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## Japan

# Amnesty International's appeal to members of parliament to support for Japan's accession to the Rome Statute of the International Criminal Court in 2007

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“The establishment of the International Criminal Court in 2002 was the realization of a long effort to end impunity and undertake through the rule of law that those who commit the crime of genocide, crimes against humanity and war crimes will no longer be beyond the reach of justice. This important step demonstrated the international community's commitment to a permanent and universal mechanism to ensure that as regards those most serious of crimes, impunity will not be tolerated.”

**United Nations Secretary-General, Kofi Anan, Annual Report of the Secretary-General on the Work of the Organization, 16 August 2005**

“Japan is making last efforts towards the accession to the Rome Statute, so that Japan will be able to even more effectively support the Court as a State Party, with a view to eradicating and preventing the most serious crimes and thereby strengthening the rule of law in the international community.”

**Statement by H.E. Kyoji Komachi, Ambassador of Japan to the Netherlands at the Fifth Session of the Assembly of States Parties of the International Criminal Court, 23 November 2006.**

Amnesty International today called on all members of Japan's Diet to support the government's progress towards acceding to the Rome Statute of the International Criminal Court (Rome Statute) in 2007. The government has indicated that the issue of accession, as well as necessary legislation, will be submitted to the Diet in the near future its approval. Parliamentary support is therefore vital for Japan to join the new system of international justice.

The Rome Statute was adopted on 17 July 1998 to establish a new permanent International Criminal Court (Court) to investigate and prosecute individuals suspected of genocide, crimes against humanity and war crimes. Less than four years later, as a result of overwhelming international support, the Court was established. Since then the Court has focussed on investigating and prosecuting crimes committed in the Democratic Republic of Congo, northern Uganda and Darfur, Sudan. The first trial of Thomas Lubanga Dyilo, who is charged with conscripting, enlisting or using children under the age of fifteen in hostilities in the Democratic Republic of Congo, is expected to begin in 2007.

Amnesty International believes that with international support and cooperation the Court will help to deter the most horrific crimes by ensuring that those responsible will be brought to justice either in the Court or, under the principle of complementarity, in national courts. Since 1998, Amnesty International has been campaigning for all states to join the new system of international justice by ratifying or acceding to the Rome Statute. At present, 104 states from all continents, over half the international community, have done so. Many other states are preparing to ratify or accede.

Even the United States of America, which originally opposed the establishment of the Court, is now re-considering its position. For example, on 18 September 2006, the Legal Adviser of the US State Department stated that "we share the goals of the International Criminal Court for international criminal justice and accountability" and that with respect to the situation in Darfur, "we supported the use of the International Criminal Court for the trials for those responsible for atrocities in Darfur."

Japan has been a strong supporter of the establishment of the Court. It participated in the drafting of the Rome Statute and has since actively followed the work of the Court, including participating as an observer at the Court's oversight body – the Assembly of States Parties. Amnesty International welcomes reports in September this year that in preparation to ratify the Rome Statute, the government has earmarked funds to contribute to the Court's budget in 2007 and is planning to submit the issue to the Diet for approval shortly, including legislation ensuring Japan's cooperation.

If Japan does accede in 2007, it will be able to participate fully in the Assembly of States Parties and would be eligible to nominate a candidate to be a judge at future elections. Most importantly, Japan's ratification would ensure that Japanese people will be protected by the new system of international justice to end impunity for the worst crimes known to humanity.

Amnesty International is aware that widespread parliamentary support for the Court already exists within the Diet. Indeed, the organization has on earlier occasions raised the issue with parliamentary parties and notes that there exists overwhelming support for Japan's accession. Nevertheless, Amnesty International is aware that a small number of concerns have been raised as to whether Japan should accede to the Rome Statute. Amnesty International would like to respond to these concerns.

Firstly, concern has been raised that the Court, which is currently focussing on African situations, will not be relevant to Japan. Of course, crimes of such seriousness are considered crimes against the whole of humanity regardless of where they are committed and all states must join in working to end them. Furthermore, it would be wrong to conclude that the Court is focused solely on Africa based on its first investigations – which unarguably represent the most serious situations in which crimes are being committed. Although the Court has focussed on African situations in its first investigations, the Court currently has a number of other situations under analysis and it will no doubt launch further investigations in other regions in the near future.

Secondly, concern has been raised that Japan will have to contribute too much to the funding of the Court. As the scale of payments to the Court is based on the United Nations scale, it is true that Japan will be among the highest contributing states. The Assembly of States Parties has recently clarified that the maximum assessed rates applied by the United Nations will also be applied to its contributions to the Court's budget. Amnesty International hopes that financial issues will not prevent Japan's accession to the Rome Statute. The organization notes that the overall budget of the Court is small in comparison to other international institutions, currently at less than 90 million euros. It is also important to note that strong financial controls have been put in place to ensure that the Court operates efficiently and effectively, including an internal auditor to monitor the day to day work of the Court, an external auditor which reports annually to the Assembly of States Parties and an expert Committee on Budget and Finance to review the Court's annual budget requests.

Thirdly, concern has been raised that military and civilian commanders will automatically be criminally liable before the Court for crimes committed by their subordinates. This is not the case. The Rome Statute does recognize that commanders can be criminally responsible for crimes committed by their subordinates, but Article 28 is carefully drafted to avoid injustices that may have occurred in some national prosecutions of commanders. Command responsibility is subject to a number of conditions: commanders must have effective command and control or effective authority over their forces; they must fail to exercise control properly over their forces; they must know or should have known (in the Rome Statute, this element of negligence only applies military and not civilian commanders) that the forces were committing or about to commit the crimes; and they must fail to take all necessary and reasonable measures within their power to prevent or repress the crimes or to submit the matter to competent authorities for investigation and prosecution.

Lastly, concern has been raised that provisions in the Rome Statute which hold subordinates criminally responsible for following orders by their superiors is incompatible with Japanese law, which provides that subordinates must follow orders of their commanders. While a general obligation to follow orders is contained in Japanese law, it would be absurd to interpret the provisions in a manner that would obligate a subordinate to commit genocide, crimes against humanity or war crimes. The Rome Statute addresses this question by providing for an exception where national obligations to follow orders exist. The exception is, however, subject to two important conditions: the subordinate must not know that the order was unlawful; and the order was not manifestly unlawful. The Rome Statute makes clear that orders to commit genocide and crimes against humanity are manifestly unlawful.

Amnesty International hopes this information is useful to members of the Diet when they consider Japan's of accession to the Rome Statute. Members seeking further information on the International Criminal Court can refer to AI Japan's web pages on the Court, including fact sheets at: [www.amnesty.or.jp](http://www.amnesty.or.jp). Alternatively, members wishing to discuss any issues raised in this paper are welcome to contact Makoto Terranaka, Amnesty International Japan at: 4F Kyodo Bldg., 2-2 Kandanishiki-cho, Chiyoda-ku, TOKYO 101-0054; Tel: (+ 81 3) 3518 6777; Fax (+ 81 3) 3518 6778; e-mail: [info@amnesty.or.jp](mailto:info@amnesty.or.jp)

Amnesty International looks forward to Japan's accession of the Rome Statute furthering its commitment to international justice by joining the international movement to end impunity for the worst crimes known to humanity.