



## Synthesis Report on

### “SUPPORTING COMPLEMENTARITY AT THE NATIONAL LEVEL: AN INTEGRATED APPROACH TO RULE OF LAW”

7-9 December 2011

#### Introduction

1. The International Center for Transitional Justice (ICTJ) and the United Nations Development Programme, with the support from the governments of Denmark and South Africa, held a retreat on **Supporting Complementarity at the National Level: An Integrated Approach to the Rule of Law**, at Greentree in Manhasset, New York, from December 7 through 9 in 2011. The retreat was conducted according to the Chatham House Rule, and this report provides a summary of the principal discussions without attributing views to individual participants.
2. At the first meeting held at Greentree in October 2010, international justice practitioners and development actors came together for the first time to explore how to implement the concept of complementarity and strengthen domestic systems to investigate and prosecute Rome Statute crimes. Overall, the retreat constituted a critical first step in the discussion among a number of key actors on advancing the principle of complementarity. It was acknowledged that further discussion was essential to build on the understanding established at the policy level about the need to develop the relationship between experts in the international justice and rule of law sectors. It is important to note, however, that these discussions are part of a long-term process, and an ongoing effort that will take time to deliver concrete results and measurable impact.
3. Greentree II was convened to deepen the discussion on technical and operational aspects of strengthening complementarity at the national level. The specific goals of the event were to ensure increased co-ownership of the process by development/rule of law actors; to provide analysis on the progress specific countries have made on complementarity; to explore experiences with national capacity development and identify key technical areas for attention in joint initiatives on complementarity at the national level; and to ensure coherence and coordination of in-country assistance between international justice and development actors and national stakeholders on the other. The meeting followed a roundtable interactive discussion geared toward developing a road map for further developments. ICTJ and UNDP

brought together nearly 70 officials representing interested state and non-state parties to the Rome Statute; rule of law practitioners; relevant UN actors; principals and representatives of the International Criminal Court (ICC); essential stakeholders from national jurisdictions; and NGOs that work on these issues.

#### Overview of Discussion

4. Participants in the retreat explored the strategic approaches that various countries have taken in pursuing investigations and prosecutions for Rome Statute crimes like war crimes, crimes against humanity, and genocide. Lessons learned and best practices were examined as well as the role that prosecutions played in strengthening the rule of law in specific countries. The group at the retreat examined the role development actors play in assisting efforts to pursue accountability for serious crimes as well as the role they can play in the future. Specific countries discussed included Bosnia and Herzegovina, Democratic Republic of Congo (DRC), Guatemala, Sierra Leone, Timor-Leste, and Uganda.
5. One of the principal findings was the need to strategize comprehensive approaches to investigating and prosecuting serious crimes in the initial stages of establishing judicial accountability mechanisms. Pursuing accountability for such serious crimes requires specialized expertise, and the kinds of assistance that national authorities might need will vary across the board. Therefore, it is essential to conduct a needs assessment that examines what skills might be required for any particular circumstance or to address any deficiencies. An assessment can also examine who should provide the assistance and the level of human and material resources necessary to pursue investigations and prosecutions. In Timor-Leste, no formal needs assessment was conducted and as a consequence, victims and witnesses got very little attention. On the other hand, a needs assessment was conducted in Uganda from the outset and linked to a coordinated sector wide approach and plan. The key importance of ensuring national ownership of the assessment was stressed as well as the need to feed need assessments into existing national development strategies.
6. The role that justice can play in addressing massive human rights violations and serious crimes in the aftermath of the Arab Spring was explored. More specifically, discussions centered on the willingness and capacity of countries like Bahrain, Egypt, and Libya to investigate and prosecute serious crimes, as well as the types of assistance they might need. The discussion about Libya emphasized the point that any technical assistance must be embedded into the local legal context; Libyans must see any such assistance as being in compliance with Libyan law. In Egypt, certain sectors of the judiciary need assistance. It was also emphasized that peer-to-peer exchanges with experts from other countries/regions (especially in Latin America) could be beneficial. Bahrain presents an interesting situation in which the government established an international independent commission of inquiry to investigate abuses. There are a number of reforms already started, yet it remains to be seen the extent to which the recommendations in the report will be fully implemented. The role of the international community to provide assistance was mentioned in this respect.

7. Mainstreaming complementarity into broader rule of law initiatives was also discussed. Such an approach could ensure greater participation from development actors in complementarity initiatives. The importance of ensuring a focus on complementarity was stressed. Complementarity programmes and results can be introduced into long-term strategic planning frameworks, including through UN Development Assistance Frameworks, and broad national development and peacebuilding strategies, Post-Conflict Needs Assessments and the support given through the UN's Peacebuilding Fund. Development actors can help by ensuring that its programmes are developed to advance justice, security, and development simultaneously. This could assist not only with ensuring adequate resources and an integrated approach to programming but also ensuring national ownership and facilitating better coordination of all actors involved.
8. The retreat evaluated the success of existing capacity building initiatives. In this regard, the importance of the sustainability of initiatives was emphasized as well as the need for the donor community to coordinate its efforts. In the DRC, for example, despite the fact that more than 3,000 trainings have occurred with national actors on investigative and prosecutorial techniques, many people suspected of committing serious crimes have not been investigated or prosecuted. A judicial monitoring process has been created to track the progress made in each case, and trainings are conducted in accordance with the findings of the monitors. It was also mentioned that the donor community has poured significant funds into the DRC, yet coordination and competition among donors remains a challenge. In the case of Sierra Leone, the Special Court of Sierra Leone (SCSL) undertook several training initiatives with national rule of law actors (lawyers, police officers, and interpreters). But some of them have opted not to remain in the national system, given its fragility, and have sought employment in other international fora.
9. Participants also discussed the relationship between mechanisms created to pursue accountability for serious crimes and broader rule of law reforms in the countries in which these mechanisms were established. In Sierra Leone, for example, judicial reform began before the SCSL was established. Initially, there was little interaction between the court and broader reforms; interactions between the two increased over time. The court's efforts in spearheading the creation of Sierra Leone's first national witness protection program is a clear example of this. In Timor-Leste, efforts to reform the judicial system occurred at the same time in which the Special Panels for Serious Crimes (SPSC) was operational; therefore it is more difficult to determine the impact the SPSC had on judicial reform. However, it was noted that the SPSC, much like other hybrid judicial institutions of its nature, succeeded in raising awareness about human rights and international humanitarian law. In this regard, participants in the retreat at Greentree strongly emphasized the transformative effect that outreach can have on affected populations. Strategies on outreach should be developed from the outset to ensure that the main objectives of the judicial mechanism are not overshadowed by challenges such as misperceptions or allegations of political interference.
10. The role that the ICC and ASP can play in strengthening national capacity was also explored. While it is understood that both the ICC and the Secretariat of the ASP have limited capacity and

resources to strengthen national capacity, discussions did point to several ways in which both entities can be of further assistance. Suggestions in which the ICC can be of further assistance on this matter include utilizing the potential of preliminary examinations conducted by the Office of the Prosecutor as well as further streamlining the coordination and cooperation that currently exists with law enforcement networks in specific countries. In relation to the Secretariat of the ASP, a mechanism had been created to facilitate the exchange of information between the ICC, states, civil society and other stakeholders including a web portal. Additionally, it should be considered how the ASP could take a stronger role in this process. It was also acknowledged that individual states could play a more active role. Suggestions included pooling resources amongst ASP states to pursue accountability for serious crimes.

11. Initiatives by multilateral organizations, such as the UN and European Union (EU), as well as civil society have also contributed to promoting and advancing complementarity over the course of the year since Greentree. In relation to the EU, activities have centered on the development of a tool kit, the EU Action Plan which also refers to complementarity, and providing policy support for ongoing and future rule of law programs. Civil society organizations like the Open Society Justice Initiative have also developed a handbook as well as and providing assistance to mobile courts in the DRC on gender justice for the civilian or military trials of mostly mass rape cases.

#### Conclusion and Way Forward

12. Overall, one of the major outcomes of the retreat has been the resolve to move complementarity from the broader policy discussions toward a more concrete plan of action to ensure implementation of initiatives on the ground. However, several challenges remain. First, the political dialogue on how to make complementarity work, engaging all relevant stakeholders, needs to continue. Secondly, there is a real need to implement complementarity in specific country contexts and to coordinate efforts.
13. In relation to securing broader political support, several suggestions have been raised. Several interventions called for putting complementarity more clearly on the ASP agenda. It was also suggested to add complementarity to the agenda of the General Assembly High Level Rule of Law Debate next year. More specifically, a broader reference group of states to help create political impetus for complementarity was considered necessary.
14. In relation to implementing complementarity initiatives in specific countries, one idea on a possible way forward was to establish some form of a facilitation process including the establishment of a small complementarity group. This complementarity group might include relevant stakeholders, in particular actors from the development field. It would also include legal assistance providers, recipient states, ICC representatives, expert organizations, regional and sub-regional organizations, and the UN, as well as donor agencies. The number of participants of the complementarity group should be limited to a manageable size in order to ensure the committee's effectiveness, particularly its ability to react to developing situations and openings on the ground. The coordination process should be built around a bottom-up

needs assessment, which will create the basis for the development of national strategies or country-specific plans on complementarity. This should be done in close collaboration with the respective recipient state. An independent actor, like ICTJ, can be involved to provide a support function for a coordination committee. Looking into possible pilot projects could be a next step.