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A Written Submission to the 19th Session of the Assembly of States Parties of the Rome Statute of International Criminal Court by the Asian Legal Resource Centre

WORLD: Assembly of States Parties Must Elect Judges and Prosecutor on Merits

Mr.

President:

The 19th Session of the Assembly of States Parties (ASP) is unique in the history of the International Criminal Court (ICC). Since the inception of the ICC there had never been a pandemic imposing physical confinement on almost the entire population of the planet coupled with continuation of international crimes being unleashed in many parts of the world. In such a situation, we are opted to express the challenges we face in the first ever virtual session of the ASP.

This ASP Session is historically important in the context of elections of the Judges and Prosecutor of the ICC amongst the nominated candidates in accordance with the Rome Statute at a crucial juncture which may redefine the Court's future.

The 19th ASP Session is taking place having the Final Report of the Independent Expert Review (IER) of the International Criminal Court and the Rome Statute System published. Anyone reading paragraph 209 of the report will find it very hard to believe that men occupying superior portfolios of 'all 'Organs of the Court' were committing harassment, and sexual harassment against the female staffs and interns. It is a highly disturbing reality and very hard to imagine that how poorly committed professionals have been recruited to work in the world's highest criminal court!

The given challenging situation must be enough for the ASP to exercise its mandate in electing the deserving nominees on the basis of merits, proven high ethical standards, and commitment to protect their individual as well as the Court's integrity.

It should be noted with caution that the Court has been facing certain major challenges in terms of politically motivated non-cooperation from few powerful states, and an ominous funding constraint. The ASP can play its constructive role to ease the political and diplomatic tensions between the Court and the entities that impose barriers upon the ICC's functionality. The ASP's effective actions can greatly contribute to overcome the funding deficiency, which is an integral part of the Court's independent operation.

The incoming prosecutor needs to end the practice of overlooking enforced disappearances as a 'crime against humanity' under Article 7 of the Rome Statute that are prevalent in many of the State Parties' national jurisdictions. The Office of the Prosecutor's (OTP) ongoing investigation on international crimes against the Rohingya Muslims of Myanmar should include the cases of enforced disappearances as civil society groups have already made submissions to the United Nations Working Group on Enforced or Involuntary Disappearances.

The OTP is already aware that Bangladesh, despite being a State Party to the Rome Statute, consistently commits enforced disappearances. The victims of enforced disappearances have no resort to get justice for the crimes of enforced disappearances as the domestic justice mechanism

abdicates its constitutional authority and has been dysfunctional under an authoritarian rule. The domestic judiciary has never demonstrated its objective to hold the incumbent government and the perpetrators accountable for the crime against humanity. The OPT should not let Bangladesh hide its own crimes behind the Rohingya genocide-survivors whose rights and dignity are repeatedly being curtailed in its jurisdiction disregarding the international community's requests and recommendations. Frustrating the victims of enforced disappearances, like the victims of war crimes of Afghanistan, will ultimately pose questions about the OTP's commitment to its mandate, efficiency and the ICC's integrity as a whole.

The Asian Legal Resource Centre (ALRC) remains committed to support any initiative of the ICC regarding enforced disappearances and International crimes in its jurisdictions of work.

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The Asian Legal Resource Centre (ALRC) works towards the radical rethinking & fundamental redesigning of justice institutions in Asia, to ensure relief and redress for victims of human rights violations, as per Common Article 2 of the International Conventions. Sister organisation to the Asian Human Rights Commission, the ALRC is based in Hong Kong & holds general consultative status with the Economic & Social Council of the United Nations.