



ICJ KENYA

STATEMENT BY THE KENYA SECTION OF THE INTERNATIONAL COMMISSION OF JURISTS AT THE NINTH SESSION OF THE ASSEMBLY FOR STATE PARTIES TO THE ROME STATUTE OF THE ICC

Honourable Participants and Observers,

I take this opportunity to thank the assembly for taking time to allow Organisations to contribute to the debate on the various issues up for deliberations. I would like specifically speak to the issue of cooperation by State Parties to the Rome Statute in light of the recent developments in the African Continent over the year emanating from decisions made at the African Union.

The necessity for Cooperation by State Parties to the Rome Statute cannot be over emphasised, it is through their cooperation in the supporting the work of the court that the ICC can be effective in executing its role of eradicating the culture of impunity.

The African Union made a decision in Sirte, Libya last year calling on its Member not to cooperate with the ICC in the arrest and surrender of President Al Bashir this initial call was not implemented as such by AU member States and in a move that was laudable African State Parties to the Rome Statute participated in large numbers at the review conference held this year in June in Kampala and indeed the African group jointly reaffirmed their commitment to the RS and resolve to support the ICC. These declarations and any gains perceived to have been harnessed at the review conference in were to quickly be washed away precisely a month later when the African Union met in July in the same city of Kampala and once again renewed its earlier resolution for its member States not to cooperate with the ICC in the arrest and Surrender of President Bashir. The resultant effects to the work of the court are of particular concern:

1. Firstly, because this decision came a few days after President Bashir was able to travel to Chad an African State Party to the Rome Statute, in July 2010.
2. Secondly, and subsequent to the AU decision President Bashir travelled to a second State Party to the Rome Statute, Kenya during the celebrations for the promulgation of the new Constitution for the Country in August 2010.
3. A possible third visit in Kenya in October-November was forestalled by early opposition on the visit by various stakeholders, including national and international civil society organisations and the Court itself. The court requested the government of Kenya to give it reasons as to why they wouldn't arrest President Bashir were he to be in Kenya to

attend a Special meeting of the Inter governmental development Authority (IGAD) convened by President Kibaki of Kenya to discuss the upcoming January 2011 referendum in Southern Sudan. The meeting was eventually postponed and held in Addis Ababa the headquarter of the African Union.

The proactive reaction by the court is laudable and we are of the view that similar requests to all State Parties would be ideal in order to forestall future visits that are being used by President Al Bashir to consolidate his support.

The Court also informed the UN Security Council and this Assembly, of the non-cooperation in order for appropriate measures to be taken. It is our humble view that this issue ought to be deliberated upon and the Assembly ought to play its role in promoting cooperation especially where the obligation to cooperate is blatantly ignored or violated.

There is also need for consistency by the African State Parties on their commitment to cooperating with the ICC and implementing their obligations under the Rome Statute. Pledges made at the review conference and at meetings such as this one should be the same messages taken to the other regional groupings such as the African Union Summit sessions. A few African countries that are party to the RS have remained steadfast on their commitment to the court at the various forums even when it was not popular to do so, and when I speak of these countries the governments of Botswana, South Africa and Ghana come to mind, this is laudable and we urge other African State Parties to remain committed to their obligations under the Rome Statute.

Finally as I conclude I wish to put on the hat of a person coming from a situation country and briefly speak to the question of outreach in the situation countries. There has been commendable effort by the court in Kenya to initiate outreach activities at a very early stage, this has significantly assisted in addressing the need to demystify the court especially to the affected communities and the larger public. However despite these early interventions there still remains a huge information gap in the country with many Kenyans having not been reached and as the consolidation of the cases on Kenya becomes a reality new issues continue to emerge that need to be addressed through outreach and public information. The civil society has tried to bridge the gap but much more remains to be done. We therefore support the calls that have been made for the establishment of an outreach office in Kenya to facilitate better engagement. In addition we hope this gathering will see it fit to look in to the issue of allocating more resources to outreach and communication because from our experience this is a core component of improving the efficacy of the work of the court and also changing perceptions in Africa on what the agenda of the court is.

I thank you.