

Re: Recommendations in relation to the International Criminal Court (ICC) at the 19th session of the Human Rights Council's Universal Periodic Review (UPR).

New York, Brussels, 2 April 2014.

Your Excellency,

In your capacity as a representative of a State Party to the Rome Statute of the International Criminal Court (ICC) and as member of the United Nations, I have the honour of writing to you on behalf of the Coalition for the International Criminal Court, a network of over 2,500 non-governmental organizations in more than 150 countries advocating for a fair, effective and independent International Criminal Court (ICC), to encourage you and your government to make specific recommendations in relation to the ICC to States coming up for review at the **19th session of the Human Rights Council's Universal Periodic Review (UPR) to be held from 28 April to 9 May 2014 in Geneva.**

The ICC and the Rome Statute system represent the greatest advance in international criminal law in the last fifty years. For the first time, a permanent mechanism to investigate and prosecute crimes that shock the conscience of humankind had been created. In February 2013, Côte d'Ivoire became the 122nd State to ratify the Rome Statute of the ICC. This is in itself a remarkable achievement. However, continuing to secure universal acceptance of the Court remains a primary objective in order to ensure that no perpetrators of genocide, war crimes, and crimes against humanity can escape justice. It is therefore necessary that ICC Member States - in all fora, but particularly within United Nations bodies – ensure that universality of the Rome Statute is achieved.

During the 1st cycle of the UPR (2008-2011), participating ICC Member States issued over 100 recommendations to more than 60 States in relation to the ICC – the majority concerning ratification of the Rome Statute on the basis of paragraph 2 of Human Rights Council (HRC) Resolution 5/1 (2007). These recommendations have been influential in generating discussion on international justice at both the national level and in UN fora, in promoting the adoption of concrete steps to strengthen the membership of the ICC, and in increasing the effectiveness of domestic legal systems in dealing with national investigations and prosecutions of crimes against humanity, genocide, and war crimes.

The second cycle of review – which began with the 13th UPR session (22 May-4 June 2012) – offered a new opportunity to strengthen the global commitment towards ending impunity for the perpetrators of the most serious crimes. In this regard, we welcome the recommendations made so far in relation to the ICC, the majority on ratification and implementation of the Rome Statute and of the Agreement on Privileges and Immunities of the Court (APIC).

Your Excellency, we therefore appeal to your government, as a State Party to the Rome Statute, to reaffirm its commitment to the fight against impunity at the Human Rights Council. Specifically, we appeal to your government to promote the **worldwide ratification of the Rome Statute and of the APIC and their implementation into national legislations** – on the basis of paragraph 2 and paragraph 1 of HRC Resolution 5/1 (2007), respectively – during the discussion in the UPR Working Group, by making recommendations to the States under review that have not yet undertaken such steps. For your information, the annex below includes background information on and suggested recommendations to the States under review at the 18th UPR session.


Your Excellency, we urge you to submit recommendations and to make a focused intervention highlighting these recommendations during the interactive dialogue. In addition, the Coalition encourages you to follow up on the recommendations made during the previous sessions to ensure the prompt implementation of accepted recommendations as well as to encourage States that have rejected or not responded to recommendations to consider them.

The Coalition remains at your disposal and is prepared to work with your government to provide you with support and advice for your efforts within the United Nations' Human Rights Council.

Sincerely,

William R. Pace

Convenor
Coalition for the International Criminal Court

A handwritten signature in black ink that reads "William R. Pace". The signature is written in a cursive, flowing style.

Status of Ratification and Implementation of the Rome Statute and the Agreement on Privileges and Immunities (APIC)
and
Recommendations to the States under Review at the 19th session of the Human Rights Council’s Universal Periodic Review (UPR) (Working group: 28 April - 9 May 2014)¹

The information and recommendations suggested below **for the States under review** cover the following elements:

- (a) Accession to/ratification of the Rome Statute,
- (b) Accession to/ratification of the Agreement on Privileges and Immunities of the Court (APIC), and
- (c) The full alignment of national legislations with both agreements.

No recommendations are suggested for the States under review that have already undertaken such steps.

(Countries listed in alphabetical order)

ALBANIA

- ◆Albania ratified the Rome Statute on 31 January 2003.
- ◆Albania ratified the APIC on 2 August 2006.
- ◆The 2009 criminal code includes incomplete definitions of crimes against humanity, genocide, and war crimes in its section on “*Crimes against humanity*” as well as some Rome Statute principles (*nullum crimen sine lege, nulla poena sine lege*, etc).
- ◆General obligations regarding inter-state judicial cooperation and extradition procedures are included in the code but do not cover assistance and cooperation with the ICC specifically. There are no known efforts underway to further align national legislation with the provisions of the RS.

Recommendation for the 19th session of the UPR:

Albania should fully align its national legislation with the Rome Statute, including by incorporating provisions to cooperate promptly and fully with the International Criminal Court and to investigate and prosecute genocide, crimes against humanity and war crimes effectively before its national courts.

BHUTAN

- ◆Bhutan has not signed or ratified the Rome Statute.
- ◆Bhutan has not signed or ratified the APIC.
- ◆There are no known efforts regarding the accession to the Rome Statute or the APIC, and the alignment of national legislation with the Rome Statute.

¹ The information provided herein has been noted and compiled by the Coalition for the International Criminal Court either via public domain sources or via direct communications from States themselves. Errors and lacunae may thus be present. The Coalition welcomes any updates or corrections to the information provided herein.

During the 1st cycle of the UPR, in 2009, Bhutan **accepted** a recommendation to ratify the Rome Statute and the APIC (made by Slovakia). Bhutan gave a **general response** to a recommendation to ratify the Rome Statute and other international treaties (made by Argentina)².

Recommendation for the 19th session of the UPR:

Bhutan should accede to and fully align its national legislation with the Rome Statute of the International Criminal Court (ICC), including by incorporating provisions to cooperate promptly and fully with the International Criminal Court and to investigate and prosecute genocide, crimes against humanity and war crimes effectively before its national courts, and accede to the Agreement on Privileges and Immunities of the Court (APIC).

BRUNEI DARUSSALAM

- ◆ Brunei Darussalam has not signed or ratified the Rome Statute.
- ◆ Brunei Darussalam has not signed or ratified the APIC.
- ◆ Few advances have been made regarding accession to the Rome Statute, although it has been reported that the Ministry of Foreign Affairs continues to study and monitor the developments of ICC and its work.
- ◆ There are no known efforts regarding the alignment of national legislation with the Rome Statute.

During the 1st cycle of the UPR, in 2009, Brunei Darussalam **rejected** the recommendations to ratify the Rome Statute and other international treaties (made by Chile and Slovakia)³.

Recommendation for the 19th session of the UPR:

Brunei Darussalam should accede to and fully align its national legislation with the Rome Statute of the International Criminal Court (ICC), including by incorporating provisions to cooperate promptly and fully with the International Criminal Court and to investigate and prosecute genocide, crimes against humanity and war crimes effectively before its national courts, and accede to the Agreement on Privileges and Immunities of the Court (APIC).

COSTA RICA

- ◆ Costa Rica ratified the Rome Statute on 7 June 2001.
- ◆ Costa Rica ratified the APIC on 28 April 2011.
- ◆ In May 2002, Costa Rica amended the Criminal Code (*Law on Criminal Prosecution to Punish War Crimes and Crimes against Humanity, Law No. 82721*) with provisions on war crimes and crimes against humanity. The provisions establish that any of these crimes included in international treaties ratified by Costa Rica, including the Rome Statute, are punishable under Costa Rican domestic legislation. A bill to include additional war crimes, crimes against humanity, and the crime of genocide in the Criminal Code is pending

² Argentina recommended Bhutan to “Become a party to ICERD, ICCPR and its Optional Protocols, ICESCR, the Convention on the Prevention and Punishment of the Crime of Genocide, the Rome Statute of the International Criminal Court and the Convention on the Status of Refugees and its Protocol”.

³ Chile recommended Brunei Darussalam to “Consider signing or ratifying, as appropriate, the following international human rights instruments: the Optional Protocols to ICCPR, CAT, the Rome Statute of the International Criminal Court and the Convention on the Prevention and Punishment of the Crime of Genocide” and Slovakia recommended Brunei Darussalam to “Consider an early ratification of the Optional Protocols to ICCPR and ICESCR, CAT and the Rome Statute”.

discussion within the Human Rights Commission in Congress. The Bill includes all Rome Statute crimes as well as principles of international criminal law.

◆During the Review Conference of the Rome Statute (held in 2010, in Kampala, Uganda), Costa Rica pledged to adopt a “*National Protocol on Cooperation with the International Criminal Court*” to implement, inter alia, the provisions of Part 9 of the Rome Statute on “International cooperation and judicial assistance”. Some of these actions have been adopted, such as the designation of ICC Focal Points. The government of Costa Rica is currently looking into the elaboration of specific provisions on cooperation with the ICC.

Recommendation for the 19th session of the UPR:

Costa Rica should fully align its national legislation with the Rome Statute of the International Criminal Court (ICC), including by incorporating provisions to cooperate promptly and fully with the International Criminal Court and to investigate and prosecute genocide, crimes against humanity and war crimes effectively before its national courts.

COTE D’IVOIRE

◆Côte d’Ivoire ratified the Rome Statute on 15 February 2013.

◆Côte d’Ivoire has not signed or ratified the APIC.

◆An experts’ workshop was held in July 2013 in commemoration of International Justice Day. On 19 July 2013, the experts submitted a draft bill to the Minister of Justice (*Ministère de la Justice et des Libertés Publiques*), including provisions to cooperate promptly and fully with the ICC and to prosecute the crimes under the Rome Statute effectively before its national courts.

The Government is reportedly considering the draft bill and has not yet transmitted it to the Parliament. In January 2014, a parliamentary meeting held in the National Assembly of Côte d’Ivoire on the fight against impunity for international crimes, evidenced multipartisan support for the prompt implementation of the Rome Statute into national legislation.

*During the 1st cycle of the UPR, in 2009, Côte d’Ivoire gave a **general response**⁴ to the recommendations to ratify the Rome Statute (made by Brazil and the United Kingdom), and align its legislation with the Rome Statute (made by Mauritius), and the recommendation to ratify the Rome Statute and the APIC (made by Slovakia).*

*Côte d’Ivoire **did not respond** to the recommendations to ratify the Rome Statute and other international treaties (made by Austria and Chile⁵) and to “authorize the Prosecutor of the ICC to conduct a mission in Cote d’Ivoire, as prescribed by the Rome Statute” (made by Belgium).*

⁴ Côte d’Ivoire commented that (in French): “La Côte d’Ivoire a signé le Traité instituant la Cour le 30 novembre 1998 et a reconnu la compétence de la CPI au regard de crimes commis sur son territoire depuis le 19 septembre 2002. Mais les exigences de l'article 95 de sa Constitution de 2000 ont amené les Autorités ivoiriennes à soumettre ce Traité au Conseil Constitutionnel dans le cadre du contrôle de sa conformité à la Constitution. Dans un avis du 17 décembre 2003, le Conseil Constitutionnel ivoirien a relevé quelques priorités qui seraient de nature à gêner la Côte d’Ivoire dans une procédure de ratification du Traité de Rome en l’état et d’autres éléments qui entraveraient sa mise en oeuvre : “L’amnistie, les privilèges et les immunités des hautes autorités de l’Etat, la prescriptibilité des crimes selon les dispositions actuelles du code de procédure pénale ivoirien”.”

⁵ Austria recommended Côte d’Ivoire to “Ratify the Convention on the Rights of Persons with Disabilities CRPD, OP-CAT and the Rome Statute” and Chile recommended Côte d’Ivoire to “Ratify the following international human rights instruments: the second Optional Protocol to the International Covenant on Civil and Political Rights - OP-CAT - the two Optional Protocols to CRC - CRPD and its Optional Protocol and the Rome Statute”

Recommendation for the 19th session of the UPR:

Côte d'Ivoire should fully align its national legislation with the Rome Statute of the International Criminal Court (ICC), including by incorporating provisions to cooperate promptly and fully with the International Criminal Court and to investigate and prosecute genocide, crimes against humanity and war crimes effectively before its national courts, and accede to the Agreement on Privileges and Immunities of the Court (APIC).

DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA

- ◆The Democratic People's Republic of Korea has not signed or ratified the Rome Statute.
- ◆The Democratic People's Republic of Korea has not signed or ratified the APIC.
- ◆There are no known efforts regarding the accession to or alignment of national legislation with the Rome Statute.

Recommendation for the 19th session of the UPR:

The Democratic People's Republic of Korea should accede to and fully align its national legislation with the Rome Statute of the International Criminal Court (ICC), including by incorporating provisions to cooperate promptly and fully with the International Criminal Court and to investigate and prosecute genocide, crimes against humanity and war crimes effectively before its national courts, and accede to the Agreement on Privileges and Immunities of the Court (APIC).

DEMOCRATIC REPUBLIC OF CONGO

- ◆The Democratic Republic of Congo (DRC) ratified the Rome Statute on 11 April 2002.
 - ◆The DRC ratified the APIC on 3 July 2007.
 - ◆In March 2008, a comprehensive bill including both provisions to cooperate with the ICC and to investigate and prosecute genocide, crimes against humanity and war crimes effectively before its national courts was deposited in the National Assembly for consideration. On 4 November 2010 the National Assembly, declared this bill admissible. In 2011, an amended version of the draft bill was sent to the Commission on Politics, Administration and Justice (*Commission politique, administrative et judiciaire*) of the National Assembly. The ICC bill was not considered in Plenary. At the September 2012 United National General Assembly High-Level Meeting on the Rule of Law, the DRC also made a commitment to speeding up the process of aligning its legislation with the Rome Statute. The draft bill was re-introduced again and sent to the Commission on Politics, Administration and Justice in November 2012.
- In early 2013, the government instructed the Commission on Politics, Administration and Justice to divide the draft ICC bill in 4 laws: one modifying the criminal code, one modifying the criminal procedural code, one modifying the criminal military code and finally one modifying the judicial military code. The Commission adopted the bills in December 2013. The discussion of these bills in plenary session hasn't yet been put on the agenda of the National Assembly's session that started in March 2014 for its examination in plenary.

*During the 1st cycle of the UPR, in 2009, the Democratic Republic of Congo (DRC) **accepted**⁶ the recommendations to align its legislation with the Rome Statute (made by Argentina and*

⁶ The DRC further noted that the recommendations made by Australia and Switzerland "are either already implemented or in the process of implementation".

Switzerland), and to “prosecute all those accused of war crimes and crimes against humanity, regardless of their position in the hierarchy, and strip of their function in the army or civil service those identified as perpetrators of grave human rights violations” (made by Switzerland), as well as “Ensure that International Criminal Court arrest warrants are executed regardless of rank - the Rome Statute is enacted into domestic law - demobilization and reintegration are accelerated - and the Security Council's recommendations on military officer screening and transitional justice are implemented” (made by Australia).

Recommendation for the 19th session of the UPR:

The Democratic Republic of Congo (DRC) should fully align its national legislation with the Rome Statute, including by incorporating provisions to cooperate promptly and fully with the International Criminal Court and to investigate and prosecute genocide, crimes against humanity and war crimes effectively before its national courts.

DOMINICA

- ◆Dominica acceded to the Rome Statute on 12 February 2001.
- ◆Dominica has not signed or ratified the APIC.
- ◆An ICC Implementing Legislation Bill including both provisions to cooperate with the ICC and to investigate and prosecute genocide, crimes against humanity and war crimes effectively before its national courts was prepared by the Attorney General's Office in 2005. There is no information available on the progress of this draft bill.

Recommendation for the 19th session of the UPR:

Dominica should fully align its national legislation with the Rome Statute of the International Criminal Court (ICC), including by incorporating provisions to cooperate promptly and fully with the International Criminal Court and to investigate and prosecute genocide, crimes against humanity and war crimes effectively before its national courts, and accede to the Agreement on Privileges and Immunities of the Court (APIC).

EQUATORIAL GUINEA

- ◆Equatorial Guinea has not signed or ratified the Rome Statute.
- ◆Equatorial Guinea has not signed or ratified the APIC.
- ◆There are no known efforts regarding the accession to or alignment of national legislation with the Rome Statute.

*During the 1st cycle of the UPR, in 2009, Equatorial Guinea **accepted** a recommendation to ratify the Rome Statute (made by Chile).*

Recommendation for the 19th session of the UPR:

Equatorial Guinea should accede to the Rome Statute of the International Criminal Court (ICC) and fully align its national legislation with the Rome Statute, including by incorporating provisions to cooperate promptly and fully with the International Criminal Court and to investigate and prosecute genocide, crimes against humanity and war crimes effectively before its national courts, and accede to the Agreement on Privileges and Immunities of the Court (APIC).

ETHIOPIA

- ◆ Ethiopia has not signed or ratified the Rome Statute.
- ◆ Ethiopia has not signed or ratified the APIC.
- ◆ The Penal Code of Ethiopia contains definitions of genocide, crimes against humanity, and war crimes but the definitions are not fully consistent with the Rome Statute as they predated it.

There are no known efforts regarding the accession to or alignment of national legislation with the Rome Statute.

*During the 1st cycle of the UPR, in 2009, Ethiopia **rejected** the recommendations to ratify the Rome Statute (made by Argentina and Canada) and the APIC (made by Slovakia).*

Recommendation for the 19th session of the UPR:

Ethiopia should accede to the Rome Statute of the International Criminal Court (ICC) and fully align its national legislation with the Rome Statute, including by incorporating provisions to cooperate promptly and fully with the International Criminal Court and to investigate and prosecute genocide, crimes against humanity and war crimes effectively before its national courts, and accede to the Agreement on Privileges and Immunities of the Court (APIC).

NICARAGUA

- ◆ Nicaragua has not signed or ratified the Rome Statute.
- ◆ Nicaragua has not signed or ratified the APIC.
- ◆ A new Criminal Code (*Law No. 641*) adopted in November 2007 and enacted in July 2008 includes most of the Rome Statute crimes in Title XXII. Notwithstanding, with regards to accession to the Rome Statute, Nicaragua has reiterated over the last years that it does not intend to accede to the Rome Statute in the near future. In the June 2011 and 2012 OAS Resolutions on Promotion of the ICC, Nicaragua included a declaration stating that “*the Government of Nicaragua cannot for the time being accede to the Rome Statute as conditions in our country do not favor our adhering to this international instrument.*”

*During the 1st cycle of the UPR, in 2009, Nicaragua **rejected** a recommendation made by Chile to ratify the Rome Statute,*

Recommendation for the 19th session of the UPR:

Nicaragua should accede to the Rome Statute of the International Criminal Court (ICC) and fully align its national legislation with the Rome Statute, including by incorporating provisions to cooperate promptly and fully with the International Criminal Court and to investigate and prosecute genocide, crimes against humanity and war crimes effectively before its national courts, and accede to the Agreement on Privileges and Immunities of the Court (APIC).

NORWAY

- ◆ Norway ratified the Rome Statute on 16 February 2000.
- ◆ Norway ratified the APIC on 10 September 2002.
- ◆ The Criminal Code as amended in March 2005 introduced updated substantive legislation on the crimes of genocide, war crimes, and crimes against humanity based on the definitions in

the Rome Statute. Some definitions are more extensive in that they also include certain crimes considered as war crimes under international customary law that are not in the Rome Statute.

◆The *Law to Implement the Statute of the International Criminal Court* was enacted in 2001 to incorporate the Rome Statute provisions on cooperation into national legislation. The law includes provisions on surrender of persons and enforcement of sentences.

◆On 10 June 2013, Norway ratified the amendment to article 8 of the Rome Statute related to the prohibition of the use of certain weapons in a non-international armed conflict (Article 8 of the Rome Statute).

In the framework of this campaign, no recommendations are suggested for Norway.

PORTUGAL

◆Portugal ratified the Rome Statute on 5 February 2002.

◆Portugal ratified the APIC on 3 October 2007.

◆The *Law adapting Portuguese criminal legislation to the Statute of the International Criminal Court* (Law 31/2004) was adopted on 22 July 2004. It amended the criminal code by introducing substantive definitions of genocide, crimes against humanity, and war crimes along the lines of the Rome Statute

◆There is no specific legislation on cooperation with the ICC however legislation on international judicial cooperation in criminal matters passed in 1999 can be used to address some aspects of cooperation with the ICC, including arrest and surrender of suspects, enforcement of sentences, and mutual legal assistance.

Recommendation for the 19th session of the UPR:

Portugal should fully align its national legislation with the Rome Statute, by incorporating provisions to cooperate promptly and fully with the International Criminal Court.

QATAR

◆Qatar has not signed or ratified the Rome Statute.

◆Qatar has not signed or ratified the APIC.

◆On 24-25 May 2011, Qatar hosted a Regional Diplomatic Conference on the ICC. The President of Qatar, Sheikh Tamin bin Hamad Al Thani, noted in his opening statement that the “ICC is one of the most important achievements of the international community and it will be an essential basis for the progress of the human civilization.” In June 2011, Qatar signed an agreement with the ICC naming Doha as the Court’s regional seat for information, training, and qualifying Arab lawyers to work for the ICC.

◆There are no further known efforts regarding the accession to or full alignment of national legislation with the Rome Statute.

*During the 1st cycle of the UPR, in 2009, Qatar **rejected** a recommendation to ratify the Rome Statute and other international treaties (made by Chile)⁷.*

Recommendation for the 19th session of the UPR:

Qatar should accede to the Rome Statute of the International Criminal Court (ICC) and fully align its national legislation with the Rome Statute, including by incorporating provisions to cooperate promptly and fully with the International Criminal Court and to investigate and prosecute genocide, crimes against humanity and war crimes effectively before its national courts, and accede to the Agreement on Privileges and Immunities of the Court (APIC).

⁷ Chile recommended Qatar to “Ratify international instruments still pending, particularly the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Optional Protocol to the Convention against Torture, the Optional Protocol to the Convention on the Rights of Persons with Disabilities, and the Rome Statute”.