Report of the Training on
Promoting the ICC’s Contribution in Democratic
and Human Rights Reform in Libya
Hammamet, Tunisia
27-29 January 2015
**Training on Promoting the ICC’s Contribution in Democratic and Human Rights Reform in Libya**

**Background**
On 27-29 January 2015, No Peace Without Justice, with the support of the Al-Kawakibi Democracy Transition Center (Kadem), organised a training on “Promoting the ICC’s contribution to democratic and human rights reform in Libya”, which was held in Hammamet, Tunisia.

The overall goal of the training was to reinforce the knowledge of Libyan civil society actors on the mandate, rules and procedures of the ICC by enhancing their expertise on the links between the ICC principle of complementarity and the Libyan judicial system, including on the current status of the Libyan cases before the Court and their interconnections with the ongoing national trials against top leaders of Muammar Gaddafi regime. The training also aimed to strengthen the capacity of participants to organise ICC-related activities that engage effectively with the population, particularly victims and affected communities, through communications and outreach activities.

The ICC indictments issued in 2011, while the conflict was ongoing, were an important element in denying authority and legitimacy to the previous regime and offered hope that Libyans would one day receive justice and redress. As Libyan institutions remain weak and the ongoing humanitarian and political crisis has further deteriorated the situation in the country, it is critical to reinforce the understanding of the legal profession, the media and civil society activists, which carry weight and respect within Libyan society, about how the ICC works and the potential role it can play in supporting accountability and redress for victims in Libya. The ICC, in fact, can play a critical role, by acting as a catalyst for transformation of the Libyan judicial system as a whole, to ground judicial reforms on international standards and principles.

**Presenters**
Presenters of the 3-day training included Mr Fadi El Abbdallah, ICC Spokesperson and Head of the Public Affairs Unit, and Mr Amady Ba, Head of International Cooperation at the ICC Office of the Prosecutor.¹

**Participants**
The training engaged 23 participants including Libyan lawyers, representatives of civil society, the media and human rights activists. Participants were selected for their critical role in promoting judicial and legal reform to support accountability and redress for victims, in monitoring trials and in reaching out to the Libyan population, including victims and affected communities.

**Partners**
NPWJ worked with the Libyan Trial Monitoring Network, comprising the Tripoli Bar Association and other Libyan partners, to ensure that the discussion closely followed the reality and the needs as identified on the ground. NPWJ also worked in partnership with the Al-Kawakibi Democracy

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¹ See Annex 1 for biographical details of the presenters
Transition Center (KADEM) and the training was held in the framework of the Transitional Justice Academy, to support the training and contribute expertise.

**Day one**

- **Opening session**
  Amine Ghali, Program Director of KADEM, opened the workshop by welcoming the participants and introducing the presenters: Amady Ba Head of International Cooperation at the ICC Prosecutor’s Office, who spoke about the role of the ICC in Libya and the importance of its presence, and Gianluca Eramo, NPWJ MENA Democracy Program Coordinator. Participants introduced themselves and outlined their expectations for the training. In the following open discussion, participants discussed the current situation in Libya and the challenges facing transitional justice, including the ongoing violence in the country, the current status of displaced people within and outside Libya’s borders, the challenges facing women and the difficulties in reporting and documenting the current violence as well as the different aspects of legal reform and the tools that can be used to help solve the situation in Libya.

- **Overview of the Rome Statute**
  Led by Amady Ba and Fadi El Abdallah, this session presented detailed information about the Rome Statute, the nature of the crimes covered by the ICC and its jurisdiction. Participants engaged actively in the session, including asking questions about UN Security Council Resolution 1970 (2011) and the ICC’s work in Libya.

- **Overview of ICC perceptions in Libya and national trials**
  Presented by Ahmed El Gasir, this session provided an overview of perceptions and expectations towards the ICC in Libya, transitional justice measures and the current status of national trials against Saif Al Islam Gaddafi and Abdullah Al-Senussi. Mr El Gasir noted that media in Libya does not know much about the ICC and risks spreading misinformation instead of providing accurate and timely information about the Court and the trial against Mr Gaddafi. Many people in Libya perceive the ICC as part of the United Nations and consider that it lacks independence from the UN Security Council. Mr El Gasir encouraged the ICC to reach out to people in Libya and engage them on the role and mandate of the Court to overcome these negative perceptions. The ICC should also answer the questions raised by many Libyans about why the ICC only focuses on high level political ranks of the former regime and not on the many others who are still committing crimes in Libya. Mr El Gasir concluded his intervention stating that many Libyans fear that the ICC might manipulate the evidence against Saif Al Islam Gaddafi and that he should not be treated differently from other alleged perpetrators who are tried inside Libya. Mr Ba explained the relationship between the ICC and the UN, highlighting the ICC’s independence. He also focused on the policy of the Prosecutor to investigate and prosecute those who bear the greatest responsibility for the crimes and the reasoning behind it to clarify why the Court does not prosecute lower-level perpetrators. Mr Ba concluded by defining the principle of complementarity, how it unfolded in the Libyan cases and what opportunities Libyans have to promote accountability and reparations to victims at the national level through the Rome Statute.
Bringing cases before the ICC and the Libya situation

Led by Amady Ba and Fadi El Abdallah, this session analysed the Libyan situation and the ongoing cases before the ICC. The presenters illustrated the procedures taken by the ICC in the cases presented against Mr Gaddafi and his regime. Questions asked by the participants included: why has the ICC concentrated on the case of Saif Al Islam Gaddafi, the son of Mr Gaddafi, but dropped the case of Abdallah Al Senussi in the current situation? Why does the ICC believe that the Libyan judiciary is capable in one case but not in the other? Can the ICC determine whether the Libyan judiciary is capable or incapable of proceeding with cases? Is there an intention in the ICC to develop the Rome Statute consistent with the recent events following the Arab Spring? Will the ICC investigate also the events that occurred throughout the last four years? How does the ICC process crimes? Is it possible to prosecute someone for having the intention to commit a crime, i.e. the intention to commit a massacre or a mass killing, what tools are needed to prove it, such as documents or speeches, and what are the conditions needed to start an investigation?

Mr El Abdallah explained the Court’s jurisdiction, the substantive elements of the crimes and the mechanisms triggering ICC jurisdiction, focusing on what happened in the case of Libya including that since Libya is not a party to the Rome Statute, the UN Security Council intervened to give the necessary mandate to the ICC. Mr El Abdallah also illustrated the relations between the ICC and national judicial bodies. Participants argued that Libya has a good judiciary – what it needs is true support of the role of the national judiciary. The discussion revolved around the unique case of Saif al-Islam Gaddafi and the belief that the ICC so far has not trusted the Libyan judiciary to prosecute him. The ICC judges found that the evidence submitted was not sufficient to evaluate whether the domestic and the ICC investigations cover the same case and that defendant is not in the jurisdiction of State authorities. The participants also explained that the judges prosecuting Mr Gaddafi are from the appeal court of Zawia and prosecuting him in Zintan makes them the same as judges from Tripoli.

Day Two

 ICC Outreach and Public Information
This session was led by Mr El Abdallah who illustrated the ICC’s outreach principles, activities, information material, website, media opportunities and how Libyan civil society and legal professionals can contribute to advancing accountability through outreach and public information.

 Victims and victims’ participation within the ICC framework
Mr El Abdallah introduced the concept of victim participation and the challenges in that area. Participants asked about the mechanisms victims can take to reach out to the ICC and whether or not there is a direct means of communication.

 The role of relevant stakeholders, including civil society, to advance implementation of the Rome Statute and transitional justice

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This session was presented by Amady Ba and Greta Barbone who explained the relationship between the legal work of the ICC and the work by local civil society organisations. The session revolved around two main questions: Does the ICC recognise a partner? What is the main role of civil society in the work of the ICC? Participants then discussed the kind of work that can be implemented by their organisations through different media campaigns, depending on the nature of the matter, including opening communication channels between media and the courts, listening clubs, communication through websites, social media, the relations between the ICC and local journalists through capacity building and publication of ICC programs and news in Libyan local networks. Participants also discussed the role of the ICC in providing security, civil society’s contribution to reviewing legislation and presenting appeals, the addition of terrorism to the jurisdiction of the ICC, the lack of trust of the Libyan people in the transitional justice law, the need for civil society organisations to play their proper role in Libya and the need to improve knowledge of Libyans citizens on the ICC’s mandate and role. It was highlighted that ratification of the Rome Statute can be a tool to hold criminals accountable in Libya; it can also be a booster for the Libyan judiciary to arrest these criminals and to implement the principle of complementarity in Libya.

- **Overview of transitional justice in Libya, its principles and mechanisms**

This session was presented by Salam Ali Tekbali and Amine Ghali. Mr Tekbali presented the main components and objectives of transitional justice (TJ) in Libya, including the relationship between the ICC and transitional justice and how implementation of the Rome Statute would support providing accountability at the national level for crimes under international law committed in Libya. He considered that the practical preconditions for TJ in Libya are: national consensus on the scope and depth of violations that will be targeted by the TJ program through a transparent and inclusive participatory approach; collection of evidence to gather information and systematise it; strengthening institutional capacity on TJ; and harmonising the different initiatives on TJ that have been developed so far. Mr Tekbali noted that there is an urgent need to identify the specific legal and judicial reforms necessary to establish a comprehensive framework for TJ in Libya, highlighting that the ICC’s assistance can be crucial in this respect. He added that currently there are serious misconceptions and misunderstandings about the role of the ICC in Libya among the public and lawmakers. Therefore he invited the ICC to engage the population to spur national support for its activities. Mr Tekbali made a number of examples where the ratification and implementation of the Rome Statute could favour TJ and accountability in Libya, including institutional and legal reforms; technical assistance for the judiciary; and capacity building of civil society and legal professionals on documentation of crimes. Finally, according to Mr Tekbali, the ICC should coordinate with the Libyan authorities to avoid creating a “two-track” process. Mr Ghali illustrated the Tunisian experience of transitional justice subsequent to the fall of the former regime, including mechanisms and themes (e.g. economic crimes) that are relevant to the Libyan situation.

- **Working Groups on the current opportunities and challenges for the ICC and Transitional Justice in Libya**

Participants divided into three groups to work on three main questions:

1. What are the activities and initiatives civil society, media and the legal community can undertake to promote the ICC and Transitional Justice mechanisms in Libya?
2. What are the activities and initiatives civil society, the legal community, media and the ICC can undertake to promote positive perceptions of the ICC in Libya and maximise the role of the ICC as a catalyst for change? 
3. What are the activities and initiatives civil society, the legal community and media can undertake to have a more robust judicial national system?

**Day Three**  
Within the working groups, participants began to identify the strengths and weaknesses of the national judiciary and then identified which kind of activities and initiatives could be developed by legal professionals, the media and civil society representatives to promote the role of the judiciary in Libya and foster a culture of accountability. Participants identified the following six issues as problematic areas to which particular attention should be paid:

- Backlog of judicial cases.
- Lack of trust in the national judiciary.
- The problem of legislation.
- Lack of security.
- Deficiencies in the judicial inspection system.
- Overlapping authorities and powers.

**Proposals and recommendations**  
Subsequent to the identification of problem areas, the working groups proposed a number of recommendations, specific to the areas of civil society, the media and the legal community, as follows:

- **Civil society**  
  Participants agreed that:
  - The ICC should consider the feasibility to hold and organise trainings and meetings for Libyan civil society activists and organisations in order to build their capacities to act on issues relating to democratic reform, human rights protection and transitional justice;
  - Libyan experts and civil society activists should be supported in gaining more knowledge on the experiences of other countries, such as Tunisia, South Africa and Morocco, in the field of transitional justice;
  - INGOs should assist and favour the creation of channels of communication and links between Libyan civil society representatives, victims and the ICC;
  - Libyan civil society organisations should propose and organise training courses for police and other law enforcement to ensure that human rights are protected and respected also in periods of turmoil, such as the present days;
  - Civil society should be active in following the work of judicial institutions to monitor respect for the principles of fair and just trials; and
  - Civil society organisations should focus on monitoring the activities of the Constitutional Drafting Committee and lobby its members to ensure the adoption of measures that guarantee the separation of powers.
Media
Participants agreed that:

- The ICC should put more efforts in reaching out to and informing Libyan citizens about its procedures and the principles that are at the basis of its work, also to ameliorate the perception of the ICC in Libya, which more and more is considered as a biased institution;
- Local media and journalists should further expand their reporting on the ongoing violence and, when possible, submit it as evidence to the ICC; and
- Media have a big role to play to strengthen the trust of Libyan citizens toward the judicial system, by describing the realities and challenges the judiciary faces.

Legal community
Participants agreed that:

- The legal community should consider advocating to include terrorism as a crime subject to ICC jurisdiction;
- The ICC should consider how to review and adapt its procedures and working mechanisms vis-à-vis the new challenges posed by regional developments in the MENA region;
- Libyan legal professionals should call for a revision of the Libyan code of procedures and assist the public authorities in developing new administrative and legal procedures that can help in reducing the backlog of cases in Libyan courts and ensure the protection of prisoners’ rights and respect for the principles of fair and just trials;
- Libyan legal professionals should urge the amendment of the Law on Political and Administrative Isolation (Law No. 13/2013) and the Law on the Libyan Nationality (Law No. 24/2010) by organising public meetings and seminars and developing proposals for amendments also with the support of external expertise;
- Libyan legal professionals should study and propose ways to monitor and evaluate the judicial system, also with the support of external expertise, in order to stimulate and help the judiciary in delivering the right to justice for all Libyan citizens.

Conclusion and evaluation of the training
The training reinforced the knowledge of Libyan civil society actors on the mandate, rules and procedures of the ICC. It enhanced their expertise on the links between the ICC principle of complementarity and the Libyan judicial system, including on the current status of the Libyan cases before the Court and their interconnections with the ongoing national trials against top leaders of Muammar Gaddafi regime. By bringing together Libyan actors that can have an impact on the transitional justice process in the country, such as lawyers, the media and human rights activists, the training contributed to the country’s democratic transition process and supported a role for the ICC in Libya as part of a holistic and inclusive transitional justice process. This was achieved through building participants’ capacity to maintain justice and accountability for past crimes at the forefront of the political discourse, to promote legal and judicial reforms based on the principles of fair trials according to international standards recognised in the Rome Statute and to promote cooperation with the ICC. The training also strengthened the capacity of the target groups to organise ICC-related activities that can engage effectively with the population, particularly victims and
affected communities, through communications and outreach activities. It supported the role of the ICC in being a catalyst for change in Libya through developing an understanding of its mandate, rules and procedures among Libyan civil society, and facilitated the ICC contributing to the achievement of justice and redress for victims in Libya.
Annex

Biographical details of presenters

Fadi El Abdallah

Dr. Fadi El Abdallah is currently the Spokesperson and Head of the Public Affairs Unit at the International Criminal Court (ICC) based in The Hague. After studying law at the Sagesse University and the Lebanese University, Dr. Fadi El Abdallah obtained his PhD from the University Paris II Panthéon-Assas. Prior to obtaining his position at the ICC, Dr. Abdallah taught at both the Law and International Business Institute (IDAI) in Cairo, Egypt, as well as Paris II within the Paris and Melun Centers. Since joining the ICC in 2008, Dr. El Abdallah has committed himself to increasing awareness of the ICC’s mandate and its importance to the international community including the Middle East.

Amady Ba

Justice Amady Ba, Senegalese “Hors Hierarchie Judge”, has worked at the ICC since March 2008, on secondment from the Judiciary High Council for Judges. Head of the International Cooperation at the Office of the Prosecutor, he is responsible for developing the ICC network and judicial cooperation with States, the UN, international and regional organisations, judicial institutions, civil society and the academic community. Justice Ba graduated from the Law University of Dakar in 1983 and qualified as a Judge in 1985. He completed his training at the French National School for Judges, contributing towards strong links between France and Senegal. Serving as education chair at the Judicial Training Centre of Dakar (National Judge School of Senegal), he became Director in 1997. He provided extensive judicial training at both national and international levels, and promoted technical and financial partnerships between African and Western countries. In 2002, Justice Ba was appointed to the International Development and Law Organization (IDLO) in Rome. While implementing projects to reinforce Justice, the Rule of Law and good governance in developing countries, he became the Head of the French Department and promoted the actions of IDLO. Since the beginning of his career, Justice Ba has always been active in judicial education and judicial and international cooperation.