

## RECOMMENDATIONS OF THE AFRICAN AND EUROPEAN CIVIL SOCIETY SEMINAR ON ACCOUNTABILITY AND JUSTICE, 11-12 APRIL 2011 - PRETORIA, SOUTH AFRICA

On 11-12 April 2011, the EU organized a seminar on 'Accountability and Justice' in Pretoria, which brought together over 70 representatives of African and European Non-governmental organisations to discuss the achievements and challenges faced by the International Criminal Court and the international justice system.

The NGO representatives present adopted the following recommendations aimed at strengthening the fight against impunity for the most serious crimes that shock the conscience of humanity:

### [→ TO STATES PARTIES TO THE ROME STATUTE \(RS\) OF THE INTERNATIONAL CRIMINAL COURT \(ICC\):](#)

#### *With regard to universality of the Rome Statute, support and cooperation with the ICC:*

- Actively work towards **universality and full implementation of the Rome Statute** and of the Agreement on Privileges and Immunities of the Court (APIC).
- Provide any relevant multilateral or bilateral logistical, technical, and financial **assistance, support and expertise to States** with more limited resources to facilitate ratification of the RS and enactment of implementing legislation, as well as cooperation with the ICC.
- Cooperate with and support **civil society efforts** to promote universality and implementation of the RS; to monitoring judicial proceedings of the ICC and before national courts; and to assist and inform local populations about the Court's work, including victims and affected communities.
- Strengthen **diplomatic support** for the Court's mandate and activities at all levels and in all fora, including at ASP sessions, the UN, the AU, and the EU,
- Assist other ICC States Parties to **resist political pressure** to breach their obligations under the RS.
- Fully comply with all judicial **requests of assistance and cooperation** in an effective and timely manner at all stages of the Court's proceedings, in particular, in the execution of **outstanding Court arrest warrants** and the identification, tracing and seizing of assets.
- Create **national mechanisms**, such as focal points or task forces, to facilitate the execution of cooperation requests, and conclude **framework agreements** to form the basis for effective cooperation, such as on victim and witness protection, sentence enforcement, or interim release.
- Create strong mechanisms to respond to **instances of non-cooperation** with the Court, including within the ASP as foreseen in Article 87.7 of the Rome Statute.
- The **election of the Prosecutor** must be carried out through a merit-based process that ensures that the most highly qualified candidates gets elected, taking into account criteria related to the best qualification for the position, including experience in international criminal law, dedication to a well-functioning, respected and effective ICC, excellent management skills and diplomatic skills, as well as the ability to act impartially and independently.
- Provide the Court with sufficient **resources** to effectively fulfil its judicial mandate. In particular, continue to support a fully-funded **legal aid program** for the defence and victims to ensure their adequate representation from the earliest stages, contribute to the **fund for family visits of detainees** at the seat of the Court in The Hague, contribute to the newly established **ICC Special Fund for relocations**, and ensure the **Trust Fund for Victims** is adequately funded to complement potential upcoming reparation awards while continuing to carry out current assistance activities. Continue to financially support **ICC outreach programs**, which are essential for the court's work to be well understood and increase its impact on victims and affected communities, and to provide the necessary resources to **strengthen the ICC field presence**.
- Support development of Court-wide guidelines on **intermediaries** and their implementation, and engage in on-going dialogue with the Court on ways to strengthen its **field presence** and to maximize **positive complementarity** such as by engaging national, local and foreign actors.
- Work to gain deeper **insight into the ICC's work**, including through visits to situation countries.
- Ensure that **peace negotiations and agreements** incorporate issues of accountability and justice, including the rights to a remedy and reparation for victims of serious crimes.

**With regard to implementing the Rome Statute and obligations under international law<sup>1</sup> domestically:**

- Recall that States have the **primary responsibility and the obligation under international law** to conduct thorough and effective investigations and prosecutions for serious crimes in violation of international law, including the obligation to prosecute or extradite suspects of such crimes.
- Ensure that **relevant capacity** exists on a national level to carry out thorough and effective investigations and prosecutions of persons allegedly responsible for serious crimes; encourage and support these national initiatives and ensure **coordination** among actors undertaking such activities.
- Systematically take into account the fight against impunity and the principle of complementarity in the broader **context of development and rule of law assistance** and ensure that victims are central to these programmes.
- Take all measures necessary to ensure **effective administration of national justice**, in particular: allocate sufficient **financial resources** to the justice sector to ensure its effectiveness, independence, and respect for international guarantees for fair trials; guarantee **victims' rights** to participate, to legal representation, to be treated with dignity, to reparation, to information, and protection measures for victims, witnesses, and organisations involved in national proceedings; support and encourage sustained **training and capacity-building of relevant national actors**, such as judges and prosecutors, as well as civil society and counsel; reinforce **prison and penitentiary** systems to respect the rights of detained persons and ensure the proper execution of penalties; and systematise **trial observations** of national proceedings.
- Comprehensively integrate into **domestic legislation** and ensure the effective implementation in practice of: the general principles of the RS; the principle of *aut dedere aut judicare*; the **definitions** of crimes in accordance with international law (including, but not limited to, crimes identified in the RS, the Geneva Conventions and the UN Convention against Torture); international **fair trial standards**; the **rights of victims** to information, protection, participation, legal representation and reparation as enshrined in the UN Basic principles on the rights to remedy and reparation; provisions on **effective assistance and cooperation** with the ICC and between States (as foreseen in Part IX of the RS); principles of **command responsibility** and other forms of individual criminal responsibility; and alignment of maximum **penalties** to those contained in the RS (including abolishment of the death penalty).
- Ensure that national courts have **civil and criminal jurisdiction** in relation to serious crimes, (including, but not limited to, crimes identified in the Rome Statute, as well as the Geneva Conventions and the UN Convention against Torture) and that domestic legislation provides for the independent exercise of such jurisdiction by investigative, prosecutorial and judicial authorities **without any political interference**;
- Ensure that **statutes of limitations** and of **immunities** in accordance with Article 27 of the RS do not apply to serious crimes.
- Ensure laws are harmonized with international human rights law, including Article 15 of the International Covenant on Civil and Political Rights (ICCPR), which allows the **retrospective application of international criminal law**.
- Lend one another all **relevant assistance** necessary to review, amend and develop comprehensive and effective legislation reflecting all international legal obligations to prosecute or extradite, including through the provision of technical assistance, in relation to cases concerning suspects of serious crimes committed around the globe.
- **Develop reference-guidelines on lessons-learned** on implementing legislation, along with sharing model laws and guidelines with countries that have not yet fully implemented the RS domestically
- Ensure that implementation of the RS and all obligations under international law is carried out with the **involvement and consultation** of civil society and parliamentarians at the earliest stage and throughout the process.

**→ To AFRICAN ICC STATES PARTIES:**

- Enter into cost neutral agreements, such as tri-partite agreements facilitated by the ICC, to assist the court and accept **witnesses** who are relocated.
- Use **sub-regional dialogues** to clarify and resolve questions that African government officials may have on the ICC, and to consult on upcoming regional decisions that could impact the Court.
- **Increase dialogue** on the ICC between African States Parties and ensure **better coordination and information exchanges** between diplomats based in capitals, Addis Ababa, and New York on ICC-related issues.

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<sup>1</sup> In the context of the seminar, obligations under international law include obligations under international customary law, international human rights law, international humanitarian law and international criminal law.

- Work to ensure that **AU decisions** do not undermine the ICC, and publicly clarify government positions in support of the ICC where AU summit decisions are contrary to that support.
- Develop a “**Friends of the ICC**” group in **Addis Ababa** on the model of those already existing in New York and The Hague.
- Promote enhanced **communication between the AU and the Court**, including by continuing to advocate for the establishment of an **ICC liaison office** at the AU headquarters in Addis Ababa.
- Promote improved communication between the **AU and the United Nations Security Council (UNSC)** on matters related to the ICC.
- Increase **consultation** with civil society working on the ICC in Africa, and identify **government officials** who may be valuable strategic partners for civil society on the ICC.

#### → TO THE AFRICAN UNION (AU) AND THE EUROPEAN UNION (EU):

- Communicate the recommendations to all AU and EU member States and relevant officials, including all EU delegations to African countries
- Recall the importance of and fully implement the provisions of Art 11(6) of the **Cotonou Agreement** that encourages member states of the African Caribbean and Pacific (ACP) region and of the EU to ratify and fully implement the RS, as well as in any agreement between African and European states and with 3<sup>rd</sup> countries.
- Ensure **support for the principle of universal jurisdiction** and that AU and EU member states and their partner states have **comprehensive legislation** on all international legal obligations to prosecute or extradite those allegedly responsible for serious crimes.
- Consider establishing **training mechanisms** to ensure adequate expertise of immigration officials, police investigators, prosecutors and judges in the detection, investigation and prosecution of serious crimes.

#### → TO THE EUROPEAN UNION (EU):

- Increase efforts to promote the fight against impunity, and ratification and implementation of the RS and of the APIC in all **political dialogues and meetings of EU MS with third countries and regional organisations**.
- **Consider conditioning assistance** to the realisation of concrete results relative to the fight against impunity.
- Systematically take into account the fight against impunity and the principle of complementarity in the broader **context of development and rule of law assistance**;
- Ensure that the newly created **European External Action Service (EEAS)** becomes a strong arm in support of the ICC and the IJ system.
- Identify **ICC focal points in EU Delegations** in relevant countries (such as the human rights adviser), who would be fully trained and mandated to follow ICC developments, local perceptions and cooperation with the ICC, and actively promote the ICC locally.
- Nominate an **EU Special Representative on International justice**, who could give more visibility to the EU’s commitment to the ICC and justice for victims of serious crimes.
- Increase and enhance **informal dialogue** on the ICC between like-minded African and European government officials.
- Increase projects aiming at **supporting and building capacities of civil society**, including victims’ organisations, to promote universality and implementation of the RS; to monitor judicial proceedings of the ICC and before national courts; and to assist and inform local populations about the Court’s work and about domestic efforts (complementarity), including victims and affected communities, in particular in Africa, considering that such groups tend to be under-resourced and that activists often face risks to their security.
- **With regard to the expansion of jurisdiction of the African Court of Justice and Human Rights (African Court) to include individual criminal responsibility for serious international crimes**, the majority of civil society organisations (CSOs) at the Seminar expressed **strong reservations about this initiative and the likelihood that such a new mechanism would be truly effective**. Should the AU and its Member States decide to nonetheless move forward with this initiative, the EU should:
  - Encourage **dialogue** among African states and civil society about an expanded African Court, and contribute **lessons-learned** from regional courts outside Africa, taking into consideration that these are human rights and not criminal courts.
  - Support **African civil society efforts** to engage in, monitor and improve the AU’s discussion on the expanding the jurisdiction of the African Court.

#### → TO THE AFRICAN UNION (AU):

- Approve the **establishment of an ICC liaison office** in Addis Ababa, Ethiopia and conclude the **Memorandum of understanding (MoU)** between the AU and the Court.
- Facilitate the information, accreditation, and participation of civil society, and the accreditation of Court officials, to attend **AU meetings** at which the ICC is to be discussed and provide clearer **avenues** for civil society advocacy at the AU on international justice.
- **With regard to the proposed expansion of jurisdiction of the African Court of Justice and Human Rights (African Court) to include individual criminal responsibility for serious international crimes**, the majority of civil society organisations (CSOs) at the Seminar expressed **strong reservations about this initiative and the likelihood that such a new mechanism would be truly effective**. Should the AU and its Member States decide to nonetheless move forward with this initiative, the AU should, at a minimum:
  - Apply **lessons learned from Africa's existing regional courts** and human rights institutions, and ensure **civil society** is involved in consideration of expansion.
  - Ensure that if expanded to cover serious crimes, the African Court revised statute provides for **provisions ensuring that the Complementarity regime** with the ICC will be fully respected (with the ICC remaining the court of last resort) and upholds international standards, including on fair trials, and international best practices relating to prosecutorial and judicial independence.
  - Ensure that individuals and civil society organisations have **access** to and standing before the court, and that the political commitment to expansion is matched by requisite **resources**.

#### → TO THE INTERNATIONAL CRIMINAL COURT (ICC):

- Cooperate with **national authorities** dealing with investigations and cases of serious crimes when necessary and consistent with the Rome Statute's principles and requirements.
- Conduct **public information and outreach** in a more systematic manner from the earliest possible stage in situations under investigation and preliminary examination, to ensure accurate information is disseminated, expectations are managed, and the court's impact in promoting deterrence and national proceedings is maximised.
- Ensure that public information and outreach include **all activities under the ICC's mandate**, including victims' rights, safe communication with the OTP, and fair trial guarantees. This involves: developing **strategies** to explain policies regarding the defence (such as regarding interim release, acquittal, and family visits) to victims and affected communities, and the general public to increase the credibility of the system and the understanding of the court's respect for fair trial standards and defence rights; **engaging** proactively with vulnerable victims, including women, victims of Sexual and Gender-Based Violence (SGBV), children and young people; and affected communities, and exploring **creative means** to inform remote victims (such as by using particular languages, media, and locating field offices closer to affected communities).
- Maintain and increase, as appropriate, the **Court's field presence** in situation countries and optimise field offices, including empowering them to play a greater role in building the ICC's legacy, and promoting the Court's mandate and positive complementarity.
- Ensure that the ICC is **accessible** to victims, and that vulnerable victims, including victims of Sexual and Gender-Based Violence (SGBV), are adequately **supported and protected** physically and psychologically at all stages of proceedings.
- Clarify policies on **intermediaries**, considering the crucial role they play in the implementation of the ICC's mandate, and the risks they face, and provide protection, training and assistance as appropriate.
- Promote better **understanding of the ICC's work in Africa** through increased visibility, including outreach and training of African **journalists**, such as by bringing them to observe proceedings at the seat of the Court in The Hague.
- Increase **collaboration with civil society**, in particular in countries under preliminary examination and investigation on issues related to cooperation.
- Ensure that all organs of the ICC regularly interact with and **consult local civil society and victims' groups** on specific policy issues while acknowledging their independence, such as through invitation to discussions and involvement in outreach and information initiatives.
- Increase **awareness of the prosecutorial strategy** and reasoning behind decisions linked to it.

- Ensure that the **future development** of the prosecutorial strategy takes into account lessons learned, including in relation to the interests of victims and the response to demands for justice at local level.

**→ To AFRICAN AND EUROPEAN CIVIL SOCIETY:**

- Continue and increase efforts to **pressure States Parties** to ensure full and effective implementation of the RS and ratification of the APIC and to **urge States Non Parties** to ratify the RS and implement it in national law.
- Strengthen **monitoring** and **awareness raising** on the need for full and effective implementation of the RS; and the ICC's prosecutorial strategy and judicial proceedings, including with respect to witness and victim protection and fair trial guarantees.
- Increase the **distribution of information** about the ICC to local populations and strengthen public opinion on the ICC, including by enhancing ties and provision of material to media at all levels.
- Continue efforts to urge States, international and regional organisations to **support** the Court's mission and mandate and to **cooperate** with the ICC, including in the execution of arrest warrants and on defence issues, such as by concluding framework agreements on interim release and acquittal.
- Promote the importance of ICC states parties countering misinformation on the Court and avoiding initiatives that run counter to ICC States parties obligations under the RS, such as by not seeking to rely on **political pronouncements** to breach obligations under international law and the RS.
- Reach out effectively to and maintain dialogue with **EU Delegations and States** in relevant countries as important actors to support the Court and to push for effective cooperation.
- Ensure strong civil society **information and representation** at regional summits and other intergovernmental events where the ICC is discussed, including relevant AU-EU events.
- Strengthen **collaboration** between civil society in Africa and in Europe to press States and international and regional organisations to give support and cooperation to the ICC
- Increase collaboration, and create **regional and sub-regional networks** to more effectively advocate for support to and cooperation with the ICC, including at sub-regional levels.
- Strengthen **domestic civil society networks working in Africa** on international justice, and explore working in closer collaboration with **national and continental/regional African and European parliamentarians**, including in joint fora such as the ACP-EU Joint Parliamentary Assembly (JPA).
- Support the development of comprehensive **legislation** on serious crimes that reflects all international **obligations to prosecute or extradite**, and ensure governments, parliamentarians, lawyers, professional organisations and trade unions, as well as victims and organisations working with them, are engaged on universal jurisdiction cases.
- Compile and share legislative and practical information nationally on the **ability** of national authorities to **exercise universal jurisdiction**, including concerning all relevant cases.
- Carefully **select universal jurisdiction cases** taking account of strategic discussion among civil society as to which cases should be pursued, and considering the views of **communities in exile and victims themselves**.
- Continue awareness raising activities to sensitize victims on their right to access justice at national level, consider **initiating legal proceedings** (on behalf of and fully including, victims) at the national level for serious international crimes, and monitor these proceedings at all stages, including at the investigation stage.
- Consider seizing **relevant regional and international mechanisms** (including human rights mechanisms such as the African Commission on Human and Peoples' Rights) as an additional means to fight against impunity for serious international crimes.
- **With regard to the expansion of jurisdiction of the African Court of Justice and Human Rights (African Court) to include individual criminal responsibility for serious international crimes**, the majority of civil society organisations (CSOs) at the Seminar expressed **strong reservations about this initiative and the likelihood that such a new mechanism would be truly effective**. Should the AU and its Member States decide to nonetheless move forward with this initiatives, African and European civil society should:
  - Increase **information and awareness about the strengths and weaknesses** of existing African and European regional courts and human rights institutions, and the lessons-learned from these organisms, and **engage with the AU Commission's** initiative to investigate the implications of expanding the jurisdiction of the African Court.