyan Attorney General, Professor Githu Muigai.

### ASP DISCUSSIONS

Parameters of the debate as iterated by the Moderator would focus on the impacts of an indictment (as opposed to the subsequent judicial processes) of heads of state on peace, stability and reconciliation. The Assembly were then shown a video statement by the director general of the Department of Legal Affairs of Norway, Amb. Rolf Einar Fife. Having been present at the signing of the Rome Statute in 1998, he outlined the history and spirit of hope and universal ideals in which its main principles were adopted.

In the panel discussions that followed, Ms. Diarra welcomed the ASP’s decision to hold the debate and to accommodate the request of the AU. She highlighted Africa’s long-standing support for the ICC and the fight against impunity. However, she underlined the AU’s concerns regarding the failure of the Court to investigate outside the Africa region and the impact of international criminal proceedings on regional peace and security.

Professors Jalloh and Bassiouni discussed the legalities of head of state immunity and international courts. Professor Bassiouni stressed the need to look for practical solutions to the problems facing the Court, such as the opening of an OTP field office in Nairobi to allow for closer dialogue and cooperation with the Kenyan authorities, while Professor Jalloh emphasised that most of the AU’s concerns can already be addressed within the flexible framework of the Rome Statute.

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Professor Muigai conveyed Kenya’s belief that the ICC trials impact negatively on its ability to address the consequences of the 2007-08 post-election violence, and reflected on Kenya’s role as one of the most important actors in maintaining peace and stability in Africa, citing the prevalence of terrorism and piracy in the region. He argued that immunities for sitting heads of

state exist in many domestic jurisdictions and that this should also apply at the international level. He also listed a number of situations around the world where international justice had not been applied.

States then took floor, including: Congo Brazzaville, Namibia, Liechtenstein, Côte d’Ivoire, France, Panama, the DRC, Senegal, Argentina, the Philippines, Guatemala, Greece, Kenya, Tanzania, the Neth-

erlands, Peru, Belgium, Romania, Mexico, South Africa, Japan, Norway, Chile, Russia, Germany, the United Kingdom, Switzerland, New Zealand and Brazil. The states welcomed the inclusion of the Special Segment on the agenda of the ASP. Many States drew attention to the relationship between peace and justice and stated that the quest for justice cannot be allowed to jeopardise peace and security. There was a general consensus that something must be done to address the AU's concerns. However, many States also made interventions in which they said that the integrity of the Rome Statute cannot be compromised, that the independence of the Court as a judicial institution is paramount, and that Article 27 of the Rome Statute is an untouchable cornerstone of the ICC system. States picked up on the comments of the panellists and reiterated that there is a need to find practical solutions to the problems facing the Court, while others suggested that these solutions may already exist within the Statute and Rules of Procedure and Evidence. There was also general recognition that the Special Segment was just the beginning of what will be an ongoing dialogue between the states parties over the coming year.



Panelists at the debate on head of state immunity Credit: ICC-CPI

NGOs were then invited to make interventions. Mr. Richard Dicker of Human Rights Watch discussed the prosecution of Liberia's Charles Taylor, which had been predicted to wreck ongoing peace talks, but in fact marginalized Taylor, allowing for more stability and the rule of law in Sierra Leone. Mr. Dicker called on states parties to remember the victims and to not rely on worst case scenarios or reflex reactions when considering peace and justice.

Mr. Njonjo Mue spoke on behalf of Kenyans' for Peace Truth and Justice (KPTJ), a coalition of Kenyan civil society organizations, and argued that immunity effectively means impunity. He warned that an amendment granting immunity for sitting heads of state would risk making immunity a prize to be won in elections, and said that the AU was attempting to recreate the ICC in the image of the flawed courts that necessitated its creation.

Mr. George Morara of the Kenyan Human Rights Commission (KHRC) also addressed the Assembly. He argued that victims of the post-election violence in Kenya still support the ICC process, and cautioned that providing immunity to heads of state would contravene the very reason the Court was created—to prosecute those that bear the greatest responsibility for the world's gravest crimes. He also warned that providing sitting heads of state with immunity would create an incentive for them to hold onto power, threatening to entrench dictatorship and impunity.

Mr. George Kegoro of the International Commission of Jurists-Kenya said that states parties need to be careful, as ill-thought-out amendments to the Rome Statute could compromise the ICC and render it no longer worth having. He also noted that there was no need for any amendments to the Rome Statute or Rules of Procedure and Evidence because the Court has recently clarified what is meant by 'presence at trial.' Mr. Kegoro also said that the Kenyan government had campaigned to get rid of the ICC cases and, having failed to accomplish that, was now seeking to change the terms on which the trials take place.

Mr. Louis d'Or of the Club des Amis du Droit du Congo addressed the Assembly on the issue of head of state immunity, saying that immunity would take away victims' hopes that perpetrators of grave crimes may be tried and be a cause of instability in the future.

Mr. Fergal Gaynor, legal representative for victims in the Uhuru Kenyatta case, was also given an opportunity to address the Assembly and urged it not to let down victims by recognizing immunity. He stressed that ICC jurisprudence had already provided for an excusal arrangement for the Kenyan cases, and noted that no persons at a high or mid-level in Kenya has been prosecuted by Kenyan authorities.

Mr. Keriako Tobiko, Kenya's director of public prosecutions, also made an intervention from the floor during the Special Segment. Mr. Tobiko reiterated Kenyan Attorney General Githu Muigai's assertion that Kenya has to date cooperated with the ICC and will continue to do so. He stressed that this is due not to pressure that has been put on Kenya but instead results from Kenya taking its international obligations seriously. He disputed the claims of civil society representatives who said that Kenya has not prosecuted those responsible for the post-election violence, pointing to 1,200 domestic cases that have been taken to the Kenyan courts. Mr. Tobiko also stated that complementarity should be a two-way street, but that while Kenya has been cooperating with the ICC, both the Office of the Prosecutor and civil society have refused to cooperate with or furnish evidence to the domestic Kenya authorities investigating the post-election violence.

At the suggestion of the Republic of Kenya, a paragraph was included in the Omnibus Resolution in which the Assembly welcomed with appreciation the inclusion in the agenda of the 12th session of the Assembly the special segment as requested by the African Union. The wording of the paragraph was drafted by Uganda, with input by Estonia, and supported by South Africa and Brazil.

## **RELEVANT DOCUMENTS**

(For clickable links, please visit the online version of this document at [http://www.coalitionfortheicc.org/documents/ASP12\\_report.pdf](http://www.coalitionfortheicc.org/documents/ASP12_report.pdf))

[Decision of the African Union on 'Africa's relationship with the International Criminal Court'](#)

[Recommendation by the Bureau for the inclusion of an additional item in the agenda of the 12th session of the Assembly of States Parties of the International Criminal Court](#)

[Informal summary by the Moderator of Special segment as requested by the African Union: "Indictment of sitting Heads of State and Government and its consequences on peace and stability and reconciliation"](#)

## V. VICTIMS' ISSUES & INTERMEDIARIES

### BACKGROUND

IN 2013, The Bureau mandated The Hague Working Group to discuss the topics of victims and affected communities and the Trust Fund for Victims, including reparations and intermediaries. The discussions were facilitated by Ambassador Eduardo Pizarro Leongómez (Colombia) and Ambassador Karim Ben Becher (Tunisia). The ASP adopted a stand-alone resolution on victims and reparations and included a number of references to the issues in the Omnibus Resolution (see Chapter X). For the first time in the history of the ASP, a dedicated plenary session was organized to build on the stocktaking exercise conducted during the Review Conference in Kampala on victims' issues, whereby a high-level panel discussed concrete recommendations for states to advance victims' rights as articulated in the Rome Statute.

### ASP DISCUSSIONS

#### *DEDICATED PLENARY SESSION*

On Friday 22 November, a dedicated plenary session was scheduled entitled, "Beyond Kampala: reaffirming the value of the victims' mandate of the Rome Statute System", which was by chaired by Parliamentarians for Global Action's Mr. David Donat Cattin. Panelists included Ms. Fiona McKay, chief of the ICC Victims Participation and Reparations Section (VPRS); Mr. Motoo Noguchi, chair of the Board of Directors of the Trust Fund for Victims (TFV); Mr. Fidel Luvengika Nsita, Congolese victims' legal representative in the Katanga case; Ms. Mariana Goetz, deputy director and director of programs for the REDRESS trust; and Mr. Francois Roux, head of the Defense Office of the Special Tribunal for Lebanon.

Ms. McKay discussed the ambitious role for victims set forth in the Rome Statute, as well as whether any changes to victims' participation need to be made. She noted that victims, especially victims of sexual and gender-based violence, should not be forced to collectively participate in proceedings. Mr. Noguchi touched upon the impact of the TFV's reparative work, and discussed the challenges that lay ahead in executing the TFV's mandate, with a particular focus on outreach and communications. Mr. Nsita discussed the experience of representing victims in the Katanga case, mentioning how victims in that case were split into two groups to avoid a potential conflict of interest, and described the very active role played by victims in the case. He also discussed challenges, such as building trust among

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Chair David Donat-Cattin (PGA) and panelists of the dedicated plenary session on victims.

victims, and highlighted the importance of being able to communicate with victims. Ms. Goetz discussed civil society's role in ensuring that victims' participation is meaningful. She noted the symbolic value of having a day in court, and called for the ICC to institute policies that take victims' needs into account. Goetz also noted the need for improved outreach, guidelines for intermediaries and the implementation of protection provisions. Finally, Roux advocated for the Court to improve its procedures for victims' participation, emphasizing the need for balance between different legal traditions.

Following the panel, statements were made by states, including: France, Germany, Mexico, Liechtenstein, Colombia, Japan, Finland, Estonia, Peru, Belgium, Namibia, Lithuania (on behalf of the European Union), the United Kingdom, Australia, Chile, Costa Rica, Kenya and Nigeria.

During a scheduled intervention from the floor, Fergal Gaynor, legal representative of victims in the Uhuru Kenyatta case, attested to the value of victims' participation, describing it as empowering. He said that the TFV needs more funds so that it can begin operations in Kenya, and called the distinction between victims of a situation and of a particular case discriminatory, recommending that it be done away with.

Representatives from the International Federation for Human Rights (FIDH) and No Peace Without

Justice (NPWJ) also made statements. FIDH called for victims to be put at the center of Court proceedings and for the procedural rights to be guaranteed. NPWJ encouraged the ICC to share its expertise on victims' participation with states so that they can implement domestic legislation and emphasized the importance of outreach and the need for it to be properly funded. Dr. Norbert Wühler, chair of the Independent Panel of Experts on Victim Participation at the ICC, reflected on the outcomes of the Independent Panel's report issued in July. He stressed that although the current legal framework is sound, the Court is lacking a shared vision on how best to implement the rights of victims to participate in the face of challenges this system puts on the Court. Dr. Wühler also reminded the plenary that victims should be treated with compassion and respect and appropriate measures should be taken for their wellbeing and privacy.



Greta Barbone (No Peace Without Justice) addresses the plenary during the session on victims.

sion and respect and appropriate measures should be taken for their wellbeing and privacy.

## *RESOLUTION*

The ASP adopted a stand-alone resolution on victims and reparations and included a number of references to the issues in the Omnibus Resolution. The resolution, which was drafted in consultation with the Court, states parties and civil society organizations, addresses the following topics: a) Victims' Participation; b) Reparations; c) Intermediaries; d) Complementarity and Communications, and e) the Trust Fund for Victims. The Trust Fund for Victims will be addressed in the next chapter.

### **A. Victims' Participation**

In the lead-up to the ASP, the Court and stakeholders iterated the need to review the participation system in order to simplify it, the main issue being the existence of different approaches within the

Court relating to the right to participate and the resources required to implement the different approaches. Another point of discussion was the necessity for the participation to be meaningful for both the victims and for the trial proceedings. States parties indicated a preference for a uniform system but the Court indicated that choosing the modality for participation is at the judges' discretion.

The ASP reiterated the need to review the participation system in order to ensure the sustainability, effectiveness and efficiency of the system, including any necessary amendment to the legal framework of the Court.

In the adopted resolution, the ASP recalled its concern about the difficulty the Court has encountered in processing applications from victims seeking to participate in proceedings. It therefore reiterated the need to review the participation system in order to ensure the sustainability, effectiveness and efficiency of the system, including any necessary amendment to the legal framework of the Court. The ASP further called on the Court to explore ways to harmonize the application process and do so in consultation with all relevant stakeholders.

The resolution further decides that ASP discussions on victims next year will focus on victims' participation.

## **B. Reparations**

The four main issues discussed during 2013 in relation to reparations were i) the establishment of principles related to reparations; ii) parameters of indigence related to enforcement of reparations orders; iii) the importance of adopting and implementing tools for the identification, tracing and freezing or seizure of assets of convicted persons for reparations purposes; and, iv) the debate on the individual and collective approaches to reparations.

These discussions culminated in the ASP calling on the Court to continue to ensure that principles relating to reparations be established in accordance with Article 75 of the Rome Statute. As to the parameters of indigence of a convicted person related to enforcement of reparations orders, states reaffirmed in the resolution that the declaration of indigence of the accused for the purpose of legal aid bears no relevance to the ability of the sentenced person to provide reparation and requests the Court to continue to develop a scheme in that regard in the coming year. The resolution does however reassert that the enforcement of reparations awards shall be prioritized when deciding on the disposition or allocation of fines and forfeitures of assets belonging to the sentenced person. The resolution further stresses that it is of paramount importance that all necessary measures are taken for the identification, tracing and freezing or seizure of any assets of the sentenced person, which are indispensable for reparations, and calls upon states parties to enter into voluntary agreements, arrangements or any other means to this end with the Court. The discussions held throughout the year on individual and collective approaches to reparations did not culminate in resolution language.

## **C. Intermediaries**

The main issue addressed by The Hague Working Group throughout 2013 was the lack of a clear legal framework and/or legal ground in the core legal texts to guide the Court's interaction with intermediaries. A lack of clarity with regard to the implementation of the "Draft Guidelines Governing the Re-

lations between the Court and Intermediaries” was also highlighted. The issues identified that might require further discussion in 2014 relate to further developments in case law; the duty of overseeing the functions of intermediaries; possible liability of the Court if an intermediary is harmed; and the fact that after the *Lubanga* case, the use of intermediaries has become an issue that deserves greater attention in order to prevent or address alleged *offenses against the administration of justice* pursuant to Article 70 of the Rome Statute. The resolution on victims adopted by the ASP does not mention intermediaries at all. However, the omnibus resolution does mandate the ASP to continue discussions on the matter next year (See Chapter X).

#### **D. Complementarity and Communications**

The resolution on victims and reparations encourages states parties, where crimes under the Court’s jurisdiction have been committed, to act in solidarity with victims by adopting victim-related provisions as appropriate in their domestic legislation. These states are also encouraged to play an active role in sensitising communities on the rights of victims in accordance with the Rome Statute in general and victims of sexual violence in particular, speaking against their marginalization and stigmatization, assisting them in their social reintegration process and in their participation in consultations, and promoting a culture of accountability.

#### **RELEVANT DOCUMENTS**

(For clickable links, please visit the online version of this document at [http://www.coalitionfortheicc.org/documents/ASP12\\_report.pdf](http://www.coalitionfortheicc.org/documents/ASP12_report.pdf))

[Resolution on Victims and affected communities, reparations and Trust Fund for Victims, ICC-ASP/12/Res.5](#)

[Report of the Bureau on Victims and affected communities and the Trust Fund for Victims, including reparations and intermediaries](#)

[Resolution on Strengthening the International Criminal Court and the Assembly of States Parties, ICC-ASP/12/Res.8](#)

[Victims Rights Working Group recommendations to the 12th Session of the Assembly of States Parties in relation to victims’ issues](#)

[Report of the Independent Panel of Experts on Victim Participation at the International Criminal Court, July 2013](#)



## VI. COOPERATION

### BACKGROUND

THE COOPERATION resolution from the 11th session of the ASP requested the Bureau to establish another facilitation on cooperation for the duration of 2013, following which, the Bureau re-appointed Ambassador Anniken Ramberg Krutnes (Norway) as cooperation facilitator. Over the course of 2013, The Hague Working Group prioritized the following: a review of the 66 recommendations on cooperation; non-essential contacts with persons subject to an arrest warrant; privileges and immunities of ICC staff; and arrest strategies. In a similar vein as the workshop on cooperation held last year, the facilitator organized a one-day meeting in May as the centerpiece of the ASP's inter-sessional work on cooperation, bringing together ICC and state party officials, NGO representatives and external experts, including from the United Nations Office of Legal Affairs and Interpol to discuss the issue of non-essential contacts, privileges and immunities and arrest strategies. The facilitator also organized two forums on witness protection in Dakar and Arusha.



Panel during the plenary session on cooperation

### SIXTY-SIX RECOMMENDATIONS

For the first time since they were issued in 2007, The Hague Working Group reviewed the recommendations on cooperation in order to assess those of particular and current importance to the Court's work.<sup>2</sup> Given that issues relating to privileges and immunities, arrests and witness protection, all of which form a number of the 66 recommendations, would already form the basis of discussion, the recommendation relating to the appointment of focal points or establishment of a central authority on cooperation were earmarked as of particular importance. Some states also identified of particular importance those recommendations that facilitated assistance to third states to meet their cooperation obligations. Belgium took the lead on consultations regarding the respective recommendations with the end result that the Bureau look into the establishment of a coordinating mechanism of national authorities dealing with ICC cooperation, for the exchange of best practices.

### NON-ESSENTIAL CONTACTS

Following the cooperation resolution from the 11th annual session, in which the ASP recognized that contacts with ICC fugitives were to be avoided where such contact would "undermine the objectives of the Rome Statute", the Bureau mandated The Hague Working Group to further address the issue and report to the 12th session accordingly. This would prove to be one of the more contentious issues handled

<sup>2</sup> Annexed to resolution ICC-ASP/6/Res.2

by the Working Group with the focus of the discussion, drawing on the UN's own guidelines and the prosecutor's 2009-1012 strategy and with a view to proposing language for the draft resolution on cooperation that would provide states parties with guidance. While language was tabled, the Working Group was divided amongst those states that could live with the suggested language that had been amended over the course of discussions and those, including the Coalition, that would have preferred stronger language and in the absence of which the matter should be deferred for further discussion in 2014. This would eventually be the agreed way forward as iterated in the resolution adopted at the 12th session.

#### PRIVILEGES AND IMMUNITIES

The one-day meeting in May, complemented by a discussion paper by the Court, provided an opportunity for a reaffirmation of the importance of universal ratification of the Agreement on Privileges and Immunities, by both states and non-states parties.

The one-day meeting in May, complemented by a discussion paper by the Court, provided an opportunity for a reaffirmation of the importance of universal ratification of the Agreement on Privileges and Immunities, by both states and non-states parties. An outcome of this and subsequent discussions as iterated in the Omnibus resolution was agreement on a pledging exercise at the 13th annual session for states to

ratify the agreement on privileges and immunities by the 20th anniversary of the Rome Statute in 2018 and for the provision of technical assistance for states meet that obligation. Language emphasizing the importance of privileges and immunities was also included in the resolution on cooperation.

#### ARREST STRATEGIES

With 12 fugitives subject to an ICC arrest warrant still at large, the issue of arrest strategies was considered a priority matter and discussed during the one day meeting on cooperation in The Hague, with a discussion on the lessons learned and best practices of the *ad hoc* tribunals and the role that international and regional police bodies, like Interpol and Europol can play in assisting with arrests. Discussions were complemented by a contribution paper from the Office of the Prosecutor. A road map was agreed upon by The Hague Working Group and adopted by the ASP towards achieving an operational tool by the 13th session that would enhance the prospects for the execution of arrests—drawing upon lessons learned and best practices of other actors and identifying those factors or elements that have assisted in the past with arrests.

#### WITNESS PROTECTION SEMINARS

Recognizing that there were an insufficient number of witness relocation agreements the facilitator organized two high-level regional seminars in Dakar and Arusha over the course of 2013, sponsored by Norway, the Netherlands and Estonia. The seminars were organized in part to encourage states in the region to conclude bilateral agreements with the court that would facilitate the relocation of ICC witnesses at risk within the locale of territories where ICC cases were currently underway, but also to discuss witness protection challenges at a national level and to develop stronger ties with the ICC.

## ASP DISCUSSIONS

### A. PLENARY DISCUSSION ON COOPERATION

In the afternoon of 22 November, the issue of cooperation was addressed during a stand-alone plenary session. The second such session convened by the ASP, focused specifically on the issue of witness and victim protection, with a key note speech delivered by H.E. Sidiki Kaba, minister of justice for Senegal. Calling on states to strengthen cooperation with the Court, the minister emphasized the integral role witnesses played in trial proceedings and the importance of national witness protection programs in this regard. He also drew upon the experience of Senegal's Special Chamber and the case against Hissène Habre, witnesses for whom would be guaranteed protection, but also the importance of exchanging lessons learned and best practices as well as strengthening ties with civil society representatives.

In the panel presentation that followed, the registrar of the Court, Mr. Herman Von Hebel, spoke of the fundamental importance that cooperation played in the courts protection of over 750 witnesses and their families and the 13 relocation agreements that the court had entered into and the need for more in light of the Court's protection needs. Mr. Von Hebel also spoke of the special fund for relocation, which at a total of a million Euros with increasing expenditure required further replenishment. Ms. Fidelma Donlon, deputy registrar of the Special Court for Sierra Leone, spoke about the work of the Special Court and the creation of the Residual Special Court, which would be responsible for the more than 500 victims and witnesses that had testified throughout the history of the Special Court and the importance of outreach to victims on the impact of the closure of the Special Court. Ms. Lorraine Smith, Director of the ICC Program at the International Bar Association (IBA), discussed the IBA's report on witness rights and protection at the ICC, in particular the importance of strengthening internal ICC structures responsible for protection, ensuring equity of protection for both prosecution and defense witnesses and state cooperation with respect to concluding relocation agreements. A discussion then followed between the panelists and the assembled states parties and civil society, with states reflecting on the importance of timely execution of cooperation requests, outstanding arrest warrants, non-essential contacts and bilateral cooperation agreements. From civil society organizations, the International Commission of Jurists-Kenya, commented on Kenya's track-record in cooperating with the court and the need for an inter-sessional political process that can deal with non-cooperation issues. The Coalition also took the floor to emphasize the importance of a plenary session on cooperation at the 13th session and the court identifying states beyond Africa that would be willing to conclude bilateral cooperation agreements.

### B. COOPERATION RESOLUTION

Following discussions in The Hague Working Group and during the plenary session itself, the ASP adopted a stand-alone resolution on cooperation. Building on the resolution adopted at the 11th session, the resolution *inter alia* recognized the importance of diplomatic and financial support for investigations born from UN Security Council referrals and requests the bureau to report to the ASP at its 13th session on the progress made by states parties on the implementation of pledges made at the Review Conference in 2010 as well as to maintain a facilitation on cooperation. There were also several references made in the omnibus resolution on cooperation (See Section X below)

## **NON-COOPERATION**

The Bureau issued another report on non-cooperation, drawing attention to the visits in 2013 of ICC fugitives, Omar al-Bashir to Chad and Nigeria and Abdel Raheem Muhammed Hussein, who had visited Chad and the Central African Republic, and the efforts of the ASP president as per the ASP's non-cooperation procedures and the judges of the ICC under Article 87 of the Rome Statute.

## **RELEVANT DOCUMENTS**

(For clickable links, please visit the online version of this document at [http://www.coalitionfortheicc.org/documents/ASP12\\_report.pdf](http://www.coalitionfortheicc.org/documents/ASP12_report.pdf))

[Resolution on Cooperation, ICC-ASP/12/Res.3](#)

[Concept note on the plenary session in cooperation](#)

[Report of the ASP Bureau on cooperation](#)

[Keynote address by H.E. Sidiki Kaba, Minister of Justice of the Republic of Senegal](#)

[Summary of the Arusha Seminar on Witness Protection \(29-30 October 2013\)](#)

[Report of the ASP Bureau on non-cooperation](#)

[Coalition Team on Cooperation, Comments and Recommendations to the 12th Session of the ASP \(page 12\)](#)

[Plenary Statement by the Coalition for the International Criminal Court](#)

## VII. ELECTIONS

AT THE 12TH session the ASP elected a new judge and six members of the Committee on Budget and Finance. The New York Working Group also addressed reforming the nomination and election process for judges.

### JUDICIAL ELECTIONS

Following the resignation of Judge Anthony Carmona, who was appointed President of Trinidad and Tobago in March 2013, a judicial vacancy was made available for a judge from the group of Latin American and Caribbean States (GRULAC). During the nomination period, GRULAC states parties put forward two nominations for the one seat:

1. Mr. Geoffrey A. Henderson, (Trinidad and Tobago)
2. Dr. Leslie Van Rompaey (Uruguay)

To further assist and inform states parties in the elections—but also to enable all stakeholders including the Court, civil society organizations and the general public to gain more insight into the nominees—the Coalition requested each to complete a questionnaire relating to their background, experience and motivation. The responses were circulated to states parties and uploaded to the Coalition website for further distribution. The candidates were also interviewed by the ASP's Advisory Committee on Nominations in October, its first such scrutiny of judicial nominees and the results published in its candid report and circulated before the 12th session.

Dr. Van Rompaey withdrew his candidacy prior to the elections scheduled for day four of the 12th session on 23 November, leaving Mr. Henderson as the only sitting candidate, who was promptly appointed as judge to the ICC. Mr. Henderson was sworn in on 12 December and will assume his duties from January 2014.

Over the course of 2013, The New York Working Group under the facilitation of Mr. Stefan Barigga (Liechtenstein) also addressed the procedure for the nomination and election of ICC judges, including how to increase choice in elections as well as how to deal with situations where an elected judge has not been sworn in within six months of an election.

### CBF ELECTIONS

Six seats on the Committee on Budget and Finance were also up for election, specifically one for a candidate from an African state; three for candidates from Western Europe and other states; one for GRULAC; and one for Eastern Europe. During the nomination period, seven nominations were put forward:

1. Mr. David Banyanka (Burundi)
2. Ms. Carolina Maria Fernandez-Opazo (Mexico)
3. Mr. Gilles Finkelstein (France)



Judge Henderson during the swearing in ceremony on 12 December 2014. Credit: ICC-CPI

4. Mr. Juhani Lemmik (Estonia)
5. Mr. Gerd Saupe (Germany)
6. Mr. Noumoutié Herbert Traore (Burkina Faso)
7. Ms. Helen Louise Warren (United Kingdom)

The only contested seat was that for Africa. Prior to the elections on day four, Mr. Herbert Trarore of Burkina Faso withdrew his candidacy, leaving the remaining six candidates who were duly appointed and who will take office in April 2014 at the CBF's spring session.

### **RELEVANT DOCUMENTS**

(For clickable links, please visit the online version of this document at [http://www.coalitionfortheicc.org/documents/ASP12\\_report.pdf](http://www.coalitionfortheicc.org/documents/ASP12_report.pdf))

[Information on the election of a Judge](#)

[Information on the election of CBF members](#)

[Report of the Advisory Committee on Nominations of Judges on the work of its second meeting](#)

[Note Verbale from Geoffrey Henderson \(Trinidad and Tobago\)](#)

[Note Verbale from Leslie Van Rompaey](#)

[Response to Coalition Questionnaire from Justice Geoffrey Henderson](#)

[Response to Coalition Questionnaire from Dr. Leslie Van Rompaey](#)

[Coalition Team on Elections, Comments and Recommendations to the 12th Session of the ASP \(page 14\)](#)

[Bureau Report on the Review of the Procedure for the Nomination and Election of Judges](#)

## VIII. AMENDMENTS

### BACKGROUND

DURING THE 12TH ASP session, states parties addressed and adopted a number of amendments to the Rules of Procedure and Evidence and the Rome Statute. Subject to Article 51 of the Rome Statute, amendments to the Rules of Procedure and Evidence (RPE) can be proposed by any states party and shall enter into force if adopted by a two-thirds majority of the members of the ASP. Any amendments to the RPE, must be consistent with the Rome Statute and, in the event of conflict between the Statute and the RPE, the Statute shall prevail.

In order to allow for a year-round structured dialogue between subsidiary bodies of the ASP, the Court and other stakeholders on proposals for amendment to the RPE, the ASP set out a road-map through the Study Group on Governance. The ASP also set up a Working Group on Amendments for the purpose of considering amendments to the Rome Statute and to the RPE with a view to identifying amendments to be adopted in accordance with the Rome Statute and the Rules of Procedure of the Assembly of States Parties. The Working Group on Amendments, chaired by Ambassador Paul Seger (Switzerland) and meeting in New York has the goal to achieve greater clarity on both the substantive views on the amendment proposals and the procedure to be followed in dealing with amendment proposals, as to inform the ASP in considering the amendments during its annual session. The Study Group road-map and the Working Group on Amendments however do not preclude the right of a state party to submit an amendment proposal to the RPE at any time in the year prior to an ASP session following Article 51 of the Rome Statute.

Amendment proposals to Rule 68 (on prior recorded testimony) and Rule 100 of the RPE (on the decision-making procedure for designating an alternate seat for proceedings of the Court) were submitted to the ASP for adoption. (See Chapter XII of this report).

Following the outcome of the African Union extraordinary summit in October, which inter alia called for deferral of the Kenya cases under Article 16 of the Rome Statute and questioning the legality of investigations against sitting heads of state, proposals to amend the RPE as well as the Rome Statute were submitted to the Working Group on Amendments.

Proposals were made jointly by Botswana, Jordan and Liechtenstein to Rule 134 as a suggested initiative that the ASP could undertake in its effort to deal with the political crisis following the African Union



Amb Paul Seger, chair of the ASP Working Group on Amendments addressing the plenary Credit: ICC-CPI

In order to allow for a year-round structured dialogue between subsidiary bodies of the ASP, the Court and other stakeholders on proposals for amendment to the RPE, the ASP set out a road-map through the Study Group on Governance.

extraordinary summit and subsequent demarches. The proposal's main goal was to codify the 25 October 2013 Appeals Chambers decision in the case against Ruto and Sang, wherein the Appeals Chamber found that "Article 63 (1) of the Statute does not operate as an absolute bar in all circumstances to the continuation of trial proceedings in the absence of the accused" as well as the 18 October Trial Chamber V(b) decision in the case against Kenyatta, which identified certain types of hearings during which presence of the accused would be particularly important. The proposal also suggested the use of communication technology as a manner of ensuring presence—although not physical—at a trial hearing.

An additional proposal was introduced by Kenya which sought to provide for exception excusal from presence at trial for heads of states or those persons charged with such responsibilities

The United Kingdom also introduced a rule to amend Rule 134 in order to put emphasis on alternative measures the Court could take to the (physical) presence of an accused at trial specifically through the use of communication technology and/or through representation by counsel.

Kenya also suggested amendments to Article 63 of the Rome Statute (trial in the presence of the accused), Article 27 (irrelevance of official capacity), Article 70 (Offenses against the administration of justice), and Article 112(4) (establishing an Independent Oversight Mechanism) and the preamble of the Rome Statute setting out the complementary nature of the Rome Statute. However, as amendments to the Rome Statute can only be decided upon in an ASP session three months after their notification to states parties as per Article 121 of the Rome Statute, it was clear before the start of the ASP session that these proposed amendments could not be adopted this year and therefore were not subject to the same level of scrutiny as the proposed amendments to the RPE.

Following days of intense negotiations in formal and informal Working Group meetings during the 12th session, states agreed by consensus on an amendment to Rule 134 to include three new sub paragraphs.

## ASP DISCUSSIONS

Following days of intense negotiations in formal and informal Working Group meetings during the 12th session, states agreed by consensus on an amendment to Rule 134 to include three new sub-paragraphs.

The new Rule 134*bis* would allow an accused to request to be present at his or her trial from a remote location through the use of video tech-

nology. The Trial Chamber would rule on such requests on a case-by-case basis with due regard to the subject matter of the specific hearings in question. The new Rule 134*ter* and Rule 134*quater* allow an accused to request to be excused from presence at trial and to be represented by counsel only.

Under Rule 134*ter*, which applies to all accused persons, the Trial Chamber will apply a number of conditions and rule on such a request on a case-by-case basis with due regard to the subject matter of the specific hearings in question. The new rule, in line with the Appeals Chamber ruling in the Ruto case, specifies that any absence must be limited to what is strictly necessary and must not become the rule.

Rule 134*quater*, however, is specifically applicable to those mandated to fulfill "extraordinary public duties at the highest national level". The Chamber in question shall look at alternative measures, but if



these are inadequate, grant the request if it is in the interest of justice and provided that the rights of the accused are respected. The new rule adds that the Trial Chamber shall have due regard to the subject matter of the specific hearings in question and that the decision is subject to review at any time.

At the end of the Working Group's discussions, Botswana, Kenya, Nigeria, Namibia, Uganda, South Africa, Zambia, Tanzania, Senegal, Tunisia and Sierra Leone took the floor to welcome the resolution outlining the amendments.

### **RELEVANT DOCUMENTS**

(For clickable links, please visit the online version of this document at [http://www.coalitionfortheicc.org/documents/ASP12\\_report.pdf](http://www.coalitionfortheicc.org/documents/ASP12_report.pdf))

[Resolution on the Amendments to the Rules of Procedure and Evidence, ICC-ASP/12/Res.7](#)

[Decision of the African Union on 'Africa's relationship with the International Criminal Court'](#)

[Report of the Working Group on Amendments](#)

## IX. BUDGET

### BACKGROUND

THIS YEAR THE Court submitted to the ASP a budget proposal for 2014 of €126.07 million, based on estimates of what its financial resource needs would be for 2014. This proposed budget represented an increase of €10.95 million on the approved budget for 2013 and was mainly due to an increase in the number of situations, the volume of prosecutorial and judicial activities and the corresponding services and implementation of the new OTP strategy, as well as forward commitments and common system costs.



Working Group on ICC Budget. Credit: ICC-CPI

The budget proposal was discussed by the Committee on Budget and Finance (CBF), who conducted a technical examination of the proposed budget, and recommended that the 2014 budget should be €121.5 million, or a cut of approximately €4.5 million to the Court's proposed budget.

Prior to the Assembly session The Hague Working Group met both formally and informally to consider the proposed budget for 2014, taking into consideration the CBF recommendations, and preparing for further discussions during the 12th session of the Assembly. These discussions took place with a view to reaching consensus

among states parties on the budget that the Assembly would allocate to the Court for its activities in 2014, and were facilitated by Ambassador Werner Drüml (Austria).

Throughout the year, the Coalition's Budget Team provided advocacy to the CBF at both its 20th and 21st sessions. This included addressing the CBF and issuing papers. The Coalition also produced comments on the proposed budget of the Court for 2014 and also provided advocacy to states parties during The Hague Working Group whilst informal consultations took place on the budget leading up to the 12th assembly session.

### ASP DISCUSSIONS

The ASP approved the CBF-recommended budget for the Court of €121,656,200. This decision was reached following discussions at the ASP which had aimed at reaching a consensus position. Prior to the Assembly session, Canada broke a silence procedure to adopt the CBF's recommendations following the proposal of the ASP budget facilitator. Canada had indicated that it wished to adopt a zero-growth position, contrary to the other ASP states' consensus position. However, following a number of demarches in Ottawa and elsewhere to the Canadian government during the Assembly session, Canada rejoined the consensus on the budget. Subsequently at the ASP session, the ASP adopted a resolution on the budget in keeping with the CBF recommendations.

The final programme budget for 2014 is as follows:

<b>Section</b>	<b>Thousands of euros</b>
Major Programme I—Judiciary	10,045.8
Major Programme II—Office of the Prosecutor	33,220.0
Major Programme III—Registry	66,293.0
Major Programme IV—Secretariat of the Assembly of States Parties	2,843.6
Major Programme V—Interim Premises	5,900.7
Major Programme VI—Secretariat of the Trust Fund for Victims	1,585.8
Major Programme VII-1—Project Director’s Office (permanent premises)	1,283.2
Major Programme VII-2—Permanent Premises Project—Interest	110.8
Major Programme VII-5—Independent Oversight Mechanism	373.3
	<b>Total 121,656.2</b>

Following a commitment made at the 11th ASP session, the host state agreed that it would continue to contribute to the costs for the Court in relation to the Interim Premises. This contribution amounts to €2,950,350. Therefore the 2014 programme budget appropriations that will be assessed for contributions by states parties will be €118,595,000.

The contingency fund was not replenished at the 12th session as the current level of the contingency fund was above the €7 million threshold at which point the fund would need to be replenished.

The final budget resolution incorporates a number of paragraphs on the strategic approach to an improved budgetary process. The resolution welcomes the recommendations of the Study Group on Governance on the budget process designed to improve the transparency, predictability and efficient conduct of the entire budget process. The resolution also welcomes the lessons learned exercise carried by the Office of the Prosecutor (OTP) and the new strategic plan of the OTP focused to ensure the quality and efficiency in investigations, prosecutions and cooperation and notes the likely impact of the strategic plan to the proposed budget requests until 2017. The resolution also authorizes the registrar to reorganize and streamline the Registry’s organizational structure within the envelope of the approved programme budget for 2014.

During the plenary working group on the budget discussions, the registrar of the Court—Mr. Herman von Hebel—addressed the states parties at the Assembly for the first time since taking office in 2013. The registrar discussed the forecasted implementation of the 2013 budget was 97.3%. The registrar also spoke about the Court’s proposed 2014 programme budget. He emphasized that the adequacy of the Court’s budget was a question of having a functioning, successful institution capable of pursuing its ambitious mandate of ending impunity. The registrar stated that a significant budgetary increase was unavoidable in 2014 if the Court was to attain the common objective of improved OTP processes and output. In relation to the Registry, the registrar stated that the Registry has proposed a modest increase, corresponding mainly to the increased number of services requested by the OTP, such as security, field operations and protection of and support for witnesses. However, the remaining Registry proposed budget remained close or equal to zero-growth, despite the increased workload and level of activities within the Registry. In relation to the CBF recommendations, the registrar stated that the CBF recommendations to reduce

the proposed budget increase were made without identifying specific budget lines, which helpfully provided flexibility and responsibility to the Court in spending and allocating its resources—an approach which was welcomed by the Court. Finally the registrar discussed the reorganization of the Registry stating that it was time to make an in-depth analysis of the functioning of the Registry. The reorganization of the Registry will primarily aim at clarifying and ensuring the realization of the vision, mission, culture and values of the Registry, improving Court-wide and Registry-wide coordination, and at ensuring the continuous and efficient delivery of quality services in the most effective manner. Accordingly, the three main principles guiding the reorganization would be: the One-Court principle, strategic leadership and sustainability.

During the working group on the budget, Canada made a statement that the 2014 proposed programme budget increase was too high and that there was no need for an increase in the Court's budget. Canada stated that it had always asked for fiscal responsibility and other such measures to regulate spending. However, Canada believed that additional savings could be found, over and above those found by the CBF and had had discussions with the Court regarding how a zero nominal growth budget could be achieved for 2014. Nonetheless, Canada concluded that the 2014 budget proposed by the facilitator was reasonable in the present circumstances. Canada concluded that it would continue to monitor spending throughout 2014 with the express objective of achieving zero nominal growth in 2015.

## **RELEVANT DOCUMENTS**

(For clickable links, please visit the online version of this document at [http://www.coalitionfortheicc.org/documents/ASP12\\_report.pdf](http://www.coalitionfortheicc.org/documents/ASP12_report.pdf))

[Resolution establishing the Programme budget for 2014, the Working Capital Fund for 2014, scale of assessments for the apportionment of expenses of the International Criminal Court, financing appropriations for 2014 and the Contingency Fund, ICC-ASP/12/Res.1](#)

[Proposed Programme Budget for 2014 of the International Criminal Court, ICC-ASP/12/10](#)

[Report of the Committee on Budget and Finance on the work of its 21st session ICC-ASP/12/15](#)

[Statement by Mr. Gilles Finkelstein, the Chair of the Committee on Budget and Finance](#)

[Presentation of Mr. Herman von Hebel, the Registrar of the ICC](#)

[Coalition Team on Budget and Finance Comments and Recommendations to the 12th Session Of The Assembly of States Parties \(page 9\)](#)

## X. THE OMNIBUS RESOLUTION

### BACKGROUND

AT EACH OF its sessions since 2003 the ASP has adopted an ‘Omnibus Resolution,’ formally titled ‘Strengthening the International Criminal Court and the Assembly of States Parties.’ The Omnibus Resolution addresses a wide range of substantive, practical and policy issues in relation to the Court, the ASP and other stakeholders.

### ASP DISCUSSIONS

Following informal consultations on its draft content during the ASP session chaired by Facilitator Ana Cristina Rodríguez Pineda (Guatemala), the Omnibus Resolution as adopted addresses, inter alia, universality of the Rome Statute; the Agreement on Privileges and Immunities; cooperation and non-cooperation; the relationship with the United Nations and other international organizations and bodies; activities of the Court; elections; legal aid; review of working methods; strategic planning; victims and affected communities; the Trust Fund for Victims; recruitment of staff; and complementarity.



#### A. UNIVERSALITY OF THE ROME STATUTE

The ASP welcomed Cote D’Ivoire as the newest state to have ratified the Rome Statute since the 11th session of the ASP; decided to keep the status of ratifications under review and to monitor developments in the field of implementing legislation; recalled that the ratification of the Rome Statute must be matched by national implementation of the obligations emanating there from; and welcomed the report of the Bureau regarding the implementation of the plan of action for achieving universality and full implementation of the Rome Statute.

#### B. AGREEMENT ON PRIVILEGES AND IMMUNITIES

The paragraphs on the Agreement on the Privileges and Immunities call upon states that have not yet done so to become parties to the Agreement as a matter of priority and to take the necessary action to exempt their nationals employed by the Court from national income taxation. The ASP also reiterated the obligations of states parties to respect such privileges and immunities as are necessary for the fulfilment of the Court’s purposes and appealed to all states not party to the Agreement in which the Court’s property and assets are located to protect said property and assets from interference.

#### C. COOPERATION

The ASP referred inter alia to the stand-alone resolution on cooperation adopted at the 12th session and called upon states parties to comply with their obligations under the Statute, to continue to express their support for the Court, and to ensure full and effective cooperation with the Court, in particular in the areas of implementing legislation, enforcement of Court decisions and execution of arrest warrants. The ASP encouraged states parties and the Court to consider further measures to enhance the implementa-

tion of the 66 recommendations annexed to resolution ICC-ASP/6/Res.2.

#### **D. NON-COOPERATION**

The Assembly took note of the report of the Bureau on non-cooperation and recognized the negative impact that the non-execution of Court requests can have on the ability of the Court to execute its mandate. It also called upon all stakeholders to continue assisting the President of the ASP, including when accomplishing her task with the support of the regional focal points for non-cooperation.

#### **E. RELATIONSHIP WITH THE UNITED NATIONS**

The ASP recognized the need for enhancing the institutional dialogue with the UN, including on Security Council referrals; welcomed the statement by the president of the Security Council regarding the importance of state cooperation with the Court; and noted with appreciation the annual UN General Assembly resolutions concerning the Court. The ASP also noted with concern that, to date, expenses incurred by the

The ASP recognized the need for enhancing the institutional dialogue with the UN, including on Security Council referrals; welcomed the statement by the President of the Security Council regarding the importance of state cooperation with the Court; and noted with appreciation the annual UN General Assembly resolutions concerning the Court.

Court due to referrals by the Security Council have been borne exclusively by the states parties, and urged states parties to begin discussions on the proper implementation of Article 115(b) of the Statute.

#### **F. RELATIONSHIPS WITH OTHER INTERNATIONAL ORGANIZATIONS AND BODIES**

The Assembly recalled its decision to establish a representation of the Court at the AU headquarters in Addis Ababa; emphasized the need to intensify dialogue with AU and to strengthen the relationship between the Court and the AU; and committed to the Court's further engagement in Addis Ababa with the AU in anticipation of establishing its liaison office. The ASP also recalled the contribution that the International Humanitarian Fact-finding Commission could make to the prosecution of war crimes.

#### **G. ACTIVITIES OF THE COURT**

The ASP noted with satisfaction the fact that considerable progress continues to be made in the Court's activities, in particular its preliminary examinations, investigations and judicial proceedings. The Assembly invited the Court to continue to take note of best practices of other relevant international and national organizations and tribunals and encouraged the Court to undertake all necessary efforts to fully implement the One-Court principle and to coordinate its activities among its organs.

#### **H. ELECTIONS**

The ASP emphasized the importance of nominating and electing the most highly qualified judges in accordance with Article 36 of the Rome Statute; encouraged the state parties to identify the best candidates; and decided to adopt the amendment to the procedure for the nomination and election of judges contained in Annex II to the Omnibus Resolution. Regarding the election of the second prosecutor of the ICC, the ASP took note of report and option paper of the Bureau on this process.

**I. LEGAL AID**

The ASP acknowledged the Court's efforts to continue implementing the revised legal aid remuneration policy as adopted by the Bureau on 23 March 2012; noted certain documents and reports of the Bureau pertaining to the legal aid system; and stressed the need for continuous monitoring of the efficiency of the revised legal aid system in order to uphold and strengthen its principles, namely fair trial, objectivity, transparency, economy, continuity and flexibility.

**J. WORKING METHODS REVIEW**

The ASP recognized the benefits of rationalizing the working methods of the subsidiary bodies of the Bureau and the Assembly in order to cope with an increasing workload and decided to replace Rule 29 of its Rules of Procedure with the text in Annex III of the Omnibus Resolution as of the 14th session of the Assembly.

**K. STRATEGIC PLANNING**

The ASP emphasized the need for the Court to continue to improve and adapt outreach activities in order to further develop and implement the Strategic Plan for Outreach in affected countries, including by early outreach from the outset of the Court's involvement. The resolution also took note of the revised Court's Strategic Plan for 2013-2017 and the revised Strategic Plan of the OTP for the year 2014-2015, and reiterated the importance of strengthening the relationship between the strategic planning process and the budgetary process.

**L. VICTIMS AND AFFECTED COMMUNITIES, REPARATIONS AND TRUST FUND FOR VICTIMS**

The ASP referred to its stand-alone resolution on victims and affected communities, reparations and Trust Fund for Victims. The Omnibus Resolution stressed the central importance that the Rome Statute accords to the rights and needs of victims, in particular their right to participate in judicial proceedings and to claim reparations, and emphasized the importance of informing and involving victims and affected communities in order to give effect to the unique mandate of the Court towards victims.

**M. RECRUITMENT OF STAFF**

The ASP welcomed the Court's continued efforts, in the recruitment of staff, to seek equitable geographical representation and gender balance, as well as to seek expertise on specific issues, including trauma-related psycho-social needs and violence against women or children.

**N. COMPLEMENTARITY**

In addition to referring to the stand-alone resolution on complementarity, the omnibus resolution recalled the primary responsibility of states to investigate and prosecute the most serious crimes of international concern and that, to this end, appropriate measures need to be adopted at the national level, and international cooperation and judicial assistance need to be strengthened, in order to ensure that national legal systems are capable of genuinely prosecuting such crimes.

**O. PROGRAM BUDGET**

The ASP took note of the important work done by the Committee on Budget and Finance; emphasized the importance of endowing the Court with the necessary financial resources; and urged all states parties to transfer their assessed contributions in full and by the deadline or, in the event of arrears, immediately. The Assembly also called upon states, international organizations, individuals, corporations and other entities to contribute voluntarily to the Court.

**P. REVIEW CONFERENCE**

The ASP noted with appreciation the recent ratifications of the amendments adopted at the first Review Conference of the Rome Statute; resolved to activate the Court's jurisdiction over the crime of aggression as early as possible; recalled with appreciation the pledges of increased assistance to the Court made by 35 states parties, one observer state and a regional organization; and called for the swift implementation of these pledges and the submission of additional pledges.

**Q. PARTICIPATION IN THE ASSEMBLY OF STATES PARTIES**

The Assembly called for contributions to allow for the participation of the least developed countries in the ASP; welcomed with appreciation the inclusion on the agenda of the 12th session the special segmented as requested by the AU on the indictment of sitting heads of state and government and its consequences on peace and stability and reconciliation; welcomed the substantial discussions on complementarity, victims and cooperation; and expressed its intention to have dedicated plenary sessions on these critical topics on the agenda of future sessions of the ASP.

**RELEVANT DOCUMENTS**

(For clickable links, please visit the online version of this document at [http://www.coalitionfortheicc.org/documents/ASP12\\_report.pdf](http://www.coalitionfortheicc.org/documents/ASP12_report.pdf))

[Resolution Strengthening the International Criminal Court and the Assembly of States Parties \(the Omnibus Resolution\), ICC-ASP/12/Res.8](#)

[Comments and Recommendations of Coalition Teams to the 12th Session of the Assembly of States Parties](#)



## XI. THE TRUST FUND FOR VICTIMS

### BACKGROUND

IN 2013 THE Hague Working Group discussed the Trust Fund for Victims in the facilitation on victims and affected communities and the Trust Fund for Victims, including reparations and intermediaries. Discussions were led by Ambassador Eduardo Pizarro Leongómez (Colombia) and Ambassador Karim Ben Becher (Tunisia). During the year, the need to strengthen the capacity of the Fund while preserving its independence and the importance of prioritizing fines and forfeitures for the purpose of reparations to victims were the main themes discussed.



The Trust Fund Secretariat Director Pieter de Baan and the Chair of the Trust Fund Board of Directors Motoo Noguchi at a side-event on 22 November.

### ASP DISCUSSIONS

During the opening plenary session on the first day of the 12th session, the Chair of the Trust Fund's Board of Directors Motoo Noguchi gave a presentation summarizing the activities and projects the TFV conducted in 2013 and informing the ASP on the progress made thus far. In his address, the chair of the Board gave an update on the Trust Fund's work to provide assistance to victims under ICC jurisdiction in Uganda and the DRC, where it pays special attention to victims of gender and gender-based violence. He noted, however, that Trust Fund activities have been suspended in the Central African Republic due to the country's deteriorating security situation. As the Trust Fund relies on voluntary donations, Noguchi expressed gratitude to Sweden and Finland for multi-annual funding agreements and called for more states to follow suit.

The Chair of the Board participated in the 22 November dedicated plenary session entitled, "Beyond Kampala: reaffirming the value of the victims' mandate of the Rome Statute System". During the panel, Noguchi touched upon the impact of the TFV's reparative work, and discussed the challenges that lay ahead in executing the TFV's mandate, with a particular focus on outreach and communications.

### CONTRIBUTIONS

During the course of the ASP, an unprecedented amount of donations were pledged to the Trust Fund for Victims with a total value of over €6.5 million. Sweden announced a donation of approximately €4.2 million over three years, the largest single contribution to the Fund so far.

The Netherlands announced an un-earmarked contribution of €1 million; Germany announced €900,000 to be earmarked for the TFV's reparations reserve; the United Kingdom is contributing an additional £300,000 in addition to the £500,000 contributed earlier in 2013. The Czech Republic, Estonia, Finland, Ireland, Italy, Poland, Republic of Korea and Spain also confirmed contributions.

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## **THE RESOLUTION ON VICTIMS AND REPARATIONS**

The TFV was addressed in the resolution on Victims and affected communities, reparations and Trust Fund for Victims. In the resolution, the ASP encourages the Board and the Secretariat to continue to ensure increased strategic and operational visibility of the work of the Fund, to maximize its impact and to ensure the continuity and sustainability of the Fund's interventions.

The ASP calls upon states, international and intergovernmental organizations, individuals, corporations and other entities to contribute voluntarily to the Trust Fund to not only increase the volume of the Fund, but also to broaden its resource base and to improve the predictability of funding. The resolution also invites states parties in particular to consider making earmarked voluntary contributions to the Trust Fund for reparations in addition to any regular voluntary contributions to the Fund.

## **PRESENTATION OF EXTERNAL EVALUATION REPORT**

During a side-event on Friday, 22 November the external evaluation report of TFV programmes in northern Uganda and the DRC conducted by the International Centre for Research on Women was launched. The event, chaired by TFV Secretariat Executive Director Pieter de Baan, set out the assessment of the impact of the TFV's work contained in the external evaluation report and included a discussion of areas for improvement and recommendations for the TFV to implement for its 2014-2017 strategic plan.

## **RELEVANT DOCUMENTS**

(For clickable links, please visit the online version of this document at [http://www.coalitionfortheicc.org/documents/ASP12\\_report.pdf](http://www.coalitionfortheicc.org/documents/ASP12_report.pdf))

[Resolution on Victims and affected communities, reparations and Trust Fund for Victims, ICC-ASP/12/Res.5](#)

[Resolution on Strengthening the International Criminal Court and the Assembly of States Parties, ICC-ASP/12/Res.8](#)

[Report of the Bureau on Victims and affected communities and the Trust Fund for Victims, including reparations and intermediaries](#)

[Report to the Assembly of States Parties on the projects and the activities of the Board of Directors of the Trust Fund for Victims for the period 1 July 2012 to 30 June 2013](#)

[Statement by Motoo Noguchi, the Chair of the Board of Directors of the Trust Fund for Victims](#)

[External Evaluation of the Trust Fund for Victims Programmes in Northern Uganda and the Democratic Republic of Congo](#)

[Coalition Team on the Trust Fund for Victims Comments and Recommendations to the 12th Session of The Assembly of States Parties \(page 19\)](#)

[Victims Rights Working Group recommendations to the 12th Session of the Assembly of States Parties in relation to victims' issues](#)

## XII. THE STUDY GROUP ON GOVERNANCE

### BACKGROUND

IN 2010 THE ASP established a Study Group on Governance (Study Group) to conduct a structured dialogue between states parties based in The Hague and the Court with a view to strengthening the institutional framework of the Rome Statute system and enhancing the efficiency and effectiveness of the Court pursuant to Article 112(2) of the Rome Statute. In 2013, the Study Group was chaired by Ambassador Håkan Emsgård (Sweden) and organized its work around two clusters: 1. increasing the efficiency of the criminal process, and 2. enhancing the transparency and predictability of the budgetary process.

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### ASP DISCUSSIONS

#### Cluster 1: Increasing the efficiency of the Criminal Process

The work of Cluster 1 focused on proposed amendments to two of the Rules of Procedure and Evidence (RPE). The first amendments proposal relates to Rule 100, which establishes the decision-making procedure for designating an alternate seat for proceedings of the Court. The amendment provides for a more expeditious process for designating an alternate seat. The second proposed amendment concerns Rule 68, which deals with prior recorded testimony. The proposed amendment is intended to reduce the length of ICC proceedings and streamline evidence presentation by increasing the instances in which prior recorded testimony can be introduced instead of hearing the witness in person. Both amendments proposals were adopted by the Assembly in a stand-alone resolution.

The Study Group also discussed and endorsed amendments to the Roadmap—setting out how the review process of the Court’s criminal procedures would be undertaken and to facilitate a structured dialogue between subsidiary bodies of the ASP, the Court and other stakeholders in addressing proposals for amendment to the RPE—which was subsequently adopted by the Assembly in the Omnibus Resolution.

The co-focal points for this cluster were Mr. Shehzad Charania (United Kingdom) and Mr. Thomas Henquet (The Netherlands).

During the ASP session, Sweden, The Netherlands, the United Kingdom and Switzerland presented a paper entitled ‘Action Plan for expediting the criminal process of the International Criminal Court’. In the paper, the states set out that the process to increase the efficiency of the criminal process should be accelerated and suggest that the SGG should prioritize looking at the Pre-Trial Chamber—Trial Chamber relationship next year.

#### Cluster 2: Enhancing the transparency and predictability of the budgetary process

Led by focal point Klaus Keller (Germany), Cluster 2 discussed and put forward a number of recommendations on the following issues designed to improve the transparency, predictability and efficient

conduct of the entire budget process and each phase therein: the budget cycle, assumptions and the judicial calendar; the relationship between the Assembly and the Committee on Budget and Finance; the Contingency Fund; lessons learned from the budget negotiations; new approaches to accounting and budgeting and the future of this cluster. The recommendations were endorsed by the ASP in the Omnibus Resolution.

The mandate of the Study Group was extended by one year.

### **RELEVANT DOCUMENTS**

(For clickable links, please visit the online version of this document at [http://www.coalitionfortheicc.org/documents/ASP12\\_report.pdf](http://www.coalitionfortheicc.org/documents/ASP12_report.pdf))

[Resolution on the Amendments to the Rules of Procedure and Evidence, ICC-ASP/12/Res.7](#)

[Resolution on Strengthening the International Criminal Court and the Assembly of States Parties, ICC-ASP/12/Res.8](#)

[Report of the Bureau on the Study Group on Governance](#)

[Working Group on Lessons Learnt: Second report of the Court to the Assembly of States Parties](#)

[Resolution on the Establishment of a Study Group on Governance, ICC-ASP/9/Res.2](#)

[Coalition Team on ASP Oversight Comments and Recommendations to the 12th Session of the Assembly of States Parties \(page 16\)](#)

## XIII. COMPLEMENTARITY

### BACKGROUND

CONSULTATIONS ON complementarity in 2013 focused on the steps to be taken by the ICC when it is to depart from situation countries—so-called “exit” or “completion strategies.” This is reflected in the Court’s Report on Complementarity, which concludes that assistance to the national system should be provided as early as possible to support not only the completion of any cases before the Court, but also to foster national prosecutions of other perpetrators after the Court has concluded its work.

As in previous years, the ASP Secretariat had endeavored to collect and share information relating to the complementarity-related capacity needs and activities to date of the Court, states parties, international organizations and civil society, with the aim of strengthening national jurisdictions; this year saw the dissemination of two notes verbales to this effect.

Although the 11th session of the ASP featured a plenary discussion on complementarity, such a discussion did not take place at the 12th session and despite reference in the Omnibus Resolution from the 11th session recognizing the importance of standing agenda items on complementarity at the annual sessions of the Assembly, a reference that was repeated in the omnibus resolution adopted at the 12th session. A stand-alone resolution on complementarity was also adopted at the 12th session following inter-sessional discussions, led by focal points, Denmark and South Africa, that calls on states to incorporate the Rome Statute crimes into national law, establish jurisdiction for those crimes, and ensure the effective enforcement of these laws. In its report adopted at the 12th session the Bureau recommended that the Assembly consider including the issue of complementarity on the agenda of future sessions of the Assembly for further discussion.

### RELEVANT DOCUMENTS

(For clickable links, please visit the online version of this document at [http://www.coalitionfortheicc.org/documents/ASP12\\_report.pdf](http://www.coalitionfortheicc.org/documents/ASP12_report.pdf))

[Note verbale requesting information on any capacity-building needs in the area of the investigation and prosecution of serious international crimes](#)

[Note verbale requesting information on their complementarity-related activities](#)

[Report of the Bureau on complementarity](#)

[Resolution on complementarity](#)

[Report of the Court on complementarity: Completion of ICC activities in a situation country](#)

[Report of the Secretariat on complementarity](#)

## XIV. REFORM OF THE WORKING METHODS OF THE ASP BUREAU

### BACKGROUND

AN INITIATIVE took place over the course of 2013 to evaluate and rationalize the working methods of the subsidiary bodies of the ASP Bureau. Through informal consultations with states parties, the Court organs and NGOs in both The Hague and New York, *ad country* focal points Sweden, Switzerland and Ghana mapped out areas for improvement in order for the ASP to better fulfill its mandates. These areas included the need to improve the intersessional workload, the need to ameliorate the relationship and communication between the New York Working Group and The Hague Working Group, the lack of intersessional decision-making possibilities, and the need for enhanced expertise to feed into ASP discussions. Recommendations for larger structural reforms as well as small-scale practical changes to be implemented immediately were identified, including the better sequencing, scheduling and planning of facilitators meetings; facilitators' 'hand-over document' and 'guiding note' allowing for more focused discussions; limit demands for documentation from the Court; and the streamlining of ASP Secretariat's work.

### ASP DISCUSSIONS

The evaluation and rationalization of the working methods of the subsidiary bodies of the ASP Bureau was discussed in the context of the Omnibus Resolution. In this resolution the ASP endorses the recommendations set out throughout the year and welcomes the Bureau to continue to work on the matter in 2014.

In the context of the reform of the working methods of the ASP Bureau, the ASP adopted an amendment to Rule 29 of the Rules of Procedure of the Assembly of States Parties. The new rule rationalizes the start of the term of office of any newly elected Bureau and therewith ASP president. The Bureau so elected shall now assume its functions only at the conclusion of the ASP session at which it is elected, instead of the beginning of the session. This rule will take effect at the 14th session of the ASP, at which session a new Bureau and president will be elected.

### RELEVANT DOCUMENTS

(For clickable links, please visit the online version of this document at [http://www.coalitionfortheicc.org/documents/ASP12\\_report.pdf](http://www.coalitionfortheicc.org/documents/ASP12_report.pdf))

[Report of the Bureau: Evaluation and rationalization of the working methods of the subsidiary bodies of the Bureau](#)

[Resolution on Strengthening the International Criminal Court and the Assembly of States Parties, ICC-ASP/12/Res.8](#)

[Coalition Team on ASP Oversight Comments and Recommendations to the 12th Session of the Assembly of States Parties \(page 16\)](#)

## XV. THE INDEPENDENT OVERSIGHT MECHANISM

### BACKGROUND

AT THE EIGHTH session of the ASP in November 2009, the ASP established an independent oversight mechanism (IOM) in accordance with Article 112(4) of the Rome Statute, which was mandated to provide for the inspection, evaluation and investigation of the Court in order to enhance its efficiency and economy. At the time of its establishment, it was decided that the IOM's investigative function would be implemented immediately, while the inspection and evaluation functions would be brought into operation at a later stage. Over the course of the following years, states parties have extensively addressed the three mandates of the IOM in consultation with the Court.

### ASP DISCUSSIONS

A consensus was reached this year under the co-facilitation of Ambassador Jorge Urbina Ortega (Costa Rica) and Ambassador Álvaro Moerzinger Pagani (Uruguay) on the full operationalization of the IOM. The ASP adopted a stand-alone resolution on the IOM that will allow the Court to start the recruitment of a permanent Head of the IOM and subsequently its staff. The Head of the IOM will continue to work on the legal framework for the IOM and will submit it for consideration at the ASP in 2014. The resolution also highlights that the operational mandate of the IOM will be fully reviewed at the 15th ASP session in 2016.

The Temporary Head of the IOM in close consultation with the Court, the Staff Union Council and states parties, developed a draft anti-retaliation/whistle-blower policy that is now under consideration by the Court. Pending the adoption of this policy by the Court, the IOM will take action on any act of retaliation guided by a number of guidelines set out in the annex to the ASP resolution on the IOM.

### RELEVANT DOCUMENTS

(For clickable links, please visit the online version of this document at [http://www.coalitionfortheicc.org/documents/ASP12\\_report.pdf](http://www.coalitionfortheicc.org/documents/ASP12_report.pdf))

[Resolution on the Independent Oversight Mechanism, ICC-ASP/12/Res.6](#)

[Resolution on Strengthening the International Criminal Court and the Assembly of States Parties, ICC-ASP/12/Res.8](#)

[Report of the Bureau on the Independent Oversight Mechanism](#)

[Consolidated report of the Independent Oversight Mechanism on its activities during 2013](#)

[Coalition Team on ASP Oversight Comments and Recommendations to the 12th Session of the Assembly of States Parties \(page 16\)](#)

## XVI. LEGAL REPRESENTATION

### BACKGROUND

EFFECTIVE AND meaningful legal representation is essential to the realization of fair trial rights, and victims' rights to participation and reparation set out in the Rome Statute. These rights are also central to the legitimacy and purpose of the Rome Statute system. Throughout 2013, discussions on legal representation, under the facilitation of Ambassador Gyula Sumeghy (Hungary), took place between the Court, states parties and civil society organizations, with reference to the legal aid system. These discussions included an assessment of the ongoing implementation of changes to the Court's legal aid system, which was adopted at the 11th session of the ASP. The Hague Working Group also recommended that states parties and the Court prepare themselves for a possible reassessment of the legal aid system, with special regard to, indigence, the Office of Public Counsel for the Defense, as well as to victims' related legal aid issues, within a realistic deadline, once the first full judicial cycles are completed. This reassessment shall be supported by independent experts.

Other topics, which will be discussed in 2014, include the impact of OPCD on the legal aid system and a strategic plan for the defense.

### ASP DISCUSSIONS

At the 12th ASP session, states parties adopted paragraphs on legal aid as part of the omnibus resolution (see below). The Coalition together with Hungary also organized a successful side-event on 25 November addressing the impact of legal aid on victims participation and representation entitled 'Ensuring the voice of victims: Legal Aid and Victims'. The side event was chaired by Hungarian Ambassador Gyula Sumeghy and featured a panel of attorneys and NGO representatives.

### RELEVANT DOCUMENTS

(For clickable links, please visit the online version of this document at [http://www.coalitionfortheicc.org/documents/ASP12\\_report.pdf](http://www.coalitionfortheicc.org/documents/ASP12_report.pdf))

[Strengthening the International Criminal Court and the Assembly of States Parties, ICC-ASP/12/Res.8 at para. 34:](#)

[Coalition Team on Legal Representation Comments and Recommendations to the 12th Session of the Assembly of States Parties \(page 27\)](#)

[Report of the Bureau on Legal Aid](#)

[Report of the Registry on the Comprehensive Review of the Legal Aid System of the Court](#)

[Registry's single policy document on the Court's legal aid system](#)



## XVII. PREMISES

### BACKGROUND

THE CONSTRUCTION OF the ICC's permanent premises started in March 2013. The timeline for the completion of the premises, September 2015, remains on schedule, with the permanent premises expected to be ready for occupation by the Court in December 2015.

In 2014, with the construction project remaining €6.3 million under the approved budget of €190 million, the Oversight Committee of the Permanent Premises decided to invest €0.7 million of approved budget savings into a change of the design needed to expand the conference capacity of the permanent premises. This will create the possibility of the permanent premises being able to host meetings of the Assembly of States Parties from 2016.

In 2013 the Oversight Committee also revised the governance of the permanent premises project, to ensure that the transition project, which allows for the transition into the new premises, aligns with the construction project. The project director (Mr. Neil Bradley) will manage the overall project and report to both the Oversight Committee and the registrar. As a result, the project budget incorporated the transition costs, with the latter being removed from the regular ICC budget. As a consequence, the Oversight Committee set the overall cost of the unified permanent premises project at €195.7 million, including transition costs for €11.3 million, subject to a review which will aim at achieving a reduction of the permanent premises project budget to €193.7 million by June 2014. However, at present €5.7 million, will still need to be funded for the period of 2014-2016.

The Oversight Committee has proposed a funding mechanism to ensure that no further resources are requested from states parties for the transition project or, if any further requests are requested, that these requests for further contributions will not be made until 2017.

The proposed funding scheme for the incorporation of the transition project into the permanent premises project is therefore based on the following elements:

- (i) Savings in the construction budget (€5.6 million);
- (ii) The ICC's regular budgetary surpluses, pertinent to the financial years 2012 to 2014 (up to €5.7 million); and
- (iii) Advances from the cash deposits of the Court (2014-2015) until such surplus is available (2014 to 2016).



Rendering of the future courtroom of the ICC permanent premises. © Schmidt Hammer Lassen Architects

The timeline for the completion of the premises, September 2015, remains on schedule, with the permanent premises expected to be ready for occupation by the Court in December 2015

## ASP DISCUSSIONS

During the opening plenary session on Wednesday, 20th November 2013, the chair of the Oversight Committee, Mr. Roberto Bellelli (Italy), presented an oral report on the activities of the Committee. The report discussed the change to the design, in order to increase the flexibility of the premises, the project's costs, the transition of the ICC from the interim to the permanent premises and the governance of the transition project. The Chair stated that in 2014 the Committee is expected to finalize the consideration of the future long-term maintenance and capital replacement costs of the permanent premises.

Finally, the chair stated that the two-year mandate of the members of the Committee was due to expire on 21 December 2013. The chair stated that in the absence of any further nominations, it was proposed that the Assembly elects the 10 outgoing members of the Committee to continue in their posts.

During informal consultations on the permanent premises, chaired by Mr. Roberto Bellelli, held on 25 November 2013, states parties discussed the Report on the Activities of the Oversight Committee and the Resolution on the Permanent Premises. The Resolution discusses the scope of the project, the financial targets for 2014-2016 and the budget for 2014, the total cost of ownership, one-time payments and the governance and management of the project, amongst other topics.

The Resolution endorsed the recommendation of the Bureau, that the membership of the Oversight Committee, for the next term of 2014—2015, be comprised of; Kenya, Japan, Republic of Korea, Romania, Argentina, Venezuela (Bolivarian Republic of), Germany, Ireland, Italy and the United Kingdom.

On 28 November 2013, the Assembly adopted the resolution on the permanent premises and a side event was held by the permanent premises project director's office which showed the initial construction of the permanent premises and discussed a number of construction related issues, such as financing of the project.

## RELEVANT DOCUMENTS

(For clickable links, please visit the online version of this document at [http://www.coalitionfortheicc.org/documents/ASP12\\_report.pdf](http://www.coalitionfortheicc.org/documents/ASP12_report.pdf))

[Resolution on Permanent Premises, ICC-ASP/12/Res.2](#)

[Report on the activities of the Oversight Committee](#)

[Report of the Chair of the Oversight Committee on exercise of delegated authority](#)

[Oral report of the Chair on the activities of the Committee, Mr. Roberto Bellelli \(Italy\)](#)

## XVIII. SIDE EVENTS

### WEDNESDAY 20 NOVEMBER

#### Press conference by the president of the Assembly

ASP President Tiina Intelmann held a press conference in which she outlined the schedule of work for the Assembly session and discussed the main issues expected to arise—including the AU-requested debate on the indictment of sitting heads of state and the proposed amendments to the ICC Statute and Rules of Procedure and Evidence. The president also discussed topics such as the state of the ICC’s relationship with Africa, the process of amending the Rules of Procedure and Evidence, and the OTP’s request for a 2014 budget increase.



#### Reception on the occasion of the opening of the 12th session of the Assembly

In the evening, a reception was held to open the 12th Assembly of States Parties, which was sponsored by Estonia, Netherlands and Switzerland along with other contributing states parties.

### THURSDAY 21 NOVEMBER

#### Coalition for the International Criminal Court NGO press briefing

The Coalition held a press conference with, Brigid Inder, executive director of the Women’s Initiatives for Gender Justice; George Kegoro, executive director of the International Commission of Jurists-Kenya; Richard Dicker, director of the International Justice Program at Human Rights Watch; and Stephanie Barbour, head of office at the Amnesty International Centre for International Justice. Niall Matthews, Coalition communications officer, moderated the panel. The panelists touched upon the trials of Kenyan leaders; proposed amendments to the Rome Statute and the Rules of Procedure and Evidence; the debate over immunity for sitting heads of state; the Independent Oversight Mechanism; the prosecution of sexual and gender-based crimes through the ICC and at the national level; the need for the universal application of international justice; the declining number of victims applying to participate in ICC proceedings; and, Canada’s refusal to agree on a budget increase for the Court in 2014.



## FRIDAY 22 NOVEMBER 2013

### “Accountability in Syria: will a referral suffice?”

Human Rights Watch, Costa Rica, Switzerland, the Netherlands and Senegal hosted a meeting on accountability in Syria. The meeting featured a round table discussion moderated by Richard Dicker from Human Rights Watch. Participants included representatives from the United States, Liechtenstein, Finland, Denmark and the European Genocide Network. A legal advisor from Germany participated in his personal capacity. The discussion centered around ways of moving forward to bring accountability for crimes allegedly committed in Syria, including the potential role of the ICC, how to empower fair and impartial proceedings in national courts and possible non-judicial accountability mechanisms.

### Visit to the ICC

A visit to the ICC was conducted for ASP delegates and NGO members, which included a presentation and the opportunity to attend a hearing.

### Practice and implications of Regulation 55 of the Court’s regulations

The War Crimes Research Office of the American University Washington College of Law, the International Bar Association and Serbia held an event on the “Practice and implications of Regulation 55 of the Court’s regulations”, which included the launch of a report on “Regulation 55 and the Rights of the Accused at the International Criminal Court.”

### Coalition meeting for Latin American and Caribbean States on cooperation with the ICC



The Coalition held a meeting on cooperation with the ICC for Caribbean and Latin American states. Speakers included Norwegian Ambassador Anniken Ramberg Krutnes, facilitator of the Hague Working Group on Cooperation; Brigitte Suhr, director of the Coalition’s regional programs; Sunil Pal, head of the Coalition legal section; Antonia Pereira de Sousa, associate cooperation officer with the Office of the Prosecutor (OTP); Alexander Khodakov, special adviser on external relations and cooperation, ICC Registry; Montserrat Carboni, permanent representative of FIDH to the ICC; and Luis Toro, senior legal officer at the Organization of American States (OAS) Department of International

Law. States present included Costa Rica, Guatemala, Chile, Mexico, Argentina and Honduras. Topics discussed included, the need for relocation and interim release agreements between the ICC and states; OTP work on cooperation with the UN Security Council and Latin American and Caribbean states; and OAS efforts to promote cooperation with the Court and universality in the region. Civil society in attendance welcomed the strong statements on the integrity of the Rome Statute made by Latin American and Caribbean states during the previous day’s discussion of immunity for sitting heads of state.

### Trust Fund for Victims side event launching the external evaluation of the TFV programs in Northern Uganda and the Democratic Republic of Congo, towards a perspective of upcoming interventions

The TFV, Sweden and Finland co-hosted an event to launch the external evaluation of TFV programs

in Northern Uganda and the DRC, which was conducted by the International Centre for Research on Women. The event, chaired by TFV Secretariat Executive Director Pieter de Baan, included an assessment of the impact of the TFV's work, discussion of areas for improvement and recommendations for the TFV to implement for its 2014-2017 strategic plan.

#### **Africa and the ICC: Fostering greater cooperation with the diplomatic sphere**

Africa Legal Aid hosted a meeting entitled, "Taking the Higher Ground in the Debate on the ICC and Africa: Fostering Greater Cooperation with the Diplomatic Spheres." Speakers included William Pace, convenor of the Coalition for the ICC; Evelyn A. Ankumah, executive director of Africa Legal Aid; George Kegoro, executive director of the Kenya Section of the International Commission of Jurists; Amady Ba, head of OTP's Jurisdiction, Complementarity and Cooperation Division; Anniken Ramberg Krutnes, ambassador of Norway to the Netherlands and facilitator of the Hague Working Group on Cooperation; Roland Amoussouga, chief of external relations and strategic planning for the International Criminal Tribunal for Rwanda; and Hakan Emsgard, ambassador of Sweden to the Netherlands. Topics discussed at the event include: cooperation, the role of civil society, the lack of space in the African Union for non-state actors to express their views; public support for the ICC in Kenya; the politics of the ICC-Africa relationship; Hague Working Group activities; the need to work with civil society and other stakeholders to improve cooperation and share best practices; the ill effects of non-cooperation; and reinforcing the link between complementarity and cooperation.

#### **Effective and meaningful participation of victims before the ICC: the link between application, participation and representation**

Avocats Sans Frontieres (ASF) and REDRESS co-hosted a side event on "Effective and meaningful participation of victims before the ICC." ASP President Tiina Intelmann delivered remarks on the issue. Redress Deputy Director, Mariana Goetz moderated a panel that included: Mariana Pena, ASF consultant; Jean-Philippe Kot, expert on international and transitional justice; Fiona McKay, chief of the ICC Victims Participation and Reparations Section; and Norbert Wuhler, chair of the Independent Expert Panel on the Participation of Victims at the ICC. Mr. Wuhler discussed possible ways to improve victim participation at the ICC. Ms. McKay described the Registry's experience with victims as well as new approaches to participation. Ms. Pena and Mr. Kot discussed victim participation and representation in the Bosco Ntaganda case.



#### **The crime of aggression: experiences of early ratifiers**

The Permanent Mission of the Principality of Liechtenstein to the United Nations, New York and The Global Institute for the Prevention of Aggression hosted a side event on the experiences of early ratifiers of the Kampala amendments and the crime of aggression amendment. Opening remarks were made by Mr. Christian Wenaweser, permanent representative of Liechtenstein to the United Nations and Mr Don Ferencz, convenor of the Global Institute for the Prevention of Aggression. The panelists

comprised: Dr. Athaliah Molokomme, attorney-general, Botswana, Mr. Pascal Hector, deputy director general for legal affairs, Foreign Office, Germany, Mr. Roman Kirn, ambassador of Slovenia to the Kingdom of the Netherlands, Mr. Gerald Thompson, Ministry of Foreign Affairs, Trinidad and Tobago and Dr. Maria del Lujan Flores, legal adviser, Ministry of Foreign Affairs, Uruguay. The event was moderated by Mr. Stefan Barriga, deputy permanent representative of Liechtenstein to the United Nations. Speakers emphasized that the early ratification of the amendments expressed a public commitment to the International Criminal Court, the Rome Statute and the rule of law. States had chosen different paths regarding implementation, and it was emphasized that ratifying first and implementing later may be a

good way to proceed, especially given the delayed activation of the amendments. Speakers emphasized the usefulness of various resources related to the Kampala amendments during the domestic process, in particular the handbook available at [www.crimeofaggression.info](http://www.crimeofaggression.info).



#### **Press Conference with Kenyan Civil Society Organizations**

Representatives from Kenyans for Peace Truth and Justice and ICJ Kenya met with the press to address the state of domestic investigations in Kenya with respect to the 2007/2008 post-election violence and the Kenyan government's positions at the ASP.

#### **Universality and full implementation of the Rome Statute: challenges and best practice**

The co-focal points for the Plan of Action, Cyprus, Japan, Romania, along with the UK and the Secretariat of the ASP sponsored a side event where, Dr. Bogdan Aurescu, state secretary in the Romanian Ministry of Foreign Affairs, made opening remarks. Panelists included Kirsten Meersschaert Duchens, Coalition regional coordinator for Europe; Dr. David Donat Cattin, secretary-general designate of Parliamentarians for Global Action; Judge Silvia Fernández de Gurmendi, President of ICC Pre-trial Chamber I; Ambassador Tina Intelmann, ASP president; Baroness Vivien Stern, member of the British House of Lords; and Christian Behrmann, EU fo-



cal point for the ICC. Dr. Claus Kress of the University of Köln served as moderator.

Each speaker discussed his or her organization's plans of action and activities. Topics of discussion included the need to increase the number of ICC states parties; the role of civil society in encouraging ratification and implementation; the role of regional organizations; and the Coalition's campaign to promote ratification and implementation through the Universal Periodic Review. The Coalition also launched its booklet on the status of Rome Statute ratification and implementation around the world.

#### **Coalition for the International Criminal Court and City of The Hague Reception**

In the evening, the Coalition and the City of The Hague co-hosted a reception. Joziás J. van Aarsten, mayor of The Hague and ASP President Tiina Intelmann, delivered remarks along with Coalition Con-

venor, William Pace. The Trust fund for Victims also held a reception, co-hosted by Finland and Sweden that same evening.

### **SATURDAY 23 NOVEMBER 2013**

#### **Coalition Meeting with African governments and civil society**

The Coalition held a regional meeting with civil society and government representatives from Africa. The co-chairs were the Coalition's Stephen Lamony and Human Right Watch's Elise Keppler. The meeting provided the opportunity for civil society to speak about their activities in Africa, and for African governments to express their views and concerns.



Lambert Nigarura presented the work of the Burundi Coalition for the ICC in promoting accountability and the work of the Court. George Morara, Kenyan Human Rights Commission, talked about the need for accountability in Kenya for the 2007-08 post-election violence. Dr. Abiola Akiyode, Nigeria Coalition for the ICC, explained civil society's actions around the recent visit of Sudanese President Omar Al-Bashir to the country. Eugène Bakama, Club des Amis du Droit du Congo, presented on the situation in the Democratic Republic of Congo and the need for greater accountability for crimes committed in the course of the conflict in the east of the country. A Sudanese civil society representative spoke about the lack of local justice in Sudan and the need for international justice to fill the impunity gap. Kwamchetsi Makokha, part of the Kenyan civil society delegation, gave a presentation on the public discourse on the ICC in Kenya.

The discussion focused around: the situation in Kenya, the outcomes of the recent African Union (AU) extraordinary summit on the ICC, proposed amendments to ICC Statute and rules, the role of civil society in advocating for justice on behalf of victims, levels of public support for the ICC process in Kenya, the perceived bias of the ICC against Africa, the need for constructive criticism of all parties—the ICC, states and civil society, the need for greater interaction between the AU and civil society, and the need to continue dialogue to enhance mutual understanding.



Kenyan Director of Public Prosecution Keriako Tobiko, Attorney General of Kenya Githu Miugai, representatives from Uganda and South Africa, Coalition Convenor William Pace, Parliamentarians for Global Action, ICJ-Kenya's George Kegoro and Njonjo Mue, Kenya civil society representative, were among those to make interventions from the floor.

#### **Complementarity in practice—examples from Kenya**

The event, co-hosted by Germany and Kenya, was moderated by Bettina Ambach, director of the Wayomo Foundation. Panelists included: Pascal Hector, German head of international legal affairs; Alex Whiting, professor at Harvard Law School; Githu Miugai, Kenyan attorney general; Sam Kobia, Judicial

Service Commission Kenya; Athalia Molokomme, Botswanan attorney general and Njonjo Mue, Kenya civil society representative.

The discussions touched upon the central role of complementarity to the ICC system, the prosecution of international crimes in Kenya including mid-level and lower-level perpetrators, a planned International Crimes Division in Kenya, government cooperation with the ICC, the number of cases related to Kenya's post-election violence, witness protection, the need for victims concerns to be addressed, the recent vote in Kenya's parliament and senate to withdraw from the Rome Statute and repeal its International Crimes

Act, and, the challenges and complexities in the African context with regards to complementarity.



### **Accountability in Syria**

Opening remarks at this event, co-hosted by No Peace Without Justice and Italy, were delivered by Haytham al-Maleh, Syrian human rights leader and president of the Legal Office of the Syrian National Coalition. Suheir Atassi, vice president of the Syrian National Coalition and head of the Assistance Coordination Unit and Abdul Hadi Habal, Syrian human rights activist and NPWJ Syria team leader, made interventions. Discussions revolved around the lack of a coherent response by the international community to the crisis in Syria

and the need for an international criminal tribunal to prosecute alleged crimes. Participants included Richard Dicker of Human Rights Watch; Stephen Rapp, the US ambassador-at-large for War Crimes Issues; Brigitte Chelebian of Justice Without Frontiers; and Stefan Barriga, the deputy representative from Liechtenstein, among others.

### **Kenya and the ICC: ensuring redress for victims and upholding the Rule of Law**

Moderated by Paulina Vega, FIDH vice-president, panelists in this event included: George Morara, Kenya Human Rights Commission; Fergal Gaynor, legal representative for victims; Amir Suleiman, African Center for Justice and Peace Studies; George Kegoro, ICJ-Kenya. During this event, the rights of victims, of Kenya's 2007-08 post-election violence, to participate in ICC proceedings were underlined. Panelists also discussed the problems that victims face at present. They said that there continues to be a lack of support and comprehensive reparations for victims in Kenya, in the west of the country in particular.

Many still fear to return to their lands and need credible prosecutions. Speakers referred to a recent opinion poll conducted in Kenya that found that the PEV victims continue to support the ICC. Kenyan civil society organizations called for no further delay in the ICC cases. There was also a call for the Trust Fund for Victims to start its activities in Kenya as soon as possible.



### **Coalition regional meeting with European governments**

In the afternoon the Coalition, Lithuania and the European External Action Service (EEAS) hosted a meeting with European governments. The event was moderated by Coalition Regional Coordinator for Europe, Kirsten Meerschaert-Duchens and co-



hosted by Ridas Petkus, COJUR-ICC chair, on behalf of Lithuania—holding the rotating presidency of the Council of the European Union, and Christian Behrmann, EEAS,

The speakers from civil society were: Eugène Bakama, Club des Amis du Droit du Congo; Lambert Nigarura, Coalition Burundaise pour la CPI; and Evelyn Balais-Serrano, Forum Asia, Thailand. States representatives from Croatia, the Netherlands, UK, Serbia, and the EU Genocide Network participated.

The event provided the opportunity for a discussion on the Rome Statute in Europe, and the role European governments and the EU and can play to support the ICC and international justice around the world. The meeting also included interventions from other civil society representatives from all regions of the world and other government delegates.

#### **Enquiry and fact-finding commissions: a potential role for the IHFFC?**

This event, co-hosted by Belgium, the United Kingdom and Switzerland, was moderated by Gerard Dive, federal coordinator for Belgian cooperation with the ICC and tribunals. Panelists included Maria Theresa Dutti, regional legal adviser of the International Committee of the Red Cross; Professor Eric David, member of the International Humanitarian Fact-Finding Commission (IHFFC); and Colonel Charles Garraway, vice-president of the IHFFC. Topics discussed included the increasing role of fact-finding commissions and the scope for a potential relationship with the ICC system.



#### **Coalition Meeting with Asia-Pacific governments**

In the afternoon, the Coalition held a regional meeting with civil society and government representatives from Asia-Pacific. Evelyn Balais Serrano, director of FORUM-ASIA, chaired the session and ICC President Sang-Hyun Song gave the keynote address. The participants discussed the progress and challenges to ratification and implementation of the Rome Statute in the region, which include bilateral immunity agreements that exist between the United States (US) and a number of states in the region. John Washburn, American Coalition for the ICC, gave a presentation on developments in the US position on the ICC. Virginie Amato, Coalition senior advocacy officer, gave a briefing on means of using the United Nations (UN) Universal Periodic Review process to encourage states subject to review to ratify or implement the Rome Statute and the Agreement on Privileges and Immunities. The Thai Alliance for Human Rights also spoke on efforts to encourage Thailand to join the Rome Statute. States in attendance included Japan, China, India, New Zealand, Australia and the Philippines.





## MONDAY 25 NOVEMBER

### Quality control in Fact-Finding and complementarity online

The event, co-hosted by Colombia, Denmark, Finland, Germany, Norway, Switzerland, the European Commission and the Canadian Internet Law Resource Page, was chaired by Martin Sorby, head of the International Humanitarian and Criminal Law section of the Norwegian Ministry of Foreign Affairs, and featured the launch of Morten Bergsmo's book, 'Quality Control in Fact Finding.' Speakers included Serge Brammertz, prosecutor from the International Criminal Tribunal for the Former Yugoslavia (ICTY); Judge Liu Daqun from the ICTY; Judge David Re from the Special Tribunal for Lebanon; Professor Martin Scheinin from the European University Institute; Professor Charles Garraway, vice president of International Humanitarian Fact Finding Commission; Professor Dov Jacobs from Leiden University; Wolfgang Kaleck from the European Center for Constitutional and Humanitarian Law; Dr. Simon De Smet from the ICC Chambers; and Herman von Hebel, registrar of the ICC.

The second part of this session focused on online legal resources, which were discussed by Professor Morten Bergsmo and Professor Mark Klamberg from Uppsala University. The third part of the session focused on the Case Matrix Network (CMN) and included speakers Emilie Hunter; Teimuraz Antelava of the Ministry of Justice of Georgia; Professor Olympia Bekou; Alexander Ramelli from Colombia; and Ilia Utmelidze from the CMN Knowledge Hub.

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### Mutual legal assistance and extradition for domestic prosecution of the most serious international crimes

This panel discussion event hosted by Belgium, was chaired by Gérard Dive, head of the Belgian Ministry of Justice's International Humanitarian Law Unit. Panelists included Joan Kagezi, head of the War Crimes Prosecution Section of the International War Crimes Section of the High Court of Uganda; Hester van Bruggen, prosecutor of the Dutch War Crimes Unit; and Quirien van Straelen, coordinator of the Dutch Ministry of Security and Justice.

The panelists outlined the various issues and challenges encountered in the prosecution and investigation of international crimes—in which cases witnesses, perpetrators and evidence are often scattered all over the globe. They indicated that in order to overcome these barriers—which mostly originate from difficulties carrying out multinational investigations and achieving extradition, as well as ensuring the protection and involvement of witnesses and interpreters—an instrument for mutual legal assistance and extradition for serious international crimes should be created with as many countries as possible involved. Preliminary work has already taken place to engage countries in talks about such an instrument, and much support was indicated during the panel discussion.

The event also included an update on the work of the Uganda War Crimes Division, and update on treaties, protocols and informal mechanisms for cooperation and mutual legal assistance in East Africa and

the Great Lakes region, and insight into the Netherlands' approach to mutual assistance and extradition for grave crimes. Interventions from the floor touched up the relative experiences of different countries.

### **Political will for complementarity**

This event, co-hosted by Sweden and the Open Society Justice Initiative, featured a panel comprised of Mohamed Karim Ben Becher, ambassador of Tunisia to the Netherlands; Carlos Castresana, former commissioner of the International Commission Against Impunity in Guatemala; Kamari Clarke, professor of Anthropology and International and Area Studies at Yale University; and Ambassador David Scheffer, special expert on United Nations Assistance to the Khmer Rouge Trials. The panel was moderated by Open Society Justice Initiative Executive Director James Goldston, and introductory remarks were made by Swedish Ambassador Håkan Emsgård.

Panelists discussed examples of national trials from different countries and their respective fields of work, with discussions centered around the necessity of political will at the international level and a sense of ownership over the process at the national level. They also discussed the need for international support for national complementarity programs that take into account local context on the ground. Additionally, participants explored driving forces behind the current impetus towards prosecution of international crimes at the national level.

The event also focused on the political challenges faced by those involved in shaping and implementing national prosecutions for grave crimes and the ways in which different actors, including the international community and civil society, can demonstrate political will and overcome political obstruction.

### **Ensuring the voice of victims: Legal Aid and Victims**

This meeting, co-hosted by Hungary and the Coalition, was chaired by Hungarian Ambassador Gyula Sumeghy and featured a panel of attorneys and NGO representatives. Paulina Massida, principal counsel for Office of the Public Counsel for Victims, spoke about the challenges of victims representation and the need to recognize the differences between the representation of victims and defendants, as well as the impact of those differences on the ICC's legal aid system. Montserrat Carboni, permanent representative to the ICC of the International Federation for Human Rights (FIDH), addressed the broader international principles of legal aid and the need for states parties to share their own expertise and lessons-learned in domestic legal aid systems in order to improve the ICC system. As external legal representatives for victims in the Lubanga and Kenyatta cases respectively, Luc Walley and Fergal Gaynor highlighted practical challenges faced in situation countries when representing large numbers of victims spread over vast geographical areas. They also provided insight into possible institutional improvements to the ICC's existing legal aid system for victims.



### **Reception Commemorating the International Day for the Elimination of Violence Against Women**

To mark the International Day for the Elimination of Violence against Women, Women's Initiatives



for Gender Justice and the Swedish Ministry for Foreign Affairs held a reception with presentations delivered by ICC Prosecutor Fatou Bensouda; Swedish Ambassador to the Netherlands Håkan Emsgård and Women's Initiatives Executive Director Brigid Inder.

## **TUESDAY 26 NOVEMBER**

### **Towards a more effective and efficient International Criminal Court: how best to expedite the proceedings” Study Group on Governance, Cluster I**

This side event featured a panel discussion moderated by Liesbeth Lijnzaad, legal advisor for the Netherlands Ministry of Foreign Affairs. Panel participants were ICC Vice President Judge Sanji Monageng; OTP Prosecutions Coordinator Fabricio Guariglia; Hakan Friman, deputy

director-general of the Swedish Ministry of Justice; and David Donat Cattin, secretary-general designate of Parliamentarians for Global Action (PGA).

Judge Monageng, who acts as chair of the Working Group on Lessons Learned, gave an introduction to the process of expediting judicial proceedings through the ASP's Study Group on Governance. She stressed that the process to amend the Court's Rules of Procedure and Evidence is complex and long as there is a need for thorough consideration and extensive consultation with many stakeholders.

Panelists addressed challenges to expediting proceedings at the ICC.

#### **Complementarity in Libya**

The delegation of Italy, which hosted the event along with No Peace Without Justice (NPWJ), made introductory remarks to begin this meeting, which was chaired by Wafa B.H. Omar, director of international programs at the Al-Kawakibi Democracy Transition Center (KADEM). Scheduled remarks were made by Fathi Salem Abouzakhar of the Libyan Centre for Strategy and Future Studies; Rhianon Smith, Libya program officer for NPWJ; and Marieke Wierda of the University of Leiden. NPWJ Secretary-General Niccolò A. Figà-Talamanca also participated in the discussion.



Panelists discussed recent efforts to promote transitional justice in Libya by local civil society groups, as well as NPWJ's work to raise the capacity of local actors in Libya and the region to deliver justice in accordance with international human rights standards. NPWJ has recently published a handbook entitled, "Supporting Trial Monitoring in Libya."

The ICC cases against Saif Al-Islam Gaddafi and Abdullah Al-Senussi were also discussed, including the admissibility decisions and the domestic proceedings against the two. Libyan cooperation with the ICC was also on topic, as well as the need for victims and affected communities inside Libya to have access to informa-

tion on the ICC. Libya's domestic situation was also considered, including the government's commitment to justice for crimes committed during and after the 2011 revolution, the capacity of the Libyan judicial system and difficulties in prosecuting members of the revolutionary forces. Finally, lessons from Libya were considered for Syria.

Representatives from Amnesty International, Italy, the Office of the Prosecutor (OTP), the Office of Public Counsel for Victims and Syrian civil society each participated with interventions from the floor.

### **Cooperation with the ICC: how to strengthen national institutions?**

This side event, co-hosted by France and l'Organisation internationale de la Francophonie (OIF), featured a panel moderated by Professor Cheikh Tidiane Thiam, ambassador and technical advisor to the Senegalese minister of foreign affairs. Panelists included Amady Ba, head of the International Cooperation Section of the ICC Office of the Prosecutor (OTP); Francois Falletti, attorney general, Court of Appeal of Paris, secretary general of the Association Internationale des Procureurs et Poursuivantes Francophones (AIPPF); Francis Dako, Coalition coordinator for Africa; and Claude Choquet, first vice president in charge of investigations at the Crimes against Humanity and War Crimes and Misdemeanors of the Tribunal de Grande Instance of Paris.

Ba spoke about the system of cooperation and complementarity at the ICC, giving different examples, including non-situation countries, countries where national authorities are prosecuting crimes, situations referred to the ICC and non-states parties. He stated that 80% of the Court's cooperation requests are fulfilled. Falletti presented the work of the AIPPF, which was created in 2009 in Cameroon as a special institution for francophone countries due to a lack of French-language documentation. The organization's general purpose is to strengthen judicial cooperation and exchange best practices.

Dako gave concrete examples of cooperation between Francophone countries and the Court and underlined some of the reasons given for non-cooperation. He said that African states in general are cooperative with the Court, but that the political and societal context in certain parts of the continent, work against this. There are also operational and logistic challenges in places such as the DRC. In order to improve cooperation, Dako suggested that: the ICC should better understand local contexts; states exiting crises should integrate the Rome Statute into state-building processes; and the UN Security Council should address non-cooperation when it happens and support the Accountability, Coherence and Transparency (ACT) reform initiative.

Choquet gave an update on a division dealing with grave crimes in the French court system. Created in 2012, it has judicial and police functions. It has dealt with 40 cases, the majority of which were related to the Rwandan genocide. The first case will go to trial next year. The division has international investigators that and is looking to increase cooperation with the ICC for information and best practices.

### **Mechanism to Boost Political Will for Grave Crimes**

This event was led by representatives of Sweden and Eric Witte of the Open Society Justice Initiative (OSJI), and served, as an introduction to a proposal for a coalition to encourage and build political will for domestic prosecutions of grave crimes. The proposal centered on the creation of a network of like-minded states and civil society organizations that would improve the flow of information about diplomatic and advocacy options in order to facilitate the building of political support for genuine domestic proceedings. The initiative is envisioned as a web platform that would help overcome the lack of

coordination and communications channels between various actors, as well as a general lack of knowledge. Interventions were made by Claire Duffy of the International Bar Association and the Coalition's William Pace and Kirsten Meerschaert Duchens, as well as representatives of the president of the ASP and others, who voiced concerns and made recommendations to improve upon the proposal.

**Sitting Heads of State on Trial: A leap forward for the ICC or the beginning of the end?**

In the evening, Reporting Kenya, IWPR and the Wayamo Communication Foundation held an open debate entitled, "Sitting Heads of State on Trial: A leap forward for the ICC or the beginning of the end?" Debate panelists included PGA's David Donat Cattin, Kenyan transitional justice expert Njonjo Mue, Professor Sarah Nouwen of the University of Cambridge Faculty of Law and Ambassador Gerald Thompson of Trinidad and Tobago. IWPR Africa Editor Simon Jennings served as moderator. The debate can be viewed on YouTube at <http://www.youtube.com/watch?v=GgeibJ7RhSE>.

**Reception and Exhibition: Muffled Voices: Who are the Real Victims in Kenya**

A reception and exhibition entitled, "Muffled Voices: Who are the Real Victims in Kenya?" was co-hosted by the Kenya Human Rights Commission (KHRC) and Journalists for Justice, Kenya. The exhibit featured images of the post election violence and poetry from Kenyan poets on the impact of the violence and ICC trials.

**WEDNESDAY 27 NOVEMBER**

**Witness protection: challenges lessons learned and ensuring an effective regime for the International Criminal Court**

The discussion, co-hosted by Colombia, Norway, Switzerland, International Commission of Jurists-Kenya (ICJ-Kenya) and OSJI, regarding the need to advance witness protection and to improve investigation and prosecution standards, was moderated by James Goldston, executive director of the OSJI. Panelists included ICC Registrar Herman von Hebel; Anniken Ramberg Krutne, ambassador of Norway to the Netherlands and The Hague Working Group facilitator on cooperation; Roland Amoussouga, chief of external relations and strategic planning at the ICTR; and Njonjo Mue, transitional justice expert and board member at the International Commission of ICJ-Kenya.

Von Hebel shared insights on the Court's practices, stating that effective witness protection will encourage more participation in proceedings. He noted that shortcomings in the current system have been identified and that further dialogue with the Office of the Prosecutor (OTP) will foster greater cooperation between it and the Registry. Ambassador Ramberg Krutne emphasized that states parties can contribute to the protection of witnesses by entering into relocation agreements with the Court and providing funding. Amoussouga stressed the need to implement clear protocols between the OTP and defense counsel and emphasized the necessity for the Registry—as a neutral organ—to treat witnesses equally and impartially. Mue elaborated on current witness protection measures taken in Kenya and the role played by civil society. He said that Kenya's witness protection mechanism is heavily underfunded and civil society groups filling in the gaps do not have the proper training, which can lead to miscommunication and expectations that cannot be met.

The director of the Witness Protection System in Kenya, Alice Osebo Ondieki, and the legal advisor of the Bulgarian embassy, Zlatko Dimitrov, as well as ICJ-Kenya's George Kegoro, made interventions from the floor.

**THURSDAY 28 NOVEMBER****Launch of expert paper and panel on modes of liability: the jurisprudence and practices at the ICC**

Women's Initiatives for Gender Justice launched an expert paper on the ICC's jurisprudence and practice regarding modes of liability and how they have been applied to charges of sexual and gender-based crimes. Panelists included Brigid Inder, executive director of Women's Initiatives; Gabrielle McIntyre, chief de cabinet, Presidency of the ICTY; Fabricio Gauriglia, prosecutions coordinator; Kevin Hughes, senior legal advisor, Appeals Chamber, SCSL and Kate Orlovsky, legal officer at Women's Initiatives. Opening remarks were provided by Mr. Shehzad Charania, legal adviser at the British embassy in The Hague and head of the International Law Team. The topics discussed included jurisprudential developments, similarities and differences regarding interpretations of modes of liability at three international courts.

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