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## **The Status of ICC Implementing Legislation**

### *States Parties need to expedite enactment of implementing legislation*

#### **Introduction**

The success of the International Criminal Court (ICC) is directly linked to complete and prompt state cooperation. States Parties will need to render assistance to the ICC in the many ways enumerated in the provisions of the Rome Statute.

Human Rights Watch has outlined the need for strong ICC implementing legislation and has recommended strategies for implementing several key provisions of the Rome Statute in considerable detail. See "Making the International Criminal Court Work: A Handbook for Implementing the Rome Statute," September 2001 available at: <http://www.hrw.org/campaigns/icc>. We have also developed a series of charts comparing the different implementing laws enacted, or proposed, by approximately twenty States Parties from around the world. Updated comparative charts are now available at: <http://www.hrw.org/campaigns/icc>.

At the resumed session of the first Assembly of States Parties (ASP) we are concerned that States have not made the adoption of implementing legislation a major governmental priority. A worldwide network of implementing laws will provide the ICC with the strong basis necessary to begin its work in mid-2003. Human Rights Watch urges States Parties individually, and the ASP as a whole, to urgently intensify their efforts to enact implementing legislation.

#### **Global Progress on Implementation**

A growing number of States have recognized the importance of implementing legislation and have committed themselves to drafting laws as quickly as possible. Some degree of progress has been made in every region, but more needs to be done.

Here are a few note-worthy examples of interesting steps States Parties have taken to push forward the implementation process.

*Review of existing criminal, procedural and constitutional laws:* In Africa, Niger and Senegal have established an expert committee to review existing laws as the first step of the implementation process.

*A joint implementation task-force to commence drafting:* Drawing upon the expertise of government legal experts from different ministries is a good model to ensure that States Parties' international legal obligations in the Rome Statute are properly incorporated into national law. Brazil established a Commission on Implementing Law that includes independent legal experts for drafting purposes. While in Africa, both Niger and Senegal created a task-force to progress implementing legislation.

*Bilateral outreach:* Several States Parties have conducted outreach on a bilateral basis. The Canadian government has sponsored the participation of legal experts from its Ministry of Justice to advise and provide technical expertise to States Parties. For example, Canadian Justice officials advised West African states on implementation at a regional gathering, the Economic Community of West African States (ECOWAS). French Ministry of Justice officials have provided implementation assistance to

Cameroon bilaterally, while New Zealand is considering providing technical assistance to States within the Pacific region.

*Civil society involvement in drafting legislation:* In Argentina, an inter-ministerial commission charged with preparing the first draft implementing law, made the draft available to national and international civil society groups. The Brazilian Commission on Implementing Law held several open meetings to discuss the draft implementing law with a wide range of interested parties, including professors, law associations and nongovernmental organizations. A very similar approach was adopted in the Democratic Republic of Congo, with the Ministry of Justice organizing seminars in collaboration with nongovernmental organizations.

Although States in every region are making progress, too few States have begun the difficult and exacting – but very achievable – task of drafting implementing legislation. Failure to support the Court through the enactment of comprehensive implementing legislation, regulating both procedural as well as substantive criminal law, may jeopardize the Court as it begins operations.

The table included at Annexure A provides a provisional snapshot of the progress made by each State Party towards enacting implementing laws.\*\*

### **Human Rights Watch Recommendations**

Human Rights Watch urges States Parties to commit more resources to making ICC implementing legislation a priority. Human Rights Watch believes the critical step now is harnessing the expertise and experience developed in those States Parties that have enacted implementing legislation. We call on States Parties that have made progress to make the lessons learned accessible to other States Parties that have yet to develop their laws.

Human Rights Watch recommends that:

#### **(1) The Assembly of States Parties (“ASP”) Should Form a Committee on Ratification and Implementation**

The importance of widespread implementation requires the ASP to actively promote it.

Human Rights Watch recommends that the ASP establish a Committee to pursue this goal. For example, individual States could approach the Committee if they wanted to benefit from the technical expertise already generated in other States that have developed implementing laws. The Committee could then help contact or convene experts from relevant States with expertise to share.

The Committee should evaluate the advantage of a formal ASP mechanism to promote ratification and implementation under ASP auspices.

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\*\* Please note that Human Rights Watch has not consulted the government from every state party in compiling this summary. There may be some errors. Human Rights Watch welcomes feedback from States Parties regarding the status of their implementing law. *Please contact the following Human Rights Watch Counsel:* GRULAC: Brigitte Suhr at +1-212-216-1249 ([suhrb@hrw.org](mailto:suhrb@hrw.org)); AFRICA: Pascal Kambale at +1-202-612-4363 ([kambalp@hrw.org](mailto:kambalp@hrw.org)); WEOG, EEG & ASIA: Andrew Egan at +1-212-216 1283 ([icc\\_in10@hrw.org](mailto:icc_in10@hrw.org)).

**(2) States Parties Should Supplement the Work of an ASP Committee with Regional and Bilateral Efforts to Share Technical Legal Expertise with States Developing Implementing Legislation**

One of the key obstacles to expediting implementation in many States Parties is the lack of technical expertise and shortage of financial resources necessary to develop comprehensive implementing legislation. As discussed briefly above, some States Parties have successfully reached out to share their implementation expertise and experience with certain States. These outreach efforts now need to intensify.

**(3) Civil Society Must be Included in the National Drafting Process**

One very positive aspect of the implementation process so far has been the participation of civil society in helping draft the legislation. A growing number of governments have made available draft laws to national and international nongovernmental organizations for written commentary. Human Rights Watch welcomes this trend and urges other governments to give civil society the opportunity to bring its expertise to the implementation process.

**(4) States That Will Soon Ratify or Accede Should Begin their Implementing Process**

We believe States that will soon be submitting their instruments of ratification or accession should begin the implementation process (preparing analyses of national legislation) now so that they will be able to implement quickly upon their ratification or accession. With the Rome Statute now in force, only about 60 days separates the date of ratification or accession from the date that a new state party’s Rome Statute obligations enter into force.

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**ANNEX A: THE GLOBAL STATUS OF IMPLEMENTING LAWS**

*Note: Some States Parties have enacted or drafted implementing laws, but have not done so comprehensively; when Human Rights Watch evaluates the interaction of their implementing laws with their relevant existing laws, some “gaps” remain. This chart does not distinguish between States Parties with comprehensive or inadequate implementing laws. Instead, it focuses on whether the process of developing implementing laws has commenced at all. Human Rights Watch hopes that those States Parties with lingering “gaps” – and this includes some States shown to have ENACTED some implementing laws – move quickly to close them.*

Status of Implementing Law	State Party				
	AFRICA	GRULAC	WEOG	EEG	ASIA
<b>Enacted</b>	South Africa		Australia Canada ; Finland France Germany The Netherlands New Zealand Norway Sweden Switzerland United Kingdom	Estonia Romania Slovenia	

Status of Implementing Law	State Party				
	AFRICA	GRULAC	WEOG	EEG	ASIA
<b>Draft circulated</b>	Dem. Rep. Of Congo	Argentina Brazil Ecuador Uruguay	Belgium Iceland Ireland <sup>1</sup> Italy Liechtenstein Malta Spain	Bulgaria The Fed. Rep. of Yugoslavia	
<b>Commenced drafting process</b>	Benin Ghana Namibia Niger Senegal Sierra Leone	Bolivia Panama Paraguay Peru Trinidad and Tobago Venezuela	Portugal	Croatia Hungary	Cambodia Rep. of Korea Mongolia
<b>Minimal / No progress</b>	Botswana Gabon The Gambia Lesotho Malawi Mali Nigeria Tanzania Uganda Zambia	Costa Rica Colombia Honduras	Austria Denmark Greece Luxembourg San Marino	Bosnia-Herzegovina Latvia The Former Yugoslav Rep. of Macedonia Poland Slovakia	Cyprus East Timor Fiji Marshall Islands Nauru Samoa Tajikistan
<b>Unknown</b>	Central African Republic Djibouti Mauritius	Andorra Antigua & Barbuda Barbados Belize Dominica Saint Vincent and the Grenadines			Jordan

<sup>1</sup> We anticipate that the Irish Parliament will authorize circulation of draft implementing legislation later this month.