



PGA Statement in the Debate on Complementarity (11<sup>th</sup> ASP, The Hague, November 2012)

- **Complementarity is one of the 3 pillars on which the Rome Statute is founded and built**, along with the obligation to cooperate and the principle of legality: Parliamentarians for Global Action (PGA) welcomes this timely and focused debate of today, like we did last week with the one on Cooperation. This is diplomacy at its best within the Assembly of States Parties. Congratulations to South Africa and Denmark for their leadership.

- **Ending impunity is a priority and reflects a pre-existing legal obligation** that the Rome Statute's Entry into Force 10 years ago has reinforced: As the jurisprudence of the ICC has affirmed in a pivotal decision on jurisdiction in the Kenyan situation of Pre-Trial Chamber III on 30 May 2011 at its paragraph 44,

*"44. The Chamber is well aware that the concept of complementarity and the manner in which it operates goes to the heart of States' sovereign rights. It is also conscious of the fact that **States not only have the right to exercise their criminal jurisdiction over those allegedly responsible for the commission of crimes that fall within the jurisdiction of the Court, they are also under an existing duty to do so, as explicitly stated in the Statute's preambular paragraph 6.**"*

- Political will is one of the two key components to make complementarity work: A strong and firm political willingness to end impunity, with solid roots in the legislative and regulatory framework, is necessary for complementarity efforts to be sustainable and effective. Investing resources in capacity-building and technical assistance to activate complementarity is essential, and it is equally essential to sensitize and mobilize political actors and stakeholders so to ensure that willingness goes hand-in-hand with ability to fight impunity, but this is nothing new for States that decided to ratify the Rome Statute and accepted the binding terms of its Article 17 defining this pivotal relationship between ability and willingness<sup>1</sup>. The role of an organization like the one I represent, Parliamentarians for Global Action – *the largest transnational network of individual legislators united by the vision to contribute to the creation of rules-based international order* – is to continue and increase its action in National Parliaments and other decision-making fora in support of the full application of the principle of complementarity, to be based on **comprehensive and effective domestic legislation that can depoliticize the investigation and prosecution of crimes and allow access to justice for victims**: Such legislation shall be supported by *administrative, budgetary and other measures aimed at giving concrete tools to the daily practice of Courts and Tribunals, Prosecutorial authorities, Law-Enforcement authorities, correctional services and other components of the States' Apparatus* that should unite their forces to exercise their sovereign jurisdiction in good faith.

- We therefore urge this Assembly of States Parties to ensure that political actors and civil society working on the building of political will are fully included in the debates, decision-making processes and operation projects to make complementarity work.

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THE PGA ICC CAMPAIGN RECEIVES SUPPORT FROM THE EUROPEAN UNION (EUROPEAN INSTRUMENT FOR DEMOCRACY & HUMAN RIGHTS), THE GOVERNMENTS OF THE NETHERLANDS, SWITZERLAND AND LIECHTENSTEIN, AS WELL AS HUMANITY UNITED.  
THE PGA COMPLEMENTARITY PROJECT IN DRC, KENYA & UGANDA IS SUPPORTED BY THE MAC ARTHUR FOUNDATION.  
PGA RECEIVES CORE SUPPORT FROM THE SWEDEN AND DENMARK.  
IN 2007-11, THE PGA ICC CAMPAIGN RECEIVED ALSO SUPPORT FROM BELGIUM, GERMANY AND THE MUNICIPALITY OF THE HAGUE.

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<sup>1</sup> It would be consistent and coherent for Non States Parties supporting the implementation of complementarity to actively engage in, and conclude as soon as possible, their national ratification process of the Rome Statute.