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Report of the Secretariat on complementarity

Note by the Secretariat

Pursuant to paragraph 9 of resolution RC/1 of the Review Conference, paragraph 47 of resolution ICC-ASP/9/Res.3, paragraph 61 of resolution ICC-ASP/10/Res.5, paragraphs 8 and 9 of resolution ICC-ASP/11/Res.6 of 8 June 2010, 10 December 2010, 21 December 2011 and 21 November 2012, respectively, the Secretariat of the Assembly of States Parties hereby submits for consideration by the Assembly its report on complementarity. The present report reflects the activities undertaken by the Secretariat in the implementation of its mandate to facilitate the exchange of information between the Court, States Parties and other stakeholders, including international organizations and civil society, aimed at strengthening domestic jurisdictions.

I. Introduction

1. By resolution RC/Res.1 entitled “Complementarity”, the Review Conference tasked the Secretariat of the Assembly of States Parties (“the Secretariat”),

“...in accordance with resolution ICC-ASP/2/Res.3, and, within existing resources, to facilitate the exchange of information between the Court, States Parties and other stakeholders, including international organizations and civil society, aimed at strengthening domestic jurisdictions, and *requests* the Secretariat of the Assembly of States Parties to report to the tenth session of the Assembly on progress in this regard”.

2. The Assembly of States Parties (“the Assembly”) reaffirmed this mandate by its subsequent resolutions, ending with resolution ICC-ASP/11/Res.6.

II. Activities with respect to actors in the field of complementarity

3. The Secretariat continued to implement this mandate along the two-track approach identified by the Assembly focal points, Denmark and South Africa. The Secretariat has continued to maintain contacts and further develop working relationships with actors in the field of complementarity, with a view to supporting States in their efforts to strengthen capacity to investigate and prosecute Rome Statute crimes. In particular, the Secretariat facilitated the organization of a high level seminar on witness protection in Dakar in June 2013, organized by the facilitator for cooperation and sponsored by Norway, the Netherlands and Estonia. The seminar gathered high-ranking officials from nine Francophone African States Parties, and aimed at reinforcing national capacities in the area of witness protection and encouraging the sharing of best practices and experiences with the Court in this specific field. Participants identified several key areas where the capacity of national actors should be reinforced, in order to allow for an effective implementation of positive complementarity, including the training of judicial and police actors involved in witness protection and relocation, and the need to have a proper legal framework in place for giving effect to specific cooperation requests from the Court. A similar seminar is planned by the facilitator for cooperation at the end of October 2013 in Arusha, for Anglophone African States Parties, in which the Secretariat will participate.

4. Furthermore, acting on the basis of requests by some civil society organizations for assistance in holding seminars aimed at building capacity, the Secretariat has acted as a liaison with potential donor organizations. The Secretariat notes that some of the donors are increasingly mainstreaming international justice into their development assistance programmes.

5. The President of the Assembly, Ambassador Tiina Intelmann (Estonia), continues to attach high importance to the topic of complementarity and places a special focus on complementarity in all the statements she gives in different fora, including intergovernmental meetings, regional conferences, and public events. She has stressed the importance of building domestic capacity to investigate and prosecute Rome Statute crimes in a broader rule of law context. The President has also highlighted the important role that regional organizations and the United Nations play in providing assistance in that regard. The goal of her activities is to give complementarity work prominence and to create synergies with various actors who work on these issues.

6. The President also raised the importance of States proactively taking action to strengthen their capacity to bring accountability for Rome Statute crimes in her bilateral meetings. These include bilateral meetings during the United Nations General Assembly 68th Session, as well as with high-level representatives of the European External Action Service, members of the European Parliament and representatives of the African Union Commission.

7. The Secretariat has carried out its mandate in close consultation with the Assembly focal points and the President of the Assembly of States Parties, in particular the discussion of modalities for implementation of the mandate.

III. Requests conveyed by the Secretariat to States and other stakeholders

8. Pursuant to the mandate set out in paragraph 8 of resolution ICC-ASP/11/Res.6, whereby the Assembly requested the Secretariat to “within existing resources, continue to develop its efforts in facilitating the exchange of information in this regard, including through inviting States to submit information on their capacity- needs for the consideration of States and other actors in a position to provide assistance, and to report on the practical steps taken in this regard to the twelfth session of the Assembly”, the Secretariat, by note verbale ICC-ASP/12/S/012 of 12 April 2013, invited States to submit such information on the capacity-building needs which they had identified. The Secretariat has, so far, received responses from three States, which have been posted on the complementarity website when appropriate. Areas where capacity building needs were identified concern, inter alia, the training of personnel in investigation and prosecution techniques, including forensic and witness protection issues, training in the use of legal databases, and access to international criminal law jurisprudence. The Secretariat is liaising with the requesting States with a view to assisting in identifying actors capable of providing the requested assistance.

9. In addition, the Secretariat has identified a number of States having expressed in other fora specific capacity-building needs in various areas, such as evidence collection and witness protection, and intends to follow up with these States and liaise with actors providing assistance in these areas.

10. By note verbale ICC-ASP/12/S/013, of 12 April 2013, the Secretariat, pursuant to paragraph 9 of the above-mentioned resolution, encouraged States, international and regional organizations and civil society to submit to it information on their complementarity-related activities. The Secretariat received three responses from States, which have been posted on the complementarity website as appropriate.

IV. Activities with respect to the Court

11. In accordance with the mandate of the Review Conference regarding the Court, the Secretariat has continued discussions with the organs of the Court on information sharing and on how it might collaborate with them.

12. The Secretariat collaborated closely with the Court in the organization and identification of participants in the Dakar seminar on witness protection, which allowed for a constructive dialogue among the participating States and the Court, including the identification of areas where capacity building or technical assistance would be needed. The Secretariat intends to continue to improve cooperation with the organs of the Court.

V. Complementarity website

13. The Secretariat continues to hold the view that the vehicle of a dedicated website would more readily facilitate contact and exchange of information among a broad scope of actors in order to meet existing capacity building needs in the area of international criminal justice.

14. In order to make the data formerly contained on the Complementarity Extranet more readily accessible and user friendly, the Secretariat, in February 2013, transferred this data to the internet website of the Assembly of States Parties.¹ The website is intended to provide an information base on events relating to complementarity, identify the main actors and their activities, and facilitate contacts between donor States, international and regional organizations, civil society and recipients, in order to advance the goal of strengthening national capacity to investigate and prosecute the most serious crimes of concern to the international community. The dedicated website is a neutral forum which could be used by donors as well as recipients. The Secretariat continues to post information received on technical assistance needs as well as on capacity-building projects on the website. The

¹ http://www.icc-cpi.int/en_menus/asp/complementarity/Pages/default.aspx

Secretariat, with the assistance of the Office of the President, is also in the process of preparing a non-exhaustive list of the key complementarity actors, which it proposes to post on the website along with a brief description of their mandate and work, and the links to their respective websites. This would enhance the resources available on the Assembly website to States and other stakeholders for the development of domestic capacity to bring accountability for serious international crimes.

VI. Conclusion

15. The Secretariat continues to make progress in the implementation of its mandate, within existing resources. Since May 2013, the capacity of the Secretariat has benefited from the work of a consultant on complementarity within the office of the President, funded by extra-budgetary resources, and it will continue to build on its work in collaboration with the consultant.

16. As regards its mandate to facilitate the exchange of information, the Secretariat notes that it has received very limited responses to its notes verbales, making it more difficult to prepare an overview of either the needs for technical assistance or the complementarity-related activities of States and other stakeholders. The Secretariat invites States in a position to provide capacity-building assistance to so indicate to it. Furthermore, the Secretariat reiterates the need to manage expectations, while continuing to develop and implement this mandate.
