

NGOs call upon all states to

## MAINTAIN THE INTEGRITY OF THE ROME STATUTE

The undersigned members\* of the CICC Steering Committee share a number of serious concerns that certain provisions and proposals before the International Criminal Court (Court) Preparatory Commission threaten the integrity of the Rome Statute. In addition to other matters of concern to members, the following issues are of particular concern:

**1. Any proposal that would narrow the Court's ability to exercise its jurisdiction, including the current proposal by the U.S. regarding Article 98 and the Relationship Agreement, must be rejected unconditionally.**

The U.S. Proposal would constitute a substantial amendment to the jurisdictional framework of the Rome Statute. Based on proposals that were decisively rejected in Rome, it would reverse key Rome compromises regarding the exercise of jurisdiction and the limited ability of the Security Council to prevent investigations and prosecutions from going forward. Such amendments are governed by the provisions of Article 121, and are beyond the competence of the PrepCom to introduce through the Rules and the Relationship Agreement.

The U.S. Proposal would prevent the Court from trying nationals of non-state parties, unless that state consents or the Security Council otherwise decides. This would allow the Permanent Members of the Security Council to use their veto power to block the exercise of the Court's

jurisdiction over their nationals and those of their allies. Such selective application of justice would seriously damage the credibility of the Court and violate the principle of equality before the law.

The proposed Article 98 Rule is objectionable in itself. It would expand the Article 98(2) exception, which only governs interstate agreements, to encompass agreements not contemplated under the Statute between the ICC and others. By licensing the Court to narrow its own jurisdiction, contrary to the Statute, the proposed Rule would invite ongoing efforts by states, particularly powerful ones, to seek exemptions in the future. This would erode the Court's authority and consequently its efficacy.

**2. The requirement in the rolling text that a State or organization "actively promote or encourage..." the criminal conduct should be deleted from the chapeau to crimes against humanity.**

Crimes against humanity do not necessarily require that the state or organization was active in promoting or encouraging the criminal conduct. A policy by a state or organization to commit an attack includes tolerating or acquiescing in, or failing to punish or prevent the commission of the crimes enumerated in the Rome Statute. To require the prosecutor to prove active support would be unrealistically onerous and unnecessary. The Court should be allowed to infer a policy from the fact that the acts have been committed on a systematic or widespread scale. The requirement of an active state or organizational policy would defeat one of the purposes of international criminal law, namely, to provide recourse for vulnerable individuals where protection is unavailable domestically.

Moreover, the "actively promote or encourage" language emerged as an alternative to the proposal made at the December PrepCom to exclude crimes against humanity committed against women and children relating to family matters. The current rolling text could be misinterpreted to

accomplish the same impermissible objective, while also excluding increasingly common atrocities carried out by groups of persons who might not meet the criteria of an organization.

### **3. The Elements of Crimes should not narrow the scope of the crimes as defined under the Rome Statute or as established under international law.**

Enslavement and sexual slavery: The proposed elements of enslavement and sexual slavery must not be restricted to acts involving commercial exchanges. By emphasizing "purchasing, selling, lending or bartering" and by linking 'similar deprivations of liberty' to this list, the elements threaten to exclude situations of slavery, such as forced labour or other servile conditions, which do not involve a commercial transaction. An exchange of money or other pecuniary benefit is not a necessary element of the crime of enslavement or sexual slavery. For example, the Nuremberg Tribunal characterized forced labour as enslavement and current case law recognizes rape and detention as sexual slavery. The Court's jurisdiction over slavery which is part of a widespread or systematic attack against a civilian population depends upon de-emphasizing the commercial exchange element and ensuring that forced labour and reducing a person to a servile status come within the scope of the crime.

Enforced disappearances: The proposed elements of enforced disappearances of persons should be revised to ensure the inclusion of crimes perpetrated by different persons at different stages of the crime, i.e, the arrest, detention or abduction of the person and the refusal to acknowledge the deprivation of liberty or to give information on the whereabouts of the disappeared.

Persecution: The proposal in footnote 25 to add the concept of "universally recognized" to qualify 'fundamental rights' should be

rejected. This would be inconsistent with the Statute, which requires only that the grounds be universally recognized, and not the rights. The definition of persecution in the Rome Statute is already more restrictive than international law which does not require that the acts constitute 'severe deprivations' of rights. Further restrictions are unwarranted.

Knowledge element in war crimes: The common element in the rolling text of war crimes that "[t]he accused was aware of the factual circumstances that established the existence of an armed conflict" could pose insurmountable problems of proof. It should be deleted, allowing article 30 to govern.

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[A complete list of signatories to this statement is also available at: <http://www.iccnw.org/html/jointsigs20000606.html>]

**The following (171) members of the NGO Coalition for an International Criminal Court have subscribed to this joint statement as of June 23, 2000:** Amnesty International; Asociación pro Derechos Humanos; Fédération Internationale des Ligues des Droits de l'Homme (FIDH); Human Rights Watch; Rights and Democracy; Lawyers' Committee for Human Rights; No Peace Without Justice; Women's Caucus for Gender Justice; World Federalist Movement &endash; Institute for Global Policy; European Law Students Association (International); International Criminal Law Society; Society of International Law and Politics in International Affairs at Columbia University; Formation, Education and Insertion, Youth and Women; Comité National D'Action pour les Droits de L'Enfant et de la Femme-Cadef Cameroun; Kituo Cha Katiba; Federación Nacional de Docentes Universitarios; Proyecto Periodismo Independiente y Alternativo; Comisión Ecuémica de Derechos Humanos; Al Sur del Sur; Area de

Paz y Solidaridad de Esuerra Unida del País Valencia; Asociación Pro Derechos Humanos de España; Derechos Human Rights; Equipo Nizkor; Nizkor International Human Rights Team; Paz Ahora; Serpaj Europa; Amnistía Internacional Sección Peruana; Asociación de Defensa de Derechos Humanos de Tacna; Asociación de Defensa de la Libertad; Asociación de Familias Desplazadas en Lima; Asociación Ecociudad; Asociación Miterio Diaconal Paz y Esperanza; Asociación Nacional de Centros; Asociación Nacional de Familiares de Detenido Desaparecidos en Zonas de Emergencias; Asociación por la Vida y la Dignidad Humana del Cusco; Asociación Jurídica Pro Dignidad Humana de Huánuco; Centro Amazónico de Antropología y Aplicación Práctica; Centro de Desarrollo Rural "Villa Nazaret" de la Diócesis de Chulucanas; Centro de Asesoría Laboral del Perú; Centro de Estudios y Acción para la Paz; Comisión de Derechos Humanos; Comisión de Derechos Humanos de Canas; Comisión de Derechos Humanos de Chumbivilcas; Comisión de Derechos Humanos de Espinar; Comisión de Derechos Humanos de Ica; Comisión de Derechos Humanos de Provincias Altas; Comisión de Derechos Humanos - Parroquia El Agustino; Comisión de Solidaridad, Desarrollo y Justicia; Comisión Diocesana de Acción Social de Chachapoyas; Comisión Episcopal de Acción Social; Comisión Prelatural de Pastoral Social de Huamachuco; Comité de Derechos Humanos del Alto Huallaga; Comité de Derechos Humanos de Huacho; Comité de Derechos Humanos de Ilo; Comité de Derechos Humanos de Moyobamba; Comité de Derechos Humanos de Pachitea; Comité de Derechos Humanos de Pasco; Comité de Derechos Humanos de Sanchez Carrión; Comité de Derechos Humanos de Taurija &dash; Pataz; Comité de Derechos Humanos de Villa El Salvador; Comité Nacional de Familiares Detenidos, Desaparecidos, Refugiados; Concilio Nacional Evangélico; Comité Vicarial de Derechos Humanos; Coordinadora Nacional de Derechos Humanos; Diaconía para la Justicia y la Paz del Arzobispado de Piura; Equipo de Defensa y Asesoría Campesina; Equipo de Derechos Humanos del Estrecho de Putumayo; Fundación Ecuémica para el Desarrollo y la Paz; Grupo de Iniciativa Nacional por los Derechos del Niño; Instituto de Defensa Legal; Instituto Peruano de Educación en Derechos Humanos y La Paz;

Movimiento Cívico contra la Impunidad; Movimiento Cristiano Pro Derechos Humanos de Quillabamba; Movimiento Manuela Ramos; Movimiento Negro Francisco Congo; Oficina de Pastoral Social de Puno; Oficina de Protección de los Derechos Humanos del Periodista; Oficina Pastoral de la Dignidad Humana de Huancayo; Organización Peruana para la Educación y Defensa de los Derechos Humanos Alto Huallaga; Proyecto Paz-Perú - Consejo Latinoamericano de Iglesias; Servicios Educativos, Promoción y Desarrollo Rural; Vicaría de la Solidaridad de Ayavirí; Vicaría de la Solidaridad de Cajamarca; Vicaría de la Solidaridad de Jaén; Vicaría de la Solidaridad de Juli; Vicaría de la Solidaridad de Sicuani; Plataforma Interamericana de Derechos Humanos, Democracia y Desarrollo; Organización Mundial contra la Tortura; Servicio Ecuménico para la Dignidad Humana; Centro de Derechos Humanos de la Universidad Católica Andrés Bello; Centros Comunitarios de Aprendizaje; Comisión de Justicia y Paz de Petare; Comisión de Justicia y Paz del Secretariado Conjunto de Religiosas y Religiosos de Venezuela; Comité de Derechos Humanos de Puerto La Cruz; Comité de Familiares de Víctimas de los Sucesos de Febrero / Marzo de 1989; Coordinadora de Organizaciones no Gubernamentales de Atención al Niño; Coordinadora No Gubernamental de Mujeres; Defensa de los Niños Internacional; Federación Latinoamericana de Asociaciones de Familiares de Detenidos Desaparecidos; Organisation Nationale des Droits de L'Homme; Lelio Basso International Foundation; Women's International League for Peace and Freedom; International Association of Lawyers Against Nuclear Arms (German Section); The Glasnost Foundation; International Society for Human Rights; Swedish Helsinki Committee for Human Rights; International Federation of Action by Christians for the Abolition of Torture; Society for Threatened Peoples International; Women and Men Engaged in Advocacy, Research & Education for Human Rights; Informationsstelle Peru e.V.; Fundación Foro Nacional por Colombia; Instituto Colombiano de la Participación "Jorge Eliécer Gaitán"; Centro de Documentación en Derechos Humanos "Segundo Montes Mozo S.J."; Medicus Mundi; Asociación de Familiares de Detenidos Desaparecidos y Víctimas de las Violaciones a los Derechos Humanos en México;

Comisión Mexicana para la Defensa y Promoción de los Derechos Humanos; Asociación Servicios Rurales; Vicaría de la Solidaridad de Celendín; Comisión de Justicia y Paz - Derechos Humanos Vicariato de Iquitos; Comisión Diocesana de Servicios y Pastoral Social; Comité de Derechos Humanos de Tayabamba &Pataz; Servicio Educativo para el Desarrollo y la Solidaridad; Pastoral Social Caritas de Panamá; Foro por la Vida; Fundación de los Derechos Humanos del Estado Anzoátegui; Oficina Diocesana de Derechos Humanos "Humana Dignita"; Oficina del Vicariato de Derechos Humanos de Puerto Ayacucho; Programa Venezolano de Educación -Acción en Derechos Humanos; Red de Apoyo por la Justicia y la Paz; Vicaría Episcopal de Derechos Humanos de Caracas; Vicaría Episcopal "Derecho y Justicia " de Cumaná; Voluntariado Penitenciario de la Universidad Católica Andrés Bello; International League for Human Rights; Guatemala Human Rights Commission/USA; Angolan Anti-Militarism Initiative for Human Rights; World Federalists of Canada; La Cuerda; Medica Mondiale; Canadian Committee to Combat Crimes Against Humanity; Center for Women's Global Leadership; Arab Center for the Independence of the Judiciary and the Legal Profession; Foundation for Women, Thailand; International Needs Ghana; The Medical Foundation for the Care of Victims of Torture; The Leo Kuper Foundation; Mauritius Action for Disarmament and Peace; The Center for Reproductive Law and Policy; Nederlandse Vereniging van International Recht Working Group on Feminism and International Law; Prevent Genocide International; Global Center for Women's Leadership; Older Women's League; Northeast Georgia Peace Council; Servicio de Paz y Justicia (Cordoba, Argentina); New York Coalition on Comfort Women Issues; OSF; Asociacion Nicaraguense Pro-Derechos Humanos; Comité Permanente por la Defensa de los Derechos Humanos; Centro de Estudios Legales y Sociales; Centro de Estudios y Promoción del Desarrollo; Centro de Estudios para la Defensa de los Derechos de la Mujer; Centro Flora Tristán; Comisión de Derechos Humanos de El Salvador; Comité de América Latina y el Caribe para la Defensa de los Derechos de la Mujer; Corporación Servicio Paz y Justicia. Serpaj &Chile; Coordinadora de Derechos Humanos y Solidaridad.

Europa &ndash; Perú; Servicio Paz y Justicia en América Latina;  
Servicio Paz y Justicia, Corporación Región; International Association  
of Democratic Lawyers; Pancyprian Association for the Protection of  
Human Rights; Movimiento por la Paz, el Desarme y la Libertad;  
Amnistia Internacional-Paraguay