Parliamentary Kit
on the International Criminal Court

The vision of Parliamentarians for Global Action is to contribute to the creation of a Rules-Based International Order for a more equitable, safe and democratic world.

New York / The Hague
June 2019
WHAT IS THE INTERNATIONAL CRIMINAL COURT? .................................................... 4
What does the ICC need to be effective? ................................................................. 5

WHICH COUNTRIES SUPPORT THE ICC? ............................................................. 6
States Parties and Signatories to the Rome Statute ................................................... 6
What can parliamentarians do? .................................................................................. 8

WHERE AND WHEN DOES THE ICC HAVE JURISDICTION? .............................. 9
Where is the ICC currently active? .......................................................................... 12
Situation in Burundi ..................................................................................................... 14
Situation in the Central-African Republic (I) ............................................................. 15
Situation in the Central-African Republic (II) ............................................................ 15
Situation in Côte d’Ivoire .......................................................................................... 16
Situation in Darfur (Sudan) ....................................................................................... 16
Situation in Democratic Republic of Congo .............................................................. 17
Situation in Georgia .................................................................................................... 17
Situation in Kenya ....................................................................................................... 18
Situation in Libya ......................................................................................................... 18
Situation in Mali .......................................................................................................... 19
Situation in Uganda ..................................................................................................... 19

WHAT IS THE PRINCIPLE OF COMPLEMENTARITY? ........................................... 20
Why is it necessary that States fully implement The Rome Statute into their domestic legal frameworks? .......................................................... 20
What can parliamentarians do? ................................................................................ 21

WHAT IS THE CRIME OF AGGRESSION? ............................................................. 22
What can parliamentarians do? ................................................................................ 24

WHAT ARE THE OTHER SPECIALISED COOPERATION AGREEMENTS? .......... 25
Agreement on Privileges and Immunities of the Court (APIC) ................................ 25
Specialised Cooperation Agreements ....................................................................... 25
What can parliamentarians do? ................................................................................ 27

HOW IS THE ICC FUNDED? .................................................................................. 28
What can parliamentarians do? ................................................................................ 28

USEFUL LINKS ............................................................................................................ 29
HOW CAN PGA ASSIST YOU? .................................................................................. 30
STATUS OF RATIFICATION OF THE ROME STATUTE ...................................... 32
Can corporations be investigated or prosecuted for the commission of international crimes under the Rome Statute system?

The ICC does not have jurisdiction over legal persons. Although legal persons and entities were criminalized in the Nuremberg Trials of 1945-1946, the French proposal to criminalize them did not find any support at the Rome Conference of 1998. Individuals in charge of corporations that finance, arm or otherwise aid or abet the perpetration of international crimes can be deemed responsible for such crimes under Article 25(3)(c) of the Rome Statute, provided that these individuals have the required mens rea (mental element) for the crimes in question and a causal connection between the actus reus (objective element) of the aider and abettor and the principal perpetrator is proven.

States, however, can choose to give their domestic courts jurisdiction over legal persons - such as corporations - for the commission of international crimes.

WHAT IS THE INTERNATIONAL CRIMINAL COURT?

Created by the Rome Statute, the International Criminal Court (ICC) is the first permanent and independent international court capable of investigating and bringing to justice individuals who commit the most serious violations of international criminal law, international humanitarian law and human rights. The Rome Statute defines the crimes under the Court’s jurisdiction as well as provides the general principles and procedures for the operation of the Court. It also outlines the cooperation obligations of its state parties. Its key features include the following:

- **Jurisdiction** over:
  - Individuals (not States or legal persons) who commit
  - the most serious crimes recognised under customary international law, i.e. genocide, war crimes, crimes against humanity, and the crime of aggression,
  - when genocide, crimes against humanity or war crimes are committed: (i) by a national of a State Party or a State that accepted ad hoc jurisdiction, regardless of the geographic location of their criminal conduct, or (ii) on the territory of a State Party or a State that accepted ad hoc jurisdiction regardless of the nationality of the perpetrator or (iii) by nationals and/or on a territory of non-party State in case of referral by the United Nations Security Council;
  - when a crime of aggression is committed: (i) by nationals and/or on a territory of a non-party State in case of referral by the United Nations Security Council, or (ii) when both the State of nationality of the alleged perpetrator and the territorial State where the crime has been committed consent to the Court’s jurisdiction.

- **Permanence** (not created for a specific conflict).
- **Non-retroactivity** (with jurisdiction only over acts committed after the Rome Statute entered into force for the pertinent State or in any case after 1 July 2002, except for crimes of aggression for which the Court will have jurisdiction only over acts committed after 17 July 2018).
- **Complementarity** to domestic jurisdictions: The Court can act only when domestic jurisdictions are unwilling or unable to genuinely exercise their criminal jurisdiction.
- **Respect** for internationally recognized human rights, of the accused (fair trial standards) and the victims (participation, protection and reparations).

WHAT DOES THE ICC NEED IN ORDER TO BE EFFECTIVE?

- The full and effective cooperation of State Parties: the Court depends heavily on state cooperation, as it does not have its own police force or any law enforcement structure at its disposal.
- The complementarity of the ICC to domestic jurisdictions: to this end, States must criminalise the Rome Statute’s crimes in their domestic legal orders and incorporate the relevant general principles of international criminal law into their penal codes.
- The ICC’s financial resources: to operate in the challenging context of widespread crimes in ongoing conflicts, the Court requires significant means.
- The independence of the ICC as an institution: the Court must operate solely based on evidence and objective criteria for the application of the law, not in response to popular demand or political aspirations of states.
- The universality of the Rome Statute: this treaty must be ratified by all States to ensure that no individual is above the law.
WHICH COUNTRIES SUPPORT THE ICC?

122 STATE PARTIES: HAVE RATIFIED THE ROME STATUTE
14 STATES SIGNATORIES: HAVE SIGNED BUT NOT RATIFIED THE ROME STATUTE
STATE NON-PARTIES: HAVE NOT SIGNED NOR RATIFIED THE ROME STATUTE
2 STATES THAT HAVE WITHDRAWN FROM THE ROME STATUTE
WHAT CAN PARLIAMENTARIANS DO?

It is imperative that the Rome Statute is ratified universally for the successful functioning of the Court. Parliamentarians should ensure that the ICC is truly universal:

• Parliamentarians from States not yet party to the Rome Statute can remove legal and political obstacles to the ratification/accession process.

• Parliamentarians from States not yet party to the Rome Statute can draft legislation and undertake any legislative or political initiative that may contribute to the ratification or accession.

• Parliamentarians from States Parties to the Rome 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 States Parties to the Rome Statute can request that their government promote the ratification of the Rome Statute in other countries through bilateral contacts and multilateral venues.

• All Parliamentarians should use all available avenues to help ensure that universal representation in the ICC system is understood as a true priority by international, regional and national communities.

• All Parliamentarians should provide up to date information on the ICC to relevant people and institutions.

• All Parliamentarians can increase transparency and accountability, as well as ensure that Governments do not negotiate agreements or other measures that would permit impunity.

WHERE AND WHEN DOES THE ICC HAVE JURISDICTION?

The ICC does not have retroactive jurisdiction and does not apply to crimes committed before 1 July 2002.

States can accept ICC jurisdiction for crimes against humanity, war crimes and genocide committed after 1 July 2002, even if they have not yet ratified the Rome Statute. The Court’s jurisdiction on the crime of aggression will be active from 17 July 2018, as decided by the 2017 Assembly of States Parties to the Rome Statute.

Since States retain primary jurisdiction to adjudicate these crimes, the ICC can only act when States are unwilling or unable to genuinely investigate or prosecute the specific case the Prosecutor has built. Thus, the Court is complementary to national jurisdictions.

The Rome Statute contains strict procedural safeguards that prevent the irresponsible use of the Court for political purposes. The Independent Oversight Mechanism (IOM), which became operational in 2017, serves to provide meaningful oversight of the Court through its mandate to conduct internal court inspections, evaluations and investigations. In addition, any decision of the independent Prosecutor to proceed with an investigation or prosecution is subject to strict judicial scrutiny/review. The Prosecutor and the judges are further accountable to the Assembly of States Parties to the Rome Statute, which may take disciplinary measures against them. Moreover, States have the possibility to challenge the jurisdiction of the Court before the commencement of a trial if they perceive prosecutions as “politically motivated” or “frivolous”.

It is imperative that the Rome Statute is ratified universally for the successful functioning of the Court. Parliamentarians should ensure that the ICC is truly universal:

• Parliamentarians from States not yet party to the Rome Statute can remove legal and political obstacles to the ratification/accession process.

• Parliamentarians from States not yet party to the Rome Statute can draft legislation and undertake any legislative or political initiative that may contribute to the ratification or accession.

• Parliamentarians from States Parties to the Rome 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 States Parties to the Rome Statute can request that their government promote the ratification of the Rome Statute in other countries through bilateral contacts and multilateral venues.

• All Parliamentarians should use all available avenues to help ensure that universal representation in the ICC system is understood as a true priority by international, regional and national communities.

• All Parliamentarians should provide up to date information on the ICC to relevant people and institutions.

• All Parliamentarians can increase transparency and accountability, as well as ensure that Governments do not negotiate agreements or other measures that would permit impunity.
WHEN A COMMUNICATION IS SENT TO THE INTERNATIONAL CRIMINAL COURT

An individual or group with eye-witnesses or documentary evidence of a crime they believe should be investigated by the ICC can send their evidence and request the Court to open an investigation via “communication”

BRIEF ASSESSMENT OF

TEMPORAL JURISDICTION
Did the alleged crimes take place since the Rome Statute entered into force in the relevant State?

TERRITORIAL JURISDICTION
Did the alleged crimes take place in a State which is a Party to the Rome Statute or has accepted its jurisdiction?

PERSONAL JURISDICTION
Were the alleged crimes committed by a national of a State Party to the Rome Statute or against a national of such State?

SUBJECT-MATTER JURISDICTION
Do the alleged crimes fall under the definition of those within the ICC jurisdiction (genocide, crimes against humanity, war crimes and, if committed after 17 July 2018, crime of aggression)?

A PRELIMINARY INVESTIGATION IS OPENED

The situation is not currently being investigated:

A PRELIMINARY INVESTIGATION IS OPENED

The alleged facts are a part of an ongoing investigation by the Court:

THE COMMUNICATION IS SENT TO THE INVESTIGATING TEAM

THE COMMUNICATION SEEMS TO FALL WITHIN THE COURT’S JURISDICTION

THE COMMUNICATION IS CLEARLY OUTSIDE OF THE COURT’S JURISDICTION AND IS DISMISSED

PHASE I
CONFIDENTIAL PHASE
Preliminary thorough assessment of the situation to determine if it appears to fall within the ICC jurisdiction

PHASE II
THOROUGH SUBJECT-MATTER JURISDICTION ASSESSMENT
Do the alleged crimes fall under the definition of those within the ICC jurisdiction (genocide, crimes against humanity, war crimes and, if committed after 17 July 2018, crime of aggression)?

PHASE III
ASSESSMENT OF ADMISSIBILITY
COMPLEMENTARITY: Have genuine investigations and prosecutions been or are being conducted in the State concerned?

GRAVITY: Is the case of sufficient gravity to justify further action by the ICC?

PHASE IV
ASSESSMENT OF THE INTERESTS OF JUSTICE
Is the opening an investigation in the interests of victims and does it contribute to peace and security in the country?

ALL FOUR PHASES EXAMINED AND EVALUATED POSITIVELY
The ICC Prosecutor can request the ICC Pre-Trial Chamber to open an investigation

ONE OR MORE OF THE CRITERIA ARE NOT MET

The communication is filed and can be re-examined again in future if the ICC receives more information

PARLIAMENTARY GUIDE TO THE INTERNATIONAL CRIMINAL COURT
WWW.PGACTION.ORG
WHERE IS THE ICC CURRENTLY ACTIVE?

**SITUATIONS UNDER PRELIMINARY EXAMINATION:**
Afghanistan, Bangladesh/Myanmar, Colombia, Guinea, Iraq/UK, Nigeria, Palestine, The Philippines, Ukraine, Venezuela

**SITUATIONS FOR WHICH THE PRELIMINARY EXAMINATION WAS CLOSED:**
Gabon, Honduras, Korea

**SITUATIONS WHERE AN INVESTIGATION IS UNDERWAY:**
Burundi, Georgia

**SITUATIONS WHERE INDIVIDUALS HAVE BEEN OR ARE BEING PROSECUTED:**
DRC, Uganda, Sudan, CAR, Kenya, Libya, Côte d’Ivoire, Mali
After it was announced in April 2015 that President Pierre Nkurunziza would run for a third term, widespread protests erupted in Burundi. The government replied to the unrest by using force and creating strict restrictions on civil liberties. As his candidacy was approved by domestic courts, Pierre Nkurunziza was re-elected as President of Burundi on 21 July 2015. The repression of political opponents and perceived opponents, which might amount to crimes against humanity, however continued.

Burundi was, at the time of the beginning of this pre-electoral and post-electoral crisis, a State Party to the Rome Statute, but the government notified the Secretary-General of the United Nations of its withdrawal from the ICC in October 2016. Parliament subsequently approved this step.

The Office of the Prosecutor nonetheless announced it was opening a preliminary examination in April 2016 and a Pre-Trial Chamber authorised it to open a proprio motu investigation on 25 October 2017. As of 27 October 2017, Burundi is no longer a State Party to the Rome Statute.

The Court has not issued any public arrest warrant yet.

The Central-African Republic has been marked by political and military unrest. Between 2001 and 2003, rebel groups fought against the government led by Ange-Félix Patassé until he was overthrown in March 2003 by General François Bozizé. The government forces retaliated against civilians allegedly affiliated with the other side.

As a State Party, the CAR referred the situation on its territory in December 2004 and the Office of the Prosecutor opened an investigation in May 2007.

The Court issued one arrest warrant in relation to core crimes, against Mr. Jean-Pierre Bemba Gombo. On 8 June 2018, the latter was acquitted by Appeals Chamber.

A second case, opened in relation to offences against the administration of justice, concluded in March 2017. All five accused, including Mr. Bemba, were found guilty of various offences against the administration of justice, relating to the false testimonies of defence witnesses in the case. Their appeal was rejected.

In 2012, several rebel groups took arms against the government of President François Bozizé and took control of towns in the North and Centre of the country. The fighting between the two main groups, the Seleka and the Anti-Balaka, immensely impacted civilians, and continued even when the National Transitional Council was set up in January 2014.

As a State Party, the CAR referred the situation on its territory in May 2014 (for the second time) and the Office of the Prosecutor opened an investigation in September 2014.

The Court has issued two arrest warrants against Mr. Alfred Yekatom and Mr. Patrice-Edouard Ngaïssona. Both are currently in the Court’s custody and will be tried jointly. The charges against them have not yet been confirmed.
In February 2003, the Sudanese army, supported by Janjaweed militias and rebel groups, began fighting in the region of Darfur. The UN Secretary General warned about a risk of genocide. Sudan is not a State Party to the Rome Statute. The situation was referred to the ICC by the United Nations Security Council via Resolution 1593(2005) in March 2005. The Office of the Prosecutor opened an investigation in June 2005. The Court has issued six arrest warrants. Five of the accused - Mr. Omar al-Bashir, Mr. Ahmad Harun, Mr. Ali Kushayb, Mr. Abdel Raheem Muhammad Hussein and Mr. Abdallah Banda - are at large and have yet to be arrested. The charges against Mr. Abdallah Banda were confirmed in March 2011 after he voluntarily appeared in Court. The summons to appear was then replaced by an arrest warrant, but the accused has yet to be arrested. The proceedings against Mr. Saleh Mohammed Jerbo Jamus were terminated after his death. Mr. Abu Garda appeared voluntarily before the ICC after a summons to appear was delivered against him, but, in February 2010, the Court rejected the charges against him.

In 2010, violence erupted in Côte d’Ivoire after Presidential election results between opponents Mr. Laurent Gbagbo and Mr. Alassane Ouattara were disputed. While Côte d’Ivoire was not a State Party to the Rome Statute at the time, it had previously accepted the jurisdiction of the ICC, which allowed the Office of the Prosecutor to open an investigation in October 2011 regarding alleged crimes against humanity committed during the post-electoral violence by all sides of the conflict.

The Court has issued three arrest warrants. Mr. Laurent Gbagbo and Mr. Charles Blé Goudé were acquitted from all charges on 15 January 2019. The Court also delivered an arrest warrant against Mrs. Simone Gbagbo, but, so far, it has not been executed by Côte d’Ivoire, where she resides.

In 2003, the Sudanese army, supported by Janjaweed militias and rebel groups, began fighting in the region of Darfur. The UN Secretary General warned about a risk of genocide. Sudan is not a State Party to the Rome Statute. The situation was referred to the ICC by the United Nations Security Council via Resolution 1593(2005) in March 2005. The Office of the Prosecutor opened an investigation in June 2005. The Court has issued six arrest warrants. Five of the accused - Mr. Omar al-Bashir, Mr. Ahmad Harun, Mr. Ali Kushayb, Mr. Abdel Raheem Muhammad Hussein and Mr. Abdallah Banda - are at large and have yet to be arrested. The charges against Mr. Abdallah Banda were confirmed in March 2011 after he voluntarily appeared in Court. The summons to appear was then replaced by an arrest warrant, but the accused has yet to be arrested. The proceedings against Mr. Saleh Mohammed Jerbo Jamus were terminated after his death. Mr. Abu Garda appeared voluntarily before the ICC after a summons to appear was delivered against him, but, in February 2010, the Court rejected the charges against him.

Numerous armed groups fought in the Second Congo War from 1998 to 2003, with the support of the governments in DRC, Burundi, Rwanda, and Uganda. As a State Party, the DRC referred the situation on its territory in March 2004 and the Office of the Prosecutor opened an investigation in June 2004.

The Court has issued seven arrest warrants against alleged members of various armed groups. Mr. Sylvestre Mudacumura has yet to be arrested. Mr. Callixte Mbarushimana was arrested and transferred to the ICC, but the Court rejected the charges against him. Mr. Mathieu Ngudjolo Chui was also arrested and transferred to the ICC, but later acquitted. Mr. Bosco Ntaganda is detained at the Court and undergoing trial. Mr. Thomas Lubanga Dyilo and Mr. Germain Katanga have both been convicted of war crimes and crimes against humanity. Their respective cases are now in the reparations phase.

In 2008, a war erupted in the Georgian regions of South Ossetia and Abkhazia, which declared independence with the backing of Russia. The conflict had a devastating impact on the civilian population, with many indiscriminate weapons being used and ethnic Georgian locations being targeted.

Georgia is a State Party to the Rome Statute. In January 2016, the Court authorised the Office of the Prosecutor to open an investigation proprio motu on the situation in Georgia.

The Court has not issued any public arrest warrant yet.
After the 2007 presidential elections, violence sparked between the various candidates and the groups that were affiliated with them. Those groups attacked civilians that they considered to be supporting their opponents.

Kenya is a State Party to the Rome Statute. In March 2010, the Pre-Trial Chamber granted the Prosecutor’s request to open an investigation proprio motu on the situation in Kenya.

The Court has issued six summons to appear. The Court rejected the charges against Mr. Henry Kiprono Kosgey and Mr. Mohammad Hussein Ali in January 2012. In March 2013, the Office of the Prosecutor decided to withdraw charges against Mr. Francis Kirimi Muthaura and in December 2014 against Mr. Uhuru Kenyatta for lack of evidence. The charges against Mr. William Semei Ruto and Mr. Joshua Arap Sang were vacated by the Trial Chamber in April 2016.

Following the beginning of what has been called the Arab Spring, the Libyan government headed by the late Muammar Gaddafi strengthened its repression and pursued several attacks against civilians demonstrating against it or perceived to be dissidents.


The Court has issued five arrest warrants. Mr. Saif Al-Islam Gaddafi, Mr. Al-Tuhamy Mohamed Khaled and Mr. Mahmoud Mustafa Busayf al-Werfalli have yet to be transferred to the Court. The proceedings against Mr. Muammar Gaddafi were terminated in November 2011 after his death. Mr. Abdullah Al-Senussi’s case was declared inadmissible in October 2013 by the ICC Appeals Chamber, because the Libyan judicial authorities were prosecuting him.

In January 2012, several groups in the North of Mali began fighting against the Malian army and groups associated with the government to demand independence or greater autonomy. After President Amadou Toumani Touré was overthrown in March 2012, rebel groups - some of which were backed by the violent extremist group Ansar Dine - took control of cities in the North and imposed a new governing system allegedly based on Sharia Law.

As a State Party, Mali referred its situation to the Court in July 2012, and the Office of the Prosecutor opened an investigation in January 2013. The Court has issued two arrest warrants. Mr. Ahmad Al Faqi Al Mahdi pled guilty to charges of war crimes and was convicted in September 2016. Mr. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud was surrendered to the ICC by the Malian authorities in March 2018: The Pre-Trial Chamber has yet to confirm the charges against him.

The Lord’s Resistance Army (LRA), a violent extremist Christian rebel group, has been leading an insurgency in Northern Uganda since 1987. The group has been directing attacks against the government and army of Uganda, as well as against the civilian population.

As a State Party, Uganda referred the situation in Northern Uganda to the ICC in January 2004 and the Office of the Prosecutor opened an investigation in July 2004.

The Court has issued five arrest warrants against alleged members of the LRA. Mr. Joseph Kony and Mr. Vincent Otti have yet to be arrested.

The proceedings against Mr. Okot Odhiambo and Mr. Raska Lukwiya were terminated after their death. Mr. Dominic Ongwen is detained at the Court and is undergoing trial.
WHAT IS THE PRINCIPLE OF COMPLEMENTARITY?

As mentioned above, the ICC is governed by the principle of complementarity, which means that States have the primary responsibility to investigate and prosecute international crimes, and the ICC can only intervene when States are unwilling and/or unable to do so.

When a situation is referred to the ICC, any State can inform the Court that it is or has investigated the crimes that the Office of the Prosecutor is planning on prosecuting. The Prosecutor should then defer to the national authorities, except if the Pre-Trial Chamber authorizes the ICC’s investigation to continue. In all situations, regardless of how the ICC jurisdiction was triggered, whenever a case is commenced (i.e. through an arrest warrant or a summons to appear), States and the accused can challenge the admissibility of the case by claiming that domestic authorities are or have been investigating or prosecuting. If the Court is satisfied that that is genuinely the case, it will find the case inadmissible; otherwise, the case can continue. In all situations, regardless of how the ICC jurisdiction was triggered, whenever a case is commenced (i.e. through an arrest warrant or a summons to appear), States and the accused can challenge the admissibility of the case by claiming that domestic authorities are or have been investigating or prosecuting. If the Court is satisfied that that is genuinely the case, it will find the case inadmissible; otherwise, the case can proceed before the ICC.

Why is it necessary that States fully implement the Rome Statute into their domestic legal frameworks?

Under the principle of complementarity, the obligation of each State Party to implement the Rome Statute is all the more important:

• States must have in their domestic system the legal tools necessary to investigate and prosecute international crimes. Incorporating the crimes of the Rome Statute into domestic law is the first step to ensuring that the legal framework will give the State the ability to exercise jurisdiction over crimes against humanity, war crimes, genocides and crimes of aggression.

• States must apply all the relevant general principles of law, in order for their domestic courts to be able to fully exercise their jurisdiction over the crimes prescribed by the Rome Statute. These principles include, notably, the irrelevance of official capacity (i.e. immunities do not apply), the absence of statute of limitations, or the applicability of command responsibility. The national framework should also respect the core principles of criminal law applicable at all times, such as the presumption of innocence and procedural guarantees of a fair trial.

• States must have a defined legal framework for cooperation with the ICC, since it cannot fulfil its mandate without their cooperation. Delays from States in responding to cooperation requests reduce the Court’s efficiency and increase its costs. Even in monist systems, where the Rome Statute might be potentially assessed as a self-executing treaty, there is still a need to adapt their procedural laws to allow national authorities to recognize and enforce requests emanated by the ICC.

WHAT CAN PARLIAMENTARIANS DO?

To promote domestic prosecutions, Parliamentarians should:

• Ensure the preparation and adoption of legislation that incorporates the definitions of the crimes and general principles under the Rome Statute.

• Promote the acceptance of bilateral agreements with the Court to ensure that any State conducting prosecutions of Rome Statute’s crimes receives the necessary support for fair and effective prosecutions.

• Launch motions or resolutions that promote national investigations and prosecutions by adopting legislation and encouraging policies to reinforce the police, investigative and prosecutorial capacities of the state.

• Appeal all national authorities to prosecute businesspersons and financiers who knowingly and willingly finance criminal organizations and militias operating in conflict.

• Refrain from interfering in the judicial process against international crimes and take actions that uphold the independent action of judges and prosecutors.

• Protect the independence of the judges and prosecutors.

To promote cooperation with the ICC, Parliamentarians should:

• Instruct their government to promote the domestic implementation of the Rome Statute in other countries.

• 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.

• Create political will to respect and enforce the decisions of the Court by continuously calling for the implementation of the decisions and orders of the ICC.

• Call upon their governments to adopt positions at the United Nations to bring coherence to the Security Council’s actions about crimes under the jurisdiction of the Court, and to ensure adequate follow-up to implement resolutions referring situations to the jurisdiction of the Court.

To ensure that the independence of the Court is preserved, Parliamentarians should:

• 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.

• Develop multi-party and inclusive approaches in support of justice.

To ensure that the integrity of the Court is preserved, Parliamentarians should:

• Encourage their national parliaments to support the adoption of a declaration against immunities of Heads of State and Government for the most heinous crimes for the international community as a whole.
**WHAT IS THE CRIME OF AGGRESSION?**

From 31 May until 11 June 2010, the States Parties met in Kampala, Uganda for the first Review Conference of the Rome Statute. The Review Conference adopted two resolutions that amended the Court’s jurisdiction. Resolution 5 expanded the definition of war crimes to include crimes committed during times of non-international armed conflict; it promotes a central goal of international humanitarian law on the protection of civilians. Resolution 6 amended the Rome Statute to include a definition of the crime of aggression and provisions on the conditions for the exercise of jurisdiction.

Both amendments have been adopted in the Statute; however, their application for nationals and territories of States Parties requires ratification under domestic procedures equal to those of international treaties. As of June 2019, 38 States have ratified the Kampala Amendments on the crime of aggression and war crimes, thus satisfying the condition of reaching the threshold of 30 ratifications in order for the Kampala Amendments to be activated by the Assembly of States Parties (ASP) to the Rome Statute of the ICC.

The adoption of the Kampala Amendments on the crime of aggression was, in particular, an important step taken by the States Parties, since the amendment will establish a permanent system of international criminal accountability aimed at enforcing the most fundamental rule for governing the peaceful coexistence of nations: the prohibition of the use of force.

On December 14, 2017, the 16th Assembly of State Parties adopted by consensus a resolution that activates the Court’s jurisdiction over the crime of aggression as of 17 July 2018.

17 Jul. 1998
The Rome Statute is Adopted

1 Jul. 2002
The Rome Statute Enters Into Force

11 Jun. 2010
The Review Conference Adopts the Kampala Amendments

Palestine is the 30th State to Ratify the Kampala Amendments

14 Dec. 2017
ASP Adopts Resolution Activating the ICC’s Jurisdiction Over the Crime of Aggression

17 Jul. 2018
ICC’s Jurisdiction Over the Crime of Aggression Becomes Effective

The definition of the crime of aggression in Article 8 bis contains two parts:

- **A general clause and definition**: the “crime of aggression means the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations.” Such a manifest violation must entail “the use of armed force by a state against the sovereignty, territorial integrity or political independence of another state, or in any other manner inconsistent with the Charter of the United Nations.” The use of force in lawful self-defence, as well as the use of force authorized by the Security Council cannot qualify as an act of aggression. Other uses of forces that may violate the UN Charter may not systematically be qualified as crimes of aggression, as it is limited to aggressive wars formerly labelled “crimes against the peace”;

- **A list of acts of aggression**, such as the invasion, military occupation, and/or bombardment by the armed forces of one state against another.

According to Art. 15 bis(5) of the Rome Statute, the ICC may not exercise jurisdiction over non-party States to the Rome Statute. In addition, as adopted by the ASP, the Court may exercise jurisdiction on the crime of aggression only in situations in which the territorial State and the State of nationality of the alleged perpetrator have ratified the amendments, however, this exclusion will not apply to situations that are referred by the UN Security Council.

The same three modalities that trigger the Court’s jurisdiction for other crimes will trigger jurisdiction for crimes of aggression.

These modalities are: a state referral, a referral by the Security Council and proprio motu of the Prosecutor on the basis of information submitted to him or her. In this respect, it is essential to stress that the ICC has the same degree of independence from the UN Security Council regarding the crime of aggression as it does in other crimes under its jurisdiction.

While there is an option for the Security Council to make a determination as to whether a threat or a breach to the peace or an act of aggression has occurred, the latter determination may not infringe upon the independent decision of the Office of the Prosecutor or the Judges, which can decide not to proceed with a given investigation or prosecution. The ICC may only exercise jurisdictions for crimes committed after the activation of the jurisdiction of the Court.

The Kampala Amendments on the crime of aggression preserve all the features of the Rome Statute, including the ICC’s complementary nature and its function as an “extension” of States Parties’ domestic legal systems. For this reason, States are required to incorporate the definition of the crime of aggression into their domestic legislation to protect their territories against aggression from other states, and to ensure that their own leaders do not engage in the crime of aggression.

In addition, domestic legislation must ensure that States Parties are ready to cooperate with the Court in any investigation or prosecution related to the crime of aggression in their or other states.
**WHAT CAN PARLIAMENTARIANS DO?**

To promote the criminalisation of crimes of aggression, Parliamentarians should:

- Organise parliamentary hearings to discuss the importance of the Kampala amendment on the crime of aggression
- Question their government on the status of the preparation and submission to parliament (or to the Cabinet) of the Kampala ratification and implementation bills
- Prepare and submit a private members bill on the domestic implementation of the Kampala amendments for consideration by your parliament
- Prepare and submit a private members bill including the Kampala amendments for consideration by their parliament
- Use their political prerogatives to mobilize support to prevent the illegal use of force and establish the widest protection of civilians and armed forces during an armed conflict.
- Ensure that government and parliamentary discussions on ratification or accession to the Rome Statute are made on the basis of the 2010 version of the Statute as adopted by the Review Conference
- Question their government on their participation in initiatives that promote the ratification of the Kampala Amendments by as many states as possible
- Use their political prerogatives to mobilize support to prevent the illegal use of force and establish the widest protection of civilians and armed forces during an armed conflict.
- Ensure that government and parliamentary discussions on ratification or accession to the Rome Statute are made on the basis of the 2010 version of the Statute as adopted by the Review Conference

---

**WHAT ARE THE OTHER SPECIALISED COOPERATION AGREEMENTS?**

In addition to the adoption of implementing legislation, a number of additional agreements to the Rome Statute are necessary to expand the existing framework of cooperation with the Court.

**Agreement on Privileges and Immunities of the Court (APIC)**

APIC is designed to give Court officials the protection to conduct investigations efficiently; to safeguard victims, witnesses and defence counsels; as well as to ensure the confidentiality and safety of the documents, materials, and information handled by the ICC in the territory of its States Parties.

APIC requires the same ratification process of an ordinary international treaty. Any state can join the APIC, not only States Parties to the Rome Statute. As of May 2019, there are 77 States Parties to the APIC, one of which is not a State Party to the Rome Statute (Ukraine).

**Specialised Cooperation Agreements**

In addition to APIC, States can also sign specialised cooperation agreements with the Court. Specialised cooperation agreements are agreements about enforcement of sentences, relocation of witnesses and victims or interim and final release. By signing these agreements, States agree to help the Court in these areas.

These agreements are essential to the functioning of the Court. In all of these bilateral agreements, the final decision on whether to cooperate on voluntary issues such as enforcement of sentences always remains with the state. Thus, they are relatively low-commitment agreements.

**Enforcement of Sentences**

The Rome Statute provides that, upon conclusion of the trial, sentences of imprisonment are to be served in a state designated by the Court, which is selected from a list of States that have indicated their willingness to enforce the sentences of the Court by signing a bilateral agreement with the Court. It is important that States share the responsibility among themselves, especially given that the more States that sign these agreements, the broader the scope of choices the Chambers have when deciding on a host State.

Under these agreements, the state has the power to determine the procedure for the person’s transfer to the prison, and to terminate the enforcement in their own state. The state also decides the specific rules of implementation and develops a partnership with the International Committee of the Red Cross (ICRC).
As of June 2019, only 12 States Parties have concluded enforcement of sentences agreements with the Court. This small number of states is problematic as the ICC may not be able to place a convict in a familiar cultural setting or near their family. For example, two ad hoc agreements had to be made with the DRC in order to ensure the execution of sentences of Mr. Germain Katanga and Mr. Thomas Lubanga Dyilo.

Relocation of witnesses and victims

Under Article 68 of the Rome Statute, the ICC has the obligation to protect its witnesses, participating victims, and any other individual “at risk” because of ICC proceedings, including relocation if necessary. For international relocations, the Court is fully dependent on States Parties upholding their agreements to cooperate. The implementation of these agreements comes at no cost to the State assisting the Court. States can accept witnesses on a case-by-case basis, making the relocation agreements extremely flexible. The Court’s assistance may also contribute to improving national protection structures of the interested State.

The Court has concluded relocation agreements with 22 States Parties.

Interim and Final release

Article 60 of the Rome Statute grants the accused the right to request an interim release. However, this is not considered an issue for which states’ cooperation is mandatory, and many national implementing legislations do not have any specific provisions for how to address such requests by the Court.

However, it is very important that the accused persons are able to benefit from this right. The basic rights of the defendant would be seriously jeopardized if the Chamber could not order their interim release because it could not identify a state willing to cooperate on this issue.

The same problem arises for acquittal cases – the Court has to arrange for the return of the acquitted person. If an acquitted person cannot return to their state, he or she will have to remain in the detention centre in The Hague as he or she will have no legal status to stay on Dutch territory. Simply put, an innocent person will be in prison.

So far, only the Kingdom of Belgium and Argentina have entered into an agreement with the ICC on the interim release of detainees.

Regarding final release or acquittal cases, the Court has finalized a draft framework agreement that is open for discussion and encourages states to contact the Registry if they are interested. Argentina is for now the only State to have entered into such agreement.

WHAT CAN PARLIAMENTARIANS DO?

To promote the most effective cooperation with the ICC, Parliamentarians should:

• Underline during parliamentary debates the reliance of the ICC on the cooperation of Member States and the importance of voluntary cooperation agreements in that regard;

• Organise parliamentary hearings to discuss the importance of voluntary cooperation agreements with the ICC and appeal to the Executive branch to sign them;

• Appeal to the Executive branch to transmit the Agreement on Privileges and Immunities (APIC) to Parliament for prompt consideration and approval, in accordance with the relevant national procedure for the ratification of treaties.
HOW IS THE ICC FUNDED?

Each State Party to the Rome Statute contributes to the ICC Budget with assessed annual contributions calculated similarly to that of the United Nations' budget. In order to protect the Court’s integrity and the independence, it should not be restricted by a lack of resources, especially since it is addressing some of the most grievous international crimes.

In addition to the regular budget of the Court, the ICC welcomes voluntary contributions. These may be directed to the Trust Fund for Victims (TFV), or to other mechanisms created by the Court to respond to specific needs, such as in the case of the Darfur investigation. The Trust Fund is a necessary tool of the Rome Statute to collect means for reparations and compensation for victims of the crimes handled by the Court.

PGA suggests that each State Party support the budget of the Court from their national budgetary allocations for justice and the rule of law, instead of the budget devoted to Inter-Governmental Organizations (IGOs). Ministries that have experience dealing with prosecutors, judges, and the national judicial system, such as the Ministry of Justice, should adequately fund the Court.

WHAT CAN PARLIAMENTARIANS DO?

To ensure that the Court has sufficient financial resources for the fight against impunity, Parliamentarians should:

• Ensure that the executive branch inserts the yearly contributions to the ICC budget in the State’s national budget.
• Ensure that the national budget laws provide sufficient allocations for investigations, prosecutions and adjudications of international crimes at competent domestic courts.
• Encourage governments to pledge funds for the Trust Fund for Victims, which supports the victims of the crimes before the ICC. The Trust Fund for Victims ensures that the ICC delivers restorative justice.

USEFUL LINKS

The International Criminal Court (ICC)
Parliamentarians for Global Action (PGA)
Coalition for the International Criminal Court (CICC)
International Federation for Human Rights (FIDH)
Amnesty International (AI)
Human Rights Watch (HRW)
Trust Fund for Victims

ENDNOTES

1 With the exception of the jurisdiction over crimes committed in a State not Party to the Statute that makes a declaration to accept the jurisdiction of the Court.

PICTURE CREDITS

p1 ICC-CPI/Aleksandra Milic, 2015; ICC Permanent Premises.
p4 ICC-CPI, 2015; Newly elected Judge Raul Pangalangan sworn in on 13 July 2015 at the seat of the International Criminal Court.
p29 Parliamentarians for Global Action, April 20, 2016; Hon. Stephen Tashobya (Chair of the Legal and Parliamentary Affairs Committee, PGA Member), Hon. Fox Odoi (MP and Former Legal Advisor to the President, PGA Member) and Romina Morello (Legal Advisor, PGA) at the ICC.
HOW CAN PGA ASSIST YOU?

PARLIAMENTARIANS PLAY A KEY ROLE IN OVERCOMING LEGAL, POLITICAL, AND LOGISTICAL CHALLENGES TO FACILITATE COOPERATION WITH THE ICC. UPON REQUEST BY PARLIAMENTARIANS, THE INTERNATIONAL LAW AND HUMAN RIGHTS PROGRAMME OF PGA CAN:

(i) Involve PGA Members and other concerned MPs in peer-to-peer dialogue and cooperation to address concerns and resolve issues relating to the ICC process at the national level.

(ii) Provide up-to-date information on the ICC.

(iii) Examine the national procedures necessary for ratification and implementation—with particular attention to constitutional issues or other major political and legal obstacles.

(iv) Provide technical assistance to legislators in preparing and drafting new legislation that incorporates the definitions of the crimes and general principles under the Rome Statute, or in drafting relevant amendments in order to strengthen existing legislation regarding the ICC and international crimes. In doing so, the PGA Secretariat can make available to Parliamentarians and relevant officials “reference laws,” “model laws” or relevant existing laws in various working languages.

(v) Assist Parliamentarians in launching motions or resolutions that promote the conduct of genuine national investigations and prosecutions by:

• reinforcing and monitoring the application of legislation and

• encouraging policies to reinforce the investigative and prosecutorial capacities of the State (Prosecutors, investigating judges, investigators, police etc.), including on economic crimes that may be instrumental to the perpetration of Rome Statute crimes;

(vi) Disseminate information concerning actions that its members undertake at the national level to international media/key partners.

(vii) Facilitate actions that its members desire to undertake within their own countries or internationally.

(viii) Assist in the domestic implementation of the necessary procedures to cooperate effectively with the ICC, including in the areas of arrest and surrender, and of freezing of assets.
STATUS OF RATIFICATION OF THE ROME STATUTE

STATE PARTIES
A 'State party' has ratified or acceded to the treaty, and is therefore legally bound by the provisions in it.

1. Afghanistan – 10 February 2003
3. Andorra – 30 April 2001
5. Argentina – 8 February 2001
6. Australia – 1 July 2002
7. Austria – 28 Dec 2000
8. Bangladesh - 23 March 2010
9. Barbados - 10 Dec 2002
11. Belize - 5 April 2000
14. Bosnia & Herz. – 11 April 2002
15. Botswana - 8 September 2000
16. Brazil – 20 June 2002
17. Bulgaria – 11 April 2002
18. Burkina Faso – 16 April 2004
19. Cambodia – 11 April 2002
20. Canada – 7 July 2000
21. Cape Verde - 10 October 2011
22. CAR – 3 October 2001
23. Chad – 1 November 2006
24. Chile – 29 June 2009
25. Colombia – 5 August 2002
27. Congo – 3 May 2004
30. Cote d'Ivoire – 15 February 2013
31. Croatia – 21 May 2001
32. Cyprus – 7 March 2002
33. Czech Republic – 21 July 09
34. DRC – 11 April 2002
35. Denmark – 21 June 2001
36. Djibouti – 5 November 2002
37. Dominica - 12 February 2001
38. Dominican Republic - 12 May 2005
39. Ecuador – 5 February 2002
40. El Salvador - 3 March 2016
42. Fiji - 29 November 1999
43. Finland – 29 December 2000
44. France – 9 June 2000
45. Gabon – 20 September 2000
47. Georgia – 5 September 2003
49. Ghana – 20 December 1999
51. Grenada - 19 May 2011
52. Guatemala – 2 April 2012
53. Guinea – 14 July 2003
54. Guyana - 24 September 2004
55. Honduras – 1 July 2002
57. Iceland – 25 May 2000
58. Ireland – 11 April 2002
59. Italy - 26 July 1999
60. Japan - 17 July 2007
61. Jordan – 11 April 2002
63. (Rep. of) Korea – 13 Nov. 2002
64. Latvia - 28 June 2002
65. Lesotho - 6 September 2000
66. Liberia – 22 September 2004
67. Liechtenstein – 2 October 2001
68. Lithuania – 12 May 2003
69. Luxembourg – 8 September 2000
71. Madagascar – 14 March 2008
72. Malawi – 19 September 2002
73. Maldives - 21 September 2011
74. Mali – 16 August 2000
75. Malta – 29 November 2002
76. Marshall Isl. – 7 December 2002
77. Mauritius – 5 March 2002
78. Mexico – 28 October 2005
79. (Rep. of) Moldova - 12 Oct. 2010
80. Mongolia – 11 April 2002
81. Montenegro - 23 October 2006
82. Namibia – 25 June 2002
83. Nauru - 12 November 2001
84. Netherlands - 17 July 2001
85. New Zealand – 7 September 2000
86. Niger – 11 April 2002
88. Norway – 16 February 2000
89. Pakistan - 2 January 2015
90. Panama – 21 March 2002
91. Paraguay – 14 May 2001
92. Peru – 10 November 2001
93. Poland – 12 November 2001
94. Portugal – 5 February 2002
95. Romania – 11 April 2002
96. Samoa - 16 September 2002
98. Senegal – 2 February 1999
100. Seychelles - 10 August 2010
101. Sierra Leone – 15 September 2000
102. Slovakia - 11 April 2002
103. Slovenia – 31 December 2001
105. Spain – 24 October 2000
107. St. Lucia - 18 August 2010
108. St Vincent & the Grenadines - 3 Dec. 2002
110. Sweden – 26 June 2001
111. Switzerland – 12 October 2001
112. Tajikistan - 5 May 2000
114. Timor Leste - 6 September 2002
115. Trinidad & Tobago – 6 April 1999
116. Tunisia – 24 June 2011
117. Uganda – 14 June 2002
119. Uruguay – 28 June 2002
120. Vanuatu - 2 December 2011
121. Venezuela – 7 June 2000

SIGNATORY STATES
Signing (but not ratifying) does not create a binding legal obligation. Signatory States must however refrain from acts that would defeat or undermine the treaty’s objective and purpose.

1. Algeria – 28 December 2000
3. Armenia – 11 October 1999
4. Bahamas - 29 December 2000
5. Bahrain - 11 December 2000
7. Egypt – 26 December 2000
8. Eritrea - 7 October 1998
10. Haiti - 26 February 1999
11. Iran - 31 December 2000
12. Israel - 31 December 2000
13. Jamaica - 8 September 2000
14. Kuwait - 8 September 2000
15. Kyrgyzstan - 8 December 1998
17. Morocco - 8 September 2000
19. Oman - 20 December 2000
23. Sudan - 8 September 2000
25. Thailand - 2 October 2000
27. UAE - 27 November 2000
29. Uzbekistan - 29 December 2000
30. Yemen - 28 December 2000

FORMER STATES PARTIES

1. Burundi
   (21 September 2004 to 27 October 2017)
2. Philippines (30 August 2011 to 17 March 2019)
Parliamentarians for Global Action (PGA) is a network of more than 1300 parliamentarians from 130 parliaments across the world, who in their personal capacity and in the framework of their mandate, support international justice, the rule of law, democracy and human rights.

Since 1989, under the umbrella of the International Law and Human Rights Programme, PGA has worked for the establishment and effective operation of an International Criminal Court (ICC), and as a result of the mobilization of our members, the PGA Parliamentary Campaign for the Universality and Effectiveness of the Rome Statute of the International Criminal Court has contributed to the ratification of the Rome Statute of the ICC by 78 States as well as to its implementation in 37 States.

On account of this Campaign, PGA is widely recognized as the parliamentary network working on international justice and the ICC. PGA’s biannual Consultative Assembly of Parliamentarians on the International Criminal Court and the Rule of Law is the largest gathering of parliamentarians on this issue.

RELEVANT CONTACTS

Ms. Rebecca Shoot,
Director of the ILHR Programme (The Hague)
rebecca.shoot@pgaction.org

Ms. Marion Chahuneau,
Senior Legal Officer (The Hague),
marion.chahuneau@pgaction.org

Ms. Frederika Schweighoferova,
Senior Legal Officer (The Hague)
schweighoferova@pgaction.org

Ms. Melissa Verpille,
Senior Legal Officer (New York)
melissa.verpille@pgaction.org

Ms. María Sofía Cossar Lambertini,
Communications Associate (The Hague)
sofia.cossar@pgaction.org

Mr. Eloi Urwodhi,
Consultant (Kinshasa)
eloi.urwodhi@pgaction.org

Mr. Kula Segaran, MP (Malaysia),
Member of the House of Representatives of
Malaysia, Convenor of the ILHR Programme

Dr. David Donat-Cattin,
Secretary General (New York),
donat@pgaction.org