



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

Elizabeth Evenson

Senior Counsel, International Justice Program

November 21, 2013

Madame President, Your Excellencies,

The annual meeting of International Criminal Court (ICC) states parties represents a unique gathering of governments committed to pushing forward the court's mandate and an end to impunity. States parties—alongside court officials and civil society—can take deep pride in the steps taken toward translating the aspirations of the Rome Statute to hold to account those responsible for the most serious crimes of concern to the international community into a reality that gives hope to victims in communities around the world.

Madame President, Your Excellencies,

This Assembly session takes place at a time of intense strain on that mandate.

In spite of repeated pledges of cooperation, the Kenyan government has waged a concerted campaign to have the cases against President Uhuru Kenyatta and Deputy President William Ruto dropped. Abroad it has courted political support, including that of the African Union. At home it has failed to act to check a climate of growing hostility against those who speak up in favor of justice.

The efforts of the Kenyan government threaten to jeopardize prospects for Kenyan victims of the country's deadly 2007-2008 post-election violence to see their day in court. By trading on the false accusation that the ICC is a "tool of Western imperialism," the Kenyan government and its allies have also raised threats to perceptions of the court's legitimacy.

Madame President, Your Excellencies,

These developments present the ICC with the greatest set of challenges since the efforts of the United States under the George W. Bush administration to discourage states parties' participation in the court. It should not be surprising that in seeking to tackle the world's worst crimes in situations of entrenched impunity, the ICC will run into powerful interests working against justice.

But, now, as they did in the court's earliest days, states parties will need to work together to affirm the critical importance of the mandate of the court. States parties will need to resist short-term concessions, and instead pledge tireless support to the principles of independence and accountability at the core of the Rome Statute.

The stakes are high, and the commitment of states parties—as well as that of court officials to heighten the ICC's performance—will need to be even higher.

Madame President, Your Excellencies,

This Assembly session offers states parties opportunities to stand behind the court and, in a period of increased polarization in rhetoric around the ICC, to reclaim common ground in the fight against impunity.

First, we look to states parties to pursue an approach at this Assembly session that favors constructive dialogue and increased engagement between the ICC and among states parties. This should include a commitment to holding more meetings of states parties in African capitals and the establishment of an ICC office on the continent.

It should also include a commitment to work together to eliminate double standards in the operation of international justice through the Assembly's work on universal ratification and renewed attention to increasing the consistency of United Nations Security Council ICC referrals.

Second, we look to states parties to insist on fidelity to the Rome Statute.

States parties should be clear in debates at this session that there will be no retreat from the Rome Statute's proscription of immunity for sitting government officials in article 27. Granting immunity to sitting leaders would undermine the fundamental principle that no one should be above the law. It would create perverse and destabilizing incentives for gaining and holding on to power.

States parties should also ensure that any amendments to the court's Rules of Procedure and Evidence are consistent with the Rome Statute and court decisions.

Third, we look to states parties to engage actively in the Assembly's first plenary session on victims. States parties should use these discussions to highlight the potential positive impact of the court on victims, including those in Africa, and commit, along with court officials, to the greater realization of the rights of victims provided under the Rome Statute.

Madame President, Your Excellencies,

In addressing criticism of the ICC's mandate, former United Nations Secretary-General Kofi Annan recently stated that, "We must always have the courage to ask ourselves 'who speaks for the victims?'"¹

At this Assembly session, states parties should strive to ensure in their decisions and discussions that, in this court, the voices of victims will be heard, and will be met with unstinting support for the court's delivery of justice.

¹ "Strong and Cohesive societies: the foundations for sustainable peace," Kofi Annan, Third Annual Desmond Tutu International Peace Lecture, University of the Western Cape, October 7, 2013, <http://kofiannanfoundation.org/sites/default/files/Tutu%20Lecture%20Final.pdf> (accessed November 7, 2013).