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Human Rights Watch Statement to the General Debate of the International Criminal Court's Eleventh Assembly of States Parties

November 15, 2012

Your Excellencies,

Thank you for the opportunity to address this eleventh session of the Assembly of States Parties.

It has been 10 years since the entry into force of the Rome Statute, the treaty of the International Criminal Court (ICC). In July 2002—far quicker than had been anticipated and only four years after the treaty's adoption in Rome—the ICC's 60th member country ratified the treaty, paving the way for the court to get down to work adjudicating crimes of genocide, war crimes, and crimes against humanity.

A decade on, the treaty's membership has more than doubled, with 121 member countries. Its second prosecutor, Fatou Bensouda from The Gambia, took office in June 2012, inheriting a sizeable caseload of investigations in seven countries. Even as the ICC's reach remains too limited—the United States, China, and Russia have remained outside the system and have used their influence to shield allies from the court's jurisdiction—for many communities affected by mass atrocities, "The Hague" has increasingly come to represent the last, best hope for justice.

This is an achievement worth celebrating, and this anniversary has been fittingly marked by states parties at the outset of this Assembly session. The most fitting tribute is renewed commitment to the mission of the ICC and to seeing the effective implementation of its mandate in practice.

The court's first decade has not been an easy one, and it has, at times, disappointed expectations of the world's only permanent criminal court. It is also facing challenges not present at its founding, in particular, global economic conditions that are reducing the priority and resources afforded to international justice. This will likely place new obstacles in the court's way as it seeks to improve its performance while more fully realizing its mandate. In addition, in spite of its growing membership and the commitment of many states parties, the consistent public and diplomatic support necessary for the court to carry out its judicial mandate without interference has not fully materialized.

And yet the need for the court is clearer with every passing year. We repeat the call we made at last year's Assembly session: The Security Council should refer the situation in Syria to the court. We look to the 121 members of this Assembly, a treaty body pledged to limiting impunity for crimes that shock the conscience of humankind, to make your governments' voices heard by the Security Council.

As the court enters its second decade, each component of the Rome Statute system—including court officials and staff, states parties, and the Assembly of States Parties—will need to heighten their efforts to ensure that the ICC can meet its founders' aspirations and the expectations of victims around the world. We welcome in this regard discussions on the relationship between the United Nations (UN) Security Council and the ICC and we ask states to commit to continue to evolve this dialogue in order to strengthen Council practices on court referrals.

We urge your governments to make the most of this Assembly session to move the ICC and the broader fight against impunity forward in the court's second decade. There are three issues that deserve particular attention: (1) strengthening the court's impact in affected communities, (2) enhancing state support and cooperation to the court, and (3) expanding the reach of justice through national-level serious crimes trials.

Strengthening the Court's Impact in Affected Communities

In this anniversary year we call on ICC states parties to place increased focus in their discussions and in the consideration of the court's annual budget on whether the ICC is

living up to a key aspiration at its founding, namely, whether it is equipped to deliver justice with a real impact in affected communities.

The ICC benefits from innovative provisions in the Rome Statute and from the experiences of those tribunals that had come before it, which were often criticized for remaining too far removed from the victim communities they were set up to serve. Moving international justice forward at the ICC should encompass a real and operative concern to place affected communities at the heart of the court's work.

This is a vision that has yet to be realized in the policy decisions and practice of the court. But states parties have also placed less emphasis in their discussions on ensuring that the court's work is grounded in a concern for its impact in affected communities. This is a departure from earlier practice, when, for example, states parties pushed the court to improve its outreach activities.

This drift away from a concern for impact may stem from state party frustration with the court's limited progress in its proceedings and also with a concern for holding down the court's budget. Regardless of how the court's budget is set in any given year, however, the court and its states parties cannot allow a concern for impact to be driven off the agenda. Even if the resources made available to the court are not optimal, the Assembly should insist that a concern for the court's impact in affected communities remain at the core of its work.

As the court enters its second decade, therefore, ICC member countries and its officials should give priority to reclaiming a shared consensus regarding the importance of ensuring the court serves affected communities and has a long-term impact in situation countries. At this Assembly session states parties should support through strengthened language in Assembly resolutions those elements of the court's work that are particularly relevant to impact among affected communities. These include meaningful victim participation, outreach, field presence, the Trust Fund for Victims, and attention to the court's legacy. In budget negotiations, states parties should also express concern for the court's ability to have real impact in affected communities and insist that this concern should provide one benchmark against which the adequacy of the resources provided to the court is measured.

Enhancing State Support to and Cooperation with the Court

Over the 10 years since the Rome Statute's entry into force it has become clearer the extent to which the ICC must rely on state cooperation and support. This is true in terms of the diplomatic and political support necessary for the court to carry out its judicial work independently, as well as the technical expertise and dedicated capacity to ensure national authorities are equipped to respond to requests for judicial assistance and logistical support.

While the ICC's existence as a permanent institution, its growing membership, and its increased operationalization stand as a bulwark against a return to antipathy and license in the face of serious international crimes, neither the norm of accountability nor the court itself have advanced so far that its supporters can rest easy. For the court to be increasingly capable of taking on important but politically unpopular cases, to secure arrests, and to have its independence respected, the ICC will need increased rather than lessened expressions of political commitment—whether at the Assembly session, in strategic forums such as the UN Security Council and regional organizations, or in bilateral contacts—and the implementation of that political commitment in practice.

The General Debate at the Assembly remains an important forum for advancing political support to the court. We urge states parties to use General Debate statements and statements during the plenary discussion on cooperation to affirm their commitment to the mission and mandate of the ICC to end impunity for the crimes of most concern to the international community, and to encourage other states parties to continue to express and implement diplomatic and political support for the court.

Expressions of political commitment need to be matched by the implementation of that commitment in practice. Over the past year, the Assembly has made significant gains in its own efforts to facilitate enhanced cooperation practices among states parties. These include discussions conducted in the context of the cooperation facilitation within The Hague Working Group; a seminar on the identification, freezing, and seizure of assets held in The Hague in October; and the implementation for the first time of the Assembly's procedures on non-cooperation. States parties should give further consideration to the non-cooperation procedures based on the experience of the past year and mandate the

Assembly's Bureau to provide a further report to reach a common menu of other measures available to the Assembly to anticipate and respond to instances of non-cooperation.

The upcoming Assembly session features, for the first time, a plenary discussion on cooperation. This is a significant development that will serve to give cooperation the platform within Assembly discussions that the topic deserves. It is also a return to the example set by stocktaking on cooperation during the Kampala review conference. We encourage states parties to make the most of this opportunity to exchange best practices in the areas identified for discussion: (1) identification, freezing, and seizing of assets and (2) arrests. We also encourage states parties to use this discussion to evaluate how to step up the Assembly's efforts to enhance cooperation, including by considering the creation of an intersessional working group on cooperation.

Focused attention on arrests is overdue. ICC arrest warrants remain outstanding against 12 individuals, stalling efforts to deliver justice to victims in these cases. The plenary discussion is not a forum where states parties should discuss any specifics for particular arrest efforts. That discussion, unsurprisingly, would best take place in other settings. Nonetheless, the "value added" of discussing arrests in the Assembly, drawing on broad lessons learned including from other international criminal tribunals, lies in creating greater clarity of what is needed and increasing a sense of real support for actually executing and assisting with arrest warrants.

Complementarity: Expanding the Reach of Justice through National-Level Serious Crimes Trials

In just a few short years—beginning in Kampala and evolving under the Greentree process—diplomatic discussions on the ICC and the future of international justice have focused increasingly on what states can do, including through their allocation of development assistance, to bolster national capacity to handle atrocity crimes. At the same time, the very real obstacles to realizing justice at the national level, which include uneven political will and institutional weaknesses in the justice sector, have also become more apparent. This reality underscores that overcoming obstacles to national capacity and willingness requires a firm recognition among diplomatic and development actors in the ICC's 121 states parties that fighting impunity for atrocity crimes requires long-term attention, support, and investment.

Against this backdrop, we very much welcome the plenary discussion on complementarity at this year's Assembly. To make the most of the discussion, we urge states—particularly those with experience as either a donor or recipient state—to include high-level representation and development actors in their delegations and to encourage them to participate actively in the debate in order to share lessons learned. In their statements during the debate, states parties and observers should commit to mainstreaming the importance of accountability initiatives with diplomatic and development staff on the ground and underscore that, alongside capacity building initiatives, states should also work together to strengthen the will of governments to see through independent and impartial trial of the most serious crimes. States parties should also consider how to further anchor complementarity efforts within the work of the Assembly, including by calling on the complementarity focal points to convene meetings under the auspices of the existing working groups in The Hague and in New York on specific topics relating to complementarity. This could ultimately lead to a working group on complementarity if justified by need in the future.