



Role of Parliamentarians in strengthening the integrity of the International Criminal Court (ICC), promoting justice and accountability for the perpetrators of international crimes

1. Dual nature of the parliamentary prerogatives: legislative and political

Parliamentarians play a quintessential role in the ICC system and have political as well as legislative prerogatives that can advance the rule of law worldwide, being amongst others:

- Table resolutions, motions in parliament in support of the ICC;
- Adopt legislation and encouraging the full implementation of the Rome Statute in the national legal order;
- Be vocal on ICC issues and ask the government to be vocal in support of the ICC;
- Engage in peer-to-peer dialogue, make public statements;
- Engage in global efforts to address misconceptions and promote the effective functioning of the Court;
- Interact with constituency and relevant stakeholders to raise awareness on the Rome Statute system and its benefits;
- Encourage the signature of voluntary agreements.

2. A five-folded action in pursuance of the strengthening of the ICC system

Legislative and political prerogatives can be carried out in pursuance of five specific goals for the strengthening of the ICC system:

1. To promote the universality of the Rome Statute

- Parliamentarians from States Parties to the ICC Statute can work with other Parliaments and Governments to promote the ratification and accession of the Rome Statute within the framework of the overall promotion of human rights, the Rule of Law, justice, peace, democracy, sustainable development and multilateral cooperation;
- Parliamentarians from all over the world, can increase transparency and accountability, as well as ensure that Governments do not negotiate agreements or other measures that would permit impunity, either clandestinely or through public policy decisions.

2. To promote cooperation with the ICC and the principle of complementarity

- Urge their Governments to draft legislation to effectively implement the Rome Statute and transmit it to Parliament, or when appropriate, initiate the drafting process themselves [N.B. The PGA legal staff is able to provide technical assistance to MPs, including in drafting articles for proposed legislation];
- Appeal to the Executive branch to transmit the Agreement on Privileges and Immunities (APIC) to Parliament, or the relevant national body for the ratification of treaties, for prompt consideration and approval.

3. To ensure that the Court has sufficient financial resources for the fight against impunity
 - Make sure that the Executive branch inserts the yearly contributions to the ICC budget in the national appropriation bill on foreign relations/international organizations;
 - Make sure that their national budget laws contain appropriate allocations in support of the investigation, prosecution, and adjudication of international crimes by competent national courts;
 - Encourage their governments to pledge funds for the Trust Fund for Victims, which supports the victims of the crimes being tried in the ICC. The Trust Fund of Victims ensures that the ICC not only delivers retributive and preventative justice, but also restorative justice.
 4. To preserve the independence of the Court
 - Must monitor their governments and make use of both their legislative prerogatives as well as their political prerogatives to protect and ensure the judicial independence of the ICC through the developing of, *inter alia*, multi-party and inclusive approaches in support of justice, avoiding politicizing or misrepresenting the scope and power of the Rome Statute or the ICC.
 5. To ensure that legal, political, and logistical challenges are overcome to facilitate cooperation with the ICC
 - Domestic implementation of the necessary procedure to cooperate effectively with the ICC, including in the areas of arrest and surrender, and of freezing of assets;
 - Political will for the prompt and effective arrest and surrender of individuals sought by the ICC
 - Ratification and implementation of the supplemental treaty entitled “Agreement on Privileges and Immunities of the Court (APIC), and other specialized agreements with the ICC, including on Enforcement of Sentences, Interim Release and Protection and Relocation of Witnesses and Victims;
 - Political advocacy for improved cooperation by the Security Council and other organs of the United Nations;
 - Political will to address instances of non-cooperation by States.
3. ***The specific case of AU member States: concrete actions that Parliamentarians can take in their country to promote international justice and accountability by strengthening the ICC***

The courses of action to be taken with States members to the AU ought to be differentiated between:

- *African States non-parties to the Rome Statute:*
 - a) To ensure the universality of the ICC: it is fundamental that Parliamentarians contribute to removing legal and political obstacles to the national ratification/accession process and

- on this basis - undertake any appropriate legislative or political initiative that could contribute to the ratification or accession not only to the Rome Statute but also to the Kampala Amendments adopted in 2010.

- *African States parties to the Rome Statute, especially those where Parliamentarians are active members of PGA:*
 - a) To promote the principle of complementarity: it is important in all cases to continue fostering the adoption of provisions criminalizing the commission of international crimes, especially the crime of aggression through the ratification and implementation of the Kampala Amendments. Additionally, Parliamentarians of Benin, Botswana, Cape Verde, Chad, Djibouti, Gabon, Gambia, Ghana, Liberia, Madagascar, Malawi, Nigeria, the Seychelles, Sierra Leone, Tunisia, Tanzania, and Zambia should contribute to the adoption in their national legislations of provisions regarding the crime of genocide, crimes against humanity and war crimes. Parliamentarians could also use the example of Guinea, which included in its new Criminal Code the crime of aggression. Moreover, following the example of the Democratic Republic of the Congo, special emphasis should be put on the adoption of the General Principles of Criminal Law for enhancing the effectivity of the principle of complementarity. Given the sensibility of the topic of immunities, a solid promotion of the importance of Article 27 in the fight against impunity result a in priority issue
 - b) To promote cooperation with the ICC: given the impossibility for the ICC to enforce its own decisions without cooperation from states, we encourage Parliamentarians from Benin, Burundi, Cape Verde, Chad, Congo, Cote d'Ivoire, Djibouti, Gabon, Gambia, Ghana, Lesotho, Liberia, Madagascar, Malawi, Namibia, Niger, Nigeria, the Seychelles, Tunisia, Tanzania, and Zambia to raise awareness on the need of cooperation agreements. We celebrate efforts being made in Botswana and Sierra Leone whilst further encouraging Parliamentarians of both states to call for the adoption of the draft legislations on cooperation, currently in hands of the executive powers. We also encourage the Members of the Central-African Parliament to bill amendments to amend the currently incomplete cooperation law.

In the context of the accusations being held by the AU and some of its member States, it is imperative for *parliamentarians from all around the world* to renew their promise to preserving the independence of the Court. This is why it is particularly important for members of parliaments to counter-argue public statements *politicizing* or *misrepresenting* the scope and power of the Rome Statute or the ICC, as they weaken and undermine the legitimacy and credibility of an institution born out of the compromise of the international community to ensuring accountability for the commission of the most serious crimes.