

Open Letter to the International Criminal Court and the Assembly of States Parties

Victims could lose out with states' double-standard on International Criminal Court resources

Unprecedented support for the role of the ICC should be matched by government commitment to the sustainable funding needed to deliver justice in all situations that come before the Court

30 March 2022

The Coalition for the International Criminal Court (Coalition) welcomes the renewal of support for the critical role of the International Criminal Court (ICC) to deliver justice for serious international crimes, and the expressions of interest by its States Parties in bolstering the financial and human resources of the Court.

While the positive response of States Parties signals a commitment to justice, States Parties' chronic underfunding of the Court has led to an exceptional request by the Office of the Prosecutor for voluntary contributions to be provided outside the Court's regular budget, including through a newly established trust fund and gratis personnel. The Coalition has repeatedly called attention to the significant and long-standing gap between the Court's workload and the resources available to it in its regular budget. The Court's budget has consistently been limited by States Parties, including through the insistence of some on "zero nominal growth" and in setting arbitrary financial envelopes, including for legal aid, and by failures on several occasions of the Court to request the resources it needs. This has impacted the Court's effectiveness and delayed victims' access to justice. This recent call by the Office of the Prosecutor to States Parties for voluntary contributions and gratis personnel to support its investigative activities – and the enthusiastic response by some States Parties – amounts to an admission by the Court and its States Parties that the Court does not have adequate resources.

The call for voluntary contributions and gratis personnel when attention is high on one specific situation also risks exacerbating perceptions of politicization of and selectivity in the Court's work. Recent pledges by States Parties of funding and seconded personnel in the context of a specific situation sends the unfortunate signal that justice for some victims should be prioritized over others, depending on political will, including a willingness to make resources available. States Parties should be alert to the fact that perceptions of selectivity in the prioritization of situations or inappropriate bias in the Court's work are detrimental to the Court's legitimacy and can undermine the credibility of the justice it renders where it does act.

The Court's States Parties collectively share responsibility for ensuring appropriate resources for the entire Court through setting its annual budget. This provides the best protection for prosecutorial and judicial independence by ensuring sufficient budgetary resources are available for the Court to take and implement decisions by reference only to the applicable law and to the fairness of proceedings. Voluntary contributions to the Office of the Prosecutor will not address the resource needs of other organs, parties and participants, which increase in correlation with the Office's activities. Voluntary contributions also raise significant risks when it comes to the sustainability of funding. In addition, there are policy considerations in the use of gratis personnel, including perceptions that seconded personnel may have divided loyalties.

What happens next is crucial to the Court's future success.

Momentum now on the Court's critical role should drive the Court and States Parties toward a fundamental reconsideration of the human and financial resource levels needed by the Court in its regular budget to independently and effectively execute the mandate given it, without arbitrary limitations that may have a political effect or damage perceptions of the Court's legitimacy and independence.

The Coalition calls on the Court's States Parties to:

- Adopt a principled approach to the ICC's resources that ensures the Court has long-term and secure funding, based on assessed, not voluntary, contributions from states parties, for all organs, programmes and activities, in order to meet all the demands placed upon it;
- Commit publicly to revisit the Court's budgetary needs during the 2023 budget cycle in 2022, and reject a "zero-nominal growth" approach as incompatible with the Court's mandate and workload;
- Ask the Court to present a 2023 programme budget adequate to ensure sufficient resources across all of its organs, programs, and activities, and to include in its baseline amounts expended through the Office of the Prosecutor's trust fund as well as through the use of gratis personnel;
- Promote tirelessly the Court's prosecutorial and judicial independence and, where voluntary contributions or gratis personnel are provided in response to the current call, be explicit in statements about those contributions that the resources are provided to be used at the complete discretion of the Office of the Prosecutor, in a transparent manner, without earmarking their use to specific situations or investigations in any way, and ensuring gratis personnel are subject to all relevant ICC codes of conduct, including policies on harassment and non-retaliation;
- Disclose transparently voluntary financial contributions or the provision of gratis personnel and ask that the Court report transparently on the use of any such contributions and personnel;
- Support the court in developing a long-term strategic vision, as recommended by the Independent Expert Review, as a basis for closing the gap between the work the court must do and the resources it has available through assessed contributions; and
- Reopen Assembly negotiations on the annual programme budget to civil society observers, consistent with the Assembly's general practices on transparency.

Background

Each year, the International Criminal Court develops a request to the States Parties for its programme budget for the following year. The final budget is adopted by the Assembly of States Parties, the Court's management oversight and legislative body, through a dedicated resolution during the regular Assembly session, usually held in November or December. The programme budget is funded through assessed contributions of its States Parties (Rome Statute Article 115). This contribution is proportionate to the States Parties' gross national incomes. The ICC's budget covers the costs of the Judiciary, the Office of the Prosecutor, the Registry, the Assembly Secretariat, and the Trust Fund for Victims Secretariat, among others.

To ensure sufficient funding to the Court in the face of unforeseen developments, States Parties may convene a special session to adopt a supplemental budget between regular budget cycles. The Court also has a contingency fund, set up to deal with costs unforeseen at the time of the adoption of the annual budget. However, States Parties have lowered the amount allocated to the contingency fund, and failed to replenish it fully on a regular basis.

The Rome Statute also provides for voluntary contributions (Rome Statute Article 116) and the provision of gratis personnel (Rome Statute Article 44 (4)). Their use has been regulated by the Assembly of States Parties in a manner that underscores their limited and exceptional nature and to protect the Court's independence ([ASP Guidelines for the selection and engagement of gratis personnel at the ICC](#) (Annex II of ASP Omnibus resolution ICC-ASP/4/Res.4 (2005), pp. 44-48)); "[Relevant criteria for voluntary contributions to the International Criminal Court.](#)" ASP Resolution (ICC-ASP/1/Res.11), 3 September 2002: [Financial Rules and Regulations of the Court, Regulation 7.2-7.4](#)).

The Coalition for the ICC is the world's largest partnership advancing the cause of international justice. With member organizations in 150 countries, the Coalition is leading the global fight to end Rome Statute crimes through a commitment to the core values of human rights and justice. The Coalition works to promote a fair, effective, independent, and universal ICC and accountability and redress for the victims of such crimes through the Rome Statute system.