

November 28, 2011

Foreign Ministers
African States Parties to the International Criminal Court

Dear Foreign Minister,

From 12–21 December 2011, your government will join the 119 International Criminal Court (ICC) states parties for the 10th session of the Assembly of States Parties (ASP) of the ICC. We, the undersigned African civil society organizations and international organizations with a presence in Africa, write to urge your government to use this session to reinforce crucial support that African states have provided to the ICC to date, so that victims of heinous crimes in Africa and elsewhere are not left without redress. Below we highlight four critical areas for action at the session:

1. At the ASP general debate, make clear your state's support for and willingness to cooperate with the ICC

In the past three years, attacks on the court by some African leaders, and decisions by the African Union (AU) calling for non-cooperation with the ICC following arrest warrants issued for Sudanese President Omar Al-Bashir, have created significant challenges for the court. In this context, we commend the efforts by African ICC states parties to reaffirm the support that the ICC has on the continent. Notably, Burkina Faso, Mali, and Niger this year clearly indicated that they would abide by their commitments as ICC states parties in response to possible efforts by suspects in the ICC's Libya investigation to enter their countries, including former president Muammar Gaddafi. Botswana and South Africa have similarly affirmed their commitment to arrest ICC suspects – including Sudanese President Omar al-Bashir – who enter their countries.

Such expressions are important and many more are needed. The ICC is not a perfect institution, and principled criticism of the court's work is also important, but it should be situated amid an overall support from states parties to abide by their obligations as ICC states parties.

In addition, at the upcoming session, your government should support the adoption of procedures to address instances of non-cooperation, which have been developed by the bureau of the Assembly of States Parties. These procedures will help ensure the ASP is equipped to meet its obligations relating to non-cooperation. Finally, we urge your government to remain committed to and report on advancements achieved on pledges to support the court made at the 2010 Review Conference of the ICC.

2. Approve a budget that permits the ICC to implement its mandate effectively

We call upon all states at the ASP to reject arbitrary reductions to the ICC budget and ensure adequate resources for the ICC to implement its mandate. A wide gap is emerging between the resources requested by the court and the willingness of some states parties to meet the costs. In particular, some states parties are insisting on zero growth in the court's budget for 2012 in spite of an increased workload. While states parties should engage court officials on increasing the efficient use of resources, reasonable growth is necessary to meet new demands.

Of further concern is the suggestion from some states parties that as part of achieving these cuts, the court should prioritize “core” activities. We are concerned that this might mean reductions for certain activities, such as outreach and public information, despite their recognized importance at ASPs in recent years, often with the support of African states parties.

Your government has a critical role to play in ensuring the court has adequate resources to do its work and we thus urge you to take the following positions in budget discussions at the ASP:

- **Oppose zero growth as a budgetary policy for the ICC and support resources adequate to the court’s mandate.** Zero growth is incompatible with the court’s increasing workload. The court is a unique institution; its workload will vary from year to year, and several divisions of the court need to continue to grow in order to meet demand. The international community tasked the ICC with new responsibilities this year (Libya was referred by the UN Security Council, and the Ivorian government requested the prosecutor to open an investigation in Côte d’Ivoire) on top of existing ones. ICC states parties should ensure that the court has necessary resources, and any proposed reductions to the court’s budget request should be evaluated against the court’s ability to implement its mandate.
- **Insist that sufficient resources are allocated to the court’s outreach and public information activities.** Outreach is vital to ensure that justice is not only done but seen to be done among those most affected by the crimes, and to help provide notice to victims of their rights of participation. Public information efforts are also an essential way to help increase awareness of the court and, in turn, cooperation and support to it. States parties have worked in partnership with the court to develop its work over nine ASP sessions; while there is room for improvement in how the court conducts its communications activities, it should be without question that they should be undertaken.

3. Commit to adopting domestic implementing legislation of the ICC’s Rome Statute

We applaud the new ratifications of the Rome Statute this year by African states, Tunisia and Cape Verde. Their ratifications further reinforce Africa’s support to the fight against impunity, and increase the number of African states parties to the ICC to 33 out of 119 globally.

Following ratification, implementation of the Rome Statute into domestic law is essential to build the national capacity of states to prosecute genocide, war crimes, and crimes against humanity and to facilitate cooperation with the court. To date, six African states – Burkina Faso, Central African Republic, Kenya, Senegal, South Africa, and Uganda – have enacted comprehensive legislation in these areas, while a number of other countries have developed draft legislation.

During the 2010 Review Conference of the ICC, several African states committed to advance implementation of the Rome Statute domestically. We encourage these and all states to take ICC domestic implementation forward. In addition to drawing examples from ICC implementing laws from across the globe, states may refer to model ICC implementing laws, such as are available from the Commonwealth, and manuals on implementation, such as are available from the International Committee of the Red Cross. At the ASP, we urge your government to report on any progress made this year on implementing legislation and to recommit to making further

advances in 2012. Those with finalized legislation should pledge to share their expertise and experiences with other countries.

4. Support to the incoming prosecutor

At the ASP, a new chief prosecutor will be elected; this will mark a major transition in the court's life. African states parties have an important role to play in supporting the new prosecutor in carrying out his or her duties, especially as there are currently seven ongoing situations on the continent. We therefore urge your government to provide the necessary support and cooperation to the new office bearer in order to promote the best performance of his or her duties and to fulfill the mandate of the Office of the Prosecutor.

We hope this information is useful and look forward to a productive ASP session.

Sincerely,

Amnesty International Côte d'Ivoire
Amnesty International Togo
Arche d'Alliance, Democratic Republic of Congo
Association pour les Droits de l'Homme et l'Univers Carcéral, Democratic Republic of Congo
Centre for Accountability and Rule of Law, Sierra Leone
Centre for Human Rights and Rehabilitation, Malawi
Children Education Society, Tanzania
Civil Resource Development and Documentation Centre, Nigeria
Coalition Béninoise pour la Cour Pénale Internationale (CPI), Benin
Coalition Burundaise pour la CPI, Burundi
Coalition Centrafricaine pour la CPI, Central African Republic
Coalition for the International Criminal Court, with an office in Benin
Coalition for Justice and Accountability, Sierra Leone
Human Rights Watch, with offices in South Africa and Kenya
International Crime in Africa Programme, Institute for Security Studies, South Africa
Kenyan Section of the International Commission of Jurists, Kenya
Liberian Coalition for the International Criminal Court, Liberia
Ligue pour la Paix, les Droits de l'Homme et la Justice, Democratic Republic of Congo
Mouvement pour la Defense des Droits de l'Homme et d'Action Humanitaire, Central African Republic
Rencontre africaine des droits de l'homme, Guinea
Rights and Rice Foundation, Liberia
Southern African Centre for the Constructive Resolution of Disputes, Zambia
Southern Africa Litigation Centre, South Africa
Synergie congolaise des organisations non-gouvernementales pour les victimes, Democratic Republic of Congo
West African Bar Association, Nigeria

The signatories are members of an informal network of African civil society organizations and international organizations with a presence in Africa who have been working on Africa and the International Criminal Court.