



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

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Mr. President,

This year, the International Criminal Court community celebrated a milestone in the development of international justice. At the first-ever review conference—held in Kampala, Uganda—states parties, observer states, intergovernmental organizations, and civil society reaffirmed their collective commitment to holding to account perpetrators of mass atrocity.

As the earliest opportunity to consider amendments to the Rome Statute—and with the adoption of two amendments—the review conference capped the first phase of the ICC's establishment.

But the Kampala review conference was also an opportunity to look ahead. By assessing the key challenges facing the further development of the ICC and the broader fight against impunity, stocktaking discussions in Kampala served to identify critical next steps in strengthening international justice.

We welcome the serious attention paid by the Assembly and states parties in their preparations for Kampala and in their active and engaged participation in debates there.

But if the debates in Kampala and the important resolutions and declarations adopted there are to have real meaning in the fight against impunity, the Assembly and states parties must now take steps to translate them into concrete action.

Pledges

First, the dozens of pledges made in Kampala hold out real promise for increasing practical and political support to the court. We welcome statements made during the General Debate reflecting steps taken by states parties to implement these pledges. The Assembly should put in place a framework to encourage the full implementation of pledges made in Kampala while also encouraging additional pledges as a regular feature of Assembly sessions.

Cooperation

Second, developments since the Kampala conference have only underscored the importance of the Assembly's heightened attention to cooperation.

The visits of President Omar al-Bashir of Sudan to Chad and Kenya without facing arrest makes a mockery of the suffering of Darfuris and risks making a mockery of the court's decisions, and can only encourage President al-Bashir's efforts to undermine the warrants issued for his arrest.

They also lend new urgency to the Assembly equipping itself to address questions of non-cooperation. We look forward to serious discussion at the session this week on putting in place Assembly procedures to address non-cooperation, but think that more work will be needed to develop these procedures in full. We recommend that the Assembly request the Bureau continue these discussions through the appointment of a facilitator within one of its working groups, with a view toward preparing recommendations in this regard to the next session of the Assembly.

We have also seen, however, the very positive effect that can be had where states parties work together to assist one another to enhance cooperation practices. The joint efforts of states parties and civil society avoided a repeat visit to Kenya and a visit to Central African Republic. These successes required advance notice and concerted efforts at coordination.

They also demonstrated to us—as did the sharing of best practices during stocktaking in Kampala—the very real gains that may be made by encouraging positive practice on cooperation among states parties, including through creating additional vehicles within the Assembly to facilitate exchange on cooperation.

When it comes to increasing political and diplomatic support, for example, states parties should make the most of opportunities provided here at the United Nations, where debates touching on the ICC's work are conducted on an extremely high-profile stage. We recommend that an Assembly facilitator be put in place here in New York to identify to other states parties to identify such opportunities to mainstream support for the ICC's mission and mandate across the United Nations.

States parties should also support the work of the Assembly's cooperation facilitator. They should seek to provide additional capacity by looking ahead to the creation of a working group on cooperation to take forward targeted initiatives on cooperation and to facilitate the sharing of best practices based on the model set in Kampala.

Complementarity

Third, the Assembly will need to maintain its attention to putting the complementarity principle into practice; indeed, if the fight against impunity is to move forward, it must increasingly be brought to the national level. This is not a task for the Assembly alone, but the Assembly—and particularly through its focal points and Secretariat—has a critical role to play in bringing about a focus on national prosecution of ICC crimes as a distinct subset of broader rule-of-law assistance. We look forward to discussion during this session and beyond to further define and implement this critical role.

In taking these steps to translate pledges and discussions at the review conference into concrete action, states parties will make manifest the “renewed spirit of cooperation and solidarity” of Kampala and better ensure real gains to the fight against impunity.

Mr. President,

The Assembly has before it several other important matters at this session.

Allocating resources adequate to the ICC's mission and mandate

Chief among these are the consideration of the court's budget. In their scrutiny of the court's proposed budget and the recommendations of the Committee on Budget and Finance, we urge states parties to avoid arbitrarily imposed cuts. States parties should ensure the allocation of resources adequate to the ICC's

ability to carry out its mandate in a manner which delivers meaningful justice for victims and affected communities. We also urge states parties to allocate specific resources to the court to permit continued engagement with the African Union headquarters and diplomatic missions in Addis Ababa with a view toward the future establishment of the ICC's liaison office there.

Study group on the governance framework of the Rome Statute system

States parties will also consider adopting a resolution to establish a study group in The Hague addressed to the governance framework of the Rome Statute system.

Human Rights Watch has long advocated for a robust role for states parties when it comes to strategic dialogue with court officials on court activities. At the same time, we have equally emphasized that this must be done with scrupulous respect for the court's independence and deference for the expertise of court officials in setting policy. A real and important balance must be struck and kept between, on the one hand, this independence and deference, and on the other, the essential role of the Assembly in providing management oversight.

If states parties proceed with the establishment of this group, we urge them to pay careful attention to this balance. Of particular importance will be to ensure that the study group avoids reaching topics that would put the Assembly beyond the appropriate boundaries of oversight. We recommend that before the study group commences work, states parties develop terms of reference to define the topics under discussion. The terms of reference should also define the study group's working methods. These methods should place a firm emphasis on the study group's consultation with court officials to benefit from and be led by their greater expertise with court procedures and operations, as well as with civil society representatives as close observers of the ICC and other international justice mechanisms. Finally, the study group should benefit from study of the ASP's existing oversight mechanisms to ensure that it does not duplicate efforts, and also to identify areas where Assembly structures need improvement.

Thank you.