

INTERNATIONAL CRIMINAL COURT

RECOMMENDATIONS TO
THE 13TH SESSION OF
THE ASSEMBLY OF
STATES PARTIES (8 TO
17 DECEMBER 2014)

**AMNESTY
INTERNATIONAL**



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RECOMMENDATIONS TO THE 13TH SESSION OF THE ASSEMBLY OF STATES PARTIES

INTRODUCTION

The 13th session of the Assembly of States Parties of the International Criminal Court (Assembly) will take place in New York from 8 to 17 December 2014.

At this session, the Assembly will:

- Conduct a General Debate about the International Criminal Court (ICC or Court) and the Rome Statute system;
- Adopt the 2015 budget for the ICC;
- Elect six judges and seven members of the Committee on Budget and Finance;
- Conduct a plenary discussion on cooperation with a particular focus on the ICC's role in addressing impunity for crimes of sexual and gender-based violence; and
- Consider resolutions on cooperation, victims and strengthening the ICC and the Assembly of States Parties, among others.

The Assembly may also:

- Consider amendments to the Rules of Procedure and Evidence prepared by the Working Group on Lessons Learnt aimed at expediting the criminal process. These are currently being discussed by the Working Group on Amendments;
- Consider amendments to the Rome Statute if they are taken forward to the session by the Working Group on Amendments. The Working Group is currently discussing a number of proposals that were not considered by the 2010 Review Conference and five amendments submitted to the United Nations Secretary-General by Kenya in March 2014; and
- Conduct a "Special Session to discuss the conduct of the Court and the Office of the Prosecutor" which has been proposed by Kenya as a supplementary agenda item and is currently under consideration by the Bureau of the Assembly.

This paper sets out Amnesty International's recommendations on some of these issues. The recommendations reflect the organization's overarching call for states parties' deliberations and decisions to support the ICC's efforts to combat impunity for genocide, crimes against humanity and war crimes and to protect the integrity of the Rome Statute. The contents page of this paper serves as a summary of the recommendations contained herein.

Amnesty International will have a delegation present throughout the session whose members will be available to discuss any of these issues and recommendations with government delegations.

I. GENERAL DEBATE

1. DURING THE GENERAL DEBATE STATES PARTIES SHOULD AFFIRM THEIR SUPPORT FOR THE ICC AND COMMIT TO PROTECT THE INTEGRITY OF THE ROME STATUTE

Amnesty International recommends that, in their statements, states parties:

- Affirm their commitment to support the ICC's work and protect the integrity of the Rome Statute;
- Acknowledge that complementarity is the cornerstone of the Rome Statute system and commit to fulfilling obligations to investigate and prosecute crimes under international law;
- Commit to cooperate promptly and fully with the ICC, including in the execution of arrest warrants, and urge all states parties to do the same;
- Express continued support for the full implementation of the rights of victims contained in the Rome Statute and the need for effective outreach to victims and affected communities;
- Announce voluntary contributions to the ICC Trust Fund for Victims; and
- Announce pledges to support the Rome Statute system, including those recommended by Amnesty International in its *Call for pledges by states at the 13th session of the Assembly of States Parties* (see Annex).

II. OTHER PLENARY DISCUSSIONS

A. DISCUSSION ON COOPERATION

Throughout the year, the Hague Working Group has discussed important challenges the ICC faces regarding cooperation and considerable progress has been made in considering areas such as arrest strategies, handling defence cooperation requests and studying the feasibility of a coordinating mechanism of national contact points for cooperation. Amnesty International particularly welcomes the initiative of the Facilitator (Norway) to strengthen cooperation among regional groups with the ICC, building on the practice developed in 2013, by organizing two seminars on fostering cooperation with the Court, one with African states and one with Latin American states.¹ At the 13th session, the Assembly will hold its third plenary discussion on cooperation which will include a focus on crimes of sexual and gender-based violence.

¹ See *Report of the Court on cooperation*, ICC-ASP/13/23, 23 October 2014 – available at: http://www.icc-cpi.int/iccdocs/asp_docs/ASP13/ICC-ASP-13-23-ENG.pdf. In addition, the Court held an ICC-AU seminar and an ICC-EU roundtable.

2. STATES PARTIES SHOULD COMMIT TO SUPPORT AND COOPERATE FULLY WITH THE ICC'S EFFORTS TO INVESTIGATE AND PROSECUTE CRIMES OF SEXUAL AND GENDER-BASED VIOLENCE

During the plenary debate on cooperation, states should affirm their support for the ICC's efforts to address sexual and gender-based violence where it amounts to crimes under the jurisdiction of the Court and engage in a constructive dialogue about ways to strengthen cooperation in this regard. States should:

- Welcome the adoption of the Office of the Prosecutor's (OTP) Policy Paper on Sexual and Gender-based Crimes in July 2014,² recognizing that taking a strategic approach to addressing these crimes does not indicate any hierarchy of crimes under the Rome Statute but rather acknowledges the need for a systematic focus at all stages of preliminary examinations, investigations and prosecutions to ensure they are addressed;³
- Urge all states to take general steps to cooperate with the ICC including, but not limited to, entering into bilateral agreements with the ICC to relocate victims and witnesses at risk and making contributions to the Special Fund for witness relocation;⁴ and
- Undertake to investigate and prosecute, pursuant to the principle of complementarity and, where relevant, the exercise of universal jurisdiction, persons responsible for committing crimes of sexual and gender-based violence.

B. PROPOSED "SPECIAL SESSION TO DISCUSS THE CONDUCT OF THE COURT AND THE OFFICE OF THE PROSECUTOR"

3. THE ASSEMBLY SHOULD ENSURE THAT DISCUSSIONS AND ANY ACTION TAKEN AS A RESULT ARE CONSISTENT WITH THE ASSEMBLY'S MANDATE AND RESPECT THE INDEPENDENCE OF THE ICC

The government of Kenya has requested the inclusion of a supplementary agenda item in accordance with Rule 12 of the Rules of Procedure of the Assembly of States Parties. In an explanatory memorandum, Kenya has outlined a number of concerns, which it requests be discussed, regarding the conduct of the Court and the OTP. Kenya proposed that the Assembly deliberate on its concerns "as items of an important and urgent character, in the exercise of the management oversight provided by the Assembly to the Presidency and the Prosecutor regarding the administration of the Court, with a view to proposing immediate remedial solutions including appropriate

² Available at: <http://www.icc-cpi.int/iccdocs/otp/OTP-Policy-Paper-on-Sexual-and-Gender-Based-Crimes--June-2014.pdf>.

³ States are particularly encouraged to use Amnesty International's *Checklist for States at the Global Summit to End Sexual Violence in Conflict* to consider measures they can commit to taking in the future. Available in English, French and Spanish at: <http://www.amnesty.org/en/library/info/IO53/007/2014/en>.

⁴ The Special Fund exists to assist states parties that are willing to accept witnesses and victims who are at serious risk but which are not in a position to bear the full cost of such relocation. For further information see Amnesty International's *Call for pledges by states at the 13th session of the Assembly of States Parties* in the Annex, Recommendation 8.

caution to the Court and the Office of the Prosecutor.”⁵ In a communication to the President of the Assembly, the President of the ICC, the Prosecutor and the Registrar expressed the view that some of the issues raised by Kenya “relate to matters that fall within the judicial and prosecutorial competence of the Court, and are therefore governed by its judicial and prosecutorial independence”.⁶ The request is currently being considered by the Bureau.

Amnesty International considers that the Assembly should be a forum where states parties can raise and discuss concerns regarding the work of the ICC. However, when the Assembly considers such matters, it must ensure that its discussions are consistent with the Assembly’s mandate.

The concerns raised by Kenya should not result in discussions and/or outcomes that:

- impinge the independence of the ICC and the OTP; or
- improperly comment on and/or influence on-going criminal investigations and/or trials.

The Assembly is mandated by Article 112(2)(b) of the Rome Statute to provide management oversight to the Presidency, the Prosecutor and the Registrar regarding the administration of the Court. However, it is important to recall that the drafting history of the Rome Statute reveals that states parties specifically included “regarding the administration of the Court” to preclude the Assembly from conducting oversight of judicial activities.⁷

III. AMENDMENTS

At the time of writing, amendments developed by the ICC’s Working Group on Lessons Learnt to Rules 76(3), 101(3), 140 and 144(2)(b) of the Rules of Procedure and Evidence are being discussed by the Working Group on Amendments and may be proposed to the 13th session for the Assembly’s consideration. In addition, the Working Group on Amendments is continuing to discuss proposals to amend the Rome Statute, including those not taken forward to the Review Conference in 2010 and proposals made by Kenya in March 2014 to amend the Preamble, Article 27, Article 63, Article 70 and Article 112 of the Rome Statute. At the time of publication it is not clear which, if any, proposals to amend the Rome Statute will be considered at the 13th session.

⁵ See *List of supplementary items requested for inclusion in the agenda of the thirteenth session of the Assembly*, ICC-ASP/13/34, Rev.1: *Explanatory memorandum to supplementary agenda item 1: Note verbale from Kenya no. 561/14*, dated 3 November 2014, at p.4 (para 10 in the original).

⁶ *Letter from the President, the Prosecutor and the Registrar of the ICC to the President of the Assembly of States Parties*, 7 November 2014.

⁷ S. Ramo Rao, Article 112, in Otto Triffterer (ed.), *Commentary on the Rome Statute of the International Criminal Court* (2nd edn, Beck/Hart 2008) 1691; Adriaan Bos, ‘Assembly of States Parties’ in Antonio Cassese, Paola Gaeta, John RWD. Jones (eds), *The Rome Statute of the International Criminal Court* (Oxford University Press 2002) Vol. 1, 305.

A. AMENDMENTS TO THE RULES OF PROCEDURE AND EVIDENCE

4. STATES PARTIES SHOULD ENSURE THAT AMENDMENTS TO THE RULES OF PROCEDURE AND EVIDENCE DO NOT UNDERMINE THE RIGHTS OF THE ACCUSED

In an August 2014 publication, Amnesty International indicated that some of the proposed amendments to the Rules: (i) undermined the rights of the accused; and (ii) appeared not to be in conformity with the Rome Statute.⁸ Since then, no further amendments have been made to the proposals and they are currently under consideration by the Working Group on Amendments. Amnesty International therefore reiterates the following concerns regarding the proposals and urges states parties to ensure that the rights of the accused are not undermined by amendments adopted at the 13th session.

Rule 76(3) – translation of prosecution witness statements

Amnesty International opposes the proposal to amend Rule 76(3) to enable a Trial Chamber to authorize translation of only excerpts of prosecution witness statements. The proposed amendment is inconsistent with internationally recognized fair trial rights of accused persons, including those set out in the Rome Statute, to:

- adequate time and facilities to prepare a defence (Article 67(1)(b)); and,
- examine, or have examined, the witness against him or her (Article 67(1)(e)).

The right to adequate facilities to prepare a defence is an essential component of ensuring equality of arms and includes an accused person's right to have timely access to relevant information upon which the prosecution may rely, as well as information which may affect the credibility of witnesses presented by the prosecution and any potentially exculpatory material.⁹ While it is not disputed that international fair trial standards do not provide for unlimited free translations of all materials disclosed to the defence, the accused does have a right to have translated, free of charge, documents that are necessary for a fair trial.¹⁰ Prosecution witness statements are key documents, which may contain facts upon which the prosecution intends to rely and other vital information on which the defence may rely. It is vital that these statements can be reviewed by the accused so that he or she can instruct his or her counsel appropriately. The statements therefore must be made available in a language the accused understands.¹¹ This is precisely the reason why Rule 76(3) currently provides that "statements of prosecution witnesses shall be made available in original and in a language that the accused fully understands and speaks." Similarly, another

⁸ *Amnesty International's position on proposals to amend the ICC Rules of Procedure and Evidence at the thirteenth session of the Assembly of States Parties*, IOR 53/009/2014, 5 August 2014 – available in English and French at: <http://www.amnesty.org/fr/library/info/IO53/009/2014/en>.

⁹ See Amnesty International, *Fair Trial Manual* (2nd ed.), AI Index POL 30/002/2014, at chapter 8.4 (Disclosure) – available in English, French, Spanish, Arabic and Russian at: <http://www.amnesty.org/en/library/info/POL30/002/2014/en>.

¹⁰ See European Court: *Luedicke, Belkacem and Koç v Germany* (6210/73, 6877/75 and 7132/75), (1978) §48, *Kamasinski v Austria* (9783/82), (1989) §74, *Diallo v Sweden* (13205/07), Section N(4)(d) of the Principles on Fair Trial in Africa, and Article 67(1)(f) of the Rome Statute.

¹¹ *Ibid.*

fundamental component of the equality of arms, namely the right to examine prosecution witnesses and the concomitant right to be able to prepare for such cross-examination, may be undermined if the accused is not in a position to fully understand the written testimony submitted to a Trial Chamber and to prepare, with their counsel, to challenge its probity and credibility.

Although the Rule 76(3) proposal requires a Chamber to consider the “requirements of fairness” in determining whether full or partial translations are required, Amnesty International questions whether a Chamber will be in a position to assess the relevance of information that should rather be determined by defence counsel in consultation with their client. Judges play the central role in upholding fair trial rights, but they should not supplant the proper role of the defence in criminal proceedings. The organization is further concerned that the proposal does not provide that the defence may appeal a decision to only partially translate statements.

Rule 144(2)(b) – translation of certain decisions of the Trial Chamber

Amnesty International has serious concerns about the proposal to amend Rule 144(2)(b) to allow a Trial Chamber to provide only partial translations of decisions on admissibility, jurisdiction, the criminal responsibility of the accused, sentencing and reparation. In its current form, it may undermine the rights of an accused person or his or her defence to:

- be fully informed of the essential facts and legal bases of decisions concerning the proceedings against him or her; and,
- to appeal, as the accused must know the reasons for the judgment in order to be able to instruct their counsel.

The proposed amendment to Rule 144(2)(b) does not provide that any refusal of a request by the defence for a full translation would be subject to a right of appeal.¹²

Amnesty International acknowledges the time and cost involved in translating decisions of the Trial Chamber. Nevertheless, the accused has a right under Article 67(1)(f) of the Statute “to be provided with translations, free of any cost, as are necessary to meet the requirements of fairness.” Rule 144 expressly names decisions on admissibility, jurisdiction, the criminal responsibility of the accused, sentencing and reparation as those which must be provided in a language an accused fully understands, because they are of fundamental importance to their interests and likely to be appealed. These decisions should be considered to fall within the scope of judicial determinations for which translations into a language the accused fully understands are necessary, in order to meet the requirements of fairness.

At the very minimum, the proposed amendment to Rule 144(2)(b) must include safeguards to ensure that the “requirements of fairness” are understood to guarantee that the accused is effectively informed of the factual and legal basis for key decisions and the reasons behind them. This must avoid the possibility that the defence will receive random or insufficient excerpts of decisions. It must also be made subject to the right of appeal. It should be questioned whether this proposal will achieve efficiency, given the amount of work that developing effective partial translations may involve and the potential for disputes to arise over what portions of decisions should be translated.

¹² See for example Article 3(5) of the EU Directive 2010/64 (2010) on the right to interpretation and translation in criminal proceedings.

Rule 101(3) – time-limits for translations

Amnesty International supports the proposed amendment to Rule 101(3), which will permit a Chamber to order that certain decisions will be considered notified to the parties on the day of its translation, as this will provide clarity on when applicable time-limits are triggered. This appears to recognize that an accused, or his or her defence, has the right to fully understand a decision before being required to decide how to respond to it. However, the organization is concerned that under the proposed Rule, time-limits may commence from the date of notification of *partial* translations of critically important decisions referred to in Rule 144(1). There do not appear to be sufficient safeguards to ensure that defence counsel is provided with the full text of the decision in the working language of the ICC that they are fluent in and that the accused is fully informed of the factual and legal bases of decisions in the proceedings against him or her.

Amnesty International accordingly recommends the removal of the language “or parts thereof” from the proposed amendment to avoid this rule being inconsistent with fair trial standards and the Statute’s “requirements of fairness” in Article 67(1)(f).

New rule 140 *bis* – temporary absence of a judge

Amnesty International is concerned that the proposed new Rule 140 *bis*, which would allow a Trial Chamber to continue to sit during the temporary absence of a judge for exceptional reasons in order to complete a “specific matter which has already commenced within a short timeframe,” is inconsistent with Article 74(1) of the Statute. This article explicitly requires that: “All the judges of the Trial Chamber shall be present at each stage of the trial and throughout their deliberations.” Article 51(4) of the Statute expressly provides that amendments to the Rules of Procedure and Evidence must in all cases be consistent with the Statute itself.

At the time of publication of this paper, the Working Group on Amendments had reached the conclusion that this proposal did not enjoy sufficient support to be discussed at the Assembly, but it remains to be seen whether any of the states or judges, acting by absolute majority, will propose its discussion at the 13th session.

The requirement for judges to be continually present at all stages is in place to guarantee that each respective judge has “*direct* knowledge about what evidence has been presented and what else has occurred during all relevant stage of the trial proceeding.”¹³ The requirement of continuous presence is also fundamentally linked with the Statute’s numerous guarantees of procedural fairness, including the obligation in Article 74(2) that: “The Trial Chamber’s decisions shall be based on its evaluation of the evidence and the entire proceedings” – which presupposes that each judge is directly familiar with every moment of the trial. Triffterer notes that trial proceedings must be suspended if a judge needs to leave the courtroom.¹⁴ Amnesty

¹³ Triffterer ed., *Commentary on the Rome Statute of the International Criminal Court*, 2nd ed. (2008), Article 74 - Requirements for the decision, by Otto Triffterer, at 1391-2. Triffterer notes that the requirements of continuous presence are such that trial proceedings must be suspended if a judge needs to leave the courtroom. Moreover he states: “[v]iolations of this high demand on permanent presence during the trial can only be compensated for by a repetition of those stages at which a respective judge, taking part in the finding the decision, was not present; otherwise his or her absence is a reason for appeal.”

¹⁴ *Ibid.*, at 1392.

International is particularly concerned that:

- The Rule may permit proceedings to continue even if the absent judge objects;
- The proposal appears to allow the remaining judges to decide an issue without clear provisions on the role of the absent judge; and,
- Safeguards are not proposed to ensure that they do not miss key information during their absence or to limit the amount of time the proceedings may continue in the absence of the judge.

Furthermore, the requirement that the remaining judges must determine that it is in the interests of justice to continue is vague. Noting that continuing in the absence of the judge may only relate to “exceptional circumstances”, it is doubtful whether the proposed amendment, if passed, will expedite criminal proceedings.¹⁵

B. AMENDMENTS TO THE ROME STATUTE

It is currently unclear which, if any, of the proposed amendments to the Rome Statute will be considered at the 13th session. Amnesty International reminds states parties that it has set out its views regarding the proposals that were not taken forward to the 2010 Review Conference, which are reflected in its submissions to the ninth session of Assembly.¹⁶ Below, Amnesty International reiterates its position on proposed amendments to Articles 16 and 27.

5. STATES PARTIES SHOULD REJECT THE PROPOSAL TO WEAKEN THE FUNDAMENTAL PRINCIPLE IN ARTICLE 27 THAT NO-ONE IS IMMUNE FROM PROSECUTION BY THE ICC

Kenya has proposed that Article 27 be amended to preclude the ICC from prosecuting heads of state and government while they hold office. Article 27 sets out the fundamental principle that no-one, regardless of their status, can be exempt from prosecution by the ICC. Article 27 should not be weakened under any circumstances. It is one of the cornerstones of the Rome Statute and vital to achieving its object and purpose to ensure that ‘the most serious crimes of concern to the international community as a whole must not go unpunished’ and ‘to put an end to impunity for the perpetrators of these crimes’.¹⁷ The amendment contradicts the principle of equality before the law contained in the Article. States parties should insist that there can be no amendment that weakens Article 27.

¹⁵ Amnesty International notes the additions to the text proposed by Germany, dated 10 July 2014, namely adding conditions to the exercise of the rule such that: at least one of the remaining judges has not been temporarily absent before in the case; the absent judge is given the opportunity to make him or herself familiar with the entirety of the proceedings conducted in his absence by means of video-recording and the transcript; and clarifying that a compelling reason in the interests of justice would include “inter alia in order to preserve evidence that will otherwise be lost or endangered”. These additions address some but not all of Amnesty International’s concerns.

¹⁶ *International Criminal Court: Concerns at the ninth session of the Assembly of States Parties*, IOR 53/016/2010, section 6 – available at: <http://amnesty.org/en/library/info/IO53/016/2010/en>.

¹⁷ Preamble of the Rome Statute.

6. STATES PARTIES SHOULD REJECT THE PROPOSAL TO AMEND ARTICLE 16 TO ENABLE THE GENERAL ASSEMBLY TO DEFER ICC INVESTIGATIONS AND PROSECUTIONS

In 2009, African states parties to the Rome Statute proposed that the Review Conference should consider a proposal to amend Article 16 so that, in certain circumstances, the United Nations General Assembly can defer ICC investigations and prosecutions. Many states parties expressed concerns regarding the proposal at the eighth session of the Assembly and it was decided not to consider it in Kampala.¹⁸ Nevertheless, the amendment remains on the agenda of the Working Group of Amendments (together with other amendments not considered at Kampala) and, in January 2014, the African Union decided that it would continue to promote the proposal at the 13th session of the Assembly.¹⁹

Amnesty International opposed the inclusion of Article 16 in the Rome Statute which permits the Security Council, a political body, to defer ICC investigations and prosecutions of either the nationals of its members or those of other states.²⁰ Our organization has also consistently opposed its use. States parties should unequivocally oppose this proposal. If passed, it would vastly expand the potential for political interference in the work of the ICC.

IV. THE 2015 BUDGET

For 2015, the ICC has requested a budget of €135.39 million, including an increase of €13.74 million over the 2014 budget.²¹ The proposed budget states that additional funds are requested to fund rising staff costs, as well as costs related to the planned commencement of two new trials in 2015 (*Prosecutor v. Bosco Ntaganda and Prosecutor v. Laurent Gbagbo*), further investment in the implementation of the OTP's Strategic Plan for 2012 to 2015 to improve the capacity of the OTP to conduct high-quality preliminary examinations, investigations and prosecutions and investment by the Registry in strengthening the Victims and Witnesses Unit. The Committee on Budget and Finance reviewed the budget request in September and has recommended

¹⁸ *Report of the Working Group on the Review Conference, in Assembly of States Parties to the Rome Statute of the International Criminal Court*. 'Official Records: Eighth Session, The Hague, 18-26 November 2009' Vol. I, paras. 60-61 "[c]oncern was expressed that the proposal broadened the scope for political interference with the activity of the Court...Doubts were raised as to whether the provision would be compatible with the Charter of the United Nations...[t]he view was expressed that an expansion of that provision would not serve the interest of the Court and could not, therefore, be supported by States Parties".

¹⁹ *Decision on the progress report of the African Commission on the implementation of the decisions on the International Criminal Court*, Doc. Assembly/AU/13(XXII), 'African States Parties should...continue to speak with one voice to ensure that the African proposals for amendments to Articles 16 and 27 of the Rome Statute of the ICC are considered by the ASP Working Group on Amendments as well as by the forthcoming sessions of the Assembly of States Parties (ASP) to the Rome Statute'.

²⁰ See, for example: Amnesty International, *International Criminal Court: Making the right choices – Part I - Defining the crimes and permissible evidence and initiating a prosecution*, AI Index: IOR 40/001/1997, January 1997, pp. 111-112.

²¹ *Proposed Programme Budget for 2015 of the International Criminal Court*, ICC-ASP/13/10, 18 September 2014 – available at: http://www.icc-cpi.int/iccdocs/asp_docs/ASP13/ICC-ASP-13-10-ENG.pdf.

that the Assembly adopt a budget for 2015 which is €6.38 million less than the budget requested by the ICC.²²

7. STATES PARTIES SHOULD ENSURE THAT THE ASSEMBLY PROVIDES THE ICC WITH SUFFICIENT RESOURCES TO FUNCTION EFFECTIVELY AND INDEPENDENTLY IN 2015

Amnesty International is concerned that some states parties are pressing for zero nominal growth for the 2015 Programme Budget, regardless of the resource needs of the ICC. As in previous years, we strongly oppose states parties taking this approach to the ICC's budget at a time when the ICC's workload is increasing and we urge states parties to strongly reject it. Instead, it is vital that the Assembly considers the 2015 Budget and reviews the recommendations of the Committee, taking into account the views of the ICC, to ensure that the Court can carry out its anticipated workload for 2015 effectively.

In particular, as set out in detail in the Coalition for the ICC Budget and Finance Team's submission to The Hague Working Group on the Budget,²³ Amnesty International urges states parties to:

- Consider carefully the Committee's recommendations to reduce the request of the OTP by €4.33 million in 2015, including a significant reduction based solely on budgetary estimates provided by the Office in its Strategic Plan.²⁴ Particular attention should be paid to the potential impact of such cuts on the implementation of the OTP's Strategic Plan, especially on preliminary examinations, investigations and prosecutions; and
- Consider carefully the Committee's recommendation to reduce the request of the Registry by €0.93 million in line with reductions to the OTP without considering the specific resource needs of the Registry.²⁵ In particular, the Assembly should consider the Registry's claim that it did its utmost to confine its budget request to the "bare minimum" and that any additional reductions would undermine the Registry's essential functions.²⁶

8. STATES PARTIES SHOULD REJECT THE COMMITTEE'S RECOMMENDATION FOR THE ASSEMBLY TO SET A FINANCIAL TARGET OR ENVELOPE AT EACH ASSEMBLY MEETING

Amnesty International is concerned by the Committee's recommendation that "states parties consider whether a financial target or envelope should be set at each Assembly

²² *Report of the Committee on Budget and Finance on the work of its Twenty-Third session*, ICC-ASP/13/15, 18 November 2014, paras 11-13 – available at: http://www.icc-cpi.int/iccdocs/asp_docs/ASP13/ICC-ASP-13-15-ENG.pdf.

²³ See CICC Budget and Finance Team Paper, *Recommendations to the Hague Working Group on the Budget*, 18 November 2014 – available at: http://www.coalitionfortheicc.org/documents/CICC_BudgetandFinance_HWG_submission_18_Nov2014.pdf

²⁴ *Report of the Committee on Budget and Finance on the work of its Twenty-Third session*, para. 38.

²⁵ *Report of the Committee on Budget and Finance on the work of its Twenty-Third session*, para. 46.

²⁶ *Proposed Programme Budget for 2015 of the International Criminal Court*, ICC-ASP/13/10, 25 August 2014, para. 268.

meeting that would define the anticipated outer limits of the budget for the year following the one immediately thereafter.”²⁷ If this recommendation is adopted, there is a risk that the ICC’s budget process would be driven, not by the resource needs of the ICC, but by how much some states parties are willing to pay. This approach is entirely inappropriate given the fluctuating workload of the ICC and inconsistent with the Assembly’s important practice of deciding the budget as near as possible to the start of the financial year. If states parties adopt the recommended approach, it would consider the financial envelope more than a year in advance of the budget period. The Assembly should continue to decide the annual budget based on a thorough examination of the budgetary needs of the ICC in a transparent and merit based process.

V. RESOLUTIONS

Amnesty International has already provided input on the text of a number of resolutions to the Hague Working Group. There are, however, some outstanding issues that may be submitted to the Assembly for consideration and areas where the draft resolutions should be strengthened.

9. STATES PARTIES SHOULD AFFIRM THE ASSEMBLY’S COMMITMENT TO PROMOTE COMPLEMENTARITY IN THE OMNIBUS RESOLUTION AND ENCOURAGE DISCUSSION ON THE ISSUE AT FUTURE SESSIONS

Complementarity is the cornerstone of the Rome Statute system. Complementarity is essential if states parties are to achieve their goal to “put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes.”²⁸ Amnesty International therefore regrets that the Assembly will not hold a separate plenary discussion on this issue at this session, as it did in 2012. The Assembly should be a key forum to consider how to promote complementarity, including tackling persistent challenges, sharing information and experience and coordinating the activities of all actors. It should be an agenda item for each session of the Assembly.

Furthermore, our organization is concerned that, during discussion of the Programme of Work and the draft report and resolution on complementarity in the Hague Working Group, efforts have been made by one state party to remove references to the role of the Assembly and the ICC in promoting complementarity. The Assembly should adopt the proposed paragraphs on complementarity, which at the time of writing are bracketed in the draft Omnibus resolution, and resist efforts to weaken language agreed on and adopted by the Assembly in previous years.

10. STATES PARTIES SHOULD SUPPORT THE ADOPTION OF THE DRAFT RESOLUTION ON VICTIMS AND AFFECTED COMMUNITIES AND COMMIT TO CONTINUE DISCUSSING VICTIM-RELATED ISSUES IN 2015

Amnesty International welcomes many positive elements of the draft resolution on “Victims and affected communities, reparations and Trust Fund for Victims” which respect the victims’ mandate of the respective organs of the ICC and affirm the

²⁷ *Report of the Committee on Budget and Finance*, para. 44.

²⁸ Preamble, Rome Statute

important work of the Trust Fund for Victims. In particular Amnesty International welcomes the Assembly's request for the ICC to review in 2015 the application system for victim participation and to prepare a report on possible reform of victim participation. States parties should support the adoption of the draft resolution at the session and require the Bureau to ensure that discussions on these issues continue from early 2015 onwards through an appropriate process or mechanism. In particular, the Assembly should provide oversight of the reviews and the Registry's proposal to merge a number of victim-related functions into a single Victim's Office. In addition, consideration should be given to discussing victim-related issues, including their rights to information, participation, protection and support, at the 14th session of the Assembly, taking into account the review. States parties and the ICC should recall the principles and recommendations proposed in the 2013 report of the *Independent Panel of Experts on Victim Participation at the ICC* and take them into account during the important discussions the Assembly will mandate for the coming year.²⁹

11. STATES PARTIES SHOULD CALL FOR THE RESOLUTION ON COOPERATION TO INCLUDE A STANDING AGENDA ITEM ON COOPERATION AT FUTURE SESSIONS

Amnesty International has reviewed the draft resolution on cooperation and welcomes many positive elements that seek to strengthen cooperation with the ICC. In particular, paragraphs calling on states parties and other states to enter into bilateral agreements with the ICC to relocate victims and witnesses at risk, urging states parties to consider strengthening cooperation in relation to enforcing sentences and accepting persons granted interim or final release (including in cases of acquittal) are important. Equally, Amnesty International welcomes provisions highlighting the importance of cooperation with requests transmitted by the ICC on behalf of the defence. The resolution should also confirm that each session of the Assembly will include a standing agenda item to discuss different issues related to further strengthening cooperation with the ICC.

12. STATES PARTIES SHOULD SUPPORT THE INCLUSION OF STRONG PROVISIONS ON NON-COOPERATION IN THE OMNIBUS RESOLUTION

Non-cooperation is a significant challenge to the effective functioning of the ICC. It is essential that the Assembly and, where appropriate, the United Nations Security Council respond effectively to findings of the ICC of non-cooperation when they are made. Amnesty International therefore supports the inclusion of language proposed in the Omnibus resolution to review, in the coming year, the Assembly's non-cooperation procedures adopted at the 10th session,³⁰ with a view to strengthening potential responses to instances of non-cooperation. Likewise, states parties should also support calling - in the resolution - on the Security Council to consider the seven judicial findings of non-cooperation made in relation to the situation in Darfur that have been referred to it by the ICC.

²⁹ *Independent Panel of experts report on victim participation at the International Criminal Court*, 26 July 2013, IOR 53/001/2013 – available at:

<http://www.amnesty.org/fr/library/info/IOR53/001/2013/en>. The findings of the Panel of Experts were presented to the Hague Working Group in July 2013 and during the plenary discussion on victims and affected communities at the 12th session of the ASP.

³⁰ See Assembly Procedures relating to non-cooperation, ICC-ASP/10/Res.5, Annex.

13. STATES PARTIES SHOULD ENSURE THAT THE ASSEMBLY MAINTAINS OVERSIGHT OF REVIEWS AND CHANGES TO THE LEGAL AID SYSTEM IN 2015 IN THE OMNIBUS RESOLUTION

The expected completion of the first full judicial cycle in 2015 will trigger the mandate given to the ICC by the Assembly to review the functioning of the legal aid system with respect to both the defence and victims.³¹ This review is now likely to take place in the context of the ongoing initiative of the Registry to reorganize and streamline the functioning of the organ, which, it appears, could lead to significant changes to the manner of legal aid provision for both the defence and victims – including replacement of legal aid for victims with in-house representation. The Assembly should maintain oversight of proposed changes to legal aid. Amnesty International therefore welcomes the draft language in the Omnibus resolution requesting the ICC to present any proposal for adjustments to the existing legal aid system to the Bureau. The Assembly should adopt this and other proposed paragraphs on legal aid in the Omnibus resolution reiterating the request to the ICC to carry out the mandated review. In addition, the Bureau should, through a continued Facilitation or other means such as a Focal Point or Special Rapporteur, ensure that a transparent review takes place in consultation with independent experts. Moreover, the Assembly should ensure that it is fully consulted before major changes are implemented in 2015.

VI. UNIVERSALITY OF THE ROME STATUTE

14. STATES PARTIES SHOULD CALL ON THE ASSEMBLY TO INVEST MORE IN THE IMPLEMENTATION OF ITS PLAN OF ACTION FOR ACHIEVING UNIVERSALITY AND FULL IMPLEMENTATION OF THE ROME STATUTE

Since the 12th session of the Assembly, no state has acceded to the Rome Statute and the number of states parties remains at 122. Only one state, Senegal, ratified the Agreement on Privileges and Immunities. The Czech Republic, Sweden and Ecuador enacted domestic implementing legislation concerning cooperation and/or complementarity obligations.

Although this year's report on the Plan of Action indicates many positive steps taken by the Assembly and other actors to promote universality, there is still much more that the Assembly should do to implement the Plan of Action.

Given the importance of both universality and full implementation to both the success of the ICC and its broader impact in the fight against impunity, it is disappointing that the Assembly continues to under-invest in implementing the Plan of Action. In particular, since the Plan's adoption, the Secretariat has been asked to perform its functions to implement the Plan "within existing resources".³² Amnesty International has called for the Assembly to establish a unit within its Secretariat to provide the full-time commitment needed to coordinate the implementation of the Plan; to establish regular contact with states parties and non-states parties, as well as with civil society; to promote public information sharing; to develop and implement a resource database of information for states parties and non-states parties who are in the process of

³¹ See ICC-ASP/12.Res.8, Annex 1, para. 6.

³² Plan of Action of the Assembly of States Parties for Achieving Universality and Full implementation of the Rome Statute of the International Criminal Court, ICC-ASP/5/Res.3, Annex I, para. 7.

ratifying and/or implementing the Rome Statute, as well as for civil society; and to provide or coordinate technical assistance in a transparent manner when needed. States parties are urged to reconsider its approach to implementing the Plan of Action to ensure that it does not become obsolete.

Amnesty International acknowledges a new recommendation in the Assembly's 2014 report on the Plan of Action for states parties "[t]o provide financial and/or other supports, where possible to civil society, academia, international organizations and professional associations that provide technical assistance to overcome the challenges to ratification and implementation identified in this report."³³ States parties can also take other steps to implement the Plan of Action that do not entail costs. Information sharing is a particularly important and mostly cost-neutral element of implementing the Plan. Recognizing that many efforts are taking place at the national and inter-government levels, the Plan of Action emphasizes the importance of states and other actors reporting on their activities. Regrettably, in most years, only a small number of states have informed the Assembly of their activities at the national level to ratify and implement the Rome Statute and of their efforts to promote the implementation of the Plan by other states. The rate of response to the Secretariat's annual questionnaire on states' activities has been low this year. Only six states parties have reportedly replied so far. Most states have also failed to take the basic step set out in the Plan to appoint a national contact point. All states parties are encouraged to contribute to the Plan of Action by completing the questionnaire in the lead up to the 13th session.

States that are in the process of implementing the Rome Statute are urged to consider and apply the recommendations set out in Amnesty International's *Updated Checklist for Effective Implementation of the Rome Statute*, which provides a comprehensive guide for implementing the Statute and other international criminal law obligations in law and practice.³⁴

ANNEX 1: AMNESTY INTERNATIONAL'S CALL FOR PLEDGES BY STATES AT THE 13TH SESSION OF THE ASSEMBLY OF STATES PARTIES³⁵

The 13th annual meeting of states parties to the Rome Statute of the International Criminal Court (ICC) will take place in New York from 8-17 December 2014. It is an

³³ *Draft report on the Plan of action for achieving universality and full implementation of the Rome Statute of the International Criminal Court*, 2014, at IV, recommendation no. 8.

³⁴ Available at: <http://www.amnesty.org/en/library/info/IO53/009/2010>.

³⁵ Also available in French and Spanish at <http://www.amnesty.org/fr/library/info/IO53/010/2014/en>.

important opportunity for states to affirm their commitment to fully realize the Rome Statute system of international justice and review the national mechanisms they have put in place to combat impunity for crimes international law. In particular, states can make key pledges to strengthen their support for and cooperation with the ICC.

At its 12th session last year, the Assembly welcomed pledges that had been made by 36 states and one regional organization and called on states to make additional pledges and keep the Assembly informed of their implementation.³⁶ In advance of the 13th session, the Assembly's Secretariat has invited all delegations to submit further pledges.³⁷ Information on how to make pledges, including a form that states should complete, is available on the Assembly's website.³⁸

Amnesty International calls on each of the current 122 states parties, unless they have already done so, to pledge and to take the following steps to strengthen the Rome Statute system:

- To enact effective legislation to implement the Rome Statute;
- To ratify the Agreement on Privileges and Immunities of the International Criminal Court;
- To enter into an agreement with the ICC to relocate witnesses and victims;
- To enter into an agreement with the ICC to receive persons granted interim release;
- To enter into an agreement to receive persons released from the custody of the ICC who cannot go back to their country of nationality or residence;
- To enter into an agreement with the ICC on enforcement of sentences;
- To make a voluntary contribution to the ICC Trust Fund for Victims;
- To make a voluntary contribution to the Special Fund for the purpose of funding family visits;
- To make a voluntary contribution to the Special Fund for witness relocation;
- To ratify the amendment adopted in Kampala to expand the definition of war crimes.

Amnesty International also encourages states that have previously made pledges in these or other areas to report to the Assembly at the 13th session on the status of their implementation.

1. PLEDGE TO ENACT EFFECTIVE LEGISLATION TO IMPLEMENT THE ROME STATUTE

To ensure that they can fulfil their obligations to investigate and prosecute persons suspected of crimes under international law, in accordance with the principle of

³⁶ ICC-ASP/12/Res.8, para. 66.

³⁷ ICC-ASP/13/SP/57.

³⁸ See http://www.icc-cpi.int/iccdocs/asp_docs/ASP13/ICC-ASP-NV-13-SP-57-ENG.pdf.

complementarity, and provide full cooperation with the ICC, all states parties, regardless of their legal system, should enact effective implementing legislation. For example, states should ensure that war crimes, crimes against humanity, and genocide and the modes of liability for the commission of these crimes are defined in domestic criminal law in line with the highest standards of international law. States should also ensure that all crimes of sexual and gender-based violence are criminalized in accordance with international law.³⁹ Moreover, procedures for cooperation with the ICC should be clearly set out in national law, including executing requests from the Court for the arrest and surrender of accused persons, assisting investigations by the Prosecution and Defence, facilitating the appearance of witnesses, and responding to requests for other forms of cooperation. At present, just over half of the current 122 states parties have enacted domestic implementing legislation.⁴⁰ Those states parties that have yet to do so should pledge to enact legislation promptly. National processes for reviewing national law and developing legislation should proceed without delay and include broad consultation with civil society. States are encouraged to consider and apply Amnesty International's: *International Criminal Court: Updated checklist for effective implementation*.⁴¹

2. PLEDGE TO RATIFY THE AGREEMENT ON PRIVILEGES AND IMMUNITIES OF THE INTERNATIONAL CRIMINAL COURT

To ensure the effective and independent functioning of the ICC, states parties and other states should ratify the Agreement on Privileges and Immunities of the ICC. The Agreement provides privileges and immunities to ICC officials and staff, as well as the Defence, that are essential to enable them to perform their duties and functions on the state's territory. To date 73 states, including one non-state party, has ratified the Agreement. The 50 states parties that have not done so should pledge to ratify without further delay and to take any necessary steps to promptly implement it in domestic law.

3. PLEDGE TO ENTER INTO AN AGREEMENT WITH THE ICC TO RELOCATE WITNESSES AND VICTIMS

To ensure that they can meet their obligations to cooperate with the protection of victims and witnesses in accordance with Articles 86 and 93(1)(j) of the Rome Statute, states parties should enter into relocation agreements with the ICC. States parties that do so commit to assist the ICC fully with resettling victims and witnesses who are at such serious risk on account of their interaction with the Court that they cannot remain in their own country. Since last year, only one state has signed such an

³⁹ See Amnesty International, *Rape and sexual violence: Human rights law and standards in the International Criminal Court*, Index: IOR53/001/2011 - <http://www.amnesty.org/en/library/info/IOR53/001/2011> and Amnesty International, *Combating Sexual Violence in Conflict: Recommendations to states at the Global Summit to End Sexual Violence in Conflict*, Index: IOR53/006/2014 - <http://www.amnesty.org/en/library/info/IOR53/006/2014/en>.

⁴⁰ Only 45 states have enacted implementing legislation concerning both complementarity and cooperation obligations, while 15 have enacted legislation for complementarity alone and 3 for cooperation obligations alone. Information on which states that have enacted implementing legislation can be found at www.iccnw.org.

⁴¹ See Amnesty International, *International Criminal Court: Updated checklist for effective implementation*, Index: IOR 53/009/2010 (2010) - <http://www.amnesty.org/en/library/info/IOR53/009/2010>.

agreement with the ICC, bringing the total number to 14. More agreements are needed in all regions of the world, including, but not only, in Africa, where the OTP's investigations and prosecutions are currently focused. States parties that have not yet done so should pledge to enter a relocation agreement as soon as possible so that they can accept and provide vital protection to victims and witnesses at serious risk when required.

4. PLEDGE TO ENTER INTO AN AGREEMENT WITH THE ICC TO RECEIVE PERSONS GRANTED INTERIM RELEASE

To ensure that the ICC can release accused persons pending their trial, states parties should enter into agreements with the ICC to accept them while on interim release. Article 60(2) provides that the Chamber shall grant interim release unless it is satisfied that conditions requiring their detention have been met. This practice is consistent with the right of the accused to liberty and the presumption of innocence. However, in at least one case, the ICC has not been able to find a state willing to accept an accused person.⁴² To date, only one state (Belgium) has signed such an agreement.⁴³ The ICC has stated that “[t]he signature of such agreements would be a clear sign by States that they want a Court that is impartial and respectful of the right of the defence.”⁴⁴ Given the existence of only one such agreement, other states parties should pledge to enter into agreements to receive persons on interim release as soon as possible.

5. PLEDGE TO ENTER INTO AN AGREEMENT WITH THE ICC TO RECEIVE PERSONS RELEASED FROM THE CUSTODY OF THE COURT WHO CANNOT GO BACK TO THEIR COUNTRY OF NATIONALITY OR RESIDENCE

To ensure that the ICC can immediately release all persons who have been acquitted or whose cases have been otherwise concluded requiring their release from the Court's custody, states parties should enter into agreements with the Court to accept such persons who cannot go back to their country of nationality or residence. Article 81(3)(c) provides that “[i]n the case of acquittal, the accused shall be released immediately”, subject to the possibility that, in exceptional circumstances, an acquitted person may continue to be detained pending an appeal of the decision by the Prosecutor. However, in most cases, the accused should be released immediately. Proceedings may also be concluded at other stages of proceedings and a person may be released from the custody of the Court. In some cases, however, it may not be

⁴² See *Prosecutor v Jean-Pierre Bemba, Judgment on the appeal of the Prosecutor against Pre-Trial Chamber II's "Decision on the interim release of Jean-Pierre Bemba and Convening Hearings with the Kingdom of Belgium, the Republic of Portugal, the Republic of France, the Federal Republic of Germany, the Italian Republic, and the Republic of South Africa*, ICC-01/05-01/08, 2 December 2009. The Appeals Chamber found that the willingness of a state to accept an accused person on their territory is a pre-condition of release, at paras 106-107.

⁴³ See ICC Press Release, *Belgium and ICC sign agreement on interim release of detainees*, ICC-CPI-20140410-PR993, 10 April 2014. On 23 October 2014, Belgium, the Democratic Republic of the Congo and France each accepted an individual granted interim release by the Court in the case of *Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido*. DR Congo and France accepted these individuals on an *ad hoc* basis in the absence of signed framework agreements on interim release with the Court.

⁴⁴ ICC-ASP/12/35, para. 29.

possible to return released persons to their country of nationality or residence, including when they are at risk of persecution or torture. Indeed, the first person acquitted by the ICC requested that the ICC prevent his return to his country, stating he would be in fear for his safety there in light of the testimony he gave in his defence during his trial.⁴⁵ However, to date, no other state has agreed to accept him. The ICC has subsequently developed a framework agreement for states to accept persons released who cannot go back their country of nationality or residence in 2013, but no state has yet to sign one. All states parties should pledge to enter into agreements with the ICC to receive such persons as soon as possible following their release.

6. PLEDGE TO ENTER INTO AN AGREEMENT WITH THE ICC ON ENFORCEMENT OF SENTENCES

To ensure that persons convicted and sentenced to imprisonment serve their sentence in the facilities of states parties that meet international standards, states parties should enter into enforcement of sentences agreements with the ICC. Part 10 of the Rome Statute provides that convicted persons will serve their sentences in the prison facilities of states parties willing to accept such persons and emphasizes that this is a shared responsibility of all states parties. It sets out criteria for the designation of a state to enforce a sentence, including taking into account the nationality and views of the sentenced person.⁴⁶ Furthermore, such facilities must meet international standards.⁴⁷ To date, only eight states parties have entered into such agreements with the ICC, seven of which have entered into force. Only one African state party (Mali) has signed an agreement and no new agreements have been signed in the last three years. More states parties should pledge to conclude sentence enforcement agreements with the ICC to ensure that the ICC has a broad discretion in designating where sentences can be enforced and that facilities that meet international standards are available in all regions of the world.

7. PLEDGE A VOLUNTARY CONTRIBUTION TO THE ICC TRUST FUND FOR VICTIMS

To ensure that victims of genocide, crimes against humanity and war crimes being investigated by the ICC are provided with assistance and that the ICC's reparation orders are fully implemented, all states parties should make voluntary contributions to the Trust Fund for Victims. The Trust Fund for Victims, through its projects of

⁴⁵ Mattheiu Ngudjolo Chui, who is the subject of a United Nations Travel Ban, requested an order for his transfer to Belgium, where he intended to apply for asylum, *see: Requête urgente de la Défense en vue de solliciter la relocalisation internationale de Mathieu Ngudjolo hors du continent africain et sa présentation devant les autorités d'un des Etats parties au Statut de la Cour pénale internationale aux fins de diligenter sa procédure d'asile*, ICC-01/04-02/12, 21 December 2012. This matter remains pending before the ICC Appeals Chamber and the travel ban remains in force until a state agrees to receive Ngudjolo Chui, *see: Registry's observations pursuant to regulation 24 bis of the Regulations of the Court on the "SECOND ADDENDUM to Defence request that the Appeals Chamber order the Victims and Witnesses Unit to execute and the host State to comply with the acquittal*, ICC-01/04-02/12-25, para. 4.

⁴⁶ *See* Article 103(3); Article 106, Rome Statute.

⁴⁷ For detailed guidance on the steps states should take in relation to enforcement of sentences, *see* Amnesty International, *International Criminal Court: Updated checklist for effective implementation*, Index: IOR 53/009/2010 (2010) - <http://www.amnesty.org/en/library/info/IO53/009/2010> at 39-42.

assistance and its possible role in implementing ICC reparation orders, is an essential mechanism to ensure the positive impact of the Rome Statute system for victims. However, despite generous contributions by 32 states since its establishment,⁴⁸ it requires a significant increase in resources to expand its projects of assistance in relation to all situations under investigation by the ICC and to be prepared for the first reparation orders of the ICC. States parties, particularly states that have yet to make a contribution, should, in accordance with their financial abilities, pledge a voluntary contribution to the Trust Fund. States which are in a position to do so should consider pledging a regular annual contribution in order to help ensure the predictability of resources at the disposal of the Fund.

8. PLEDGE TO MAKE A VOLUNTARY CONTRIBUTION TO THE SPECIAL FUND FOR THE PURPOSE OF FUNDING FAMILY VISITS

To ensure that the rights of indigent accused persons in detention to receive family visits are respected, states parties should make voluntary contributions to the Special Fund for the purpose of funding family visits. In 2010, the Assembly established the Special Fund, despite a decision of the ICC Presidency that persons in ICC detention have a right to family visits and that the ICC has a positive obligation to fund family visits of indigent persons.⁴⁹ In doing so, the Assembly decided that such visits would be funded entirely by voluntary contributions. However, only one state has made two contributions to the Trust Fund in four years and the balance of the fund had fallen to approximately €10,000 by October 2014.⁵⁰ Given that the expenditure on family visits in 2013 was €52,460, the fund may exhaust its resources in the near future unless additional contributions are made. Having established the fund, it is essential that more states parties make voluntary contributions to ensure the rights of accused persons in detention are respected. States parties can demonstrate the importance of the rights of accused persons by pledging to make a voluntary contribution to the Special Fund for the purpose of funding family visits. If insufficient voluntary contributions are made, alternative funding solutions must be adopted by the Assembly.

9. PLEDGE TO MAKE A VOLUNTARY CONTRIBUTION TO THE SPECIAL FUND FOR WITNESS RELOCATION

To support other states parties in relocating victims and witnesses, states parties should make voluntary contributions to the Special Fund for witness relocation. The Special Fund seeks to complement the process of states entering into agreements to relocate witnesses and victims. It assists states parties that are willing to accept witnesses and victims who are at serious risk but which are not in a position to bear the full cost of such relocation. The initiative also aims to foster regional solutions for the relocation of those at risk, thereby minimising the personal impact of relocation. Only seven states have made contributions to this fund to date. In addition to entering

⁴⁸ These are: Andorra, Australia, Austria, Belgium, Colombia, the Czech Republic, Denmark, Finland, France, Germany, Hungary, Ireland, Italy, Japan, Jordan, Latvia, Liechtenstein, Luxembourg, Mexico, the Netherlands, Norway, Poland, Estonia, Republic of Korea, Senegal, Slovenia, South Africa, Spain, Sweden, Switzerland, Trinidad and Tobago and the United Kingdom.

⁴⁹ *Decision 'Mr Mathieu Ngudjolo's Complaint under Regulation 221(1) of the Regulations of the Registry against the Registrar's Decision of 19 November 2008'*, ICC-RoR-217-02/08, 10 March 2009.

⁵⁰ Germany has made two contributions of €85,000 each.

into agreements on relocation, states parties are encouraged to also make voluntary contributions to the Special Fund to support other states that wish to provide this vital form of cooperation to the ICC.

10. PLEDGE TO RATIFY THE AMENDMENT ADOPTED IN KAMPALA TO EXPAND THE DEFINITION OF WAR CRIMES

At the Review Conference on the Rome Statute of the ICC, held in Kampala in 2010, states parties adopted two amendments to the Rome Statute which are open for ratification to all states parties. An amendment to Article 8 makes employing certain prohibited weapons war crimes in non-international conflict, including poison and poisoned weapons, asphyxiating and poisonous gases and bullets which expand or flatten easily in the human body.⁵¹ To date, it has been ratified by 21 states. States parties should pledge to ratify the amendment to Article 8 without delay in order to ensure that the ICC can exercise jurisdiction over these prohibited weapons in both international and non-international armed conflicts and incorporate the prohibition of these weapons into national law both during international and non-international armed conflicts.

Amendments were also adopted at Kampala that seek to activate the ICC's jurisdiction over the crime of aggression. To date, 18 states have ratified them.⁵² Although it is not within Amnesty International's mandate to promote ratification of the crime of aggression,⁵³ the organization notes that states parties that wish to do so may also pledge to ratify these amendments.

⁵¹ See RC/Res.5*Amendments to article 8 of the Rome Statute.

⁵² See ICC Website, available here: http://www.icc-cpi.int/en_menus/asp/RomeStatute/Pages/default.aspx/. The crime of aggression is defined in Article 8*bis*. It can come into force pursuant to a decision of the Assembly after 1 January 2017 when 30 ratifications has been achieved (see Article 15*ter*: Exercise of jurisdiction over the crimes of aggression (Security Council referral)). See also: RC/Res.6* The crime of aggression.

⁵³ Amnesty International is an organization that works to ensure that people everywhere enjoy all rights enshrined in the Universal Declaration of Human Rights and other international human rights standards. Although the organization recognizes that an act of aggression by one state against another can lead to serious human rights abuses in international armed conflicts, it does not take a position on whether conflicts themselves should be determined to be just or legal or whether leaders suspected of committing the specific crime of aggression – a crime by one state against another state - should be prosecuted. Instead, during international armed conflicts, Amnesty International focuses on protecting civilians; exposing violations of human rights and humanitarian law; and campaigning against impunity for the victims of human rights abuses committed during conflict. This includes calling for the investigation and prosecution of persons suspected of genocide, crimes against humanity and war crimes.

**Amnesty International
International Secretariat
Peter Benenson House
1 Easton Street
London WC1X 0DW**

www.amnesty.org

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