

Human Rights Watch statement to the Cooperation plenary
Assembly of States Parties 21st Session

Informal draft for interpreters

Many thanks to the co-facilitators for the invitation to participate in today's panel discussion. I realized in preparing for today that in this year of anniversaries, I believe that this is the 10th anniversary of the Assembly's first plenary session on cooperation. The standing nature of this agenda item—which has endured as the sole thematic discussion within the Assembly's agenda—reflects the absolutely central role of state cooperation in the Rome Statute system. [With these ten years of practice in mind, the Assembly should continue to develop its working methods to identify priorities, to generate real momentum in these areas and sustained, focused follow-up intersessionally, as well as building other platforms for exchange between national cooperation experts.]

Other speakers have already stressed the court's responsibilities under article 68 to ensure the protection of victims and witnesses appearing before the court. The capacity of the court to ensure adequate protection and support is likely to determine the extent to which witnesses will cooperate with the court and to which victims will take an active part in proceedings. Witness cooperation and victims' participation, in turn, are key factors in the court's ultimate success.

The discussion has highlighted the “cooperation” element of witness protection, particularly in the context of witness relocation. Relocation should be a measure of last resort, and yet it is a unfortunate necessity. Where needed, the court depends on the political will of states to accept witnesses and victims for relocation, on the one hand, and on the other, to have the technical expertise to support relocation.

The latter then also highlights a “complementarity” opportunity for witness protection. As noted in the court's report to this session on cooperation and as previously recommended through the complementarity facilitation, states can work together—to share expertise and provide capacity building activities—with the aim of developing witness protection programs nationally. When it comes to ICC situation countries, this can be an important component of positive complementarity strategies, that is, strategies aimed at assisting national authorities to investigate and prosecute serious international crimes. Such strategies are a key element of ensuring as the ICC completes its work, it contributes to a lasting legacy for the rule of law. The Assembly should revisit its discussions on complementarity, with the aim of increasing these kinds of exchanges, in line with the spirit of the Independent Expert Review recommendation 247.

Finally, let me conclude by noting that while the discussion today focused in the main on witness protection, a number of other actors may also be put at risk because of the operation of justice. These include the intermediaries—whether individuals or organizations—on which the court relies to act as a go-between, for example, with survivor communities. It also includes non-governmental organizations and human rights defenders advocating for justice. That advocacy, of course, is what brings the world's attention to human rights crises marked by crimes within the court's jurisdiction. And through pressing for cooperation and political support, that advocacy creates the very enabling environment necessary for justice to work.

The court and the Assembly have a number of tools to ensure they play the role they can in addressing these risks. At a time of continuous risk to those standing up for justice, we would look to the court and the Assembly to ensure those tools are fit for purposes and implemented fully in practice.

For the court, this could include revisiting guidelines on intermediaries and available security and protection measures, as well as ensuring it has the resources to support those measures.

The Assembly, for its part, has before it an important new tool, following the Bureau's adoption of a strategy to implement IER Recommendation 169 regarding the Assembly's response to any threat or attack against the Court, its officials, and those cooperating with it." Threats to human rights defenders for their advocacy on behalf of justice may be aimed at derailing the court's mandate, and the Assembly and states parties should integrate responses to attacks on civil society into their broader strategies for confronting obstruction of the ICC's work. In so doing, the Assembly can stand up for human rights defenders and serve as a model for supporting the vibrant civil society space at the heart of the international justice movement.