

# OPEN SOCIETY JUSTICE INITIATIVE

## STATEMENT AT ASP 2012 – DISCUSSIONS ON COMPLEMENTARITY

[Madame Chair/Mr. Chairman]:

The Open Society Justice Initiative joins others in thanking South Africa and Denmark for their energy and efforts as co-focal points on complementarity. We share the view expressed by some states that complementarity should remain as an agenda item at future ASP sessions.

In the very useful remarks we heard from states yesterday, much of the focus was on capacity building, an area in which there are many opportunities to advance complementarity in practice. However, in many locations political challenges loom as the even larger hurdles.

We welcome Sweden's suggestion that questions of political will with respect to complementarity should be integrated into bilateral diplomatic engagement. In some countries, diplomatic attention to complementarity is simply crowded out by competing priorities, often because local delegations lack familiarity with the issue.

We also welcome Liechtenstein's suggestion that the ASP give greater focus to the challenge of unwillingness. The ASP can continue and intensify its work in this regard along three important tracks:

1. It can bring attention to, and help overcome, political obstacles where these impede genuine national proceedings. The ASP President can work with states to urge the domestication of Rome Statute crimes in national law, and press members to improve faulty coordination of their individual efforts to support national will and capacity to conduct proceedings for international crimes.
2. The ASP has an important diplomatic role in advancing complementarity. The ASP President should continue to engage in outreach to counteract misinformation campaigns about the Rome Statute. The ASP can laud successes, note failures, and urge action to confront particular problems, including through the President's diplomatic activity and adoption of ASP resolutions. Where political obstacles to genuine domestic investigations and prosecutions are exposed to light, it is generally easier to generate will to overcome them.

3. The ASP can also build political will for complementarity by ensuring that it fully funds ICC outreach. Wherever there is a demand for justice in response to international crimes, civil society can play an important role in outreach. But it is critical that affected communities also hear from the institution responsible for the proceedings. States should develop the capacity to engage in substantive dialogue with their own citizens about justice processes they are undertaking.

In situations where proposed or actual national proceedings coexist with ICC proceedings or preliminary examinations, outreach conducted by each authority is particularly important. Many states vocal in ASP budget discussions still underappreciate that outreach is key to the ICC's own efficiency and success. Anti-justice demagoguery thrives on misinformation and corrodes political will for national proceedings and ICC cooperation alike, but it can be defanged through effective outreach. Likewise, outreach can encourage community participation in domestic and ICC investigations. It can render as truly felt justice what would otherwise be obscure, remote legal developments. In such locations as Kenya, the Democratic Republic of Congo, Uganda, Guinea, and Colombia, the Rome Statute is comprehensively engaged. In these places, which include situations under preliminary examination, this Assembly's greatest contribution to building political will for national proceedings could be to simply adequately fund ICC outreach.

Thank you.