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ICC 23-1 Submission No.

**FAX TRANSMISSION**

*Received 28/3/02
 Mike Walsh
 Office Secretary*

To: Mr. Kerry Bartlett MP
 Chair, Joint Standing Committee on Treaties
 C/o JSCOT Secretariat

Attention: Secretariat, Joint Standing Committee on Treaties

Fax Number: 011 61 2 6277 4827

Number of pages: 5

Date: 27 March, 2002

Dear Sirs/Madams

Please find attached a letter to Mr Kerry Bartlett, MP regarding the current inquiry of the Joint Standing Committee on Treaties on the Rome Statute for the International Criminal Court.

We would greatly appreciate if the Committee Secretariat could forward this letter to Mr Kerry Bartlett, MP and provide copies of the letter to the other members of the Committee.

Thank you for your assistance with this matter.

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 (contact: Andrew Egan, ph: 212-216-1886)

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26 March 2001

Mr Kerry Bartlett MP
 Chair, Joint Standing Committee on Treaties
 C/o JSCOT Secretariat
 By fax: 011 61 2 6277 4827

Dear Mr Bartlett,

I write in relation to the current inquiry of the Joint Standing Committee on Treaties into the ratification of the Rome Statute for the International Criminal Court (ICC). Specifically, I want to alert you to the need for the Committee to finalize its report as soon as possible so that if Australia ratifies the Rome Statute, as Human Rights Watch believes it must, its national interests as a state party to that treaty are properly safeguarded.

The ICC is about to become a reality: fifty-six of the required sixty ratifications have now been lodged with the United Nations. There is now insufficient time for Australia to become a member of the historic first group of sixty states to ratify the Rome Statute. However, it may still be possible for Australia to participate as a state party, with full voting rights, at the first meeting of the Assembly of States Parties (ASP), scheduled for September 2002.

It is clearly in Australia's national interests, as a likely future state party to the Rome Statute, to participate fully in the vitally important work entrusted to the first ASP. Among other things, the first meeting of the ASP will decide the budget for the ICC, approve the Rules of Procedure and Evidence for the Court and adopt the rules for the elections of the judges and the prosecutor.

As you know well, Australia has played a lead role in the negotiations for the establishment of an international criminal court that is a representative, credible and effective instrument for international justice. If Australia wishes to continue to actively support the establishment of such an institution, as the government has said it does, then the parliamentary process must gather momentum. Australia will need to complete ratification by 30 June 2002 if it is to play an active role at the September ASP meeting. If it fails to meet this deadline, it will be nothing more than a passive observer, unable to help shape the new Court in its critical formative years.

Furthermore, if Australia wishes to participate in the election of judges and the prosecutor, or even to nominate an Australian for election to these posts, the Parliamentary process must be completed by approximately 30 June 2002. Nominations for these elections are expected to close sometime in November 2002, with the elections held in the early part of 2003. Due to the Australian Parliamentary sittings timetable, ratification must be approved by Parliament by the end of the Winter Sittings if Australia is to participate in the first elections for



the ICC. Again, the outcome of these elections will play a key role in determining whether the new Court will be credible and effective.

As you can see, in addition to forming its conclusion as to the desirability of Australia ratifying the Rome Statute, the Committee has a critical role in determining whether Australia will have a say in how the ICC will eventually look.

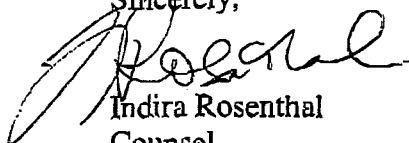
Over a period of twelve months, the Committee of the 39th Parliament conducted extensive public consultations and a comprehensive review of the implications for Australia in ratifying the Rome Statute. The more than 200 written submissions made and the widespread public hearings held by the Committee have resulted in a full airing of views on the ICC.

The interruption of the previous Committee's work by the 2001 federal election inevitably delayed the inquiry and the Committee's consideration of the draft implementing laws. While it is important that these draft bills be carefully analyzed, this work must not unduly delay the Committee's report to Parliament. The Committee should carefully build upon the work already completed by the previous Committee and urgently assess any submissions lodged on the implementing legislation.

As Chair of the Committee, I urge you to harness the cross party support for the ICC in the Australian parliament and conclude your inquiry into the Rome Statute as a matter of priority. The Committee should table its report at the very beginning of the Winter Sittings of Parliament, at the latest, so that adequate time is available to digest it prior to the introduction of the proposed legislation into Parliament. As you know from our previous submission and oral testimony before the Committee, Human Rights Watch firmly believes that Australia must ratify the Rome Statute.

I have attached for your information a timeline outlining the anticipated dates for major ICC events.

Sincerely,



Indira Rosenthal
Counsel

International Justice Program

Copy to: Joint Standing Committee on Treaties Secretariat
Members of the Joint Standing Committee on Treaties:

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Senator B Cooney
Senator J Ludwig
Senator B Mason
Senator J McGauran
Ms Julie Bishop MP
Mr Peter King MP
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Countdown to the International Criminal Court What you need to know

Ratifications needed: 60

Ratifications achieved: 56

Important dates regulating *Australia's* status as a State Party

KEY EVENTS

DATES

60th State ratifies the treaty

Expected 11 April 2002.

Entry into Force of the Rome Statute

Genocide, war crimes, crimes against humanity committed after this date can be tried by the Court.

Expected July 1, 2002

(60-90 days after 60th Ratification).

Establishment of the ICC - First ASP

Voting members of the first ASP approve Rules of Procedure and Evidence, Elements of Crime, Financial Rules and other important documents.

Scheduled for September 2-13, 2002

United Nations, New York.

Close of nomination period for first Judges and Prosecutor

Expected end of November/early December 2002

Election of first Judges and Prosecutor

Approximately January 2003.

RATIFICATION SCENARIOS**Assuming *Australia* ratifies by 30 June 2002**

This would require passage of the implementing Bills through Parliament early in the Winter Sittings period.

Assuming *Australia* ratifies by 30 August 2002

This would require passage of the implementing Bills through Parliament by the end of the Winter Sittings period.

Assuming *Australia* ratifies by 30 October 2002

This would require passage of the implementing Bills through Parliament by the end of the Winter Sittings period.

CONSEQUENCES

Following a 60 day period from the date of ratification, *Australia* will become a member of the first ASP on 1 September 2002 with full voting rights.

Australia can vote in the first ASP and can nominate a candidate for judge or prosecutor of the ICC and vote in the ensuing elections.

Following a 60 day period from the date of ratification, *Australia* will become a member of the first ASP on 1 November 2002 with full voting rights.

Australia will be a passive observer at the first ASP. However, Australia could still nominate a candidate for judge or prosecutor of before the end of November 2002 and vote in the elections in January 2003.

Following a 60 day period from the date of ratification, *Australia* will become a member of the first ASP on 1 January 2003 with full voting rights.

Australia will be a passive observer at the first ASP and will be unable to nominate an Australian candidate for judge or prosecutor. Australia may be able to vote in the judicial elections in January 2003, depending on the rules adopted by the first ASP.