REPUBLIC OF BOTSWANA

STATEMENT

BY

THE ATTORNEY GENERAL OF
THE REPUBLIC OF BOTSWANA

THE ROLE AND OBLIGATIONS OF STATES
IN COOPERATION AND COMPLEMENTARITY

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ROME: 13TH NOVEMBER 2014
1. Ladies and Gentlemen, Distinguished guests,

2. At the onset, allow me to express my sincere gratitude to the organisers and hosts of this symposium, “Challenges and Opportunities of the International Criminal Court (ICC): the Interplay between Complementarity and Cooperation”. “No Peace without Justice” for inviting me to speak on the role and obligations of states in cooperation and complementarity.

3. I must sincerely apologise for not being able to travel to Rome due to unexpected circumstances that have arisen that require my presence in my country. For it would have indeed been wonderful to be in Rome, where sixteen years ago, States appended their signatures to an instrument that was to change the face of international criminal justice.

4. Botswana remains firmly committed to achieving the objectives of the Rome Statute and a strong and effective international criminal justice system. We have demonstrated our unflinching support for the ICC, will do everything within our limited resources to contribute to the strengthening of the international criminal justice system.
5. To this end, we have been an active participant with other States Parties in the annual meetings of the Assembly of States Parties since we ratified the Rome Statute in 2000. We have also participated in other ICC-related events, such as the Review Conference that adopted the Kampala Amendments in July 2010.

6. In April 2013, we had the honour to co-host, with the Principality of Liechtenstein and the Global Institute for the Prevention of Aggression, a Workshop on the Ratification of the Kampala Amendments on the Crime of Aggression.

7. It was at this workshop that our President signed the instrument of ratification signifying Botswana’s accession to the Kampala amendments on the Crime of Aggression, becoming the first African country to do so. We therefore have a great challenge ahead to ensure implementation of these additional commitments.

8. I therefore welcomed this opportunity to participate in the exchange of ideas and expertise which will hopefully result in useful recommendations which will facilitate the Courts work with States, Civil Society and other non-state actors.
9. As states, governments and civil society we are here because we are united in the common desire to establish just and peaceful societies. In Botswana, we care deeply about these matters and we also believe that peace and justice are indivisible. We deliberately and willingly became a State Party to the Rome Statute, in order to be bound by the commitment to end impunity and crimes against humanity.

10. That we take such commitments seriously is demonstrated by the modest strides we have made in their implementation. I am optimistic that the Rome Statute of the ICC will become part of the laws of the Botswana in the near future.

11. In acknowledging that national legislation domesticating the Rome Statute is an important tool in ensuring that states perform their role and obligations on cooperation and complementarity, the Rome Statute of the International Criminal Court Bill No. 22 of 2014 was published on the 16th July 2014. It is my sincere hope that the newly elected Parliament will enact it into law during the current session.
12. Although it remains a draft bill until published and passed by Parliament, I am in a position to share some of its general features with respect to cooperation. Part III of the Bill deals with the cooperation and assistance Botswana can provide to the ICC with regard to the investigation and prosecution of persons alleged to have committed crimes under the Rome Statute.

13. This Part contains provisions dealing with what a request for assistance entails, how such requests are made, as well as the need for confidentiality in dealing with requests. Requests for assistance include obtaining of evidentiary documents, location of witnesses, enforcement of court orders, questioning of any person being investigated and prosecuted, to name a few.

14. Under the Bill, such applications for assistance will be made directly to the Director of Public Prosecutions (DPP), who is the central authority for extradition and mutual legal assistance under the current legal framework. The DPP is also empowered to give consent to requests made under the bill, thereby speeding up the process.
15. We are also in the process of reviewing our other legislation to ensure compatibility with the Rome Statute and determining what changes are required to ensure maximum cooperation by Botswana. This means strengthening and building capacity where necessary to enable effective implementation. It must be recognised that this is work in progress which requires continuous improvement.

16. I believe that Botswana has also demonstrated its readiness to cooperate with other State Parties and the Court on matters pertaining to the Rome Statute. We do this because the principles of cooperation and complementarity are not simply implied, but are actually substantive elements of the obligations that we have assumed.

17. I say this because after all, it is the primary duty of the State to prosecute the crimes defined in the Rome Statute. In situations where it is unable or lacks the capacity to do so, the role of the ICC is complementary.
18. I mention these issues to underscore the crucial significance of the twin principles of cooperation and complementarity to fulfilling in good faith the obligations assumed by state parties. It is therefore essential for State Parties and all concerned to approach these matters with the seriousness they deserve.

19. We should avoid politicising the issues because that will detract from focusing on the vital technical details that matter most to implementation and above all, to the welfare of victims of the most serious crimes.

20. Developing countries such as my own country Botswana, must accept that while they have resource challenges, it remains their responsibility to establish the necessary local institutions to serve the needs of the people. The people, including civil society must also realise that as tax payers, it is their duty to pay for the services. For these are the institutions that provide the sense of security needed at home and that enable them to cooperate with and complement the work of the ICC.
21. On the other hand, the highly industrialised and developed countries must acknowledge the serious shortage of resources in developing countries and the competition for such resources in terms of the national development agenda. This means the developed partners should be willing to assist with the provision of resources. It also means that we should redouble our outreach, awareness and resource mobilisation in all our countries.

22. The Hague working Group has been doing some work in this area for some time. In this respect, I commend the sterling work which South Africa and Denmark devoted to advancing the process for some time as country focal points.

23. This year Botswana is pleased to work alongside Sweden to build on the exemplary work of our predecessors. In this regard, a number of activities have been undertaken mainly:

- informal consultations on the draft programme of work;

- activities, meetings and informal discussions on the subject matter;
• a workshop on combating sexual and gender based crimes at the national level was held in Stockholm, Sweden, 20-21 May 2014;

• a Hague Working Group meeting focusing on witness protection and greater capacity building of the rule of law.

The details of issues are reflected in the Report of the Bureau of the Assembly of State Parties.

24. In addition, we remain active at home, in the SADC and Africa region by collaborating with other states, agencies and NGOs in the work of the ICC. In July this year, it was my pleasure to lead the Botswana delegation to the High Level Seminar on Fostering Cooperation, that was organised by the ICC, the European Commission, and the Governments of Norway and the Netherlands. During the session on Stocktaking – States’ Perspective on cooperation, we shared our experiences on these matters and learnt a lot from others.
25. Recently on the 4th to the 5th November 2014, Botswana participated in a Roundtable discussion on “International Criminal Justice that Africa Needs”, as well as a Seminar on “International Justice in Africa: Who should take the lead?”. These events were organised by the Institute for Security Studies (ISS) in Pretoria and discussions resulted in a number of specific recommendations relating to promoting justice for international crimes in Africa and Africa’s engagement with the ICC.

26. Botswana’s commitment to participate arose primarily due to the fact that the tense relationship between the International Criminal Court (ICC) and the African Union has dealt a blow to the international justice project on the continent. These tensions have been a setback for the delivery of justice, at a time when grave crimes continue to be committed and new conflicts have emerged, most recently, in South Sudan and the Central African Republic.
27. Botswana’s clear position however, is that the responsibility for ensuring accountability and providing justice to the victims rests not only with the ICC but also with African states themselves and further, that Africa cannot afford to delay justice because of politics at the continental level.

28. I wish to conclude by saying that cooperation and complementarity are critical because the success of the ICC is directly related to the willingness of states parties to establish local institutions to complement its role, and cooperate with the ICC when called upon to do so. Botswana stands ready to fulfill its obligations in this regard, and will do so without fear or favour. We need each other and must therefore work together. As our hosts say, “Rome was not built in one day”; we need patience, tolerance and moderation to build systems that can serve the peace and justice we all want.