

12TH CONSULTATIVE ASSEMBLY OF PARLIAMENTARIANS
ON THE INTERNATIONAL CRIMINAL COURT AND THE RULE OF LAW (CAP-ICC)
43RD ANNUAL FORUM OF PARLIAMENTARIANS FOR GLOBAL ACTION

4-5 November 2022
National Congress of Argentina, Buenos Aires

Plan of Action on the Universality and Effectiveness of, and political support for, the Rome Statute system against impunity

We, the Members of Parliament participating in the 12th Consultative Assembly of Parliamentarians on the International Criminal Court (ICC):

Expressing gratitude to PGA, the PGA Argentina National Group and the Chamber of Deputies of Argentina for co-organizing this meeting, to all the panellists for sharing their expertise with the distinguished audience, as well as to donors and institutional partners for the invaluable support they provide to the work of PGA in the promotion of human rights and the Rule of Law;

Recognizing that the deliberations took place within the framework of the results-oriented PGA campaign for the universality and effectiveness of the Rome Statute;

Acknowledging the crucial role Legislators play in achieving the universality and effectiveness of the Rome Statute system, which consists of national jurisdictions complemented by the ICC as the only permanent international criminal jurisdiction that intervenes when States are unwilling or unable to genuinely investigate and prosecute international crimes, as well as in building and strengthening the Rule of Law, and enhancing victims' access to justice, truth and reparations;

Recognizing that impunity for perpetrators of genocide, crimes against humanity, war crimes and the crime of aggression only serves to increase the likelihood of the commission of new atrocities, as demonstrated by the impunity for mass atrocities committed *in* Syria after 2011 which are fueling the perpetration of similar crimes, including the crime of aggression, *in and against* Ukraine;

Underscoring the importance of the ICC in preventing and countering *equally* the four (4) crimes of concern to the International Community as a whole, namely genocide, crimes against humanity, war crimes and the crime of aggression;

Recognizing that States must urgently and without hesitation correct the jurisdictional restrictions inserted in 2010 in Article 15 bis of the Rome Statute concerning the crime of aggression: such restrictions were accepted by States Parties at a time in which wars of aggression and annexation as the ones that characterized World War II were considered "obsolete";

Observing that **law-abiding nations have all-to-gain and nothing-to-lose** by joining the Rome Statute system against impunity, as their membership reinforces their democratic institutions, the independence of the judiciary and of prosecutorial authorities, and the overall system for the protection and promotion of universal human rights under a strengthened Rule of Law;

Adopt the following Plan of Action:

I. On the Impact of the Rome Statute system on global affairs, domestic jurisdictions, atrocity-prevention and the imperative to achieve peace-with-justice

We resolve to:

1. Promote the ratification by all States that have *not yet* joined the Rome Statute system against impunity, as staying out of this system means that the ICC cannot exercise its complementary jurisdiction and cannot reinforce the customary law obligation for States to fight impunity for genocide, crimes against humanity, war crimes and the crime of aggression, stipulated in the Nuremberg Principles of 1946 and in many other binding instruments:
 - a. To this effect, create strategic and tactical opportunities for Parliamentarians to engage with their Government and society-at-large to ensure that our States ratify and fully implement the Rome Statute, as well as undertake the commitment to provide the necessary cooperation, support and financial & logistical means for the ICC and subsidiary bodies, starting with the Trust Fund for Victims, to realize their indispensable mandate, and
 - b. Intensify our efforts to ensure that universality of the Rome Statute in its most recent amended version is mainstreamed as an objective in all available mechanisms of inter-parliamentary relations – including trans-regional parliamentary initiatives – and programs of actions designed by Governments to promote human rights, the rule of law, justice, peace, democracy, sustainable development and multilateral cooperation.
2. Call for our Governments to engage in supporting the fight against impunity at the ICC Assembly of States Parties through measures for an expanded capacity of the ICC as well as in other multilateral fora, *inter alia* by supporting the UN General Assembly Resolution proposed by Mexico to create an Ad Hoc Committee for a Crimes against Humanity convention and by promoting the adoption of a new treaty on Mutual Legal Assistance proposed by Argentina, Belgium, The Netherlands, Mongolia, Senegal and Slovenia;
3. Ensure that there is no impunity-gap for the crime of aggression in respect to all situations of aggressive war, starting with the ongoing war of aggression in and against Ukraine:
 - a. To this effect, launch parliamentary actions demanding all Governments of the 123 States Parties to realign the jurisdiction of the ICC on the crime of aggression to the regime of the Rome Statute of 17 July 1998 on genocide, crimes against humanity and war crimes, hence eliminating the norms contained in paragraphs 4 and 5 of Article 15bis of the Statute that are incompatible with the principle of *equality of all individuals before the law*;
4. Ensure the adoption of domestic legislation that (i) incorporates the definitions of the crimes, general principles and the rights of victims under the Rome Statute in its amended version as well as (ii) secures full cooperation of States with the ICC:
 - a. To this effect, Parliamentarians from States that have *not yet* implemented fully the Rome Statute in their domestic legal order undertake the commitment to make available to their Governments the “model law” or “reference law” developed by the PGA Secretariat to bring about full implementation in all areas of complementarity and mandatory or “voluntary” cooperation of States with the ICC;

5. Promote the ratification of the Agreement of Privileges and Immunities of the Court (APIC) in all States that have not yet done so;
6. Strengthen the reparative element of the Rome Statute system of international and domestic criminal justice through the elaboration and adoption of appropriate legislative frameworks for reparations, in consultation with victims and affected communities, which should encompass public policies of our States to provide regular contributions to the Trust Fund for Victims by both the private and the public sector.
7. Galvanize political support and resources to collaborate with other governments and international organizations to achieve effective arrest strategies of those sought by the ICC, in addition to ensuring that our governments conclude bilateral cooperation agreements with the Court, including on enforcement of sentences, protection and reallocation of witnesses and interim and final release.

II. On the Challenges for International Criminal Justice

We resolve to:

8. Vigorously engage with our colleagues from all political affiliations to achieve national and multi-partisan consensus to support the adoption by our competent authorities (e.g. Ministries for Foreign Affairs) of public, transparent and merit-based procedures at the national level to make nominations for judicial positions at the ICC:
 - a. To this effect, call upon all States Parties to the Rome Statute to immediately implement Recommendation 377 of the Independent Experts Review report calling States to adopt guidelines or criteria to improve transparency and accountability in domestic nomination processes and meet the deadline of the December 2022 Assembly of States Parties, which is necessary to ensure that the new guidelines apply to the nominations for the six new ICC Judges to be elected in 2023.
9. Support the recommendations of the Independent Experts Review of the ICC that are aimed at ensuring that our governments respect the independence of the Court and ensure an appropriate level of political, logistical and budgetary support for the ICC, especially when the Court is under attack;
10. Call upon, once again, the United Nations Security Council and its Member-States to
 - a. refer to the jurisdiction of the Court the gravest situations that do not fall under the automatic jurisdiction of the ICC,
 - b. provide the ICC with the necessary financial and logistical means to accomplish its mandate for the situations referred to it,
 - c. refrain from the use of the veto in the face of mass atrocities, which entails a grave breach of International Law and the UN Charter, and
 - d. denounce the abuse of the veto-power by Permanent Members, especially when the latter may be implicated in the commission of international crimes, condemn the practise of such States as against international law (*contra legem*), and empower the United Nations General Assembly to perform its functions in accordance with the “uniting for peace” resolutions in all cases in which the Security Council fails to act in accordance with the UN Charter.