

AMNESTY INTERNATIONAL PUBLIC STATEMENT

19 March 2010
AI Index: IOR 53/005/2010

Amnesty International calls on states parties to achieve key benchmarks before the Review Conference of the Rome Statute

Amnesty International today called on all 110 states that have ratified the Rome Statute, in advance of their meeting in New York next week (22 to 26 March 2010), to take important steps to fulfil their commitments to international justice.

The Assembly of States Parties of the International Criminal Court will meet to continue preparations for the Review Conference of the Rome Statute of the International Criminal Court which will take place in Kampala, Uganda on 30 May to 11 June 2010. The Review Conference is the first opportunity for states parties to consider proposals to amend the Rome Statute and to take stock of how the International Criminal Court and the Rome Statute system has worked since it was established on 1 July 2002.

Amnesty International recognizes that, despite the Court making significant progress in the last seven years, its work is under threat – not from opponents of international justice – but by the inaction of its supporters, who are failing to take sometimes even basic measures to implement their commitments to international justice and to the Court.

Amnesty International has, therefore, set nine benchmarks which it is calling on all states to achieve before the Review Conference. If states are not able to meet all these benchmarks in time for the Review Conference, the organization is urging governments to make formal pledges during the Review Conference to address the outstanding issues as soon as possible.

Benchmark 1: All states parties must enact or amend national legislation ensuring their authorities can investigate and prosecute genocide, crimes against humanity, war crimes, and other crimes under international law in accordance with the strictest requirements of international law and without obstacles. Each state party recognizes that under the principle of complementarity it has the primary obligation to investigate and prosecute genuinely these crimes before their national court. The Court will only step in as a last resort when states are unable or unwilling genuinely to do so. To ensure the success of the complementarity system and to avoid over-burdening the Court with cases, a full review of existing national laws must be conducted and new legislation enacted or existing legislation amended. To date, less than half of the 110 states parties have done so and much of that legislation has serious flaws.

Benchmark 2: All states parties must enact national legislation ensuring that they can cooperate fully with the International Criminal Court. The Rome Statute expressly requires states parties to cooperate with the investigation and prosecution of crimes under the jurisdiction of the Court (Article 86) and identifies some specific forms of cooperation that may be required (Article 93). In addition, the Assembly of States Parties issued a detailed Report on Cooperation at its sixth session in 2007 setting out 66 recommendations for states parties. Regrettably, less than half of the 110 states parties have enacted cooperation legislation and much of that legislation has serious flaws.

Benchmark 3: All states parties must ratify the Agreement on Privileges and Immunities of the

International Criminal Court. The Agreement, which was adopted by the Assembly at its first session in 2002, sets out privileges and immunities which are vital to the operation of the Court and essential to guarantee a state party's full cooperation. To date, only 62 of the 110 states parties have ratified the Agreement.

Benchmark 4: All states parties must enter into a victims and witness relocation agreement with the Court. The work of the Court dictates, that even when strict precautions are taken, victims and witnesses may become at such serious risk because of their interaction with the Court that they need to be relocated to another country. States parties must, therefore, assist the Court with resettling victims and witnesses at serious risk to their countries and providing them with essential services to ensure their integration. Effective victim and witness protection is a key element of the Court's investigation and prosecution of crimes under its jurisdiction and is, therefore, not optional. Amnesty International is seriously concerned that, in its Report on Cooperation issued to the Assembly at its last session, the Court states that the total rate of successful relocations currently stands at only 40%. This is unacceptable. Urgent measures are required of states parties to make their countries available for relocations.

Benchmark 5: All states parties should enter into enforcement of sentences agreements with the Court. Part 10 of the Rome Statute provides that convicted persons will serve their sentences in the prison facilities of states willing to accept convicted persons. Such facilities must meet international standards. Amnesty International is concerned that only two states so far (both European states parties) have committed themselves to accept convicted persons by entering into an enforcement of sentences agreement with the Court. With the first trials now taking place, it is important that all states parties whose prison conditions meet international standards enter into an agreement to provide the Court with a range of venues in all regions and the others bring their prisons into conformity with these standards so that they can enter into such an agreement.

Benchmark 6: All states parties should designate national contact points on cooperation. Communications between states parties and the Court are vital to guarantee effective cooperation. Without clear communication channels the Court's requests for cooperation risk going unanswered. Amnesty International notes that in its Report on Cooperation to the Assembly, the Court states "more than 40 states had not yet designated a permanent contact point responsible for cooperation."

Benchmark 7: All states parties should designate national contact points for the Assembly's Plan of Action for Universal Ratification and Full Implementation of the Rome Statute and respond to the annual survey of states activities. Amnesty International strongly supports the Assembly's Plan of Action to achieve universality of the Rome Statute. Since its adoption in 2006, however, there are worrying signs that in practice most states parties are not taking any steps to implement it. In particular, responses to an annual survey submitted to states parties by the Secretariat of the Assembly on steps they have taken to implement the Plan have been limited. Only 22 of the 110 states parties have responded so far to the 2009 questionnaire.

Benchmark 8: All states parties should make annual voluntary contributions to the International Criminal Court's Trust Fund for Victims. The Trust Fund established in accordance with Article 79 of the Rome Statute is mandated to provide essential assistance to victims and to fulfil the Court's reparations awards (where a convicted person is unable to do so). Now that the Trust Fund is operational, it is important that states parties provide it with regular voluntary contributions to fulfil these important tasks.

Benchmark 9: States that have made declarations amounting to prohibited reservations to the Rome Statute must withdraw them. Amnesty International notes that a number of states, including Australia, Colombia, France, Malta and the United Kingdom have made declarations to the Rome Statute which according to Amnesty International's legal analysis *International Criminal Court: Declarations amounting to prohibited reservations to the Rome Statute (AI Index: IOR 40/032/2005)* amount to reservations and are therefore prohibited by Article 120

of the Rome Statute. These reservations must be withdrawn with immediate effect. Amnesty International plans to publish one or more documents to be distributed before the Review Conference indicating whether states parties have met these benchmarks. Amnesty International is currently developing a detailed position paper to be issued in May on the amendments before the Review Conference and the items on the stock-taking agenda.