REPORT

ON THE

The Twelfth Assembly of States Parties of the International Criminal Court

The Hague, The Netherlands
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Summary
From 20 to 28 November 2013, the Assembly of States Parties (ASP) of the International Criminal Court (ICC) met in The Hague for its twelfth annual session. The ASP was attended by States Parties, observer States, international organisations and non-governmental organisations, including a delegation from No Peace Without Justice (NPWJ), which was headed by its Secretary-General Niccolò Figa-Talamanca. NPWJ convened two side-events co-sponsored by the Delegation of Italy on: “Accountability for Syria”, which was held on 23 November 2013 and “Complementarity in Libya”, which was held on 26 November 2013. On 22 November 2013, NPWJ also contributed, through an oral statement to the ASP plenary session, to the panel discussion entitled “Beyond Kampala: reaffirming the value of the victims’ mandate of the Rome Statute System”, delivered by Senior Program Associate Greta Barbone.

The Twelfth Session of the Assembly of States Parties ended on a relatively positive note. The ASP again gave good and solid directions to the Court in respect of its outreach program, including underscoring the importance of early outreach, and its field presence. This is extremely important to keep the ICC focused on those it was established to serve, namely the victims and affected communities. The ICC’s program budget for 2014 was passed despite the indications we had seen that it may be a contentious and difficult discussion, although we are concerned with the suggestion from one State that there will be a focus on “zero nominal growth” next year. NPWJ considers this to be a dangerous approach and urges all States to continue to resist it and to focus instead on ensuring the ICC has the resources it needs, while also ensuring it uses those resources efficiently and effectively.

Nonetheless, these are important results that will help the Court maximise its impact in the coming year and NPWJ encourages the Court to make the most of what has been achieved during the ASP to make the year 2014 the best year yet for the ICC and for the delivery of justice to victims and affected communities. NPWJ is disappointed by the new Rules that were adopted, which skirt dangerously close to contradicting the Rome Statute. Nonetheless, NPWJ is pleased that they fall short of making a distinction between defendants based on their official capacity, which would have been in direct violation of the Rome Statute. The most important thing now will be to see how these Rules are implemented in practice to ensure they are not susceptible to an interpretation that negates the fundamental principle of equality of all before the law.

There were fruitful discussions between all States Parties, alongside observer States and civil society, on the issues that prompted the Extraordinary AU Summit in October, including on the issue of irrelevance of official capacity, which is a fundamental principle of the Rome Statute, and what this means in practice for a sitting Head of State or Government. There are many things that need to be discussed in further detail but this dialogue was a positive development and a sign of the strong commitment of all States Parties to the Rome Statute system. NPWJ hopes these channels of communication, involving all stakeholders, will remain open and that there may also be encouraging developments in the near future on opening an ICC Liaison Office with the AU in Addis Ababa.

1. Opening session
The Twelfth ASP of the ICC gathered in The Hague from 20 to 28 November 2013. Hundreds of government delegates from States Parties and from observer States participated in the session, alongside over 100 NGO representatives and representatives of international organisations.

On Wednesday 20 November, during the opening plenary session, the ASP adopted the agenda, organised its work and heard reports from the Court and the Trust Fund for Victims. Ms Tiina
Intelmann, President of the ASP, chaired the opening session, which included remarks from Mr Miguel de Serpa Soares, the Under-Secretary General for Legal Affairs and Legal Counsel at the United Nations, on behalf of UN Secretary-General Ban Ki-moon; Mr Abdou Diouf, Secretary-General of l'Organisation Internationale de la Francophonie; Ms Navi Pillay, UN High Commissioner for Human Rights; Judge Sang-Hyun Song, President of the ICC; and Ms Fatou Bensouda, ICC Prosecutor.

The Under-Secretary General for Legal Affairs stated that the Court faces many challenges, including the lack of universality of the Statute, bringing the accused to judgment and delivering justice to the victims without undue delay. The Court has had to struggle to marshal the necessary resources to investigate simultaneously eight situations while conducting preliminary examinations on a further eight situations. The Secretary General of la Francophonie stressed that every effort should be done in order to ensure that the complementarity principle fulfills its potential to try alleged perpetrators of serious crimes. Ms Navi Pillay drew the attention to the *raison d'être* of the Court and to complementarity. The Court will only prosecute individuals if they are not held accountable for crimes by national jurisdictions. The Rome Statute system is based on the notion of sovereignty, which is centred on the protection of individuals and human rights. No one should be above the law, and the Court should practice non-selectivity. She also pointed out the need to acknowledge victims and victims’ rights. The Court needs unequivocal political support.

Judge Song, the President of the ICC, spoke about the successes of the Court during the last calendar year, including the surrender and transfer of Bosco Ntaganda to the Court, as well as the ongoing procedures involving Uhuru Kenyatta, Joshua Sang, and Mr Ruto from Kenya. He noted that with respect to the Kenyan situation, the ASP was the proper venue to address challenges and issues. Judge Song further observed however, that the proposed amendments to the Rules of Procedure and Evidence (RPE) should not be taken lightly. He was glad that the Assembly would devote special sessions to the topics of victims and cooperation. The ICC is wholly dependent on the cooperation of States for the effective fulfilment of its mandate, from facilitating the investigation of potential crimes and securing apprehension of suspects to the freezing of assets and enforcing sentences. The Court is immensely grateful for the extensive cooperation that it receives, but they are all aware that there are some important gaps and problem areas and States Parties in particular should address these. He stressed that the relocation of witnesses is a particularly burning need and one that is directly related to current proceedings. While they have made some progress this year, much more support is needed. He encouraged all States Parties that had not done so yet to engage with the Registry with a view to sharing the joint responsibility of providing security to witnesses through a framework agreement on relocation. With respect to the budget, Judge Sang noted that the aim was to maximise the pace and efficiency of procedures under budgetary constraints. He also stated that the Court has been rigorous in implementing its budget. On the one hand, Judge Sang said that the Court’s budget warrants an increase, especially with respect to the budget of the Office of The Prosecutor (OTP) and the Registry. On the other hand, he recognised that the efficiency of the Court needed to be strengthened.

Ms Fatou Bensouda, the Prosecutor of the Court, remarked that the OTP constructed a new strategic plan, which was published five weeks ago. Some of the items included in the plan were trial readiness, more efficient investigations, expansion of the way evidence is collected and who the Court will investigate (not only high level officials). The plan has two distinct goals. First, it seeks to end impunity by encouraging national investigations. Second, a code of common conduct in the OTP was laid out. Ms Bensouda stated that the OTP needs more resources to conduct its work and stressed that the aim of the OTP is to combine the work of the Court as a judicial organ with its
close cooperation with States Parties. She highlighted that political considerations will play no part in OTP decision-making and recalled the principle of complementarity under which States have the primary responsibility to investigate and prosecute individuals.

Mr Motoo Noguchi, the Chair of the Board of Directors of the ICC Trust Fund for Victims (TFV), observed that the TFV was active in the Democratic Republic of the Congo, Uganda and the Central African Republic. The TFV had to suspend its activities in the CAR due to security reasons. In the DRC, it provided assistance to 5000 victims. Overall, the aim of the TFV is to provide funds for programs involving physical, psychological and social rehabilitation. Mr Noguchi asked States to support the Fund financially and thanked Sweden and Finland for their contributions. The Fund has received support from the Ferencz Foundation, the Busy Bee Foundation and private donors in Europe and the US.

Mr Roberto Bellelli addressed the Assembly regarding the permanent premises of the Court. He highlighted that 184 million euros have been spent out of 190 million allocated for the project. The project is designed to be a unified project, and 13 States have contributed to it.

Finally, President Intelmann addressed the Assembly. She stated that there were two proposal put forth dealing with amendments to the RPE. She remarked that there are proposals to change some of the rules of procedure of the ASP as well. Further, a new President will be elected in 2014 and therefore there are consultations on the new President as well. With respect to complementarity, cooperation and universality, Ambassador Intelmann observed that the President and the Bureau worked together to address issues of non-cooperation. They were involved in engagement and dialogue with regional organisations, including the AU and many others. The aim of the Bureau and the President were capacity-building and cooperation.

2. General Debate
The General Debate took place over a span of three working days, punctuated by a special segment requested by African States following the Extraordinary Summit of the African Union in October 2013. Members of some observer States and NGOs also intervened during the plenary held during the second week of the meeting. Overall, the general debate was well attended, with a number of high-level Government representatives including Ms Emma Bonino, Italian Minister of Foreign Affairs; Mr Frans Timmermans, Dutch Minister of Foreign Affairs; Prince Zeid Ra'ad Zeid Al-Hussein, Permanent Representative of Jordan to the UN; Mr Stephen Rapp, US Ambassador at large for Global Criminal Justice; and Ms Amina Mohamed, Kenyan Minister for Foreign Affairs.

Several States mentioned the policy priorities of NPWJ (see the annex for NPWJ’s Policy Priorities Paper that was distributed during the ASP and for a table of which States mentioned which priorities). On support for complete and well-resourced investigation teams primarily based in the field as a means to ensure the integrity of the Statute, Italy and Poland mentioned the need to promote genuine national investigations and to have a stronger field presence also in order to speed up the investigations. Concerning outreach at the earliest possible opportunity, Italy, Nigeria, Finland and Trinidad and Tobago stated that outreach is a fundamental activity to accomplish the Court’s mandate. Regarding the Court’s field presence, Italy, Finland and Sweden mentioned the promotion of genuine national investigations and having a stronger field presence. As far the budget is concerned, only one State, namely Canada, proposed a zero nominal growth, a position that met with considerable resistance.
During the general debate States raised a number of issues, including the proposed amendments to the Rules of Procedure and Evidence submitted by Kenya, the relationship of the Court to other regional and global organisations, ratification of the Rome Statute, cooperation, complementarity, the status of victims before the Court and reparations, the Trust Fund for Victims, the budget of the Court along with calls for more efficiency in monetary matters, the permanent premises of the Court and its governance.

With respect to the Court, a number of States noted that it is an independent institution and States Parties need to comply with the Rome Statute. Some States also recalled that complementarity is a cornerstone of the Rome Statute system and it is important to understand that the Court is a Court of last resort. States also affirmed their commitment to the Court. With respect to the Rome Statute in particular, States noted that more non-States Parties should be called on to ratify the Statute and to implement it into national legislation. Some States stated that there should be no compromise on the way in which the Court operates. With respect to all situations it is involved in, the Court carries out its work impartially.

At the same time, States called on the ICC to continue its dialogue with regional and global organisations, specifically the African Union, the European Union, the United Nations and the United Nations Security Council. States affirmed that the concerns of the African Union and African leaders should be taken seriously. With respect to Africa, and Kenya in particular, some States remarked that the peace process should be respected, while staying clear of any political considerations in the work of the Court. The methods by which testimony is collected by the Court should change; the use of video technology was advocated for by a number of States.

Some States welcomed positively the Special Segment requested by the AU, as it was a good opportunity to raise concerns and talk openly about some issues. Moreover, other States reported that the UN Security Council should refer the situation in Syria to the ICC. Turning to the issue of victims, States noted that their representation and participation should be maintained and respected. States were called on to donate to the ICC Trust Fund for Victims as well.

Non-governmental organisations and civil society were praised for their work as well. Gender based violence in conflict was further highlighted by States. Lastly, with respect to the budget of the Court, certain States called for an increase in the budget of the Court, while some others called for efficiency in the face of global economic hardships.


The special segment was chaired by Ambassador Prince Zeid Al-Hussein of Jordan and featured Ambassador Rolf Einar Fife, Director General of the Department of Legal Affairs of Norway; Ms Djenaba Diarra, the Legal Counsel of the African Union; Professor Githu Muigai, the Attorney-General of Kenya; Professor Cherif Bassiouni; and Professor Charles Jalloh. The special segment took place on 21 November 2013. Following introductory interventions from the panellists, 29 States Parties and 1 observer State took the floor. Several NGOs participated in the discussion.

The discussion on the issue of the indictment of sitting Heads of State and Government and its consequences on peace and stability and reconciliation confirmed the commitment of the international community to fight against impunity. The debate seemed to indicate that any substantive change to the Rome Statute was unlikely to materialise in the near future, particularly taking into account the amendment procedure provided therein. Certain States noted that
irrelevance of immunity of sitting heads of State for ICC crimes is a key principle of the Rome Statute and it is enshrined in Article 27.\textsuperscript{1} Other States referred with different nuances to the debate of “peace versus justice”, “peace and justice” as well as “peace or justice”. There was nonetheless broad agreement that the Assembly should consider looking into practical solutions consistent with the existing legal framework that would address concerns expressed by the African Union.

There was also a discussion regarding the delicate balancing act required to achieve the objectives of the fight against impunity on the one hand and peace and stability on the other. Speakers recognised that this constituted a challenge in the exercise of prosecutorial discretion. Another element generally highlighted in the debate was the importance of the principle of complementarity and the fact that the ICC is a court of last resort. Accountability should, first and foremost, be pursued at the national level; assisting States in strengthening their judiciary was a pivotal endeavour to which everyone should contribute.

There was broad satisfaction that an open process of dialogue had been started in order to address the concerns of African States and with the manner in which the special segment had been organised and conducted. It was agreed that this dialogue should continue and develop further, focusing also on possible practical measures to deal with the issues that had been raised.

This session was very beneficial as it provided a forum for discussions among various stakeholders and promoted understanding of the various positions on some sensitive issues. It allowed some States to express and explain the reasons for their disappointment with the perceived treatment received by the Court. It also promoted solutions that would address these concerns and re-affirm support for the Court and the Rome Statute system, as affirmed by other States. Several practical solutions were also offered – in particular by some of the panellists – with respect to hearing testimony by the Court, which may alleviate some of the concerns that were raised.

4. Discussion on Victims

The Assembly of States Parties decided to include a special segment to discuss the topic of victims and affected communities on Friday 22 November. The panel was moderated by Dr David Donat-Cattin (PGA, Parliamentarians for Global Action) and composed by experts and representatives from the ICC, the TFV, Redress and legal representative(s) of the victims. The debate focused on enhancing representation, participation, reparations and the overall protection of victims. The panel highlighted that States Parties have to play an active role in hearing victims in criminal proceedings and in sensitising communities affected by the crimes. The need for an effective outreach and communication have also been mentioned by the Panel and certain states pointed out that outreach is a crucial challenge to be addressed by the ASP. As a way to ensure cooperation with the Court and prevent misinformation, the ICC should continue optimising its outreach activities. Participants noted the need for further communication and information about the Court in situation countries as well. The role of victims and their representation was also discussed.

\textsuperscript{1} Article 27: Irrelevance of official capacity: 1. This Statute shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence.
Certain States also called for the enactment of legislation for the protection and the reparations of victims. States made reference to the Kampala amendments and how they can be used – if enacted in national legislation – to protect victims. Certain States pointed out that a growing number of victims are willing to participate. As victims and the affected communities are the *raison d'être* of the ICC, States have to contribute to the optimisation of the system, ensuring both an individual and collective participation.

In the resolution adopted later, the Assembly recalled its invitation to States Parties to act in solidarity with victims of the crimes under the jurisdiction of the Court and to play an active role in sensitising communities, in particular victims of sexual and gender based violence and other vulnerable groups. States Parties were invited to fight against their marginalisation and to promote a culture of accountability for all these crimes.

5. Discussion on Cooperation

The discussion was chaired by Ambassador Krutnes of Norway; panellists included the Minister of Justice of Senegal; the ICC Registrar of the Court; the Deputy Registrar of the Special Court for Sierra Leone; and a representative of the International Bar Association. States, NGOs and the panellists addressed the issues of the execution of ICC arrest warrants, legal cooperation and witness protection. Those speaking and intervening noted that in addition to legal cooperation, there should also be political cooperation and the enactment of bilateral agreements. The Minister of Justice of Senegal noted that the training of police forces was a critical issue. He called on the ICC to continue to be impartial and fair and noted that the budget for victims’ issues should be increased.

The impact of lack of strong, timely and consistent cooperation and assistance to the Court is multi-faceted: it may lead to delays in investigations and other Court proceedings and operations. This will affect the Court’s efficiency and, as a consequence, may increase running costs and the budget requirements of the Court. The delays may also affect the integrity of the proceedings. From the OTP’s perspective, in situations where cooperation is lacking and arrest warrants are outstanding, there are costs related to preserving evidence, maintaining contact with witnesses, monitoring security and mitigating threats. These costs will continue to run as long as the cases cannot be presented to the Judges. The Office has publicly stated regularly that there has been a marked increase in recent years in efforts to intimidate and harm or expose witnesses and pervert the course of justice. To give concrete effect to the principle of equality of arms, it is also important that States Parties and international organisations give adequate consideration to requests for cooperation from the defence teams. In the same spirit, States Parties are encouraged to consider entering into defence-related agreements such as release agreements.

The only way forward to consolidate the foundations of the Rome Statute, as the Court is expanding its activities, is to have an increasing number of States providing voluntary cooperation to the Court. It is also crucial to take into consideration the expectations of victims and affected communities throughout the Court’s situations and cases, as they are the first beneficiaries and the *raison d'être* of this Court.

Through its resolution on cooperation, the Assembly expressed serious concerns about the outstanding arrests or surrender requests against 14 persons. The Assembly adopted a roadmap for achieving an operational tool to enhance expeditious execution of arrest and surrender orders.
6. Report on the Proposed Budget

The ICC Registrar noted that he sought an increase in the budget of the Court. The budget of the Court then should be 126 million euros for the next calendar year, which is less than what originally intended. He noted the improvements in the Registry and the new strategic plan of the Office of the Prosecutor. Both of these initiatives, which will promote efficiency and the ability of the Court to fulfil its mandate, require resources. The Chair of the Committee on Budget and Finance provided an overview of the budget process, including requests and suggestions forwarded by State Parties. He noted that he will be asking for additional resources for the operations of the Court. Finally, the External Auditor of the Court noted that in the audit process, help was received from the national audit office of the UK. He remarked that there needs to be an administrative manual for the Court and cautioned about a certain opacity in the management of finances. He also drew attention to artificial inflation of future costs, noting that issue was the methods by which these costs were calculated. Seventy-six percent of the auditor’s recommendations were accepted. Yet, there seems to be a lack of coherency in the management of the project dealing with the permanent premises. Finally, the Auditor noted that there should be a multi-year budget.

Finally, the States Parties agreed on the budget proposal contained in Resolution ICC-ASP/12/Res.1, which was adopted by consensus at the 12th plenary meeting on 27 November 2013. The programme budget was adjusted by 4.52 million Euros, based on the Report from the Committee on Budget and Finance, which reduced the total to 121,656,200 Euros. The Resolution on the Budget as amended by the CBF was adopted without objections, but with a comment from the Canadian delegation. Canada commented that even though it can agree with the new budget, it still views the proposed budget as too high. Canada initially suggested zero nominal growth for 2014, but was able to accept the budget after negotiations. Canada still argues for the Court to demonstrate budgetary restraint, sound management and additional savings in future years. The Canadian Delegate further indicated that even though Canada accepts the budget for 2014, it will closely monitor the Court to ensure that zero nominal growth for future budgets is achieved.

7. Working Group on Amendments

Before the beginning of the ASP, African States noted that they would like to see amendments to the Rules of Procedure and Evidence, in particular to rule 134 on the presence of accused persons at trial. A number of articles of the Rome Statute were discussed, including articles 27, 36, 51, 63, 67 and 83. A large portion of the debate was a closed debate, only open to State Party representatives. During the open debates, a number of proposals were entertained and the debate was, for the most part, open and cooperative. The contentious issue was the role of sitting heads of State should play when indicted by the Court, while fulfilling their constitutional obligations. At the end of the debate, amendments to rule 134 were accepted, which included the use of video conferencing.

Via the resolution on Amendments to the Rules of Procedure and Evidence, the Assembly adopted several amendments. The amendment to rule 68 facilitates the use of prior recorded testimony in trial. The amendment to rule 100 facilitates the decision for the Court to sit in a State other than the host State, to hear a case in whole or in part. Further, the Assembly adopted new rules 134 bis, ter and quater on the use of video technology, excusal from presence at trial and excusal from presence

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at trial due to extraordinary public duties. These amendments, which entered into force upon adoption by the Assembly, are intended to improve the efficiency of the Court’s proceedings while safeguarding the rights of the accused.

8. Working Group on the Omnibus Resolution

At each of its session since 2003, the ASP has adopted an “Omnibus Resolution”. The Omnibus Resolution, formally titled “Strengthening the International Criminal Court and the Assembly of State Parties”, addresses a wide range of substantive, practical and policy issues in relation to the Court, the ASP and other stakeholders.

This year, States Parties adopted the Omnibus resolution on 27 November 2013 by consensus. The great part of the text was already agreed upon before the ASP during informal consultations on reform of this resolution, chaired by the facilitator Ms Ana Cristina Rodriguez Pineda (Guatemala). The reforms addressed, among other issues, the length of the resolution and its overlap with standalone resolutions adopted by the ASP.

The Omnibus Resolution as adopted addresses: the universality of the Rome Statute and the Agreement on Privileges and Immunities; Cooperation; Host State; the Relationship with the United Nations; Relationships with other international organisations and bodies; Activities of the Court; the Study Group on Governance; the review of the working methods of the ASP Bureau; Strategic planning, including on outreach; Victims and affected communities; the ICC Trust Fund for Victims; recruitment of staff; complementarity; the Independent Oversight Mechanism; the budget; the Review Conference; the consideration of amendments; and participation in the Assembly of States Parties. Annex I concerns Mandates of the Assembly of State Parties for the inter-sessional period while Annex II relates to the procedure for the nomination and election of judges.

Regarding the main issues discussed during the Assembly, States Parties stressed the need for continuous monitoring of the efficiency of the revised legal aid system to uphold and strengthen the principles of the legal aid system. They endorsed the “Revised Roadmap” of the Assembly’s Study Group on Governance, which further facilitates efficient and structured dialogue between all stakeholders within the Rome Statute system to consider proposals aimed at expediting the criminal process of the Court. The omnibus resolution also amended the timeline for the nomination of judges, which will now commence 32 weeks before the elections. Since the Assembly would hold its thirteenth session in New York from 8 to 17 December 2014, the nomination period for the six judges to be elected in December 2014 would tentatively open on 28 April 2014. This would allow the Advisory Committee on the Nomination of Judges to submit its report to the Assembly well in advance of the thirteenth session.

NPWJ policy priorities were well integrated in the resolution. The issues of the Universality of the Rome Statute, State Immunities, developing outreach (through the Strategic Plan for Outreach) and strengthening field presence were all well reflected in the text.

9. Side Events

During this ASP, NPWJ held two side events, one on 23 November 2013 on Accountability for Syria and one on 26 November 2013 on Complementarity and Libya.

The side event on Syria discussed the situation in Syria and the current lack of sufficient action by the international community, which has really only provided a unified and prompt response to the use of chemical weapons, exerting pressure on Syria to destroy them. This was recognised as a positive development, but that overlooks accountability for the tens of thousands of people killed in the conflict by conventional weapons. The speakers also stressed that accountability needs to be part of any peace talks that may hopefully be held, affirming that all perpetrators of crimes committed in the country must be held accountable if there is to be any hope for lasting stability, reconciliation and peace in Syria. Speakers included Suheir Atassi, Vice President of the Syrian National Coalition and Head of the Assistance Coordination Unit, Haytham al-Maleh, Syrian human rights leader and President of the Legal Office of the Syrian National Coalition, in charge of accountability and transitional justice, Abdul Hadi Habal, Syrian human rights activist and NPWJ Syria Team Leader. Among the participants were representatives from States, civil society and the International Criminal Court.

The side event on Libya discussed the opportunities and challenges for complementarity in Libya, including the potential for the case of Mr al-Senussi to foster efforts to conduct effective reform of the judiciary in the country while recognising the concerns relating to fair trial rights. It also explored what “inability” means and focused on the role of the international community in assisting Libya to become able to investigate and prosecute crimes under international law. The event also highlighted the importance of outreach and communication to promote understanding of the ICC mandate and procedures, which is essential to engage victims and the people of Libya and contributes to an environment conducive to cooperation with the Court. The panel, which was chaired by Wafa B.H. Omar, Director of International Programs at Al-Kawakibi Democracy Transition Center in Tunis, included among the speakers Fathi Salem Abouzakhar (Libya), Libyan Centre for Strategy & Future Studies, Marieke Wierda, University of Leiden, on leave from being TJ Adviser at the UN Support Mission in Libya, Rhiannon Smith, Libya Program Officer for NPWJ in Tripoli and Niccolò Figà-Talamanca, Secretary-General of NPWJ. Participants included representatives of States, civil society and the International Criminal Court.

In addition, there were a wide variety of side events organised by other actors which dealt with a number of key issues and concerns relevant to State Parties, observer States and members of civil society. The side events included the following topics and thematic areas: cooperation of the Latin American and MENA states with the Court, the issues of Syria and Libya, the right of the accused, universality and the full implementation of the Rome Statute, victims and affected communities, the participation of victims, mutual legal assistance and extradition, quality control and fact finding, complementarity, the Trust Fund For Victims, domestic prosecutions, the issue of sitting heads on trial, gender justice and the permanent premises.

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5 A report from the side event is available from http://npwj.org/ICC/12th-ASP-ICC-NPWJ-held-a-side-event-%E2%80%9CAccountability-Syria%E2%80%9D.html.
6 A report from the side event is available from http://npwj.org/ICC/12th-ASP-ICC-NPWJ-convened-a-side-event-%E2%80%9CComplementarity-Libya%E2%80%9D.html.
Annex

NPWJ Policy Priorities
The Twelfth Session of the ICC Assembly of States Parties comes at a time when the ICC itself is under increasing threat. The ICC and its States Parties need to take strong, decisive action to be flexible enough to respond to political demands and various threats to the ICC, while at the same time maintaining the fundamental principles that underpin the Rome Statute, such as the irrelevance of official capacity when it comes to the application of the Rome Statute.

While the ICC as an institution will continue, how it and its States Parties respond to the challenges, particularly those that have arisen as a consequence of the Kenya cases, will determine how much of its time is spent fighting threats or reacting to problems and how much of its time can be spent on forward planning and development. At the same time, life goes on: even as the ICC is under threat, it must still function in its situation countries and continue to strive to provide proper, visible and meaningful justice for the populations affected by crimes. As such, the ICC and its States Parties must continue to maintain their focus on the everyday challenges facing the ICC, including in relation to its investigation teams, outreach, field presence, a completion strategy and its budget, particularly in terms of promoting its efficiency and effectiveness.

As the Twelfth Session begins, NPWJ is therefore pleased to share the following recommendations for the ICC’s 123 States Parties:

1. **Prevent abuse of State Immunities**: ICC States Parties should protect and maintain the irrelevance of official capacity as a fundamental principle of the Rome Statute and ensure that any proposed amendments are subject to thorough scrutiny and discussion, including with the engagement of non-States Parties, international organisations and civil society as a whole.

2. **Investigation teams**: ICC States Parties should support full, well-resourced investigation teams primarily based in the field as a means to ensure the integrity of the Rome Statute system and to promote efficiency and effectiveness, including avoiding the need for time-consuming and expensive follow-up investigations.

3. **Outreach**: ICC States Parties should support outreach at the earliest possible opportunity, preferably whenever an interest in a particular country is indicated or work begins in a particular country.

4. **Field Presence**: ICC States Parties should support the enhancement of the Court’s field presence and encourage the ICC to prioritise it, both as a matter of operational policy and, wherever possible, through holding trials or parts thereof in situ.

5. **Completion strategy**: ICC States Parties should support the ICC in developing its completion strategy, both general guidelines and for specific situations.

6. **Budget**: ICC States Parties should oppose arbitrary zero nominal growth and support an ICC budget that will enable the ICC to fulfil its mandate effectively and efficiently.
1. **Prevent abuse of State Immunities**

The challenges facing the ICC due to the specific circumstances of the Kenya cases have raised the spectre of potential amendments to the Rome Statute and, in particular, a dilution of article 27 on the irrelevance of official capacity. As a matter of principle, NPWJ does not oppose a consideration of amendments to the Rome Statute, provided they are not at odds with the fundamental principles underpinning the Statute, including the right to redress, the fight against impunity and fair trial rights. Amendments to the Court structure, or the Court’s operations, could provide a useful approach that may streamline the operations of the Court and strengthen the fundamental principles that underpin it. However, amendments should not be entered into lightly and those amendments that threaten fundamental principles should be rejected, whether the amendments are to the Rules, the Elements of Crimes or the Rome Statute itself. Any proposed amendment that seeks to provide a shield of State immunity for the application of any provision of the Rome Statute should be resisted as an amendment that threatens the fundamental principles underpinning the Court.

NPWJ calls on all States Parties to protect and maintain the integrity of the Rome Statute, including through rejecting any amendments that seek to dilute article 27, and to ensure that any proposed amendments are subject to thorough scrutiny and discussion, including with the engagement of non-States Parties, international organisations and civil society as a whole.

2. **Full investigation teams**

With some ICC cases coming to the confirmation of charges and trial stages, the effects of a policy of small, targeted investigations are now coming to light. This early policy, while attractive in its low expenditure, is now being revealed as an expensive approach, with the OTP being required to do further investigations and with some charges not being confirmed or an acquittal due to insufficient evidence being brought. It should be emphasised that this is not in and of itself an indication that there is something wrong with the system – far from it, this indicates that the system as a whole is working. It does, however, indicate that there is a problem at the investigations stage and that more resources, particularly human resources, need to be put into this first, early stage of a case to avoid problems, inefficiency and ineffectiveness, both of which could lead to even greater expenditure down the line.

This has been recognised by both the Prosecutor and Registrar of the ICC, who have requested resources to support wider and better-staffed investigations. NPWJ strongly supports this request, according to which the resources should be employed efficiently and effectively, and emphasises that well-resourced, full investigations teams that are based in the field give better investigative results. Better investigative results in turn support better prosecutions that, when properly defended, produce the kind of fair trials that populations affected by conflict need and deserve. It also saves resources in the long run by removing the need to “re-do” investigations that should already have been done efficiently, effectively and completely and by avoiding the waste accompanying days, weeks and months spent in trials that are doomed to failure due to insufficient foundations for those trials.

3. **Well-supported, early outreach**

Outreach plays a vital role in creating conditions conducive for cooperation with the Court and preventing or stemming the spread of misinformation; in facilitating participation and legal representation of victims in the proceedings; in explaining due process rights; to facilitating redress
for affected communities; and in creating an enabling and supportive environment. International Criminal Court (ICC) outreach activities are of crucial importance and remain one of the most important ways to improve ICC work in situation countries. Outreach remains critical not only for populations affected by the crimes, but also for victims, to enable them to make informed choices about their participation in ICC proceedings, including reparations. The ICC needs to continue to optimise its outreach activities and States Parties need to provide the necessary accompanying financial support and oversight to ensure that those funds – like all ICC funds – are spent effectively and efficiently.

Outreach assists in reducing the impunity gap by directly engaging people affected by crimes with the court mechanisms and staff that bring them justice. It enhances the effectiveness of ICC proceedings because it promotes understanding of, and hence support for, the Court’s mandate – which is not always obvious to victims or affected communities. In an impact and legacy survey on the Special Court for Sierra Leone carried out by NPWJ and its partners in Sierra Leone and Liberia during 2012, the importance of outreach and the fact that it should be included in a court or tribunal’s budget from the outset came to the forefront.

Outreach helps prevent misunderstandings regarding ICC activities in situation countries and outreach staff will be able to provide specific information about what will happen under the framework of transitional justice processes. For example, the ICC needs to implement a program in Libya to raise awareness of its procedures regarding complementarity and domestic capacity to prosecute the relevant actors. The Libyan case provides a clear example of a situation in which a lack of information and outreach has resulted in widespread confusion and disillusionment with the ICC as a whole and as an accountability system. Just over two years ago, when NPWJ first began working in Libya, perceptions of the ICC were largely positive; now, however, people’s perceptions have changed and it has become very difficult even to talk about the ICC there. While the lack of outreach is not the only factor, it does point to the difference outreach can make for the Court’s ability to carry out its work and fulfil its mandate.

NPWJ recommends that outreach should be started at the earliest possible opportunity, preferably whenever an interest in a particular country is indicated or work begins in a particular country, and should as far as possible extend to encompass the whole country, irrespective of where crimes were committed. Victims and populations in countries that are under preliminary examination should be engaged to ensure accurate information is disseminated, to manage expectations about the ICC, and to maximise the ICC’s impact in terms of deterrence and the promotion of national proceedings Outreach activities should be adapted to respond to the effects of judicial developments in different areas of the situation countries, in coordination with the Office of the Prosecutor. Vulnerable victims and communities such as women, victims of sexual violence and children should be targeted and information on victims’ participation and reparations as an integral part of outreach activities should be included from the early stages of an investigation. NPWJ recommends that States Parties retain and highlight these points in the omnibus resolution and ensure sufficient financial support is provided.

7 Making Justice Count: Assessing the impact and legacy of the Special Court for Sierra Leone in Sierra Leone and Liberia (September 2012); available from http://www.npwj.org/node/5599.
4. Strengthened field presence

The involvement of the ICC raises the hope of redress for thousands of victims of war crimes, crimes against humanity and genocide. To have any chance of fulfilling these hopes, the ICC has to increase its field presence through effective field offices in order to carry out day-to-day operations and to maintain meaningful interaction with people there. For this reason, NPWJ has consistently advocated for the ICC to become closer to the victims, communities and other stakeholders affected by its work in situation countries.

The ICC’s field presence in a situation country confirms the on-going engagement and commitment of the ICC to ensure its continued relevance and to maximise its impact on victims, communities, the public and other stakeholders. A permanent in-country presence of the ICC could help bridge the huge gap between The Hague and the people living in situation countries and provide strong support to complementarity, legacy and completion efforts. Field presence also brings logistical assistance and administrative support for all organs of the Court, particularly in regards to local investigations. For example, the Kampala field office seems to have been a regional hub in promoting support of other situations in neighbouring countries.

There are several challenges associated with establishing and maintaining a strong field presence in conflict countries; the early days are particularly challenging as complex political and operational environments. Nonetheless, the ICC is an institution established precisely to deal with conflict and post-conflict situations and can and must find ways to work within those environments, as many other international agencies do. To do so, it needs to have the vision of itself as serving the people affected by conflict and by the crimes within its jurisdiction, a vision that ICC States Parties must share and must demonstrate to the Court through its policy guidance.

NPWJ therefore recommends that States Parties support the enhancement of the ICC field presence and encourage the Court to prioritise it, both as a matter of operational policy and, wherever possible, through holding trials or parts thereof in situ. In the context of the ASP, this can be done through the omnibus resolution and through ensuring there is sufficient support for field operations in the budget, alongside oversight to ensure the resources are employed effectively and efficiently.

5. Development of an ICC Completion Strategy

While the International Criminal Court is a permanent institution, its presence in and interaction with each particular situation country is, by design and by necessity, transitory. The ICC’s engagement begins with a preliminary examination, proceeds through investigation and prosecution and ends with appeal: it must fulfil its mandate and once it has done that, it must leave. This is true even as the length and intensity of its engagement is in many ways a product of the Prosecutor’s strategy for that particular situation and cannot be too curtailed or delineated by other actors. Nonetheless, the ICC will need to implement a completion strategy in each situation country in accordance with its mandate and vision in order to address the issues that arise as it concludes its work. These issues comprise its judicial cases, residual functions and physical legacy issues, including infrastructure and equipment.

The earliest possible development of a completion strategy will also facilitate the ICC’s approach on legacy, clarifying its vision on various issues including its impact on victims and affected communities and on the capacity of national judicial systems to investigate and prosecute crimes under international law, thereby maximising its capacity to work efficiently, effectively and in a timely manner. The ICC should start planning for its legacy and completion from the moment it
begins work in a particular country and, preferably, have a well thought-out strategic plan for legacy and completion, including outreach on these issues, from before they enter a particular country to begin work. This planning and implementation should be carried out with a wide range of actors, both local and foreign, to maximise the potential legacy work and the chances of those actors also fulfilling completion roles.

NPWJ considers that any ICC completion strategy must fulfil the criteria discussed above and should consider the lessons learnt from the experiences of ad hoc courts such as the SCSL, the ICTY and the ICTR. At a more specific level, it is suggested that the ICC develops both general guidelines for its completion and situation-specific strategies that are phased to include short, medium and long-term objectives. This is crucial for the ICC to be aware of what is seeks to have achieved in a situation country from the earliest stages of investigation and is able to publicise to local populations the nature of these particular goals. This again contributes to expectation management. The completion strategy timeline for different parts of the ICC need not be the same; outreach would perhaps require longer engagement than others such as the OTP, as the need for outreach would likely continue beyond the OTP’s direct engagement. Finally, any completion strategy must be based in country in order to maximise local knowledge and participation.

6. Efficient and effective budget

While the annual budget is inevitably a controversial issue, the ICC can only improve on its areas of weakness (such as field presence, outreach and investigations), continue its existing functions and fulfil its mandate when financed with an adequate budget. All of this is threatened by an arbitrary zero nominal growth budget, which NPWJ strongly opposes. The ICC budget needs to be able to respond to new and unforeseen situations in an efficient and effective way.

NPWJ recommends that ICC’s annual budget be directed to where it matters most to maximise the Court’s impact, namely its field presence, outreach and investigations, all of which are the bedrock for the Court’s overall effectiveness and impact in countries where the crimes have been committed. For example, sufficient funds should be provided to ensure an appropriate field presence and outreach for Libya, based on a proper legacy and completion strategy, which will ensure proper oversight and allow States Parties to ensure ICC funds are spent efficiently and effectively.
<table>
<thead>
<tr>
<th>NPWJ Policy Priority</th>
<th>Positions elaborated during ASP</th>
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<tr>
<td>Prevent abuse of State Immunities</td>
<td>Ghana - To reexamine relevant portions of the Rome Statute. Tanzania - Proposal of an amendment in the working group. Kenya - Look pragmatically at Rome Statute; to consider amendment. Lithuania (EU) - To preserve independence of the ICC and the integrity of the statute. South Africa - The Rome Statute is a developing system. Germany – To ensure the integrity of the Rome Statute. Peru - Ready to the adoption of practical measures, rules and procedures. Any other amendment affecting the Rome Statute has to be very carefully and well assessed in order not to undermine the fight against impunity. France - ASP has to answer about Kenyan's concerns. Italy – Relation with AU should not be underestimated. Uganda - An intelligent interaction between justice and peace is needed. Kenyan citizens' decision to elect Kenyatta should be respected. Kenya is at risk of terrorism. Nigeria - Indictment of sitting Head of States and Governments for peace, stability and reconciliation is a question to be discussed. The vote at UNSC didn't take it into account our question, hoping that ASP will do. UK - Vote of the UK at the SC: unable to support the resolution, art. 16 requirements were not met. Czech Republic - We would not support any amendments that would undermine the RS. Namibia – Namibia supports Uganda and the AU meeting in October. All the atrocities we suffered were committed by foreigners. To strengthen the National Courts, as a complementation of ICC. Indictment of Head of State in government, must be address by this ASP. We regret that the UNSC has not taken into account the needs of the people that elected democratically their leaders. We stand along with African State Parties. (15-18 Debate) LC AU – Wherever crimes of war, African Union can go without asking to that Member State. However, the principle on which AU is based is that peace and justice are strongly connected. The indictment of a sitting Head of State is a threat to peace and stability (the case of Darfur) and undermines efforts for peace. (15-18 Debate) Kenya – Over the last five years we have fully cooperated with the Court. Heads of State democratically elected is a serious problem, to be approached in a unique manner – the case of Sudan has to be taken into account. Immunity to guarantee the continuation of a State as a State. In Kenya International Community should not play the Russian roulette. France as an example about State immunities. (15/18 Debate) Norway – Any kind of immunity would challenge the sense of justice as stated in the Rome Statute.</td>
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<tr>
<td><strong>Investigation teams</strong></td>
<td><strong>Outreach</strong></td>
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<td>ICC States Parties should support full, well-resourced investigation teams primarily based in the field as a means to ensure the integrity of the Statute.</td>
<td>ICC States Parties should support outreach at the earliest possible opportunity.</td>
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<tr>
<td><em>Panama</em> – Art. 27 is clear: there is no distinction whether you are a HoS&amp;G or not.</td>
<td><em>Italy</em> – To promote genuine national investigation and to have a stronger field presence.</td>
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<td><em>Czech Republic</em> – We speak about one particular country but it is also a lesson to keep in mind. A country cannot be peaceful and democratic without justice. Immunity: Statute identifies several crimes whose jurisdiction is limited. Art. 27 is clear. To find a solution within the Rome Statute, to hope that we find solutions for the Working Group for Amendments.</td>
<td><em>Poland</em> - To increase the Court investigative capacity, speed up investigation.</td>
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<td><em>Senegal</em> – Justice takes into account the issues of victims and reconciliation. As part of the five countries designed to find solutions to this issue, according to Senegal the independence of the Court is necessary as well as the integrity of the Statute.</td>
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<tr>
<td><em>Argentina</em> – Art. 27: Its a principle of international law, generally accepted. You cannot allow any exemption of responsibility for whatever reason.</td>
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<td>ICC States Parties should oppose arbitrary zero nominal growth and support an ICC budget fulfilling the mandate effectively and efficiently.</td>
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<td><em>Italy</em> – To promote and ensure outreach.</td>
<td><em>Gambia</em> - As ICC activities increase, resources should be increased.</td>
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<td><em>Nigeria</em> - Outreach program in order to complete the court program.</td>
<td><em>Lithuania (EU)</em> - EU continues to support the efforts of the Trust Fund for Victims.</td>
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<td><em>Finland</em> – Outreach is an essential component of the activities of the Court.</td>
<td><em>Germany</em> - The proposed budget is an excellent compromise.</td>
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<td><em>Trinidad and Tobago</em> – Outreach Programs: enactment of national programs to bring to justice criminals.</td>
<td><em>South Korea</em> - To provide an appropriate level of funding to ensure activities will be carried out.</td>
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<td><em>South Africa</em> - We cannot think that a court in The Hague can run cases all over the world.</td>
<td><em>Gambia</em> - As ICC activities increase, resources should be increased.</td>
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<td><em>Italy</em> – Promote genuine national investigation and to have a stronger field presence.</td>
<td><em>Lithuania (EU)</em> - EU continues to support the efforts of the Trust Fund for Victims.</td>
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<tr>
<td><em>Finland</em> – Increase the presence in the field, the Court is an institution that should be known by the people and be near the people.</td>
<td><em>Germany</em> - The proposed budget is an excellent compromise.</td>
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<td><em>Colombia</em> - Respect of jurisdiction sovereignty, and believe that states will bring to justice accused within their borders, the states have better access to resources, witnesses.</td>
<td><em>South Korea</em> - To provide an appropriate level of funding to ensure activities will be carried out.</td>
</tr>
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| *Sweden* – To enhance national legal capacities for investigating the crimes under our statute. | }
Costa Rica - SP has to provide what needed to ensure ICC's operations.
Netherlands - Netherlands will support the Trust Fund for Victims (1 billion euro).
Tunisia - To ensure the Trust Fund for Victims to be supported.
Italy - Trust Fund for Victims has a central role. ICC needs efficient resources, used effectively, it needs financial support.
Nigeria – Supporting the Trust Fund of Victims.
Poland - Increasing financial needs of the Court should be taken into consideration, but reminding the great difficulties faced by the countries in Europe.
New Zealand – To ensure financial support of the Court.
Ireland - Trust Fund for Victims, encourage SP who have not contributed until now, that they do.
Spain – Budget adapt to the realities of states, economic crisis, improve efficiency according to the possibility of states.
Sweden – The trust fund for victims must be supported.
Norway - Fully support the budget as amended by the Budget and Finance Committee.
Uruguay – To strengthen the methods of work, therefore we support the court.
Canada - Deeply concerned about the raising costs of the ICC and we urge for a zero growth budget.
Trinidad and Tobago – Notwithstanding the State Parties difficulties, we must give to the court enough money so that it can carry out its work.