

Dear Foreign Minister,

Attached is a letter from more than 40 civil society organizations, international and national, urging you to consider postponing the codification of the crime of aggression in the Rome Statute for the International Criminal Court beyond the upcoming Review Conference in Kampala in June.

The issues surrounding ICC jurisdiction over the crime of aggression are complex. The current amendment proposal risks politicizing and overburdening the ICC, and undermining the integrity of the Rome Statute. There still exists substantial disagreement on key aspects of the proposed crime. Rushing to a vote in Kampala risks undermining the cohesiveness of states parties that has been so essential to the Court's establishment and mission. Taking more time to strengthen the Court, to consider this matter further, and to achieve broader agreement on the outstanding issues will benefit the ICC in the long-term. We encourage states to continue discussions beyond Kampala.

We thank you for your consideration of this letter.

May 10, 2010

Dear Foreign Minister

Re: Aggression and the International Criminal Court

We are leaders of organizations dedicated to ensuring that the International Criminal Court succeeds in its mission to fight impunity for the most serious international crimes. We believe that adoption of the Rome Statute was an historic achievement. It is vital that the upcoming Kampala Review Conference reinforce that achievement and promote the effective functioning of the Court. As strong supporters of the Court, we are concerned about codifying the crime of aggression in Kampala.

The issues surrounding ICC jurisdiction over the crime of aggression are complex and are ones on which Court supporters can and do reasonably disagree. Many states have undertaken extended discussions in an attempt to forge consensus around this crime. Nonetheless, the current amendment proposal risks politicizing and overburdening the ICC, and undermining the integrity of the Rome Statute.

For both practical and principled reasons, we believe that this early stage in the court's evolution is not the time to add aggression to the Court's docket.

First, aggression – a crime based on acts committed against a state – raises fundamentally political considerations about a state's initial decision to resort to the use of force. The ICC's other three crimes – war crimes, crimes against humanity and genocide -- are violations against individuals for which legal remedies have long been available and clearly defined in international customary laws and treaties. For obvious reasons, the ICC strives to present itself as an effective judicial body that is independent of political concerns. Amending the Rome Statute now to grant the Court jurisdiction over aggression will exacerbate the challenges the ICC already faces in fending off attacks about its perceived politicization.

Second, asking the ICC to take on another category of crime at present risks overburdening the Court when it is still striving to prosecute and try those responsible for current crimes. Much work is needed to further improve the operation of the Rome Statute system in respect of cooperation, complementarity, the impact on victims and affected communities, and questions of peace and justice. Each of these issues requires dedicated attention at Kampala. Prudently declining to adopt an amendment on aggression at this time, when the Court has such urgent challenges to tackle, is the most effective way to strengthen an institution that is central to combating impunity, and ensuring accountability, for the most heinous international crimes.

Finally, notwithstanding several years of debate, there still exists substantial disagreement among states parties to the Rome Statute on key aspects of the proposed crime of aggression. As recently as the third week of March, a meeting of the Assembly of States Parties in New York revealed stark divisions. Given the wide range of perspectives which currently exist on the aggression amendment, pushing it to a vote in Kampala risks undermining the cohesiveness of states parties that has been so essential to the Court's establishment and mission.

The Kampala Review Conference is not the last opportunity to address the crime of aggression. Under Article 121 of the Rome Statute, an amendment can be considered at any time in the future by the Assembly of States Parties directly or by another Review Conference. Taking more time to strengthen the Court, to consider this matter further, and to achieve broader agreement on the outstanding issues will benefit the ICC in the long-term. We encourage states to continue discussions beyond Kampala.

Sincerely,

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