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Mwai Kibaki
President of the Republic of Kenya
Office of the President
Harambee House, Harambee Avenue
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Nairobi
Kenya

17 July 2003

Dear President,

Today, International Justice Day, the fifth anniversary of the adoption of the Rome Statute of the International Criminal Court (Rome Statute), Amnesty International is launching a campaign for universal ratification of the Rome Statute. I am writing to urge your government to join in this effort.

As of 1 July 2003, 90 states, almost half of the states of the international community have ratified the Rome Statute. Reaching such a threshold in five years is a testament to the will of the international community to ensure that it will not stand aside and let the fabric of humanity be torn asunder by those who commit genocide, crimes against humanity and war crimes.

Those states that have ratified the Rome Statute have committed themselves to a new system of international justice in which their national courts have the primary obligation to investigate and prosecute people accused of crimes under international law. However, if states are unwilling or unable to genuinely investigate and prosecute these crimes the International Criminal Court (ICC) can do so. Such a system, if universally supported, would ensure an end to the horrific trend repeated throughout the last century where people were allowed to plan and commit these crimes knowing they would not be held accountable for their heinous acts.

Amnesty International is working to ensure that all states ratify the Rome Statute so that it has the widest possible jurisdiction. Universal ratification will ensure that there are no more safe havens for those who commit the worst crimes under international law.

Accordingly, I am writing to urge your government to join the international effort to establish this new system of international justice by ratifying the Rome Statute as soon as possible. Amnesty International's members around the world, are already undertaking initiatives to support Kenya's ratification of the Rome Statute.

Kenya has played an important role in supporting the establishment of the International Criminal Court by signing the Rome Statute on 11 August 1999. This signature indicates an intention to ratify. Amnesty International welcomes reports that the Attorney-General is considering both ratification of the Rome Statute, as well as implementing legislation. We urge the authorities to move the process forward, to enable Kenya to become a state party to the Rome Statute without further delay.

All states that ratify the Rome Statute will need to enact new legislation or amend existing legislation to ensure that their national courts can effectively investigate and prosecute persons suspected of the crimes defined in the Rome Statute and that they can cooperate fully with the Court. Such legislation should, if possible, be enacted by the time the Rome Statute enters into force for Kenya (60-90 days following ratification). States should begin work on drafting implementing legislation at the same time as they start the process of ratification. By doing so, states parties will be in a position to fulfil their international responsibilities when the Rome Statute enters into force for their state.

To assist states with reviewing their legislation in order to prepare national legislation, Amnesty International has prepared *International Criminal Court: Checklist for effective implementing legislation* (IOR 40/011/2000) May 2000, which I enclose for your information. We urge your government to conduct broad consultation with civil society groups in Kenya and internationally when preparing your country's implementing legislation. We would be happy to assist by commenting on any draft legislation that is prepared.

Furthermore, in September 2002, the Assembly of States Parties adopted an Agreement on Privileges and Immunities of the Court, which provides important privileges and immunities for Court staff not covered by any other treaty. The Agreement is open for signature until 30 June 2004. We hope that Kenya will sign the Agreement as soon as possible and to take measures to ensure that it ratifies the Agreement and implements it into national law before the Rome Statute enters into force for Kenya, so that the International Criminal Court can operate effectively throughout the world.

Finally, as you are aware the Court is the object of a worldwide campaign by the United States of America (USA) to weaken it and to obtain impunity from international justice for United States (US) nationals accused of genocide, crimes against humanity and war crimes. Your government may have been contacted by US authorities to sign an agreement committing not to surrender US nationals to the Court. These agreements violate the Rome Statute and other international law, by seeking to give impunity from international justice to the perpetrators of the worst crimes in the world, instead of seeking to end it. We hope that your government will refuse to enter into any such agreement.

Amnesty International, along with the vast majority of members of civil society and states, believe that US fears that the Court could be used to bring politically motivated prosecutions against US nationals are wholly unfounded. The Rome Statute contains extensive safeguards and fair trial guarantees to ensure that such a situation could not arise. Amnesty International is confident that the International Criminal Court will, through its practice, convince the USA to reconsider its position and to eventually ratify the Rome Statute. The more states that ratify the Rome Statute in the coming years, the more likely the USA will reconsider its position in the foreseeable future.

The inauguration of the 18 judges and the Prosecutor of the new International Criminal Court this year, permitting it to become fully operational in the near future, is a momentous step forward in the fight to end impunity for the worst crimes known to humanity. I urge you to take the steps outlined in this letter to further strengthen the Court and contribute to making international justice a reality.

Yours sincerely,



Irene Khan
Secretary General