

**INDEPENDENT EXPERT REVIEW: COMPREHENSIVE ACTION PLAN**

Court Organ(s) / ASP Mandate(s)	Prioritized Recommendation(s)	Timeline (half-yearly)	Comments/ Implementation Status
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FIDH is pleased to submit its contribution to the proposal of an action plan for the assessment of the Independent Expert Review recommendations. This submission focuses on the recommendations we consider should be assessed as a priority. While we do not take position on the content of each recommendation, we believe that they should be addressed first based on the following criteria: 1) how they affect the relationship between the ICC or any of its organs, and victims and affected communities (particularly regarding understanding of the Court and its functioning on the one hand, and the in-country/local reality on the other hand); 2) ensuring a more meaningful victim participation; and 3) enhancing victims' rights at the Court. This contribution is not comprehensive and does not cover all areas that should be prioritised, but those most directly related to the above mentioned criteria.

We would like to highlight that 1/ the prioritisation already conducted by the experts served as basis for our reflection and submission, including taking into account the possibility of rapid implementation,; 2/ while we have respected the format provided by the Review Mechanism to submit this contribution, we only focus here on prioritisation and not on allocation; and 3/ we fully endorse the submission from the CICC Review Team, co-lead by FIDH.

**COURT ORGANS**

<p><b>Presidency</b></p>	<p><b>R174-176</b> [Annex 1, para 37] "The Presidency should design and organise a compulsory, intensive, comprehensive and tailor-made Induction Programme for new Judges, to be held soon after commencement of their judicial mandate. External cooperation and support can be sought for both the Induction Programme and a Professional Development Programme for Judges."</p>		<p><i>While only the most qualified, experienced and suitable candidates must be nominated and elected to join the ICC bench, being a judge at the ICC has its specificities. As such, and despite the judges' individual qualifications, it is essential that they all take part in a comprehensive and mandatory induction programme specifically tailored to working at the ICC, understanding its values, and being aware of its challenges. Such programme should also include key aspects of the work of the Court, such as victim participation and rights, as well as the specificities of certain crimes under the jurisdiction of the Court, particularly sexual and gender-based crimes. It should follow by regular development programmes during a judge's mandate. FIDH considers these recommendations a priority, given the key role played by the bench in delivering justice to the victims, and that a timely implementation of these recommendations could be beneficial to the newly appointed judges who recently joined the bench this year (2021). FIDH would also like to highlight the recommendation from the experts to reach out to external cooperation and support, as there are many stakeholders, including civil society organisations, who may have insights to share.</i></p> <p><i>It is important that Presiding Judges have extensive experience in leading courtroom proceedings to successfully accomplish their duties. This would require not only an adequate knowledge of victims' procedural rights, but also a good understanding of the Court's jurisprudence on the matter. FIDH strongly encourages the Court to prioritise the advancement of the knowledge on victims' rights of judges and Court staff. This could be done for instance via a thorough induction training for new arrivals, experience exchanges between current and former ICC judges as well as peers from other international courts and tribunals, and continuous professional development initiatives and training sessions.</i></p>
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Judicial Divisions

**R222-224** [Annex 1, para 52] “Trial decisions and appeal judgments on conviction or acquittal and all related dissenting and concurring opinions should be issued in writing at the same time. Chambers should be required to circulate the final draft of the judgment among the Bench sufficiently in advance of its issuance to enable any judge intending to issue a separate opinion to have time to finalise it and circulate it to their colleagues before the judgment is finalised. Guidelines as to the length and content of separate judgments should be introduced in the Chambers Practice Manual.”

**R351.** “The Judiciary should encourage the Registry, TFV, LRV, OPCV, OTP and the Defence to appropriately enter into Protocols that would enhance the efficiency and effectiveness of reparations proceedings in all its phases” **R342-343** [Annex 1, para 65] “Consistent and coherent principles relating to reparations should further be developed (Article 75(1)). Standardised, streamlined and consistent procedures and best practices applicable in the reparations phase of proceedings should be incorporated in the Chambers Practice Manual.”

**R156-157** [Annex 1, para 34] “The OTP should establish a focal point for maintaining bilateral relations with CSOs at Headquarters, and appoint a field staff member as responsible for relations with relevant CSOs and the media, jointly with the Registry’s Outreach staff”; **R267** “The Prosecutor should consider appointing an OTP focal point to be in charge of responding to queries and otherwise communicating with the civil society and other stakeholders during the Pes”; **R158-159**

**R165.** Outreach activities should be built into the program budget of any new investigation, to ensure that this dimension of the case is not ignored. Given the budgetary challenges faced by the Court, consideration should be given to innovative ways of raising essential funding, including lobbying of interested States Parties and drawing on the expertise and resources of civil society.

*in its submission to the independent expert on 15 April 2020, following consultations with FIDH members and partners from ICC situation countries, including legal representatives of victims, FIDH recommended that “The judiciary should strive to make key judicial decisions available in writing at the time of their pronouncement, allowing adequate public information and outreach to be conducted in a timely manner. Doing so would ensure that ongoing investigations are not affected by misinformation, misconceptions or resentment over the lack”. This has been reflected in R222-224. As highlighted, the lack of decision in writing prevents from conducting proper outreach towards those most affected by the decision, and significantly impacts the understanding and perception of the Court’s work in the situation countries. For the same reasons mentioned above, FIDH would also like to add as a priority the need for these written decisions to be systematically and promptly translated into relevant languages (See FIDH report ‘Whose Court is it? Judicial Handbook on Victims’ Rights at the ICC’, April 2021, p.33, Recommendation 7)*

*Reparation proceedings and decisions at the ICC, as highlighted by the experts in 2020 and by many stakeholders before that, remain inconsistent and confusing. Now at a stage where more and more trial and appeal decisions are made, it is absolutely crucial to address these inconsistencies and ensure that legal representatives have clarity on the process, the standard practices, and can accordingly inform their client of their rights while managing expectations. Reparations is a key phase in the delivery of justice and, if conducted properly, can help heal from the harm suffered. However, conducted improperly, it can also enhance the frustration and the suffering of the victims, their communities, and the society as a whole. Therefore, as suggested by the experts as well as by FIDH in its latest report ‘Whose Court is it?’, it is now crucial to adopt and develop court-wide “principles on reparations on the basis of the existing jurisprudence in this area, with a view to ensuring greater consistency, clarity and predictability of the Court’s decisions on reparation” (FIDH, ‘Whose Court is it?’, p.71, Rec. 1). Civil society has been a key partner of the Court, and in particular the OIP, since its creation. Civil society organisations (CSOs), particularly those based in-country and/or working closely with victims and affected communities, have contributed to the Court’s mandate by, among other: documenting crimes under the jurisdiction of the Court, and contributing to preliminary examinations and investigations conducted by the OTP (including by submitting Article 15 communications); supporting the Court in face of attacks; and facilitating contact with victims and affected communities or conducting outreach and sharing information. Despite recognising this crucial role, the Court and in particular the OTP has not always delivered its part. There have been complaints about a one-way relationship between the OTP and CSOs, or a too important reliance on local CSOs’ activities despite their lack of financial and human resources. While CSOs are committed to support the Court in its mandate to deliver justice, the relationship could and should be improved. Whether in the form of a focal point or a better strategy in engaging with CSOs (e.g. a manual with proper implementation, taking into account existing ICC guidelines on intermediaries), improving exchanges between the OTP and CSOs, including directly in-country, and as early as possible in the proceedings, is essential and should be a priority. With many ongoing preliminary examinations, investigations and cases, and with limited capacities as often recalled by the OTP, this should be addressed as soon as possible*

*We touch on the importance of outreach below (R163-164). This recommendation however raises a specific and key issue, i.e. the budget allocated to outreach activities. It also indirectly raises broader budget issues at the ICC, particularly at the OTP. While we understand and acknowledge the restrictions that the Court faces due to limited budget available and increasing workload, engaging with victims and affected communities should never be sacrificed. As highlighted many times in this submission, they are at the heart of the Court’s work and, therefore, any budget planing, with regard to any phase of the proceedings, should have a dedicated line to ensure a proper outreach and public information. For the same reasons mentioned below on the importance of outreach, but also because it is time for the Court to adopt a new approach with regard to budget planing, this recommendation should be a priority, as well as all other recommendations aiming at improving the budget process at the Court, despite not being*

<p><b>Office of the Prosecutor</b></p>	<p><b>R255-256, R258</b> [Annex 1, para. 55] “The OTP should consider adopting an overall strategy plan for each PE, with benchmarks and provisional timelines for all its phases and activities, including its closure, and, if relevant, re-opening. Upon authorisation of an investigation, this plan should provide the foundation on which to build the OTP’s targets and strategies for the investigation.” <b>R269-271</b> [Annex 1, para. 56] “In parallel, the ID should develop long-term situation-specific investigative strategies that cover all stages of the situations, from the opening of a PE/Investigation, to possible deprioritisation, hibernation and closure of an investigation. These plans should have flexible benchmarks to enable appropriate responses and monitoring of their implementation.”</p>	<p>Unfortunately, due to time constraints, FIDH is not able to provide feedback or suggestions on timeline.</p>	<p><i>Given how crucial to ICC proceedings successful preliminary examinations and investigations are, it is critical that the OTP adopt situation-specific strategies ahead of engaging with the relevant situations. As highlighted by the experts, a better strategy will lead to more targeted resources towards actual needs, help manage expectations, preserve and gather evidence as well as, and most importantly, ensure a more meaningful contribution from those who work in-country including victims, affected communities, civil society organisations and other local actors. Better tailored strategies are essential to improving the OTP’s approach to each situation. Adopting clear strategies, including benchmarks, however flexible, will help give more clarity about the OTP’s work during the relevant phases, and bring the necessary transparency and efficiency it still lacks. It will also likely impact public communication and outreach activities towards victims, affected communities and other relevant stakeholders. Any recommendation aiming at developing or improving strategies, whether at the OTP or other organs of the Court, is a matter of priority because it will positively impact all ongoing and upcoming preliminary examinations and investigations.</i></p> <p><i>While FIDH does not take position on the two years limit recommended by the experts, we have, together with our member and partner organisations from situations under preliminary examination, often called on the OTP to address the length of PEs. As highlighted in our submission to the Independent Experts in 2020, “the delays in progressing preliminary examinations can come at great cost: in some instances, the situation on the ground worsened and crimes continued being committed while the OTP was assessing the genuine nature of domestic accountability efforts among other legal Criteria.” (para. 24) We understand that, in some situations, longer PEs might be beneficial to encourage national proceedings. However, given the lower threshold required for preliminary examinations to be completed and the limitation to other activities this entails (while investigations trigger activities and other powers, such as better outreach and public information), we suggest to consider time limits. The transition to a new Prosecutor is a key opportunity to reflect on best practices and on the experts’ recommendations on the matter. FIDH would also like to take the opportunity to recall that whether the Court has sufficient funds to conduct the investigations should not be a</i></p>
	<p><b>R257</b> “PEs should last no longer than two years. Extensions could be granted by the Prosecutor, but only in exceptional and justified circumstances”</p>		<p><i>VPRS is responsible for assisting victims in their applications, participation and request for reparations. There are significant concerns regarding its limited capacity to effectively implement this mandate. One of the concerns is that VPRS involvement comes too late. Explicit orders from</i></p>
	<p><b>R336-337</b> [Annex 1, para 64] “The VPRS should be recognised as the lead entity charged with tracing and identifying further victims with claims for reparation during the reparations phase. Arrangements for facilitating and collecting applications for victim participation should commence once an arrest warrant or a summons to appear has been issued.”</p>		



Registry

**R347-348, R350** [Annex 1, para 67] The Court should confer on the Registry (Victims Participation and Reparations Section (VPRS)) the principal responsibility for identifying, facilitating, collecting, registering and processing, including the legal assessment of all applications by (i) victims for participation at trial intending to request reparations, and (ii) new potential beneficiaries eligible for participation, prior to the issuance of the Reparations Order. Identification and collection of applications from victims requesting to participate only in the reparations phase should continue even after the time limit before the commencement of trial set by the Trial Chamber. The Registry should intensify efforts to identify and register reparations experts (*Regulation 41, Regulations of the Court*)

**R345** "Increased investment should be made in, and more value drawn from, an early and proper completion, collection and processing of the combined standard application form for victim participation and reparations."

**R338** "Victims admitted to participate in proceedings should be automatically admitted to participate in any other case opened within the same situation for the same events."

**R80-86** on field offices and **R293-298** on OTP presence in situation countries.

*Chambers could facilitate better coordination within the Registry in this regard. It is important for Chambers to give instructions to VPRS in terms of setting up systems at the local level to assist victims to submit applications. In relation to the standard process involving victims' application forms, the challenge at the early stages, before a case is announced, is that victims are generally not encouraged by the Court to prepare and submit application forms. The reasons for this include VPRS' lack of capacity and resources to engage meaningfully with victims' communities in the range of situations (language, field presence, budget). The importance of VPRS engaging with victims and making preparations to "facilitate" the application process early during the situation phase is crucial as such groundwork is fundamental to enable a simpler and faster process once a case is announced at a later stage. As soon as a case is announced, VPRS should collect and process victims' applications in relation to that case. With all that in mind, FIDH considers that it is a priority to confirm the role of the VPRS and ensures that its mandate is fully implemented from the earliest stages. VPRS is a key actor when it comes to victim participation and any recommendation aiming at clarifying its mandate should be prioritized. FIDH would also like to raise the importance of addressing legal representation at the ICC, and choice of counsel. While the experts' final report does have a certain amount of findings on the topic, it fell short of recommendation to improve it.*

*FIDH does not take a position on whether there should be an automaticity in admitting victims to participate in proceedings in cases within the same situation for the same events, we leave it instead to the relevant bodies to assess this suggestion. However, we consider this recommendation a priority because ensuring meaningful participation from a wide range of victims in the proceedings is crucial--see our most recent report on victims' rights at the ICC (Judicial Handbook). This can be ensured, mainly by the judges, by improving current processes. For instance by: starting the procedure of admission as soon as a case becomes known; issuing timely, clear and comprehensive decisions setting out the process for victims to apply for participation; giving explicit instructions to the VPRS or adopting a broader and more progressive approach to the causal link between the harm suffered by the victims, their personal interests and the charges (See FIDH, 'Whose Court is it?', p.47, Recs 2 to 8). Complicated and inconsistent procedures and applications processes can have and have had negative impact on victim participation and the fulfilment of their rights. Therefore, while this recommendation only covers one aspect of victim participation, FIDH considers that it is, along with all recommendations aiming at enhancing victims' rights at the ICC, a priority. 2021 is a critical year, given the unprecedented number of investigations and ongoing cases, and the election of new ICC principals and a third of the ICC bench. These circumstances bring a unique opportunity to enhance and improve victim participation.*

*Bridging the gap between the ICC and the field is essential for a better understanding of the contexts and situations on which the Court intervenes. ICC staff from all organs need a better understanding of these situations, the local reality, and the cultural, social and political context in which the crimes are committed. In-country presence is also crucial to enhance the understanding of what the Court does, to build trust, reduce misconceptions on both sides, and ensure better delivery of justice. Victims being the primary beneficiaries of the work of the Court, and the most affected by it, it is crucial that action be taken urgently to reduce the existing gap that's currently affecting both the work and the image of the Court in situation countries.*

The Court (as a whole)

**R87.** The leadership of the Court should adopt and demonstrate a clear commitment to a multi—pronged strategy to deal with predatory behaviour in the workplace, namely bullying, harassment and sexual harassment. It must be clear to all staff, particularly supervisors, that such behaviour is inexcusable and unacceptable at the Court and will not be tolerated. There should be avenues by which staff can safely report bullying and harassment to managers and receive guidance and support as to the procedure to follow if they wish to lodge a complaint.

**R88.** The Court should work assiduously, through its recruitment, promotion and training programs, to bring more women into senior managerial positions, in part to bring about a change in the prevailing practices that have tolerated unacceptably predatory behaviour in the past

**R163.** The Court needs a cross-Organ, coordinated communications strategy. Most importantly, it needs the different Organs to be talking to each other and coordinating public information responses to issues and developments in the Court’s business even in the absence of such a strategy. An outreach plan, at least for every situation country, if not also per region, should be devised and then implemented from the PE stage of every situation.

**R164.** Outreach programs and activities should be built into decisions to pursue particular investigative activities from the start, given the critical importance of winning the support of communities impacted by the events to be investigated. Outreach strategies for new situations should be coordinated across the Court and should be ready to be implemented at the time that any new preliminary examination is announced. The Registry’s Regulations, limiting outreach to situations and cases, should be amended

**R344** “The Court and the ASP should incorporate in the RPE or any other statutory text that reparations proceedings under Article 75 (Reparations to victims) and subsection 4 (Reparations to victims) of section III, Chapter 4 of the RPE, shall not be stayed pending an appeal against conviction and/or sentence, with proper safeguards for the fundamental rights of the accused or appellant.”

*Addressing workplace misconducts and gender inequality at the Court is and has always been a priority. An institution cannot work properly and effectively if staff at all levels are not respected and/or find themselves in a toxic workplace environment. These institutional issues and related recommendations from the experts are not ones that require a deep assessment of whether or not they should be implemented, but require immediate and concrete action. There are currently some indications that the Court, particularly the OTP, has already started reflecting on these issues. There should be a Court-wide discussion to ensure that positive changes are seen across all organs of the Court. The renewal of principals that took place in 2021 constitutes the perfect opportunity to make new commitments towards a more respectful and safe environment at the Court.*

*As a federation of more than 190 members from all over the world, with a great amount of members working closely with victims and affected communities, outreach and public information has been at the heart of FIDH’s work since the creation of the Court. All our work conducted at the Court, or in connection to it, is survivor-centred. We consider it a priority to provide adequate and timely information to survivors from the earliest stages, including from the preliminary examination phase—regardless of whether they have formally been accepted to participate in the proceedings as victims. In situations like Afghanistan or Georgia, victims remain unaware of the status of an investigation that impacts them directly, and this is unacceptable. The need for accurate information about the Court will only increase over the coming years, as misinformation and disinformation become easier to spread through digital technologies, and as more preliminary examinations, investigations and/or cases open. Victims should not only be properly informed but they must be consulted and play a meaningful and active role in ICC proceedings, something that they cannot do if outreach strategies are flawed.*

*While FIDH doesn’t take position on whether or not there should be a modification of the RPE and other statutory texts on the matter, we consider it a priority to “[e]nsure an expeditious reparations process by, inter alia issuing, as early as possible, decisions on the reparations process that outline the steps to be taken in the period leading to the issuance of a reparations order, commissioning experts on reparations at an early stage, and commencing the reparations process prior to the determination of a final appeal on conviction and sentence” (“Whose Court is it?” Rec 2, p. 71) While this is particularly addressed to the ICC bench, it is important for the whole Court to adopt a clear strategy on reparations including these elements.*

	<p><b>R359</b> “To facilitate and enhance cooperation of all actors within the Court with a victim-related mandate, including for the successful implementation of the above recommendations, a standing coordination body should be established, chaired by the Deputy Registrar.” (and related <b>R339</b>, <b>R360</b> on potential activities the standing coordination body could be mandated with)</p>	<p><i>There is a clear need for better coordination at the Court among victim-related mandate holders. Existing and long-lasting uncertainties, inconsistencies and lack of clarity with regard to division of responsibility, procedures and applicable standards have now to be resolved to ensure adequate and meaningful victim participation and respect of victims’ rights as set out by the Rome Statute. Whether in the form of a standing coordination body or otherwise, we consider it a priority to “carry out a full appraisal of the effectiveness of the scheme with the aim of facilitating the meaningful participation of the maximum possible number of victims in proceedings.” (R339) In whichever form this is conducted, civil society, particularly those working directly with victims or representing them, should be consulted (R360). Given the central role played by victims in the Court’s proceedings, as highlighted repeatedly in this submission, recommendations aiming and enhancing their participation and improving the relationship they have with the Court is a priority to ensure that ongoing and future proceedings are improved</i></p>
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OTHER			
<p><b>Secretariat of the Trust Fund for Victims</b></p>	<p><b>R356</b> “The TFV should develop as soon as possible a comprehensive and effective fundraising strategy.”</p>		<p><i>In its submission to the Independent Expert on 15 April 2021, FIDH provided a certain number of recommendations on the Trust Fund for Victims (see p.37), some reflected in the Experts’ final report and recommendations. While we decided to focus the present submission on other recommendations (due to lack of capacity for a comprehensive submission), we however decided to specifically raise the necessity to develop a comprehensive and effective fundraising strategy as an absolute priority. Whatever the result of the assessment of the role of the Trust Fund will be, and whether or not some of its prerogatives are delegated to the VPRS, there is no doubt that it needs to adopt, develop, reinforce a strategy to fundraise enough funds to comply with its mandate. As for any organ or body working directly on or with victims, the question of budget is central. The negative impact of inadequate budget becomes clearer every year and must be addressed urgently. For the Trust Fund, this means developing a comprehensive and effective fundraising strategy as a first and crucial step.</i></p>
<p><b>Arrears</b></p>			
<p><b>Budget</b></p>			
<p><b>Budget: Budget Mangement Oversight</b></p>			
<p><b>Budget: Premises</b></p>			
<p><b>Complementarity</b></p>			
<p><b>Cooperation</b></p>			
<p><b>Geographical representation and gender balance in the recruitment of staff of the Court (GRGB)</b></p>			
<p><b>Legal Aid</b></p>			
<p><b>Non-cooperation</b></p>			

Review Mechanism