



KEY RECOMMENDATIONS

Assembly of States Parties 15

The Hague, 16-24 November 2016



COALITION FOR THE INTERNATIONAL CRIMINAL COURT

Join the fight for global justice
www.coalitionfortheicc.org

Introduction

Coming at a time of great challenge for the International Criminal Court (ICC) and the Rome Statute system, and for the world more broadly, the 15th annual session of the Assembly of States Parties (ASP) to the Rome Statute will serve as a vital forum for states and civil society actors to commit to maintaining the integrity of the Rome Statute and to consistent, strategic, and forward-looking actions; international institutions are only as powerful as their members allow them to be.

The Coalition for the ICC - a network of more than 2500 non-governmental organizations working in partnership to achieve justice for victims of genocide, war crimes, and crimes against humanity - facilitates the participation of civil society at the annual ASP session. More than 600 representatives of civil society are expected at the 15th Assembly of States Parties session, with many of them producing papers and advocacy materials to assist delegates in their deliberations.

In an effort to inform these commitments and the discussions taking place at this year's ASP session, and in light of the recent notifications by a number of States Parties of their intent to withdraw from the Statute, the Coalition has prepared the following key recommendations and concerns for States Parties' consideration ahead of the 15th ASP session.

Unite to deliver ICC justice to victims around the globe

In light of the tremendous challenges facing the International Criminal Court and the Rome Statute system, and the world more broadly, the Coalition for the International Criminal Court believes that a demonstration of unity and support for the international justice system is more vital than ever before to ensure the protection of global human rights in the face of rising tides of hostility, discrimination, and repression around the world. This year's ASP session comes at a time when demands for justice and accountability for grave crimes are growing around the world. The adoption of the UN Sustainable Development Goals in 2015 serves as formal acknowledgement by the international community that justice and the rule of law are essential elements for achieving the UN Charter's goals of peace, security, and human rights for all.

However, recent notifications by a number of States Parties of their intent to withdraw from the Statute have underscored the urgent need for governments and the ASP to protect the international justice system and continue to build on decades of efforts to end global impunity.

The General Debate segment of the ASP session provides an opportunity for governments to do just that: reaffirm their strong support for the ICC and the Rome Statute system in the mission to ensure accountability for the most egregious crimes known to humankind.

As we celebrate the Coalition for the ICC's 20th anniversary of fighting for the first "Never Again Court," which continues to take shape in the form of the ICC, the Coalition is encouraging governments to make supportive declarations to advance the following key principles during discussions on the outstanding resolution negotiations, as well as during the General Debate, special plenary sessions, side-events, and all other discussions around the 15th ASP session.

High-Level Political Support and Commitment

There is a crucial need for the highest levels of State Party governments to reaffirm their political support for the Rome Statute and the ICC. Support from government leaders will not only revitalize commitment to the Rome Statute, but also bolster the capacity of the ICC to deliver justice, provide redress to victims, and rebuild resilient post-conflict societies. When the most vocal on ICC issues have too often been anti-ICC leaders and groupings, it is vital that states and the international community show resolve and support the Rome Statute system they joined in national, regional, and international fora.

Strong response to withdrawal announcements

The move by a few States Parties to withdraw from the Rome Statute undermines the international justice system and sets back human rights progress worldwide. Opposition to the ICC has grown as it assumes the role for which it was established in 2002: to bring those individuals most responsible for grave crimes – including high-level government officials – to justice. This mandate comes from an overwhelming majority of states which voted for the adoption of the Rome Statute in 1998. States Parties should use the General Debate and other avenues to counter misinformation about the ICC and defend the Rome Statute system as it faces serious political challenges to its fundamental objective and purpose.

Safeguarding the integrity of the Rome Statute

The question of immunity for sitting heads-of-state and high-level government officials is one of the most important issues raised in relation to recent withdrawal announcements. While immunity for sitting heads-of-state has been a challenge encountered in some domestic jurisdictions, Rome Statute Article 27 prohibits immunities for heads-of-state and senior government officials. This is a cornerstone of the international justice system. States Parties should be steadfast in reiterating the importance of this principle in their General Debate statements as well as in other discussions during the ASP session.

ICC independence and States Parties' oversight

The ASP is inextricably linked to States Parties' oversight role within the Rome Statute system and the ICC. The Coalition notes that some States Parties and other governments have inappropriately interpreted the ASP oversight responsibilities and have attempted to have the ASP interfere with judicial and prosecutorial proceedings and decisions. The legitimacy of the Statute and the Court cannot be upheld unless the Assembly scrupulously respects the independence of the Office of the Prosecutor and of the Judiciary. Challenges to cases before the ICC must only be made before the judges and at all times in compliance with the Rome Statute.

Universality of the Rome Statute

In the face of withdrawal announcements, the General Debate should be used as a key opportunity to encourage non-states parties to join the Rome Statute system. Encouraging wider ratification and continued support of the Rome Statute is vital to maintaining and expanding the reach of international justice. States Parties can elaborate on the benefits of ICC membership, which might include advancement of the rule of law, sustainable development, and good governance. States Parties can also offer political support and, as appropriate, technical

assistance to states wishing to work toward that goal. States Parties can further use the opportunity to report or exchange experiences on progress made in implementing the Rome Statute’s provisions into national legislation, and/or towards ratification of the Agreement on Privileges and Immunities of the ICC (APIC).

Ratification of the APIC

The Agreement on Privileges and Immunities of the ICC (APIC) outlines privileges and immunities states should extend to Court officials and materials, guaranteeing the Court can carry out its work in an independent and unconditional manner. It is an essential element of state cooperation, crucial to the Court’s ability to operate as an independent judicial institution. 74 of the 124 states party governments have ratified APIC, as well as one non-state party (Ukraine). We urge all governments that have not yet ratified to do so or to indicate their commitment to do so during the APIC pledging ceremony at the 15th ASP session. This is one very important way governments can demonstrate solidarity with the Rome Statute and the ICC, and ensure its effective functioning.

Financial commitment to the Rome Statute system

A lack of resources has severely frustrated the optimal functioning of the Court. States Parties should oppose arbitrarily limiting the Court’s 2017 budget, which would undermine the ability of the ICC to deliver justice. While recent developments in the Court’s work increases the importance of timely and full payment of States’ contributions to the ICC budget, arrears of contributions currently stand at 34 million euros. To ensure all States Parties can make timely contributions and preserve their right to vote at the ASP session, States can use the General Debate as an opportunity to encourage support for the Least Developed Countries (LDC) Trust Fund.

Contributions to the Trust Fund for Victims

In light of the first reparations plan approved by judges and ready for implementation by the Trust Fund for Victims (TFV) in the Democratic Republic of the Congo, states should increase their financial, political, and moral support for the TFV and commit to regular contributions in the future. Particular attention should be paid to specific donor appeals aimed at assisting victims of sexual and gender-based violence.

Contributions to the Trust Fund for Family Visits for indigent detainees

The existing resources in the Trust Fund for Family Visits for indigent detainees are exhausted and urgent voluntary contributions are needed to ensure the ICC can safeguard the human rights of its detainees and meet the highest possible standards of criminal administration.

Election of CBF members

An election is slated for the 15th ASP session to elect six members of Committee on Budget and Finance. While the ASP Bureau has requested that States Parties find consensus to avoid the need for an actual vote, states should ensure that the elections remain fair, transparent, and lead to the election of the most qualified candidates. The Coalition strongly opposes reciprocal political agreements (“vote-trading”) in all ICC and ASP elections.

Judicial Elections in 2017

States should begin the search for only the most highly qualified candidates for the judicial elections set to take place at the 16th ASP session in 2017. With six new judges to be elected, set to join 11 remaining male judges and one remaining female judge, States Parties should pay particular attention to equitable gender representation on the ICC judicial bench which has served as a gold standard among international tribunals in this regard. During the nomination and election process, States Parties should ensure that minimum voting requirements, including for gender, are upheld. The Coalition itself does not endorse or oppose individual candidates, but rather advocates for the integrity of the nominations' and elections' procedures.

Gender justice

States should express their commitment to gender justice, noting that sexual and gender-based crimes (SGBC) are particularly reprehensible insofar as they result from pre-existing gender inequalities and target, on a large-scale, those most vulnerable in society – in particular women and girls, but also men and boys, on the basis of their gender. States could highlight, where relevant, efforts made to incorporate gender-inclusive provisions when implementing the Rome Statute, including criminalization of the full range of SGBC within domestic legislation.

States could also express support for efforts to achieve gender balance among ICC staff. In this regard States should pay particular attention to the nomination of the highest qualified female candidates for the 2017 Judicial Elections. With the six new judges joining the 11 male judges and one female remaining judge, it is crucial to ensure a fair gender balance on the ICC bench.

Status of Cooperation and Implementation

Full and prompt cooperation between States and the ICC remains essential for the effectiveness and success of the international criminal justice system. At the ASP session, states can report on progress made toward full implementation of national obligations under the Rome Statute, including legislative reform and integration of the treaty's provisions and principles of law into all facets of government, such as through the appointment of dedicated ICC focal points in state agencies and departments.

States may also use the General Debate as an opportunity to describe how they have responded to instances of non-cooperation, and as applicable, how they have upheld their legal obligations to cooperate with the ICC in the face of competing relationships that undermine fundamental international law principles in relation to serious international crimes. States may also exchange on the impact that non-cooperation can have, in particular when it concerns the arrest and surrender of individuals subject to ICC arrest warrants. States Parties should use the dedicated plenary session on cooperation at the ASP to reaffirm their commitment to critical cooperation tools, such as voluntary framework agreements and arrest strategies.

Outstanding arrest warrants

There is an absolute urgency for ICC arrest warrants to be executed. Without arrests, ICC cases cannot proceed and the Court's purpose to deliver timely justice is defeated. The execution of arrest warrants requires strong political will and diplomatic pressure, and States are

encouraged during the ASP session to stress their commitment to working towards the execution of all outstanding ICC arrest warrants, not least through inter-state cooperation. Short of executing these warrants, States should voice a commitment to avoiding non-essential contact with persons who are subject to ICC arrest warrants.

Complementarity

The primary obligation of States Parties to exercise their criminal jurisdictions in the investigation and prosecution of international crimes is a fundamental pillar of the Rome Statute system. This principle will only be fully realized with robust national prosecutions for grave crimes, which require the implementation of adequate and effective national legislation on Rome Statute crimes and general principles of law. Commitments to complementarity can also reflect efforts to sensitize and mobilize relevant national actors; to build political will to seek justice for grave crimes; to implement victims' rights; and to ensure the technical capacity to carry out investigations and prosecutions of international crimes.

States Parties should recall that complementarity is crucial to ensuring the full realization of the Rome Statute's promise and should use the ASP session as an opportunity to highlight the importance of positive complementarity efforts by States Parties, the Court, regional and international organizations, and civil society. The ASP session also allows for substantively focused statements on critical issues relating to complementarity, with particular regard to enhancing national capacity to investigate and prosecute sexual and gender-based crimes.

Building on Victims' Participation and Reparations

States Parties should underscore the need to keep victims' concerns at the center of discussions regarding the ICC and the need for the full realization of victims' rights, including the system of victims' participation and reparation. States Parties should also acknowledge the absolute importance of victims and affected communities within the Rome Statute system, including the benefits that meaningful victims' participation brings to the Court's proceedings and the judicial process as a whole.

States Parties should recall that, moving forward, all actors within the Rome Statute system must continue to share the responsibility of guaranteeing that victims' participation at the ICC is meaningful, and that victims are involved in the justice process in a manner that ensures their dignity and physical and psychological well-being. States should also recall that lessons-learned exercises must be undertaken in light of the Court's first cases and that these must form the basis for any future victims' representation discussions.

Support for outreach and communications

States should stress their support for and emphasize the pivotal importance of the Court's outreach work coupled with a robust public information strategy, setting out coordinated public information and media efforts to raise the Court's profile. Outreach efforts are crucial to creating an environment conducive to the ICC undertaking its work in situation countries; to managing victims' expectations; and to enabling the communities most affected by serious international crimes to follow and understand the international criminal justice process and the work of the Court. Equally important is support for the Court's efforts to reach the wider public through its

public information activities. Investment in communications and outreach, including through a strengthened field presence, contributes to the Court's overall visibility, enhances cooperation and support received, promotes the Court's proper functioning, international legitimacy, and local relevance, and allows the true story of the Court to be heard amidst anti-ICC media campaigns.

Organization of the ASP

Through administrative oversight and cooperation with the ICC, the ASP and its subsidiary mechanisms have a critical role to play in enhancing the effective functioning of the ICC. In this respect it is clear that the effectiveness of the ICC is intrinsically linked with effective oversight and support by the ASP. States should use the General Debate to welcome and support the considered reforms to the ASP institutional structures initiated in 2013 and fully support continued discussions and concrete enhancements moving forward. Many ICC experts and delegates from governments and nongovernmental organizations continue to raise the issue that the timing of the ASP sessions – in November – is not conducive to ensuring sufficient preparation and participation by delegates, and the ASP should consider changing the time of year that the ASP convenes.

The UN and the ICC

This year's ASP session comes at a time when demands for justice and accountability for grave crimes are growing around the world. The adoption of the UN sustainable development goals in 2015 serves as formal acknowledgement by the international community that justice and the rule of law are essential elements for achieving the UN Charter's goals of peace, security, and human rights for all. While the ICC and UN remain separate and independent bodies, governments must emphasize the strong link between their respective mandates and missions and their shared aim for global peace and security. As the entity having referred the situations in Darfur, Sudan and Libya to the ICC, the UN Security Council must provide the Court with full and effective cooperation to enable it to conduct its investigations and prosecutions in these situations.

Join the 'United by Common Bonds' Campaign

Drawing inspiration from the Rome Statute preamble declaration that "*all peoples are united by common bonds, but this delicate mosaic may shatter at any time,*" the Coalition has launched a campaign called United by Common Bonds, with the intention of underlining the global nature of the Court's mandate and mission, of the worldwide movement that brought about its establishment, and of the continuing global desire to see it succeed. United by Common Bonds will seek to rally expressions of support (written, visual, video, demonstrations) from global civil society, states, ICC, United Nations, eminent personalities, celebrities, and the general public. Participants in the campaign are asked to share their reasons for supporting the ICC and international justice. The United by Common Bonds [campaign video](#) can be found on: <http://bit.ly/2eD898V>. The Coalition's recently launched [new website](#) on <http://www.coalitionfortheicc.org/> is acting as platform for resources and means of expressing solidarity.

COALITION FOR THE INTERNATIONAL CRIMINAL COURT



The COALITION FOR THE INTERNATIONAL CRIMINAL COURT includes 2,500 non-governmental organisations in 150 countries working in partnership to strengthen international cooperation with the International Criminal Court; ensure that the Court is fair, effective and independent; make justice both visible and universal; and advance stronger national laws that deliver justice to victims of war crimes, crimes against humanity and genocide.