



fidh

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FIDH Recommendations to the 20th session of the Assembly of States Parties to the ICC Statute

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Introduction

The 20th session of the Assembly of States Parties (“ASP” or “Assembly”) to the Statute of the International Criminal Court (“ICC” or “Court”), will be held in The Hague (Netherlands), from 6 to 11 December 2021. This session takes place amidst the continuing global health crisis and will be hosted with similar COVID-19 measures as the 19th session. The format will allow for both in-person participation and livestream attendance. Regrettably, civil society organisations will only be allocated 16 in-person seats in total, while States Parties and observers will be allowed four representatives each to attend in-person.

Over the past year, FIDH has closely monitored the work of the ICC and States Parties. In 2021 alone, the Court bid farewell to Fatou Bensouda and welcomed the new Prosecutor Karim Khan,¹ replaced one third of its bench with experienced judges,² reached a verdict and sentence in the Dominic Ongwen case (Uganda),³ issued its first final conviction involving sexual and gender-based crimes in the case against Bosco Ntaganda (Democratic Republic of Congo or “DRC”),⁴ held the confirmation of charges hearing in the Mahamat Said Abdel Kani case (Central African Republic or “CAR”),⁵ and authorised a full investigation into the situation in the Philippines.⁶ In spite of the challenges presented by the global pandemic, the Court managed to maintain its operations and introduced innovative measures which have allowed it to remain active. While FIDH welcomes these promising developments, the Court continues to face significant challenges in the fulfilment of its mandate, including limited financial resources and a lack of State cooperation, which greatly hinder the progress of cases, investigations, and preliminary examinations.

Some of the Court’s difficulties have been highlighted by the Independent Experts who were mandated to assess the Court’s performance and the Rome Statute system. Their comprehensive assessment, published in September 2020, provides 384 recommendations to strengthen the Court, including concrete steps—directed at external and internal stakeholders—to address these challenges.⁷ While the ICC’s independence as a judicial institution must be respected and preserved, States Parties can play an important role in facilitating its work. This is particularly true now that States Parties are invited, following the adoption of a comprehensive action plan in July 2021, to discuss the findings and recommendations of the Independent Experts, and potential ways forwards.⁸

This year’s ASP session will see general debates on matters such as cooperation, the activities of the Court, the election of the Deputy Prosecutors and the members of the Board of Directors of the Trust Fund for Victims (“TFV”), budgetary allocations, and amendments to the Rome Statute and the Rules of Procedure and Evidence.⁹

This position paper details FIDH’s views regarding the work of the Court, and presents key recommendations relevant to ICC States Parties and the mandate of the Court.

1. ICC, [Statement of the ICC Prosecutor, Fatou Bensouda on the transition process and related discussions with the Prosecutor Elect](#), 19 March 2021.

2. FIDH, [Six judges join the International Criminal Court’s bench as the Court begins a new chapter](#), 24 December 2020. In particular, note that out of the six, five were considered ‘highly qualified’ by the Advisory Committee on Nominations of Judges; see also ICC ASP, [2020 Nominations - Election of six judges](#), 18 December 2020.

3. ICC, [Dominic Ongwen declared guilty of war crimes and crimes against humanity committed in Uganda](#), 4 February 2021; ICC, [Dominic Ongwen sentenced to 25 years of imprisonment](#), 6 May 2021.

4. ICC, [Ntaganda case: ICC Appeals Chamber confirms conviction and sentencing decisions](#), 30 March 2021; FIDH, [DRC: Nearly twenty years after the crimes in question were committed, ICC orders reparations for the victims of Bosco Ntaganda](#), 16 March 2021.

5. ICC, [ICC concludes confirmation of charges hearing in Said case](#), 14 October 2021.

6. ICC, [Situation in the Philippines: ICC Pre-Trial Chamber I authorises the opening of an investigation](#), 15 September 2021.

7. IER, [Independent Expert Review of the International Criminal Court and the Rome Statute System Final Report](#), September 2020.

8. IER, [Comprehensive Action Plan for the Assessment of the Recommendations of the Group of Independent Experts](#), 30 June 2021.

9. ASP, [Provisional Agenda](#), 19 February 2021.

FIDH's recommendations for ICC States Parties at the 20th session of the ASP

1. States Parties must do better in regards to cooperation with the ICC

According to the Rome Statute, States Parties are obliged to fully cooperate with the Court.¹⁰ FIDH is encouraged by the recent actions of certain States, including the efforts taken by countries under preliminary examinations. For instance, FIDH takes note of the commitment shown by Colombia with the visit to the ICC of Vice-President Marta Lucía Ramírez Ramírez,¹¹ and the Cooperation Agreement between the Office of the Prosecutor ("OTP") and the Government of Colombia to help push forward domestic accountability efforts.¹² Similarly, authorities in CAR have taken steps earlier this year to cooperate with the Court, leading to the surrender of Mahamat Said Abdel Kani.¹³

The ability of the ICC to fulfil its mandate depends heavily upon the premise of State cooperation, yet it remains a critical challenge.¹⁴ A crucial area is the implementation of arrest warrants. To date, and despite arrest warrants demanding their apprehension, 12 ICC suspects remain at-large.¹⁵ Likewise, FIDH urges States Parties to take further action regarding situations referred to the ICC under Chapter VII of the UN Charter. Despite the promising decision taken by Sudan's Cabinet to ratify the Rome Statute, this decision must still be approved by the ruling Sovereign Council before Sudan can be recognised as a State Party—which may be in jeopardy with the recent coup. The ICC only has jurisdiction over the situation in Sudan because of a referral from the United Nations Security Council ("UNSC").¹⁶ Yet to date, the ASP and UNSC have not taken effective measures in response to non-cooperation.¹⁷

FIDH therefore strongly encourages the UNSC to play an active role in promoting cooperation with the ICC, especially regarding the execution of arrest warrants. In Sudan, the remaining four arrest warrants, issued against Omar Al-Bashir, Abel Raheem Muhammad Hussein, Ahmad Harun, and Abdallah Banda Abakaer Nourain have yet to be executed. FIDH looks forward to more definitive action from the UNSC, and encourages States Parties to request the UNSC to develop a framework for advancing cooperation.

FIDH has consistently advocated for the ICC to receive the support it requires to address non-cooperation, since measures such as the toolkit on non-cooperation have clearly fallen short.¹⁸ While there is a standing session on cooperation during the ASP, FIDH calls for specific instances of non-cooperation to be directly addressed during the session, including for instance, which States are unwilling to cooperate with investigations and arrests. States must finally develop tangible ways to tackle such flagrant instances of non-cooperation.

10. Part IX of the Rome Statute addresses international cooperation and judicial assistance.

11. ICC, Vice President of Colombia visits International Criminal Court, 26 April 2021.

12. ICC, ICC Prosecutor, Mr Karim A. A. Khan QC, concludes the preliminary examination of the Situation in Colombia with a Cooperation Agreement with the Government charting the next stage in support of domestic efforts to advance transitional justice, 28 October 2021.

13. ICC, Situation in Central African Republic II: Mahamat Said Abdel Kani surrendered to the ICC for crimes against humanity and war crimes, 24 January 2021.

14. ASP, Assembly Procedure relating to non-cooperation, 12 December 2018, p.55.

15. ICC, About the Court "Facts and Figures", available here: <https://www.icc-cpi.int/about> (accessed 4 November 2021)

16. UNSC, Resolution 1593 (2005), 31 March 2005.

17. See FIDH/KHRC, The victims' mandate of the International Criminal Court: disappointments, concerns and options for the way forward, June 2020. In particular the sessions of the ASP and its resolutions emphasise States Parties' obligation to cooperate fully with the Court in its investigation and prosecution of crimes within its jurisdiction, including with regard to the execution of arrest warrants and surrender requests, as well as other forms of cooperation set out in article 93 of the Rome Statute cooperation obligation (see for example, Resolution ICC-ASP/18/Res.3). Further, the ASP has adopted procedures relating to non-cooperation (see Annex II to Resolution ICC-ASP/17/Res.5), a tool kit on non-cooperation, and has active focal points on non-cooperation.

18. ASP, Non-cooperation, 11 March 2021; FIDH, ICC: Ahead of 19th ASP, FIDH Issues Recommendations to Strengthen Court, 8 December 2020.

Lastly, FIDH welcomes the rescinding of the Trump executive order and the lifting of related sanctions against ICC personnel, and calls for further engagement of the Biden administration with the ICC.¹⁹

FIDH calls upon States Parties to:

- 1. Actively cooperate with the Court at all stages of ICC proceedings, including providing access to information and a country's territory, executing arrest warrants, transferring suspects to the seat of the Court, complying with cooperation agreements, and publicly reiterating their commitment to defending the Court's mandate and independence.**
- 2. Improve and apply ASP procedures related to non-cooperation, and directly address instances of non-cooperation during the standing agenda item on cooperation at the ASP.**
- 3. Encourage the UNSC to develop a framework for advancing cooperation.**

2. The assessment and adoption of the budget by States Parties must follow a needs-based approach

The ICC's annual budget is proposed by the Court and examined by the Committee on Budget and Finance ("CBF"), which then provides recommendations.²⁰ The budget, which is adopted at the ASP, must account for all the activities of the Court, e.g., preliminary examinations, investigations and prosecutions; witness protection; language services; legal aid; assistance and reparations to victims; and management of the Court's facilities. For 2022, the Court has proposed a budget of €162.4 million, a 9.5% increase from its 2021 budget which amounted to €148.3 million.²¹ The CBF has however recommended the Assembly approve a 4.9% budget increase of €7.3 million.²²

The OTP has requested an increase of 8.5% from its 2021 budget, amounting to a total of €51.4 million for 2022.²³ The OTP is currently seized with five situations under preliminary examination (Bolivia, Guinea, Nigeria, Ukraine, and Venezuela II), 16 investigations (Afghanistan, Bangladesh/ Myanmar, Burundi, Central African Republic I/II, Côte d'Ivoire II, Darfur, Georgia, Kenya, Libya, Mali, Philippines, DRC, State of Palestine, Uganda, Venezuela I), and 30 cases including the ongoing trials of Alfred Yekatom/Patrice-Edouard Ngaïssona (CAR),²⁴ Ali Muhammad Ali Abd-Al-Rahman (Sudan),²⁵ and Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud (Mali).²⁶ Given the OTP's recurrent assertion that budget and resource restrictions have led to deprioritizing or postponing certain investigative and prosecutorial activities,²⁷ FIDH welcomes the OTP's request for an increased budget. Particularly, the OTP has committed a 39.7% increase for non-staff costs.²⁸ FIDH recommends that some of these resources are allocated to updating OTP-specific information management systems, including essential technological advancements to strengthen the effectiveness of the Office during its transition to a cloud-based environment.

19. FIDH, [With sanctions lifted, here's how the Biden administration must go further to engage with ICC](#), 9 April 2021.

20. ASP, [Report of the Committee on Budget and Finance on the work of its thirty-sixth session](#), 10 August 2021.

21. ASP, [Proposed Programme Budget for 2022 of the International Criminal Court - Corrigendum](#), 13 September 2021, p. 2.

22. ASP, [Report of the Committee on Budget and Finance on the work of its thirty-seventh session](#), 27 October 2021, p. 5.

23. ASP, [Proposed Programme Budget for 2022 of the International Criminal Court - Corrigendum](#), 13 September 2021, p. 1.

24. ICC, [Yekatom and Ngaïssona Case](#).

25. ICC, [Abd-Al-Rahamn Case](#).

26. ICC, [Al Hassan case](#).

27. See ICC, [Statement of the Prosecutor, Fatou Bensouda, on the conclusion of the preliminary examination in the situation in Ukraine](#), 11 December 2021; ICC, [Statement of the Prosecutor, Fatou Bensouda, on the conclusion of the preliminary examination of the situation in Nigeria](#), 11 December 2020; OTP, ["Without Fear or Favour": My Reflections on my term as Prosecutor of the International Criminal Court](#), 15 June 2021; ICC, [Mr Karim Asad Ahmad Khan QC sworn in today as the Prosecutor of the International Criminal Court](#), 16 June 2021; ICC, [Statement of the Prosecutor of the International Criminal Court, Karim A. A. Khan QC, following the application for an expedited order under article 18\(2\) seeking authorisation to resume investigations in the Situation in Afghanistan](#), 27 September 2021.

28. ASP, [Proposed Programme for the Budget for 2022 of the International Criminal Court Executive Summary](#), 21 July 2021, p. 9.

Over the past year, FIDH has expressed concern over the lack of adequate financial and human resources allocated to ensure meaningful victim participation and legal representation. Consequently, FIDH strongly supports the proposed €2.1 million increase in legal aid.²⁹ In 2020, the legal aid budget was overrun by €0.7 million.³⁰ Considering the forecasted judicial activity in 2022, an increased level of support will be required, and this must be reflected in the budget line for legal aid. As such, the Registry's first increase proposed in four years amounting to 10.3% is encouraging.³¹

Similarly, FIDH highlights the need to allocate appropriate funds to outreach and public information, and welcomes the Registry's proposal of a €1.9 million increase to its budget to provide for witness protection and increased outreach activities stemming from OTP investigations.³² Survivors, victims, and affected communities are at the heart of the Court's work, and FIDH supports any initiatives that remove some of the obstacles victims face in accessing the Court.³³ In this vein, together with the Victims Participation and Reparation Section ("VPRS"), the Trust Fund for Victims plays a critical role in facilitating victims' access to reparations ordered by the Court.³⁴ In 2022, reparation activities extend to five cases (Germain Katanga, Thomas Lubanga Dyilo, Ahmad Al Faqi Al Mahdi, Bosco Ntaganda, and Dominic Ongwen). Considering the large victim base in the cases of Bosco Ntaganda and Dominic Ongwen, the reparation orders need to be carefully anticipated and provided for in the 2022 budget.³⁵

An adequate budget is central to the TFV's work with victims. Thus far those who have been found guilty at the ICC have all been declared indigent and have not paid for the reparations ordered, leaving the financial burden to be satisfied by voluntary contributions. The negative impact that inadequate resources have on victims is becoming clearer each year, and must be addressed urgently.³⁶ FIDH calls on States to make financial contributions to the TFV.

Lastly, FIDH continues to express concern regarding the Court's liquidity problems. In 2020, outstanding contributions increased by €12.6 million, and the liquidity issues were only temporarily resolved through early payments.³⁷ Today, the liquidity challenge faced by the Court is even more pressing. As a matter of urgency, FIDH reiterates the importance that States Parties pay their assessed contributions without delay. Timely contributions should be an expected practice.³⁸ The consequences of delayed payments to the Court are far-reaching—for instance, a delayed investigation not only undermines victims' rights, but also risks the loss of evidence, and weakens the credibility of the Court. Without a sufficient cash flow, the Court simply cannot fulfil its mandate nor function.

FIDH calls upon States Parties to:

- 1. Adopt the 2022 budget requested by the Court, and develop a long-term budgetary plan that is sustainable and needs-based.**
- 2. Consider contributing more substantively to the TFV so that reparations can be paid to victims.**
- 3. Disburse financial contributions on time to avoid liquidity issues.**

29. ASP, *Proposed Programme for the Budget for 2022 of the International Criminal Court Executive Summary*, 21 July 2021, p. 9; FIDH, *Whose Court is it? Judicial Handbook on victims' rights at the International Criminal Court*, April 2021, p. 28.

30. ASP, *Report on the Committee on Budget and Finance on the work of its thirty-sixth session*, 16 June 2021, p. 12.

31. ASP, *Proposed Programme Budget for 2022 of the International Criminal Court*, 16 August 2021, p. 83.

32. ASP, *Proposed Programme Budget for 2022 of the International Criminal Court*, 16 August 2021, p. 85.

33. FIDH/KHRC, *The victims' mandate of the International Criminal Court: disappointments, concerns and options for the way forward*, June 2020, pp. 7-8.

34. FIDH, *Whose Court is it? Judicial Handbook on victims' rights at the International Criminal Court*, April 2021, pp. 56-71.

35. ASP, *Proposed Programme Budget for 2022 of the International Criminal Court*, 16 August 2021, p. 13.

36. FIDH/KHRC, *The victims' mandate of the International Criminal Court: disappointments, concerns and options for the way forward*, June 2020, p. 37.

37. ASP, *Financial Statements of the International Criminal Court for the year ended 31 December 2020*, 23 July 2021, p. 16.

38. ASP, *Report on the Committee on Budget and Finance on the work of its thirty-fourth session*, 1 July 2020, p. 9.

3. States must uphold the fundamental principles of the Rome Statute that guarantee victims' role in ICC proceedings

Since the entry into force of the Rome Statute, FIDH has monitored the implementation of victims' rights before the Court.³⁹ FIDH considers it a priority to provide adequate and timely information to survivors from the earliest stages, including from the preliminary examination phase, regardless of whether they have formally been accepted to participate in the proceedings as victims.⁴⁰ In situations like Afghanistan and Georgia, victims have remained unaware for months of the status of an investigation that impacts them directly.⁴¹ The need for accurate information about the Court will only increase over the coming years, as misinformation and disinformation become easier to spread through digital technologies, and as more preliminary examinations, investigations, and cases open. FIDH calls States Parties to press the Court to adopt a Court-wide outreach strategy to ensure that victims are properly informed and engaged throughout all phases.

In particular, FIDH is concerned by the lack of outreach activities and engagement with survivors, victims, and affected communities during the preliminary examination phase.⁴² Given how crucial to ICC proceedings successful preliminary examinations and investigations are, it is critical that the OTP adopts outreach plans that are situation-specific. As highlighted by the Independent Experts, targeted strategies will lead to resource allocation that can better meet actual needs, help manage expectations, gather and preserve evidence, and most importantly, ensure a more meaningful contribution of victims, affected communities, civil society organisations, and other local actors impacted by the Court's activities.⁴³ Additionally, FIDH recommends the ASP adopts a victim-centred language in the zero draft omnibus resolution.

The participation of victims in legal proceedings allows survivors of Rome Statute crimes to present their views and concerns when their personal interests are affected. FIDH notes concerning developments regarding the representation of victims at the ICC. In January 2021, in the case of Ali Muhammad Ali Abd-Al-Rahman (Sudan), the Pre-Trial Chamber appointed the Office of Public Counsel for Victims ("OPCV") as the common legal representative for all victims participating in the confirmation of charges hearing.⁴⁴ This decision was taken without prior consultation with the victims, even though several of them were already represented by an external lawyer—violating the right of victims to choose their own counsel.⁴⁵ While the Pre-Trial Chamber reviewed the decision and ultimately allowed a lawyer to represent a group of victims,⁴⁶ FIDH highlights a similar situation in the Mahamat Said Abdel Kani case—where the Pre-Trial Chamber again appointed OPCV as the common legal representative.⁴⁷ FIDH reiterates that meaningful victim participation depends on effective legal representation, and urges States Parties to encourage the Court to respect the right to choose one's own counsel.

FIDH calls upon States Parties to:

1. Adopt a victim-centred language in the zero draft omnibus resolution, and urge the Court to implement outreach plans that are situation specific to ensure that there is

39. See FIDH, Victims at the Center of Justice: From 1998 to 2018: Reflections on the Promises and the Reality of Victim Participation at the ICC, December 2018.

40. FIDH, The justice survivors deserve: Open Letter to the new ICC Prosecutor Karim Khan, 23 June 2021.

41. OTP, Request for leave to submit Amicus Curiae observations pursuant to Rule 103 of the Rules of Procedure and Evidence, 7 May 2021, para. 29.

42. FIDH, Preliminary Examinations at the ICC: an analysis of Prosecutor Bensouda's Legacy, September 2021, pp. 17-18.

43. FIDH/NPWJ, Outreach to Victims, Affected Communities and Civil Society: an analysis of Prosecutor Bensouda's Legacy (forthcoming). See also, IER, Independent Expert Review of the International Criminal Court and the Rome Statute System Final Report, September 2020, R241-R242.

44. ICC, Prosecutor v Ali Muhammad Ali Abd-Al Rahman, Decision establishing the principles applicable to victims' and representation during the Confirmation Hearing, 18 January 2021.

45. FIDH requested leave to appear as amicus curiae in the Abd-Al-Rahman case on 3 February 2021. The request focused on issues relating to victims' legal representation, victims' choice of counsel, and victims' meaningful participation at the ICC. See ICC, Request for leave to submit Amicus Curiae Observations Pursuant to Rule 103 of the Rules of Procedure and Evidence, 3 February 2021.

46. ICC, Prosecutor v Ali Muhammad Ali Abd-Al Rahman, Decision on the request for leave to appeal the Decision establishing the principles applicable to victims' participation and representation during the Confirmation Hearing, 9 February 2021.

47. ICC, Prosecutor v Mahamat Said Abdel Kani, Decision on victim applications for participation in the proceedings and on legal representation of victims, 6 October 2021.

adequate and timely information to survivors from the earliest stages, including from the preliminary examination phase.

2. Press the Court to adopt a Court-wide outreach strategy to ensure that victims are properly informed and engaged throughout all phases.
3. Encourage the Court to guarantee meaningful victim participation through effective legal representation, which includes the choice of counsel.

4. States Parties should encourage the ICC to address gender equality in recruitment processes

FIDH welcomes the creation of an ICC Focal Point for Gender Equality,⁴⁸ and urges States Parties to encourage the ICC to actively recruit female candidates for senior positions. While the ICC has proclaimed its dedication to fostering a culture of equality, and recently reaffirmed this with the adoption of the High-Level Statement on Gender Equality,⁴⁹ FIDH reiterates the utmost importance of this commitment and urges States to press the Court to continue making concrete advancements. Moreover, in line with the IER recommendation R15, achieving gender equality requires bold and decisive action, and extends to gender as well as sexual orientation.⁵⁰ While recognising the complexity of these issues, FIDH highlights the specific need to mainstream gender equality, and proactively address the underrepresentation of women.

In light of the recent findings of the Independent Experts regarding workplace misconduct and gender inequality at the Court, these issues should be considered a high priority at the ASP.⁵¹ An institution cannot work properly and effectively if there are staff at all levels who are disrespected or find themselves in a toxic workplace environment. These institutional issues and related recommendations from the Independent Experts do not require a deep assessment of whether they should be implemented, but rather necessitate immediate and concrete action. FIDH welcomes the discussions that took place among States Parties, facilitated by the Review Mechanism in October 2021, to address these issues and calls on all relevant stakeholders to ensure concrete changes—as demonstrated by the ICC Prosecutor’s recent appointment of Ad Hoc External Panel on Workplace Culture for the OTP.

FIDH calls upon States Parties to:

1. Promote gender equality mainstreaming, and proactively address the underrepresentation of women in senior positions in the ICC.
2. Press the Court to continue making concrete gender equality advancements.
3. Encourage the Court to introduce comprehensive measures to address the negative workplace culture.

5. Elections must be conducted with integrity

Four elections will take place at this year’s ASP, namely the election of (1) Bureau members, (2) members of the TFCV Board of Directors, (3) members of the Advisory Committee on nominations of judges, and (4) two Deputy Prosecutors.⁵² States Parties will also adopt a resolution on the election process for the next Registrar.

48. ICC, [International Women's Day: ICC appoints Focal Point for Gender Equality](#), 8 March 2021.

49. ICC, [High-Level Statement on Gender Equality of the International Criminal Court](#), 30 April 2021.

50. IER, [Independent Expert Review of the International Criminal Court and the Rome Statute System Final Report](#), September 2020, R15.

51. IER, [Independent Expert Review of the International Criminal Court and the Rome Statute System Final Report](#), September 2020, R87-88.

52. ASP, [Assembly of States Parties to the Rome Statute Twentieth Session: 6-11 December 2021 Work Programme](#), 25 August 2021.

Prosecutor Karim Khan has made public his short list for the two positions of Deputy Prosecutor.⁵³ Applying the criteria put forward by the selection panel assisted by the Independent Oversight Mechanism (“IOM”), the Prosecutor presented two lists, one with female candidates only, and a second list with candidates from a francophone or civil law country. The nominated candidates are Ms Sylvia Domaradzki (Canada), Ms Nazhat Shameen Khan (Fiji), Ms Paolina Massida (Italy), Mr Mame Mandiaye Niang (Senegal), Ms Claudia Paz y Paz Bailey (Guatemala), and Mr Alex Whiting (France). FIDH welcomes the geographical diversity of the six candidates, and invites States Parties to keep this present during the election. Additionally, expertise on victims’ rights and experience working with victims should also be an important criterion. Victims’ participatory rights have sometimes been too narrowly interpreted, and States Parties should seek Deputy Prosecutors with expertise in this area to securely guarantee victims’ procedural rights.

FIDH calls upon States Parties to safeguard and ensure the integrity and transparency of the election processes. In particular, States Parties should undertake comprehensive vetting of candidates and avoid unilateral nominations, vote trading, endorsements, campaigning, or any other forms of support to individual candidates. Specifically, FIDH reminds States Parties that the nominees must, according to Article 42(3) of the Rome Statute, have a ‘high moral character’.⁵⁴ While FIDH welcomes the introduction of a vetting process for the Deputy Prosecutor candidates, the new IOM channel to submit allegations of misconduct was not publicly announced nor circulated, and the 14-day window to report comprehensive allegations was far too brief.⁵⁵ FIDH strongly urges States Parties to create a permanent mechanism to vet candidates for elected positions, which is well publicised and includes genuine reputational interviews, in order to properly measure the ‘high moral character’ requirement.

FIDH calls upon States Parties to:

- 1. Ensure geographical diversity and expertise on victims’ rights when electing the Deputy Prosecutors.**
- 2. Ensure merit-based and transparent election processes that avoid unilateral nominations, vote trading, endorsements, or any other forms of campaigning and support to individual candidates.**
- 3. Create a permanent mechanism to vet the ‘high moral character’ of candidates for elected positions.**

6. The Independent Expert Review findings and recommendations must be carefully assessed and implemented in a timely manner.

The Independent Expert Review (“IER”) was established in December 2019 at the 18th Assembly of States Parties.⁵⁶ In September 2020, the IER published its final report.⁵⁷ FIDH contributed to the assessment by sending a confidential submission to the Independent Experts in April 2020, based on consultations organised in Nairobi, Kenya in March 2020, with 25 national members and partner NGOs from ICC situation countries and victims’ legal representatives.⁵⁸ A number of FIDH’s recommendations were reflected in the Independent Experts’ final report and recommendations, particularly regarding ways to strengthen the TFV.⁵⁹

53. ASP, [Shortlist of candidates submitted by the Prosecutor](#), 10 October 2021.

54. Article 42(3) of the Rome Statute.

55. ASP, [Confidential channel](#).

56. ASP, [Resolution ICC-ASP/18/Res.7: Review of the International Criminal Court and the Rome Statute system](#), 6 December 2019.

57. IER, [Independent Expert Review of the International Criminal Court and the Rome Statute System Final Report](#), September 2020.

58. FIDH/KHRC, [The victims’ mandate of the International Criminal Court: disappointments, concerns and options for the way forward](#), 22 June 2020.

59. FIDH/KHRC, [The victims’ mandate of the International Criminal Court: disappointments, concerns and options for the way forward](#), June 2020, p. 38. IER, [Independent Expert Review of the International Criminal Court and the Rome Statute System Final Report](#), September 2020, R356.

During the 19th ASP, a Review Mechanism was created, under the auspices of the Assembly, to create an action plan to assess the IER recommendations.⁶⁰ In July 2021, the Review Mechanism submitted a proposed action plan containing allocations, timelines, and a prioritisation of the recommendations,⁶¹ which various stakeholders commented on.⁶²

FIDH welcomes the inclusive and transparent manner in which the Review Mechanism has prepared the comprehensive action plan, and looks forward to this continued dialogue. However, FIDH regrets the short notice for feedback and quick turnarounds for comments, often in a format that is not user friendly (e.g., spreadsheets). In order for the Review Mechanism to meaningfully engage all relevant stakeholders, efforts should be made to genuinely include civil society and those most impacted by the work of the Court, especially victims. This is of particular importance considering that there are numerous IER recommendations relating to, e.g., legal representation, participation, reparations, outreach, and field presence. FIDH urges the Review Mechanism to prioritise recommendations impacting victims without delay. In these multistakeholder discussions, FIDH also reminds States Parties to support and respect the independence of the Court, particularly when it comes to the operationalisation of recommendations related to the Court as a judicial institution.

FIDH calls upon States Parties to:

- 1. Involve all relevant stakeholders in the assessment and implementation phase of the recommendations, including genuine consultations with civil society.**
- 2. Prioritise IER recommendations impacting victims and affected communities and ensure there is no delay in addressing those recommendations.**
- 3. Respect the independence of the ICC when discussing the implementation of the IER recommendations.**

60. ASP, [Resolution ICC-ASP/18/Res.7: Review of the International Criminal Court and the Rome Statute system](#), 6 December 2019, Appendix I, para.2.

61. IER, [Comprehensive Action Plan for the Assessment of the Recommendations of the Group of Independent Experts](#), 30 June 2021.

62. FIDH, [Comments on Action Plan](#).

2021 in review: FIDH publications and statements in relation to ICC matters

Reports

1. [EN | FR] [Forthcoming] (with NPWJ) Outreach to survivors, victims and affected communities: An analysis of Prosecutor Bensouda's legacy at the ICC
2. [EN | FR] [Forthcoming] (with MIDH and LIDHO) Côte d'Ivoire: from justice sacrificed in the name of 'reconciliation' to justice instrumentalised by politics
3. [EN | AR] [Forthcoming] (with ACJPS and SHRM) Delays and Dilemmas: New Violence in Darfur and Uncertain Justice Efforts within Sudan's Fragile Transition
4. [EN | AR] [Forthcoming] (with ECCHR and LFJL) NO WAY OUT: Migrants and Refugees trapped in Libya Face Crimes Against Humanity
5. [EN] (with Amnesty International and OMCT) [The fate of thousands hanging in the balance: Afghanistan's fall into the hands of the Taliban](#)
6. [EN | SP] (with CAJAR) [ICC benchmarking consultation on Colombia: What is the way forward for the longest preliminary examination in the history of the Court?](#)
7. [EN | FR] [Preliminary examinations at the ICC: An analysis of Prosecutor Bensouda's legacy](#)
8. [EN | SP] (with IDHEAS) [Mexico: Report denounces enforced disappearances by Nayarit Public Prosecutor's Office, urges ICC to investigate](#)
9. [EN | FR] (with WIGJ) [Accountability for sexual and gender-based crimes at the ICC: An analysis of Prosecutor Bensouda's legacy](#)
10. [EN | FR] ["Whose Court is it? Judicial handbook on victims' rights at the International Criminal Court"](#)
11. [EN | FR | SP] (with TRIAL International, REDRESS, ECCHR, Civitas Maxima and CJA) [UJAR 2021: The impact of coronavirus on universal jurisdiction](#)

Open letters (jointly with other organisations)

1. [EN] [Ukraine: Human rights group urges President to sign international crimes law](#)
2. [EN | FR | SP] [The justice survivors deserve: Open letter to the new ICC Prosecutor Karim Khan](#)
3. [EN | FR | SP] [Human rights organisations send farewell letter to ICC Prosecutor Fatou Bensouda](#)
4. [EN] [Palestine: FIDH and 190 organisations support Sheikh Jarrah families' letter to the ICC regarding their imminent forced displacement](#)
5. [EN | FR | SP] [Cambodia: International Criminal Court Prosecutor urged to prosecute land grabbing crimes](#)
6. [EN] [USA: More than 70 non-governmental organizations, faith-based groups, and academic institutions call for the Biden administration to repeal ICC sanctions](#)

7. [EN | FR | SP] [USA: NGOs to Biden—support access to justice for all by rescinding Trump-era executive order impeding ICC’s work](#)

Statements (jointly with other organisations)

1. [EN] [Afghanistan: Resumption of the ICC investigation into Afghanistan, while welcome, should not exclude groups of victims or crimes within the Court’s jurisdiction](#)
2. [EN] [With sanctions lifted, here’s how the Biden administration must go further to engage with ICC](#)
3. [EN | FR | SP] [DRC: Nearly twenty years after the crimes in question were committed, ICC orders reparations for the victims of Bosco Ntaganda](#)
4. [EN | FR | SP] [With ICC at a crossroads, new Prosecutor elected to lead Court’s fight against impunity for the most serious crimes](#)
5. [EN | FR | SP] [Palestine: Welcomed ICC landmark decision recognising its territorial jurisdiction over Palestine including Gaza and the West Bank](#)
6. [EN | FR | SP] [Uganda: Dominic Ongwen convicted by the ICC for a wide range of sexual and gender-based crimes](#)
7. [EN | FR | SP] [CAR: An ex-Séléka at the ICC—Towards equal accountability for crimes committed in Central African Republic](#)

Happenings in The Hague

1. [EN | FR | SP] [Transition of the ICC Office of the Prosecutor](#)
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3. [EN] [Q&A on the Dominic Ongwen case at the ICC](#)

Campaigns

1. [EN | FR | SP] (with IDHEAS and CAJAR) [Mexico and Colombia: together to fight impunity for forced disappearances and extra-judicial executions](#)

Background information on above publications

Changes at the ICC

To close the ASP19 December session, [FIDH welcomed](#) the election of six new judges to join the ICC bench over the course of 2021, among which five were characterised as “highly qualified” by the Advisory Committee mandated to assess the candidates’ profiles. Only two months later, and following a contentious election process, [FIDH congratulated](#) Mr Karim Khan for being elected as the third ICC Prosecutor. We considered that this election represented a key opportunity to reaffirm the Court as an essential actor in the fight against impunity for international crimes, and to strengthen its impact on victims and affected communities.

Following the election, and together with more than 70 other human rights organisations, [FIDH then sent a farewell letter](#) to Prosecutor Bensouda, expressing our gratitude for her many years of

service to the Court and for the progress made by the OTP during her tenure. In a similar vein, when Prosecutor Khan took office in June 2021, FIDH and 47 of its member organisations addressed to the new Prosecutor a [welcome letter](#), taking the opportunity to highlight key ways to advance justice at the ICC.

Given the importance of such a transition between two Prosecutors at the ICC, and for the work of the Court and the OTP in particular, FIDH also published a [Q&A](#) with accessible information on the transition process, the profile of the new Prosecutor, what he was about to inherit, and the challenges that he would face when taking office.

Attacks against the OTP

In terms of challenges, FIDH closely followed the election of US President Joe Biden and his approach towards the executive order adopted by President Donald Trump in 2020 which directly targeted international justice efforts before the ICC, and further threatened international efforts towards accountability for the most serious crimes of concern to the international community as a whole. Together with 62 of its member organisations, FIDH first [called on the Biden's administration](#) to demonstrate their commitment to human rights to fully rescinding, with immediate effect, the executive order. We then joined a global movement of more than 70 NGOs reaffirming in an [open letter](#) the need to repeal the executive order and ICC sanctions. In April, we finally welcomed the lifting of the sanctions and, with 28 of our member organisations, [urged the US](#) to constructively engage with the ICC and demonstrate its commitment to accountability for serious international crimes, including those committed by the most powerful.

Taking stock of Fatou Bensouda's mandate

To reflect on Fatou Bensouda's nine years as the ICC Prosecutor (2012-2021), FIDH engaged in a stocktaking exercise focused on three key areas of the work of the OTP particularly relevant to our mandate - accountability for sexual and gender-based crimes, preliminary examinations, and outreach to victims and affected communities – and identified key recommendations addressed to the incoming Prosecutor. It was divided into three papers launched over the course of 2021. On 18 June, to mark the International Day for the Elimination of Sexual Violence in Conflict, FIDH and its partner, Women's Initiatives for Gender Justice (WIGJ), [launched](#) the first [publication](#) of the series during an online event with the participation of both Prosecutor Bensouda and Khan. The [paper on preliminary examinations](#), based on consultations involving organisations from 13 countries connected to preliminary examinations, was [published](#) in September. The last paper, prepared together with our partner organisation No Peace Without Justice, will be published in December.

Victims' rights

Similarly to the opportunity created by the transition from the second to third ICC Prosecutor, we called attention to of the replacement of one third of the ICC bench and [prepared a handbook](#) taking stock of the judicial implementation of victims' rights at the ICC (as of early 2021), and presented key practical recommendations for Chambers on the role they can, and must, play in ensuring meaningful exercise of victims' rights. This handbook was presented to remaining and newly elected judges, and [made available publicly](#), together with an [executive summary](#).

Reactions to ICC situations and cases developments

Over the course of 2021, FIDH continued to closely monitor situations under the jurisdiction of the Court, react to major developments, and call on the respective organs and bodies of the Court to act according to their mandate where necessary.

As such, FIDH [welcomed in February the landmark decision](#) recognising the ICC's territorial jurisdiction over Palestine, including Gaza and the West Bank, and therefore allowing the Prosecutor to investigate Rome Statute crimes committed on these territories. We took this opportunity to also provide an accessible analysis of this complex situation, published in the form of a [Q&A](#) on our website.

However, in two other situations FIDH, together with organisational members and partners, urged the ICC to take measures or move forward. On the situation of Cambodia, and following a public announcement on to a soon-to-be-made decision by the OTP, a [letter](#) was sent to Fatou Bensouda, endorsed by UN Expert bodies, civil society organisations, and senior lawyers worldwide, expressing our support for pursuing an ICC examination into land grabbing crimes. With regard to the situation of Mexico, FIDH and one of its Mexican member organisations, IDHEAS, [published a report](#) denouncing enforced disappearances allegedly committed by the Nayarit Public Prosecutor's Office, and urging Prosecutor Khan to consider initiating an investigation for possible crimes against humanity in the country. This follows a [campaign](#) launched by FIDH and partner organisations which started earlier this year on the crimes of enforced disappearances and extra-judicial executions in Mexico and Colombia.

FIDH and its member organisations have also been particularly involved in the Colombian situation, and will remain so despite the decision of Prosecutor Khan to terminate the preliminary examination without opening an investigation. After Prosecutor Bensouda issued a call for a benchmarking consultation before leaving office, FIDH and CAJAR prepared a joint report aimed at contributing to the reflection on how the Office should deal with a preliminary examination that faces a long-term, multi-layered domestic accountability process. The [confidential report](#), introducing 10 benchmarks, with their 30 corresponding indicators, was submitted confidentially to the OTP in October.

Finally, FIDH, Armanshahr / OPEN ASIA and CCR [took position](#) on Prosecutor Khan's latest decision on the situation of Afghanistan. While we welcomed his intention to resume the investigation concerning the crimes committed by the Taliban, we raised our deep concerns regarding the apparent exclusion, without prior information and consultation of victims, of certain actors involved in international crimes committed in the context of the Afghan armed conflict since May 2003. While the recent [shocking developments](#) in Afghanistan justify an emphasis on the crimes committed by the Taliban, we hope that all responsible for atrocity crimes will be held accountable.

In terms of specific cases, FIDH particularly [welcomed](#) the conviction of Dominic Ongwen for the international crimes he committed in northern Uganda since July 2002, including a wide range of sexual and gender-based crimes. Together with our member organisation FHRI, we considered that this verdict finally brings justice to victims of atrocious crimes committed by the LRA and serves as a strong message to other commanders still active and also responsible for such crimes. To provide more accessible insight into this important case, we prepared a [short Q&A](#) explaining the facts, decision, and its importance.

FIDH and its local member organisations also [welcomed](#) the arrest of Mahamat Said Abdel Kani, the first ex-Seleka who may face have to answer before the ICC for his alleged crimes, which constitutes an important first step towards recognising the responsibility of all sides for the crimes committed in CAR in 2013 and 2014. Finally, together with our member from the DRC, we also [welcomed](#) the decision ordering reparations in the case against Bosco Ntaganda, which takes into account the demands of the victims, and call on the states concerned to support the prompt and effective implementation of the reparation measures ordered.

Universal jurisdiction

FIDH, TRIAL, REDRESS, ECCHR, CJA, and Civitas Maxima [published a report](#) containing information on universal jurisdiction cases in 2020, looking at if and how the Covid-19 pandemic has impacted the delivery of justice at the national level. The 2021 [Universal Jurisdiction Annual Review \(UJAR\)](#) shows that many cases did move forward and new suspects were brought to justice, and that even a global health crisis did not imperil the use of universal jurisdiction across the world.



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Keep your eyes open

fidh

Establishing the facts - Investigative and trial observation missions

Supporting civil society - Training and exchange

Mobilizing the international community - Advocacy before intergovernmental bodies

Informing and reporting - Mobilizing public opinion

For FIDH, transforming societies relies on the work of local actors.

The Worldwide Movement for Human Rights acts at national, regional and international levels in support of its member and partner organisations to address human rights abuses and consolidate democratic processes. Its work is directed at States and those in power, such as armed opposition groups and multinational corporations.

Its primary beneficiaries are national human rights organisations who are members of the Movement, and through them, the victims of human rights violations. FIDH also cooperates with other local partner organisations and actors of change.

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FIDH is an
international human rights
NGO
federating 192 organisations
from 117 countries

fidh

ABOUT FIDH

FIDH takes action for the protection of victims of human rights violations, for the prevention of violations and to bring perpetrators to justice.

A broad mandate

FIDH works for the respect of all the rights set out in the Universal Declaration of Human Rights: civil and political rights, as well as economic, social and cultural rights.

A universal movement

FIDH was established in 1922, and today unites 192 member organizations in 117 countries around the world. FIDH coordinates and supports their activities and provides them with a voice at the international level.

An independent organisation

Like its member organizations, FIDH is not linked to any party or religion and is independent of all governments.