

**Helen Clark, UNDP Administrator**  
**Keynote address to**  
**The 11<sup>th</sup> Session of the Assembly of States Parties to the International Criminal Court.**

**“Human Development and International Justice.”**  
**The Hague, The Netherlands**  
**Monday 19 November, 10:00am**

My thanks go to the President of the Assembly, Ambassador Intelmann, for inviting me to speak at this eleventh Session of the Assembly of States Parties on the important topic of human development and international justice. I also thank the official focal points for complementarity, South Africa and Denmark<sup>1</sup>, for their partnership with UNDP and their leadership<sup>2</sup> in bringing the international justice, development, and national rule of law communities together to advance the principle of complementarity.

I am particularly pleased to be able to join you this year, as you celebrate the tenth anniversary of the entry into force of the Rome Statute. I first visited the International Criminal Court in The Hague as Prime Minister of New Zealand in 2004 – possibly the first head of government to do so.

UNDP has described the establishment of the International Criminal Court “as the culmination of a long historical process towards greater accountability for international crimes”, reaching back to the Nuremberg, Tokyo, and other subsequent trials.<sup>3</sup> The combined efforts of the remarkable institutions presiding over these trials have helped raise expectations among the world’s peoples that perpetrators of the most serious international crimes will be held to account, and that their victims will have redress.

The UN Secretary-General himself has noted that “we live in an age of accountability– in which there is an ever growing emphasis on the responsibility of States to end impunity and prosecute those responsible for genocide, crimes against humanity, war crimes, and other egregious crimes.” He points out that “at the centre of this new system stands the International Criminal Court.”<sup>4</sup> Your own role, as members of the Assembly which oversees and enables the work of the Court<sup>5</sup>, has been and continues to be critical to cementing in this new era.

The Rome Statute focused international attention on the primary role of States in ensuring accountability for serious crimes of international concern. That, in turn,

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<sup>1</sup> Official focal points for complementarity for the Assembly of States Parties.

<sup>3</sup> “Synthesis Report of Key Issues Emerging from UNDP Dialogue/Workshop on Complementarity and Transitional Justice”, October 2011, p. 6.

<sup>4</sup> “UNSG “New Age of Accountability” 17 Oct 2012 <http://www.un.org/News/Press/docs/2012/sgsm14589.doc.htm>

<sup>5</sup> “The Assembly of States Parties is the management oversight and legislative body of the International Criminal Court.” <http://www.icc-cpi.int/Menus/ASP/Assembly/>

**has focused attention on the need for more effective national justice systems and the rule of law.**

**Paragraph ten of the preamble of the Rome Statute states that “...the International Criminal Court shall be complementary to national criminal jurisdictions”. This complementarity principle establishes the ICC - in its quest “to bring the perpetrators of massive crimes to justice”- as a court of last resort. National criminal justice processes have primary jurisdiction, if they are willing and able. To be able, national judicial systems need to be strengthened in a number of countries.<sup>6</sup>**

**The ICC is not, by virtue of its mandate, able to meet growing expectations for justice everywhere. It is only when national governments take responsibility for dealing with crimes and atrocities that justice can be delivered at the scale required. National action is essential to thwart cycles of violence and conflict, and to lay a foundation for reconciliation, peace, and human development.**

**This is where UNDP’s work intersects with the objectives of the Rome Statute. Through our rule of law and governance work, we help strengthen the capacity of governments to deliver justice and the capacities of citizens to access it. This work is particularly important where countries seek to overcome legacies of violence, human rights abuses, and conflict. Countries recovering from massive crimes and/or atrocities often have large numbers of victims and perpetrators, at the very time when their judicial system may be least capable of delivering.**

**Prior to the Review Conference of the Rome Statute in Kampala<sup>7</sup>, the former President of the Assembly of States Parties<sup>8</sup> took the initiative to invite UNDP to be part of the dialogue there. This was indeed recognition of the synergy which exists between the objectives of the Rome Statute and the work of UNDP to give voice to the powerless and replace cultures of impunity with systems of justice and accountability.**

**In my remarks today, I will emphasize that member states and development actors should give priority to the capacity support needed to build national systems for delivering justice, and that such support should be placed in a broader development context.**

**Good justice systems underpin effective governance overall. Where governments are accountable and responsive to the needs and expectations of citizens, then**

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<sup>6</sup> Resting its jurisdiction on what is known as the principle of complementarity: it will not act and consider a case inadmissible if the crimes are genuinely investigated and prosecuted by domestic authorities. Article 17, Rome Statute.

<sup>7</sup> “The Review Conference on the Rome Statute of the International Criminal Court (ICC) in Kampala, Uganda (31 May to 11 June 2010) was the first and only conference of its kind - where ICC states parties, observer states, international organizations, NGOs, and other participants discussed proposed amendments and took stock of its impact to date. <http://www.iccnw.org/?mod=review>

<sup>8</sup> President of the Assembly of States Parties from November 2008 to December 2011 was Christian Wenaweser from Liechtenstein.

**institutions of justice upholding the rule of law are more likely to develop. Good governance and the rule of law are, in turn, critical for sustained human development.**

***1. Rule of law and the principle of complementarity***

**At the UN General Assembly’s High Level Meeting on the Rule of Law two months ago, I spoke of the importance of the rule of law in establishing peace, justice, and other foundations for inclusive and sustainable development. The rule of law underpins the UN’s mission to advance peace, development and human rights and, as such, is central to the mandate of UNDP.**

**We work with governments to strengthen the rule of law, not only because that is a highly desirable objective in its own right, but also because it is critical for reducing poverty, achieving the Millennium Development Goals, and advancing human development.**

**Our emphasis is on supporting institutions of governance and systems of justice to become more capable, effective, fair, and inclusive. In this way, we can help countries to build the national capacity they need to end impunity, prevent cycles of violence, and prosecute serious crimes. We do this through our on-going work to strengthen governance systems, and in the immediate support we provide countries in the aftermath of crisis.**

**Building capacity for establishing the rule of law makes a significant contribution to ending impunity, both in moments of crisis and over the long term.**

**The ICC has a critically important but limited reach. While it can bring to justice those accused of the gravest crimes, it is likely that only a relatively small number of high-profile suspects will be investigated and possibly prosecuted at the international level.**

**Thus national authorities need to build the capacity to investigate and prosecute more comprehensively, because they will be responsible for prosecuting the bulk of offenders. National authorities also need the capacity to manage the prosecution of lower level suspects, and to consider other transitional justice mechanisms, such as memorializing or truth telling, which can aid in the process of reconciliation.**

**“Positive complementarity,” in the words of the Assembly of States Parties, “refers to all activities whereby national jurisdictions are strengthened and enabled to conduct genuine national investigations and trials of crimes included in the Rome Statute.”<sup>9</sup>**

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<sup>9</sup>ICC Assembly of States Parties - Report of the Bureau on complementarity, ICC.ASP/9/26 (17 Nov 2010)[http://212.159.242.181/iccdocs/asp\\_docs/ASP9/ICC-ASP-9-26-ENG.pdf](http://212.159.242.181/iccdocs/asp_docs/ASP9/ICC-ASP-9-26-ENG.pdf).

**It is therefore critical to assist States, which are willing, to develop their capacity to conduct the technically demanding investigations and prosecutions which are required with respect to international crimes. It may also be important to support other mechanisms which facilitate reconciliation.**

**Coming to terms with a legacy of serious crimes and human rights abuses is essentially a political and societal process, which should ideally have a profound and long-term impact on societies and communities, and prevent recurrence of such crimes. As highlighted in the World Bank’s World Development Report of 2011, mechanisms for reconciliation can add credibility to and build trust in national justice and security institutions<sup>10</sup>. That is crucial for breaking cycles of violence and conflict.**

**2. UNDP’s role: linking complementarity, the rule of law, and human development**

**Last year, when delivering the Annual Emilio Mignone Lecture on transitional justice, sponsored by the New York University School of Law, Centre for Human Rights and Global Justice, and the International Center for Transitional Justice, I spoke about the linkages between transitional justice and development, noting that “UNDP’s mandate places it precisely at the crossroads of support for countries recovering from crisis and seeking to move to social peace and inclusive and sustainable development.”**

**Through its experience, including in countries recovering from crisis, UNDP has come to understand that shortcomings in the rule of law underlie the exclusion, suffering and poverty of many people.**

**Where the rule of law is firmly in place, all individuals and groups are subject to the law, irrespective of their position in government and society. Crimes and abuses are punished, and the lives and livelihoods of the poor and vulnerable are protected, enabling them to better plan and forge their own futures.**

**This Assembly has recognized the importance of the rule of law and of development actors’ involvement in complementarity, together with “the need for additional measures at the national level... for the enhancement of international assistance to effectively prosecute perpetrators [sic]”.<sup>11</sup>**

**As a development practitioner, UNDP’s role is to help build the capacity of national partners at their request, in order to expand the freedoms, choices, and capabilities of people to pursue social and economic progress and live lives they value. In carrying out this work, UNDP can help countries establish the capacity**

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<sup>10</sup> World Development Report 2011, World Bank, page 8.

<sup>11</sup> Resolution RC/Res.1 on complementarity adopted at the 9th plenary meeting, on 8 June 2010, by consensus, paras 3 and 8.

[http://www.icc-cpi.int/iccdocs/asp\\_docs/Resolutions/RC-Res.1-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/Resolutions/RC-Res.1-ENG.pdf).

necessary to enable perpetrators of serious crimes of international concern to be held accountable. This work helps advance the objectives of the Rome Statute.<sup>12</sup>

The high level of trust in UNDP as a development partner enables us to work in what are often highly sensitive areas, such as the rule of law and justice. That work has seen us involved in more than 100 countries, including more than forty conflict-affected countries, over the past decade.

UNDP is also contributing to better co-ordination of the UN's rule of law work. With the Department for Peacekeeping Operations, we have combined efforts as Global Focal Points to strengthen UN assistance around justice, police, and corrections work in post-conflict and crisis contexts.

At the Review Conference on the Rome Statute of the International Criminal Court in Kampala in 2010, UNDP advocated integrated approaches to pursuing those responsible for serious crimes of international concern and to development. That could be achieved by bringing together capacity support to enable prosecutions, advance complementarity, and strengthen national justice systems as part of a broader rule of law, good governance, and human development, agenda - rather than pursue stand-alone efforts.<sup>13</sup> Evidence suggests that the integrated approaches are more effective.

We understand that for a number of years, the international tribunals for the former Yugoslavia and Rwanda appeared to be divorced from broader institutional reform efforts in those countries. Later in their mandates, they did focus on national capacity, legacy, and outreach, in order to have that broader impact. That has contributed positively to national prosecutions of perpetrators and to access to justice at the national levels.

A failure to include national capacity development as an initial objective, and thereby not to incorporate developmental approaches, was also noted with hybrid courts, such as those in Timor Leste and Kosovo. Where there is a narrow technical focus on international criminal justice expertise, then opportunities can be missed to help strengthen national justice systems and the rule of law, and to build trust in those systems.

### **3. Maximizing the transformative impact of complementarity**

At UNDP we strongly believe that explicitly linking work on complementarity to broader development initiatives, including institutional reforms, will contribute to establishing the rule-of-law based societies which are so essential for accelerating human development and achieving peace and stability.

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<sup>12</sup> From Article 1 of the Rome Statute <http://untreaty.un.org/cod/icc/statute/romefra.htm>

<sup>13</sup> Geraldine Fraser-Moleketi, Director, Democratic Governance Group in the Bureau for Development Policy. "Review Conference of the Rome Statute: Taking Stock of the Principle of Complementarity." Kampala, Uganda. 31 May -11 June 2010.

**We see through our work to develop the capacity and legitimacy of national justice systems how support to *nationally-led* development approaches which enhance accountability can have a longer-term positive impact on rule of law in a country.**

**This year, Rwanda celebrated the tenth anniversary and closure of its traditional courts, known as the gacaca, which were supported by UNDP. These drew on traditional justice mechanisms to address more than one million cases, helping to fill a substantial impunity gap. Research suggests that the process adopted was beneficial for Rwanda's development.<sup>14</sup>**

**Elsewhere too, UNDP has helped countries to realize the potential of traditional or customary justice mechanisms to contribute both to accountability for perpetrators and to social co-existence and healing.**

**In states of the former Yugoslavia, for example, UNDP believes that well-designed support to prosecutions of serious crimes of international concern have had beneficial effects for the development of the overall capacity of the justice system.**

**In Bosnia, building the capacities of prosecutors' offices and courts at the canton and district levels to process war crime cases has been linked to more effective responses to human rights violations overall. It also helped strengthen transparency and public outreach, leading to greater legal awareness and access to justice.**

**In Serbia, where the Judicial Training Academy integrated international law in its curriculum and mentoring programmes, UNDP observed that more judges applied the same high international standards in deciding domestic cases.**

**Strengthening national justice capacities generally can also advance complementarity. Where justice systems are better able to help victims and witnesses make claims and access justice in complex cases - including against corruption, gender-based violence, and organized crime- it can be easier to prosecute genocide, crimes against humanity, and war crimes.**

**Sound justice systems can also help to reduce fear and intimidation. Croatia's victim & witness programme, supported by UNDP, had this effect, and has been recognized by the Council of Europe as a best practice.**

**UNDP believes that ensuring justice for women victims of serious crimes of international concern is best achieved through the integrated approaches we are advocating. In the Eastern DRC, we saw how developing the capacity of the military prosecutor's office to prosecute sexual violence was complemented by**

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<sup>14</sup>The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda: Justice without Lawyers (Cambridge University Press, 2010). [http://www.cambridge.org/gb/knowledge/isbn/item2705297/?site\\_locale=en\\_GB](http://www.cambridge.org/gb/knowledge/isbn/item2705297/?site_locale=en_GB).

efforts to extend legal support to victims, improve case monitoring, and set up mobile courts. Since 2011, 350 sexual- and gender-based violence cases have been heard through eighteen military mobile courts in Eastern Congo, resulting in 193 convictions. This suggests that national prosecutions are viable even in the most challenging of contexts.

Strengthening justice sector institutions can also help countries prosecute crimes long after they have occurred, and in so doing help end impunity. In Guatemala, UNDP brings together the key actors to address a broad range of transitional justice-related mechanisms, from archiving, exhumations, and forensic analysis, to reparations, psycho-social care, and awareness rising. The effectiveness of criminal investigations there has increased. The first prosecutions of high-level perpetrators of conflict-related crimes were held in 2011. A number of convictions have been reached already, and other cases are ongoing. Lower homicide rates have been linked to such comprehensive efforts in the country.

Other transitional justice mechanisms can also have such ‘spillover’ effects for development. Following a recommendation of the truth and reconciliation commission established in Peru in 2001, for example, the Office of the Ombudsman launched a campaign to register births and issue identity cards, enabling previously undocumented, mainly poor citizens, to access health care, education, and the protections of the law.

Linking victim-centered reparations, development, and national prosecutions can also have important implications for social equity and justice. In Colombia, UNDP provides capacity support for prosecuting serious crimes of international concern, and for making reparations for victims, including through land restitution. Such work is consistent with the Rome Statute’s emphasis on victims, and with the purpose of the Trust Fund established to facilitate reparations for victims.

#### **4. A transformative agenda**

In essence I am arguing that capacity support to advance complementarity can and should be designed to have a broader impact on development. It may take time for the full potential to be realized, but such approaches will be transformational.

I do not underestimate the magnitude of the task for countries endeavouring to deal with a legacy of past crimes and abuses. Many societies, however, have in their history experiences of what we would now see as gross human rights violations.

The processes established to address such abuses are highly sensitive, political, and complex. That is why it is vital that national stakeholders lead them and own them. Partners like UNDP can play a supportive and enabling role, which must

always be characterized by humility and patience. If we work together as States Parties, civil society, and development partners, with mutual understanding and a shared vision, there is much more which can be done to move forward on complementarity and justice overall which will have a transformative impact on societies.

An agenda to this effect could include:

- 1) Increasing capacity development support to national actors in all areas of justice. Complementarity efforts must be specifically designed from the outset with a development perspective, to enable their integration with broader justice reform programmes and to maximize spill-over benefits for developing the rule of law. We should formulate more agreed tools and assessments to enable such approaches.
- 2) We should support those national reform constituencies which are bravely leading on accountability processes, in particular by reinforcing the independence and integrity of the judiciary and of national prosecutors.
- 3) \Country platforms can be built to provide platforms for on-going and sustained engagement on national accountability, bringing together government, civil society, victims groups, and other stakeholders. Victims' perspectives need to be fully incorporated in the national dialogue. Development actors, such as UNDP, can play a convening role.
- 4) We also need to leverage from the co-ordination role of UN Resident Co-ordinators and the Secretary-General's Special Representatives, and make use of the range of planning tools with which they work, so that Complementarity can be well integrated within broader efforts to advance human development and transitional justice.
- 5) Development programmes on justice reform should be linked to systems of reparation and to addressing the root causes of injustice, including those which are gender-related. Livelihoods and micro-finance, victims and witness support, legal identity and assistance, and land restitution are among the areas where these links can be made.
- 6) More can to be done to optimize the use of available resources, including by deploying development funds for reparation programmes, and, in turn, making international justice-related funding more available for the national capacity development of justice institutions.
- 7) South-South exchange and knowledge sharing among the many countries which have experience with national prosecutions should be supported. UNDP is contributing to a UN system-wide process, requested by the Secretary-General, to capture lessons learned and develop a Guidance Note

**on how the UN system can enhance national capacities to investigate and prosecute serious international crimes and provide reparations.**

**The Assembly of States Parties can also help lay the ground for justice which is transformational by:**

- 1) Continuing to engage proactively on the issue of complementarity in support of national development efforts and through further co-operation between the organs of the Court and development actors.**
- 2) Taking whole-of-government approaches in your own countries, to improve communication and mutual engagement between Ministries of Foreign Affairs, development agencies, and international legal and justice professionals.**
- 3) Advocating for the work of those judges, prosecutors, and lawyers who are promoting accountability in very difficult circumstances in their national context.**
- 4) Continuing to support those functions of the Court which enable international justice efforts to have greater impact at the national level, including through public outreach, victims' participation, and reparations.**
- 5) Increasing the resources available for national capacity development efforts in the rule of law through bilateral and multilateral means, and contributing to the exchange of best practice, lessons learned and knowledge, including by sharing your own national experiences with accountability.**

**At UNDP we are committed to supporting the objective which the States Parties to the Rome Statute had in mind when they established the International Criminal Court ten years ago: to increase accountability for the most serious crimes of international concern, and to enable redress for the victims. We want to see this work contribute to broader societal transformation, and thus help provide the basis for sustained peace, social cohesion, and inclusive development.**

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