

AMNESTY INTERNATIONAL PUBLIC STATEMENT

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Amnesty International Assessment of the 15th Session of the Assembly of States Parties to the ICC

The [Assembly of States Parties](#) to the Rome Statute of the International Criminal Court (Assembly), which is currently made up of 124 states that have signed up to the International Criminal Court (ICC), concluded its 15th annual session on Thursday 24th November 2016. A large number of NGOs also attended the meeting, along with observer states including China, USA and Russia. Amnesty International also held two very successful 'side-events' at the Assembly session, – one on the need for accountability in North-Eastern Nigeria, and one (with FIDH) on examples of positive complementarity in West and Central Africa.

The Assembly session was characterised by a positive reaffirmation of support to the Court by many states parties, in particular from the African region. In contrast, the session will be remembered for the highly regrettable efforts of the Court's largest financial contributors, including Canada, UK, France, Germany, Japan and Spain to restrict the Court's ability to meet the demands placed upon it with the inevitable consequence of the Court being unable to undertake investigations where these are urgently needed.

Prior to the Assembly session, Amnesty International published a series of [seven recommendations](#) to states parties prior to the Assembly session including on proposed amendments to the Court's Rules of Procedure and Evidence and the importance of funding family visits for indigent detainees. The recommendations also included a proposal regarding the need for clearer procedures to be applied to consultations under Article 97 of the Rome Statute and a proposal for the establishment of a judicial process to rule on challenges to the legality of cooperation requests when consultations fail to resolve disputes. With its detailed and expert recommendations, Amnesty International was able to effectively occupy the corridors of the Assembly and engage in advocacy with many state representatives and diplomats, as well as the representatives of international organisations including the African Union and the European Union, and other NGOs (both international and national).

In the weeks leading up to the fifteenth Assembly session, Amnesty engaged in extensive advocacy efforts, working closely with our national offices and sections in all regions of the world, with a strong emphasis on the African region, to encourage states to publicly support the ICC at the ASP and to engage constructively with the ICC to resolve any legitimate issues.

Nearly all of Amnesty's recommendations were taken up by states parties, with clear evidence at the Assembly that Amnesty's calls had been heard and that Amnesty's recommendations on concise issues had gained specific traction by key policy makers in several strategic member states.

Positive affirmations of support for the Court

The run up to the Assembly's 15th session had been overshadowed by the withdrawals of three governments – [Burundi](#), [Gambia](#) and [South Africa](#) – from the Rome Statute. [Amnesty International had called on these governments to reconsider](#) their decisions, emphasizing that at a time when crimes under the jurisdiction of the ICC continue to be committed with impunity in many regions of the world, [membership of the Rome Statute](#) and the ICC ensured a [key avenue for justice](#) and reparation for millions of victims.

During the opening days of the ASP session, despite unsubstantiated rumours that the withdrawals might precipitate a ‘mass withdrawal’ of states parties, many states parties voiced their continuing support for the ICC and the Rome Statute. In particular, states parties from the African group spoke out during the general debate to re-affirm and renew their continuing support for the Court and the Rome Statute system, highlighting in particular that states should address concerns from within the Rome Statute system of justice and that withdrawals only served to undermine justice efforts. Representatives from African states including [Nigeria](#), [Democratic Republic of Congo](#), [Cote d’Ivoire](#), [Botswana](#), [Tunisia](#), [Ghana](#), [Mali](#), [Burkina Faso](#), [Tanzania](#), [Lesotho](#), [Senegal](#) and [Uganda](#) made positive statements regarding the ICC’s work.

African states parties also took the opportunity to highlight a number of shortcomings in the Rome Statute system, particularly the absence of certain permanent members of the UN Security Council from the system and the inconsistent manner in which the UN Security Council had responded to calls for international justice. Amnesty International also delivered a [statement](#) during the general debate, calling on those states parties who had chosen to withdraw from the Rome Statute system to reconsider their decision and emphasising that as the ICC progresses its investigations into new situations, the Court will need to the support of all states, including a strong voice from the African region, to help it meet its challenges and the potential new backlash against the Court. The urgent need for the permanent members of the UN Security Council to refrain from using their veto in relation to situations involving war crimes, crimes against humanity and genocide was also strongly advocated.

On Friday 16th November, the President of the Assembly, Mr. Sidiki Kaba, convened an open Bureau meeting to discuss the “Relationship between Africa and the International Criminal Court”. This meeting was held in a ‘spirit of ‘dialogue’ which had been sought and emphasised by many states parties during the preceding days’ general debate. However, despite many states highlighting the need for dialogue, including African states parties, during the plenary session many states stayed silent and very few African states took opportunity and invitation to raise issues before the Assembly.

Attempts to interfere with the Court’s work through the budget

Discussions concerning the budget of the Court were held largely in the second week of the Assembly session, and took place in the context of a damaging long-term effort by the Court’s biggest financial contributors to restrict increases in the budget which threatens to [curtail and interfere with the ICC’s work](#). The initiative by Canada, Colombia, Ecuador, France, Germany, Italy, Japan, Poland, Spain, UK and Venezuela ignored the recommendations of the Committee on Budget and Finance - an independent expert body - that additional funding for the court was needed. The [final budget](#) allocated to the Court was €141.6 million, substantially below the €147.25 million originally requested by the Court. While recognising that the Court should continue to take measures if possible to increase its efficiency, Amnesty International is concerned that cuts to the ICC’s budget will not, as a matter of course automatically lead to efficiencies and may in fact lead to the Court being less efficient. Amnesty International is also deeply concerned by the devastating impact that reductions of resources by states parties to those requested by the Court have and have had on the court’s capacity to conduct investigations and keep pace with crimes committed in new situations. States must not use the ICC’s budget as a means to restrict its work.

Fair Trial Concerns on Amendments to the Court’s RPEs

Amnesty International remains concerned by the [Assembly’s decision](#) to amend Rules 144(2)(b) and 101(3) which permit only the partial translation of key decisions into a language fully understood by the accused. Indeed, Amnesty International has [previously stated](#) that, despite some safeguards, the changes may undermine the rights of the accused in Article 67 of the Rome Statute, including the right to translations, as well as the right to adequate time and facilities to prepare a defence and to examine, or have examined, the witness against him or her.

Amnesty International had urged the Assembly to reject the proposed amendment to Rule 144(2)(b) and amend proposed Rule 101(3) to exclude the commencement of time limits following partial translations. At the very minimum, the Rule amendment should have expressly required a case-by-case assessment of the nature of the decision, its impact on the accused and whether the defence may seek to appeal the decision. The scope and quality of any partial translation should also have to be guaranteed in the new Rule, in particular ensuring that the accused is effectively and fully informed of the factual and legal basis for the decision. Amnesty International will continue to monitor the application of these amended rules very closely to ensure that the rights of the accused are fully upheld in practice.

Importantly, the most controversial amendment – to Rule 76(3) - which Amnesty International had recommended be rejected and which would have allowed only partial translation of Prosecution witness statements, was not adopted by the Assembly.

The Assembly's Working Group on Amendments also considered provisionally amended Rule 165, which concerns the prosecution and trial of offences against the administration of justice under Article 70 of the Rome Statute. The provisional amendments reduce the number of judges at pre-trial and trial from three to one and the number of judges conducting appeal proceedings from five to three; remove the separate sentencing procedure in Article 76(2) and; remove the interlocutory appeal procedure in Article 82(1)(d) on issues 'that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial.' Amnesty International had outlined a number of fair trial concerns regarding the provisional amendments and called for changes to the amendment before its adoption by the Assembly, in order that recourse to a separate sentencing hearing and interlocutory appeals was retained.

During the Working Group on Amendments meeting, France and Germany presented a [proposal](#) which reflected and addressed many of Amnesty International's concerns. However, neither this proposal, nor the provisionally amended Rule 165 was adopted by the Assembly before the conclusion of the Assembly session. Amnesty International will continue to monitor the work of the Working Group on Amendments as it continues to consider this amendment in 2017, as well as the Court's implementation of provisional Rule 165.

The Need to Address Challenges Prior to the Next Assembly Session

The fifteenth Assembly session will be remembered for positive statements of support for the Court by many states on the one hand, which was not ultimately backed-up by the necessary financial support for the Court on the other.

In 2017, states parties must continue their support for the Court as it opens new investigations and conducts preliminary examinations, which may be increasingly politically and logistically difficult. States Parties will need to ensure that their support for the Court stands firm in the face of a likely backlash as the Court expands its work outside of Africa.

African states parties will also have to maintain the positive momentum and support for the Court expressed during the fifteenth Assembly session into the African Union's January Summit in Addis Ababa, where discussions on a call for mass withdrawals from the Rome Statute may be on the agenda.

The intersessional period before the sixteenth Assembly session provides the ASP with an opportunity to address a number of key issues and challenges, including addressing issues around cooperation with the ICC and the need for voluntary agreements to be entered into, as well as ensuring that states parties meet fulfil their cooperation obligations. Amnesty International discussed a number of these challenges in a [plenary discussion](#) on cooperation at the fifteenth ASP session, and will follow with close interest how states parties will concretely address the challenge of non-cooperation by states parties, including at a plenary session in the next Assembly agenda.

Discussions in 2017 will also continue on the procedures for states parties to consult with the Court when they identify problems that may impede or prevent the execution of a cooperation request pursuant to Article 97 of the Rome Statute. Amnesty International has provided a detailed recommendation on the way forward with regard to Article 97 consultations, including the [recommendation](#) that a judicial process be established to rule on the legality of cooperation requests when consultations fail to resolve disputes. States parties should use the intersessional period to clarify the procedure to be followed, ensuring that they comply with the Statute.

States parties should use the intersessional period to strengthen the ICC and Rome Statute system and engage with South Africa and Burundi, urging them to reconsider their position before their withdrawal takes effect, as well as encouraging the government of Gambia to follow through on its reported announcement that it will rescind its withdrawal from the Rome Statute.