

***“[e]xecutions... torture, rapes, blackmail and abandonment in the desert are the order of the day ... the most serious, systematic human rights violations...concentration-camp-like [conditions]”***

German diplomat describing Libyan detention facilities in a confidential cable to Chancellor Angela Merkel and other German officials, few days before the Malta Declaration, 29 Jan 2017

To

19/09/19

the Chairwoman,

the Committee on Human Rights and Humanitarian aid,

Deutscher Bundestag

## I. Introduction

1. On 3 June 2019, the undersigned provided the Office of the Prosecutor (‘OTP’) of the International Criminal Court (‘ICC’) with evidence implicating agents of the European Union (‘EU’) and its Member States’ (‘MS’) in Crimes Against Humanity (‘CAH’). These crimes were committed from 2014 and are still being committed, pursuant to EU and its MS to stem migration flows from Africa via the Central Mediterranean route, at *all* costs.
2. The evidence establishes criminal liability within the meaning of the Rome Statute and jurisdiction of the ICC, for policies that resulted in the killing by drowning of thousands of migrants, the *refoulement* of tens of thousands of migrants attempting to flee Libya, and complicity in the crimes against humanity of **murder, deportation, imprisonment, enslavement, torture, rape, persecution and other inhuman acts**, taking place in Libyan detention camps and torture houses.
3. Relying on agreements concluded with Muammar Gaddafi, EU’s border externalization policy collapsed together with his regime in 2011. Consequently, in 2014 the EU resorted to a deterrence-based migration policy, which ignored the plight of migrants in distress at sea and was aimed to dissuade others in similar situation from seeking safe haven in Europe (‘EU’s 1<sup>st</sup> Policy’).
4. EU’s 1st Policy turned the central Mediterranean to the world’s deadliest migration route. Only between January 1st, 2014 and end of July, 2017, over **14,500 people died** or were

reported dead or missing. Two incidents in one week in April 2015 alone, took the lives of 1,200 people.

5. While migrant crossings had not decreased, death toll drastically increased. Gradually, Search and Rescue ("SAR") missions operated by NGOs replaced the operations previously carried out by EU and its MS, in compliance with international maritime, human rights and refugee law.
6. Consequently, EU's 1<sup>st</sup> Policy failed. In response, in 2015 the EU renewed its Libya-based border externalization policy. The EU's 2nd policy ("EU's 2nd Policy") ousted the NGOs from the Mediterranean and dramatically deepened cooperation with a consortium of militias that are known today as the so-called 'Libyan Coast Guard' ('LYCG').
7. Despite numerous international instruments and decisions, such as the European Court of Human Rights ('ECtHR') ruling in the *Hirsi* case (2012) or UNHCR guidelines from 2015, according to which push-backs to Libya are unlawful and strictly prohibited, this new configuration effectively enabled the outsourcing of this criminal policy to the LYCG.
8. In lieu of the lawful rescue and safe disembarkation previously operated by rescue NGOs, therefore, the LYCG became a key-actor in the interception, detention on board, widespread and systematic abuse and unlawful refoulement of persons in need of international protection attempting to flee Libya.
9. Through a complex mix of legislative acts, administrative decisions and formal agreements, alongside hundreds of millions of euros, the EU and its MS provided the LYCG with material and strategic support, including but not limited to vessels, training, command & control capabilities.
10. To ensure the forcible transfer and disembarkation of persons in need of international protection at Libyan ports, the EU and its MS – including Germany - channeled their policies through the LYCG by directly commanding, instructing and providing LYCG with the necessary information, such as the location of migrant boats in distress. In this context it should be also noted that the EU and its MS – including Germany – are also, albeit indirectly, financing and thus facilitating the operation of the Libyan concentration-camps.
11. Without the involvement of the EU and its MS – and primarily Germany - the LYCG had no technical capacity nor political will to intercept migrants seeking to exit Libya and detain them in camps. In other words, **without the implementation of EU's 2nd Policy, the crimes against the targeted population would not have never occurred.**
12. EU's 2nd Policy, therefore, enabled the commission of these crimes which, within the meaning of the Rome Statute, amount to a 'widespread and organized attack against civilian

population'. As a key MS within the EU, therefore, Germany is orchestrating the most lethal campaign the ICC has jurisdiction over since its establishment 20 years ago.

13. A special gravity and cruelty of this campaign is the fact that this widespread and systematic attack was (and still is) directed against not only the most vulnerable persons on earth, but also this attack is being launched at their most vulnerable moment in time: when they are in distress at sea, facing their own death, and sometimes witnessing the death of their closest relatives, by drowning.
14. As a quite recent investigation established, the EU and its MS replaced boats with drones and are now, instead of intervening, simply watching the slow death of children, women and men. At best, they are using the information to ensure the said population will be collectively expelled, back to the very same concentration camps they are fleeing from.
15. In order to avoid and in violation of their legal duties under international maritime, refugee and human rights law, the EU and its MS – including Germany - orchestrated a policy of forced transfer of tens of thousands of persons to concentration camps, where crimes against humanity and war crimes were (and are still being) committed.
16. Between 2016 and 2019, about **50,000 victims** were intercepted, detained on board of vessels, and transported to concentration camps and torture houses, where various crimes within the meaning of the Rome Statute would be committed.
17. The evidence provided to the ICC undisputedly demonstrate that EU and MS agents – including German officials and agents – carefully designed and meticulously implemented a highly coordinated naval border control operations, with full awareness of the lethal consequences of their conduct.
18. In January 2017, for example, German Chancellor Angela Merkel received a diplomatic cable from its Embassy in Niger, which described Libyan detention facilities as a place where **“[e]xecutions... torture, rapes, blackmail and abandonment in the desert are the order of the day ... the most serious, systematic human rights violations... concentration-camp-like [conditions]”**.
19. In August 2017, the Italian Deputy Minister acknowledged this enterprise of collective and organized expulsion of tens of thousands migrants, orchestrated by the EU and Italy, meant **“taking them [the migrants] back to hell”**. The French President Emmanuel Macron stated that the situation in Libya constitutes **“a crime against humanity”**.
20. The President of the African Union also described the situation in Libya as “shocking” and “scandalous”. But Mr. Conde also insisted on identifying the potential perpetrators of these crimes: **“we must establish the responsibilities... in Libya there is no government,**

**so the European Union cannot ... ask that country to detain refugees... the refugees are in terrible conditions... the European Union is responsible”.**

21. In hindsight, the architects of the concerned EU policies acknowledged their wrongdoing. Both the President of the EU Commission Juncker and the former Italian Interior Minister Minniti described their own decision-making as a ‘huge mistake’, one that “cost human lives”.
22. But this was no mistake. The evidence provided to the ICC Prosecutor is exclusively based on EU and MS internal, sometimes confidential, documents and cannot be disputed. They establish that these policies were **part of an intentional plan, with full and real-time knowledge of the lethal consequences.**
23. Based on the foreknowledge of the widespread and systematic crimes committed in Libya, UN Special Rapporteur on Extrajudicial or Arbitrary Executions, Prof. Agnes Callamard, published a report and noted that “[t]he **International Criminal Court should consider preliminary investigation into atrocity crimes against refugees and migrants”.**
24. Another UN Special Rapporteur, this time on Torture, Prof. Nils Melzer, described the root causes of these crimes: **“migration laws, policies and practices that knowingly or deliberately subject or expose migrants to foreseeable acts or risks of torture or ill-treatment... are “conclusively unlawful”.**
25. Mr. Melzer joined Ms. Callamard in calling the ICC-Prosecutor to **“examine whether investigations for crimes against humanity or war crimes are warranted in view of the scale, gravity and increasingly systematic nature of torture, ill-treatment and other serious human rights abuses [...] as a direct or indirect consequence of deliberate State policies and practices of deterrence, criminalization, arrival prevention, and refoulement.”**
26. The crimes committed against migrants are well-documented and undisputed, including by various EU and MS organs and agencies. The evidence concerning the prior knowledge of EU and MS officials and agents with respect to the outcomes for deportees is also evidenced in their own statements and numerous official documents. Finally, no one is denying the collaboration with the LYCG, a consortium of militias that in the absence of EU policy would have never been involved in the said criminal policy and acts.
27. Since Nuremberg trials, international criminal tribunals are founded to hold the most responsible actors accountable. Since Eichmann’s trial, not only multinational treaties but also universal jurisdiction is recognized in the pursuit to end impunity.
28. The UN Security Council (‘UNSC’) referred the situation in Libya to the ICC already in

2011. The ICC Prosecutor notified the UNSC more than once that her mandate includes the investigation of war crimes and crimes against humanity committed against ‘migrants’ in Libya, describing it as **“a marketplace for the trafficking of human beings”**.

29. The sole, remaining question is until when the most responsible actors in this case – including German civil servants – will enjoy impunity, based on the close institutional and sociological (‘habitus’) affinity between the EU and the ICC.

## **II. Preliminary Answers to Questions Submitted by the Various Parliamentary Fractions**

### Question 1

30. Shrinking space for civil society and associated threat to human-rights defenders obviously compromise the investigation of grave human rights violation and, in turn, impunity prospers.

31. But civil society is not shrinking. In fact, it is expanding. For different reasons, however, civil society still fails to identify the discourses and practices to effectively struggle against indeed powerful and sophisticated apparatus of power, in order to prevent human rights violations, protect the victims once such violations occur, and hold accountable those responsible.

32. The case of EU migration policies in the Mediterranean and Libya demonstrates this with clarity: the framing of the situation as a matter pertaining to international maritime and human rights law, or even worse to international relations and sovereign prerogatives of member states, enables individuals and institutions to plan and implement criminal policies while enjoying impunity.

33. In any event, the goal of EU and MS’s attack on rescue NGOs operating in the Mediterranean – such as Sea Watch, Open Arms, SOS\MSF, Team Humanity, Pilotes Volontaires and others – is not to fail investigation of human rights violation and therefore does not have, *per se*, an influence on impunity. In other words, the attack on rescue NGOs is not meant to cover up a human rights violations. It is the violation of human rights itself.

34. As described in detail in our brief to the ICC and in passing in Section I above, the campaign against SAR NGOs was one of the two prongs of EU’s 2<sup>nd</sup> Policy to stem migration policies from Africa at all costs. After rescue NGOs filled the gap created by EU Operation Triton, the *first* leg of this second policy was to oust the NGOs from the critical SAR zone by delegitimizing, harassing (e.g. by preventing disembarkation, de-flagging, fines and the institution of other administrative proceedings) and ultimately criminalizing organizations and activists. This campaign was successful and resulted in more than 90%

decrease in the operational presence of SAR NGOs in the relevant area.

35. The EU Commission stated, in an official response to our submission, that its migration policy is aimed to save lives of persons in distress at sea. But the attack on rescue NGOs in the Mediterranean proves otherwise.
36. It proves the objective is rather to clear the critical SAR zone from vessels that are tasked with saving lives and are complying with the most basic principles of international law, and contract instead with a consortium of militias, the LYCG, i.e. an entity that would be willing to execute the criminal policy the EU was unable to operate by itself, and rescue NGOs were unwilling to.
37. Indeed, the evidence we have gathered establishes that only mercenaries were willing to be complicit in the commission of numerous crimes against humanity and war crimes, and only in exchange of multiform material support of tens of millions of euros.
38. This means that the criminalization of NGOs was not intended only to silenced criticism and avoid accountability, but was part and parcel of EU's ongoing criminal policy itself. The attack on the Good Samaritans, in this context rescue NGOs, is therefore not merely a obstruction of justice, but a criminal act *per se*.
39. Given the intentional killing of thousands by drowning and the tens of thousands that are intercepted and deported back to Libya, the attack on civil society and human rights defenders constitutes a form of persecution by *prosecution*.
40. This persecution, among others vectors, is used to launch the broader attack against the targeted civilian population of civilians in need of international protection, while they are exercising their right to leave (and live) and are in distress at sea. In other words, those who are themselves implicated with atrocious crimes, are abusing State powers and pursuing the criminalization of others so their own criminal policies will be successfully implemented.
41. But the attack on NGOs which took upon themselves the task that is legally assigned to the EU and its MS has another, secondary objective: to reframe the entire matter not as a matter of law, i.e. legal duties and justice, but as a humanitarian gesture and grace.
42. Unfortunately, too often civil society fails to challenge this normative framework and political narrative imposed by EU and its MS. For example, too often civil society organization are surrounding to the unlawful refusal of States to provide a port for disembarkation, accepting this is a matter of internal relations, sovereignty and discretion, and subsequently to be negotiated between States, while those rescued are left for days to survive in inhuman and degrading conditions.
43. It is not a humanitarian gesture. It is the Law. The legal right to be rescued has a

corresponding duty to conduct a rescue or at least not to fail it, and accordingly to disembark those who are rescued. Rescue NGOs should therefore either seek immediate judicial remedy prior to disembarkation (e.g. as Open Arms did in their last disembarkation), or simply exercise the law by disembarking at the closest safe port, bearing the legal consequences thereafter (e.g. as Captain Rackete of Sea Watch did).

### Question 2

1. Essentializing populations, based on race, in an European, let alone German parliament, is perhaps the best example how racist notions, such as the theory of the 'great replacement', infiltrated European liberal discourses and practices. The adoption of such racist concepts and their incorporation to the mainstream 'European way of life', for political gains, is the process that enables the reduction of diverse group of people - coming from different economic backgrounds, nationalities, cultures, motivations, professions etc.- to be defined merely by the circumstantial fact they are on the move, typically fleeing an armed conflict or persecution. That, in turn, creates the perfect conditions for dehumanization and subsequent 'tragic' extermination of its members, in our case the killing by drowning, execution, starving, sickness, and other inhuman acts committed in concentration camps-like conditions. Germany should know better.

### Question 3

2. Germany, both directly and as part of the European Union's apparatus of power, is complicit to a great extent in the alleged crimes against humanity committed in connection with EU and MS migration policies in the Central Mediterranean and Libya.
3. The nature of EU and Germany's complicity may be divided to two categories: the *first* may be attributed to the *indirect* multiform material, strategic and moral support provided to consortium of militias known as the so-called LYCG, which is tasked by the EU and Germany with the interception, forcible transfer and collective expulsion (*refoulement*) back to the concentration camps the targeted population is fleeing from.
4. The support includes but not limited to the creation of the (i) pseudo-legal framework for the implementation and execution of the attack against migrants pursuant to State (Germany) and/or Organizational (EU) policy, such as the adoption of the Italian-Libyan MoU by the EU (the Malta Declaration), proceedings at the IMO instituted to internationally recognize a Libyan SAR zone, and the establishment of MRCC center in

Tripoli; (ii) the various forms the EU and Germany are *financing* the LYCG and other Libyan entities (e.g. DCIM), either via the EUTF and other structures, or indirectly through 3<sup>rd</sup> party ‘implementing partners’ operating on Libyan soil; (iii) the *training* of dozens LYCG agents by EU operation Sophia, including Libyan agents identified by the UN Sanction Committee as implicated in human trafficking and other criminal activities; (iv) the provision and maintenance of *vessels* and other equipment by fellow EU MS (e.g. Italy, France and Malta), in violation of the UNSC arm embargo on Libya; (v) the provision of command and control capabilities, for example through EU MS military vessels docking at Libyan ports.

5. The *second* type of complicity is manifested by Germany’s *direct* involvement – being part of the EU or independently – in orchestrating and facilitating virtually each and every interception operation conducted by the LYCG.
6. For example, EU MS vessels and drones are not only refraining from providing assistance to migrant boats in distress at sea, but they are also providing the LYCG with specific location of migrant boats, to ensure they will be intercepted by LYCG and not civil society or commercial vessels. In fact, because the LYCG is not conducting maritime patrols at all, it is operating only based on and in reaction to requests by EU MS organs, agencies and vessels.
7. The case submitted to the OTP of the ICC individually analyzed 13 cases, including the Sea Watch 6<sup>th</sup> November 2017 case, in which EU actors are present on-scene but their involvement is limited to ensure rescue NGOs will not be involved in SAR activity and that instead the LYCG will assume command over the interception, so the *refoulement* back to Libya of tens of thousands of persons in need of international protection would be possible.
8. Based on the evidence provided that substantiate the factual part of our brief to the ICC, legally we demonstrate that the complicity of EU and its MS in crimes against humanity in Libya amounts to the highest mode of liability acknowledged in international criminal law, i.e. that of principal shared responsibility (co-perpetration), a criminal enterprise that is implemented jointly with or through another in this case Libyan agents, members of the LYCG and other entities.
9. In the alternative, the complicity of Germany, again both as part of the EU and by itself, at minimum amounts to the mode of liability recognized in International Criminal Law including in the Rome Statute as ‘aiding and abetting’.
10. Regardless the extent of its complicity and the mode of liability attributed to its criminal



acts and omissions, Germany and other EU MS agents are implicated in the crimes against humanity of murder, torture, rape, enslavement, deportation, persecution and other inhuman acts, committed against about 50,000 victims from 2016 to date.

11. This is so because none of the principal suspects denies the commission of the above-mentioned crimes against humanity in Libyan detention facilities and torture houses. And no one neither disputes the direct and indirect collaboration of the EU with the consortium of militias known as the LYCG, as described above and in detail in our brief to the OTP.
12. Given the pending ongoing ICC investigation on the situation in Libya, including concerning crimes against humanity and war crimes committed against persons in transit ('migrants'), the investigation and prosecution of the most responsible actors, namely those who premeditated, planned, designed and orchestrated these policies – is inevitable. This is what the ICC was established for: to ensure the most responsible actors would not enjoy impunity.

#### Question 4

13. The German Federal Government has not at all failed to work towards preventing the return of refugees to Libya, the drowning of thousands of refugees in the Mediterranean and the imposition of EU's fatal closed-door policy.
14. To the contrary, the German Federal Government has been extremely successful in doing so. Being key actor in the EU, German government had and still has perhaps the strongest influence on EU migration policy in the Central Mediterranean.
15. The evidence gathered, processed and submitted to the ICC prosecutor exclusively relies on internal EU and MS documents, cables and reports, alongside public statements of EU and MS officials, bureaucrats and agents dated before during and after the criminal attack against the target population was planned and executed.
16. We invite the respectful committee to conduct in-depth scrutiny of the comprehensive brief submitted. Here we will limit ourselves to one, albeit astonishing example.
17. As noted above, the Malta Declaration adopted the 2017 Italian-Libyan MoU which is the pseudo-legal document that governs and regulates the collaboration of the EU and Italy with one of the two 'governments' exercising limited control over Libya (the UN-backed GNA).
18. Few days before the conclusion of the Malta Declaration, the German Chancellor and other senior German officials, received a cable from the German Ambassador in Niger. As cited above, the cable describes reliable reports from Libyan detention centers, where

widespread “[e]xecutions... torture, rapes, blackmail and abandonment in the desert are the order of the day ... the most serious, systematic human rights violations...concentration-camp-like [conditions]”.

19. With this kind of foreknowledge and awareness (*Mens Rea*), EU and German officials have decided to move forward and conclude the Malta Declaration, namely to send (and continue sending) 50,000 children, women and men that are fleeing Libyan civil war and armed conflict – back to the camps they are fleeing from.
20. To sum, this is by no means a *failure* that is producing the worst humanitarian ‘tragedy’ in human history. This is carefully planned and designed attack that is consisted of premeditated commission of multiple prohibited acts and omissions pursuant to EU organization policy to stem migration flows from Africa at all costs.
21. This criminal policy is therefore ‘*successful*’ as the objective has been accomplished: since its implementation, there is 90% drop in arrivals to EU soil. But we are concerned with the costs.

#### Question 5

22. The Nuremberg and following trials are considered as the most effective examples in which an in-depth pacification and renewal of a society happened. They function as a mark-up example that was never reproduced at that scale, nor with this efficiency. The effective control of the judging authority over the concerned territory, the quickness of the first trials, their proximity with the period of the concerned acts, and the immense institutional means deployed to create an epuration at a large scale - allowed for a durable and accepted shift in Germany.
23. In the contemporary era, the international tribunals have produced very mixed effects, with little to no study demonstrating their effect in fighting impunity. Nonetheless, there is little doubt that political actors, from Columbia to Israël, have integrated the constraints of a possible ICC referral and have acted accordingly. The apparatus of universal jurisdiction – and their use since Judge Baltasar Garzon triggered the arrest of Augusto Pinochet – has had a very important effect until its deactivation as a result of political pressure.

#### Question 6

24. Sanctions, whether individual or collective, have proven to be less effective compared to national or international criminal proceedings, even though they have had punctual

- disruptive effects against non-state actors in certain war zones, especially in Central Africa.
25. The implementation of procedural steps to sanction grave violations of rights against important political actors seem to be much more effective when they are taken in the same political space in which the acts they sanction were committed. This appears to be a precondition for such sanctions to be accepted and legitimized.
  26. This is why we have considered that bringing a case before the International Criminal Court would be an extraordinary opportunity not only for the ICC, but also for the EU, to demonstrate its adherence to the rule of law and its capacity to implement its preconizations in its own political space.
  27. International Criminal Law and more specifically the system of law that was adopted in 1998 during the Rome Conference, has been built up in order to put at the top of the hierarchy of norms – a concept conceived by the Austrian jurist Hans Kelsen – a set of rules that would render unlawful a certain type of behaviors, behaviors that commonly consist using violence as a tool to gain power. No legal vector and no political objective can overrule the legal frame set up by the Rome Statute.
  28. Therefore, unlike other systems of sanctions, the Rome Statute does not only set limits to the political action of individuals, it also does not need any political validation or renewal at a national or international level. Once the State has adhered to the Rome Statute, the implementation of any decision by the International Criminal Court is supposed to be automatic, as the law contained in its Statute is presumed to be integrated in the internal system of the member State.
  29. Therefore, the commission of acts sanctioned by the Rome Statute cannot be re-legitimized by internal, national legal framework, and no conflict of norms can be insinuated in that regard. This allows for justice to be practiced independently from the evolution of power relations. And polemic or interference between State relations is as a consequence limited.
  30. Both sanctions and criminal proceedings have a disruptive effect in international relations and are therefore should be used with caution and through independent bodies. Yet, criminal proceedings are purposely have greater impact, as their neutrality is secured through procedural steps that sanction mechanisms, such as the Magnitsky ask, cannot guarantee.
  31. This is why, when the degree of gravity and all other criteria requested by the Rome Statute are met, we consider this tool to be preferable to any other. And this is why it is our view that sanctions should be used as subsidiary measures, aimed only to ensure the execution of international criminal decisions, rather as main tools to address these issues.

32. Finally, acts of lesser gravity such as violations of human rights that do not amount to atrocious crimes and do not fall within the meaning of the Rome Statute, should be treated too within integrated legal systems, such as the European convention for human rights, rather than through foreign sanctioning regime. This is so because here too, the degree of politicization of these proceedings increases once they are instituted outside such systems, and thus they are more susceptible to political interference and suffer absence of legitimacy.

#### Question 7

33. Regarding actors that fall under the scope of international criminal law, only criminal prosecution should be envisaged. National or international sanctions of non-criminal nature should only be envisaged as subsidiaries to this prosecution, increasing the pressure under the said actors and pushing others to distance themselves from the incriminated individuals.

34. The discussion over the legitimacy and effectiveness of these tools in other situations falls outside our current mandate.

#### Question 8

35. The lack of engagement of the Prosecutor of the ICC with respect to the main situations in which Western forces are implicated has been dragging down its capacity to act and to be perceived as a legitimate actor. The international community seems to have created an instrument that is only used instrumentally, essentially by its mere fact of existence. This reluctance has hindered the capacity of the Court, that has deployed itself as a safehouse for international civil servants with little to no ambition to resist the current constraints applied to their mandate, especially at the Office of the Prosecutor. The consequence is an apathic institution, unable to fulfil its mandate, one that relies on its symbolic power to subsist, without creating any kind of serious friction with the main powers by fear of losing their support. The latest turnout on the Afghanistan situation is particularly worrying and shows an institutional failure that should trigger alarm.

#### Question 9

36. The simplest measure would be the use of the UNSC referral to the ICC of the Syrian situation, which is currently blocked by Russia and China after the perceived abuses of the

2011 Libyan situation. The development of universal jurisdiction, which would hinder the travelling capacity of the targeted actors and their capacity to re-legitimize themselves would also be an interesting tool to approach. Constancy in the prosecutions and rigor in the investigations would naturally be the follow-up tools to reach for a result.

#### Question 10

37. The ICC is in a catastrophic situation and the choice of its next prosecutor will be of great importance. After two mandates following the same line (Fatou Bensouda was the adjunct Prosecutor of Luis Moreno Ocampo), the capacity of the States to choose an ambitious prosecutor, capable of extracting itself from the compromising strategies chosen by its predecessors is of crucial importance to legitimize again the institution, especially towards African states. Else, its cost and rising disarray will trigger unavoidable debates about its existence.
38. The nature of the institution is also now to be interrogated. The Nuremberg Trials saw their legitimacy sustained on their reliance over subsidiary institutions that put into trial thousands of individuals. The current strategy followed at the ICC is to narrow proceedings, and make “symbolic” choices that are supposed to affect the behavior of the other actors in the chosen situations.
39. It is nonetheless unconceivable to deal with mass crimes without mass scale trials. In the situation we submitted our communication about, we consider that it would be impossible to understand, judge and dismantle the political strategy that has brought to the death of tens of thousands of people without trials that would include political, bureaucratic and executionary levels.
40. The ICC is incapable today to host such legal proceedings. Reforming it in order to attain this capacity, an objective that is not contradictory with the complementary nature of the institution, being a Court of last resort, appears to us as a priority reform.

#### Question 11

41. Nominating a strong and fiercely independent prosecutor in 2020 seems to be the first requirement to allow the ICC to deploy itself. The Assembly of State Parties should also negotiate the budgets of the institution in a triennial or quinquennial fashion, rather than the current yearly negotiations that are not only time consuming, but that also put undue pressure over the current ICC staff member to follow short-term priorities of the States.

Finally, a structural reform that would give the institution the capacity to host larger trials, for example through the creation of “instruction judges”, under the French model, should be envisioned if no reform under the current equilibrium of powers at the Court can intervene.

#### Question 12

42. By creating bodies of law that ensure the respective national and international implementation of those basic rights, without requiring foreign interventions.

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