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President of the Assembly of States
Parties to the Rome Statute

Secretariat of the Assembly of States
Parties
International Criminal Court
Oude Waalsdorperweg 10
2597 AK The Hague
The Netherlands

1st April 2025

RE: OPEN LETTER ON IMMINENT TRAVEL OF BENJAMIN NETANYAHU TO HUNGARY, AND CALLING FOR PROACTIVE RESPONSES TO POSSIBLE FUTURE INSTANCES OF NON-COOPERATION

Dear Madame President,

I am writing on behalf of Amnesty International regarding the reported imminent travel to Hungary, a state party, of Israel Prime Minister Benjamin Netanyahu. Mr. Netanyahu is subject to an International Criminal Court (ICC) arrest warrant for war crimes and crimes against humanity, in the situation in the State of Palestine.

According to reports, Mr. Netanyahu is due to travel to Hungary for four days between Wednesday 2 April and Saturday 5 April. As a state party to the Rome Statute, Hungary has an unequivocal obligation to arrest and surrender Mr. Netanyahu to the Court if he is within its jurisdiction. Indeed, arresting all those subject to ICC arrest warrants is a clear and fundamental obligation of all states parties to the Statute of the Court.

A cornerstone principle of the Rome Statute is that no one is above the law, including heads of state sought for arrest, such as Benjamin Netanyahu or Vladimir Putin. This has been confirmed by the ICC Appeals Chamber in its 6 May 2019 *Judgment in the Jordan Referral re Al-Bashir Appeal* which is binding on all states parties. In this decision, the Appeals Chamber concluded that there is no head of state immunity under customary international law vis-à-vis an international court. This decision is binding on all states parties and provides that they are obliged to arrest all persons, up to and including sitting heads of state, subject to arrest warrants and regardless of whether they agree with or oppose a particular decision of the Office of the Prosecutor or ICC in a particular situation.

Amnesty International is deeply concerned that Benjamin Netanyahu, Vladimir Putin and others subject to ICC arrest warrants may seek to travel to states parties, in 2025 and beyond, without arrest, as part of a strategy intended to undermine the Court and the warrants issued against them. Amnesty International raised this concern in September 2024, following Mr. Putin's travel to Mongolia, a state party, without arrest and surrender to the Court. It is imperative that Mr. Netanyahu's shameful reported visit to Hungary must not be

allowed to transform into an *impunity tour* of other states parties that could potentially extend beyond Hungary to other states whose leaders or senior government officials have stated or inferred a willingness not to implement the ICC's arrest warrant against him.

The Assembly of States Parties (ASP) must therefore urgently and publicly call on Hungary to immediately arrest and surrender Mr. Netanyahu, should he set foot in the country or to rescind its invitation. In addition, the Assembly must urgently take steps to counter the strategy of weakening the Court by allowing individuals subject to arrest warrants, including heads of state such as President Putin or Prime Minister Benjamin Netanyahu, to visit states parties without arrest.

In 2011, the Assembly adopted procedures related to non-cooperation, which up to this point have not been fully utilized and must now be urgently implemented. These procedures provide for formal and informal responses to non-cooperation, including outlining possible proactive Assembly and unilateral state party responses to instances 'where there are reasons to believe that a specific and serious incident of non-cooperation, including in respect of a request for arrest and surrender of a person (article 89 of the Rome Statute), is about to occur or is currently on-going and urgent action by the Assembly may help bring about cooperation' (paragraph 7(b)). In relation to such instances, which are clearly satisfied in relation to Mr. Netanyahu's upcoming stated visit to Hungary (and potentially other states in the future), the 2011 non-cooperation procedures provide that the President of the Assembly can become active on her own initiative where it is assessed that the conditions above are met. In addition, the President should immediately notify and involve Bureau members and the regional focal points for non-cooperation in the exercise of any initiative undertaken. In particular, the procedures provide that the President is mandated to, on her own initiative, raise the issue of foreseen non-cooperation informally and directly with officials from the requested state, in this instance Hungary, and other relevant stakeholders (which in this instance could be neighboring states and the European Union), with a view to promoting full cooperation.

The *Toolkit for the implementation of the informal dimension of the Assembly procedures relating to non-cooperation*, adopted by the Assembly in 2014, is a crucial resource for the ASP President and all state parties to improve the implementation of the 2011 procedures on non-cooperation.

In particular, the *Toolkit* provides that the President of the ASP, the Bureau, the non-cooperation focal points, the cooperation working group facilitators, and all states parties should:

- i. Share information with states parties and with members of respective regional groups, including in this instance the European regional group made up of a number of European Union states, to enable states parties to take any action that they may deem appropriate regarding the possible travel of persons subject to a warrant of arrest;
- ii. Publish public statements before, during, and after travel of persons subject to ICC arrest warrants **unequivocally calling for their arrest and surrender** and reminding the state party in question, and all states parties, of their fundamental Rome Statute obligations;
- iii. Publish media releases, including, but not limited to social media, urgently raising attention to the imminent breach of the obligation to arrest and surrender and calling on, in this instance, Hungary, to arrest and surrender Benjamin Netanyahu;
- iv. Send *note verbales* and undertake *demarches* to the relevant state party, in this instance Hungary, and other relevant states, before and during the travel to the relevant state party, recalling the

fundamental Rome Statute obligations to arrest and surrender, and urging, in this instance, Hungary not to allow Benjamin Netanyahu to enter its territory without meeting its obligation to arrest and surrender him.

Madame President, the imminent travel of Benjamin Netanyahu to Hungary, or any possibility of an *impunity tour* cannot be marked by silence or inaction by yourself, nor the Assembly and individual ICC states parties. It is imperative that you and all ICC member states urgently consider how to respond to the imminent visit of Mr. Netanyahu to Hungary, as well as, with the same urgency, consider how to respond to further instances of non-cooperation which may occur in the coming months, with the expected attempts by Vladimir Putin and Benjamin Netanyahu to travel to states parties without arrest. It is incumbent on you as the President of the Assembly, as well as on the ASP Bureau members and all states parties to exhaust all possible measures and avenues to ensure that states fully cooperate with the Court.

With increasing attacks on the ICC from powerful states, the prospect of those indicted by the Court attempting to ‘chip away’ at the Rome Statute’s cornerstone provisions in order to bring down the system of international justice which the Court has embodied, is a fundamental threat for this institution. All victims of international crimes who are looking at the Court as the last glimpse of hope for truth, justice and reparations will see their expectations shattered. In these times, words of commitment or condemnation are not enough: these statements must be turned into prompt and concrete action to defend the ICC and to ensure that the crimes that the Court is mandated to prosecute do not remain unpunished. A collective and resilient Assembly of supportive states parties can serve as a staunch defender and protector of the ICC from existing and future threats to the Court’s independent mandate and activities, as epitomized by Hungary’s brazen and provocative invitation to host Benjamin Netanyahu.

Yours sincerely,

A handwritten signature in black ink, reading "Agnès Callamard". The signature is written in a cursive, flowing style.

Agnès Callamard
Secretary General