



KEY RECOMMENDATIONS

21st SESSION OF THE ASSEMBLY OF STATES PARTIES TO THE ROME STATUTE

5-10 DECEMBER 2022

CENTRE FOR INTERNATIONAL JUSTICE
hrij.amnesty.nl Twitter : @AmnestyCIJ

This paper sets out Amnesty International's **key recommendations** for the 21st 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 International Criminal Court (ICC). In particular states parties should:

- *In the ICC's twentieth anniversary year,*
 - Recognize that the ICC can play a unique role in the realization of the universal rights to truth, justice, effective remedies and reparations which must be enjoyed equally by all victims of crimes under international law;
 - Recall that double standards have no place in international justice and recognize that the Court's legitimacy risks being undermined by a selective approach to justice, as well as practices which appear to demonstrate a willingness to be influenced by powerful states;
 - Commit to fully supporting the Office of the Prosecutor (OTP) in all of its investigations, without distinction, and no matter how great the political or economic power of certain actors;
 - Emphasize the crucial importance that all investigations receive the same standard of treatment, so that all victims of international crimes have equal access to justice and reparations at the Court;
 - Call on the Assembly to ensure that all of the Court's investigations and activities are fully funded;
 - Highlight the threat to the Court's independence and impartiality if states are to able use their resources and cooperation as tools to influence which situations (and parties) are effectively investigated;
 - Recognize that universality of the Rome Statute remains critical, and urge all states who have not yet done so to ratify the Statute.
- 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;
- Recognize that demands on the ICC and for international justice continue to grow, and commit to providing the Court with an increased budget in 2023 to enable it to fulfil its independent functions effectively, while also committing to further investment which is necessary in the coming years to address the Court's capacity crisis;
- Support the establishment in 2023 of 'formal field presences' in Bangladesh, Sudan, Venezuela and Ukraine, as requested by the OTP;
- Recognize 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 within the Rome Statute;
- Recognize that efforts towards strengthening complementarity can only work if states are *genuinely* willing and able to investigate Rome Statute crimes domestically;

- Recognize 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 and due process 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 actors 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')

States parties should:

- Commit to considering findings and recommendations which point to performance shortcomings in state party support or management oversight and which require improvements by states parties to meet their obligations contained in the Rome Statute;
- Commit to addressing where a lack of cooperation, or budgetary and political support from states parties has led to the Court and its organs being unable to fulfil their mandates;
- Ensure that the input of affected communities and those who have interacted with the Court in situation countries can better be reflected in the continuing IER exercise and in the implementation of the IER's recommendations.

COOPERATION

States parties should:

- Urgently discuss the strengthening of cooperation as it relates to defence matters, which remain largely overlooked by the Assembly, 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 - recognizing that such agreements are necessary for the Court to comply with its fair trial and other human rights obligations;
- Call on states parties to consider the rights of acquitted persons, and how they can be fully realized, including through the entering into of acquittal agreements;
- Commit to and urge other states to cooperate promptly and fully with the ICC, including in the execution of all arrest warrants;
- Commit to further strengthening and regularly reviewing the Assembly's Procedures related to non-cooperation – recognizing the crucial role of the Assembly to respond to instances of non-cooperation provided in Article 87(7) of the Rome Statute;
- 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;
- 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.

PROPOSED ICC BUDGET 2023 – VOLUNTARY FUNDING and SECONDMENTS¹

General Recommendations - states parties should:

- Commit to providing the Court, at a minimum, with a 2023 budget of €179,6 million² as recommended by the Committee on Budget and Finance (CBF) – rejecting any possible attempts at further arbitrary cuts to the Committee’s recommendations;
- If necessary, states parties should call for a vote on the CBF’s recommendations, rather than adopt a consensus compromise that would fall below the recommendations and which would weaken the functioning of the Court;
- Recognize that further investment will still be necessary in the coming years to address the Court’s capacity crisis and guarantee the effectiveness and independence of the Court;
- Commit to continuing dialogue and action towards ensuring that sufficient future resources are provided for the Court to operate justly, fairly and independently, and further commit to accelerating the process of discussion among stakeholders foreseen in Recommendation 363 of the IER;
- Recall the crucial importance that all investigations receive the same principal standard of treatment, including in resource terms, so that all victims of international crimes have equal access to justice and reparations at the Court;
- Consider legitimate concerns that a two-tier system of justice may emerge as a result of the Prosecutor’s recent voluntary resourcing approach (see below).

Recommendations on Voluntary Funding – states parties should:

- Urgently consider risks that a voluntary approach to the Court’s resourcing may allow states parties to support only those situations which align with their interests - exacerbating the risk of selective justice and leaving the Court vulnerable to being influenced by powerful states;
- Recognize that the resort to voluntary contributions in 2022 is not without significant risks to the independence and effective functioning of the Court;
- Urgently consider the sustainability³ and consequences of the Prosecutor’s voluntary funding initiative as a response to the Court’s chronic capacity crisis and for the long-term effective functioning of the Court;
- Recognize that while voluntary contributions can be an important source of additional funds for the ICC, they are not a reliable or sustainable source of funding to conduct core activities effectively, such as investigations;
- Recognize that voluntary contributions to the Office of the Prosecutor could lead to asymmetrical growth and shortfalls in capacity, capabilities and funding across the various other organs of the Court;
- Take immediate steps to ensure full transparency regarding the receipt and assessment of voluntary contributions and how the money received is spent.

Given the risks associated with the voluntary funding approach to the OTP through the Trust Fund for Advanced Technology and Specialized Capacity (‘Trust Fund’), *the Assembly should:*

- A. Request the Court to report promptly and publicly on the voluntary contributions received this year and every year thereafter. The reports should include:
 - Full details of the voluntary contributions received, including: (1) whether the state complied with the Assembly’s request to declare that the voluntary contributions is not intended to affect the

¹ For further details, see Amnesty International’s 4-part series considering the Court’s capacity crisis and the Prosecutor’s resort to voluntary contributions and secondments: <https://hrij.amnesty.nl/are-there-hidden-costs-of-the-icc-prosecutors-campaign-for-additional-budget-support-voluntary-contributions-and-secondments/> - with thanks to Jonathan O’Donohue and Chuka Arinze-Onyia.

² Specifically €179,576.6 thousand, including the host State loan of €3,585.1 thousand.

³ For example, based on the experience of other ICC trust funds, it is likely that voluntary contributions to the OTP’s new Trust Fund for Advanced Technology and Specialized Capacity will fluctuate significantly each year, denying the OTP of reliable and consistent resources to plan and conduct vital aspects of its work.

independence of the Court; and (2) whether the state attached any conditions or understandings to its contribution;

- The criteria and procedure applied by the Registrar and the Prosecutor in determining that accepted voluntary contributions “will not affect the independence of the Court,” including whether consideration was given to the public announcement by states of their contributions or other statements by state officials; and
 - A full breakdown of how the money is being spent across all investigations.
- B. Ensure that reports requested by the CBF for the Court to provide a spending plan for the Trust Fund in the context of the 2023 proposed Programme Budget, as well as a report on the governance of the Trust Fund are also made public.
- C. Review and further develop its Criteria on Voluntary Contributions, providing more concrete direction to donors on how to make voluntary contributions and to the Registrar and the Prosecutor on when to accept or reject voluntary contributions. The Criteria should be reviewed regularly addressing any issues identified in the Court’s annual report. The Assembly should prioritize expanding the Criteria to provide further direction:
- To donors on publicly announcing their contributions, without affecting the independence of the Court;
 - To the Registrar and the Prosecutor on assessing contributions against the criteria that they “will not affect the independence of the Court”, including consideration that should be given to the content of announcements and other statements made by states and their officials;
 - To the CBF and the External Auditor on providing effective oversight of the Court’s application of the Criteria.
- D. In its annual resolution on Strengthening the International Criminal Court and the Assembly of States Parties, the Assembly should, in addition to calling on all states parties to support the new Trust Fund:
- Note that the Trust Fund supports the OTP’s ability to conduct core investigation tasks; and
 - Acknowledge that the Trust Fund does not prevent the Prosecutor from either requesting additional resources for these tasks from the annual budget or accessing the contingency funds, should the resources of the Trust Fund be insufficient.

Recommendations on Seconded Personnel – states parties should:

- Support all efforts of the Prosecutor to secure adequate resources, while recognizing that gratis personnel are unlikely to be a sustainable long-term solution to the Court’s capacity crisis;
- Recognize the dangers inherent in an approach where states parties will likely contribute personnel to benefit investigations only when this aligns with their interests - threatening to create a two-tier system of international justice and opening up the Court to accusations of geopolitical bias and political control;
- Recognize that the use of seconded personnel also carries risk to the Court’s independence and that further sufficient measures may need to be taken to protect the independence of the Court;
- Recognize that the use of seconded personnel may adversely affect issues related to geographical representation of staff at the ICC;
- Recognize that the 2005 Assembly’s *Guidelines for the selection and engagement of gratis personnel at the ICC* already contain significant safeguards for the Court’s effectiveness and independence which should be applied meticulously by the Court under the oversight of the Assembly;
- As necessary, consider the further development of the *Guidelines*;
- Underscore that transparency regarding the Court’s acceptance of gratis personnel is essential;
- Request the Prosecutor to satisfy the Assembly – in standalone reports to the Assembly - that all secondments have been established and conducted in accordance with the *Guidelines* established by the Assembly.