

CHAPTER 10: CONCLUDING REMARKS AND RECOMMENDATIONS

The international criminal justice project is at a critical moment in its history. Over the past ten years the ICC has established itself both as a significant role player in the international legal order, and as a mechanism capable of delivering justice for victims of crimes of significant gravity, committed by powerful actors. The states parties to the Rome Statute – whose number continues to grow – have taken important steps both towards supporting the ICC in its work, and assuming their own responsibility for combatting impunity through positive complementarity. What is more, CSOs (at all levels, from grassroots to global) have made themselves indispensable to both the ICC and states in this process. At the same time, new challenges have emerged both to the ICC and the international criminal justice project. CSOs will have to redouble their efforts, and develop new approaches, to meet these challenges.

This Report has attempted to highlight the numerous important contributions made by CSOs in the pursuit of international criminal justice in Africa.

Recommendations

CSOs must continue to work to ensure that all African states parties to the ICC adopt ICC implementing legislation that enables them to cooperate with the ICC and comply with the obligations under the principle of positive complementarity whenever possible. In particular:

- Where states have committed to adopting **ICC implementing legislation** but are yet to do so, CSOs must provide technical support and expertise, as well as ensure that priority is given to these efforts;
- Where states have indicated their reluctance or unwillingness to adopt such legislation, CSOs should identify the reasons for this position and work towards reversing it through strategic lobbying and public awareness;
- In drafting future implementing legislation, CSOs should encourage the development of a standardised approach – drawing on the experience of existing legislation (particularly from African states) and international best-practice; and
- In respect of those states that already have implementing legislation, CSOs should work to ensure that the necessary institutional architecture, human capacity and political will exists to give full-effect to such legislation whenever possible.

CSOs must work to ensure that all African states parties comply fully with their **cooperation** obligations when called upon to do so by the ICC. In particular:

- Where cooperation requires implementing legislation under domestic law, CSOs must work to ensure this is promulgated;
- Insofar as instances of on-going or anticipated non-cooperation with requests for arrest are concerned, CSOs must work with domestic and regional partners to ensure cooperation is forthcoming, including using domestic legal avenues where available to force the relevant authorities to cooperate;
- CSOs should continue to work (through networks such as the ANICJ) to share information about the movements of persons wanted by the ICC; and
- Beyond cooperation requests for surrender, CSOs should encourage states to voluntarily assume other cooperation responsibilities, such as the relocation of witnesses and incarceration of convicted persons.

CSOs must continue to ensure that the principle of **positive complementarity** is given effect to within and among African states parties. In particular:

- CSOs must ensure that states have the necessary legal and institutional frameworks, as well as capacity and political will, to prosecute international crimes within their domestic legal systems;
- CSOs must develop relationships with domestic prosecution authorities in order to assess their needs and, where appropriate, undertake supportive or partnering roles in this regard; and
- CSOs should ensure that they have the necessary expertise and capacity to collect and receive information that can later be used in domestic prosecutions.

Finally, insofar as redressing the **relationship between African states and the ICC** is concerned, CSOs must:

- Encourage and support the new ICC prosecutor's efforts to improve relations with African states and the African Union;
- Engage with the new AU chairperson on issues of international criminal justice;
- Work with the AU Commission and other regional legal bodies on the proposed expansion of the ACJHR to include jurisdiction over international crimes, with a view to assessing its feasibility and possible positive contribution to the prosecution of international crimes in Africa; and
- Consider supporting the AU's proposal to take the question of immunity of certain officials to the ICJ, through the UN General Assembly.