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International Criminal Court

Guidelines for effective implementation of the Rome Statute - Introduction

The adoption of the Rome Statute of the International Criminal Court (Rome Statute) on 17 July 1998 and its entry into force on 1 July 2002, represents not only the establishment of a new permanent International Criminal Court but, moreover, a new system of international justice that seeks to integrate efforts at both the international and national level to end impunity for the worst possible crimes.

This new system is based on the principle of complementarity, whereby, national courts have the primary obligation to investigate and prosecute genocide, crimes against humanity and war crimes and only when they are unwilling or unable will the ICC be able to step in and assert jurisdiction. It is, therefore, essential for all states parties, as well as other states, to amend existing legislation or enact new national legislation defining the crimes in accordance with international law.

Furthermore, the ICC is dependent upon the full cooperation of states to perform its functions, including but by no means limited to, assisting the ICC in collecting evidence, assisting in the protection of victims and witnesses, arresting and surrendering accused persons to the ICC, tracing and freezing assets for fines forfeiture and reparations orders and enforcing sentences for convicted persons. It is, therefore, essential that national laws are amended or new laws are enacted so that national authorities can provide the broadest cooperation with the ICC to ensure that it can achieve its crucial role effectively.

I. About the *Guidelines for effective implementation of the Rome Statute*

To assist states in the important task of reviewing their existing law and drafting implementing legislation, Amnesty International has produced these comprehensive guidelines, which builds upon the organization's paper, *International Criminal Court: Checklist for effective implementation*, AI Index: IOR 40/011/00, July 2000.¹ The *Guidelines for effective implementation of the Rome Statute (Guidelines)* look in detail at the obligations of states, both under the Rome Statute and under international law to enact and implement legislation to ensure that the new system of international justice is as effective as possible. It should be noted that the *Guidelines*, while they focus on the implementation of the Rome Statute, make recommendations for states to incorporate other serious crimes under

¹ Available at Amnesty International's International Justice Project web pages: <http://www.amnesty.org/icc>

international law into national law and, furthermore, highlights aspects of the Rome Statute that are not in accordance with international law that should not be incorporated into national law.

The *Guidelines* highlight the relevant provisions of the Rome Statute or other relevant international law and make specific recommendations for their effective implementation. The *Guidelines* indicate the relevant international law and standards or good practice for Amnesty International's recommendations.

There are 15 chapters to the *Guidelines* for effective implementation which will be issued chapter by chapter as they are completed from August 2004 onwards. The planned chapters (which may be revised in the course of preparation) are :

Introduction

Chapter 1: Genocide

Chapter 2: Crimes against humanity

Chapter 3: War crimes

Chapter 4: Other crimes under international law

Chapter 5: Offences against the administration of justice

Chapter 5: Principles of criminal responsibility

Chapter 6: Defences

Chapter 7: Elimination of bars to prosecution

Chapter 8: Fair trial

Chapter 9: Nomination of candidates to be judge or prosecutor

Chapter 10: Cooperation - general

Chapter 11: Cooperation – investigations

Chapter 12: Cooperation – arrest and surrender

Chapter 13: Cooperation – enforcement of sentences.

Chapter 14: Victims and witnesses

Chapter 15: Reparations

II. The need for states to conduct a transparent drafting and enactment processes

Amnesty International has been calling on all states to conduct transparent drafting processes, including consultation with civil society, at all relevant stages of the process. International and national groups, including Amnesty International and other international NGOs, the International Committee of the Red Cross, national professional legal bodies, women's organizations, victims' organizations etc. may have an interest in taking part in the process and making recommendations to ensure that the legislation provides for the broadest and strongest provisions for the national systems to deal with the crimes and to ensure national authorities can provide the broadest cooperation with the ICC. A number of states, including the Democratic Republic of the Congo, Senegal and the United Kingdom, have conducted transparent drafting processes in consultation with civil society, leading to significant improvements in the initial draft. Amnesty International is concerned that, with few exceptions, most states to date have conducted non-transparent processes and in nearly all cases have enacted laws that contain substantial flaws. Amnesty International, therefore, urges all states to take the following measures:

- At the very beginning of the implementation process, before the review of national law takes place, to make an announcement that the process has started. In particular, to notify Amnesty International and the Coalition for the International Criminal Court (CICC), which has over 1000 members worldwide.
- To provide contact details where initial written submissions and materials on implementation can be submitted.
- To organize an initial meeting of interested members of civil society to discuss the scope of the review and the issues to be examined.
- To issue a draft of the legislation publicly, and provide a reasonable period of consultation when civil society can meet with the drafters and make written submissions and recommendations for amendments to the draft, to be considered before the enactment process is started.
- To ensure that there is a process whereby submissions by civil society can be considered during the enactment process.

III. Public education and training of officials

At the same time that states parties begin drafting implementing legislation, they should start to develop and implement effective programs of public education and training for officials on the implementation of the Rome Statute. The experience of the International Criminal Tribunals for the former Yugoslavia and Rwanda with prosecutions by national courts of persons accused of crimes within the jurisdiction of the two Tribunals and with cooperation of national authorities demonstrates the need for public education and training of officials on the scope of crimes under international law and on the work of international criminal courts. For example, the lack of familiarity of a United States District Court in Texas with the obligations of the United States to cooperate with the International Criminal Tribunal for Rwanda may

have led to its refusal to implement the request by the Tribunal for the surrender of a Rwandan national. Similarly, the lack of an adequate training program for officials may have been responsible for the protracted negotiations between the International Criminal Tribunal for the former Yugoslavia and the French government before it would permit testimony by high-ranking military officers at the seat of the Tribunal.

States parties can help make sure that their authorities fully cooperate with the ICC, as required by Article 86 of the Rome Statute, if they commit themselves to a program of public education to generate support for investigating and prosecuting persons in national courts and for cooperation with the new international institution. Amnesty International recommends that at the same time they begin an intensive training program for judges, prosecutors, defence lawyers, police and military, justice and foreign affairs officials on their obligations under the Rome Statute. In particular, they should, as several states are now doing, update their military manuals to incorporate appropriate references to the Rome Statute.

IV. Additional Amnesty International materials on implementation

In addition to these *Guidelines*, states are encouraged to refer to the following Amnesty International documents in the reviewing and drafting process:

- *International Criminal Court: Checklist for effective implementation*, AI Index: IOR 40/011/00, July 2000
- *International Criminal Court: The failure of states to implement the Rome Statute effectively*, AI Index: IOR 40/015/2004, August 2004
- *14 Principles for the effective exercise of universal jurisdiction*, AI Index: IOR 53/001/99, May 1999
- *Universal Jurisdiction: The duty of states to enact and implement legislation*, AI Index: IOR 53/002-018/2001, September 2001

V. Amnesty International's implementation web pages and the Rome Statute Implementation Database

States are also encouraged to refer to Amnesty International's implementation web pages (http://web.amnesty.org/pages/int_jus_icc_implementation) which include all draft and enacted implementing legislation available, plus Amnesty International's commentaries on draft and enacted legislation. From these pages there is a link to Amnesty International's Rome Statute Implementation Database which includes a breakdown of enacted legislation in accordance with each article of the Rome Statute, so that drafters can see how other states have implemented articles of the Rome Statute and commentaries by Amnesty International and others.

VI. Other Amnesty International information on implementation

States implementing the Rome Statute are encouraged to contact Amnesty International's International Justice Project, if they have any questions about the organization's materials or if they require any advice in the drafting process. Interested person can also register to be notified about the publication of new chapters by sending an e-mail request to: ijp@amnesty.org