



10 December 2020

Hon. Marise Payne  
Minister for Foreign Affairs  
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Parliament House  
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Dear Minister Payne

**RE: UPCOMING ASSEMBLY OF STATE PARTIES TO THE INTERNATIONAL CRIMINAL COURT MEETING**

I write in the lead up to the nineteenth session of the Assembly of States Parties (ASP) to the International Criminal Court (ICC) to be held from 14 - 23 December 2020.

In this regard I am sure that Australia will remain a strong and vocal supporter of the ICC and take decisions at the upcoming ASP which reflect Australia's effective oversight of the ICC, ensuring the effectiveness and credibility of the Court, including its compliance with human rights.

As you will be aware, on 2nd September 2020, the USA imposed sanctions on Prosecutor Fatou Bensouda and Mr. Phakiso Mochochoko, Head of the Jurisdiction, Complementarity and Cooperation Division in the Office of the Prosecutor. We therefore strongly urge the Australian government, as part of your general debate statement, and during any relevant ASP plenary session, to:

- Call on the USA government to reverse the Executive Order and lift the sanctions imposed on members of the OTP.
- Strongly condemn all threats against the ICC, its staff, and those who are threatened for their work on the ICC and the Rome Statute, recognising that such threats are flagrant assaults on international justice; recognise that states parties and the Assembly may need to take practical measures at the national and international level to negate the impact of sanctions on the Court and its staff and; agree to develop a formal strategy for responding to attacks on the Court by all States, including by non-States Parties.

It is likely that the 'Independent Expert Review of the International Criminal Court and the Rome Statute System' - which was carried out in 2020 - will be discussed at the ASP. Amnesty International urges the Australian government to ensure that the IER's recommendations are followed up in a manner which is transparent, and with the involvement of the organs of the Court, states parties, and other relevant stakeholders, recognising that the input of affected communities and those who have interacted with the Court in situation countries should be better reflected in the ongoing review exercise and in the implementation of the Independent Experts' recommendations.

In the consideration of the Independent Expert Review, we also urge the Australian government to consider findings and recommendations in the Experts' Report which point to performance shortcomings in states party support or management oversight and which require improvements by

states parties to meet their obligations in the Rome Statute. In particular, we the Australian government to address where a lack of cooperation, or budgetary and political support have led to the Court and its organs being unable to fulfil their mandates.

At the upcoming Assembly session, States Parties will undertake elections to fill six judicial vacancies and elect the next ICC Prosecutor. Amnesty International does not take a position on individual candidates for ICC elections. However, we urge state parties to elect the most-qualified candidates, in merit-based and transparent election processes, free from vote-trading and political considerations. In view of the upcoming ICC judicial elections, we invite your government to take into account Amnesty International's *'Key Criteria for Election as a Judge to the International Criminal Court'*, which we provide in Annex to this letter.

Attached to this letter you will find *Amnesty International's recommendations to the Nineteenth session of the ASP* for your consideration. The *Recommendations* document sets out Amnesty International's key recommendations for the nineteenth ASP session, which we urge your government to consider and address. The recommendations focus on the general debate and other topics which will likely be on the Assembly's agenda, and we urge your government to reflect the points provided in the document in your interventions and participation at the Assembly session.

Amnesty International looks forward to engaging with your government at the Nineteenth session of the ASP and to discussing these issues with you further.

For further information, or to discuss and organise a meeting, please contact Joel MacKay at [joel.mackay@amnesty.org.au](mailto:joel.mackay@amnesty.org.au) or 0424 242 112.

Yours sincerely,

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