

# **INTERNATIONAL CRIMINAL COURT**

RECOMMENDATIONS TO THE  
ASSEMBLY OF STATES PARTIES  
AT ITS TENTH SESSION (12 TO  
21 DECEMBER 2011)

**AMNESTY  
INTERNATIONAL**



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# RECOMMENDATIONS TO THE ASSEMBLY OF STATES PARTIES AT ITS TENTH SESSION

## INTRODUCTION

The tenth session of the Assembly of States Parties of the International Criminal Court (Assembly) will take place in New York from 12 to 21 December 2010.

Thirteen years after the adoption of the Rome Statute of the International Criminal Court (Rome Statute), almost two thirds of UN member states have ratified it. The tenth session of the Assembly takes place in the context of a functioning International Criminal Court (ICC), which is currently conducting three trials against four persons with another case pending trial and decisions on confirmation of charges pending in three more cases. One other person has been surrendered to the ICC recently and pre-trial proceedings are commencing. The ICC has opened investigations in seven situations (Central African Republic; Côte d'Ivoire; Darfur, Sudan; Democratic Republic of the Congo; Kenya; Libya and Uganda, ) and has commenced preliminary examinations in at least eight others (Afghanistan, Colombia, Georgia, Guinea, Honduras, Nigeria, Palestine (Gaza) and the Republic of Korea).

The tenth session marks almost a decade of work by the Assembly to fulfil its functions under the Rome Statute, in particular those set out in Article 112. Although much has been achieved in this time, the Assembly still has many challenging issues on its agenda. As the ICC's oversight body, the Assembly has a vital role to play in the ICC achieving success.

During the tenth session, the Assembly will conduct elections of key officials, including the next Prosecutor and six judges of the ICC. It will also seek to resolve serious problems that have arisen in relation to the annual budget process arising from a number of states demanding that "zero-growth" be imposed on the ICC despite the fact that the ICC's activities are increasing and states are still not fulfilling their complementarity obligations, leaving an enormous impunity gap. In addition, the Assembly will continue to build on important efforts initiated at the Review Conference of the Rome Statute in June 2010 to ensure cooperation with the ICC, to promote national justice (complementarity) and to ensure that the ICC achieves its important mandates in relation to victims and affected communities.

In this paper, Amnesty International sets out a series of recommendations in relation to these and other issues for the Assembly's consideration. A summary of the specific recommendations can be drawn from the above contents page. Amnesty International will have a delegation present throughout the tenth session. Members of the delegation are available to discuss any of these issues with government delegations. Some of the issues considered by the Assembly and not discussed in this paper may be the subject of separate papers issued by Amnesty International.

Amnesty International is also actively involved in most Teams organized by the Coalition for the ICC (CICC) on a range of issues. The CICC's Teams will also issue papers reflecting the individual Team's position on specific issues before or during the Assembly. In many instances, Amnesty International endorses all or most of the recommendations in those reports and some of those Team papers that have been completed as of the date of this paper are referred to or excerpted in this document.

## **I. GENERAL**

### **1. STATES PARTIES SHOULD MAKE STRONG STATEMENTS IN SUPPORT OF THE ICC DURING THE GENERAL DEBATE.**

In accordance with the recommendations set out in this paper, Amnesty International urges states parties in their statements to the General Debate scheduled for Wednesday 14 December to support strongly the effective functioning of the ICC including:

- Supporting the adequate funding of the ICC and opposing efforts to impose “zero growth” on the ICC while its activities are still increasing.
- Supporting a transparent and thorough review, involving civil society, of the Search Committee Process for the ICC Prosecutor and the establishment of an Advisory Committee on Nominations for the election of ICC judges.
- Re-affirming their commitments given at the Review Conference to cooperate with the ICC - including in the execution of all arrest warrants - and to expressly reject arguments that heads of state charged by the ICC have immunity.<sup>1</sup>
- Recognizing the importance of developing more effective means to promote cooperation and to address failures of states parties to cooperate, in particular, with regard to arrest and surrender of persons named in ICC arrest warrants, including when the Security Council fails to take effective action.
- Recognizing the importance of developing further efforts to promote complementarity.
- Re-affirming support for the outreach and public information as core functions of the ICC and urging the Assembly not to scale back on this important work by cutting its funding.
- Announcing voluntary contributions their government has made or intends to make to the Trust Fund for Victims.

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<sup>1</sup> See Amnesty International, *Bringing Power to Justice: Absence of immunity for heads of state before the International Criminal Court*, IOR 53/017/2010, 9 December 2010, available at: <http://www.amnesty.org/en/library/info/IOR53/017/2010/en>

## II. ELECTIONS

### 2. THE ASSEMBLY SHOULD ELECT THE HIGHEST QUALIFIED CANDIDATES FOR THE NEW PROSECUTOR OF THE ICC, SIX JUDGES OF THE ICC AND SIX MEMBERS OF THE COMMITTEE ON BUDGET AND FINANCE

During the tenth session, the next Prosecutor, six judges and six members of the Committee on Budget and Finance will be elected. Although Amnesty International does not support or oppose candidates for elections, our organization believes it is essential that states parties vote for those they believe to be the most highly qualified candidates for these position and do not engage in vote-trading in relation to these and other international elections.

#### *Election of the Prosecutor*

Amnesty International notes that on 1 December, the President of the ICC announced that, in the lead up to the election, informal consultations had resulted in consensus on nominating Fatou Bensouda as the only candidate for the election on 12 December. Below Amnesty International sets out recommendations for reviewing the process applied by the Assembly in electing the Prosecutor. The recommendations focus solely on the process conducted by the Assembly and do not represent any position on the decision to elect Fatou Bensouda as the next ICC Prosecutor.

#### *Election of six ICC Judges*

At the closure of the nomination period for the elections of six judges, only 19 candidates from 119 states parties had been nominated for the election. Amnesty International is particularly dismayed that only two of those nominated are women. Our organization has repeatedly called for all states parties to conduct national processes to identify highly qualified candidates, female and male, from their countries or other states parties to ensure that the Assembly has the broadest pool of candidates to choose from.

Amnesty International welcomes the report of the new Independent Panel on ICC Judicial Elections established in December 2010 which assessed whether each of the nominated candidates fulfil the qualifications prescribed by Article 36 of the Rome Statute.<sup>2</sup> The Panel found that four of those nominated were “not qualified” under the category they were nominated. It further raised concern about the failure of states to provide information about national nomination processes conducted.

Amnesty International urges states parties to focus on electing the highest qualified candidates taking into consideration the report of the Independent Panel.

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<sup>2</sup> Independent Panel on ICC Judicial Elections, Report on the International Criminal Court Judicial Nominations 2011, 26 October 2011, available at: <http://www.iccindependentpanel.org/sites/default/files/Independent%20Panel%20on%20ICC%20Judicial%20Elections%20-%20Report%2026%20October%202011.pdf>

The Independent Panel also raised a number of important issues arising from its review of the nominations which the Assembly should consider for future elections, including whether an age-limit should be placed on candidates, whether a health assessment should be conducted to ensure candidates are able to conduct a full nine-year term and whether a code of conduct should be established for ICC judicial candidates to follow in their campaigning.

#### *Election of six members of the Committee on Budget and Finance*

Amnesty International is disappointed that, at the closing of the nomination period for the six vacant positions of the Committee on Budget and Finance, states parties had nominated only seven candidates. To achieve those seven candidates, the nomination period had to be extended three times. As the election relates to regional vacancies, if no candidates withdraw the election would be limited to a choice between two African candidates. The practice of regions nominating the bare minimum number of candidates for the number of available positions means that the Assembly is unable to conduct an effective examination and comparison of the candidates' qualifications and experience. Given the importance of this expert body, the Assembly should review its practice to ensure that it benefits from the best possible expert advice on budget and finance issues. In particular, the Assembly should consider amending the election procedure to require that a minimum number of candidates equal to twice the number of members of the Committee being elected from each region be nominated before an election can take place.

### **3. THE ASSEMBLY SHOULD CONDUCT A TRANSPARENT REVIEW INVOLVING CIVIL SOCIETY OF THE PROCESS FOR ELECTING THE ICC PROSECUTOR**

Elections of the ICC Prosecutor are vital decisions that will determine the success of the ICC. The Prosecutor bears a significant responsibility for determining where the ICC will conduct its investigations and which cases it will prosecute. Governments, civil society and millions of victims around the world will be looking to the Prosecutor to pursue international justice according to the highest standards. It is essential that the strongest candidate is elected (applying the criteria set out in Article 42 (3) of the Rome Statute) in a process that establishes the confidence of all those following the important work of the ICC. Therefore, during the ninth session of the Assembly, Amnesty International strongly supported the establishment of a search committee to identify highly qualified candidates for the election of the ICC Prosecutor. The organization was particularly concerned to ensure that the process was transparent and focussed on the merits of the candidates. With the conclusion of the first Search Committee's work and the forthcoming election of Fatou Bensouda as the consensus candidate on 12 December, Amnesty International considers that there are a number of issues of particular importance which have arisen in the first process which should be reviewed to facilitate the next election process.

Firstly, to safeguard against the politicization of the Search Committee process and to ensure confidence in its recommendations, the Terms of Reference of future Search Committees should clarify that the members are appointed as independent experts and not government or regional representatives. No government representative participating in the Bureau should serve at the same time on the

Search Committee. It should also set out the types of expertise and experience that each member should have.<sup>3</sup> The Terms of Reference for the first Search Committee regrettably failed to establish any requirement of expertise and the provision on composition which stated that “[t]he Bureau of the Assembly designates one representative per regional group as member of the Search Committee” could have been interpreted as requiring members to act as political representatives of their regions.<sup>4</sup> Amnesty International notes that, in its Report, the Search Committee has stated that “[t]he members of the Search Committee served in their personal capacities, not as representatives of their States.”<sup>5</sup>

Secondly, Amnesty International was dismayed that all five members appointed to the Search Committee were men. The Terms of Reference for future sessions should require a fair balance of female and male members.

Thirdly, considering the broad general requirements that the Prosecutor must meet in Article 42 (3), additional criteria consistent with the provisions of the Article should be developed by the Search Committee – in consultation with civil society – to guide the short-listing process.<sup>6</sup> The criteria should be made public in advance of the process to ensure transparency and inform potential candidates. In particular, criteria should be developed that examines candidates’ qualifications, training, work history/experience and sensitization to investigating, prosecuting and adjudicating gender-based crimes and crimes against children.

Finally, although Amnesty International recognizes that identifying a candidate who enjoys the support of all states parties is desirable, the organization is concerned that the informal process to seek consensus on one candidate risks further politicising the process and undermining transparency. Once the short-list is announced the formal process of nominating candidates should be conducted immediately. This process would reduce pressure on states to support a candidate for the sake of consensus and instead allow them to focus on selecting the candidate they believe is most highly qualified that they will vote for in the secret ballot required by Article 42 (4) of the Rome Statute.

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<sup>3</sup> For example, Amnesty International notes that a draft Terms of Reference to establish an Advisory Committee on the appointment of judges of the International Criminal Court states that its members “should be drawn from eminent interested and willing persons of a high moral character who have established competence and experience in criminal or international law.” It also clarifies that members “would not be the representatives of States or other organizations. They would serve in their personal capacity and would not take instructions from States Parties, States or any other organization or persons.”

<sup>4</sup> Search Committee for the position of the Prosecutor of the International Criminal Court, Terms of Reference, ICC-ASP/9/INF.2, 6 December 2010, para.4.

<sup>5</sup> Report of the Search Committee for the Position of the Prosecutor of the International Criminal Court, para.10.

<sup>6</sup> Article 42 (3) states: “The Prosecutor and the Deputy Prosecutors shall be persons of high moral character, be highly competent in and have extensive practical experience in the prosecution or trial of criminal cases. They shall have an excellent knowledge of and be fluent in at least one of the working languages of the Court.”

#### 4. THE ASSEMBLY SHOULD ESTABLISH AN EFFECTIVE ADVISORY COMMITTEE ON NOMINATIONS FOR THE ELECTION OF ICC JUDGES

Amnesty International welcomes the Assembly's consideration this year of establishing an Advisory Committee on nominations foreseen in Article 36 (4) of the Rome Statute. Our organization supports the establishment of the Advisory Committee without delay. As demonstrated by the Report of the Independent Panel on ICC Judicial Elections, such a body can provide valuable input into the election process, including protecting the effectiveness and credibility of the ICC by acting as a safeguard to ensure that candidates meet the qualifications set out in Article 36 (a), (b) and (c).

The work of the Independent Panel this year does not replace the need for the Assembly to establish its own Advisory Committee. Indeed, Amnesty International notes that the Independent Panel recommends that the Assembly establish the Committee to provide advice on nominations and issues related to the election of judges.<sup>7</sup>

Drafts of the Terms of Reference for the Advisory Committee which have been discussed by states parties to date are generally positive. In particular, Amnesty International considers it is essential that:

- The Panel should be composed of independent experts who serve in their personal capacity and do not represent governments or regions. It should also include a fair balance of female and male members from all regions.
- The mandate of the Panel should focus primarily on determining whether candidates meet the statutory requirements of Article 36 (a), (b) and (c). The organization also notes that there should be some flexibility – as recommended by the Independent Panel – for it to screen candidates “not only on the basis of specific statutory requirements such as experience and competence but also on their past record of performance as well”<sup>8</sup>. The Panel could also identify broader issues arising in the election process that require the Assembly's attention to improve the process, such as those issues identified by the Independent Panel (see above).
- The work of the Advisory Committee must be transparent and ensure that not only states parties, but also civil society and the public are informed of its working methods and recommendations.

### III. BUDGETARY ISSUES

Amnesty International is seriously concerned about discussions that are taking

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<sup>7</sup> Independent Panel on ICC Judicial Elections, Report on International Criminal Court Judicial Nominations 2011, p.20.

<sup>8</sup> Ibid.

place on the 2012 budget of the ICC in the lead up to the tenth session. For the third time in the last four years, the integrity of the budget process is being undermined by a group of the highest contributing states who are demanding that the Assembly impose “zero-growth” on the ICC’s budget.

Amnesty International strongly endorses the paper *Comments and Recommendations to the Tenth Session of the Assembly of States Parties* issued by the CICC’s Budget and Finance Team (of which it is a member).<sup>9</sup> The Report make a series of recommendations in relation to 2012 budget and the Committee on Budget and Finance’s recommendations and proposes a number of longer-term initiatives that the Assembly should take to change the debate from arbitrarily imposing “zero growth” on the ICC to improving transparency of the ICC’s budget allocation and cost-drivers, increasing understanding of the resource needs of the ICC as its activities increase and decrease and achieving greater efficiency as the ICC matures. The following recommendations draw heavily from the Budget and Finance Team paper.

#### 5. THE ASSEMBLY SHOULD CHANGE THE DEBATE FROM THE NEED FOR “ZERO GROWTH” TO THE NEED FOR TRANSPARENCY AND EFFICIENCY

Amnesty International agrees with the Budget and Finance Team that a “zero growth” approach to the ICC’s annual budget is simply not realistic nor, if it is imposed, will it lead to efficiency. The ICC was created as a dynamic institution to respond to the world’s worst crimes when required. Therefore, its resource needs will fluctuate depending on the number of situations it is investigating and its judicial activities (which will vary depending on when suspects are arrested and surrendered to the ICC).

Disturbingly, in the last decade there have been a large number of situations where crimes under the jurisdiction of the ICC have been committed. In many of these situations the ICC has launched preliminary examinations and investigations fulfilling the mandate assigned to it in the Rome Statute. It has also received two referrals from the United Nations Security Council. It should be expected that activities of the ICC will remain high in the short and medium term.

Given this possibility, states parties are encouraged to focus on ensuring that the ICC establish effective systems and uses its resources efficiently to ensure that it can achieve as much as possible in ending impunity for the worst crimes in the world. Imposing “zero growth” at a time when the ICC’s workload is still increasing will result in the ICC not being able to investigate and prosecute genocide, crimes against humanity and war crimes effectively during periods of high activity or having to reduce its activities when its work is most needed.

As evidenced in the 2012 and previous years’ budget, the ICC still has to grow in order to reach full capacity which means that future requests will be required for budget increases. If states parties cannot move their discussions beyond “zero

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<sup>9</sup> Issued on 29 November 2011 and available at: [http://www.iccnw.org/documents/CICC\\_Budget\\_and\\_Finance\\_Team\\_Paper\\_ASP10.pdf](http://www.iccnw.org/documents/CICC_Budget_and_Finance_Team_Paper_ASP10.pdf)

growth” then the same problematic process will be repeated year after year and the unsatisfactory political compromises whereby some arbitrary cuts are agreed will rapidly degrade the institution and lead to persons responsible for horrific crimes escaping justice.

Instead, the ICC’s capacity needs to be defined and a budgeting system needs to be developed which allows for scalability of the ICC’s resources in relation to its workload in a transparent manner which states parties understand and are satisfied is efficient.<sup>10</sup>

#### 6. THE ASSEMBLY SHOULD REVIEW THE COMMITTEE ON BUDGET AND FINANCE’S RECOMMENDATIONS ON THE PROPOSED 2012 BUDGET TAKING INTO ACCOUNT THE VIEWS OF THE ICC

In August, the Committee on Budget and Finance reviewed the ICC’s proposed budget for 2012 and made a number of recommendations that, if they were fully implemented, would reduce the resources requested budget by approximately €5 million. However, in the context of the efforts to impose “zero growth” on the ICC, some states are calling for the Assembly to make additional cuts to those recommended by the Committee on Budget and Finance. In trying to find additional cuts there is a real danger that the Assembly will cut blindly and damage the work of the institution in the short and long term.

Amnesty International urges the Assembly not to lose sight of its role in conducting a detailed review of the Committee’s Report. All of the recommendations should be thoroughly reviewed by the Assembly in accordance with its previous practice. The recommended cuts must not be automatically accepted in an effort to reach a compromise for greater budgetary reductions. Indeed, the Committee’s recommendations should set a floor, not a ceiling, for the 2012 budget discussions.

Many of the Committee’s recommendations relate to macro categories such as travel, training, consultants etc. It is, therefore, important that the Assembly consult with the ICC regarding any negative implications that these cuts would have on the effective implementation of its mandate if they were to be approved. Ultimately, the Assembly should provide the ICC with adequate resources to achieve its mandate.

#### ***The Assembly must not arbitrarily cap legal aid for defence and victims***

Amnesty International is seriously concerned about the statements of the Committee on Budget and Finance in relation to legal aid for defence and victims and the proposals to cap legal aid for the defence at €500,000 per accused per year and victims at €223,000 per group of victims per year without a detailed examination of what impact these arbitrary caps would have on the rights of the defence and the rights of victims.<sup>11</sup>

Amnesty International is particularly concerned that little recognition of the

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<sup>10</sup> Valuable experiences may be gathered from other international organisations, such as UNHCR, which are by nature linked to difficult to predict increases/decreases of activities.

<sup>11</sup> Report of the Committee on Budget and Finance on the work of its seventeenth session (CBF Report), ICC-ASP/10/15, 18 November 2011, para. 15 and Annex III.

importance of legal aid for defence and victims is reflected in the Committee on Budget and Finance Report. The right to legal aid for indigent suspects is a vital component of the right to a fair trial which is enshrined in Articles 55 and 67 of the Rome Statute. In order to defend their clients in often complex cases, defence lawyers require significant resources, including travel, investigation and administrative assistance in order to ensure they have equality of arms to match the significantly greater resources of the Office of the Prosecutor. Similarly, legal aid for victims is essential to achieve the rights of victims to participate in proceedings and seek reparation as set out in Article 68 and 75 of the Rome Statute. Victims' representatives have to coordinate and communicate with often large numbers of victims.

If the Assembly rushes to stem reasonable increases in legal aid costs required this year to respond to new judicial activities that are consistent with the approved legal aid system, it will erode the fundamental principles of fair trial and victims' rights guaranteed in the Rome Statute. Instead, a detailed review of the legal aid system should be conducted on the completion of the full first judicial process to determine whether efficiencies can be found, without compromising the rights set out in the Rome Statute. Since those rights are at the heart of the meaning and purpose of the ICC and are important indicators for persons, groups and nations not yet convinced of the value and viability of the ICC, maintaining them is vital for the ICC's credibility and future.

***The Assembly must ensure that resources are available for the Libya situation***

Amnesty International notes that, in its Report, the Committee on Budget and Finance recommends that the Prosecutor should "assess events on the ground and re-evaluate the needs of the Office of the Prosecutor... prior to the tenth session of the Assembly to determine if the requested resources are still required at the same level or whether further reductions on the 2012 proposed budget for the Libya situation can be made."<sup>12</sup> Amnesty International notes that, since the Committee on Budget and Finance's Report, the Prosecutor has publicly indicated that the Libyan authorities may hold national proceedings against Saif al-Islam Gaddafi following his capture. However, it should also be noted that the ICC has also clarified that "any decision on the admissibility of a case is under the sole competence of the Judges of the ICC."<sup>13</sup> Therefore, the Assembly should seek the input of all organs of the ICC in determining whether reductions can be made in the proposed Libya budget. In particular, if judicial proceedings on the admissibility of any cases are pending or anticipated at the time of the tenth session, the Assembly should, at a minimum, recognize the ability of the ICC to access the contingency fund if the ICC proceeds to prosecute the cases. The contingency fund should be replenished to ensure that sufficient resources would be available to meet such costs.

***The Assembly must continue to fund outreach and public information as a core function***

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<sup>12</sup> CBF Report, paras. 84-86.

<sup>13</sup> ICC Press Release, [Course of action before the ICC following the arrest of the suspect Saif Al Islam Gaddafi in Libya](#), ICC-CPI-20111123-PR746, 23 November 2011.

Amnesty International shares the concern of the CICC's Team that, despite recognizing the importance of outreach to "help build and maintain support for the Court internationally and to ensure broad diffusion of information on the investigation and trials within the Court" the Committee on Budget and Finance suggests that outreach activities could be funded by a mixture of assessed and voluntary contributions.<sup>14</sup>

Amnesty International is deeply concerned, as the Team stated that, once again, outreach is being targeted in the budget process to the potential detriment of victims and affected communities, ignoring the lessons of other international criminal courts, including the International Criminal Tribunals for the former Yugoslavia and Rwanda, the Special Court for Sierra Leone and the Extraordinary Chambers in the Courts of Cambodia, as well as the fact that it is part of the mandate of the ICC, the importance of which has been repeatedly recognised by the Assembly with a view to intensify the ICC's outreach efforts.<sup>15</sup> It is important to emphasize that the ICC's investigations, prosecutions, and trials depend on outreach and a number of other court activities, including external relations to secure cooperation in arrest, public information, effective victim participation, support to defence teams, and witness protection. Many of these activities are carried out most efficiently and effectively through the ICC's field presence. Resorting to voluntary contributions to fund these activities which form part of the ICC's core work would undermine the ICC's ability to do this work if contributions – especially in the current financial climate – could not be found. There is currently nothing to prevent donors that wish to contribute to the ICC's outreach activities from making voluntary contributions in accordance with Article 116 of the Rome Statute which would offset the assessed budget. While such contributions may be sought – the Assembly has the primary responsibility to ensure that outreach is adequately funded through the budget of the ICC.

#### 7. THE ASSEMBLY SHOULD TAKE LONGER-TERM MEASURES TO IMPROVE THE BUDGETARY PROCESS

In addition to the specific recommendations above in relation to the 2012 budget, Amnesty International also supports the CICC's Team also calls on the Assembly to take action to improve and to stabilise the volatile budget process in future years. Specifically, the Assembly should seek to:

- improve transparency of the ICC's budget allocation and cost-drivers;
- increase understanding of the resource needs of the ICC as its activities increase and decrease and;
- achieve greater efficiency as the ICC matures.

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<sup>14</sup> CBF Report, paras. 24-25.

<sup>15</sup> See *inter alia*, Rule 15, 50, 92 and 96 of the Rules of Procedure and Evidence; Regulations 6 and 103 of the Regulations of the Registry; and Resolution ICC-ASP/9/Res.3, paras. 38-39.

In pursuing these efforts it is hoped that, in the next years, the ICC will submit clearer budget requests that will enjoy the support of states. Another possible outcome of these efforts might be for the ICC to lay the ground work for the ICC move to a multi-year budget process.

***Current efforts to promote efficiency and improve the budget process should be continued***

Before looking at new initiatives, it should be recognized that a number of efforts are already being conducted or considered within the Assembly and by the ICC to identify efficiencies and improve effectiveness - both with regard to administrative processes and judicial proceedings - and to evaluate the budget process. These include:

- A review of the ICC's Strategic Plan, including improving the link between the plan and setting the programme budget;
- Ongoing dialogue between the ICC and the Committee on Budget and Finance to identify efficiency savings and improve the budget document. The ICC has provided the Committee with six reports regarding the status of its efforts to identify efficiency measures. In its most recent report, the Committee observed that "the Court had made considerable progress in its efforts to find and quantify possible efficiency savings" and recommended the ICC continue its efforts.<sup>16</sup>
- A request from the Committee on Budget and Finance for the ICC to examine its process for preparing the proposed program budget and report to the Committee in this regard at its eighteenth session (tentatively scheduled for 23-27 April 2012);
- Ongoing discussions in the Study Group on Governance on expediting the criminal process, and a proposed new cluster on budget process.
- An ongoing review of the Court-wide strategy in relation to victims looking at how the ICC's engagement with victims can be strengthened and in consultation with state and non-state actors in areas that will likely have a budgetary consequence, such as protection; outreach to victims and affected communities; victim participation and reparations.

The relationship of these efforts should be considered with a view to encouraging cohesion and avoiding duplication and ensuring that they can inform one another. Review of judicial processes should aim foremost at improving the ICC's effectiveness, rather than in identifying cost savings. These reviews can nevertheless contribute to increased transparency and identification of best practices, which, in turn, can contribute to stronger dialogue between states parties, the Committee on Budget and Finance, and the ICC regarding setting the programme budget.

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<sup>16</sup> Report of the Committee on Budget and Finance on the work of its seventeenth session, ICC-ASP/10/15.

***The Assembly should invite the ICC to provide a comprehensive report as soon as possible and within six months of the tenth session clarifying and fully justifying its current budget allocation and budget process***

The ICC has enjoyed significant budgetary flexibility in the last ten years both in the establishment phase and more recently as it has started fulfilling its judicial mandate. Such flexibility, including the high use of general temporary assistance to employ staff on contracts and the ability to transfer money within the major organs, was essential to get the ICC up and running. However, it has also generated confusion about how exactly resources are currently allocated within the ICC, especially when the ICC has on more than one occasion announced that it is able to absorb new costs within its existing budget without indicating where such resources are drawn from. The current style of the budget document – which primarily provides details on the needs for new resources - unfortunately does not address this issue.

As a first step towards addressing concerns about the ICC's budget it must first be understood. The ICC should therefore be required to provide a comprehensive explanation of its current budget allocation and how it relates to the organization's strategic plan and current policies. The Assembly should invite the ICC to provide:

- A clear explanation for the current staff structure of each unit (including their responsibilities) and fully justify each posts in the context of the strategies for each unit and to identify GTA posts which should be transferred to permanent posts.
- A fully justified explanation of the non-staff resources allocated to each unit.
- A clear analysis of the main cost drivers of the ICC and the core capacity of the Rome Statute system.<sup>17</sup> For example, if the number of trials is a major cost driver, then the ICC should indicate what are the maximum number of trials it could conduct at any one time in accordance with the limitations of the Rome Statute (e.g. number of judges) or other factors (e.g. number of available court rooms).
- A projection of how costs will be scaled up and down for each of the cost drivers. For example, the ICC should be able to provide an accurate estimate of the costs associated with an investigation, recognizing that there are a number of variables which may required cost adjustments, such as interpretation and translations to and from additional languages, additional security measures in high risk situations and travel and communication costs for accessing remote areas. Such estimates should include the costs associated with the OTP's investigation strategies,

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<sup>17</sup> Amnesty International does not rule out the possibility that at some point in the future states parties may consider expanding upon the ICC system – for examples by altering the number of judges, but for the purposes of this process – when the ICC has yet to reach full judicial capacity it should focus on system set out in the Rome Statute. In presenting the cost-drivers the ICC should take into account the cost drivers identified in the CBF Report, paras. 11-26.

including the size of investigation team, frequency of travel, the languages involved, projected witness protection budget. The projection should also indicate the costs of activities indispensable to the creation of an environment conducive to investigations and secure cooperation as well as to implement the provisions of the Rome Statute on victims' participation. This would include the costs of victims and witness protection, outreach, public information, external relations. It should also provide accurate information on the costs associated with the field presence the ICC intends to establish in the situation country to carry out its mandate. Similarly, the ICC should be able to provide a general estimate of costs of trials and the adjustments necessary (e.g. the projected duration of the trial, the number of defendants, defence counsel and number of victims' representatives, *in situ* hearings etc.). Similarly, the estimate should indicate the costs of activities necessary to the conduct of trials and implementation of the victims' rights under the Rome Statute, including victims and witness protection, outreach, public information, external relation and victims' participation and reparation and the necessary fluctuations in their level depending on judicial developments and phases. It should provide an indication of the costs of the ICC's field presence.

- A review of the budget process, as requested by the Committee on Budget and Finance, identifying where improvements are necessary to strengthen the link with the strategic plan and realistic assumption setting based on the above examination of cost drivers and their scalability including the opening of new investigations and trial activities.

***The Assembly should invite the Committee on Budget and Finance to study the ICC's report:***

- ***in the context of its ongoing dialogue regarding efficiency measures;***
- ***in connection with its request to the ICC to reconsider its budget preparation with a view to identifying where efficiencies can be found or should be explored; and***
- ***to make recommendations to improve the preparation of the programme budget***

Based on the information provided by the ICC, the Committee on Budget and Finance will be well placed to conduct a thorough review of the information and to make additional recommendations as to where efficiencies can be found and to identify areas where further research is required to explore whether more efficiency is possible. This should include whether a number of UN systems applied to many aspects of the ICC are appropriate for the institution. In doing so, the Committee on Budget and Finance should ensure that any such search for efficiencies are in line with the provisions contained in the Rome Statute (including the independence of the Prosecutor and the Judges), the Rules on Procedure and Evidence and relevant principles of international law. The Committee on Budget and Finance could focus on applying its financial expertise to identifying administrative, managerial and operational processes where efficiencies could be gained and avoid overlap with ongoing reviews of ICC policies (e.g., implementation of the strategy on victims) and

Study Group on Governance discussions on expediting the criminal process.

If necessary, the Committee on Budget and Finance should hold a special or extended session to review the information and discuss their recommendations. They should consult with the ICC, legal representatives, states parties and civil society during the process.

***The Assembly should review the Committee on Budget and Finance's recommendations, taking into account the views of the ICC and recommend action in key areas to improve the budget process and find efficiencies***

The Committee on Budget and Finance's recommendations should be reviewed by the Assembly in consultation with ICC officials in order to identify what additional measures are needed to achieve efficiencies and a better budgeting system incorporating these efficiencies. This could be done through the Study Group on Governance's proposed cluster on budget process, or through another forum with adequate participation of ICC officials, legal representatives, states parties, and civil society. These recommendations to the ICC could be adopted at the Assembly's 11<sup>th</sup> session, and implemented on an agreed timetable.

The ICC should be requested to report inter-sessionally to the Committee on Budget and Finance and states parties regularly on its progress, with a view to achieving significant progress in implementing the recommendations by the Assembly's 12<sup>th</sup> session.

***The ICC should be requested to report to the Assembly regularly on efficiency measures it has taken as well as bringing policy or other developments which have cost implications to the attention of the Assembly***

Achieving efficiency must be a continuing process. Similarly, efficiency should not always be viewed as a means of reducing costs. Indeed, in some situations, an increase in resources may enable the ICC to conduct its work better and with more impact. In other situations, an increase in resources in the early stages of the ICC's work might represent cost savings later on, as more initial resources can help prevent situations where additional resources are required to reach the same results at the end of the process. For example, investing more resources in outreach at the very outset of a situation prevents the formation of misconceptions that need considerably more resources to be overcome later. The ICC should keep the Assembly informed of its efforts to achieve efficiency and maintain a continuing dialogue on cost implications.

#### **IV. COOPERATION**

As recognized by the Review Conference in the Kampala Declaration and the Declaration on cooperation, cooperation from states, IGO and others is essential for the effectiveness of the ICC.<sup>18</sup> Amnesty International, therefore, welcomes the

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<sup>18</sup> In the Kampala Declaration, states parties stated:

“We, high-level representatives of States Parties to the Rome Statute of the International

Report of the Court on Cooperation as a vital tool to identifying where problems are arising in relation to the full spectrum of cooperation areas and for measures to be taken to address them.<sup>19</sup> The Report which covers the period May 2010 to September 2011 finds “cooperation with the Court has been generally forthcoming. However, great challenges remain.”<sup>20</sup> The Report highlights a number of areas where cooperation is lacking, including arrest and surrender of person subject to arrest warrants; the identification, tracing, freezing and seizure of assets; witness protection and support; defence related issues; and interim release. The Report also recognizes the strong link between public information and cooperation and provides guidelines for how states parties can support these efforts.

## 8. THE ASSEMBLY SHOULD ESTABLISH AN INTER-SESSIONAL WORKING GROUP ON COOPERATION

In addition, to the ICC’s Report, Amnesty International welcomes the work of the facilitator on Cooperation (summarised in the Report of the Bureau on cooperation) who reported that 17 informal consultations had been held in 2011 on a range of issues, including consideration of the ICC’s Report.<sup>21</sup> The organization, however, remains concerned that these substantial and complex issues continue to be discussed in informal forums without any mechanisms to take the issues forward.

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Criminal Court, gathered in Kampala, Uganda, at the first Review Conference under this Statute, held from 31 May to 11 June 2010,

. . . Stressing the importance of full cooperation with the International Criminal Court,

. . .

7. Further resolve to continue and strengthen our efforts to ensure full cooperation with the Court in accordance with the Statute, in particular in the areas of implementing legislation, enforcement of Court decisions, execution of arrest warrants, conclusion of agreements and witness protection, and to express our political and diplomatic support for the Court[.]”

Kampala Declaration, Declaration RC/Decl.1, adopted by consensus at the 4th plenary meeting, on 1 June 2010.

In the Declaration on cooperation, the states parties declared:

“The Review Conference,

. . .

5. Emphasizes the crucial role that the execution of arrest warrants plays in ensuring the effectiveness of the Court’s jurisdiction and further emphasizes the primary obligation of States Parties, and other States under an obligation to cooperate with the Court, to assist the Court in the swift enforcement of its pending arrest warrants[.]”

Declaration on cooperation, RC/Decl.2, adopted by consensus at the 9th plenary meeting, on 8 June 2010.

<sup>19</sup> Report of the Court on Cooperation, ICC-ASP/10/40, 18 November 2011.

<sup>20</sup> *Ibid.*, para. 2.

<sup>21</sup> Report of the Bureau on Cooperation, ICC-ASP/10/28, 22 November 2011.

Although our organization welcomes the recommendation in the draft resolution annexed to the Bureau's Report to "include a specific item on cooperation on the agenda of its eleventh session," a more formal inter-sessional forum must also be established to review relevant issues identified in the ICC's Report, provide for sharing experiences and responding to emerging issues. Amnesty International, therefore, calls again on the Assembly to establish a long-overdue formal Working Group on Cooperation which would work inter-sessionally to:

- review reports prepared by the ICC on the status of cooperation;
- review the implementation of the Review Conference Declaration on Cooperation, the Kampala Declaration and the 66 recommendations on cooperation adopted at the Assembly's sixth session<sup>22</sup> and consider measures that the Assembly can take to encourage more states to implement them;
- monitor the implementation of pledges given by states in relation to cooperation;
- discuss key issues of concern that arise, such as a pattern of problems with cooperation in certain areas.

The Working Group could also have a role in responding to specific instances of non-cooperation (see below).

## 9. THE ASSEMBLY SHOULD STRENGTHEN THE PROPOSED RESOLUTION ON COOPERATION

Although Amnesty International welcomes the initiative to adopt once again a separate resolution on cooperation, our organization is concerned that the proposed text annexed to the Bureau's Report is weaker than previous resolutions and recommends it be strengthened in the following ways.

- The draft resolution should expressly call on states to intensify their cooperation with the ICC by implementing the 66 recommendations on cooperation adopted by the Assembly at its sixth session;
- The draft resolution should recognize the importance of implementing the Assembly's Plan of Action for universal ratification and full implementation of the Rome Statute towards ensuring cooperation.
- The draft resolution should provide a clear mandate, including setting priorities, for the future work of the Assembly in promoting cooperation.<sup>23</sup>
- Inaccurate and inappropriate references to "voluntary cooperation" in the draft resolution should be deleted, in particular in relation to interim

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<sup>22</sup> Resolution ICC-ASP/6/Res.2, Strengthening the International Criminal Court and the Assembly of States Parties, Annex II, adopted on 14 December 2007.

<sup>23</sup> For example, paragraph 16 of the Resolution on Cooperation adopted at the Assembly's eighth session (ICC-ASP/8/Res.2) identifies 11 priority issues for the facilitator to examine.

release and witness relocation. Both forms of cooperation are essential to the investigation and prosecution of crimes within the jurisdiction of the ICC and, therefore, fall within the mandatory general obligation to cooperate set out in Article 86 of the Rome Statute.

- Rather than request that the ICC report again on cooperation at its twelfth session, the draft Resolution should request the ICC to report annually on these very important issues.

#### 10. THE ASSEMBLY SHOULD WELCOME THE REPORT ON POTENTIAL ASSEMBLY PROCEDURES RELATING TO NON-COOPERATION AND CONTINUE ITS DEVELOPMENT OF PROCEDURES

Amnesty International welcomed the Assembly's recognition at its ninth session of the "negative impact that the non-execution of Court requests can have on the ability of the Court to execute its mandate" and its decision to prepare a report for the tenth session on which Assembly procedures could be required to enable it to discharge its mandate to consider any question relating to non-cooperation.

The Report on potential Assembly procedures relating to non-cooperation, adopted by the Bureau on 8 September 2011, sets out a positive basis for further discussion by proposing initiatives that could be taken by the Assembly in relation to:

1. instances of cooperation where the ICC has referred a matter to the Assembly in accordance with Article 87 (7)
2. "exceptionally a scenario where the Court might not yet have referred the matter...but there are reasons to believe that a specific incident of non-cooperation in respect of a request for arrest and surrender of a person is about to occur or is currently on-going and urgent action by the Assembly may help bring about cooperation."

The Report recommends formal responses that could be conducted in the first scenario and informal responses to the second scenario, all of which merit support. There are a number of additional questions arising from the Report that also require consideration, particularly in consultation with the ICC, to potentially expand the available procedures. In particular:

- Will the Assembly consider suspending voting rights as a consequence of non-cooperation by a state party?
- In responding formally to non-cooperation, what assurances can the Assembly request the state to provide to ensure that non-cooperation does not continue?
- How will non-cooperation that has yet to be referred by the ICC to the Assembly be monitored and what safeguards can be put in place to ensure that the Bureau acts consistently in deciding which instances of non-cooperation to respond to?
- Are there other forms of cooperation, apart from arrest and surrender that may warrant exceptional action without a referral by the ICC? Such

instances may include failure to take effective protection measures.

- Should formal action always be excluded when a referral by the ICC under Article 87 (7) has not been made?
- What steps should the Assembly take when the United Nations Security Council fails to take steps to enforce compliance with obligations under a referral from the ICC under Article 87 (7) relating to a situation referred to the ICC by the Council?

Amnesty International, therefore, urges the Assembly in welcoming this report to mandate the Bureau to continue its consideration of the full range of issues and possible procedures, in consultation with the ICC and civil society, and to report again at its eleventh session.

## V. COMPLEMENTARITY

In practical terms, complementarity means that the ICC may only step in, as a 'court of last resort', when state parties to the Rome Statute – and, sometimes, non-state parties – do not comply genuinely with their obligation under international law to investigate and prosecute genocide, crimes against humanity and war crimes.<sup>24</sup>

The Rome Statute established a permanent ICC that could only work if each state acted in good faith to define these crimes as crimes under its national law and then vigorously enforced that law through investigations and, where there was sufficient admissible evidence, prosecutions. Otherwise the ICC would be overwhelmed with cases. Indeed, states expressly recognized in the Preamble to the Rome Statute that they had a pre-existing duty to exercise their jurisdiction over these crimes.<sup>25</sup> A state which failed to bring perpetrators to justice would risk being considered unable or unwilling genuinely to investigate and prosecute crimes within the ICC's jurisdiction.

Amnesty International welcomed the important debate on complementarity that took place during the Review Conference and the adoption of a resolution which encouraged the ICC, states parties and other stakeholders, including international organizations and civil society:

*to further explore ways in which to enhance the capacity of national jurisdictions to investigate and prosecute serious crimes of international concern as set out in the Report of the Bureau on*

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<sup>24</sup> Rome Statute of the International Criminal Court, Preamble (tenth paragraph) and Articles 1 and 17.

<sup>25</sup> In the Preamble of the Rome Statute, states parties affirm that "the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation", determine "to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes" and recall that "it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes".

*complementarity, including its recommendations.*<sup>26</sup>

At its tenth session, the Assembly will consider a detailed Report of the Court on complementarity which sets out the strategies and activities that are being employed by the Presidency, the Office of the Prosecutor and the Registry to have an impact in the fight against impunity beyond the cases being prosecuted by the ICC.<sup>27</sup> It will also consider a Report by the Bureau on complementarity which sets out the activities of the Bureau's facilitators, the Secretariat of the Assembly and other actors in promoting complementarity.

#### **11. THE ASSEMBLY SHOULD WELCOME THE REPORTS OF THE ICC AND THE BUREAU ON COMPLEMENTARITY AND ENCOURAGE FURTHER EFFORTS, INCLUDING ALLOCATING RESOURCES, TO DEVELOP THE IMPACT OF THE ROME STATUTE SYSTEM IN THE FIGHT AGAINST IMPUNITY**

The Reports of the Court and the Bureau contribute significantly to implementing the Review Conference's Resolution on complementarity and should be welcomed by the Assembly. However, they are only first steps and more should be done to ensure that momentum is built and continued in the next years. In particular:

- Regrettably, there is no provision on the formal agenda of the Assembly for States to consider both reports. The Assembly should be the key forum for discussions on complementarity and the issue should be included the agenda of all future Assembly sessions towards implementing the Review Conference Resolution, including reviewing the activities of all actors and examining key obstacles to complementarity experienced by states.
- Despite welcome efforts by the Secretariat to develop its activities, including establishing a web portal, Amnesty International is concerned that the requirement that the Secretariat should perform this work "within existing resources" is unrealistic and should be reviewed regularly to ensure that it has the necessary resources to organize the exchange of information and to present information gathered to states in an effective and usable way.

## **VI. IMPACT OF THE ROME STATUTE SYSTEM ON VICTIMS AND AFFECTED COMMUNITIES**

Amnesty International welcomed the positive debate on these issues during the Review Conference and the Resolution seeking to advance work of the ICC in these areas.<sup>28</sup> The organization regrets that no time has been allocated to the important

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<sup>26</sup> Complementarity, RC/Res.1, adopted at the ninth plenary meeting on 8 June 2010: [http://www.icc-cpi.int/iccdocs/asp\\_docs/Resolutions/RC-Res.1-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/Resolutions/RC-Res.1-ENG.pdf)

<sup>27</sup> Report of the Court on complementarity, ICC-ASP/10/23, 11 November 2011.

<sup>28</sup> The impact of the Rome Statute system on victims and affected communities, RC/Res.2, adopted at the 9<sup>th</sup> plenary meeting on 8 June 2010: [http://www.icc-cpi.int/iccdocs/asp\\_docs/Resolutions/RC-Res.2-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/Resolutions/RC-Res.2-ENG.pdf)

issue on the agenda of the tenth session of the Assembly and urges that this matter be addressed in future sessions. Amnesty International is an active member of the Victims' Rights Working Group which will issue a detailed paper on victims' issues in advance of the Assembly. In this paper, the organization stresses the following issues.

#### 12. THE ASSEMBLY SHOULD ALLOW MORE TIME FOR CONSULTATION ON THE REVISED VICTIMS' STRATEGY

In light of the delayed submission of the ICC's Revised Strategy in Relation to Victims and the obvious need for further consultations between the ICC, states parties and civil society, reflected in the Report of the Bureau on victims and affected communities and the Trust Fund for Victims, Amnesty International supports the proposal "to request the Court to finalize the review in consultation with States Parties and other relevant stakeholders and report thereon in advance of the Assembly at its eleventh session."<sup>29</sup> Amnesty International has yet to formally comment on the revised draft and will do so in due course.

#### 13. THE ASSEMBLY SHOULD REQUEST THE ICC TO REVIEW THE CURRENT SYSTEMS IN PLACE TO ENSURE VICTIMS' PARTICIPATION.

Amnesty International is seriously concerned about backlogs in the processing of applications from victims seeking to participate in proceedings before the ICC. The system is not functioning adequately and victims are losing out. The Registry must ensure that the system works, or revise the system to maximise efficiency without detracting from victims' rights under the Statute. If additional resources are required, it should provide a fully justified request to the Assembly. Our organization therefore supports the Bureau's proposal for the ICC to conduct a prompt review of its systems to address these problems "in close consultation with the Bureau and relevant stakeholders and to report thereon to the Assembly at its eleventh session."<sup>30</sup>

#### 14. THE ASSEMBLY SHOULD WELCOME THE DRAFT GUIDELINES GOVERNING THE RELATIONS BETWEEN THE COURT AND INTERMEDIARIES AND CONTINUE DISCUSSIONS TO FINALIZE THEM

Amnesty International welcomes the ICC's publication of these draft Guidelines in August 2011. Engaging with intermediaries- in particular in countries where the ICC is investigating and prosecuting cases is an important part of the ICC's work. Effective guidelines for engagement with intermediaries must be put in place, which including providing protection if they become at risk on account of their efforts to assist the work of the ICC. A number of issues arise from the document which require further consultation with states parties and civil society that has not been possible within the time available. Amnesty International, therefore, agrees with the proposal to "come back to this important issue for a more in-depth

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<sup>29</sup> Report of the Bureau on victims and affected communities and Trust Fund for Victims, ICC-ASP/10/31, 22 November 2011, Annex : Draft paragraphs for inclusion in the omnibus resolution.

<sup>30</sup> *Ibid.*

discussion.”<sup>31</sup>

#### 15. THE ASSEMBLY SHOULD URGE THE ICC TO PREPARE FOR ITS FIRST REPARATION PROCESS

The ICC has not yet adopted principles on reparation in line with Article 75 of the Rome Statute. Amnesty International endorses the recommendations set out in the Victims’ Rights Working Group paper *Establishing effective reparation procedures and principles for the International Criminal Court* setting out key areas which should be covered in the principles.<sup>32</sup> The paper recommends that the principles should be established in accordance with international standards and comparative best practice.

Amnesty International notes the concerns that states have identified in the Report of the Study Group on Governance relating to the lack of principles. Our organization agrees with the decision by the Study Group not to proceed with proposed amendments to the Rules of Procedure and Evidence that would require the ICC to develop principles within 60 days, as such a process would have risked a poor outcome for victims. Instead, recognizing that the first reparation process may take place in 2012, Amnesty International agrees with the proposal to remind the ICC of the requirement to establish principles under Article 75 (1) of the Statute and requesting the ICC to report to the Assembly at its eleventh session.<sup>33</sup>

#### 16. STATES PARTIES SHOULD MAKE VOLUNTARY CONTRIBUTIONS TO THE TRUST FUND FOR VICTIMS

The ICC may issue its first reparations order in 2012. To ensure that the Trust Fund has adequate resources to fulfil the ICC’s orders to provide reparations to victims through the Fund and to conduct other projects of providing assistance to victims, Amnesty International once again urges each state party to make annual voluntary contributions to the Trust Fund and to announce their contribution or pledges in their statements to the Assembly’s General Debate.

### VII. RATIFICATION AND IMPLEMENTATION OF THE ROME STATUTE

Five years after its adoption, Amnesty International recognizes some progress made this year in implementing the Plan of Action<sup>34</sup>:

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<sup>31</sup> Report of the Bureau on the strategic planning process of the International Criminal Court, ICC-ASP/10/29, Annex: Draft paragraphs for inclusion in the omnibus resolution.

<sup>32</sup> Available at: [http://www.iccnw.org/documents/CICC\\_Budget\\_and\\_Finance\\_Team\\_Paper\\_ASP10.pdf](http://www.iccnw.org/documents/CICC_Budget_and_Finance_Team_Paper_ASP10.pdf)

<sup>33</sup> Report of the Bureau on the Study Group on Governance, ICC-ASP/10/30, 22 November 2011, para. 28 and Annex II: Draft resolution on reparations.

<sup>34</sup> Adopted by ICC-APD/5/Res.3, Strengthen the International Criminal Court and the Assembly of States Parties and annexed to the Resolution.

- Five new states – Cape Verde, Grenada, Maldives, Philippines and Tunisia - ratified the Rome Statute, bringing to total number of states parties to 119;
- Four states – Chile, Costa Rica, Malta and Tunisia - ratified the Agreement on Privileges and Immunities of the International Criminal Court (APIC), bringing the total number of states parties to 64.

Amnesty International welcomes the Report of the Bureau on the Plan of Action, which provides a useful assessment of current efforts to implement the Plan and recommendations for continued efforts.<sup>35</sup> It particularly welcomes the new recommendation recognizing the importance of ratifying the APIC in the Plan of Action.<sup>36</sup> The organization urges the Assembly to approve the recommendations and calls on the Assembly, its Secretariat and all states parties to commit to advancing the Plan of Action further this year.

#### 17. THE ASSEMBLY SHOULD INVEST MORE TO IMPLEMENT ITS PLAN OF ACTION FOR UNIVERSALITY AND FULL IMPLEMENTATION OF THE ROME STATUTE

Amnesty International considers that information sharing is a key element of implementing the Plan. Recognizing that many efforts are taking place at the national level and at the inter-government level, the Plan emphasises the importance of states and other actors reporting on their activities. Regrettably, in most years only a small number of states parties have informed the Assembly of their activities at the national level to ratify and implement the Rome Statute and their efforts to promote the implementation of the Plan by other states. Most states have failed to take even the basic step set out in the Plan to appoint a national contact point. This year, as the Bureau's Report notes the rate of response to the Secretariat's questionnaire has been low again with only 13 states and two regional organizations replying.<sup>37</sup> Amnesty International urges states parties to build further on this information sharing in the lead up to and during the tenth session by responding to the Assembly's questionnaire.

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. Amnesty International is particularly concerned that, since the Plan's adoption, the Secretariat has been asked to perform its functions to implement the Plan "within existing resources." Instead, Amnesty International is calling 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; to promote information sharing; to develop and implement a resource database of information for states parties and non-states parties who are in the process of ratifying and/or

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<sup>35</sup> Report of the Bureau on the Plan of Action for achieving universality and full implementation of the Rome Statute of the International Criminal Court, ICC-ASP/10/25, 23 November 2011.

<sup>36</sup> *Ibid.*, paras. 24-26.

<sup>37</sup> *Ibid.*, para.7.

implementing the Rome Statute; and to provide or coordinate technical assistance when needed. The organization urges states parties to reconsider this issue to ensure that the Plan of Action does not become obsolete.

#### 18. THE ASSEMBLY SHOULD REACT TO DECLARATIONS MADE BY A NUMBER OF STATES UPON RATIFICATION WHICH AMOUNT TO RESERVATIONS

As in previous years, Amnesty International is seriously concerned that declarations made upon ratification by some states amount to disguised reservations contrary to Article 120 of the Rome Statute and Article 19 of the Vienna Convention on the Law of Treaties. Article 120 of the Rome Statute provides that no reservations may be made to the Statute (unilateral declarations which specify or clarify the meaning of certain provisions and not amounting to reservations are not expressly prohibited). In its 2005 report, *International Criminal Court: Declarations amounting to prohibited reservations to the Rome Statute*, the organization examines declarations made by states parties to date and concludes that a number of them amount to reservations, including unilateral declarations made by Australia, Colombia, France, Malta, United Kingdom and Uruguay.<sup>38</sup> The legal analysis also calls on all states parties not to make any declaration that may amount to a reservation. The organization welcomed the decision by Uruguay on 26 February 2008 to withdraw its declaration and urges the other listed states to do the same.

Amnesty International calls upon the Assembly to urge states to withdraw any declarations or understandings that amount to reservations and declare that such reservations are without legal effect in order to ensure that those states remain bound by their obligations under the Rome Statute. The organization also believes that the ICC should not be limited in the exercise of its jurisdiction by declarations made by states parties and should give its own interpretation of the Rome Statute in full independence.

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<sup>38</sup> AI Index: IOR 40/32/2005, November 2005, (also available in French and Spanish), available at: <http://web.amnesty.org/library/index/engior400322005>.





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