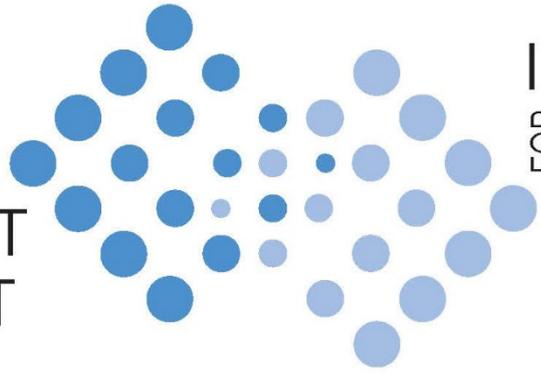


WORLD  
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INSTITUTE  
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POLICY

# **Review of the International Criminal Court**

Civil society organizations call for prioritizing efforts to strengthen the capacity of the Office of the Prosecutor, outreach to affected communities and the implementation of victims' rights

**June 2021**

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# Introduction

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The World Federalist Movement/Institute for Global Policy (WFM/IGP) is pleased to submit to the Assembly of States Parties' Review Mechanism and the International Criminal Court (ICC) the views and recommendations of more than 90 civil society organizations (CSOs) from Africa, Asia-Pacific, Eastern Europe, Middle East and Latin America and the Caribbean on the assessment and implementation of the recommendations of the Independent Expert Review of the ICC.

In May 2020, WFM/IGP initiated a project seeking to engage CSOs from each of these regions in the ICC Review, recognizing that input of organizations working on the front line of the fight against impunity in their countries and regions is essential for the Review to succeed in its aim of strengthening the performance of the ICC and the Rome Statute system.

Following a detailed survey and webinar consultation meetings, in November 2020, the organization issued *Review of the ICC: Views and Recommendations from civil society* documenting participating CSO representatives' assessments of the performance of the ICC, recommendations for reforms and initial reactions to some of the recommendations of the Independent Expert Review that had been issued in September 2020.

Since then, WFM/IGP has continued to work with CSOs in these regions to keep them informed about progress on the ICC Review, including the establishment and work of the Assembly's Review Mechanism and the ICC's responses to the Independent Expert Review recommendations.

Recognizing that the Review Mechanism's next task of developing a comprehensive Plan of Action for assessing the Experts' 384 recommendations is a critical stage of the ICC Review, WFM/IGP conducted further consultations with CSOs in May and early June 2021 to discuss their expectations of the process for assessing and implementing the Experts' recommendations, including what they believe should be the most immediate priorities for reform.

This submission draws from these consultations, as well as the views expressed in the November 2020 report, citing CSO's statements and relevant survey and polling data throughout. Given that many CSOs working against impunity face serious security issues, in many instances participating CSOs and/or their location have not been identified.

# Expectations of the Plan of Action

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Most CSO representatives consulted by WFM/IGP support the ICC Review.<sup>1</sup> They are eager to contribute to the process of strengthening the performance of the ICC by engaging in the assessment of the Experts' recommendations and the implementation of the ICC Review.

*It is heartening to note that the Experts' recommendations emphasise the integrity and effectiveness of the ICC. When impunity prevails, it is devastating to the affected persons and communities who had shared their experiences in hope and trust. The ICC Review is welcomed and we hope that a clear action plan will be developed so that these witnesses and survivors are not left 'high, dry and empty'. **Representative of civil society, Southeast Asia***

However, many have expressed concerns that they have not been consulted effectively in the process so far<sup>2</sup> and that the "State Party-driven process" could instead weaken the Court.<sup>3</sup> In the absence of any commitment by the Assembly to review the significant resource challenges facing the Court and the failure of the Experts to recommend that the Assembly increase the Court's budget in key areas, many CSO representatives doubt whether necessary reforms can be implemented effectively.

*I welcome the ICC review process.... However, I sometimes doubt that the elaborated recommendations and suggestions on how to improve the work of the Court will be left on paper without effectively reflecting them in practice, which will further undermine the independence, integrity and effectiveness of the ICC. **Representative of civil society, Eastern Europe***

*I am concerned by the lack of priority given to civil society groups, who are often better in touch with the understandings and desires of local communities. **Representative of civil society, Burma/Myanmar***

*The ICC Review process should include civil society organizations and should not be limited to the State Parties of the ICC. **Representatives of civil society, South Africa***

*My concern is how states' politics will play into this review of the ICC when the ICC is already on such shaky ground for state cooperation and support. I'm worried this review may lead to a weakening of the independence of the Office of the Prosecutor for the ICC rather than a broadening of support for the ICC. **Representative of civil society, Sri Lanka***

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<sup>1</sup> For example, in a survey conducted by WFM/IGP between June and September 2020 (WFM/IGP 2020 Survey) 60 out of 73 CSO representatives (82%) said they supported the ICC Review. For further information relating to the survey, see [Review of the ICC: Views and Recommendations from civil society](#).

<sup>2</sup> For example, 56 out of 77 participants (73%) in WFM/IGP's 2020 Survey said that they were aware of the ICC Review. However, only 25 (32%) had been consulted or had provided input to the Independent Expert Review.

<sup>3</sup> For example, 41 out of 73 participants in WFM/IGP's 2020 Survey expressed concerns about how the ICC Review was being conducted and how it would be implemented.

*States within the ASP are part of the problem, so there's a lack of independence and impartiality in the review process. However, with an external body taking [up] part of the process, that issue is partially mitigated. The key will be what information is published and which recommendations are actually adopted (or even acknowledged for their validity).* **Representative of civil society, Palestine**

*[States Parties] might be unwilling to take on the proposals meant to improve the operations of the ICC and especially those related to the Office of the Prosecutor, Victim and Witness Protection, and Victims Reparation.* **Representative of civil society, Kenya**

*The lack of consensus among States ... could result in not achieving the objective.* **Tutela Legal Dra. Maria Julia Hernandez, El Salvador**

To address these concerns, some CSOs consulted urge that the Plan of Action provide for an inclusive consultation process for assessing the recommendations, as well as a detailed technical review of the resource needs of the Court.

*The recommendations and eventual reforms to the ICC would not be sustainable without the political will of States Parties to ensure the strengthening of the Court. Likewise, the active participation of civil society is decisive for sustainable changes over time.* **Representative of Centro Paz en Centroamérica, focused on Nicaragua and Costa Rica**

As explained further below, CSOs support many of the recommendations in the Independent Expert Review. However, concerns have been raised that some recommendations do not provide effective solutions to the challenges that the ICC is facing, which could weaken the performance of Court and its impact in the fight against impunity.

To ensure that all such problems are identified, and effective solutions are found, CSOs from all regions (particularly those working on ICC situations) should be able to participate in the assessment of the Experts' recommendations. Consultations should be organized taking into account different time zones, languages, security concerns and other barriers to participate that some organizations may face.

*Participation of CSOs from all regions should be ensured during the ICC Review to disseminate widely the importance and need of the ICC.* **Representative of Informal Sector Service Centre (INSEC), Nepal**

*The ICC Review process should be assessed as positive itself but, after the reforms, the ICC, the Office of the Prosecutor and Trust Fund should become more effective. If the reforms are not thorough and complex enough there is no doubt that the Review process will fail and the problems remain as they are now.* **Representative of civil society, Eastern Europe**

*The extent to which civil society, victims/survivors and other stakeholders are included in the Review is crucial to ensure that the conclusions or recommendations are*

*legitimate and widely accepted.* **Representative of Asian Forum for Human Rights and Development**

Many CSOs also urge that the Plan of Action should acknowledge that a thorough assessment of the recommendations must take into account the overwhelming demands on the Court and the resource crisis that it currently faces. The effective implementation of many recommendations will require additional resources. To advance the aim of strengthening the performance of the Court, the Plan of Action should therefore include a detailed technical examination of the resource needs for the Court to function effectively and to implement specific recommendations.

*The Review is an important landmark in the life of the ICC. It represents an opportunity to improve access to justice for victims. However, without a commitment by states to adequately fund the Court in necessary areas, this process will fall short of its objectives.* **Representative of Asia Justice and Rights (AJAR)**

# Priority Reforms

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Although CSOs express strong support for many of the recommendations in the Independent Expert Review and many stress the need to also strengthen state cooperation with the Court and the support of the Assembly (which were not addressed in detail by the Experts), most CSOs emphasise that the Plan of Action should prioritize what they see as three of the most pressing challenges to the effective performance of the ICC.

## 1. Strengthening the Capacity of the Office of the Prosecutor to Conduct Prompt and Effective Preliminary Examinations and Investigations

Many CSO representatives are dismayed at the scope, pace and transparency of the Office of the Prosecutor's preliminary examinations and investigations.

*Much more consideration should be given to Phase 1 of the Preliminary Examination, which is not explicitly recognized in the Rome Statute and is not sufficiently clear. Prosecutorial discretion in opening a Preliminary Examination is unfettered and without any judicial scrutiny and opportunity to challenge the Prosecutor's decision not to open a preliminary examination over an identified and specific situation communicated to the Court, as happened in the situation of ISIS in Iraq and Syria.* **Representative of Iranian Center for International Criminal Law**

*Preliminary examinations rarely lead to real investigations. They are lengthy and ineffective. There is not much transparency in the choice of countries and not much information on the process. [They have] no influence and/or impact on the reduction and cessation of crimes committed in the countries under review... The investigations are very slow and often produce results that fall short of the expectations of victims, national and international opinion.* **Representative of the Coalition Ivoirienne pour la CPI, Côte d'Ivoire**

*We have noted with concern that the lack of a time limit on the duration of preliminary examination has affected the timely progress of the criminal process before the ICC, giving a perception of impunity and consequently of ineffectiveness that favours the commission of more and more bloody crimes.* **Representative of civil society, Venezuela**

*Where atrocities continue to happen with impunity, prompt and effective examinations are critical in signalling international concern and can concretely contribute to peaceful resolution of cases on the ground.* **Representative of civil society, Philippines**

*It is imperative that the Office of the Prosecutor review national mechanisms that have been established to address impunity. They often function as a façade to avoid crimes being investigated by the ICC.* **Representative of IMPARSIAL, Indonesia**

*The investigations [are] often [conducted] too late after the facts, not in a timely manner. **Representative of the Cameroon Coalition for the ICC, Afrique Justice, Cameroon***

*In Uganda [there] is a very strong perception that the investigations were lopsided ... and the Office of the Prosecutor may have sacrificed impartiality for state cooperation. **Representative of civil society, Uganda***

*Delays in some situations (for example in Afghanistan) has called into question the impartiality of the process of investigation and prosecution. **Representative of Informal Sector Service Centre (INSEC), Nepal***

*The investigations are very slow and that affects the effectiveness of this process. Some of the witnesses die. Some of them do not remember details of the crimes etc. There are concerns that Office of the Prosecutor's investigation will be effective only for punishing the soldiers from the countries that are fully cooperating with OTP. Declaring that the Office of the Prosecutor is not a political institution does not change the fact that an ICC investigation will have political results for parties of the conflicts and ICC as well. To overcome this problem, the ICC Review process should acknowledge that this is a problem and involved professionals should start talking about mechanisms for solving it. **Representative of civil society, Eastern Europe***

*When human rights violations against the innocent take place in a state which is not a Party to the Rome Statute, the investigations cannot be conducted. It seems like an impossible mission to guarantee the rights of victims and to establish a process to fight against impunity. **Representative of Civil Society, Tunisia***

*As a member of a civil society which is working with the victim families of the disappeared and extensively working on the issue on enforced disappearances, I would like to ask when will the ICC be ready to address the crimes of enforced disappearances. **Representative of civil society focused on a situation country***

*There is a perception that politics interfere strongly with the process of ICC prosecutions, especially in Africa. The Office of the Prosecutor is not yet free as we want it to be. The process of electing the ICC Prosecutor is problematic. We must urgently look at how to prevent political pressure from states on the Office of the Prosecutor. **Representative of civil society, Democratic Republic of Congo***

*It will be important to remove the chokeholds that are causing administrative and, where applicable, legislative inefficiencies. Some of these are related to a lack of attention given to building up symbiotic partnerships between ICC and its many relevant stakeholders. Information, processes and engagement need to be enhanced across many streams. **Representative of civil society, Southeast Asia***

Most CSO representatives consulted expressed overwhelming support for the following recommendations aimed at strengthening preliminary examinations and investigations, which should be assessed and implemented as priorities:

- For the Court to devise and implement an outreach plan for each situation country, if not also per region, from the preliminary examination stage of each situation **(R163)**.<sup>4</sup>
- For the Office of the Prosecutor to develop a policy on the criteria relevant to the opening of a preliminary examination **(R226)**.<sup>5</sup>
- For the Office of the Prosecutor to adopt an overall strategy plan for each preliminary examination, with benchmarks and provisional timelines for all its phases and activities **(R255)**.<sup>6</sup>
- For the Office of the Prosecutor to develop a policy paper on investigations covering the principles, practices, standards, and strategies that should be applied **(R268)**.<sup>7</sup>
- For the Office of the Prosecutor to develop long-term situation specific investigative strategies that cover all stages of investigations **(R269)**.<sup>8</sup>
- For the Office of the Prosecutor to consider increasing the number of Situation Specific Investigative Assistants and Country Experts **(R294)** and the recruitment of local investigative staff who could be active in the field for the duration of an investigation **(R295)**.<sup>9</sup>

However, many CSO representatives are extremely concerned that the Office of the Prosecutor does not have sufficient resources to conduct its work effectively<sup>10</sup> and that some of the Experts' recommendations seek to restrict or delay ICC investigations to address the resource limitations.

Many CSO representatives oppose the Experts' recommendation that the Office of the Prosecutor should consider adopting a higher threshold of gravity of alleged crimes in its preliminary examinations to address the disparity between the Office's resources and the

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<sup>4</sup> For example, during consultation webinars to initially review the Independent Expert Review organized in October 2020 (WFM/IGP Webinars 2020), 26 out of 26 CSO representatives polled (100%) agreed that outreach should start at the preliminary examination stage. For further information relating to the consultation webinars, see [Review of the ICC: Views and Recommendations from civil society](#)

<sup>5</sup> For example, during WFM/IGP Webinars 2020, 28 out of 30 CSO participants (93%) polled supported this recommendation.

<sup>6</sup> For example, during WFM/IGP Webinars 2020, 30 out of 30 participants (100%) polled supported this recommendation.

<sup>7</sup> For example, during WFM/IGP Webinars 2020, 25 out of 25 participants (100%) polled agreed that the Office of the Prosecutor should develop a policy on investigations.

<sup>8</sup> For example, during WFM/IGP Webinars 2020, 25 out of 25 participants (100%) polled agreed that the Office of the Prosecutor should develop investigative strategies for each situation.

<sup>9</sup> For example, during WFM/IGP Webinars 2020, 23 out of 25 participants (92%) polled supported strengthening the OTP's field presence, including country experts and local staff.

<sup>10</sup> For example, only 8 out of 38 participants (21%) in WFM/IGP's 2020 Survey agreed that the Office of the Prosecutor's investigations are adequately resourced.

high number of preliminary examinations resulting in investigations (R227).<sup>11</sup> Some explained that it could establish an opaque standard that may be applied inconsistently to different situations and deny justice to victims in some situations, despite the fact that all Rome Statute crimes are among the most serious of crimes of concern to the international community.

*I am worried about the gravity threshold ... [which] can be discretionary. If we set [higher] gravity thresholds, there are more limits to the Prosecutor's acts.*  
**Representative of Prisoners Defenders, focused on Cuba**

*Nuancing of gravity against a background of atrocity crimes is very hard to delineate.*  
**Representative of civil society, Southeast Asia**

*[A] level of caution [should] be applied [to the Experts' recommendation], when the [Court's] jurisprudence tells us gravity should be understood in the negative, in the sense that what is excluded are crimes of marginal gravity.*  
**Representative of civil society, Palestine**

*For some States, the possibility of opening a preliminary examination may have a dissuasive effect to cease actions that violate human rights, but raising the gravity threshold could be a stimulus for states to continue with these practices.*  
**Representative of Oficina Jurídica Para la Mujer, Bolivia**

*The gravity of crimes is exacerbated by historical, economic, socio-political injustices that hinder survivors' abilities to recover and to live in dignity; this must be considered in earnest.*  
**Representative of civil society, Philippines**

Many CSOs also expressed serious concerns regarding the Experts' recommendation that the Office of the Prosecutor should deprioritize and hibernate investigations if situations reach the investigation stage without sufficient resources available to conduct serious investigations (R244).<sup>12</sup>

*Isn't it the responsibility of the ASP to provide resources if the ICC decides to proceed with an investigation? [The Experts' proposed] approach brings in subjectivity and makes it difficult to include neutral standards.*  
**Representative of civil society, Malaysia**

*This approach would give extra leverage to States to put more obstacles in the way of the ICC and justice.... This would create the potential for many more misunderstandings and difficulties in managing expectations.... The burden should be put back on the ASP to provide more resources.*  
**Representative of Asia Justice and Rights (AJAR), focused on the Asia-Pacific region and Myanmar**

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<sup>11</sup> For example, during WFM/IGP Webinars 2020, 23 out of 30 participants (77%) polled opposed or did not know whether to oppose or support this recommendation.

<sup>12</sup> For example, during WFM/IGP Webinars 2020, 19 out of 25 participants (76%) polled opposed or did not know whether to oppose or support this recommendation.

*International Justice is the last resort on which victims place their hopes and knowing that there is a possibility that an investigation could be hibernated would mean the closure of all aspirations to be heard and to have access justice. **Representative of Oficina Jurídica Para la Mujer, Bolivia***

In light of the outgoing Prosecutor's efforts to complete a number of preliminary examinations, this approach raises specific concerns for CSOs working on situations where preliminary examinations are at advanced stages, or investigations have been opened recently.

*There must be a way to lobby States Parties to contribute more. The possibility of hibernating an investigation would be unacceptable to many of the affected communities. People will not understand it. CSOs will not be able to convey the approach to them. The ICC has to make people believe justice is possible. **Representative of civil society, Philippines***

*The request by the Afghanistan government to the ICC Prosecutor no to start the investigation is unacceptable. The investigation must start as soon as possible. **Representative of civil society, Afghanistan***

*It is unacceptable to suggest hibernating investigations for financial reasons. The international community, including members of the ASP, have a responsibility to provide justice to victims, and this includes funding the Court adequately. Mass crimes against persecuted groups, such as the Rohingya, must not remain unpunished. The ICC provides an avenue for this and states must walk the talk on accountability. **Representative of Asia Justice and Rights (AJAR), focused on the Asia-Pacific region and Myanmar***

*For Palestinian civil society organisations and victims who have already waited five years in preliminary examination and a further year at the Pre-Trial Chamber, the prospect of the Situation being deprioritized and hibernated is a source of grave concern that needs to be urgently addressed. In particular, undue delays arising from hibernations may compromise future investigations, and reminiscent of the Situation in Iraq, lead to difficulties in obtaining evidence, effectively shielding alleged perpetrators of Rome Statute crimes. Quite simply, justice delayed is justice denied. **Representative of Civil Society, Palestine***

## **2. Strengthening Outreach to Victims and Affected Communities**

The vast majority of CSO representatives consulted said that the ICC's outreach should be strengthened as a priority.<sup>13</sup> This was strongly emphasised by those working on situations under preliminary examination and investigation.

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<sup>13</sup> For example, 71 out of 74 participants in WFM/IGP's 2020 Survey (96%) said that the ICC should seek to strengthen outreach as a high or medium priority.

*[P]ublic outreach must happen in a good level so that the people are aware of what is the ICC ..., why they are doing the investigation and what to expect from the outcome of the investigation. **Representative of civil society, Afghanistan***

*Public outreach must be increased, especially regarding the jurisdiction of the ICC to address crimes that have been committed. **Representative of civil society, Afghanistan***

*Communication between [the] ICC and the victims and witnesses should be prioritized and stronger. **Representative of civil society, Burma/Myanmar***

*Public information and outreach need to be strengthened in the case of Palestine because there has been very little. **Representative of civil society, Palestine***

*It should not be so hard to understand what is happening at the ICC. Some victims do not want to engage — [they are] extremely distrustful of the justice system. **Representative of civil society, Palestine***

*In terms of the outreach to victims and the affected communities, in our case it wasn't the ICC's initiative, it's us who have worked very hard to establish [a] relationship with the ICC. **Representative of Darfur Women Action Group***

*The ineffectiveness and length of the investigations means that the outreach team does not have anything to tell the victims, media, NGOs, etc. If there is no news on the investigation, the representatives of ICC give the victims false hopes and it causes even more frustration in victims. **Representative of civil society, Eastern Europe***

*The Court must have the capacity to adequately explain its work to affected communities and let victims know how they can exercise their rights before the Court. If not, what is this all about? **Representative of Asia Justice and Rights (AJAR), focused on the Asia-Pacific region and Myanmar***

CSO representatives therefore overwhelmingly support the Independent Experts' recommendations that an outreach plan should be devised at least for every situation country, if not also per region **(R163)**.<sup>14</sup> They also fully support the recommendation that outreach should be implemented from the preliminary examination stage of every situation **(R163)**.<sup>15</sup>

*Early outreach to victims and families as well as civil society during the preliminary examinations will be an opportunity to explain the ICC processes and possible outcomes at different stages to avoid confusion and unrealistic expectations from the Court. **Representative of civil society, Philippines***

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<sup>14</sup> For example, during WFM/IGP Webinars 2020, 23 out of 26 participants (88%) supported this recommendation.

<sup>15</sup> For example, during WFM/IGP Webinars 2020, 26 out of 26 participants (100%) supported this recommendation.

*More time and resources should be allocated to comprehensively inform the victims, to reach as many victims as possible and to reflect the views of as many victims as possible in the preliminary examination stage.*  
**Representative of civil society, Eastern Europe**

*Special focus should be given to public outreach so that people are aware about the ICC, its jurisdiction and functions. People should be able to discuss the work of the ICC and their expectations of the Court.* **Representative of Advocacy Forum, Nepal**

*Outreach to communities and victims' families will provide confidence that they are not forgotten and that they can play a role in their own rehabilitation through a justice mechanism they can trust.* **Representative of civil society, Philippines**

However, a number of CSOs expressed concern that, although the Experts recommend that outreach activities should be built into the program budget for any new investigation, they also propose that, given the budget challenges facing the Court, consideration should be given to drawing on the expertise and resources of civil society (**R165**).<sup>16</sup> While CSO representatives recognize that they can collaborate with the ICC in relation to outreach, some highlighted that it would be inappropriate and unrealistic to expect CSOs to fill this gap for the ICC because they cannot speak on behalf of the Court, and they also lack resources.

*The ICC must have long term resources, so that the Court can implement effective outreach programs without hinderance.* **Representative of Advocacy Forum, Nepal**

*[It is] outraging to suggest that ICC should use the very limited resources of civil society groups. The burden is on the ASP to give the ICC resources to function effectively.* **Representative of Asia Justice and Rights (AJAR), focused on the Asia-Pacific region**

*CSOs assist victims and their families but cannot replace the ICC in performing outreach and communications especially when there are delays and prolonged processes.*  
**Representative of civil society, Philippines**

### **3. Strengthening Implementation of Victims' Rights**

The ICC's approach to victims' rights is a central concern of many CSO representatives consulted. Many attach significant weight to the Court's implementation of these rights in assessing the performance of the Court.<sup>17</sup>

*[Victims] are the reasons for the ICC's being. Thus, the whole process of the ICC should help in the healing of the victims. If they are aware of the processes, they may consider the process itself cathartic.* **Representative of civil society, Philippines**

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<sup>16</sup> For example, during WFM/IGP Webinars 2020, 13 out of 26 participants (50%) polled did not think or did not know whether this recommendation is appropriate or realistic.

<sup>17</sup> For example, 55 out of 73 participants in WFM/IGP's 2020 Survey (75%) said that the ICC implementation of victims' rights is an important factor in how they assess the work of the ICC.

*A victims' rights approach is essential for fostering trust in the ICC. **Representative of Informal Sector Service Centre (INSEC), Nepal***

However, many are concerned that the Court is falling short of effectively realising victims' rights to protection, participation and reparations and emphasise the need to prioritize reforms that will harmonize the ICC's policies and practices, ensuring that they are coherent and consistent.

*The Court and the ASP sometimes seem to forget that the principal constituency of the ICC are victims. Without victims, the whole system does not make much sense. A review of the Court's performance should place their rights at the center of its work. The Review Mechanism must prioritize these issues in their Action Plan. **Representative of Asia Justice and Rights (AJAR), focused on the Asia-Pacific region***

*A protocol or guidelines and systems [should] be established for the protection of defenders, victims and witnesses, to which they can avail themselves, against harassment, intimidation, threats, attacks, interference and restrictions to a safe working environment that the state may set up, directly or indirectly, to obstruct or limit their ability to cooperate with the Prosecutor's Office and the ICC. **Representative of Fundación para el Debido Proceso, focused on Bolivia and Venezuela***

*There are thousands of victims of war crimes, crimes against humanity or genocide but only victims of crimes prosecuted by the ICC can have victim status for ICC purposes. The ICC should change the practice. A person should be considered a victim regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted. **Representative of civil society, Eastern Europe***

*There have been some inconsistencies in relation to victims' participation and the jurisprudence is not clear on who is a victim and how to effectively participate in the proceedings at the ICC. **Representative of Wuro Development Concerns, Nigeria***

CSO representatives agree with the Experts' conclusion that, despite some criticisms of victims' participation, 'there is no basis for suggesting any curb on the right of victims to participate in proceedings of the Court.' However, many regret that, although the Experts note 'the right to victim participation has yet to crystallize into a consolidated and clear practice', they stated that they did not have capacity to consider the full extent of the problems or solutions. The absence in the Independent Expert Review of more detailed recommendations on the issues of victim participation, protection and legal representation are considered by some CSO representatives to be a missed opportunity to strengthen the performance of the Court. CSO representatives focussed on ICC situations emphasise challenges that victims face in participating before the ICC, which must be addressed.

*Many countries still lack electricity connectivity and internet connection. Many victims, beyond the victimization suffered, live in abject poverty and in very remote locations. Victims in many countries are also illiterate. Victims in some cases are still exposed to*

*insecurity and threats to their lives. The combination of these and other factors makes victims' application in participation proceedings impossible due to the fact that they are unable to access sources of information and material on the one hand and, often times, the time set by chambers in given cases is limited to allow for outreach followed by completing of the application forms. **Representative of civil society, Uganda***

*The majority of victims cannot participate in the proceedings and often do not feel concerned by what is said on their behalf. They do not have enough support to participate. They are very often disappointed with the outcome of trials and their management before and after. **Representative of the Coalition Ivoirienne pour la CPI, Côte d'Ivoire***

*Information about victim participation, including how to apply, is easily accessible and clear but not for marginalized victims who might not have access to online platforms. **Representative of civil society, Kenya***

*[The] limited time period given to the Victim Participation and Reparations Section and the victims for filling and submitting the application forms [undermines] victims' effective participation.... Another problem is that only the case victims can file applications, and this may be confusing to other victims. For avoiding this, the victims should be informed about the ICC process. The ICC is creating frustration and disappointing ... the victims. The application form is being changed many times. **Representative of civil society focused on a situation country***

*The requirements for victim participation are based on conditions that are not adapted to the realities faced by the victims. In the DRC, communication systems and access to official documents are very expensive. Victims' applications are rejected without taking into account their limited means to gather the elements required to participate in the proceedings. **Representative of civil society, Democratic Republic of Congo***

*Many victims are afraid to participate. The system needs to take into account the risks to victims and provide appropriate protection mechanisms. **Representative of civil society, Venezuela***

The Experts made only two recommendations aimed at improving the processes for authorizing victims to participate in proceedings, which aim at starting the process of collecting applications earlier (**R337**) and automatically admitting victims to participate in any other case opened within the same situation for the same events (**R338**), both of which should be considered as priorities.

Some CSOs expected to see a more thorough analysis of issues related to victim participation by the Experts and detailed recommendations to strengthen the Court's system.

*We are concerned that the scope of victim participation is not made a priority in the recommendations. The ICC can be a very distant Court for civil society and, due to ignorance or lack of information, the possibilities of presenting potentially relevant*

*cases diminish for that reason. **Representative civil society focused on a situation country***

Nonetheless, the vast majority of CSOs consulted support the Experts' recommendation to establish a standing coordination body within the ICC to ensure proper collaboration between different actors with a victim-related mandate **(R359)**.<sup>18</sup> Indeed, this body should conduct a full appraisal of the effectiveness of the participation scheme to identify ways in which the system can be made more efficient with the objective of ensuring the meaningful participation of the maximum possible number of victims in proceedings before the Court **(R339)**. It is crucial that processes related to victims' rights be streamlined and harmonized, in order to provide legal certainty to victims and facilitate their access to justice. Although the Experts did not list the standing coordination body process in their prioritized recommendations, CSOs urge that this initiative to strengthen the participation of victims in the work of the Court should be adopted as an urgent priority of the Review.

Some CSOs that have been following ICC reparation proceedings share many of the Experts' concerns about the accessibility, length and effectiveness of the reparations process.

*[ICC] reparations are subject to conditions which often appear complicated for victims.... Victims [in the Lubanga case] who agreed to give their views and concerns to the chambers, after a decade of waiting, they [were] subject to several evaluations which eliminated some. So, the victims are not treated fairly. **Representative of civil society, Democratic Republic of Congo***

Many CSOs strongly support the Experts' recommendations to clarify and streamline the ICC's reparations process, including the proposed priority recommendations that:

- The Court should further develop consistent and coherent principles relating to reparations in accordance with Article 75(1) of the Rome Statute **(R342)**.<sup>19</sup>
- The Presidency should incorporate in the Chambers Practice Manual standardised, streamlined and consistent procedures and best practices applicable in the reparations phase of proceedings **(R343)**.<sup>20</sup>
- The standing coordination body established to review victims' participation should also facilitate the drafting and adoption of Manuals and Standard Operating Procedures on Reparations to Victims and on Assistance to Victims **(R360)**.

Finally, most CSOs strongly support strengthening the Trust Fund for Victims, which they view as a vital part of the Rome Statute system. Recognizing the high demands for the Trust Fund

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<sup>18</sup> During WFM/IGP Webinars 2020, 21 out of 25 participants (84%) polled supported an internal review of the ICC's system of victim participation.

<sup>19</sup> During WFM/IGP Webinars 2020, 21 out of 22 participants (95%) polled supported the development of consistent and coherent principles relating to reparations.

<sup>20</sup> During WFM/IGP Webinars 2020, 22 out of 22 participants (100%) polled supported the development of standardized, streamlined and consistent procedures and best practices applicable in the reparations phase of proceedings.

to contribute to the implementation of ICC reparation orders and the increasing number of situations under investigation that require projects of assistance for victims, most CSOs strongly support the Experts' recommendation that a comprehensive and effective fundraising strategy should be developed as soon as possible, including to target private donors **(R356)**.<sup>21</sup>

However, many CSOs oppose the Experts' recommendations to restrict the activities of the Trust Fund to fundraising, administration of the funds, and release of the funds as ordered by the Court **(R354)**,<sup>22</sup> whilst responsibilities and resources related to implementation of reparations and assistance mandates should be gradually moved under the Registry's authority, to the Victim Participation and Reparations Section **(R358)**. Concerns were raised that this change would not address the underlying capacity issues experienced by the Trust Fund and may overwhelm the VPRS. Instead, some CSOs would prefer to see initiatives to strengthen coordination and collaboration between the Trust Fund and the Victim Participation and Reparations Section.

*What is needed is clarifying the processes related to reparations and strengthening the Trust Fund's capacity in terms of governance, management and fundraising. It is fundamental that the TFV and the Registry work together, so that they complement each other's capacity and expertise. Their joint work should be made public, for transparency and accountability. **Representative of Asia Justice and Rights (AJAR), focused on the Asia-Pacific region***

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<sup>21</sup> During WFM/IGP Webinars 2020, 20 out of 23 participants (87%) polled supported the development of the fundraising strategy.

<sup>22</sup> During WFM/IGP Webinars 2020, 15 out of 23 participants (65%) polled did not support or did not know whether to support or oppose this recommendation.

# Conclusions and Recommendations

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Despite the problems and challenges that have led to the ICC Review, the views and constructive recommendations of the CSO representatives set out in this submission and WFM/IGP's November 2020 report *Review of the ICC: Views and Recommendations from civil society* (November 2020) reflect the continuing support of civil society around the world for a just, fair and effective ICC.

The ICC Review is an important opportunity to improve the performance of the ICC and the Rome Statute system and to build confidence in and support for the Court's work.

WFM/IGP recommends that, in developing a draft Plan of Action to assess the Independent Expert Review's recommendations, the Review Mechanism consider fully the views and recommendations of civil society set out in this and other submissions by CSOs. In particular, the Plan of Action should:

- Provide for detailed consultations with civil society from all regions in the assessment of the Independent Expert Review recommendations and the process of implementing reforms.
- Include a detailed technical examination of the resource needs for the Court to function effectively and to implement specific recommendations.
- Prioritize consideration of recommendations that seek to strengthen the capacity of Office of the Prosecutor to conduct prompt and effective preliminary examinations and investigations;<sup>23</sup> outreach to victims and affected communities;<sup>24</sup> and the implementation of victims' rights.<sup>25</sup>
- Deprioritize or, at a minimum, ensure that CSOs can raise their concerns regarding the Experts' recommendations that seek to: restrict or delay ICC investigations to address resource limitations;<sup>26</sup> draw on the resources of civil society for outreach;<sup>27</sup> and restrict the activities of the Trust Fund for Victims.<sup>28</sup>
- Keep civil society fully informed of progress with implementation efforts and the impacts of reforms.

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<sup>23</sup> Including recommendations: R163, R226, R255, R268, R269, R294 and R295.

<sup>24</sup> Including recommendations: R163 and the recommendation in R165 for outreach activities to be built into the program budget for any new investigation.

<sup>25</sup> Including recommendations: R337, R338, R339, R342, R343, R356, R359 and R360.

<sup>26</sup> Recommendations R227 and R244.

<sup>27</sup> Recommendation R165.

<sup>28</sup> Recommendations R354 and R358.