

# KEY RECOMMENDATIONS

## EIGHTEENTH SESSION OF THE ASSEMBLY OF STATES PARTIES TO THE ROME STATUTE 2-7 DECEMBER 2019

AMNESTY  
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This paper sets out Amnesty International's **key recommendations** for the eighteenth 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 **plenary debates** on the Assembly's agenda, and we urge states to reflect the following points in their interventions and participation at the Assembly. We also provide observations and recommendations on draft provisions to be adopted in resolutions related to i. the proposed amendment to article 8(2)(e) of the Rome Statute, ii. the election and nomination of judges.

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

- Affirm their commitment to international justice, emphasizing the need to support the ICC in its work, fully respect the independence of the Court, and protect the integrity of the Rome Statute;
- Recognize 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 required to meet these challenges;
- Emphasise the crucial responsibility of the Assembly to elect the ICC's next Prosecutor, and commit to a merit-based and transparent process;
- Emphasise the need for States Parties to respect the independence of the Office of the Prosecutor and the Judiciary, this includes in states parties' discussions related to 'complementarity' and in any discussions related to a review of the challenges facing the International Criminal Court;
- Emphasise that the rights of the accused, victims and witnesses must be fully respected and implemented, and the vital role that the Assembly must play in supporting the ICC's efforts to achieve human rights compliance;
- 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.

**As part of their general debate statements, states parties should call on each other and the Assembly to develop informal and formal strategies to respond effectively to interference and threats to the Court, and should:**

- Strongly condemn all threats against the ICC, its staff, and those who are threatened for their work on the ICC and the Rome Statute;
- Recognise that the Court can best respond to threats if it is supported by the Assembly and a broad range of stakeholders, including states parties and civil society;
- Urge states parties to respond to threats against the Court through the timely issuance of high-level statements expressing support to the Court and its staff;
- Provide political and other support to states who may be pressured not to fulfil their obligations under the Rome Statute;
- 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, as noted by states parties in the omnibus resolution and regularly by the Court, and recalling the need to support the work of civil society;
- Recall that the Agreement on Privileges and Immunities (APIC) provides protection to Court staff and call upon states parties and non- states parties who have not done so, to ratify the Agreement;
- Recognise that budgetary cuts and non-cooperation by states parties present major threats to the Court's



effective functioning;

- Consider strategic and coordinated responses (of the Assembly and ICC) to withdrawals and threats of withdrawals from the Rome Statute, recognising that universality of the Rome Statute may encourage stronger and broader geographic support to the Court;

**PLENARY ON COOPERATION:** states parties should contribute to this important debate promoting efforts to strengthen cooperation, which is vital to the effectiveness of the ICC. In particular states parties should:

- 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;
- Commit to and urge other states to promptly ratify or adhere to - without making any reservations - the 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;
- Cooperate fully with, and take all measures and steps required to assist the Trust Fund for Victims (TFV) in the implementation of its assistance and reparations mandate, including by recognizing the increasing demands on the Secretariat and the need for additional resources to perform its functions effectively in all situations and cases.



## **RESOLUTION on Amendment to article 8(2)(e) of the Rome Statute of the International Criminal Court *see in depth analysis and position paper***

States parties should adopt the amendment to article 8, paragraph 2(e), of the Rome Statute of the International Criminal Court contained in annex I to the draft resolution, and call upon states parties to ratify or accept the amendments to article 8.

## **RESOLUTION on THE NOMINATION AND ELECTION OF JUDGES**

### *Principle recommendations*

Amnesty International welcomes the proposed resolution on the nomination and election of judges which includes a number of crucial and fundamental elements and practices for states parties to adopt in the nomination and election of judges.

- i. In particular, we urge states parties to consider further strengthening draft paragraph 3<sup>1</sup> and to **consider the addition of the following language to paragraph 3:**

**'Encourages States Parties, when assessing the competencies of all candidates in accordance with article 36(3)(b) of the Rome Statute, to have particular regard to rule 22 of the rules of procedure and evidence and regulation 67 of the Regulations of the Court and the following qualities...'**

- ii. Amnesty International urges states parties to **include 'fair' in paragraph 3(b)**, so that the paragraph reads: 'Knowledge of and practical experience in criminal law and practice, including fair trial procedure'.
- iii. We **strongly support the proposal in Annex I of the Resolution** on the nomination and election of judges to amendment resolution ICC-ASP/3/Res.6, to delete the phrase in paragraph 3 "shall open 32 weeks before the elections" so that it reads: "The nomination period shall open on the first Monday of the calendar year when an election should take place."

While we note the amendment to paragraph 11 in Annex II which provides that the Advisory Committee on Nominations should complete its work in sufficient time for thorough subsequent consideration by the Assembly of States Parties, we urge states also to consider the **addition of language in Annex I in draft paragraph [x]: 'The Advisory Committee on Nominations shall make its assessment as soon as possible following the closure of the nomination period'**.

- iv. **We strongly support the proposal in Annex II to insert a new paragraph 7bis or 10bis.** However, Amnesty International considers that that proposed **paragraphs 7bis and 10bis should be merged** to provide more robust procedures. In particular, while ranking is important, this may not always indicate the suitability of candidates rather than how each candidate compares to other candidates. A ranking system on its own would not *per se* ensure that qualified candidates would be nominated or elected but it would go some way to improving the guidance provided to states parties in assessing the candidates. Therefore, it is important that the ACN adopts consistent and agreed methods to grade

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<sup>1</sup> Draft paragraph 3 'Encourages States Parties, when assessing the competencies of all candidates in accordance with article 36(3)(b) of the Rome Statute, to have particular regard to the following qualities: a. A university degree in law; b. Knowledge of and practical experience in criminal law and practice, including trial procedure; c. Experience in managing complex criminal trials; d. Experience in international criminal law and procedure as desirable experience of relevance of the judicial work of the Court.'

Rule 22 of the ICC Rules of Procedure and Evidence read in conjunction with regulation 67 of the Regulations of the Court provides for the appointment and qualifications of counsel at the ICC. The *Guide for applicants to the ICC List of Counsel and Assistants to Counsel* provides that in order to be admitted to the ICC List of Counsel, prospective defence or victims' counsel are only qualified if they meet the following three criteria<sup>1</sup>:

- i. A minimum of ten years of relevant experience (five years for assistant counsel);
- ii. In criminal proceedings;
- iii. As a judge, prosecutor, advocate or in other similar capacity.



and evaluate candidates' suitability. A consistent system of grading should be adopted alongside the provision of detailed reasons for the qualitative evaluation of each candidate.

It is also crucially important that the ACN can indicate where it regards a candidate(s) as not suitable for a judicial role. This would address instances where a candidate is assessed as not suitable for a judicial role, not shortlisted, but where the nominating states party does not withdraw the candidate. Further, while it is highly unlikely that a candidate who is not suitable for a judicial role would be shortlisted by the Committee, in instances where the number of judicial candidates nominated would not be sufficient to fill all vacant judicial positions, which might lead to all candidates being shortlisted, the ACN should still have the ability to indicate when a candidate is not not suitable.

For these reasons, Amnesty International **proposes the following as a new paragraph**:

The Committee shall submit a report which:

- i) Includes graded evaluations of the candidates' suitability,
- ii) provides for a ranking of the candidates,
- iii) explains the [detailed] reasons for its qualitative evaluation of each candidate,
- iv) explains how candidates for List B have experience in "relevant areas of international law",
- v) submits a short list of [...] candidates and;
- vi) indicates where the Committee regards a candidate as not suitable for a judicial role

## INVITATION TO SIDE-EVENT

### SOUTH SUDAN: JUSTICE FOR SURVIVORS OF SOUTH SUDAN CONFLICT

**4 December 2019, Antarctica Room, 6pm-8pm**

Amnesty International invites all participants at the Seventeenth Assembly of States Parties Session to a side-event to discuss the failure of South Sudanese justice systems to hold perpetrators of crimes under international law to account.

*Light refreshments will be provided.*

