

KEY RECOMMENDATIONS

AMNESTY
INTERNATIONAL



SEVENTEENTH SESSION OF THE ASSEMBLY OF STATES PARTIES TO THE ROME STATUTE 5TH – 12TH DECEMBER 2018

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This paper sets out Amnesty International's **key recommendations** for the seventeenth 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 recommendations on draft provisions to be adopted in the '**omnibus resolution**' in relation to i. An updated victims' strategy and; ii. The election of the next Prosecutor at the Assembly of States Parties' nineteenth session.

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 supporting the Bureau's establishment of a committee of independent experts in 2019 to search for and assess candidates for election in 2020, based on criteria in the Rome Statute in a merit-based and transparent process;
- Emphasise the importance of the independence of the Office of the Prosecutor in conducting its preliminary examinations, investigations and cases, without political, budgetary or other interference;
- 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; support the efforts of the ICC in Darfur and Libya and; to – in line with Amnesty International's recommendation in 2018 - refer the situation in Myanmar to the ICC.

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';
- Adopt the New York Working Group's proposed *Assembly procedures related to non-cooperation* which strengthen the Assembly's *procedures* adopted in 2011 and;
- Commit to regularly review the Assembly's Procedures related to non-cooperation, with a view to further strengthening them - 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;



- Call for the Assembly to adopt a standing agenda item to consider and respond to any instances of non-cooperation;
- 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;
- 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;
- 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.

PLENARY ON 'TWENTIETH ANNIVERSARY': states should use the agenda item to address ways to strengthen the Rome Statute system in the next 20 years. In particular, states parties should:

- Recognise that the Rome Statute's greatest achievement is its creation of a 'system' of international justice in which states undertake domestic ('complementary') international justice processes which give effect to international law obligations - including international human rights law obligations - on states parties to investigate, prosecute, and punish individuals responsible for Rome Statute crimes (and other crimes under international law);
- Call for the Assembly to consider new ways to encourage states parties to put in place systems (including national legislation and agreements with the ICC) to ensure that they fully comply with their obligations under the Rome Statute - such as a 'Universal Periodic Review' type process;
- Emphasise the role of victims in the Rome Statute system, and the obligation of the Assembly and states parties to ensure that victims' rights to access justice and obtain reparations - at the ICC and the national level - are fulfilled;
- Call on the Assembly to strengthen its oversight role as provided in the Rome Statute, and consider how the Assembly can more effectively provide the ICC with the support it needs – for example through providing a budget allocation which allows the Court to fulfil its mandate, through improving cooperation with the Court and, responding to instances of non-cooperation (see above 'Plenary on Cooperation');
- Urge the OTP to report publicly on the implementation of its policies and strategies, including its preliminary examination policy, and review its policies and strategies on a regular basis to reflect experience and lessons learned;
- Promote better safeguards to ensure human rights compliance at the ICC, ensuring that the rights of the accused, victims and witnesses and others are fully respected. In particular, the Assembly should consider measures to ensure that failures in cooperation and insufficient resources do not undermine the Court's ability to meet its human rights obligations.

PLENARY ON 'ACHIEVEMENTS AND CHALLENGES REGARDING VICTIMS' PARTICIPATION AND LEGAL REPRESENTATION AFTER 20 YEARS OF THE ADOPTION OF ROME STATUTE': states parties should:

- Reiterate their commitment to effective and meaningful participation of victims at the ICC, including legal representation;



- Emphasise the importance of the Court updating its Revised Strategy in Relation to Victims as soon as possible, ensuring that any strategy or policy reviews concerning victims' rights at the ICC include detailed consultations with victims, national and civil society groups and legal representatives of victims;
- Commit to providing adequate resources in the Court's budget for legal aid for victims, ensuring that the ongoing legal aid review fully takes into account the unique and specialized nature of victims legal representation; fully takes into account the feedback received during the legal aid review consultations and; leads to a revised legal representation system which is transparent, efficient and effective.

PLENARY ON 'CHALLENGES TO COOPERATION: SUPPORTING THE INTEGRITY AND INDEPENDENCE OF THE COURT AGAINST EXTERNAL INTERFERENCE AND POLITICAL THREATS': states parties should call on each other and the Assembly to develop informal and formal strategies to respond effectively to interference and threats, 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 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;
- Recognise that well-funded and effective public information on the Court's activities serves to counter misinformation and powerful narratives which threaten the Court.

OMNIBUS RESOLUTION

i. Election of the next Prosecutor

Section H of the omnibus resolution ('Elections') provides the opportunity for states parties to **include language in the omnibus resolution** in relation to the election of the next ICC Prosecutor by the Assembly in 2020. In particular, states parties are strongly urged to include language which:

- Highlights the crucially important role of the Assembly to elect a highly-qualified Prosecutor;
- Recognises that the Rome Statute provides criteria which candidates must fulfil to be eligible for election;
- Highlights the need for a merit-based, transparent and depoliticised Prosecutor election process;
- Recognises that the Bureau should establish in 2019 a committee of independent experts to search for and assess candidates;



- Recognises that a crucial first step of the Bureau's work in 2019 will be to develop the Terms of Reference for the Committee. The Terms of Reference should be developed by all states parties and civil society;
- Recognises that the selection of Committee members must be transparent and based on expertise;
- Provides that the Bureau consult with all states parties and other stakeholders to identify highly qualified candidates;
- Urges states parties to support the work of the Committee, including through disseminating notice of the position of Prosecutor nationally and providing other cooperation to the Committee as required;
- Recognises that the Committee will require adequate resources in order to fulfil its mandate.

ii. Updated Victims Strategy

States parties should **strongly support paragraph 97bis** proposed by the United Kingdom which reads:

97bis. *Recalls* the Court's previous commitment to review its Revised Strategy in Relation to Victims once a judicial cycle is finished, and therefore *requests* the Court to submit an updated strategy, including measurable and time-bound objectives, to the Assembly at its eighteenth session.

INVITATION TO SIDE-EVENT



NIGERIA AND THE ICC: ADDRESSING (NON)-ACCOUNTABILITY

11 December 2018, Antarctica Room, 1pm-3pm

Amnesty International invites all participants at the Seventeenth Assembly of States Parties Session to a side-event to discuss the ICC's preliminary examination and the lack of domestic accountability for Rome Statute crimes committed by all sides in Nigeria.

A light lunch will be provided.

