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FIDH POSITION PAPER

Recommendations to the 13th Session of the Assembly of States Parties to the International Criminal Court Statute

New York, 8-17 December 2014

Article 1: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. Article 2: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty. Article 3: Everyone has the right to life, liberty and security of person. Article 4: No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms. Article 5: No one shall be subjected to torture or to cruel,

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Introduction

The 13th session of the Assembly of States Parties (ASP or Assembly) to the Statute of the International Criminal Court (ICC or Court) will take place from 8 to 17 December 2014. Important achievements have been made since the 12th session of the Assembly. Those include: the delivery of the third ICC judgment (and sentence decision) in the Katanga case; the completion of the third ICC trial (Bemba case); opening of a second investigation in the Central African Republic (for events since 2012); three confirmation of charges hearings conducted[1] and three confirmation of charges decisions delivered.[2] However, important challenges remain. Twelve persons for whom the ICC has issued arrest warrants continue to be at large. In addition, the Court continues to be criticised for its intervention in Africa and for prosecuting sitting heads of government.[3] Furthermore, the cases referring to the Kenya situation have brought about a series of additional challenges, including alleged insufficient cooperation by the Kenya government, and persisting challenges regarding witnesses' withdrawal and related corruption allegations. The international community also continues to face challenges in the field of international justice. The eight preliminary examinations conducted by the ICC Office of the Prosecutor (OTP) are an indication that grave crimes continue to be committed and are not being properly addressed by domestic judiciaries. FIDH is also concerned about very serious allegations of international crimes committed in Syria and North Korea. We are disappointed that the Security Council has to-date failed to take action to ensure accountability.[4]

The 13th session of the Assembly takes place during a period of reforms at the ICC. The OTP expects to implement further changes to its strategy in 2015, in accordance with its Strategic Plan for 2013-2015. The Registrar has been undertaking a *Re*Vision project involving reorganisations of work within the Registry. The proposals for change under the *Re*Vision project could have implications for the representation of both victims and accused before the ICC.

During the 13th session of the Assembly, States Parties will make very relevant decisions for the future of the Court. They will elect six new ICC judges. Judge Sang-Hyun Song, who has been the President of the Court since 2009, will step down in March 2015. FIDH wishes to express its deep appreciation to President Song for his commitment to the principles of international justice, his dedication to the presidency and the excellent cooperation with our organisation through the years.[5]

The Assembly will also elect a new ASP President, Vice-Presidents and Bureau. FIDH also acknowledges the work accomplished by Ambassador Tiina Intelmann during her term, in particular her efforts to defend the Rome Statute and in favour of the implementation of victims'

1. In the cases Prosecutor v Ntaganda, Prosecutor v Bemba et al. and Proseuctor v. Blé Goudé.
2. In the cases Prosecutor v Ntaganda, Prosecutor v Gbagbo and Prosecutor v. Bemba et al.
3. In June 2014, the African Union adopted the Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights, which grants the African Court of Justice and Human Rights international criminal law jurisdiction and provides immunity to sitting Heads of States or Government and certain other senior State officials. FIDH and other NGOs have expressed dismay at the adoption of the immunity provision (see Call for African States to Reject Immunity for Serious Crimes, 4 September 2014, https://www.fidh.org/en/Africa/african-union/African-Court-on-Human-and-Peoples-Rights/15970-call-for-african-states-to-reject-immunity-for-serious-crimes).
4. FIDH, The UN Security Council must refer Syria to the ICC, 13 May 2014, https://www.fidh.org/International-Federation-for-Human-Rights/north-africa-middle-east/syria/15308-the-un-security-council-must-refer-syria-to-the-icc; FIDH, Q&A: Challenges of the fight against impunity in Syria, 13 May 2014, https://www.fidh.org/International-Federation-for-Human-Rights/north-africa-middle-east/syria/15307-q-a-challenges-of-the-fight-against-impunity-in-syria; Open Letter to the UN Member States Calling for the Adoption of the UN General Assembly Draft Resolution on North Korea, 10 November 2014, https://www.fidh.org/International-Federation-for-Human-Rights/asia/north-korea/16463-open-letter-to-un-member-states-calling-for-the-adoption-of-the-un-general.
5. ICC Prosecutor and President's participation to the 38th FIDH Congress, 3 June 2013, https://www.fidh.org/International-Federation-for-Human-Rights/international-justice/international-criminal-court-icc/icc-s-prosecutor-and-president-participation-to-the-38th-fidh-congress-13537.

rights. Sidiki Kaba, Justice Minister of Senegal and ASP President-elect, and former FIDH President, will start his term at this session of the Assembly. His presidency is expected to be marked by the acknowledgement of the importance of implementing victims' rights. Minister Kaba has presented a strong vision for his presidency: improving relations between Africa and the ICC, strengthened cooperation, effective complementarity and universal ratification of the Court's Statute.[6]

During the 13th session of the Assembly, States Parties will adopt the Court's budget for 2015, thus determining what activities the Court will be able to undertake next year. They will discuss proposals for amendments to the Rules of Procedural Evidence. Finally, they will provide guidance to the Court and other actors on matters including cooperation, complementarity, victims and affected communities, legal aid, and intermediaries.

As in 2013, the Court is faced at this Assembly with proposals made by the government of Kenya. In addition to amendment proposals, including to Article 27 of the Statute (irrelevance of official capacity), the Kenya government has requested that an agenda item be added to discuss matters that concern the Court's handling of the Kenya cases. FIDH is concerned at attempts to undermine the Court's independence and mandate.

FIDH is a member of the Coalition for the ICC (CICC) and fully endorses the CICC team papers. These papers are available at: http://www.coalitionfortheicc.org/?mod=asp13. In particular, FIDH strongly supports the recommendations made by the **CICC Team on Budget and Finance** and the **CICC Team on Cooperation.**

6. Statement by H.E. Mr. Sidiki Kaba, New York – 30 September 2014, http://www.icc-cpi.int/iccdocs/asp_docs/Statement/PR1047-Statement-Me.Kaba-30Sep2014-ENG.pdf.

1 - Defending the Integrity of the Rome Statute

For the past five years, the African Union (AU) has raised concerns over the Court's intervention in Africa. The AU has particularly objected the prosecution of Heads of State and Government. Discussions at the AU level have been promoted mainly by Kenya, whose President and Deputy President face accusations of crimes against humanity before the Court.[7] The AU's concerns led to the holding of a panel at the last session of the ASP (12th session, November 2013), where the absence of immunity of Heads of State and Government (in accordance with Article 27 of the Statute) was discussed. While maintaining the principles of absence of immunity and equality before the law enshrined in Article 27, the 12th session of the Assembly did however adopt amendments to the Rules of Procedure and Evidence regarding presence of an accused at trial through video link, and excusal of presence at trial of an accused including "due to extraordinary public duties".[8] These amendments were also promoted by Kenya, following decisions of the Court that established strict conditions for absence of an accused from trial.[9] Following adoption of the amendments, FIDH expressed concerns as it observed that "States [had] conceded to political pressure, thereby endangering the integrity of the Rome Statute and disregarding victims' interests and concerns."[10]

Developments at the last session of the Assembly showed to what extent the ASP processes could be deviated to fulfil the national interest of certain States (or personal interest of certain Heads of States). It appears as though for Kenya the presence or absence of the accused at trial goes beyond the practical matter of exercising public duties, and relates rather to the perceptions that being subject to and present before an international court to answer for serious crimes could portray.

The battle started by the Kenya government did not end there. This year, Kenya has made renewed proposals for amendments (in particular an amendment to Article 27 of the Rome Statute) and requested the addition of a supplementary item to the ASP agenda. Other amendment proposals that could undermine the integrity of the Rome Statute have also been before the Working Group on Amendments this year.

a) Immunity of Heads of States and Other Worrying Amendment Proposals

Kenya has proposed that the following paragraph be added to Article 27 of the Rome Statute:

> Notwithstanding paragraph 1 and 2 above, serving Heads of State, their deputies and anybody acting or is entitled to act as such may be exempt from prosecution during their current term of office. Such an exemption may be renewed by the Court under the same conditions.

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7. The AU Assembly Extraordinary Session in October 2013 decided that "no charges shall be commenced or continued before any International Court or Tribunal against any serving AU head of state or anybody entitled to act in such capacity…" and that "the trials of President Uhuru Kenyatta and Deputy President William Samoei Ruto… should be suspended until they complete their terms of office" (African Union, Extraordinary Session of the Assembly of the African Union, 12 October 2013, Addis Ababa, Ethiopia, Ext/Assembly/AU/Dec. 1). That position has been cristalised in a more recent decision of the AU. In July 2014, the AU amended the Protocol on the Statute of the African Court of Justice and Human Rights to include immunity provisions for sitting Heads of State or Government and certain other senior State officials.
8. The amendments introduced Rules 134bis to 134quater to the Rules of Procedure and Evidence. See ICC-ASP/12/Res.7.
9. ICC-01/09-01/11-1066; ICC-01/09-02/11-863.
10. FIDH Press Release: Justice at Risk: States Parties to the ICC Statute Concede to Political Pressure, 28 November 2013, https://www.fidh.org/en/international-justice/international-criminal-court-icc/14308-justice-at-risk-states-parties-to-the-icc-statute-concede-to-political

At the time of writing it appeared as though the amendment would not be presented to the Assembly because it did not enjoy sufficient support from other States Parties. FIDH notes with appreciation that States Parties have stood firm to defend the integrity of the Rome Statute and have so far rejected any amendment to Article 27.

Article 27, which establishes the irrelevance of official capacity for prosecution before the Court, is a cornerstone of the Rome Statute and codifies international customary law. It is a manifestation of the right of equality before the law. It also embodies protection for the people of all States Parties: no Head of State or Government or other person enjoying official capacity will use such capacity to commit serious crimes against the population.

There are two types of immunities in international law: functional immunity and personal immunity. Functional immunity grants immunity for acts undertaken in an official capacity when such acts are "sovereign, public or governmental".[11] This type of immunity is therefore attached to a function and it is only valid during the time the person holds an official capacity and the purpose is to allow the person to exercise its functions independently. When a former Head of State or Government, or anyone else entitled to immunity, leaves their official position, they return to their status as a private person, and their acts are no longer official state acts benefiting from functional immunity. Personal immunity is attached to the person, as opposed to their function, and is therefore applicable also after the person has left the official duty. However, it applies only to acts undertaken in an official capacity and not to private acts.

The Rome Statute rejects both personal and functional immunity. The crimes over which the Court has jurisdiction are so serious that they can in no way be part of the "normal business" of exercising official functions.

The amendment proposed by Kenya relates to functional immunity. It intends to shield Heads of States and other high-ranking officials from prosecution *during their terms of office*. This amendment is highly problematic, firstly, because it constitutes an exception to a fundamental principle of international law: all individuals are equal before the law and no-one can avail themselves of any prerogative to commit serious crimes or avoid prosecution for commission of such crimes (even if temporarily).

Secondly, the amendment proposal made by Kenya does not make a difference between persons who would hold an official capacity at the time they commit the crimes and those who would enter official functions after having committed the crimes. In the absence of any specification and subject to judicial interpretation, it could be applicable to both situations. High-ranking government officials would enjoy the "privilege" of committing serious crimes, including against their country's populations. It would also create a situation whereby persons who have committed crimes would seek to hold official duties in order to avoid prosecution. In both cases, those who have committed serious crimes may seek to remain in power at all costs in order to avoid prosecution. They may do so including by changing the constitution so that they can be re-elected indefinitely, fraud in elections or corruption. In addition, it is important to recall that the position of Head of State in some countries may be a life-long (for example, a King or Queen) or long-term position (for example, the Prime Minister position in some countries).

All in all, the developments at the level of the AU and amendment proposals to Article 27 are a step backwards to the progress of international criminal law. Because of the nature of the crimes, commission of crimes against humanity, war crimes and genocide often require a high level of organisation and considerable resources. Past experience shows that Heads of States have used the state machinery to commit serious crimes. Amending Article 27 would amount to providing incentives for the abuse of official capacity and seriously undermine protection of the citizens of all States Parties.

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11. Regina v Bow Street Metropolitan Stipendiary Magistrate and Others, Ex Parte Pinochet Ugarte (No 3) [2000] 1 A.C. 147 page 168

In addition to Article 27, Kenya has also proposed an amendment to Article 63, which deals with the presence of an accused at trial. Kenya has proposed to include the following paragraphs:

> (1) Notwithstanding Article 63(1), an accused may be excused from continuous presence in the Court after the Chamber satisfies itself that exceptional circumstances exists, alternative measures have been put in place and considered, including but not limited to changes to the trial schedule or temporary adjournment or attendance through the use of communications technology or through representation of Counsel.
>
> (2) Any such absence shall be considered on a case-by-case basis and be limited to that which is strictly necessary.
>
> (3) The Trial Chamber shall only grant the request if it determines that such exceptional circumstances exist and if the rights of the accused are fully ensured in his or her absence, in particular through representation by counsel and that the accused has explicitly waived his right to be present at the trial.

The proposal for amendment for Article 63 appears to implicitly recognise that the amendments to Rule 134 adopted last year are in contradiction to the Rome Statute. For the same reasons exposed above regarding Article 27, we believe the proposal to amend Article 63 should be rejected. Making exceptions to the accused's presence at trial because of "exceptional circumstances" breaks the principle of equality before the law. The presence of the accused in Court, especially when the exceptional circumstances are the fact that the accused is the Head of State or his deputy, sends a very strong message to victims that the Court will apply the law equally and that those who have committed serious crimes must answer for them regardless of their official capacity.

Furthermore, an amendment proposal made in 2009 remained under consideration by the Working Group on Amendments during 2014. The proposed amendment to Article 16 was presented by South Africa on behalf of the AU. The proposal consists in the addition of the following paragraphs to Article 16:

> (2) A State with jurisdiction over a situation before the Court may request the UN Security Council to defer the matter before the Court as provided for in (1) above.
>
> (3) Where the UN Security Council fails to decide on the request by the state concerned within six (6) months of receipt of the request, the requesting Party may request the UN General Assembly to assume the Security Council's responsibility under paragraph 1 consistent with Resolution 377 (v) of the UN General Assembly.

FIDH opposed to the adoption of Article 16 from the beginning. We believe that Article 16 undermines the independence of the Court and provides an avenue for political interference into the Court's decisions and activities. For this reason, FIDH firmly opposes providing an alternative forum (the UN General Assembly) for consideration of deferrals when the Security Council fails to decide on a request. Moreover, we consider that paragraph (2) is unnecessary because, in practice, States have already requested deferrals to the UN Security Council. It is important to recall that the scope of Article 16 is very limited and it concerns cases where the UN Security Council finds that the Court's intervention could threaten international peace and security, whether or not there is a request from the State concerned.

While the Working Group on Amendments has not recommended that the amendments presented by Kenya and South Africa be forwarded to this session of the ASP for consideration, the amendments will remain under consideration of the Working Group during the intersessional period and at least until the next session of the Assembly.[12] FIDH considers that amendments that fundamentally affect the integrity of the Rome Statute and do not enjoy the support of the great majority of States Parties should not continue to be considered. Consideration of unsupported proposals takes considerable time and efforts. Most importantly, keeping amendments that would seriously undermine the Court and the Rome Statute under consideration sends the

12. Report of the Working Group on Amendments, paras 26-29 and annex IV.

message that States Parties may be willing to adopt such proposals at a later time. This is concerning because the referred proposals critically weaken the support that States Parties have traditionally expressed for the fight against impunity and undermines the efforts that they have put to strengthen international criminal justice institutions to-date.

b) Improper use of the Assembly to Pursue National Interests

This year Kenya has requested that a supplementary item be added to the ASP agenda: "Special Session to discuss the Conduct of the Court and the Office of the Prosecutor".[13] The motivation for such a discussion is Kenya's concerns on the following issues, which it suggests should be considered by the ASP: a) prosecutorial conduct; b) complementarity (in relation to evidentiary and prosecutorial standards); c) OTP's adherence to international standards; d) independence of the OTP; e) politisation of the judicial and prosecutorial functions; f) interpretation and implementation of the Rome Statute.

In a reaction to the Kenya proposal, the three ICC principals wrote in a letter to the ASP President that "the issues proposed to be discussed by the Assembly in the context of the referred special session relate to matters that fall within the judicial and prosecutorial competence of the Court, and are therefore governed by its judicial and prosecutorial independence, which are fundamental requirements of the Rome Statute (Articles 40(1) and 42)." The Court also noted that many of the issues raised by Kenya "appear to concern judicial matters that have been duly adjudicated by the relevant Chambers or that are currently *sub judice* before them; or concern issues that should, as a matter of principle and procedure, be addressed before the relevant Chamber in accordance with the legal framework governing the judicial proceedings."

Discussion as to whether the item proposed by Kenya would be included in the ASP agenda were ongoing at the time of writing. FIDH calls on States to reject inclusion of this item in the ASP agenda. The matters raised by Kenya seriously infringe on the independence of the Court and undermine the Rome Statute. We submit that Kenya is proposing that the ASP takes up a matter that is not within its sphere of competence. In particular, Article 112(2)(g) of the Statute states that the Assembly shall "perform any other functions consistent with this Statute or the Rules of Procedure and Evidence." The Kenya proposal is clearly inconsistent with the Statute and the Rules of Procedure and Evidence, and must therefore be clearly and unanimously rejected.

The request to include this agenda item also appears to be motivated by a national interest or the interest of the highest government officials (the President and Deputy President, who are accused before the Court). It is imperative that States Parties defend the Rome Statute and its integrity at every opportunity throughout the ASP. It is equally important that they send a strong message that attempts to interfere with the Court's judicial and prosecutorial independence cannot be tolerated.

FIDH has observed that this is not the first or only occasion for States Parties to use ASP proceedings in their national interest, specifically to have ASP resolutions drafted in such a way so as to reduce the chances that the Court intervenes in relation to crimes committed on their territories.

Recommendations to the ASP:

- **Reject proposals for amendments to the Rome Statute that seriously undermine the fight against impunity, the independence of the Court and the integrity of the Statute.**
- **Unanimously and vigorously reject inclusion in the agenda of the item proposed by the Kenya government.**
- **Defend the integrity of the Rome Statute, including the Court's judicial and prosecutorial independence at every opportunity throughout the ASP.**
- **Ensure ASP processes are not driven by the national interests of countries that seek to avoid the Court's intervention in relation to crimes under its jurisdiction committed on their territories.**

13. ICC-ASP/13/34/Rev.1

2 - ICC Budget and Financial Oversight

For 2015, the Court requested a Budget of € 135.39 million, which represents an increase of €13.74 million, or 11.3 per cent, over the approved budget for 2014.[14] The Court has explained that main reasons for the requested increase are:

> …a continued increase in judicial and prosecutorial activities with at least two new trials in addition to current cases; the implementation of the OTP strategy and an increase in the OTP's workload; the arrival of seven new judges, with implications for the overall allotment for judges' costs, including pension costs; as well as built-in increases, such as staff costs, due to the application of the UN common system.[15]

The 2015 budget is based on the following assumptions:

(a) Four active investigations, two Article 70 investigations, and preservation of evidence in nine hibernated investigations;
(b) Trial preparations in two cases;
(c) Trial hearings in no less than five cases;
(d) Sentencing and reparations in one case;
(e) Final appeal proceedings in one case and interlocutory appeals that may arise in all cases.[16]

Significantly, in developing the Budget proposal, the Court has taken into account that "[t]he combined workload of Pre-Trial Chambers, Trial Chambers and Appeals Chambers in 2015 is expected to exceed the level of judicial activity in 2014."[17]

A relevant explanation for the requested for €8,447.5 thousand (25.4 %) increase requested by the Office of the Prosecutor is the implementation of the New OTP Strategic Plan (adopted in September 2013).[18] The increase aims at improving quality and efficiency of preliminary examinations, investigations and prosecutions.[19] FIDH has noted the investment requested to improve specifically the quality of investigations.[20] In the past, FIDH raised concerns about the quality of ICC investigations and questioned the low number of investigators, insufficient field presence, problems arising from the practice of shifting resources (rotational model) and the need for the OTP to rely on evidence other than witness testimony.[21] The 2015 Budget proposal recognises that in order to fully implement the New Strategic Plan and achieve further efficiency in investigations, the OTP needs *inter alia* to scale investment in investigative activities[22] by increasing the number of staff members in the Investigation Division,[23] augment the number of investigation missions,[24] do away with the rotational model[25] and take measures

14. ICC-ASP/13/10, paras 2-3.
15. ICC-ASP/13/10, para 3.
16. ICC-ASP/13/10, para 22.
17. ICC-ASP/13/10, para 23.
18. ICC-ASP/13/10, para 137.
19. ICC-ASP/13/10, para 129-130.
20. ICC-ASP/13/10, para 221.
21. See i.a. FIDH, The Office of the Prosecutor of the ICC - 9 Years On,(December 2011) https://www.fidh.org/IMG/pdf/cpiproc579ang.pdf, p 21-24; FIDH, Recommendations to the Assembly of States Parties to the Rome Statute, Position Paper No. 13 (November 2008), https://www.fidh.org/IMG/pdf/FIDHPositionPaperASP7_Nov2008.pdf, p 8.
22. ICC-ASP/13/10, para 209.
23. ICC-ASP/13/10, paras 226-235.
24. ICC-ASP/13/10, para 238(a).
25. ICC-ASP/13/10, para 220.

to diversify the types of evidence the OTP relies upon.[26] FIDH considers that improvement of ICC investigations and prosecutions is essential to the credibility of the Court. As recalled in the budget, the Chambers of the Court have indicated that they expect a higher level of evidence than the one the OTP has presented in past cases.[27] Investigations and prosecutions are a crucial part of the core business of an international criminal court and they must be of very high standards.

The Committee of Budget and Finance (CBF), however, recommended a €2.70 million reduction to the OTP budget, in addition to a further €1.55 million reduction to be applied to GTA posts.[28] FIDH notes that no specific and clear justification for the non-approval of part of the OTP budget was provided by the CBF. Such a recommendation seems to be based on the OTP's capacity to absorb an increase in costs. In making such a recommendation, no consideration appears to have been made on the impact that the recommended reduction could have on the OTP's capacity to implement planned activities. The CBF, however, did recognise that "it was not in a position to express its view on the quality of the work of the OTP" and recommended "that the Assembly consider how best to evaluate the measures taken by the OTP to increase the quality" of its work.[29] FIDH agrees with the CBF that the ASP should oversee the measures adopted by the OTP in order to ensure that the quality of investigations continues to improve. However, we note that overall reduction for the OTP budget recommended by the OTP appears arbitrary.

This is confirmed by the CBF's recommendation to reduce the Registry's budget based on a 3:1 ratio (amounting to €0.93 million) as a resulted of the "absorption" of €2.78 million costs in the OTP.[30] FIDH observes that no specific information was provided by the CBF as to how the 3:1 ratio was calculated and therefore it also appears to be arbitrary.

In this regard, FIDH makes the following observations:

a. Although it is labelled as "absorption", the €2.78 million reduction is in fact a financial cut, which is likely to result in a cut to the activities planned by the OTP (this could affect the realisation of assumptions and/or the measures envisaged to improve the quality of preliminary examinations, investigations and prosecutions).
b. The reduction based on a 3:1 ratio of the Registry's budget confirms the above. The reduction to the OTP will not be absorbed. The CBF actually expects the OTP to limit its activities as a result of the cut and consequently recommends a corresponding reduction to the Registry's budget. Had the recommendation really been based on a financial assessment that the OTP would be in a position to absorb the €2.78 million (i.e. that it would be able to accomplish the planned activities within existing resources), no corresponding reduction to the Registry's budget would have been justified.

This situation raises questions about CBF recommendations and ASP decisions which seek to curtail the Court's activities. FIDH has observed a worrying tendency since the 7th session of the Assembly,[31] whereby States have gone beyond the CBF recommendations and apply further cuts to the Court's budget. In particular, FIDH is concerned about ongoing discussions among States Parties at the time of writing. We understand that States are considering *inter alia* to defer activities which are among the assumptions for next year to the contingency fund. In

26. ICC-ASP/13/10, paras 221, 238(b).
27. ICC-ASP/13/10, para 211. In this regard, it is worth recalling that charges were not confirmed in two cases before the Court (Prosecutor v Abu Garda and Prosecutor v Mbarushimana), additional evidence was requested at the confirmation stage in a recent case (Prosecutor v Gbagbo) and the Chambers acquitted one person (case Prosecutor v Ngudjolo). The quality of the evidence put forward by the OTP also received criticism in Prosecutor v Katanga (see Minority Opinion of Judge Van den Wyngaert in relation to the judgement, ICC-01/04-01/07-3436AnxI).
28. ICC-ASP/13/15, para 38.
29. ICC-ASP/13/15, para 54.
30. ICC-ASP/13/15, para 46.
31. FIDH Position Paper, Ninth Session of the ICC Assembly of States Parties (December 2010), https://www.fidh.org/IMG/pdf/ASPetatparti551a.pdf, p 17.

addition to it being an improper use of the contingency fund, the proposal raises other concerns. It undermines the purpose of having the Court present the CBF and the ASP with assumptions for each budget and it sends a message of disregard for the Court's activities. The Court's activities, such as for example trial and pre-trial proceedings, are the result of developments at the Court (execution of arrest warrants, decision on confirmation of charges, etc.). While FIDH appreciates that States have been facing a financial crisis, the organisation considers any decision that amounts to limiting the Court's activities should be well founded. Such decisions should also be taken after discussions between the ASP and the Court about the specific impact that financial cuts would have on the Court's planned programme of work, its capacity to undertake high-standard investigations, prosecutions and trials, and its ability to adapt quickly to new developments. Arbitrary decisions convey lack of understanding of the Court's overall plans and send a message of disregard for the impact of financial cuts.

FIDH understands that, through financial cuts, the CBF and States Parties have been sending a message to the Court that the ICC needs to find savings and efficiencies, and absorb new activities within existing resources to the extent possible. FIDH appreciates that this is a loadable endeavour and notes that the Court has indeed embarked in reforms, such as the recent *Re*Vision project launched by the Registrar. FIDH agrees that reforms are necessary to optimise processes, avoid duplication and ensure the best possible use of resources. However, FIDH has noted that the reforms proposed by the *Re*Vision project do not appear to be based on a thorough assessment of the costs that the reform will involve, the savings that will be made, and the level and distribution of resources that is expected post-reform.[32] While we do not suggest that States should micro-manage this process, we would expect that given States' interest that the Court find efficiencies, they would be more involved and, at a minimum, request that the financial aspect of the reform be adequately studied. This recommendation is based on FIDH's observation that Registry reforms tend to target aspects of the budget that do not signify relevant portions of the Court's spending.[33] As we have stressed in the past, however, reforms do not only need to be guided by financial gains but also assess the impact of projected changes on effectiveness of the Courts' activities.[34]

Recommendations to the ASP:

- **Abstain from adopting CBF recommendations that amount to arbitrary cuts to the ICC budget.**
- **Abstain from adopting further arbitrary cuts to the ICC budget.**
- **Engage in dialogue with the Court in relation to the impact that recommended cuts could have on the Court's planned activities, as well as the OTP's plans for improving the quality of investigations and prosecutions.**
- **Request that the Registrar undertake a study of the impact of the *Re*Vision project, both in terms of budget and finances as well as in relation to the effectiveness of the Registry's services and the Court's activities, and share that study with States Parties.**

32. FIDH comments on the ICC Registrar's *Re*Vision proposals in relation to Victims, 18 November 20114, https://www.fidh.org/IMG/pdf/letter_registar_icc.pdf, p 6-7.
33. FIDH, Cutting the Weakest Link – Budget Discussions and their Impact on Victims' Rights to Participate in Proceedings (November 2013), https://www.fidh.org/IMG/pdf/cpiasp598ang2012.pdf; FIDH, Five Myths about Victim Participation in ICC Proceedings (December 2014).
34. See e.g. FIDH Position Paper, Recommendations to the 12th Assembly of States Parties to the Statute of the International Criminal Court (November 2013), http://fidh.org/IMG/pdf/asp12positionpaper620a2013ld.pdf, p 10.

3 - Amendments to the Rules of Procedure and Evidence: the Issue of Translations

This year, the Working Group on Amendments received amendment recommendations made by the Working Group on Lessons Learnt (Chambers). The amendment proposals concerned the following provisions among others: Rules 76(3), 101(3) and 144(2)(b) of the Rules of Procedure and Evidence. Amendment proposals to these Rules were considered together as a language/translation cluster.

> [T]he proposed amendment to Rule 76(3) would allow the Court to authorize partial translations of prosecution witness statements, where such partial translations would not infringe the rights of the accused. The proposed amendment to Rule 144(2)(b) allows the Court to authorize partial translations of decisions of the Court, where such partial translations would not infringe the rights of the accused. The proposed amendment to Rule 101(3) allows the Court to delay the commencement of time limits of certain decisions until their translations are notified.[35]

FIDH notes that these recommendations are based on the Court's practice and experience. The proposed amendment to Rule 101, in particular, codifies the Court's practice to consider that decisions are notified on the day of their translation and that any time limits (for example, for appeals or requests for leave to appeal) shall run from that date. FIDH considers that this is a measure of fairness in cases where the accused is not fluent in the language in which the Court decisions are delivered.

FIDH notes that the Court is increasingly working in English. However, English is not generally spoken in the great majority of the situation countries. Two ICC investigations concern countries where English is the official language (Uganda and Kenya); five investigations unfold in countries where French is the official language (Democratic Republic of Congo, Côte d'Ivoire, Mali and two investigations in the Central African Republic); and two investigations refer to Arabic-speaking countries (Sudan and Libya). We also note that the accused sometimes speak local languages and are not fully fluent in English or French, the ICC working languages. The question of translations is therefore a live and relevant issue in the great majority of ICC cases. States should therefore apply utmost care when considering amendment proposals that may affect the accused's right to receive documentation (decisions or witness statements) in a language that they fully understand.

According to Article 67(1)(a) of the Rome Statute, the accused has a right "to be informed promptly and in detail of the nature, cause and content of the charge, in a language which the accused fully understands and speaks." While they also have a right "to be tried without undue delay" (Article 67(1)(c)), these two provisions need to be balanced adequately. In order words, there is no point in having a speedy trial if the trial is unfair because the accused has not been able to fully understand the content of witness statements and decisions in order to prepare

35. Report of the Working Group on Amendments, para 23.

their defence. Decisions on translations and adoption of amendments should also not be driven exclusively by financial considerations.

We note that the amendment proposals establish some safeguards and are phrased in a manner that would give the chambers discretion to appreciate the situation at hand before making a decision that translation of documents are not needed (in full or in part) or that time limits should run from the date of issuance of the original decision. The following chart provides more details on the wording of the amendment proposals:

Rule	Text (new text according to amendment proposal in bold)
Rule 76(3)	The statements of prosecution witnesses shall be made available in original and in a language which the accused fully understands and speaks. **Where appropriate, the Chamber may authorise translations of relevant excerpts of the statements when, after seeking the views of the parties, it determines that full translations are not necessary to meet the requirements of fairness and would adversely affect the expeditiousness of the proceedings. For the purpose of such determination, the Chamber shall consider the specific circumstances of the case, including whether the person is being represented by counsel and the content of the statements.**
Rule 144(2)(b)	Copies of all the above-mentioned decisions shall be provided as soon as possible to: […] (b) The accused, in a language he or she fully understands or speaks, **in whole or to the extent necessary** to meet the requirements of fairness under Article 67, paragraph 1 (f).
Rule 101(3)	**The Court may order in relation to certain decisions, such as those referred to in Rule 144, that they are considered notified on the day of their translation, or parts thereof, as are necessary to meet the requirements of fairness, and, accordingly, any time limits shall begin to run from this date.**

The chambers' rulings determination as to whether translations should be issued would boil down to determining whether they are necessary "to meet the requirements of fairness". In some cases, the views of the parties would be sought. FIDH notes that making a determination as to whether translation of a decision or statement is necessary "to meet the requirements of fairness" would at times require that those making the determination understand fully both the language of the original document and the language of the accused. But even in cases where the judges fully understand both languages, they may not fully appreciate the extent to which translations are necessary because it is only the accused and the defence counsel and team that are in a position to fully determine what value different documents or portions of a decision or statement have for the defence strategy. Even if judges understand the case fully, they will never see the case in the same way as the defence does. They may therefore not fully appreciate the extent to which language nuances could affect the meaning and implications of different documents or portions thereof. In short, FIDH considers that the safeguards put in place by the amendment proposals may be insufficient and recommends that States give further consideration to these amendment proposals during 2015. In particular, FIDH recommends that consultations be undertaken with Defence Counsel (and in particular French-speaking Defence Counsel with experience in ICC cases). Examples of possible additional safeguards include: the Chamber must always consult with the Defence in relation to the issue of translation; translations will be issued whenever the Defence opposes; the Chamber will take into account the languages spoken by Counsel and members of the team and their ability to convey complex legal concepts to the accused in a language that they understand; etc. It is important to recall

that non translation of statements or decisions could raise questions of fairness that could give raise to appeals. This could lead to increased litigation and additional delays.

As an additional recommendation on the issue of translation, FIDH would like to draw the attention of States Parties to importance giving due consideration to fluency in or understanding of both working languages of the Court when nominating and electing candidates to judicial vacancies. While the Statute requires that judges are fluent in only one of the two working languages,[36] it would be desirable that judges have at least a working knowledge of the other language. Finally, States Parties could also encourage the Court to pay increasing attention to the importance of operating in both working languages (and in particular to seek to conduct trials in the language of the accused whenever possible), including by ensuring that knowledge of both English and French is prioritised during recruitment processes.

Recommendations to the ASP:

- **Give further consideration to amendments on language/translation issues during 2015, with a view to ensuring that further adequate safeguards are put in place.**
- **Conduct further consultations with Defence Counsel (in particular French-speaking Counsel).**
- **Pay close attention to the desirability that candidates have a relevant knowledge of both working languages of the Court when nominating and electing judges.**
- **Encourage the Court to operate in both working languages and to ensure that recruitment processes consider the need to achieve an adequate balance of master of English and French among staff members.**

36. Article 36(3)(c): "Every candidate for election to the Court shall have an excellent knowledge of and be fluent in at least one of the working languages of the Court."

4 - Omnibus Resolution: Strengthening the International Criminal Court and the Assembly of States Parties

The omnibus resolution covers a range of different matters and includes decisions on measures that aim to strengthen the work of the Court and that of the Assembly. In the following sub-section we will discuss only a limited number of matters which FIDH follows particularly closely and on which FIDH has specific expertise.

a) Victims' Rights

Since the last session of the Assembly, the Bureau has continued to consider the issue of victims, affected communities and the Trust Fund for Victims. FIDH attaches great importance to the Assembly's involvement on such relevant matters. We strongly believe that the success of the Court will be determined by the extent to which it renders justice and redress to those who were affected by the crimes and their communities. An international court in The Hague with no connection to the ground and victims would be devoid of all meaning.

While FIDH welcomes the Report of the Bureau on Victims, Affected Communities and the Trust Fund for Victims, it is concerned about some of the language included in the proposals for paragraphs for the omnibus resolution. In particular, we have noted the reference to consideration of application of a "collective approach" in relation to the efficiency and effectiveness of the victim participation system. In this regard, we note, first of all, that although reference is made to the "victim participation system" as a whole, the recommendations appear to be related to the victim participation application process, which is only one part of the victim participation regime. Secondly, it is not entirely clear what is meant by "collective approach". Victims already participate collectively in many ways and are normally represented by a common legal representative. Thirdly, while FIDH does not oppose the consideration of any new approach that would enhance the efficiency and effectiveness of the application process as well as promote meaningful involvement of victims, we believe that there may be misconceptions about the potential benefits of a collective approach in the application process. There is a belief that great savings could be achieved through such an approach. Yet, that has not been proven. Also, as we highlighted above and in other reports,[37] the resources required to ensure victim participation constitute a very tiny portion of the budget and changes in relation to the application process may not have a fundamental impact on the Court's overall budget. However, FIDH agrees that the application process needs to be

37. FIDH, Cutting the Weakest Link – Budget Discussions and their Impact on Victims' Rights to Participate in Proceedings (November 2013), https://www.fidh.org/IMG/pdf/cpiasp598ang2012.pdf; FIDH, Five Myths about Victim Participation in ICC Proceedings (December 2014).

improved and that the Court must find ways to process victim participation applications more effectively. In doing so, the Court must consider both the needs of the judicial process as well as the needs of victims and their context. Any consideration of a collective approach to victims' applications to participate must carefully consider both the advantages and disadvantages that that would create, specifically to preserve the Court's access to individual stories and to avoid that the specificity of the individual's story and the individual's interests is lost.[38]

FIDH has also noted that the reference to "the need for possible amendments to the legal framework for the participation of victims in the proceedings". Again, having followed the work of the Bureau on this matter, we think that the reference relates to the application process; yet it is framed in such general terms that it would appear to be more far reaching. FIDH recommends that wording in the resolution be amended so that the ASP decisions, including in relation to intersessional mandates, are clear and reflect the content of what the Court and the Assembly need to focus on.

In relation to the question of "possible amendments to the legal framework" specifically, FIDH would like to make the following observations. First, FIDH agrees that any such consideration should be based on a report to be submitted by the Court in 2015. Second, FIDH submits that the Assembly is restricting the scope of its work by focusing only on possible amendments. It is possible that improvements to the application system can be achieved through other types of adjustments and may not necessarily require amendments to the legal framework (for example, in the way applications are collected and treated).

Finally, FIDH strongly recommends that all processes of the Court and the Assembly, including through its Bureau, that consider improvements to the victim participation system as a whole or the victim application process specifically benefit from the experience of victims and those who represent them. FIDH has noted that the Court and the ASP have generally failed to consult with victims and legal representatives on matters that fundamentally affect victims' rights.[39] In order for any new system to be adequately adapted to the needs of victims and for it to be successful, it would be important that the end-users of the system are consulted. In addition, victims' Counsel who are in direct contact with victims throughout the proceedings may provide very valuable insight. Other experts who interact frequently with victims and victim communities may also provide valuable information.

Recommendations to the ASP:

- **Correct references in the omnibus resolutions to the "victim participation system" when what is meant is victim participation application process.**
- **When considering improvement of the application process, do not focus specifically and narrowly on a "collective approach" or amendments to the legal framework, but rather on any practice or adjustment that would result in a more effective and meaningful process for both victims and the Court.**
- **In monitoring the Court's work on victim participation, ensure that the situation and the views of victims are adequately considered by consulting victims, victims' Counsel and other experts who have direct experience in interaction with victims and victim communities.**

b) Counsel and Legal Aid

During 2014, the Court has continued to monitor implementation of the legal aid system, and has issued several reports on the implementation of ASP decisions on legal aid and recommendations for improvement of the legal aid system.[40] FIDH has continued to note that the Court's reports

38. FIDH, Five Myths about Victim Participation in ICC Proceedings (December 2014).
39. *Ibid*.
40. ICC-ASP/13/2; ICC-ASP/13/6; ICC-ASP/13/17.

on legal aid focus almost exclusively on the financial aspect of legal aid and savings made, and neglect consideration of the quality of legal representation as per the legal aid system.[41] This is concerning because a legal aid system must be assessed in its entirety in order to come to conclusions as to its effectiveness. Focusing solely on savings disregards that the investment made by States Parties must be fruitful and, above all, must ensure that full respect for the rights of victims and accused that are represented through legal aid. Assessment of the legal aid system should also consider the impact of legal aid measures on the work of legal representation team, the quality of legal representation, the legal representation teams' capacity, the strengths and challenges that they face and other relevant gaps. Such comprehensive consideration of legal aid would allow the Court and the Assembly to determine what further measures can be taken to continue to improve the quality of legal representation offered by the Court.

FIDH has noted that the Bureau has taken note of the fact that the *Re*Vision project will have an impact on the implementation of the legal aid system. FIDH has serious concerns regarding the implementation of the *Re*Vision proposals that aim at internalising legal representation of victims.[42] We believe that it is necessary for the ASP to continue to monitor implementation of legal representation for victims and accused. As we noted above, we think that the Assembly has a relevant role to play in overseeing the implementation of the *Re*Vision measures and requesting further information including on its financial implications.[43]

When monitoring the Court's and ASP processes involving review of legal aid and legal representation, FIDH has noted with concern that Counsel (for victims and Defence) are very rarely consulted. Legal representation through legal aid and the offices for public counsel are services that the Court provides. Whenever efficiency of a service is assessed it is important to consult both the service provider as well as its recipients. Basing conclusions on the efficiency and effectiveness of the service upon the information provided only by the service provider appears fundamentally unfair. Counsel who have represented victims and accused before the ICC have very valuable experience that the Court and the ASP could certainly benefit from in all processes aimed at improving the quality of legal representation. FIDH calls upon the Court and the Assembly, including through its Bureau and Working Groups, to consult more regularly with Counsel on all matters that affect legal representation of victims and accused.

Recommendations to the ASP:

- **Request that the Court assesses the effectiveness of legal representation and legal aid services not solely from a financial perspective, but by looking also at the impact of legal aid measures on the quality of legal representation and by identifying any relevant gaps, and includes such information in reports to the Assembly.**
- **Oversee implementation of the *Re*Vision project to ensure in particular that the quality of legal representation provided to victims and accused will not decrease but improve.**
- **Conduct regular and meaningful consultations with Counsel in respect of all institutional processes that are relevant to legal representation and legal aid, and request the Court to do so as well.**

c) Intermediaries

In 2014, the Court adopted the Guidelines Governing the Relations between the Court and Intermediaries (Guidelines).[44] FIDH has called on the Court to regulate its relationship with

41. FIDH Position Paper, Recommendations to the 12th Assembly of States Parties to the International Criminal Court (November 2013), https://www.fidh.org/IMG/pdf/asp12positionpaper620a2013ld.pdf, p. 10-11

42. FIDH concerned about ICC Registrar's Reform, 19 November 2014, https://www.fidh.org/en/international-justice/international-criminal-court-icc/16493-fidh-concerned-about-icc-registrar-s-reform

43. See above section "ICC Budget and Financial Oversight".

44. The Guidelines were officially adopted in March 2014 (although units of the Court had already been applying them prior to adoption). The Guidelines and related documents are available on the Court's webiste: http://www.icc-cpi.int/en_menus/icc/legal%20texts%20and%20tools/strategies-and-guidelines/Pages/default.aspx

intermediaries since 2005,[45] and contributed to the development of the Guidelines. The adoption of the Guidelines is a relevant development. However, the Guidelines are far from perfect and will need to be developed further, updated and adapted to new situations as the relationship between intermediaries and the Court continues to evolve.

States Parties should be mindful that the Court's use of intermediaries represents significant advantages for the Court in terms of access to the affected communities but also from a financial perspective as relying on intermediaries signifies relevant savings. However, it would be inconceivable for the Court to delegate tasks to third parties at absolutely no cost. Intermediaries need to be reimbursed for the expenses made for work undertaken on behalf of the Court; sometimes they also need to be compensated or supported in other ways.[46]

FIDH recommends that the ASP take notes of the adoption of the Guidelines and call upon the Court to continue to monitor its implementation with a view to updating them as appropriate. In doing so, the Court should consider not only the needs of the judicial process but the situation and needs of intermediaries. In particular, intermediaries should be treated with consideration and the use of intermediaries should not be abused (intermediaries should not be called upon to undertake core tasks of the Court). The Court's evaluation of implementation of the Guidelines should be done in consultation with intermediaries.

Recommendations to the ASP:

- **Take note of the adoption of the Guidelines and call upon the Court to continue to monitor and update the Guidelines as necessary.**
- **Acknowledge that the use of intermediaries represents significant savings for the Court.**
- **Call upon the Court to take into consideration not only the needs of the judicial process but also the situation and the needs of intermediaries, when implementing, monitoring and updating the Guidelines.**
- **Request that the Court consult with intermediaries when evaluating the impact of the current framework.**

d) Complementarity

FIDH has taken note of the Report of the Bureau on Complementarity and notes that relevant work has been accomplished in 2014. FIDH fully supports the work of the Court and the Bureau on complementarity. As it is well-known the ICC will only be able to complete a very limited number of cases in each situation country, while the crimes over which it has jurisdiction normally involve large number of perpetrators at different levels. Enhancement of the Rule of law at the domestic level is necessary for the ICC to achieve its goals to end impunity and prevent perpetration of serious crimes in the future.

FIDH considers that some of the language on complementarity proposed for the omnibus resolution could be further strengthened to fully reflect the scope of complementarity work. Moreover, FIDH is concerned that some of the proposed language on complementarity appears to represent a step backwards with respect to the work accomplished by the Assembly in the field of complementarity since the Kampala Review Conference. In particular, we are concerned about three points.

First, we note that one of the preambular paragraphs refers to the work of the Court on complementarity in relation to conclusion of the Court's activities in situation countries and to completion strategies.[47] While complementarity work in relation to such countries and in view

45. FIDH, Position Paper N° 10 – Recommendations to the Fourth Session of the Assembly of States Parties to the International Criminal Court (November 2005), https://www.fidh.org/IMG/pdf/icc2005a.pdf, p 12-13
46. As recognised by the Guidelines (see Guidelines, p 11-14).
47. A similar paragraph was included in last year's resolution on complementarity. See ICC-ASP/12/Res.4.

of completion of the work of the Court is very relevant, we fear that this narrow reference leaves out the Court's potential impact in relation to complementarity in other countries, including situations under preliminary analysis.

Second, we note that the language on complementarity focuses primarily on the issue of "incapacity" and neglects problems related to "unwillingness" to carry out investigations and prosecutions.

Third, the proposed language appears to curtain the Court's activities in relation to complementarity by reference to complementarity efforts "within appropriate fora" and by recalling "the Court's limited role in strengthening national jurisdictions." This wording was absent in last year's resolution on complementarity. While the Court's work on complementarity may be considered to fall beyond the ICC's core mandate, it is of high relevance for the Court and the Rome Statute system to succeed. The limitations imposed by this year's draft language for the omnibus resolution do not appear to be based on excesses committed by the Court in undertaking complementarity-related work. FIDH is concerned that these limitations may rather be motivated by the interest of States that fear the Court's intervention in relation to crimes allegedly committed on their territories.

Recommendations to the ASP:

- **Acknowledge the importance of the work of the Court in relation to complementarity not only in situation countries and in relation to completion strategies, but also with reference to other countries and, in particular, situations under preliminary analysis.**
- **In furthering its work on complementarity, promote activities to address unwillingness to undertake investigations and prosecutions in addition to those aimed at strengthening the capacity of domestic jurisdictions.**
- **Recognise the importance of the role of the Court in relation to complementarity efforts and, while acknowledging that it is not part of the core mandate of the Court, abstain from imposing limitations to the Court's work on complementarity.**

e) Cooperation

FIDH has considered the Report of the Court on Cooperation[48] and the Report of the Bureau on Cooperation.[49] The Court's report highlights increasing cooperation needs:

> … the cooperation needs of the Court and its different organs have consistently increased since the start of its operations, and are expected to continue to increase in the coming years, given the increase in its investigative, prosecutorial and judicial activities, as well as the complexities of the situations and challenges the Court deals with.

Cooperation remains a very high priority for the Court and the support of States Parties continues to be key to its success. During 2014, the Court and the Assembly have continued to hold discussions with the aim to further cooperation. The Bureau (through the Hague Working Group) and the Court held discussions on arrest strategies, non-essential contacts, handling of cooperation requests from the defence and voluntary agreements. The Hague Working Group also produced a study on the feasibility of establishing a coordinating mechanism of national authorities dealing with cooperation.[50] Importantly, during 2014 the Court continued to further its dialogue with States and intergovernmental organisations, including through the holding of regional seminars in Africa and South America.

48. ICC-ASP/13/29.
49. ICC-ASP/13/23.
50. ICC-ASP/13/29, Annex II.

As a member of the CICC, FIDH supports the recommendations made by the CICC Team on Cooperation, available at: http://www.coalitionfortheicc.org/documents/Comments_and_Recommendations_to_the_13th_ASP.pdf. FIDH would like to note, in particular, the holding at this session of the Assembly of a plenary discussion on cooperation with a specific focus on crimes of sexual and gender-based violence. In this regard, FIDH recalls that the OTP adopted a Policy Paper on Sexual and Gender-Based Crimes in June 2014.[51] FIDH contributed to the development of this policy document and welcomes its adoption. The support of States through increasing cooperation is crucial for the implementation of the OTP policy. States must adequately support investigation and prosecution of such crimes by the ICC, including by facilitating evidence collection, protecting the interest of victims and cooperating in relation to witness protection, executing arrest warrants and providing strengthened political support to end impunity and prevent recurrence of such crimes. In addition, States have an obligation to prosecute sexual and gender-based crimes at the domestic level. In order for this to happen, it is important that efforts towards universal ratification and domestic implementation of the Statute continue. States must ensure that specific provisions on sexual and gender-based crimes are incorporated into national law. FIDH calls on States to prosecute those responsible for the commission of such crimes at the national level in accordance with the principle of complementarity and, where relevant, through the exercise of extraterritorial jurisdiction.

Recommendations to the ASP:

- **States Parties should express support for the Court's investigations and prosecutions and recognise the importance of cooperation, including by making specific pledges and/or political statements in relation to specific cooperation instances.**
- **States Parties should actively participate in the plenary discussion on cooperation with a focus on sexual and gender-based crimes and consider specific measures that they will adopt to support investigation and prosecution of such crimes both internationally and domestically.**
- **The Bureau should remained seized of the issue of cooperation in 2015.**

51. Available at: http://www.icc-cpi.int/iccdocs/otp/OTP-Policy-Paper-on-Sexual-and-Gender-Based-Crimes--June-2014.pdf.

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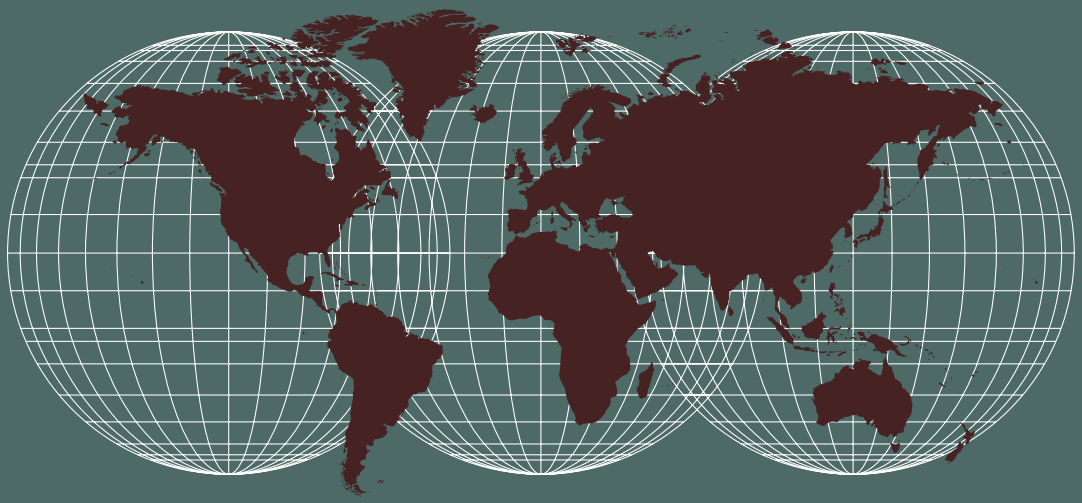

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