



Human Rights Watch Statement for the General Debate of the International Criminal Court's Nineteenth Assembly of States Parties

December 14, 2020

Mr. President,

This year's Assembly session is taking place in the context of an unprecedented global health crisis. The determination of the Assembly to press forward with its necessary work amply demonstrates how critical justice is to the protection of human rights. The Assembly session also takes place at a decisive moment for the International Criminal Court (ICC). The court's mandate has been under extreme pressure from the outgoing United States administration and, at the same time, a number of ongoing processes offer important opportunities to strengthen the court's performance.

These processes are crucial. For as long as the ICC does its job as an essential court of last resort, it will face politicized opposition from those opposed to accountability. States parties have worked in solidarity through creative private and public diplomacy on behalf of impartial justice to overcome this opposition in the past, are called upon to do so now, and will need to be prepared to do so in the future. This is part and parcel of the commitment states parties have made to the ICC and to the Rome Statute system and reaffirm through their participation in this Assembly session. Supporting processes aimed at heightening the court's delivery on its mandate while respecting its independence is an equally important dimension of state party commitment. A strengthened ICC firmly supported by its states parties will be more resilient to efforts to derail its mandate.

At this Assembly session, states parties should seize a number of the opportunities present to ensure there is meaningful change leading to enhancing the court's delivery of impartial justice as well as its ability to meet victims' rights and expectations to

access justice. In so doing, states parties can play their part in ensuring that the advances represented by the Rome Statute are consolidated, rather than lost at this moment of significant risk for human rights and the global rule of law.

First, in taking stock of what have been disappointments and missteps in its practice, the court has undergone an extensive review by a group of independent experts. The final report of the Independent Expert Review serves as a common framework for debate and discussion aimed at advancing the court's mission. The review must result in needed changes. We look forward to engaging the Assembly and the court on its many substantive recommendations. The momentum for change cannot afford to be lost.

At this session, the Assembly should adopt a resolution to guide follow-up to the report. A follow-up process should be governed by scrupulous respect for the judicial and prosecutorial independence of the court, genuine dialogue among all stakeholders, and transparency. Respect for independence is critical, at a time when the ICC is under threat and could easily be undermined without constant vigilance by states parties and court officials. States parties should establish an Assembly mechanism to coordinate state party discussions of recommendations directed by the Independent Expert Review to the Assembly, while coordinating with the court regarding the recommendations directed to its organs. While there should be opportunities for the court to report on its progress and for dialogue with all stakeholders, including civil society, decisions about recommendations directed to it should remain with the court.

Second, states parties should approach the upcoming elections of the next ICC prosecutor and six new judges with strict attention to merit, putting aside vote trading and campaigning. Human Rights Watch welcomes innovations in this year's processes aimed at changing the culture around elections of ICC officials. Ensuring the highest quality leadership at the court is a critical responsibility of ICC states parties and the choice of the next prosecutor is among the most consequential decision states parties make. This leadership should be committed to the founding vision of the ICC as a court to hold even the most powerful to account, be of high moral character, and with demonstrated professional excellence. This should include proven experience in complex, international crimes proceedings. They should also commit to seeing through

the Independent Expert Review and other steps to address the court's performance shortcomings and, integrally related, staff well-being.

As states parties continue their efforts to identify a consensus candidate for the prosecutor's election amid expectations that the process will be extended, they should set out a clear timeline. This would give meaningful effect to agreed next steps to ensure a rigorous, credible, and fair assessment of the expanded list of candidates.

Future election processes can be further strengthened from this experience. We call on the Assembly to continually evaluate the nomination and election processes for ICC judges, further advance the mandate of the Advisory Committee on Nominations, and, once the prosecutor's election is concluded, conduct an evaluation, based on a lessons-learned report by the Committee on the Election of the Prosecutor. This evaluation should include consideration of the Assembly's handling of the process and consideration of the Committee's initial shortlist.

Finally, states parties should use the Assembly session to reaffirm their support for the court and express their expectations of a changed approach by the incoming US administration. In 2020, the court came under extreme pressure from Washington, which, in September, imposed sanctions aimed at undermining the court's work. Member states took steps to rebuff the pressure placed on the court by the Trump administration's sanctions. With the new Biden administration, ICC states parties should encourage a changed approach, one that supports, rather than attacks, the global rule of law.

This year's session will look very different from previous ones, and most will attend the session virtually. Civil society organizations from all over the world, however, remain deeply invested in the mission of the ICC and will follow the proceedings online. We call on ICC states parties to keep open space for civil society's engagement within this Assembly session. Participants in this session, whether states or nongovernmental organizations, on behalf of a broader civil society and communities affected by the crimes the ICC is tasked to pursue, should raise a collective voice in support of concrete steps to ensure a strengthened ICC and more meaningful justice.