



STATEMENT AT THE 11TH ASP, NOVEMBER 2012 – DISCUSSIONS ON COMPLEMENTARITY

Thank you for the opportunity to share Human Rights Watch's reflections during this important plenary debate. In our view, the Assembly of States Parties, as a body encompassing donor and recipient states, non-states parties and civil society united by a shared commitment to fight impunity for Rome Statute crimes, is ideally placed to act as a guarantor of the complementarity principle.

There is no denying that national prosecutors, investigators and judges should be on the front lines when it comes to pursuing accountability for atrocity crimes. Under the deft stewardship of Denmark and South Africa, in just a few short years diplomatic discussions have focused increasingly on what states can do, including through their allocation of development assistance, to bolster national capacity to handle atrocity crimes.

As was noted yesterday, there is also growing recognition that justice and development— instead of competing with each other— are mutually reinforcing. In that regard, Helen Clark's keynote address was very welcome. We also agree with the suggestion made by the Swiss delegation to consider including the World Bank in future discussions.

Nonetheless, while real progress has been made, the growing enthusiasm around complementarity should not obscure the fact that the obstacles to realizing national justice for atrocity crimes can be significant.

An obvious challenge confronting many national justice systems is capability. Donors can help strengthen capacity by using funds already earmarked for rule of law reform projects and channeling them towards accountability efforts for ICC crimes as a "related but distinct" subset of rule of law assistance. This is not unlike what is already done by states for piracy, terrorism and organized crime.

But as we heard from the panelists and a number of delegations yesterday, development assistance is not by itself enough. The success of capacity-building projects hinges on the willingness of the recipient government to let them thrive. Such willingness may be in short supply, especially when crimes are committed in response to longstanding ethnic or political tensions and when their authors are in or close to those in positions of power.

Efforts to realize national accountability must also confront the lack of judicial independence and impartiality. Pursuing sensitive atrocity cases, which may implicate governmental policies or actors, can be difficult where judges and prosecutors lack the institutional culture and support needed to try allegations without fear of professional or personal retribution.

Of course, these challenges are nothing new, and offer a salient reminder as to why the ICC was created in the first place. But the deeply rooted nature of these obstacles should not be used as an excuse to shy away from efforts aimed at tackling them.

Indeed, based on our research in a number of the ICC situations under investigation or analysis, including Côte d'Ivoire, Democratic Republic of Congo, Uganda, and Guinea, there is a degree of recognition by national authorities of the need to bring perpetrators of ICC crimes to justice. The pursuit of justice in each of these countries is not without flaws. Nonetheless, development and political actors of ICC states parties that are active in these countries can use their combined leverage—the former through programs aimed at building capacity, the latter through public and private diplomacy—to push these governments closer towards realizing an independent and impartial justice process. It also remains essential to engage and support national and international civil society as critical partners in efforts to improve capacity, erode unwillingness and strengthen institutions over time.

One thing is clear: fighting impunity for atrocity crimes requires long-term attention, support, and investment. The success of this long-term engagement is enhanced by coordination among donors acting in a particular country. In addition to improving efficiency, working together can bolster states parties' collective political influence to push for meaningful national efforts to pursue ICC crimes.

We are encouraged by the constructive discussion that emerged in this year's plenary session on complementarity. We also support efforts to put complementarity on the agenda of future sessions of the ASP, and agree with the sentiment expressed yesterday that even more development actors should be included. In the meantime, we look forward to ongoing efforts by the focal points to anchor complementarity in the ASP. To that end, we encourage them to continue to use the existing working groups in The Hague and in New York to draw attention to specific progress and challenges when it comes to pursuing national justice. In this way, delegations could maintain a dynamic discussion about possible strategies to overcome these challenges and further strengthen the fight against impunity for Rome Statute crimes.

Thank you.