TABLE OF CONTENTS

Introduction 1

1. Incorporating crimes within the jurisdiction of the Court 2
(a) genocide 2
(b) crimes against humanity 2
(c) war crimes 3
(d) Implementing other crimes under international law 4

2. Universal jurisdiction of national courts over crimes under international law 5

3. The doctrine of superior responsibility 5

4. Exclusion of certain defences for crimes under international law 6

5. Crimes against the administration of justice by the Court 7

6. Temporal jurisdiction of national courts over crimes against humanity and war crimes 7

7. Other principles of criminal law 8
(a) Fair trial guarantees 8
(b) Death penalty 8
(c) Gender-sensitive law reform 9
(d) Victims protection and support 9
(e) Victims participation 9
(f) Reparations for victims 10

8. Cooperation – general 10

9. National authority responsible for receiving requests from the Court 10

10. Commencement of provisions dealing with requests 11

11. Fiji's impunity agreement with the USA 11

12. Enforcement of sentences of imprisonment imposed by the Court 11

13. Privileges and immunities 12

14. Sittings of the Court in Fiji 12

Fiji
Comments on the Discussion Paper on implementation of the Rome Statute of the International Criminal Court

Introduction

On 29 November 1999, Fiji became the fifth country to ratify the Rome Statute of the International Criminal Court (Rome Statute). Amnesty International welcomed that step as an important commitment to end impunity for the worst crimes known to humanity. The Rome Statute, in addition to establishing a permanent International Criminal Court (Court) to bring to justice persons accused of genocide, crimes against humanity and war crimes, establishes a new system of international justice to end impunity whereby national courts accept their primary obligation to investigate and prosecute crimes under international law and only if they are unable or unwilling to do so, will the Court step in. For the new system of international justice to work, all states parties must accept responsibility to address impunity at the national level. This includes implementing the Rome Statute into national law to ensure that national courts can investigate and prosecute crimes under international law and to ensure full cooperation with the Court.

In February 2005, the Director of Public Prosecutions in Fiji established an ICC Working Group, to carry out preparatory work on the implementation of the Rome Statute of the International Criminal Court in Fiji's national law. In June, the ICC Working Group issued a *Discussion Paper on Implementation of the Rome Statute of the International Criminal Court in the Law of Fiji* (Discussion Paper). Amnesty International submits this paper to the ICC Working Group providing comments on the Discussion Paper. In doing so, Amnesty International welcomes the decision to commence the process of drafting implementing legislation in a transparent manner in close consultation with civil society. Whenever states have adopted this approach to drafting such legislation it has usually led to more effective legislation that is more consistent with international law than when the process has been a closed one involving only a few government officials.

Amnesty International adopts a progressive approach to implementation of the Rome Statute. The organization considers that all states parties should use the opportunity to reform their laws so that they can effectively investigate and prosecute all crimes under international law and their countries cannot be used as safe havens for persons seeking to evade justice. Furthermore, the organization urges states to ensure that some aspects of the Rome Statute – which are not consistent with international law – are addressed in national legislation. The organization's overall approach is set out in ***International Criminal Court: Checklist for Effective Implementation*** (AI Index: IOR 40/011/1999). Amnesty International has applied this checklist to existing draft and enacted implementing legislation in ***International Criminal Court: The Failure of States to Enact Effective Implementing Legislation*** (AI

Index: IOR 40/019/2004). In addition, Amnesty International is in the process of preparing a more detailed set of guidelines for states preparing implementing legislation which examines the Rome Statute article by article. These guidelines will be available later this year.

The following comments follow the order set out in the Discussion Paper. It should be noted that Amnesty International's comments are based on the organization's expertise in international law. The organization is unable to make any specific comments relating to Fiji's national law.

1. Incorporating crimes within the jurisdiction of the Court

Amnesty International welcomes the recommendation to include in Fiji's implementing legislation crimes under the jurisdiction of the Court. The following are some issues which the organization encourages the ICC Working Group to consider and address in this process.

(a) genocide

Although the Discussion Paper notes that genocide is already incorporated into national law, Amnesty International encourages the ICC Working Group to review the national definition to ensure that it is not weaker than the definition set out in Article II of the Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention) reiterated in Article 6 of the Rome Statute. Furthermore, the ICC Working Group may wish to review the existing definition with a view to enacting a broader definition than that set out in the Genocide Convention and the Rome Statute, including the definitions adopted by other states which are described in ***International Criminal Court: The Failure of States to Enact Effective Implementing Legislation***.

National legislation should also be reviewed to ensure that all four ancillary crimes of genocide listed in Article III of the Genocide Convention are incorporated into national law. The only one of these ancillary crimes of genocide expressly included in the Rome Statute is direct and public incitement to commit genocide. Although the other three forms of genocide are largely included in Article 25 (3) (a), (b), (c), (d) and (f), defining general principles of criminal responsibility applicable to all the crimes in the Rome Statute, these provisions are not complete and in some cases the Rome Statute adopts narrower definitions than the Genocide Convention. For example, the ancillary crime of conspiracy to commit genocide, which is covered in Article 25 (d) of the Rome Statute, is based on the narrowest civil law approach requiring that genocide has been committed or has been attempted. This approach is not consistent with the Convention or other international law which does not require that acts of genocide or preparatory acts be committed, but merely that there must be an agreement to commit genocide. Fiji should ensure that its national law incorporates the more comprehensive definition of the ancillary crimes of Genocide as defined in the Genocide Convention.

(b) crimes against humanity

Article 7 of the Rome Statute defines crimes against humanity consistently with international law. Amnesty International welcomes the recommendation in the Discussion

Paper to incorporate this article into national law. It is important that the definition is not weakened in any way during the implementation process. Furthermore, the Working Group may consider adopting a broader definition of crimes against humanity, including those adopted by other states, which are described in ***International Criminal Court: The Failure of States to Enact Effective Implementing Legislation***.

(c) war crimes

Although Amnesty International welcomes the recommendation to include war crimes in Fiji's implementing legislation, the organization recommends that a more comprehensive approach be adopted than simply incorporating Article 8 of the Rome Statute. War crimes are defined as criminal acts by a large body of conventional international law, including the 1907 Hague Regulations, the four Geneva Conventions of 1949 and their 1977 Protocols. Much of this treaty law is now considered to be part of customary international law, which is particularly important to bear in mind as Fiji has not yet ratified the 1977 Protocols, and many war crimes are increasingly recognized as contrary to *jus cogens* prohibitions. Article 8 of the Rome Statute draws on this existing body of law, but establishes a distinction between crimes committed in international and non-international armed conflicts, defines some war crimes more narrowly than in these instruments and, in some cases, omits certain war crimes.

(i) Unacceptable distinction between crimes committed on international and non-international armed conflict. It is indefensible that the Rome Statute defines certain acts as war crimes when committed in an international armed conflict but not when committed in a non-international armed conflict. All war crimes should be defined as such whether they are committed in international or non-international armed conflict. In instances where conduct is defined in terms generally applicable to international armed conflict, such as "prisoners of war" or "occupied territory", equivalent conduct in non-international armed conflict, with any necessary modifications to take into account unique aspects of non-international armed conflict, should be defined as a war crime.

(ii) Narrow definitions of some war crimes. For example, Article 57 (2) (a) (iii) of Protocol I prohibits "an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage". The definition of this crime in Article 8 (2) (b) (iv) of the Rome Statute is much weaker because, at the urging of the United States of America (USA), it replaces the narrow term "concrete and direct military advantage" with the expansive term, "concrete and direct *overall* military advantage". The definition in Protocol I should therefore be used.

(iii) Omission of some war crimes. For example, the Rome Statute does not criminalize unjustified delays in repatriating or freeing prisoners of war or interned civilians once active hostilities have ceased. This conduct has been defined as a "grave breach" and, thus, a war crime under the provisions of Article 85 (4) (b) of Protocol I. Similarly, the

prohibition of an attack on demilitarized zones, is not expressly defined as a crime in the Rome Statute, but such conduct is prohibited in Article 85 (3) (d) of Protocol I.

Amnesty International therefore encourages the ICC Working Group to adopt legislation criminalizing all war crimes consistently with international humanitarian law.

In addition, the organization is calling on all governments to adopt a more progressive approach to that in the Rome Statute by criminalizing in national law the conscription or enlistment children under the age of 18 years into armed forces or groups or to use them to participate actively in hostilities. Articles 8 (b) (xxvi) and 8 (e) (vii) of the Rome Statute provides that it is a war crime to conscript or enlist children under the age of fifteen years into armed forces or groups or to use them to participate actively in hostilities. The age limit was set in accordance with the Convention on the Rights of the Child and Protocol I to the Geneva Conventions. The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict – which has not yet been ratified by Fiji - however establishes a higher standard of protection for children. The Protocol requires states parties to set a minimum age of 18 for compulsory recruitment and participation in hostilities and to raise the minimum age for voluntary recruitment from that set out in article 38, paragraph 3, of the Convention on the Rights of the Child and to take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities. Amnesty International believes that voluntary or compulsory recruitment by governments or armed groups can jeopardize the mental and physical integrity of anyone below the age of 18 years. For this reason the organization opposes all forms of recruitment of persons below 18 years of age. Only by raising the minimum age to 18 years can Fiji guarantee that children will not participate in hostilities and ensure that they will not be defined as combatants under international humanitarian law.

(d) Implementing other crimes under international law

In addition to defining crimes listed in the Rome Statute as crimes under national law, Amnesty International is calling on all states to use implementation of the Rome Statute as an opportunity to criminalize all crimes under international law as crimes under national law. The other crimes under international law are torture, extrajudicial executions and enforced disappearances. Each one of these crimes would amount to crimes against humanity if committed as a widespread or systematic attack against a civilian population. However, they are also recognized as crimes under international law when they do not meet that threshold, including individual acts. To ensure that the international system of justice is fully effective, states should ensure that their legislation defines each of these crimes under international law as crimes under national law.

Amnesty International encourages the ICC Working Group to consider including these crimes in the Fiji's implementing legislation. The crimes should be defined in accordance with their definitions under international law as set out in the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1989 UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and

Summary Executions and the 1992 UN Declaration on the Protection of All Persons from Enforced Disappearance and the draft International Convention for the Protection of All Persons against Enforced Disappearances, which has been adopted by the UN Human Rights Council, with a recommendation that it be adopted by the UN General Assembly later this year.

2. Universal jurisdiction of national courts over crimes under international law

Amnesty International welcomes the recommendation of the ICC Working Group to "give national courts universal jurisdiction over international crimes." In promoting this recommendation, the ICC Working Group is encouraged to consider Amnesty International's legal memorandum, ***Universal Jurisdiction: The duty of states to enact and implement legislation*** (AI Index: IOR 53/002-018/2001). The memorandum, which is based on a study of state practice at the international and national level in 125 countries, demonstrates that all states may exercise universal jurisdiction over crimes under international law. In some cases, such as genocide, grave breaches of the Geneva Conventions and Protocol I and torture, they must do so if a person suspected of these crimes is present in the state, or they must extradite the suspect to a state able and willing to do so in a fair trial without the death penalty or surrender the suspect to an international court. Moreover, all states may act as agents of the international community to investigate crimes under international law and seek the extradition of persons suspected of such crimes against the international community to stand trial, even when the suspect is not present in the state.

Amnesty International welcomes Recommendation 2.3, which rejects the requirement that a political official consent to the prosecution of crimes under international law on the ground that it "could give rise to perceptions of political interference". However, the organization would welcome receiving a copy of the criteria used by the Director of Public Prosecutions for exercising his or her discretion to initiate prosecutions. In some countries such criteria were drafted to guide decisions whether to prosecute ordinary crimes and such criteria are largely inappropriate to guide decisions with regard to the worst possible crimes in the world, which involve considerations of the public interest of the entire international community, not just local community concerns.

3. The doctrine of superior responsibility

Amnesty International welcomes the ICC Working Group's recommendation to incorporate the doctrine of superior responsibility, which includes command responsibility, into Fiji's implementing legislation. International law requires that all persons— commanders and superiors, whether military or civilian—in positions of responsibility are obliged to prevent or repress their subordinates committing crimes under international law and, when such crimes have been committed, to submit the matter to the competent authorities for the purpose of prosecution. However, the organization has called on states not to implement Article 28 of the Rome Statute directly as it departs from customary international law, which imposes a single standard of criminal responsibility for both commanders and superiors by introducing different degrees of responsibility for military and civilian superiors in trials before the Court. Additional Protocol I, the Draft Code of Crimes against the Peace and

Security of Mankind, the Statute of the International Criminal Tribunal for the former Yugoslavia, the Statute of the International Criminal Tribunal for Rwanda, the Statute of the Special Court for Sierra Leone and the Law on the Establishment of the Extraordinary Chambers for Cambodia all hold civilian superiors to the same strict standards as military commanders. Unfortunately, in a retrograde step, Article 28 of the Rome Statute sets a strict standard of command responsibility for military commanders or persons effectively acting as military commanders, and a weaker standard of superior responsibility for civilian superiors, excluding the provision that the latter "should have known" that subordinates were committing or were about to commit crimes.

Amnesty International encourages the ICC Working Group not to incorporate the dual standard of superior responsibility in Article 28 of the Rome Statute, but to adopt the definition under customary international law which applies the same strict standard (set out in Article 28(a)) to both military and civilian commanders.

4. Exclusion of certain defences for crimes under international law

Amnesty International welcomes the ICC Working Group's recommendation to incorporate provisions equivalent to Article 27 in national law and that "there should be no time limits on the prosecution of any of these crimes."

The organization would, however, urge the ICC Working Group to reconsider its recommendation to incorporate provisions equivalent to Article 33 into Fiji's implementing legislation. Article 33 of the Rome Statute departs from customary and conventional international law by providing for the first time in an international treaty that superior orders are a defence to war crimes in certain instances. Under customary international law, superior orders can be considered as a mitigating factor, but they are prohibited grounds for relieving criminal responsibility. Article 8 of the Nuremberg Charter, which reflects customary international law, provides:

> "The fact that the Defendant acted pursuant to order of his Government or of a superior shall not free him from responsibility, but may be considered in mitigation of punishment, if the Tribunal determines that justice so requires."

The prohibition of superior orders as a defence to crimes under international law has been incorporated in the Charter of the International Military Tribunal for the Far East, the Statute of the International Criminal Tribunal for the former Yugoslavia, the Statute of the International Criminal Tribunal for Rwanda, the Statute of the Special Court for Sierra Leone, the Law on the Establishment of the Extraordinary Chambers for Cambodia and the Draft Code of Crimes against the Peace and Security of Mankind.

Amnesty International therefore recommends that Fiji's implementing legislation prohibits superior orders as a defence to war crimes and, instead, permits consideration of superior orders in mitigation of punishment.

5. Crimes against the administration of justice by the Court

Amnesty International welcomes the recommendation that "Fiji's implementing law should provide for the prosecution before its national courts of crimes against the administration of justice by the ICC." The legislation should provide for universal jurisdiction over such offences and provide for full cooperation with the Court on the same basis as for cooperation with respect to investigation and prosecution of crimes under international law.

6. Temporal jurisdiction of national courts over crimes against humanity and war crimes

Amnesty International would be concerned if the national implementing legislation would permit national prosecution of crimes against humanity and war crimes only when they had been committed after the legislation enters into force.

Although war crimes, apart from grave breaches of the Geneva Conventions, and crimes against humanity have not been incorporated into national law, they have been recognized as crimes under international law since the Second World War. With respect to war crimes, Fiji, although it did not ratify the Geneva Conventions until 9 August 1971, had jurisdiction over grave breaches pursuant to the United Kingdom's Geneva Conventions Act 1957, which applied to Fiji under the United Kingdom's Geneva Conventions Act (Colonial Territories) Order in Council, 1959, which is listed in the 1985 Revision of Subsidiary Legislation. Crimes against humanity and war crimes have been considered crimes under international law under general principles of law recognized by the international community since the Second World War, well before the adoption of the Rome Statute. Serious violations of common Article 3 of the Geneva Conventions and of Protocol II during non-international armed conflict have been recognized as war crimes entailing individual criminal responsibility since they were included in the jurisdiction of the International Criminal Tribunals for the former Yugoslavia and for Rwanda. Therefore, it would be fully consistent with the principle of *nullum crimen sine lege* to permit retrospective national criminal legislation with respect to crimes under international law. As Article 15 (2) of the International Covenant on Civil and Political Rights (ICCPR) makes clear, such legislation is fully consistent with the *nullum crimen sine lege* principle. That provision states that nothing in the article prohibiting retroactive punishment "shall prejudice the trial and punishment of any person for any act or omission which, at the time it was committed, was criminal according to the general principles of law recognized by the community of nations." Amnesty International encourages the ICC Working Group to consider whether Section 28 (1) (j) of Fiji's Constitution should be interpreted in the same way. Thus, crimes against humanity and war crimes which the government has accepted as crimes under international law and has committed to punish by ratifying the Geneva Conventions and the Rome Statute should be considered as offences not simply from the date the implementing legislation enters into force or the date of the ratification of those treaties, but from the moment those crimes were recognized as crimes under international law.

7. Other principles of criminal law

Amnesty International welcomes the ICC Working Group's recognition that in relation to other aspects of the Rome Statute, consideration needs to be given to whether principles of criminal law which overlap with ordinary crimes should be incorporated into national law covering all crimes. The organization notes that there are currently no recommendations on this issue and would welcome the opportunity to comment on these matters as the implementation process progresses. The organization, would at this stage like to highlight the following areas where it is promoting national criminal law reform to incorporate important provisions of the Rome Statute.

(a) Fair trial guarantees

Under states' complementarity obligations, it is essential that they include satisfactory procedural guarantees in national implementing legislation, penal codes or criminal procedure codes, both to ensure that the rights of all persons connected with a criminal investigation or trial in a national court be fully respected, and to ensure that the Court does not determine that the absence of such guarantees demonstrates inability or unwillingness genuinely to investigate or prosecute crimes under international law. The procedural guarantees in the Rome Statute, including those in Articles 55, 59 – 61 and 63 - 68, reflect the highest standards of fair trial guarantees in international law and should be used as a model by all states.

In addition, it is essential that states cooperating with the Court during a preliminary examination or an investigation respect certain procedural guarantees, such as those incorporated in Article 55 of the Rome Statute, in order to ensure that the Court can carry out its responsibilities effectively. To do otherwise than expressly include the highest standard of procedural guarantees in national law runs the risk that an accused could be acquitted on the easily-avoidable ground of failure to ensure that the procedural rights of the accused or a crucial witness were fully respected.

(b) Death penalty

Amnesty International considers that the death penalty violates the right to life recognized in Article 3 of the Universal Declaration of Human Rights (UDHR) and is the ultimate cruel, inhuman and degrading punishment, contrary to the prohibition in Article 5 of the UDHR. No state party should include the death penalty for genocide, crimes against humanity or war crimes in its implementing legislation. Although Fiji abolished the death penalty for ordinary crimes on 11 March 2002, the penalty is still retained in the Military Act. Articles 77 and 78 of the Rome Statute sets out applicable penalties and determination of sentence once the accused has been found guilty; these exclude the death penalty as a punishment. Article 77 provides that the maximum penalty the Court may impose is life imprisonment. It is inappropriate that national courts should impose a more severe penalty for a crime under international law than the one chosen by the international community itself. The Security Council excluded the death penalty for such crimes from the Statutes of the International Criminal Tribunals for Rwanda and the former Yugoslavia, and it has been excluded for such crimes by internationalized

courts, including the Special Panels for Serious Crimes in East Timor, the Regulation 64 international panels in Kosovo, the Special Court for Sierra Leone and the Extraordinary Chambers for Cambodia. Introducing the death penalty in implementing legislation for crimes under the Court's jurisdiction goes against the steady trend to abolish this punishment. More than half the countries in the world have abolished the death penalty in law or practice (see Amnesty International's web pages on the death penalty: http://web.amnesty.org/pages/deathpenalty-index-eng)

Amnesty International urges the ICC Working Group to ensure that crimes included in the implementing legislation would not be subject to the death penalty and should consider recommending complete abolition of the death penalty in Fiji taking into account that the Court in prosecuting the worst crimes under international law will not impose the punishment.

(c) Gender-sensitive law reform

The Rome Statute contains many gender sensitive elements which Amnesty International is campaigning for all states to implement both in the prosecution of crimes under international law and ordinary crimes under national law. In particular, the Rome Statute criminalizes violence against women, including crimes of sexual violence and establishes procedures to ensure that survivors are treated with dignity and protected in the justice process. To assist states in considering how to incorporate these progressive elements issues into national law, Amnesty International has developed the following document: ***Stop Violence Against Women: How to use international criminal law to campaign for gender-sensitive law reform*** (AI Index: IOR 40/007/2005). Amnesty International encourages the ICC Working Group to consider the organizations recommendations for gender-sensitive law reform in the implementation process.

(d) Victims protection and support

Article 68 of the Rome Statute requires the Court to "take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses." To implement this requirement, the Court has established a Victims and Witnesses Unit to provide protection and support to victims and their families. Amnesty International is calling on all states to ensure that they have similar mechanisms in place to ensure the protection and support of victims of crimes being prosecuted before national courts and to ensure that national authorities can cooperate effectively with the Court in implementing protection and support measures. The organization is currently developing guidelines on this issue for states implementing the Rome Statute.

(e) Victims participation

The Rome Statute and the Rules of Procedure and Evidence provide that victims can participate in Court proceedings. They will be allowed to have their own legal representation to guide and advise them through the trial process and will be permitted to express their views at certain stages of the Court process. The International Criminal Court has established a special unit to aid victims to participate in its proceedings and states should devise effective ways for victims to participate in criminal proceedings. The organization is currently

developing guidelines on this issue for consideration by states implementing the Rome Statute so that victims of crimes under international law and other human rights violations can participate effectively in national proceedings.

(f) Reparations for victims

The Rome Statute and the Rules of Procedure and Evidence provide that the Court can order reparations for victims against a convicted person. In addition, in October 2005, the United Nations General Assembly adopted Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and International Humanitarian Law and the UN Updated Set of principles for the protection and promotion of human rights through action to combat impunity. Consistent with these standards, Amnesty International is calling on all states to ensure that national laws provide that victims of crimes under international law and other human rights violations can obtain full and effective reparations. The organization is currently developing guidelines on this issue for states implementing the Rome Statute.

8. Cooperation – general

Amnesty International welcomes the ICC Working Groups recommendation "that Fiji's implementing law should include all provisions necessary to enable our national authorities to comply with any requests for cooperation from the ICC, including the Prosecutor of the ICC." Amnesty International has made a number of recommendations on these issues in its ***Checklist for Effective Implementation***, which will be supplemented in the future by more comprehensive guidelines.

9. National authority responsible for receiving requests from the Court

Amnesty International welcomes the initiative to set out in the implementing legislation to whom the Court should submit requests for cooperation. Such provisions should not preclude or bureaucratize day to day communications that may be necessary between Court staff and national authorities. For example, the Victims and Witnesses Unit of the Court should be able to communicate directly and frequently with police or a national unit regarding the protection and support they are providing to specific witnesses without having to communicate through a political official on each occasion.

Another point, which is not addressed in the Discussion Paper, but which is an important issue, is that requests for cooperation from the Court should be self-executing and there should not be executive discretion regarding the implementation of such requests. A number of states have included such inappropriate provisions in their legislation which threaten to delay cooperation and to frustrate the work of the Court. Amnesty International urges the ICC Working Group to ensure that similar provisions are not included in Fiji's implementing legislation.

10. Commencement of provisions dealing with requests

Amnesty International welcomes the recommendation "that the provisions of Fiji's implementing law dealing with requests for cooperation should be expressed to commence retrospectively on 1 July 2002."

11. Fiji's impunity agreement with the USA

Amnesty International has expressed disappointment that Fiji has entered into an illegal impunity agreement with the USA. Amnesty International has analysed the agreements in its papers, ***International Criminal Court: US efforts to obtain impunity for genocide, crimes against humanity and war crimes*** (AI Index: IOR 40/025/2002) and ***International Criminal Court: The need for the European Union to take more effective steps to prevent members from signing US impunity agreements*** (IOR 40/030/2002) (enclosed), concluding that the agreements violate the Rome Statute and other international law. The organization has called for all states not to enter into such agreements and when governments do sign them, for parliaments to refuse to ratify them.

The organization, however, notes that the ICC Working Group is not considering the legality of the agreement, but only the potential implementation issues. The recommendation adopted by the ICC Working Group "that Fiji's implementing law should provide for the ICC to determine whether Article 98 applies to a request for the arrest and surrender of a person" is an important one, which clarifies that this is a decision for the Court itself to make.

12. Enforcement of sentences of imprisonment imposed by the Court

Amnesty International welcomes the ICC Working Group's recommendation "that Fiji's implementing law should provide for Fiji to house persons sentenced to imprisonment by the ICC, by agreement between the Fiji Government and the ICC." Amnesty International is calling on all states parties to enter into such an agreements recognizing that the Rome Statute envisages that all states parties, other than the host state, the Netherlands, will share in the acceptance of persons to serve sentences of imprisonment imposed by the Court.

The organization notes that the ICC Working Group has recommended that the government consider imposing certain conditions on the acceptance of prisoners, and questioned whether acceptance "should be limited to Fiji nationals sentenced by the ICC, or include prisoners from other nationalities." Amnesty International believes that it would be important to enable Fiji's prisons to house non-Fijian nationals, particularly if they are from the Pacific Island region. An alternative may be to impose a condition accepting Fiji nationals plus a set number of prisoners of other nationalities.

The organization welcomes the Discussion Report's recognition of the requirement that pursuant to Article 106 of the Rome Statute, prison conditions must be consistent with international standards. It notes that consultations are planned with the Prisons Department. It also notes that in 2005, the Fiji Law Reform Commission proposed a draft Bill to bring prison

services into line with international human rights standards. Amnesty International considers that the implementation of measures to ensure prison conditions in Fiji meet international standards, including ensuring adequate resources to achieve this, is essential. There are a broad range of international standards governing the treatment of prisoners other than those expressly incorporated in treaties which states should apply. These include: the UN Standard Minimum Rules for the Treatment of Prisoners, the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the UN Code of Conduct for Law Enforcement Officials, the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the UN Basic Principles on the Role of Lawyers, as well as regional rules, such as the European Prison Rules. These instruments are used by treaty monitoring bodies to inform their authoritative interpretation of the rights in international treaties such as the International Covenant on Civil and Political Rights and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Indeed, the first two of these standards are expressly listed as international treaty standards in their own right in the Agreement between the International Criminal Court and the Federal Government of Austria on the Enforcement of Sentences of the International Criminal Court (available at: http://www.icc-cpi.int/library/about/officialjournal/ICC-PRES-A103-AT-05_English.pdf). Some of them, such as the UN Standard Minimum Rules for the Treatment of Prisoners, can be said to reflect customary international law.

13. Privileges and immunities

Amnesty International welcomes the ICC Working Groups recommendation for Fiji to ratify the Agreement on Privileges and Immunities of the International Criminal Court and for its implementation into national law.

14. Sittings of the Court in Fiji

Amnesty International welcomes the ICC Working Group's recommendation "that Fiji's implementing law should provide for the ICC to sit and conduct trials on the national territory of this state. The ICC should be enabled to exercise all of its functions and powers in Fiji for this purpose, and provision should be made for the detention of persons in the custody of the ICC."