

COALITION FOR THE  
INTERNATIONAL CRIMINAL COURT



**BACKGROUND PAPER**

IN PREPARATION FOR

**THE 11<sup>TH</sup> SESSION OF THE ICC ASSEMBLY OF STATES PARTIES**

14 NOVEMBER TO 22 NOVEMBER 2012 – THE HAGUE

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## I. INTRODUCTION

The Coalition for the International Criminal Court (CICC) has issued this background paper in preparation for the 11<sup>th</sup> session of the Assembly of States Parties (ASP) to the Rome Statute of the International Criminal Court (ICC). The paper covers issues which will be examined as specific agenda items at the 11<sup>th</sup> ASP session and which have been the subject of discussions in the Bureau of the ASP and its The Hague and New York Working Groups over the course of 2012.

The ASP will meet in The Hague from 14 to 22 November 2012. Some 200 non-governmental organisations (NGO) representatives will attend the session. Hundreds of government delegates and other international organisations are also expected to participate.

### Relevant Documents

Provisional agenda for the 11<sup>th</sup> session of the ASP, available at:  
[http://www.icc-cpi.int/iccdocs/asp\\_docs/ASP11/ICC-ASP-11-1-ENG-PA.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/ASP11/ICC-ASP-11-1-ENG-PA.pdf)

Journal for the 11<sup>th</sup> session of the ASP, available at:  
[http://www.icc-cpi.int/iccdocs/asp\\_docs/ASP11/ASP11-Journal-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/ASP11/ASP11-Journal-ENG.pdf)

## II. OPENING PLENARY SESSION

On Wednesday 14 November, the first day of the session, the ASP will organise its work and hear reports from the Court, the Trust Fund for Victims, the Bureau of the ASP, and the Oversight Committee on the Permanent Premises respectively. The President of Senegal has been invited to address the Assembly as well.<sup>1</sup> In addition, the opening plenary session will see the election of the new Deputy Prosecutor of the Court, 9 members of the Advisory Committee on Nominations and 5 members of the Board of Directors of the Trust Fund for Victims.

### Relevant Documents

Report on activities and programme performance of the ICC for the year 2012, available at:  
[http://www.icc-cpi.int/iccdocs/asp\\_docs/ASP11/ICC-ASP-11-8-ENG-ProgrammePerformance.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/ASP11/ICC-ASP-11-8-ENG-ProgrammePerformance.pdf)

Report on the activities of the Court, available at:  
[http://www.icc-cpi.int/iccdocs/asp\\_docs/ASP11/ICC-ASP-11-21-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/ASP11/ICC-ASP-11-21-ENG.pdf)

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<sup>1</sup> To be confirmed.

### III. GENERAL DEBATE

During the General Debate on Thursday 15 November, states-parties, non-states parties, regional and international organisations are given the opportunity to address issues of the day in relation to the Assembly's work and the Rome Statute system and their own contribution in this regard. NGOs are also given an opportunity to address the Assembly. The suggested theme for this year's General Debate is "The tenth anniversary of the entry into force of the Rome Statute: the challenges ahead." It is a chance for states parties to reflect not only on their contributions to the Rome Statute process over the last ten years and to assess the first decade of the ICC, but also to focus on the challenges for the ICC over the next decade.

### IV. ELECTIONS

At its 11<sup>th</sup> session, the ASP will elect a new Deputy Prosecutor, 5 members of the Board of Directors of the Trust Fund for Victims and 9 members of the newly established Advisory Committee on Nominations. The ASP will also adopt recommendations to the ICC Judges on the election of the next Registrar. The elections are scheduled to take place on 14 November, the first day of the ASP session.

#### **Deputy Prosecutor**

Following the election of the former Deputy Prosecutor, Fatou Bensouda, to the position of chief Prosecutor of the ICC at the ASP's 10th session in 2011, a new Deputy Prosecutor will be elected by the ASP. Pursuant to Article 42(4) of the Rome Statute, the Deputy Prosecutor will be elected by secret ballot by an absolute majority of the ASP from the list of 3 candidates shortlisted by the Prosecutor following an open call for applications and interviews by the Office of the Prosecutor:

1. Mr. Paul Rutledge (Australia)
2. Mr. James Stewart (Canada)
3. Ms. Raija Toiviainen (Finland)

The new Deputy Prosecutor will be elected for a non-renewable term of 9 years, unless the Assembly decides otherwise at the time of the election, and will be responsible for the management, supervision and direction of the Prosecutions Division of the Office of the Prosecutor's. To assist and inform States Parties in the elections - but also to enable all stakeholders including the Court, civil society organisations and the general public to gain more insight about the prospective candidates - the Coalition requested each candidate to complete a questionnaire relating to their background, experience and competencies which are published on the CICC website.

#### **Board of Directors of the Trust Fund for Victims**

The five members of the Board of Directors of the Trust fund for Victims, serving in an individual capacity and on a *pro bono* basis, are elected by the ASP for a 3-year term. The 5 seats are distributed according to the 5 major world regions and should have equitable gender balance. During the nomination period, states parties put forward 5 nominations for the 5 seats:

1. Ms. Elizabeth Rehn (Finland) *incumbent chairperson*
2. Ms. Vaira Vīķe-Freiberga (Latvia) *incumbent member*
3. Mr. Denys Toscano Amores (Ecuador)
4. Mr. Motoo Noguchi (Japan)
5. Mr. Sayeman Bula-Bula (Democratic Republic of Congo)

In giving leadership and guidance to the Trust Fund as well as in attracting voluntary contributions, the Board is of pivotal importance in the Trust Fund's further development. This is especially true in the current financial climate and at the critical point where the first reparations order through the Trust Fund was made recently in the case against Thomas Lubanga.

#### **Advisory Committee on Nominations**

At its tenth session in 2011, the ASP established an Advisory Committee on Nominations of Judges of the International Criminal Court (ACN), as provided for by Article 36(4)(c) of the Rome Statute. According to its terms of reference,<sup>2</sup> the ACN will provide the ASP with "information and analysis, of a technical character, strictly on the suitability of the candidates" and is thereby intended to facilitate the election of highly qualified individuals as judges of the ICC. The ACN will be composed of 9 members, designated by the ASP by consensus and reflecting the principal legal systems of the world, equitable geographical and gender representation. The following individuals have been nominated:

1. Mr. Leonardo Nemer Caldeira Brant (Brazil)
2. Mr. Hiroshi Fukuda (Japan)
3. Mr. Philippe Kirsch (Canada)
4. Mr. Philippe Meire (Belgium)
5. Mr. Egbert Myjer (Netherlands)
6. Mr. Daniel David Ntanda Nsereko (Uganda)
7. Mr. Kevin Parker (Australia)
8. Mr. Ernest Petrič (Slovenia)
9. Ms. Mónica Pinto (Argentina)
10. Mr. Mauro Politi (Italy)
11. Mr. Árpád Prandler (Hungary)
12. Mr. Bruno Simma (Germany)
13. Mr. Raymond Claudius Sock (Gambia)
14. Ms. Kristīne Strada-Rozenberga (Latvia)

#### **Registrar**

In 2008, Ms. Silvana Arbia (Italy) was elected by an absolute majority as the Court's Registrar for a 5-year term. Her term expires in April 2013, before which the ICC's Judges will appoint the next Registrar to take office thereafter.

Following the announcement of the impending vacancy, the Court performed an initial selection process through the standard recruitment channels. Of the applications received, 30 were

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<sup>2</sup> annexed to ICC-ASP/10/36

determined to have met the minimum requirements as per the vacancy announcement. Three members of the Court's Presidency individually evaluated the qualified candidates and together identified 11 candidates who best met the requirements of the Rome Statute. From these 11 candidates, one will be elected by the judges by an absolute majority by secret ballot, and taking into account any recommendations by the ASP. States parties recommended the judges to specifically ensure that the selected candidate should demonstrate leadership qualities; preferably possess a sound legal background; have the ability to also liaise effectively with the other organs of the Court and be able to communicate effectively and preferably in both working languages of the Court.

The following candidates are nominated for the election of Registrar:

1. Ms. Alia AOUN (France/Lebanon);
2. Ms. Silvana ARBIA (Italy);
3. Mr. Giancarlo BELLELLI (Italy);
4. Mr. John HOCKING (Australia);
5. Mr. Ralph MARTENS (Germany);
6. Mr. Ngonlardje MBAIDJOL (Chad);
7. Mr. Lyn PARKER (United Kingdom);
8. Ms. Jocelyn PIERRE (France);
9. Mr. Daniel PREIRA (Senegal/France);
10. Mr. Claudio SANTORUM (Argentina/Spain); and
11. Mr. Herman VON HEBEL (Netherlands).

The Registrar is elected for a 5-year term and is eligible for re-election once. To assist and inform the judges in the elections - but also to enable all stakeholders including states parties, the Court, civil society organisations and the general public to gain more insight about the prospective candidates - the Coalition requested each candidate to complete a questionnaire relating to their background, experience and competencies which are published on the CICC website.

### **Relevant Documents**

Information on the election of Deputy Prosecutor, available at:

<http://www.icc-cpi.int/Menus/ASP/Elections/Prosecutor/Deputy+Prosecutor+%282012%29.htm>

CICC questionnaire to the Deputy Prosecutor elections candidates, available at:

<http://www.coalitionfortheicc.org/?mod=electiondeputyprosecutors>

Information on the election of the Trust Fund for Victims Board of Directors, available at:

<http://www.icc-cpi.int/Menus/ASP/Elections/Trust+Fund+for+Victims/2012/Fourth+election+of+the+members+of+the+Board+of+Directors+of+the+Trust+Fund+for+the+benefit+of+victim.htm>

Information on the election of the Advisory Committee on Nominations, available at:

<http://www.icc-cpi.int/Menus/ASP/Elections/AdvisoryCommitteeNominations/Election+ACN-+2012.htm>

Information on the election of the Registrar, available at:

<http://www.icc-cpi.int/Menus/ASP/Elections/Registrar/Registrar.htm>

CICC questionnaire to the Registrar elections candidates, available at:

<http://www.coalitionfortheicc.org/?mod=electionregistrar>

## V. THE ICC BUDGET - 2013

Every year, the Court submits to the ASP a budget proposal for the following year, based on assumptions of what its financial resource needs will be. The budget proposal is then discussed by the Committee on Budget and Finance (CBF), an expert subsidiary mechanism of the ASP responsible for addressing the Court's financial resources. The CBF considered the Court's proposed budget for 2013 on 24 September to 3 October and issued a report with its recommendations.

The ASP's Working Group on the Budget has met both informally and formally to consider the proposed budget for 2013, taking into consideration the CBF recommendations, and in preparation for further discussion during the eleventh session of the Assembly. These discussions took place with a view to try to reach consensus among states parties on the amount of budget the Assembly would allocate the Court for their activities in 2013.

The Court's proposed budget for 2013 requests €118.4 million, an increase of €9.6 million on the approved Budget for 2012. This includes costs associated with the rent of the interim premises, previously paid for by the Host State, 2 new trials in the Kenya situation, increases in legal aid and staff costs. After conducting a technical examination of the proposed budget, the CBF recommended that the 2013 budget should be reduced to €115.12 million.

Over the last few years, discussions on the budget have taken place in the context of a global financial crisis. This has resulted in some states parties seeking to adopt a 'zero nominal growth' approach to the Court's budget – adopting the same exact budget as the previous year without accounting for inflation or new prosecutorial and judicial activities. Although to date, such an approach has yet to be adopted in any finally approved budget by the ASP.

Discussions on the budget will feature throughout the agenda of the 11<sup>th</sup> ASP session.

### Relevant Documents

Proposed Programme Budget for 2013 of the International Criminal Court, available at:

[http://www.icc-cpi.int/iccdocs/asp\\_docs/ASP11/ICC-ASP-11-10-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/ASP11/ICC-ASP-11-10-ENG.pdf)

Report of the Committee on Budget and Finance on the work of its nineteenth session, available at:

[http://www.icc-cpi.int/iccdocs/asp\\_docs/ASP11/ICC-ASP-11-15-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/ASP11/ICC-ASP-11-15-ENG.pdf)

Report on Budget Performance of the ICC as at 30 June 2012, available at: [http://www.icc-cpi.int/iccdocs/asp\\_docs/ASP11/ICC-ASP-11-16-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/ASP11/ICC-ASP-11-16-ENG.pdf)

ASP 10 Resolution Establishing the Programme Budget of the Court for 2011, available at: [http://www.icc-cpi.int/iccdocs/asp\\_docs/ASP10/Resolutions/ICC-ASP-10-Res.4-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/ASP10/Resolutions/ICC-ASP-10-Res.4-ENG.pdf)

## VI. LEGAL REPRESENTATION

Effective and meaningful legal representation is essential to the realization of fair trial rights, and victim 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 2012, discussions on legal representation have taken place as part of the budget facilitation and have focussed on amendments and cuts to the Court's legal aid system.

At the 11<sup>th</sup> ASP session states parties will consider the adoption of three proposals relating to the Court's legal aid system: a) remuneration in the case of multiple mandates; b) legal aid travel (expense) policy; and c) remuneration during phases of reduced activity.

The discussions on these proposals will likely take place during sessions relating to the budget of the Court, and may be adopted as part of the budget resolution.

### Relevant Document

Report of the Bureau on Legal Aid, available at: [http://www.icc-cpi.int/iccdocs/asp\\_docs/ASP11/ICC-ASP-11-2-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/ASP11/ICC-ASP-11-2-ENG.pdf)

## VII. COOPERATION

Over the course of 2012 the Hague Working Group discussed in its facilitation on cooperation *inter alia* the freezing and seizure of assets, channels of communication and domestic procedures for dealing with ICC cooperation requests, execution of arrest warrants, voluntary cooperation agreements and privileges, and immunities of ICC staff. During the discussions, communication relating to the assistance rendered by States in identification, freezing and seizing of property and assets of suspects and accused was identified as a particular priority. The importance of implementing legislation was underlined both by States and by the Court. The topic of bilateral cooperation agreements and/or arrangements between the Court and States, including regarding enforcement of sentences, witness relocation, interim release as well as relocation of acquitted persons was also discussed. No relocation agreements were signed in 2012<sup>3</sup>; the Court describes this

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<sup>3</sup> As of 3 October 2012

absence of new agreements as an alarming shortfall in its ability to protect victims and witnesses potentially under threat.

After the events in Libya in June/July 2012, the need to clarify and raise awareness of the applicable obligations of State Parties and other States with regard to privileges and immunities for ICC staff members was highlighted.

On 16 November at the 11<sup>th</sup> Session, cooperation will be discussed in a dedicated agenda item, with a panel of 3 prominent speakers, including a representative from the ICC, as well as a State Party and NGO Representative, focusing on arrests and the issue of freezing and seizing financial assets. The Prosecutor of the International Criminal Tribunal for Yugoslavia, Serge Brammertz focusing, will deliver a key note speech.

The discussions will culminate in *inter alia* a draft resolution on cooperation

### **Relevant documents**

Report of the Bureau on cooperation, available at:

[http://www.icc-cpi.int/iccdocs/asp\\_docs/ASP11/ICC-ASP-11-28-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/ASP11/ICC-ASP-11-28-ENG.pdf)

Report of the Bureau on potential Assembly procedures relating to non-cooperation, available at:

[http://www.icc-cpi.int/iccdocs/asp\\_docs/ASP11/ICC-ASP-11-29-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/ASP11/ICC-ASP-11-29-ENG.pdf)

ASP 10 Resolution on Cooperation ICC-ASP/10/Res.2, available at:

[http://www.icc-cpi.int/iccdocs/asp\\_docs/ASP10/Resolutions/ICC-ASP-10-Res.2-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/ASP10/Resolutions/ICC-ASP-10-Res.2-ENG.pdf)

## VIII. OMNIBUS RESOLUTION

Since 2003 the ASP has adopted an 'omnibus resolution' at its sessions, which is formally titled 'Strengthening the International Criminal Court and the Assembly of States Parties'. The ASP will adopt a similar resolution again this year following informal consultations on its draft content.

In previous years the resolution has called for universal ratification of the Rome Statute; noted developments linked to institution building and to each organ of the Court; highlighted cooperation and non-cooperation issues; and dealt with administrative issues. The omnibus resolution for this session will address these issues as well as specific subjects including complementarity, cooperation, governance, strategic planning, victims and reparations, the ICC budget, ICC communications, and the Independent Oversight Mechanism.

During the ASP session, the omnibus resolution will be discussed on Saturday 17 November, Tuesday 20 November and Wednesday 21 November.<sup>4</sup>

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<sup>4</sup> Subject to change

## IX. STUDY GROUP ON GOVERNANCE

At its 9th session 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. During the 11<sup>th</sup> session of the ASP, discussions will focus on the recommended language in the omnibus resolution on which consensus has emerged amongst the Study Group. In particular, the extension of the Study Group for another year is proposed, as well as endorsing a “roadmap” to facilitate the consideration of proposals aimed at expediting the criminal process of the Court. The resolution will finally endorse recommendations designed to improve the transparency, predictability and efficiency of the budget process.

This year, the Study Group organised its work around two clusters:

### **Cluster 1: Expediting the criminal process**

States Parties and the Court agreed that ten years into the life of the Court, sufficient practice had developed for there to be a substantive review of the Court’s criminal procedures to conduct a review with a view to expedite the criminal procedures. In early 2012, the Court undertook a ‘lessons learnt’ exercise to identify and prioritise areas that would warrant further consideration, to ultimately recommend proposals of amendments to the Court’s Rules of Procedure and Evidence (RPE). Nine areas of importance were identified, including *inter alia* the relationship between the pre-trial and trial phases, modalities of victims’ participation and reparation, and interlocutory appeals. The Study Group consequently developed a ‘road-map’ to set out how this review process would be undertaken in the coming year and to facilitate a structured dialogue between subsidiary bodies of the ASP and the Court in addressing amendment proposals to the RPE.

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

In an effort for states to create greater transparency and understand each phase in the preparation of the Court’s draft programme budget, discussions in this cluster focused on the Court’s budget process - from the point at which the organs of the Court agree upon a set of assumptions which will inform the following year’s annual draft programme budget to the point at which the ASP considers and decides upon the Court’s budget. Based on these discussions, the Study Group proposed a number of recommendations including developing defined procedures for budget queries from States Parties to the Court, setting a predictable budgetary framework, reassessing the format of deliberations of States Parties on the yearly budget, the contingency fund, the budget cycle and finally a review of existing programs and policies.

The Study Group has also provided advice and recommendations on the proposal to amend rule 132 of the Rules of Procedure and Evidence. Put forward by an absolute majority of judges, the amendment proposal to Rule 132 is to allow for a single judge, as opposed to the full bench of 3 judges, to exercise the functions of the Trial Chamber, in consultation with the full bench, in respect of trial preparation only. This would allow the Court to deploy its judicial resources in a more flexible manner and thus assist to expedite the criminal process.

The outcomes of the Study Group on Governance will be discussed at the 11<sup>th</sup> session during informal consultations on the ‘omnibus resolution’.

### Relevant Documents

Report of the Bureau on the Study Group on Governance, available at:  
[http://www.icc-cpi.int/iccdocs/asp\\_docs/ASP11/ICC-ASP-11-31-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/ASP11/ICC-ASP-11-31-ENG.pdf)

## X. VICTIMS AND REPARATIONS

In the course of 2012, The Hague Working Group discussed the following topics in relation to victims and reparations: a) The revised strategy in relation to victims; b) the current system for victims to apply to participate in proceedings; c) reparations and complementarity; d) the principles on reparations; and e) the Trust Fund for Victims.

### a. Revised strategy in relation to victims

At the Review Conference in Kampala in 2010, the Court was requested to revise its Strategy in Relation to Victims, taking into consideration that recognizing victims’ rights to equal and effective access to justice; protection and support; adequate and prompt reparation for harm suffered; and access to relevant information concerning violations and redress mechanisms, are essential components of justice. In the years since the Review Conference, the Court consulted with States Parties and other stakeholders and finalised the revised strategy and its accompanying report. At the 11<sup>th</sup> session, the ASP will take note of the two documents in the resolution on victims and reparations.

### b. The current system for victims to apply to participate in proceedings

At the request of the ASP, the Court produced a paper to propose options for measures that could be taken to achieve a sustainable system of victims’ applications, as the Court is facing persistent backlogs in processing these applications. This report considers six options, which will require further consideration and consultations over the course of 2013. The draft resolution on victims and reparations before the ASP calls for an urgent review of the application system and in particular amendments to the legal framework for the implementation of a predominantly collective approach in the system for victims to apply to participate in the proceedings.

### c. Reparations and complementarity

Over the course of 2012, states parties discussed whether the ASP can or should encourage individual States Parties to play a more active role with regard to reparations to victims, by for example, sensitizing communities on the rights of victims in accordance with the Rome Statute in general and victims of sexual violence in particular. The draft resolution on victims and reparations before the ASP calls for States Parties, where crimes under the Court’s jurisdiction have been committed, to adopt victims’ related provisions as appropriate.

**d. Principles on reparations**

Further to the reparations principles set out by Trial Chamber I in the Lubanga case, States Parties call on the Court to ensure that coherent principles relating to reparations continue to be established.

**e. Trust fund for victims**

On the 1<sup>st</sup> day of the ASP session, the Trust Fund's Board of Directors will give a presentation summarizing the activities and projects of the Trust Fund for Victims (TFV) conducted in 2012 and informing the ASP on the progress made. In 2012, the TFV saw its 5<sup>th</sup> full year of operations and its reparations mandate triggered for the first time.

So far this year, the TFV has received €252,252 of voluntary contributions from States Parties. In addition, the United Kingdom pledged a £500,000 contribution at the commemoration of the 10th anniversary of the Court. During the ASP's session, the TFV's Board of Directors will request States Parties to allocate a €1 million exceptional voluntary contribution to the TFV reserve for its reparations mandate, as the reserve currently stands at €1.2 million euros for the possible future reparations award in all cases before the Court.

**Relevant Documents**

Report of the Bureau on Victims and affected communities and the Trust Fund for Victims and Reparations, available at:

[http://www.icc-cpi.int/iccdocs/asp\\_docs/ASP11/ICC-ASP-11-32-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/ASP11/ICC-ASP-11-32-ENG.pdf)

Report to the ASP on the projects and the activities of the Trust Fund for Victims Board of Directors for the period 1 July 2011 to 30 June 2012, available at:

[http://www.icc-cpi.int/iccdocs/asp\\_docs/ASP11/ICC-ASP-11-14-ENG-BDTFV.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/ASP11/ICC-ASP-11-14-ENG-BDTFV.pdf)

**XI. COMPLEMENTARITY**

Consultations in the Hague Working Group have focused on stimulating the dialogue among states parties on complementarity as well as international efforts aimed at strengthening national jurisdictions so as to be able to investigate and prosecute serious international crimes – “positive complementarity.”

Discussions primarily focused on the individual roles the Court, the ASP Secretariat, and States Parties are to play on complementarity. In that respect, the mandates of the organs of the ASP and the Court were refined as follows:

The Court itself has a limited role to play in strengthening national jurisdictions. However, rule of law actors seeking to implement complementarity-related activities can benefit from the Court's investigative and prosecutorial expertise, knowledge of situations and needs ‘on the ground,’ and hands-on experience with the challenges associated with investigating and prosecuting the most serious international crimes.

The Court's report on complementarity focuses on areas of interest to the ICC where further activities by States, international and regional organizations, and civil society would help, as well as providing some insight into the Court's experiences to feed into discussions on complementarity.

The ASP Secretariat's role in complementarity is to facilitate the exchange of information on the strengthening domestic jurisdictions between the Court, states parties, international organizations, and civil society. In this regard, the ASP Secretariat has adopted a 2-track approach: 1) creating a database to house information concerning complementarity activities, the complementarity extranet; and 2) building relationships with complementarity actors within the international community to reinforce the exchange of information.

Established in August 2011, the complementarity extranet is meant to serve as an information portal on projects and events relating to complementarity, identify the main actors and their activities, and facilitate contacts between donor States, organizations, civil society, and recipient States in to order to enable donors/recipients to be aware of needs for capacity-building and offers of assistance.

The draft resolution for consideration at the 11<sup>th</sup> ASP 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. The resolution also encourages stakeholders to submit information on complementarity-related activities to the SASP for inclusion in the extranet. On Monday 19 November 2012, the ASP will hold plenary discussions on complementarity with a keynote address by Ms. Helen Clark, Administrator of the UNDP, presentations of concrete examples by States' representatives, and an open debate on the topic.

### **Relevant Documents**

Report of the Secretariat of the ASP on complementarity, available at:  
[http://www.icc-cpi.int/iccdocs/asp\\_docs/ASP11/ICC-ASP-11-25-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/ASP11/ICC-ASP-11-25-ENG.pdf)

Report of the Court on complementarity, available at:  
[http://www.icc-cpi.int/iccdocs/asp\\_docs/ASP11/ICC-ASP-11-39-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/ASP11/ICC-ASP-11-39-ENG.pdf)

Report of the Bureau on Complementarity (Pending publication)

## **XII. INDEPENDANT OVERSIGHT MECHANISM**

At the 8<sup>th</sup> 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 inspection, evaluation and investigation of the Court in order to enhance the Court's efficiency and economy." It was decided that the independent 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 extensively discussed the operationalisation of the 3 mandates of the IOM, but have yet to reach agreement,

following concerns registered by the Office of the Prosecutor regarding a potential infringement on its prosecutorial independence. Discussions will continue in 2013.

In 2012 the Temporary Head of the IOM, in close consultation with the Court, the Staff Union Council and States Parties, developed a draft anti-retaliation/whistleblower policy. This policy is now under consideration by the Court.

The IOM will be discussed at the 11<sup>th</sup> ASP session during informal consultations on the 'omnibus resolution'.

#### **Relevant Documents**

Report of the Bureau on the Independent Oversight Mechanism, available at: [http://www.icc-cpi.int/iccdocs/asp\\_docs/ASP11/ICC-ASP-11-27-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/ASP11/ICC-ASP-11-27-ENG.pdf)