



Priorities and Recommendations for the 22nd Session of the International Criminal Court Assembly of States Parties November 2023

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Overview of Recommendations

I. Responding to threats and attacks against the ICC and those cooperating with it

- States Parties should express publicly their support for the ICC and its work in all situations, and should enhance their support to the Court, its officials, and those cooperating with it in the prevention and response to threats and attacks.
- States Parties should give full implementation to the Bureau Strategy to respond to threats and attacks against the Court.

II. Ensuring the adoption of a revised ICC Legal Aid Policy to establish a comprehensive system of legal aid that is accessible, sustainable, and credible.

- The ASP should adopt, at its upcoming 22nd session, the draft legal aid policy reform, implementing the so-called 'Scenario B+'.
- The Court and the Assembly of States Parties should continue to review, in consultation with the legal profession and other relevant stakeholders, the ICC legal aid policy in order to:
 - o Reduce and eliminate the disparity between the remuneration of external counsel and team members and their counterparts in the Office of the Prosecutor.
 - o Address and resolve the issue of income taxation for defence and victims' teams.
 - o Develop the legal aid system further with the aim to attract and retain highly skilled counsel and team members, and to improve gender equality and geographical representation.

III. Promoting effective state cooperation

Strengthening national frameworks for cooperation

- All States Parties, if they have not done so, should put in place effective national frameworks to cooperate fully with the ICC, including:
 - o Developing and enacting national implementing legislation and reviewing it every 10-15 years, taking into account the evolving experience and recommendations of the ICC.
 - o Ratifying or acceding to the Agreement on Privileges and Immunities of the ICC and incorporating it into national law.
 - o Entering into cooperation agreements with the Court on enforcement of sentences, victim and witness relocation, interim release, final release and air transport.
- States Parties should take the necessary steps toward the ratification of the MLA treaty.

Promoting state Cooperation

- States Parties should increase their efforts to cooperate with the ICC in the execution of warrants of arrest as well as in relation to financial investigations and the freezing and seizing of assets.
- States Parties should support the establishment of a coordinating mechanism of national authorities on cooperation.
- States Parties should support the establishment of a periodic review process at the ASP to strengthen national cooperation frameworks, as well as to promote and review the implementation of the 66 recommendations on cooperation and the Court's recommendations in its annual report on cooperation.

Cooperation with external defence and victims' counsel

- The ASP should enhance its consideration of the issue of cooperation with external defence and victims' counsel.



- States Parties should put in place effective national framework to facilitate cooperation with external defence and victims' teams.

IV. Ensuring effective decision-making on the annual budget and allocating sufficient resources for the ICC to fulfil its mandate

Deciding the 2023 budget

- States Parties should provide to the Court, through its regular budget, the necessary resources to implement its mandate consistently, effectively and efficiently.
- They ASP should refrain from imposing further cuts to the Court's request beyond those recommended by the Committee on Budget and Finance.
- The ASP should continue to consider ways to improve the budget process in line with the IER recommendations and other Assembly initiatives.

Electing members of the Committee on Budget and Finance

- In future elections, more States Parties should search for and nominate qualified candidates for the Committee on Budget and Finance
- States Parties should amend the composition of the Committee on Budget and Finance in order to achieve a fair representation of the different regional groups.

V. Electing the most qualified candidates in ICC elections

Strengthening the process of nomination and election of ICC Judges

- States Parties should elect highly qualified judges with knowledge and experience in criminal law and procedure, and only support candidates that were assessed as highly qualified, or well qualified by the Advisory Committee on the Nomination of Judges (ACN).
- States Parties should develop independent, transparent, and merit-based national nomination and selection processes to identify ICC judicial candidates.
- States Parties should support the efforts of the ACN towards the harmonisation of national procedures for the selection of ICC judicial candidates.
- The ASP should finalise the discussion on the Independent Expert Review recommendations on ICC judicial elections still pending.

Ensuring a thorough vetting process for all candidates to ICC elections

- States Parties should support the adoption by the 22nd ASP session of a permanent vetting process that it is fair, independent, professional and thorough.
- States parties should agree on a concrete plan for implementing the vetting process after its adoption and allocate sufficient resources for the effective implementation of vetting processes.

VI. Ensuring a sustainable source of funding for family visits

- States Parties should make voluntary contributions to the Trust Fund for family visits for indigent detainees in ICC detention.
- States Parties should develop backup measures to fund family visits in case the Trust Fund is depleted.

VII. Promoting geographical representation and gender balance and ensuring a safe working environment

- The ASP should support initiatives taken by the Court to enhance geographical representation and gender balance, while recognizing the need for continuous improvements.



- States Parties should actively cooperate with the Court in developing national frameworks supporting ICC measures to enhance geographical representation and gender balance.

VIII. Strengthening the voice of the defence in the Court

- The ASP should ensure that the Independent Expert Review's recommendations to strengthen the voice and representation of the defence are given full consideration without further delay by providing the necessary mandate to continue the discussion in 2024.

IX. Universality of the Rome Statute and amendments

- The IBA calls on all states to ratify the ICC Rome Statute and calls all ICC States Parties to urgently review the Plan of Action on Universality.
- All States Parties should ratify the amendments to the Rome Statute already adopted.
- States Parties and the ASP should give full consideration to ways in which the ICC's jurisdiction over the crime of aggression could be strengthened.



Introduction

This paper sets out the priorities and recommendations of the International Bar Association (IBA) International Criminal Court and International Criminal Law (ICC & ICL) Programme for the 22nd session of the International Criminal Court Assembly of States Parties (ASP), taking place from 4-14 December 2023 in New York.

The ICC & ICL Programme, based in The Hague, acts as the interface between the ICC and the global legal community. Through engagement with its members around the world, the IBA works to increase cooperation with and support for the ICC, with the goal of strengthening the Rome Statute system and achieving fair, effective, and accessible justice for victims of atrocity crimes.¹

The IBA ICC and ICL Programme's full recommendations for States Parties, published in [Strengthening the International Criminal Court and the Rome Statute System: A Guide for States Parties](#)², include a comprehensive set of recommendations for States Parties and the ASP to support the effective functioning of the Court, and specifically to strengthen domestic legislation and cooperation with the ICC. The relevant recommendations contained in the guide are also referenced throughout this paper.

The ICC context in 2023 and 2024: challenges and opportunities

The 22nd ASP session will be held at a critical time for international criminal justice.

In 2024, the Office of the Prosecutor will continue its investigative activities in 15 situations while warrants of arrests remain pending against 15 individuals. Four cases are currently in the trial phase (*Abd-Al-Rahman, Said, Al Hassan, and Yekatom & Ngaissona*), and reparations proceedings are ongoing in five cases (*Lubanga, Katanga, Al Mahdi, Ntaganda and Ongwen*).³

As the Court increases the scope of its work, the effective execution of its mandate is threatened by attacks against the institution, its officials, and those cooperating with it as well as by the continued imbalance between the resources provided by States through its budget and the resources requested by the Court.

The difficulties for the Court to operate are further exacerbated by shortfalls in state cooperation, which jeopardise the effective and efficient functioning of the Office of the Prosecutor and the rights of the accused and victims.

The 22nd ASP session coincides with the commemorations for the 25th anniversary of the adoption of the Rome Statute, which offered several opportunities to reflect on the ICC's mandate and challenges facing the Court as well as the vision for its future. In particular, the mandate of the ICC continues to be discussed in relation to the possible amendments of Rome Statute's provisions related to the crime of aggression to ensure their effectivity, and in relation to the possibility of adding new crimes under the jurisdiction of the Court, including the crime of ecocide.

As the Court takes stock of its work, the landscape of international criminal justice increases in complexity. In 2022, following the outbreak of war in the situation in Ukraine, ICC States Parties and the international community at large signalled a renewed commitment to international justice, reflected in the large increase in resources provided to the Court as well as in strong expressions of public support for accountability for international crimes. However, as dramatic events unfolded in other situations before the Court in the course

¹ For more information about the IBA Hague Office and ICC & ICL Programme, see https://www.ibanet.org/ICC_ICL_Programme/Home.aspx.

² IBA, Strengthening the International Criminal Court and the Rome Statute System: A Guide for States Parties ('IBA Guide for State Parties'), October 2021, available at: <https://www.ibanet.org/document?id=ICC-Report-Rome-Statute-October-2021>.

³ Report on the Activities of the International Criminal Court, ICC-ASP/22/22.



of 2023, including in the situation in Darfur, Sudan and in the situation in the State of Palestine, the reaction of States Parties and the international community failed to replicate the same level of support, sparking criticism in relation to double standards in the response of the international community to alleged atrocities.⁴

Critically, the Assembly will have on its agenda for the 22nd session the adoption of a revised legal aid policy for the Court. After several reform attempts failed in the last decade since the adoption of the current policy, the time is now crucial for the ASP to establish a renewed system of legal aid that is comprehensive, accessible, sustainable, and credible, ensuring adequate representation of the indigent accused and victims before the Court.

The Court and the ASP are at a crucial stage of the Independent Expert Review process. Almost all the recommendations have now been assessed, and the ones assessed positively are currently being implemented. As the review process nears its conclusion, at its upcoming 22nd session in December the Assembly will be called to make determinations on the future of the ICC Review Mechanism, which led the process of assessment of the experts' recommendations.

This paper seeks to identify priorities and recommendations for States Parties and the ASP to take immediate action on at the 22nd ASP Session, and over the course of 2024, in order to address the most critical challenges currently facing the Court and the Rome Statute system.

⁴ Human Rights Watch, [Countries Should Back ICC Investigation on Israel-Palestine](#), 25 October 2023.



I. Responding to threats and attacks against the ICC and those cooperating with it.

The 22nd ASP session will be held at a time of renewed threats and attacks against the Court and those cooperating with it which may risk undermining its work and operations.

Following the issuance of arrest warrants by ICC Pre-Trial Chamber II against Mr Vladimir Vladimirovich Putin and Ms Maria Alekseyevna Lvova-Belova in March 2023 in the context of the situation in Ukraine⁵, criminal proceedings were initiated by the Russian Federation against several ICC officials including six ICC Judges and the ICC Prosecutor Karim Khan, issuing arrest warrants and placing the ICC officials on a no-entry list.⁶

More recently, in September 2023, the Court was targeted by a cyber-attack of major proportions, which required a rapid response to prevent extensive damage and the restructuring of the ICC's cybersecurity infrastructure.⁷

This is not the first time that Court officials face threats and attacks.⁸ The issue was also considered by the 2020 Independent Expert Review report, which recommended the Assembly to develop a strategy to face and respond to threats. Following these recommendations, the ASP Bureau adopted in 2022 a strategy to respond to attacks against the Court and those cooperating with it.⁹ The IBA welcomes this strategy and calls for it to be fully implemented.

Attacks also continue against civil society organisations and human rights defenders cooperating with the Court and the Assembly of States Parties. To provide a safe space for civil society representatives attending ASP sessions, the ASP Bureau adopted on 29 September 2023 Guidelines and recommendations for enhancing the security of participants in the work of the Assembly, which aim at ensuring a response to alleged attacks and threats.

The IBA strongly condemns threats and attacks against the ICC and those cooperating with it, which risk undermining the Court's delivery of justice. Welcoming the ASP Presidency's statements reaffirming unwavering support for the Court¹⁰, the IBA calls on all States Parties to renew their strong commitment to the Court and its work in all situations, and to provide their assistance in preventing and responding to threats and attacks.

- **States Parties should express publicly their support for the ICC and its work in all situations, and should enhance their support to the Court, its officials, and those cooperating with it in the prevention and response to threats and attacks.**
- **States Parties should give full implementation to the ASP Bureau Strategy to respond to threats and attacks against the Court.**

⁵ [ICC judges issue arrest warrants against Vladimir Putin and Maria Alekseyevna Lvova-Belova](#), 17 March 2023.

⁶ [The Presidency of the ASP rejects the criminal proceedings initiated against high officials of the Court](#), 12 October 2023.

⁷ [Measures taken following the unprecedented cyber-attack on the ICC](#), 20 October 2023.

⁸ Human Rights Watch, [US Sanctions on the International Criminal Court](#), 14 December 2020.

⁹ [Implementation of IER recommendation 169](#), 12 August 2022.

¹⁰ [The ASP Presidency reiterates its unwavering support for the ICC, its elected officials, and its personnel](#), 1 August 2023.

II. Ensuring the adoption of a revised ICC Legal Aid Policy to establish a comprehensive system of legal aid that is accessible, sustainable, and credible.

Legal aid is a key component of the ICC's administration of justice. An adequately funded and efficient legal aid system is fundamental to ensuring fair trials and the rights of the accused, as well as the rights of victims to participate in proceedings and present their views and concerns at appropriate stages.¹¹

The current legal aid policy, entered into force in 2013, has become obsolete, threatening the equality of arms principle on which the policy itself is based and leading to protests and strikes from support staff based on the serious shortcomings of their working conditions. In 2020, the Independent Expert Review identified legal aid as a priority issue and recommended renewed efforts to finalise a full reform of the Legal Aid Policy, ensuring that it is accessible, effective, sustainable and credible, including ensuring equality of arms.¹²

The IBA commends the ongoing efforts of the Registry to review the Court's legal aid system and acknowledges the key coordination role of the current and previous Legal Aid Facilitators, Mr Peter Nagy (Slovakia) and Ambassador Maria Gallardo (El Salvador).

Following consultations with key stakeholders, the Court developed in 2023 a revised legal aid policy reform proposal. The proposed legal aid system is based on the notion of a core team for defence and victims' representatives, whose composition is determined in relation to the complexity level of the case and the stage of the proceedings. The draft reform is proposed in alternative scenarios corresponding to different percentage increases in the remuneration of external teams.

The Committee on Budget and Finance (CBF) considered the draft legal aid policy reform during its 42nd session in September 2023. The CBF recognised that a review of the legal aid system is long overdue and recommended the Assembly to adopt the draft policy reform.¹³

During the negotiations ahead of the Assembly, States Parties agreed in principle to the adoption of the draft policy, and in particular of 'scenario B+' which would ensure, according to the calculations provided by the Registry, a higher remuneration for most external team members, and that no counsel will end up with a lower remuneration than currently received.

The IBA recommends to the Assembly of States Parties to adopt, at its upcoming 22nd session, the draft legal aid policy reform, implementing the so-called 'Scenario B+'.

The IBA welcomes as improvements the extension of basic labour rights and employment protection to support staff members in external teams, the definition of a core team composition which better reflects the representation needs of defence and victims' teams, and a more efficient management of the legal aid system with an increased budgetary predictability.

Despite these improvements, a number of issues raised by defence and victims' teams in the context of the negotiations remain outstanding and will need further consideration.

¹¹ Rome Statute, Article 67(1)(b) and 68(3).

¹² IER Final Report, R328.

¹³ Report of the Committee on Budget and Finance on the work of its 42nd session, Advance version, CBF/42/5, para 13.

The new legal aid system should aim at reducing and eliminating the disparity between the remuneration of external counsel and team members and their counterparts in the Office of the Prosecutor. The principle of equivalence of remuneration between counsel and members of the Office of the Prosecutor ‘further upholds the principle of equality of arms’ and is an affirmed principle in the current legal aid system.¹⁴ Regrettably, the draft legal aid policy reform excludes the principle of equivalence of remuneration, thus hampering the equality on which the principle is based.

The disparity of remuneration between external counsel and their counterparts at the Court is largely impacted by the different tax regimes applied, and further exacerbated by the high inflation rates in the Netherlands.

A sound reform of the ICC’s legal aid system must therefore address and resolve the issue of income taxation for defence and victims’ teams. The IBA welcomes the initial conversation among States Parties on the issue in 2023, and strongly encourages the Assembly to provide, through its Omnibus resolution, the necessary mandate to continue these discussions in 2024.

It is crucial that the new legal aid system is developed further with the aim to attract and retain highly skilled counsel and team members, and to improve gender equality and geographical representation in line with the Court’s Strategy on Gender Equality and Workplace Culture and the ICC strategic plans.

In order to address and resolve these issues, the draft legal aid policy provides for an assessment of the new system by the Registry after its entry into force, and establishes a Legal Aid Committee which will have the power to make recommendations to the Registrar on future amendments of the policy.

The IBA places great importance on these issues and encourages States Parties and the Court to ensure adequate consultation with the legal profession, including the ICC Bar Association, and other relevant stakeholders in the follow-up discussions in 2024. The IBA further stresses the need for a more regular review of the legal aid policy, in line with the recommendations of the CBF and the independent experts.¹⁵

- **The ASP should adopt, at its upcoming 22nd session, the draft legal aid policy reform, implementing the so-called ‘Scenario B+’.**
- **The Court and the Assembly of States Parties should continue to review, in consultation with the legal profession and other relevant stakeholders, the ICC legal aid policy in order to:**
 - **Reduce and eliminate the disparity between the remuneration of external counsel and team members and their counterparts in the Office of the Prosecutor.**
 - **Address and resolve the issue of income taxation for defence and victims’ teams.**
 - **Develop the legal aid system further with the aim to attract and retain highly skilled counsel and team members, and to improve gender equality and geographical representation.**

III. Promoting effective state cooperation

All States Parties have an obligation to provide full and effective cooperation to the ICC, in accordance with Part IX of the Rome Statute. The Court’s ability to fulfil its mandate is largely dependent on state cooperation with its investigations, the arrest and surrender of suspects, the protection of victims and witnesses, ensuring that the rights of the accused are protected, and reparations orders. Despite the significant challenges,

¹⁴ Registry’s single policy document on the Court’s legal aid system, ICC-ASP/12/3, para 83.

¹⁵ Report of the Committee on Budget and Finance on the work of its 42nd, Advance version, CBF/42/5, para 275.



continued efforts to improve cooperation between the Court and States are ongoing, particularly in the context of the ICC Review Process and in the discussions of the ASP facilitation on cooperation.

Strengthening national frameworks for cooperation

An overview of national frameworks illustrates that most States Parties have yet to put in place effective domestic mechanisms and processes to provide prompt, full and effective cooperation with the ICC.

Of the 123 States Parties to the Rome Statute:

- Less than 60 have enacted or amended their laws providing for cooperation with the Court.¹⁶ A closer examination of many of those laws identifies flaws that could obstruct cooperation. So far, no state has enacted cooperation legislation in 2023.
- Only 78, and one non-state party, have ratified or acceded to the Agreement on Privileges and Immunities of the ICC.¹⁷ The Agreement increases legal clarity and security by specifying in detail the scope of the Court's privileges and immunities. No state has ratified the Agreement so far in 2023.
- The vast majority have yet to enter into cooperation agreements with the ICC:
 - Only 15 States Parties have entered into agreements demonstrating their willingness to cooperate with the enforcement of ICC sentences of imprisonment in their national prison facilities. So far, no state has signed an agreement in 2023.¹⁸
 - Only 26 States Parties have entered into agreements demonstrating their willingness to cooperate with relocating victims and witnesses at serious risk to their territory. So far, no State has signed an agreement in 2023.¹⁹
 - Only two States Parties have entered into agreements demonstrating their willingness to accept persons granted interim release, and agreements demonstrating their willingness to cooperate with the final release of persons following acquittal or the termination of proceedings. Belgium signed an agreement on release of persons in 2023.²⁰

The lack of domestic frameworks makes the cooperation of States Parties with the Court more difficult and is linked to shortfalls in state cooperation. The Court's latest Report on Cooperation in October 2023 describes that between 16 September 2022 and 15 September 2023:

- Only 38% of requests for cooperation by the Office of the Prosecutor in support of preliminary examinations, investigations, prosecutions and judicial proceedings were executed.²¹
- None of the requests by the Office of the Prosecutor or by the Registry for cooperation with the identification, seizing and freezing of assets were executed.²²
- No suspect was arrested and none of the requests by the Registry for cooperation with the arrest and surrender of suspects received a positive reply.²³

Other reports indicate that in some situations, the challenges of obtaining cooperation are even greater. For example, the Prosecutor's most recent report to the UN Security Council on the Darfur situation stated that a

¹⁶ Albania, Argentina, Australia, Austria, Belgium, Benin, Bosnia and Herzegovina, Bulgaria, Burkina Faso, Canada, Central African Republic, Comoros, Costa Rica, Croatia, Democratic Republic of Congo, Denmark, Ecuador, Estonia, Finland, France, Georgia, Germany, Greece, Guinea, Ireland, Italy, Japan, Kenya, Latvia, Liechtenstein, Lithuania, Luxembourg, North Macedonia, Malta, Mauritius, Montenegro, The Netherlands, New Zealand, Norway, Paraguay, Peru, Poland, Republic of Korea, Romania, Samoa, Senegal, Serbia, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Trinidad and Tobago, Uganda, UK and Uruguay. This information has been gathered from publicly available sources. States Parties are encouraged to contact the IBA if any information is not accurate.

¹⁷ Agreement on Privileges and Immunities of the ICC.

¹⁸ Report of the Court on Cooperation, ICC-ASP/22/24, para 44.

¹⁹ *Ibid*, para 48.

²⁰ *Ibid*, paras 45, 46, 47, 48.

²¹ *Ibid*, para 1.

²² *Ibid*, para 32.

²³ *Ibid*, para 27.



total of 36 requests for assistance transmitted to the government of Sudan remain to be executed, and that two planned outreach missions to the country did not take place due to the failure to issue visas²⁴

Implementing domestic frameworks to strengthen cooperation with the ICC is critical to ensure that the Court can discharge its mandate effectively and efficiently. The failure to provide cooperation may lead to challenges such as slowing down judicial proceedings, and possible violation of the rights of the accused person, which risk undermining the legitimacy of the justice process at the ICC.

The adoption on 26 May 2023 of the Ljubljana - The Hague Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes against Humanity, War Crimes, and other International Crimes (often referred to as the Mutual Legal Assistance Treaty (MLA))²⁵ represents a critical advancement in this regard, setting out duties and obligations for states to assist each other in the investigation and prosecution of international crimes.

The IBA welcomes the adoption of the MLA Treaty, and strongly encourages States Parties to the Rome Statute as well as non-states parties to take part to the signing conference in The Hague in February 2024 and to take all the necessary steps for the ratification and implementation of its provisions.

- **All States Parties, if they have not done so, should put in place effective national frameworks to cooperate fully with the ICC, including:**
 - **Developing and enacting national implementing legislation and reviewing it every 10-15 years, taking into account the evolving experience and recommendations of the ICC.**²⁶
 - **Ratifying or acceding to the ICC Agreement on Privileges and Immunities and incorporating it into national law.**²⁷
 - **Entering into cooperation agreements with the Court on enforcement of sentences, victim and witness relocation, interim release, and final release.**²⁸
- **States Parties should take the necessary steps toward the ratification of the MLA treaty.**

Promoting state cooperation

Through its Bureau, including the co-facilitators on Cooperation (France and Senegal), the ASP has taken important measures to promote state cooperation. The ASP regularly calls on States Parties to enact implementing legislation, enter into cooperation agreements, and fully implement the 66 recommendations on cooperation, and has played a key role in promoting specific forms of state cooperation, including arrest and surrender and cooperation with financial investigations and asset recovery.

In 2023, the Bureau has been tasked with a number of important objectives that can contribute to ensuring state cooperation, which it shall report on in advance of the 22nd ASP session.²⁹

The Bureau was tasked with continuing discussions on improving cooperation between States Parties and the Court to enhance prospects for implementation of pending arrest warrants as well as to improve cooperation in relation to financial investigations and freezing and seizing of assets.

²⁴ Thirty-Seventh Report of the Prosecutor of the International Criminal Court to the United Nations Security Council pursuant to Resolution 1593 (2005), 13 July 2023.

²⁵ [The Ljubljana-Hague Convention adopted](#), 26 May 2023.

²⁶ For further information, see: IBA Guide for State Parties, Part 2.3.

²⁷ *Ibid*, Recommendation 74.

²⁸ *Ibid*, Recommendations 87, 88, 89, 100.

²⁹ Strengthening the International Criminal Court and the Assembly of States Parties, ICC-ASP/21/Res.2, Annex I, para. 3.



The Bureau has been requested to continue promoting the signing of cooperation agreements. In light of the extremely low number of certain types of cooperation agreements, ensuring that more States Parties enter into agreements and accept a shared responsibility for such cooperation should be a priority for the ASP.

The Bureau has been invited to continue discussions on the feasibility of establishing a coordinating mechanism of national authorities. This initiative was originally proposed by Belgium at the 13th ASP session. However, it has yet to progress.³⁰ Given the low level of state cooperation with the Court in many areas of its work, the coordinating mechanism should be established without further delay.³¹

The Bureau has been requested to continue assessing the Independent Expert Review's recommendations relating to cooperation,³² including considering the appointment a focal point on arrests and a rewards program to facilitate access to information from the general public for the location and arrest of fugitives.³³ Both recommendations, which promise to support one of the most challenging aspects of state cooperation to date, have been assessed positively and are currently in the process of implementation.

Finally, the Bureau has been encouraged to continue its review of the implementation of the 66 recommendations on cooperation.³⁴ In light of the Court's recent reports on cooperation, which align and build upon the 66 recommendations, as well as the lack of progress by States Parties in establishing effective national frameworks for cooperation, it is important that the ASP considers a more structured process for reviewing and promoting cooperation. In particular, as recommended in the IBA's Guide to States Parties, consideration should be given to establishing a periodic review process at the ASP which requests 8-12 States Parties each year to report on and receive feedback on their national frameworks.³⁵

- **States Parties should support greater efforts by the ASP and its Bureau to promote cooperation with the ICC.**
- **States Parties should increase their efforts to cooperate with the ICC in the execution of warrants of arrest as well as in relation to financial investigations and the freezing and seizing of assets.**
- **States Parties should support the establishment of a coordinating mechanism of national authorities on cooperation.**
- **States Parties should support the establishment of a periodic review process at the ASP to strengthen national cooperation frameworks, as well as to promote and review the implementation of the 66 recommendations on cooperation and the Court's recommendations in its annual report on cooperation.**

Cooperation with external defence and victims' counsel

While Part IX of the Rome Statute imposes on States Parties the obligation to cooperate with the Court, it does not create similar obligations for States Parties to cooperate with external defence and victims' counsel. As a result, external counsel face enormous challenges in securing state cooperation for the necessary investigative and outreach activities they carry out under their respective mandates. The lack of effective state cooperation with external counsel results in the slowdown of activities and threatens the equality of arms principle.³⁶

³⁰ Report of the Bureau on Cooperation, ICC-ASP/13/29, 21 November 2014, Annex II, para. 4.

³¹ For further information, see: IBA Guide for States Parties, Recommendation 108.

³² Strengthening the International Criminal Court and the Assembly of States Parties ICC-ASP/21/Res.2, Annex I, para. 3(h).

³³ IER Final Report, R284 and R289.

³⁴ Strengthening the International Criminal Court and the Assembly of States Parties, ICC-ASP/20/Res.5, Annex I: Mandates of the Assembly of States Parties for the intersessional period, para. 3(f).

³⁵ For further information, see: IBA Guide for States Parties, Recommendation 111.

³⁶ As an example, the defence has complained on several occasions regarding non-cooperation by the government of Sudan with its requests in the Abd-Al-Rahman case, and in March 2023 ICC Trial Chamber I found Sudan non-compliance with its obligations to cooperate: Public redacted version of Decision on the Defence's requests for a finding of non-compliance by Sudan, [ICC-02/05-01/20-913-Red](#).

In its 2023 report on Cooperation, the Court indicates that the reasons for the increased difficulties in securing state cooperation for the defence include the lack of national mechanisms to deal with non-judicial requests and the volume and scope of the requests.³⁷

States Parties and the ASP should enhance the dialogue on this issue with the legal profession, with a view to introducing measures to improve state cooperation with external counsel. Measures considered may include the development of domestic frameworks for cooperation that explicitly set out the obligation to cooperate with defence and victims' teams as well as the creation of a focal point for cooperation requests within the Office of Public Counsel for the Defence and Victims.

- **The ASP should enhance its consideration of the issue of cooperation with external defence and victims' counsel.**
- **States Parties should put in place effective national framework to facilitate cooperation with external defence and victims' counsel.**

IV. Ensuring effective decision-making on the annual budget and allocating sufficient resources for the ICC to fulfil its mandate

The widespread commission of crimes under international law around the world and continued trends of impunity in national jurisdictions has resulted in a significant increase in the ICC's workload over the years which has not been matched by a commensurate increase of the Court's budget.

Lack of sufficient resources threatens the effectiveness of many of the ICC's core functions, including investigative and prosecutorial activities, adequate legal aid for defence and victims' representation, victim and witness protection, outreach, and reparations.

The lack of sufficient resources for the Court is made evident by the initiatives spearheaded by the ICC Prosecutor and more recently the ICC Registrar to create trust funds and special funds to support specific areas of the work of the Court.³⁸

Civil society as well as the CBF raised concerns related to the risks that the creation of trust funds poses to the long-term budgetary sustainability and independence of the Court.³⁹ The IBA has consistently called on the Assembly of States Parties to provide sufficient resources to the Court through its regular budget, and expresses concerns about the perceptions of politicisation and possible double standards in the work of the Court that the provision of voluntary contributions by a small pool of States Parties may create.

As noted often by the CBF in recent years, the work of the Court may be further threatened by liquidity crises resulting from the failure of States Parties to pay their assessed contributions on time. The IBA welcomes the CBF assessment that 'there may be no liquidity shortfall in 2023'⁴⁰, and calls on the ASP to explore additional means of encouraging the timely payment of assessed contributions.

³⁷ Report of the Court on Cooperation, ICC-ASP/22/24, para 19.

³⁸ [Statement of ICC Prosecutor, Karim A.A. Khan QC: Contributions and support from States Parties will accelerate action across our investigations](#), 28 March 2022.

³⁹ Coalition for the ICC, [Victims could lose out with states' double-standard on International Criminal Court resources](#), 30 March 2022; Report of the Committee on Budget and Finance on the work of its 42nd session, Advance version, CBF/42/5, para 262.

⁴⁰ Report of the Committee on Budget and Finance on the work of its 42nd session, Advance version, CBF/42/5, para 8.

Finally, the IBA recalls the importance of the contingency fund as a key element of the budgetary system of the ICC, allowing the Court to access additional resources for the discharging of its mandate in circumstances unforeseen at the time of stipulating the yearly budget. The IBA encourages States Parties to replenish the contingency fund to its nominal level, and to consider increasing it in line with the 2020 Independent Expert Review recommendations.⁴¹

Deciding the 2024 budget

The Court has requested an increase of €27.2 million in its annual budget request for 2024. The ASP's Committee on Budget and Finance has reviewed the request and recommended that the ASP reduce the additional resources to €15.1 million.⁴²

Considering the challenging financial climate and the Court's workload, the IBA is concerned that significant reductions in the budget request could seriously risk undermining the independence of the Court and the effectiveness of its work in 2024.

To ensure that the Court implements the mandate in the Rome Statute consistently, effectively and efficiently, the ICC's core activities across all situations must be adequately funded in a sustainable way by all States Parties through the regular annual budget process. There is in fact a real danger that the Court could be forced to rely on voluntary contributions and secondments for additional resources, which may only be provided by a small pool of States Parties with consequent perceptions of possible double standards and lack of independence in the work of the Court and the OTP, and with a long-term impact on the sustainability of the Court's budget. The CBF noted in its report that the creation of the OTP Trust Fund for Advanced Technology and Specialized Capacity 'had an impact on the regular budget of the organization, determining an increase in other ICC activities consequent of the increase OTP work.'⁴³

In order to improve the annual budget process, the Assembly should continue its consideration of the relevant IER recommendation and should continue to assess the possibility of separating the budget process from the ASP substantive discussions. The IBA supports measures to promote a fully informed decision-making process of the Assembly on the budget, and calls the ASP to ensure that the process of considering and deciding the annual budget of the Court is accessible and allows for the participation of all States Parties.

- **States Parties should provide to the Court, through its regular budget, the necessary resources to implement its mandate consistently, effectively and efficiently.**
- **They ASP should refrain from imposing further cuts to the Court's request beyond those recommended by the Committee on Budget and Finance.**
- **The ASP should continue to consider ways to improve the budget process in line with the IER recommendations and other Assembly initiatives.**

Electing members of the Committee on Budget and Finance

At this session, the ASP will elect six members of the Committee on Budget and Finance. The Committee plays a vital role in reviewing the Court's annual budget request and making recommendations for the ASP's

⁴¹ IER Final Report, R141.

⁴² Report of the Committee on Budget and Finance on the work of its 42nd session, Advance version, CBF/42/5, para 3-12.



consideration before a final decision is taken. It is therefore important that the ASP elects highly qualified experts to the Committee. Regrettably for the election at the 22nd session, it appears that the ASP will continue its practice of electing candidates uncontested as only six candidates have been nominated for the six vacancies.

In parallel to the current election cycle, the ASP is engaged in discussions related to the composition of the CBF, following concerns raised in 2022 in relation to the imbalance of the representation of different regional groups in the Committee. A facilitator appointed by the ASP Bureau, Ms. Monica Shahanara (Bangladesh), was tasked to provide options on the way forward.⁴⁴

- **In future elections, more States Parties should search for and nominate qualified candidates for the Committee on Budget and Finance**
- **States Parties should amend the composition of the Committee on Budget and Finance in order to achieve a fair representation of the different regional groups.**

V. Electing the most qualified candidates in ICC elections

Strengthening the process of nomination and election of ICC Judges

At its 22nd session in December 2023, the Assembly of States Parties will elect 6 judges, filling one-third of the International Criminal Court's 18 judicial seats. The election follows the regular three-year election cycle of ICC Judges. The six newly elected judges will serve for a nine-year term from 2024-2033.

The IBA welcomes the amendments introduced by the 21st Assembly session to strengthen the election process, which include the certification of the candidacy by a senior authority of the nominating state, the obligation for candidates to participate in interviews conducted by the Advisory Committee on the Nomination of Judges (ACN), and an express warning against the trading of votes.

As reflected in the IBA's Guide to States Parties, the IBA supports measures to strengthen the nomination and elections process⁴⁵ and welcomes the efforts by States Parties to develop amendments to the existing procedures. In that regard, the IBA encourages States Parties to finalise the discussion on the relevant IER recommendations still pending, including the possible review of criteria applicable to candidates from List B and the review of the qualifications for membership of the ACN⁴⁶.

The IBA stresses that merit should be the guiding factor in the election of ICC judges. Electing highly qualified judges with knowledge and experience in criminal law and procedure, as well as substantial experience in managing complex trials, is key for the ICC to discharge its mandate effectively and efficiently.

In order to identify highly qualified judicial candidates, it is essential that States Parties have in place or develop independent, transparent, and merit-based national nomination and selection processes. All national nomination processes should include targeted dissemination measures to inform qualified candidates of the process, and States Parties should consider conducting national nomination processes every 10-15 years to form a pool of candidates for the upcoming election cycles.⁴⁷

⁴⁴ Bureau of the Assembly of States Parties, Eighth meeting, 7 September 2023.

⁴⁵ For further information, see: IBA Guide for States Parties, Recommendation 25.

⁴⁶ IER Final Report, R379, R380.

⁴⁷ IBA Guide for States Parties, Recommendations 26, 27, 28.



The IBA welcomes the mandate given to the ACN to develop guidelines for the national-level nomination procedures by the 23rd ASP session in December 2024⁴⁸, and calls on States Parties to support the harmonisation efforts led by the ACN. In particular, States parties can support this process by responding to the Assembly's request to submit information on their respective national nomination and selection processes.⁴⁹

- **States Parties should elect highly qualified judges with knowledge and experience in criminal law and procedure and only support candidates that were assessed as highly qualified, or well qualified by the ACN.**
- **States Parties should develop independent, transparent, and merit-based national nomination and selection processes to identify ICC judicial candidates.**
- **States Parties should support the efforts of the ACN towards the harmonisation of national procedures for the selection of ICC judicial candidates.**
- **The ASP should finalise the discussion on the Independent Expert Review recommendations on ICC judicial elections still pending.**

Ensuring a thorough vetting process for all candidates to ICC elections

To ensure that ICC elected officials meet the requirement of high moral character, the IBA reiterates its calls for the adoption of a permanent vetting process for ICC elections at the 22nd ASP session in December 2023.

In addition to the qualifications and experience necessary for each role, the Rome Statute of the ICC requires that ICC Judges, Prosecutor and Deputy Prosecutors, and Registrar “shall be chosen from among persons of high moral character.” Ensuring that elected officials have a high moral character is not only a requirement under the Rome Statute, but an essential element in promoting a safe working environment at the Court.

The IBA has consistently called for the vetting of all candidates to ICC elections and appreciates the efforts of States Parties and the leadership of the ASP President towards development of a permanent vetting process for all ICC elections.⁵⁰

The IBA welcomed the creation of *ad hoc* vetting processes run by the ICC's Independent Oversight Mechanism (IOM) for the elections of the ICC Deputy Prosecutors in 2021, the Registrar in 2022, and the Judges in 2023, and recognised the significant progress achieved in the development of these processes.

After developing *ad hoc* vetting processes for previous elections, States Parties should now support the adoption by the 22nd ASP session in December 2023 of a permanent vetting procedure that it is fair, independent, professional and thorough. In developing the permanent vetting procedure, States Parties should take into close consideration the best practices and lessons learned during the creation of previous *ad hoc* processes.

States parties should agree on a concrete plan for implementing the vetting procedure after its adoption which should include, *inter alia*, its adaptation to different election processes, strategies to widely circulate the confidential channel for the submission of information on alleged misconduct, and the use of other languages. Finally, the Assembly should ensure that sufficient resources are allocated for the effective implementation of vetting processes.

⁴⁸ Strengthening the International Criminal Court and the Assembly of States Parties, ICC-ASP/21/Res.2, Annex III.

⁴⁹ Resolution on the review of the procedure for the nomination and election of judges, ICC-ASP/18/Res 4, para 6.

⁵⁰ For further information, see: IBA Guide for States Parties, Recommendations 24.



- **States Parties should support the adoption by the 22nd ASP session of a permanent vetting process that it is fair, independent, professional and thorough.**
- **States parties should agree on a concrete plan for implementing the vetting process after its adoption and allocate sufficient resources for the effective implementation of vetting processes.**

VI. Ensuring a sustainable source of funding for family visits

The right to family visits for ICC detainees was reaffirmed by a decision of the ICC Presidency in 2009, which noted that ‘maintaining family ties through family visits is an essential part of the detained person’s re-integration into society.’⁵¹ The Presidency decided that the ICC has a positive obligation to fund a limited number of family visits for indigent detainees to give effect to the right to family visits which would otherwise be ineffective.⁵²

In 2010, the ASP established the Trust Fund for Family Visits (TFFV) and tasked the Court with collecting voluntary contributions from States Parties, other States, non-governmental organizations, civil society, individuals and other entities.⁵³

Despite the ICC’s fundraising efforts, the TFFV has received over the years only a small number of contributions by a limited number of States Parties, insufficient to give full effect to the rights of indigent accused persons to a reasonable number of family visits.

The IBA has repeatedly called on the ASP to ensure that sustainable and adequate systems are in place to fund a reasonable number of family visits for indigent detainees in ICC detention.⁵⁴

While fundraising efforts in 2022 and 2023 have been successful, leading to a partial replenishment of the Trust Fund, it is important that States Parties intensify efforts towards sustainable and adequate funding, which will ensure the integrity of the proceedings, the proper management and administration of the ICC Detention Centre, and avoid the Court incurring additional costs.⁵⁵ Additionally, in the case the Trust Fund is depleted, it is important for States Parties to develop backup measures to secure family visits for detainees, including by resorting to the regular budget of the Court.

- **States Parties should make voluntary contributions to the Trust Fund for family visits for indigent detainees in ICC detention.**
- **States Parties should develop backup measures to fund family visits in case the Trust Fund is depleted.**

VII. Promoting geographical representation and gender balance and ensuring a safe work environment

The Rome Statute sets out that, in the employment of Staff, the Court shall ensure the highest standards of efficiency, competency and integrity, and shall have regard to the representation of principal legal systems of the world, equitable geographical representation and a fair representation of female and male staff.⁵⁶ The

⁵¹ *Prosecutor v Germain Katanga and Mathieu Ngudjolo Chui*, ICC-RoR217-02/08-8, Decision on ‘Mr Mathieu Ngudjolo’s Complaint under Regulation 22(1) of the Regulations of the Registry against the Registrar’s Decision on 19 November 2008’, 10 March 2009, para. 35.

⁵² *Ibid.*, para. 37.

⁵³ ICC-ASP/9/Res.4, Family visits for indigent detainees, 10 December 2010.

⁵⁴ For further information on the funding of the TFFV, see: IBA Guide for States Parties, Recommendation 10.

⁵⁵ Report of the Court on Cooperation, ICC-ASP/22/24, para 49.

⁵⁶ Rome Statute, Articles 44(2) and 36(8).



Bureau has stressed that geographical representation and gender balance benefits the Court by ensuring diversity of perspective which, internally, increases the creativity in the work and environment and, externally, remains crucial to address perception challenges and advance the universality of the Rome Statute.

However, in practice, female staff are severely under-represented at senior levels, with a low number of female staff compared to male staff employed in P4, P5, and D positions. A chronic geographical imbalance also exists with nationals of the Western European and Other Group over-represented at all professional levels, while staff from other regions – in particular, Asia-Pacific and Latin America and the Caribbean – are under-represented.⁵⁷

The 2020 Independent Expert Review recommended reforms in the Court’s recruitment system, noting the need for decisive action in order to achieve gender equality and ensure “the dignity, wellbeing, safety and inclusion of all individuals affiliated with the Court, regardless of gender or sexual orientation”, and to address barriers to geographical representation.⁵⁸

Several important initiatives have been taken by the Court in recent years in response to the IER recommendations. These include the creation of a Gender Equality focal point and the development of a Strategy on Gender Equality and Workplace Culture for the International Criminal Court⁵⁹, the incorporation of gender balance and geographical representation considerations into the strategic planning of the Court, the establishment of an Ombudsperson tasked to promote prevention and provide mediation, new recruitment practices, and the development of internal administrative instructions related to discrimination and harassment, disciplinary proceedings, and flexible work arrangements.

The IBA encourages States Parties to continue to support the development of instruments and initiatives to improve the gender balance and geographical representation in the recruitment of the ICC staff, including by making contributions to the Trust Fund for the development of Interns and Visiting Professionals to increase paid internship and visiting professional positions,⁶⁰ as recommended by the Independent Expert Review⁶¹. States Parties should also give adequate consideration to issues of gender balance and geographical representation in the development and adoption of a tenure policy for the Court, which is currently being discussed by the ICC Review Mechanism.

States Parties have a critical role in achieving geographical representation and gender balance. As recommended in the IBA’s Guide to States Parties, States that are not represented or are under-represented in the staff of the Court should work with the ICC to disseminate vacancy announcements to qualified candidates domestically, and particularly to qualified female candidates.⁶² To assist States Parties in this process, the ASP and the Court should consider providing practical guidance on disseminating and promoting vacancies at the national level.

- **The ASP should support initiatives taken by the Court to enhance geographical representation and gender balance, while recognizing the need for continuous improvements.**
- **States Parties should actively cooperate with the Court in developing national frameworks supporting ICC measures to enhance geographical representation and gender balance.**

⁵⁷ International Criminal Court, Human Resources Analytics on Gender and Geographical Representation, as of 30 September 2023.

⁵⁸ IER Final Report, R15 and R91-96

⁵⁹ Strategy on Gender Equality and Workplace Culture for the International Criminal Court, 8 December 2022.

⁶⁰ For further information, see: IBA Guide for States Parties, Recommendation 23.

⁶¹ IER Final Report, R96.

⁶² For further information, see: IBA Guide for States Parties, Recommendation 21 and 22.

VIII. Strengthening the voice of the defence in the Court

The 2020 Independent Expert Review of the Court recommended measures to strengthen the representation of the defence at the institutional level, particularly looking at the responsibilities of the Office of Public Counsel for the Defence in relation to the management and governance of defence services and legal aid, and oversight, capacity building and strategic development for defence representatives before the Court.

In response to the Expert's recommendations, the ICC acknowledged the importance of institutionally endowing the defence with sufficient and adequate support structures to ensure its independence, fully implementing the principle of equality of arms and giving the defence a more prominent organisational weight.⁶³

Although the Experts' recommendations were initially scheduled to be assessed in the second half of 2021 and listed as a priority for implementation,⁶⁴ their consideration was delayed in order to focus on the legal aid reform process. The Review Mechanism reported to the ASP at the end of 2021 that assessment of the recommendations was pending⁶⁵, and no further discussion took place on the topic which was also left out from the mandate of the legal aid facilitation in 2022 and 2023.⁶⁶

The IBA supports full consideration of the Expert's recommendations to strengthen the voice of the defence, improve administration and increase support to defence teams and calls on the Assembly of States Parties to provide the necessary mandate to continue the discussions on the issue in 2024.

- **The ASP should ensure that the Independent Expert Review's recommendations to strengthen the voice and representation of the defence are given full consideration without further delay by providing the necessary mandate to continue the discussion in 2024.**

IX. Universality of the Rome Statute and amendments

The effective performance of the ICC and the success of the Rome Statute system depends in large part on the efforts of all States Parties.

In 2007, the Assembly adopted a Plan of Action for achieving universality and full implementation of the Rome Statute⁶⁷, to promote ratification and implementation through advocacy, conferences, and technical and other assistance. Regrettably, 16 years later, only a few States Parties are actively promoting universality and implementation.

Considering the lack of progress and diminishing efforts to promote ratification and implementation of the Rome Statute, as well as changing perceptions of the ICC in light of criticism of its performance and the ongoing Review of the ICC, the Plan of Action should be urgently reviewed and updated so that it addresses the many challenges in promoting universality and full implementation that did not exist when it was originally drafted.

⁶³ Overall Response of the International Criminal Court to the "Independent Expert Review of the International Criminal Court and the Rome Statute System – Final Report" Preliminary Analysis of the Recommendations and information on relevant activities undertaken by the Court, 14 April 2022, para. 627.

⁶⁴ Review Mechanism: Comprehensive action plan for the assessment of the recommendations of the Group of Independent Experts, including requirements for possible further action, as appropriate.

⁶⁵ Report of the Review Mechanism submitted pursuant to ICC-ASP/19/Res.7, ICC-ASP/20/36, 7 December 2021, para 9.

⁶⁶ Strengthening the International Criminal Court and the Assembly of States Parties, ICC-ASP/20/Res.5, and Strengthening the International Criminal Court and the Assembly of States Parties, ICC-ASP/21/Res.2.

⁶⁷ Strengthening the International Criminal Court and the Assembly of States Parties, ICC-ASP/5/Res 3, Annex 1.



The IBA welcomes the recent accession to the Rome Statute of Armenia, which formally deposited its instrument of ratification on 14 November 2023 becoming the 124th State Party to the Rome Statute.⁶⁸

The IBA calls on all states to ratify the ICC Rome Statute and calls all ICC States Parties to review the Plan of Action on Universality.

For a uniform implementation and application of the Rome Statute, it is also essential that States Parties ratify and implement the amendments to the Rome Statute adopted to date. These include amendments to the list of prohibited acts under Article 8 of the Rome Statute on War Crimes, as well as the amendment related to the jurisdiction of the Court for the Crime of aggression.

With reference to the amendments on the crime of aggression and bearing in mind that they will have to be reviewed in 2025 in line with obligations set by the Kampala Review Conference, the IBA urges States Parties and the Assembly to give full consideration to ways in which the ICC's jurisdiction over the crime of aggression could be strengthened.

With respect to the amendments that have already been adopted and opened for ratification, the IBA recommends that all States Parties should ratify them.⁶⁹ The IBA further recommends that States should consider ratifying all amendments at the same time.

- **The IBA calls on all states to ratify the ICC Rome Statute and calls all ICC States Parties to urgently review the Plan of Action on Universality.**
- **All States Parties should ratify the amendments to the Rome Statute already adopted.**
- **States Parties and the ASP should give full consideration to ways in which the ICC's jurisdiction over the crime of aggression could be strengthened.**

⁶⁸ [Armenia joins the ICC Rome Statute](#), 17 November 2023.

⁶⁹ For further information, see: IBA Guide for State Parties, Recommendation 34.