



KEY RECOMMENDATIONS

TWENTIETH SESSION OF THE ASSEMBLY OF STATES PARTIES TO THE ROME STATUTE

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This paper sets out Amnesty International's **key recommendations** for the twentieth session of the Assembly of States Parties to the Rome Statute ('ASP') which we urge all states parties to consider and the Assembly to address. The recommendations focus on the general debate and other topics on the Assembly's agenda, and we urge states to reflect the following points in their interventions and participation at the Assembly.

GENERAL DEBATE: The Assembly should make strong high-level statements in support of the ICC. In particular states parties should:

- Affirm their commitment to international justice, emphasizing the need to support the ICC in its work, fully respect and safeguard the independence of the Court and protect the integrity of the Rome Statute;
- Recall the high demands on the ICC to deliver justice to victims in situations around the world and call for the Court to be provided with the support, cooperation and funding it requires, recognising the incoherence of a 'zero-growth' budget approach with the growth of the OTP's and Court's workload.
- Call on states parties who have actively and shamefully opposed the Prosecutor's investigation in the Palestine situation to reconsider their positions, and remind all states parties that - regardless of whether they agree with the ICC's decision on its jurisdiction – all states parties are obligated to comply with their Rome Statute obligations.
- Recognize that the severest impacts of the Court's underfunding are felt – not in The Hague – but in situation countries, where the Court's ability to fulfil its mandate to carry out investigations; to provide meaningful access to justice for victims or; to provide effective outreach to affected communities has been acutely damaged.
- Recognise that the ICC is a keystone of a broader Rome Statute *system* of international justice, in which states parties must step-up to ensure investigations of *all parties and persons* suspected of committing crimes under international law, including those traditionally seen as allies.
- Recognise that efforts towards strengthening complementarity can only work if states are genuinely willing and able to investigate Rome Statute crimes and that such efforts must not lead to certain crimes or nationals being able to avoid investigation or prosecution at the international or national level.
- Recognise that the International Criminal Court and its states parties must be judged on how they ensure the highest standards of human rights compliance at the ICC, particularly in relation to fair trial rights of accused and acquitted persons.
- Call on all permanent members of the United Nations Security Council to refrain from using their veto power to block referrals to the ICC Prosecutor.
- Strongly condemn threats that have been made against civil society and human rights defenders for their engagement with the Court, both generally and in the context of the Assembly of States Parties, recalling that civil society and human rights defenders play a crucial role in the Rome Statute system.



INDEPENDENT EXPERT REVIEW ('IER')

Generally, the work of the Assembly has not led to honest appraisals as to how the non-fulfilment by states parties of their oversight or management obligations in the Rome Statute has led to the Court not being able to fulfil its mandate. Indeed, states parties have so far not been willing or able to review their own performance. In our view, the IER was severely limited in its recommendations to states parties, due to its apparent unwillingness to address some of the fundamental reasons behind the Court's current performance which point to the role of states parties and the Assembly's governance shortcomings. These cannot continue to be overlooked as states parties consider the findings of the IER and its recommendations.

Amnesty International remains concerned that the IER was defined by a lack of engagement by the independent experts with stakeholders at the national-level and a lack of involvement of people from the field, including victims' communities and other stakeholders. It is imperative that the ongoing work related to the IER urgently includes the participation of stakeholders from situation countries and affected communities. Indeed, a 'technical' review which does not consider how the Court's effective operations in the field and its impact can be significantly improved, would serve a severely limited purpose.

Amnesty International understands that the Independent Experts had been requested and invited to visit situation countries and to conduct consultations within those countries – with a view to meeting with people from affected communities and those who have dealt with the ICC. While the impact of the Covid-19 pandemic had been raised as a reason for the Independent Experts having been unable to consult with those in situation countries, we firmly believe that the Experts should have exhausted all avenues to gather the input of stakeholders in situation countries, including travelling to those countries. Going forward, we urge states parties and all those engaging on the IER not to consider meetings solely in New York or The Hague as sufficient for comprehensive stakeholder engagement with the IER, and to consider how the meaningful participation of stakeholders and particularly affected communities in situation countries can be included in any future work on the IER and in the consideration of the IER's recommendations.

Amnesty International also remains wary of states parties seeking to use the Independent Expert Review, and discussions within the ASP's intersessional working groups, as a vehicle to interfere with the Court's independence. We urge states parties to be acutely aware of state party overreach under the auspices of the Expert Review and to oppose any attempt by certain states to improperly interfere with the Court's work.

As part of their **general debate statements**, and **during any relevant plenary session**, states parties should:

- Urgently consider how to ensure that the input of affected communities and those who have interacted with the Court in situation countries can better be reflected in the ongoing review exercise and in the implementation of the IER's recommendations;
- Commit to considering findings and recommendations 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;
- Commit to addressing where a lack of cooperation, or budgetary and political support have led to the Court and its organs being unable to fulfil their mandate.

PROPOSED ICC BUDGET 2022

The impact of the Assembly's chronic underfunding of the Court is starkly upon us.

States parties must recognize that the severest impacts of the Court's underfunding are felt – not in The Hague – but in situation countries, where the Court's ability to fulfil its mandate to carry out investigations; to provide



meaningful access to justice for victims or; to provide effective outreach to affected communities has been acutely damaged.

This year the Office of the Prosecutor ('OTP') has opened investigations in Palestine, The Philippines, and Venezuela – all of which will require significant resources to be effective. These developments take the number of ICC situations under investigation to sixteen and clearly demonstrate the incoherence of a 'zero-growth' budget approach (that a number of states parties continue to pursue) with the growth of the OTP's workload and expectations placed upon it. Indeed, despite representing an increase over the approved budget in 2021, the amount of resources recommended by the CBF for 2022 fall far short of those required for the Court to meet its demanding workload, and may not allow the Court and OTP to fulfil the budgetary assumptions it had set out in its proposed budget.

In 2021 a lack of resources has been given as a justification for the Prosecutor to 'hibernate' concluded preliminary examinations in Nigeria and Ukraine, despite determining that full investigations are warranted. The 'hibernation' approach is deeply problematic. It is likely to shut the door on victims' only hope of justice; further politicize the ICC; leave civil society, victims and witnesses vulnerable to threats, intimidation and attacks by perpetrators seeking to take advantage of delays to undermine the ICC and destroy evidence; and render future investigations exceptionally challenging, if not impossible. Similarly, the OTP has resorted to arguments of resource scarcity to pursue a deeply-flawed selective justice approach in Afghanistan which in our view presents an overwhelming threat to the fulfilment of the Court's mandate and its future - if the Court can only pursue investigations based on arbitrary and often political determinations of states and whether they are – or are not - willing to pay for certain investigations.

We are also acutely aware that states who do not want the ICC to investigate certain situations may seek to weaken the Court through an inadequate budget allocation. With the Court's major funders expressing their opposition to the Palestine investigation for example, we have never been more concerned that political considerations will affect the work of the Office of the Prosecutor.

Looking to the future, it is clear that a new budgetary approach is needed. Annual demands for zero-growth are unacceptable and unsustainable, and we urge the 'silent majority' of states parties who have not actively pursued a zero-growth budget position to make themselves heard.

The Assembly must urgently discuss the medium, and long-term resource requirements for an effective ICC, as well as how the Court can achieve at least a baseline capacity level of staff and resources, where it can respond to demands without undermining quality and efficiency.

As part of their **general debate statements**, and **during any relevant plenary session**, states parties should:

- Commit to providing the Court, at a minimum, with a budget of 151.98 million as recommended by the CBF;
- Commit to addressing where under-funding and pressure on the Court to present 'zero-growth' budgets has led to the Court's underperformance and its organs being unable to fulfil their respective mandates;
- Commit to considering the medium, and long-term resource requirements for an effective ICC, as well as how the Court can achieve at least a baseline capacity level of staff and resources, where it can respond to demands without undermining quality and efficiency.

COOPERATION WITH THE ICC

States parties should urgently examine the findings in the Independent Experts' Report and the instances which detail cooperation challenges faced by the Court. With these in mind, the Experts' (limited) recommendations that '[t]he OTP and the ASP should consider improvements in cooperation' and that 'cooperation between the Court and the ASP needs to be encouraged' must be urgently acted upon.



The standalone cooperation plenary session may provide an excellent opportunity to discuss practical solutions to the cooperation challenges the Court is facing. This year, discussions on the seizing and freezing of assets would provide the opportunity to discuss how such assets could be used for the benefit of victims and particularly to ensure full and effective reparations awards. Article 57(3)(e) of the Rome Statute provides that the ICC Pre-Trial Chamber may ‘seek the cooperation of States pursuant to article 93, paragraph 1 (k)¹, to take protective measures for the purpose of forfeiture, *in particular for the ultimate benefit of victims*’.

States parties should also recognize that the term ‘voluntary’ cooperation is an unfortunate misnomer, by its implication that such cooperation is perhaps not essential to the proper functioning of the Court. In fact, the Court can only function if states parties are willing to enter into ‘voluntary’ agreements with the Court, and we continue to urge states parties to do so.

One area of significant concern surrounds the lack of willingness of states parties to enter into voluntary agreements with the Court in relation to defence matters, or to matters relating to accused persons and acquitted persons. In this regard, the ongoing situation of Mr. Charles Ble Goudé following his acquittal is of significant concern. Amnesty International understands that despite being acquitted, Mr Ble Goudé has not been able to leave the Netherlands, nor even allowed to leave The Hague - as such he is not fully at liberty. Mr Ble Goudé’s case highlights the stark need for the ICC and states parties to consider the rights of acquitted persons, and how they can be fully realised, including through acquittal agreements, which should allow for an acquitted person to be fully at liberty in states who have entered into such agreements. Amnesty International particularly calls on The Netherlands to consider its obligations as the ICC’s host state as requiring it to ensure the right to liberty - to the fullest extent possible - of acquitted persons who may practically have to remain in The Netherlands following acquittal in the Courtroom.

As part of their **general debate statements**, and **during any relevant plenary session**, states parties should:

- Urgently discuss the strengthening of cooperation as it relates to defence matters as well as the need for states parties to enter into voluntary agreements with the Court in matters relating to accused persons and acquitted persons.
- Call on states parties to consider the rights of acquitted persons, and how they can be fully realised, including through the entering into of acquittal agreements, which should allow for an acquitted person to be fully at liberty in states who have entered into such agreements.
- Call on The Netherlands to consider its obligations as the ICC’s host state, and the requirements on it to ensure the right to liberty - to the fullest extent possible - of acquitted persons who may practically remain in The Netherlands following acquittal in the Courtroom.
- Commit to considering improvements in cooperation and their own performance shortcomings and obligations in the Rome Statute as they relate to cooperation, including in the intersessional cooperation working group and in the consideration of the Independent Expert Review’s findings and recommendations;
- Commit to and urge other states to cooperate promptly and fully with the ICC, including in the execution of all arrest warrants – recognising that outstanding arrest warrants undermine efforts to advance states parties’ shared goal to ‘put an end to impunity for the perpetrators of these [Rome Statute] crimes’;
- Commit to further strengthening and regularly reviewing the Assembly’s Procedures related to non-cooperation - recognising the crucial role of the Assembly to respond to instances of non-cooperation provided in Article 87(7) of the Rome Statute to ensure that states parties fulfil their cooperation obligations;
- Urge the United Nations Security Council to support the efforts of the ICC in Darfur and Libya, especially by responding to findings of non-cooperation, and through providing resources in instances where the Council refers situations to the Court;
- Urge the United Nations Security Council to refer the situations of Myanmar and Syria to the ICC, without any jurisdictional ‘carve-outs’, including for non-states parties.

¹ Rome Statute Article 93(1)(k) reads: (1) States Parties shall, in accordance with the provisions of this Part and under procedures of national law, comply with requests by the Court to provide the following assistance in relation to investigations or prosecutions [...] (k) The identification, tracing and freezing or seizure of proceeds, property and assets and instrumentalities of crimes for the purpose of forfeiture, without prejudice to the rights of bona fide third parties.



- Commit to and urge other states to promptly ratify or adhere to - without making any reservations - the Agreement on Privileges and Immunities (APIC), recognising that the APIC allows the Court and its staff to fulfil their mandate in any territory subject to the jurisdiction of states parties;
- Commit to and urge other states to enter into agreements with the ICC on witness relocation, interim release, enforcement of sentences and relocation of acquitted persons; recognising that such agreements are necessary for the Court to comply with its fair trial and human rights obligations;
- Commit to strengthening the Court's capacity to effectively investigate and pursue the identification, freezing and seizure of assets including for reparations as provided in Article 75(4) of the Rome Statute and Rule 99(1) of the Rules of Procedure and Evidence.