
amnesty international

International Criminal

Court:

**Implementing the Assembly's Plan
of Action for achieving universality
and full implementation of the Rome
Statute**



“Universal ratification and full implementation of the Rome Statute of the International Criminal Court are imperative if we are to achieve justice and to be successful in the fight against impunity.”

Report of the Bureau on ratification and implementation of the Rome Statute and on participation in the Assembly of States Parties, ICC-ASP/5/26

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International Criminal Court Implementing the Assembly's Plan of Action for achieving universality and full implementation of the Rome Statute

Introduction

Amnesty International is a human rights organization which has campaigned for over 12 years for the establishment and operation of a just, fair and effective International Criminal Court (Court). In particular, since the adoption of the Rome Statute in July 1998, Amnesty International has campaigned for universal ratification and effective implementation of the Rome Statute and the Agreement on Privileges and Immunities of the International Criminal Court (APIC). At present, the organization is campaigning for ratification by the following priority target countries: Angola, Cape Verde, Chile, China, Cote d'Ivoire, Guatemala, India, Indonesia, Japan, Lebanon, Morocco, Moldova, Mozambique, Nepal, Philippines, Thailand, Togo, Turkey, Ukraine and Pacific Island states. The organization is also actively encouraging states around the world to draft and enact effective implementing legislation for both the Rome Statute and APIC in a transparent process in close consultation with civil society at every stage. Amnesty International has provided detailed commentaries on draft and enacted legislation in a significant number of countries.¹

Since the first session of the Assembly of States Parties (Assembly), Amnesty International lobbied the Assembly to join regional governmental organizations, governments and civil society in working for universal ratification and effective implementation of the Rome Statute and APIC. The organization, therefore, strongly welcomed the decision of the Assembly at its fourth session to request the Bureau:

to consider measures that could be taken by the Assembly, the Secretariat of the Assembly of States Parties or States Parties to help increase the number of ratifications and to facilitate full implementation of the Rome Statute....

Furthermore, Amnesty International welcomed the establishment of a Working Group on Ratification and Implementation of the Rome Statute (Working Group) by the Bureau and provided input to its consideration of the issues, including making

¹ For details of Amnesty International's commentaries on implementing legislation of the Rome Statute see: <http://web.amnesty.org/pages/icc-implementation-eng>

submissions to a meeting of the Working Group on 7 July 2006. Out of the process, the Working Group prepared a draft Plan of Action for achieving universality and full implementation of the Rome Statute² which was submitted to the Assembly for consideration at its fifth session on 23 November to 1 December 2006. Amnesty International strongly supported the content of the Plan of Action and lobbied the Assembly to adopt the Plan so that work to implement it could begin work as soon as possible. However, the organization expressed concern that no additional resources had been assigned to the Secretariat of the Assembly to conduct the coordination functions set out in the Plan of Action. The Assembly adopted the Plan of Action, although, unfortunately, it retained language that the Secretariat should implement this ambitious plan “within existing resources.”

Amnesty International has prepared this paper to contribute to the process of implementing the Assembly's Plan of Action. Although, in due course, the organization hopes that there will be an opportunity to review the Plan of Action to consider other measures that the Assembly could take to promote ratification and implementation, the organization believes that the Plan of Action provides a sound basis for developing effective Assembly activities. Therefore, in this paper, the organization focuses its recommendations primarily on taking practical steps to begin implementing the Plan of Action rather than addressing substantive issues covered in the Plan.³ In particular, the organization believes that priority should be given to putting in place the infrastructure and systems to implement the plan in 2007

I. Putting in place the infrastructure to implement the Plan of Action

There are three main actors identified as having roles in the implementation of the Plan of Action – the Assembly through the Working Group, the Secretariat and the states parties. Below Amnesty International examines their roles individually and makes recommendations for their structure and responsibilities. It also notes the important role that national and international civil society can play in ensuring effective implementation of the Plan of Action.

² Annexed to Report of the Bureau on ratification and implementation of the Rome Statute and on participation in the Assembly of States Parties, ICC-ASP/5/26.

³ Amnesty International does, however, plan to provide input to the Working Group on a number of substantive issues in the future, including, detailed recommendations concerning the scope of the obligations to implement the Rome Statute and other relevant international law.

(a) The Assembly

The Assembly is ultimately responsible for reviewing the Plan of Action and overseeing its implementation.⁴ The Assembly tasked the Bureau to undertake these functions and to report to it regularly. The Bureau has decided to perform these tasks through the Working Group structure established last year. Amnesty International believes this is the most effective structure to ensure that the Assembly performs its functions and encourages the Assembly and the Bureau to give the Working Group a long-term mandate to review the Plan of Action and oversee and facilitate its implementation.

The Working Group must be the driving force behind the implementation of the Plan of Action. Although it will be assisted by the Secretariat in communicating with states parties, the Working Group will have the greatest political means to ensure that states parties engage in and contribute to the process. It will, therefore, need to be active and visible to the rest of the Assembly in implementing the Plan of Action.

The Working Group should strive to engage as many states parties as possible in its work, including those states who are already actively involved in promoting ratification and implementation of the Rome Statute and states from all regions that can provide important regional perspectives. If appropriate, the Working Group may consider appointing focal points for communicating with states from specific regions.

The Working Group should meet at least three times a year to review the implementation of the plan and direct the work of the Secretariat. At regular intervals – at least every two years - the Working Group should review the Plan of Action to see whether it should be revised and communicate its recommendations to the Assembly for consideration. Given the worldwide efforts by civil society organizations to promote ratification and implementation of the Rome Statute, the Working Group should consider allowing representatives of Amnesty International, the Coalition for the International Criminal Court and other organizations working for universal ratification and effective implementation to observe the Working Group's meetings and, where appropriate, to make submissions. The Working Group should report to each session of the Assembly, via the Bureau, on its work and the implementation of the Plan of Action.

⁴ The Plan of Action states, paragraph 8: "The Assembly, through its Bureau, should keep this Plan of Action under review, including by monitoring the status of ratifications of the Rome Statute, developments in the field of implementing legislation, and the range of obstacles to ratification and full implementation faced by states."

(b) The Secretariat of the Assembly

The Secretariat of the Assembly has been assigned the task of coordinating a number of aspects of the Plan of Action, including collecting, collating and distributing information.⁵ Although the full extent of work required by the Secretariat is not entirely clear in the Plan of Action, Amnesty International believes that in order to advance its implementation, the Secretariat will need to take the initiative to obtain such information from states parties and other states, intergovernmental organizations and non-governmental organizations, in addition to providing continuing support to the Working Group and states parties. This will require full-time staff members within the Secretariat to work solely on implementing the Plan. At the fifth session of the Assembly, Amnesty International raised concerns about the failure to provide additional staff within the Secretariat to perform these functions. The Assembly decided not to authorize additional staff, on the basis that existing resources in the Secretariat were sufficient. In the circumstances, Amnesty International encourages the Working Group in 2007 to work with the Secretariat's existing resources, mindful that, if the resources are insufficient to advance the implementation of the Plan of Action as required, then the Working Group should request that additional resources be allocated to the Secretariat in 2008.

Amnesty International encourages the Secretariat to clarify the resources it will allocate to the implementation of the Plan of Action in 2007 as soon as possible, including the time capacities of staff. It should establish a contact person or persons who will be responsible for assisting the Working Group and implementing the Secretariat's functions set out in the Plan of Action. Under the direction of the Working Group, the Secretariat should develop an annual strategy for implementing

⁵ The Plan of Action lists the following examples of information that states should submit to the Secretariat:

- (i) Information on obstacles to ratification or full implementation facing States;
- (ii) National or regional strategies or plans of action to promote ratification and/or full implementation;
- (iii) Technical and other assistance needs and delivery programmes;
- (iv) Planned events and activities;
- (v) Examples of implementing legislation for the Rome Statute;
- (vi) Bilateral cooperation agreements between the Court and States Parties;
- (vii) Solutions to constitutional issues arising from ratification;
- (viii) National contact points for matters related to promotion of ratification and full implementation.

the Plan of Action. The strategy should be approved by the Working Group following consultation with civil society, which has been involved for almost a decade in working for ratification and effective implementation of the Rome Statute and APIC and has a wealth of information about what states have done or plan to do.

(c) States parties

States parties are the central actors in the Plan of Action. The Plan of Action cannot be implemented effectively without their engagement and activity. Amnesty International therefore urges all states parties to review the Plan of Action and to engage with the Working Group and the Secretariat, recognizing that universal ratification and full implementation are vital to fully realizing the new system of international justice that they have sought to create over the last decade to end impunity for the worst crimes. By investing in working with other states to ratify and implement the Rome Statute, states parties will strengthen the international justice system. Any financial investment made now will be re-paid in future years as the costs of running the Court will be divided among more states parties, not to mention the possibility that the effective functioning of the Court could save the international community immeasurable resources, if, as is hoped, it will contribute significantly to deterring the crimes.

Amnesty International therefore urges states parties this year to establish a contact person for implementing the Plan of Action and to review the Plan to consider what steps it can take to contribute to the Assembly's efforts to achieve universal ratification and full implementation.

II. Priorities for 2007 to implement the Plan of Action

Amnesty International recognizes that the Plan of Action is broad and ambitious. It will therefore take time for efforts to implement the Plan to become fully operational. Therefore, in addition to setting up the infrastructure recommended above, the organization recommends the following areas of the Plan of Action should be adopted as priorities for 2007.

The list of national contact points should be established as soon as possible

Developing contacts with all states parties, who are primarily assigned the task to implement the Plan of Action, must be a first priority. It should be expected that it will be a time consuming task to identify the contact points in each state party. Indeed,

it is likely that most states parties will not have a person responsible for the promotion of the ratification and implementation of the Rome Statute and therefore the responsibility will need to be assigned.

As a first step the Working Group should request the President of the Assembly to write to all states parties notifying them of the Plan of Action and urging each state to appoint a contact person or persons (in some states that are already active on the issues there may be more than one person working on this issue). Responses should be sent to the Secretariat, so that its staff can compile and publish the information and report to the Working Group regularly on the status of the development of the list of contact points.

In the event that states parties do not reply within a reasonable period of time, the Secretariat should seek information from other sources, including the Friends of the International Criminal Court, regional governmental organizations, governments and non-governmental organizations promoting ratification and implementation in other countries to identify their government contact persons who can be requested to act as a contact person for the implementation of the Plan of Action.

Although the Plan of Action establishes the contact points under the heading “states parties”, Amnesty International recommends that the Working Group considers opening the network to contact persons from non-states parties that are in the process of ratifying and who are committed to promoting ratification and implementation nationally and internationally.

Guidelines should be prepared and sent to all national contact points

To encourage national contact points to engage in implementing the Plan of Action, it would be useful for the Secretariat to prepare, with the assistance of states parties actively promoting the Rome Statute and in consultation with civil society, guidelines which would be sent to each national contact point setting out ideas and recommendations for measures that they could take to promote ratification and implementation in their own countries and in other countries. For example, the guidelines could include some examples of letters sent to non-states parties urging them to ratify, recommended information to be disseminated to non-states parties about the Court, recommendations for organizing effective national or regional conferences, information on where to obtain information on enacting implementing legislation, etc.

A questionnaire should be prepared for all national contact points to report on their work and their plans

As information sharing is an essential part of the Plan of Action, the Working Group should request the Secretariat to prepare a questionnaire which would be sent to contact points annually asking them to report on their efforts taken in the year and their planned activities for the year ahead. The Secretariat would then prepare a report collating and analyzing the information in the responses, which would be annexed to the report of the Working Group to the Assembly. States should be able to update the information provided by national contact points throughout the year by contacting the Secretariat. The Secretariat could also publish these reports as they are received.

Mechanisms should be established to inform states parties of key developments in national processes on ratification and implementation to generate support

The Working Group should establish from the outset mechanisms to inform states parties of important developments in countries considering ratifying and implementing the Rome Statute. For example, there should be a system whereby all national contact points are notified of important progress towards ratification in a country so that states parties can contact that government to welcome the developments and encourage them to complete the ratification process. Effective channels of communication should be established so that the Working Group can be informed of such developments and react promptly.

The Secretariat should develop a strategy to gather resource information on ratification and implementation and to make it available to states parties

States parties are mandated in the Plan of Action to provide information to the Secretariat on a number of issues which may be useful to assist other states ratifying and implementing the Rome Statute. In addition, there are a range of other useful materials that the Secretariat should collate and make available to states. The Working Group should request the Secretariat to develop a strategy for collecting the information and for making it available to states parties either through the internet, extranet, databases, or other mechanisms. In addition, the Secretariat should develop a strategy for informing non-states parties and states parties about the existence of this information to facilitate their efforts. The strategies should be presented to and approved by the Working Group, following consultation with civil society. Unless there are compelling reasons to keep particular aspects of such information confidential, all such information should promptly be made public to increase its usefulness.

III. Other substantive responsibilities

Although this paper focuses primarily on practical issues to implement the Plan of Action, there is one important substantive process that should be acted upon by the Working Group this year.

The Working Group should engage in discussions on cooperation issues

At its fifth session, the Assembly requested the Bureau to “address the issue of cooperation and report to the Assembly of States Parties at its next regular session.”⁶ The Working Group on Cooperation has already met with the Court and received presentations from Court officials from major programmes on what they consider to be important matters of cooperation that the Court will require from states. At the request of the Working Group on Cooperation, the Court has compiled their submissions into a “one court” document that has been presented to the Working Group on Cooperation. Amnesty International believes that implementing legislation is a key issue to ensuring cooperation. The Working Group on Ratification and Implementation of the Rome Statute should, therefore, communicate with the Working Group on Cooperation to consider implementation issues arising from the Court’s report. In particular, the Working Group should consider requesting the Court to draw from its report a non-exhaustive list of cooperation issues that should be addressed by states parties in their implementing legislation to facilitate states reviewing their national laws. Such a tool would no doubt be extremely useful to states in enacting legislation. To the extent that the Court consider it inappropriate to provide detailed recommendations in this regard, the two Working Groups could consult staff of other international criminal courts to identify what would be useful provisions to ensure prompt and effective cooperation.

Conclusion

Amnesty International hopes that these recommendations are useful to the Working Group on ratification and implementation of the Rome Statute, the Secretariat of States Parties and states parties as they begin their work to implement the Assembly’s Plan of Action. The organization fully agrees with the findings of the Assembly that “universal ratification and full implementation of the Rome Statute of the International Criminal Court are imperative if we are to achieve justice and to be

⁶ Strengthening the International Criminal Court and the Assembly of States Parties, Resolution ICC-ASP/5/Res.3, paragraph 36.

successful in the fight against impunity.”⁷ The organization is committed to providing continuing input and support to the Working Group, the Secretariat of the Assembly and states parties to making universality of the Rome Statute and full implementation a reality.

⁷ Report of the Bureau on ratification and implementation of the Rome Statute and on participation in the Assembly of States Parties, ICC-ASP/5/26, paragraph 6.