



**fidh**

# FIDH Recommendations to the 21st Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court The Hague, 5-10 December 2022

Position Paper



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# INTRODUCTION

Following two years of highly restricted sessions due to the global health crisis, the 21st session of the Assembly of States Parties (the “ASP”) to the Rome Statute of the International Criminal Court (“ICC” or “Court”) will be held in The Hague, the Netherlands, from 5 to 10 December 2022.<sup>1</sup> FIDH welcomes the ASP resuming its pre-COVID-19 practices and enabling both in-person participation, including the possibility to organise side-events, and livestream attendance. The significantly limited civil society participation during the 19th and 20th sessions hampered this annual opportunity for exchange and awareness-raising between all actors involved in the fight against impunity for international crimes. While plenary discussions were still held and some online side-events were organised, including with the support of some States Parties, the 19th and 20th sessions were nevertheless largely deprived of the voices of victims, communities and those working most directly with them in countries of interest to the Court. In returning to in-person events, it will be crucial to hear from and actively engage with those most affected by the Court’s work, on its successes and shortcomings.

In 2022, the ICC continued to face numerous challenges, including insufficient or lack of State cooperation, limited resources (despite the unprecedented show of support to the Office of the Prosecutor (“OTP”) following Russian aggression against Ukraine), and attacks against its independence. These persisting challenges continue to hinder the Court’s progress in its preliminary examinations, investigations and cases.

Nevertheless, this year, which celebrated the 20th anniversary of the ICC’s establishment,<sup>2</sup> was also marked by promising developments. Since the 20th session of the ASP, the Court saw the swearing in of Mr Mame Mandiaye Niang and Ms Nazhat Shameem Khan as Deputy Prosecutors<sup>3</sup> as part of a renewed OTP structure; held several discussions regarding the assessment and implementation of key recommendations issued by the Independent Expert Review (“IER”) to enhance the Court’s performance;<sup>4</sup> opened an investigation into alleged crimes against humanity and war crimes committed in Ukraine since 2014;<sup>5</sup> resumed its investigation in Afghanistan;<sup>6</sup> joined Italy, the Netherlands, Spain and the United Kingdom in the Joint Team on crimes against migrants and refugees in Libya to increase cooperation and support to national investigation efforts;<sup>7</sup> opened the trials of Ali Muhammad Ali Abd-Al-Rahman (Darfur, Sudan)<sup>8</sup> and Mahamat Said Abdel Kani (Central

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1. ASP, [Provisional Work Programme](#), 11 November 2022.

2. ICC, [International Criminal Court marks 20th anniversary](#), 1 July 2022.

3. ICC, [Mame Mandiaye Niang and Nazhat Shameem Khan sworn in as Deputy Prosecutors of the International Criminal Court](#), 7 March 2022.

4. IER, [Independent Expert Review of the International Criminal Court and the Rome Statute System Final Report](#), 30 September 2020.

5. ICC, [Statement of ICC Prosecutor, Karim A.A. Khan QC, on the Situation in Ukraine: “I have decided to proceed with opening an investigation”](#), 28 February 2022.

6. ICC, [ICC judges authorise Prosecution to resume investigation in Afghanistan](#), 31 October 2022.

7. ICC, [Statement of ICC Prosecutor, Karim A.A. Khan QC: Office of the Prosecutor joins national authorities in Joint Team on crimes against migrants in Libya](#), 7 September 2022.

8. ICC, [Abd-Al-Rahman trial opens at International Criminal Court](#), 5 April 2022.

African Republic ("CAR") II);<sup>9</sup> and saw the transfer of Maxime Jeoffroy Eli Mokom Gawaka (CAR II).<sup>10</sup> Important policies and strategies were initiated, such as a Court wide Strategy on Gender Equality and Workplace Culture,<sup>11</sup> and an OTP Gender Persecution Policy (both to be launched during the 21st ASP session);<sup>12</sup> organisation of the OTP's first thematic roundtable with civil society organisations, on the topic of crimes against children;<sup>13</sup> and the OTP's joint launch with Eurojust of practical guidelines for civil society organisations on documenting and preserving information on international crimes (the "OTP/Eurojust Guidelines").<sup>14</sup> FIDH has raised some concerns about the process of establishing and reviewing these guidelines, including overly tight turnaround times provided to a limited number of civil society groups wishing to make comments; however, they have the potential to become a key tool for a more structured and mutually respectful cooperation between the OTP and civil society, recognising the latter's expertise and key role in furthering accountability efforts for international crimes.

This year's 21st ASP session will see general debates on matters such as cooperation, the activities of the Court and the Trust Fund for Victims ("TFV"), recommendations concerning the election of the Registrar, and budgetary allocations.<sup>15</sup>

This paper outlines FIDH's views regarding the Court's recent work, which the Federation and its member organisations closely followed over the course of the year, and presents six key recommendations relevant to this 21st session of the ASP, and addressed to States Parties and other stakeholders contributing to fulfil the Court's mandate.

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9. ICC, [Said trial opens at International Criminal Court](#), 26 September 2022.

10. ICC, [Situation in Central African Republic II: Maxime Jeoffroy Eli Mokom Gawaka surrendered to the ICC for crimes against humanity and war crimes](#), 14 March 2022.

11. ICC, [The ICC launches consultations on the zero draft of its first Strategy on Gender Equality and Workplace Culture](#), 9 December 2021.

12. ASP, [ASP21 Advance Journal](#), 11 November 2022, pp. 5, 6.

13. ICC, [Statement of the Prosecutor of the International Criminal Court, Karim A.A. Khan KC, on NGO roundtable on crimes against children](#), 15 November 2022.

14. ICC, [ICC Prosecutor and Eurojust launch practical guidelines for documenting and preserving information on international crimes](#), 21 September 2022.

15. ASP, [Provisional Work Programme](#), 11 November 2022.

# FIDH's Six Recommendations to States Parties at the ASP's 21st Session

FIDH makes the following six recommendations to States Parties for the upcoming 21st ASP session on issues relevant to its mandate.

## 1. Victims must be central to ICC proceedings

The ICC was created with the express intention of giving victims a central role in the judicial process, from rights to participate in proceedings to rights to claim reparation.<sup>16</sup> Meaningful victim participation notably recognises the victims' experience, enables them to express their views, and allows them to contribute to, and benefit from, the justice process.<sup>17</sup> Since the Rome Statute's entry into force, FIDH has consistently monitored victims' rights before the Court and advocated for victims and communities to have a prominent voice in all stages of ICC proceedings.<sup>18</sup> Over the course of 2022, FIDH and its member organisations have raised their concerns and closely followed developments in relation to victim participation.

Firstly, FIDH and the Colectivo de Abogados José Alvear Restrepo regretted the Prosecutor's decision in October 2021 to close the preliminary examination, after 17 years, into crimes under the jurisdiction of the Court committed in Colombia. It was particularly concerning that this decision was taken without providing sufficient reasoning to victims and impacted communities, in contrast to past closed preliminary examinations in situations such as UK/Iraq, Gabon and Honduras.<sup>19</sup> After almost two decades of the preliminary examination, the lack of comprehensive justification created understandable frustrations among victims, affected communities, civil society and local justice actors – who continue to witness the impunity of many high-ranking perpetrators in Colombia. Accordingly, FIDH welcomed the Pre-Trial Chamber's decision in July 2022,<sup>20</sup> which noted that the Prosecutor does have an "obligation to promptly inform" victims, organisations (including FIDH and CAJAR), or others who provided information during the 17 year preliminary examination of his reasoning and now await a timely response from the OTP. The Colombian situation illustrates the broader concerns previously raised by FIDH in relation to the lack of situation-specific outreach activities and engagement with survivors, victims and affected communities during the preliminary examination phase,<sup>21</sup> leading the Federation to call for a "Court-wide outreach strategy to ensure that victims are properly informed and engaged throughout all phases".<sup>22</sup>

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16. See in particular Articles 68 and 75 of the Rome Statute; Rule 94 of the Rules of Procedure and Evidence.

17. FIDH, *New ICC Judges Must Ensure the Meaningful Participation of Victims in Criminal Proceedings*, November 2020, p. 5.

18. 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.

19. FIDH, *Colombia: ICC Prosecutor's baffling choice to close preliminary examination must be reversed*, 27 April 2022.

20. FIDH, *Colombia: International Criminal Court orders Prosecutor to justify closing preliminary examination*, 26 July 2022.

21. FIDH, *Preliminary Examinations at the ICC: an analysis of Prosecutor Bensouda's Legacy*, September 2021, pp. 17-18; FIDH, *The justice survivors deserve: Open Letter to the new ICC Prosecutor Karim Khan*, 23 June 2021.

22. FIDH, *December 2021: FIDH Recommendations to the 20th session of the Assembly of States Parties to the ICC Statute*, November 2021, p. 8.

Secondly, FIDH called for victims to be placed at the centre of reparations proceedings, such as Ugandan victims in the case of Dominic Ongwen.<sup>23</sup> In what might become the largest and most complex reparations proceedings considered by the Court to date (with over 4,000 victims participating during the trial stage alone), it is crucial for the ICC to deliver prompt and effective reparations to all eligible victims and to improve on its past procedural delays and inconsistencies. Accordingly, FIDH recommended the Court adopt and operationalise a victim-centred methodology for the design, identification and implementation of reparations. Throughout all reparations phases, measures must be implemented to enable effective and meaningful victim participation, including through ensuring adequate legal representation, psychosocial support, information about services, care provisions for children and transportation allowances to victims. Given the obstacles faced as a result of their experiences, measures should also be taken to facilitate victim identification – for example, establishing a presumption that children born from sexual violence are direct victims, and accounting for displaced victims outside of Uganda.

Thirdly, FIDH followed the proposed reform of the ICC's legal aid system, to be implemented from 2024. FIDH welcomes the opportunity to reform and enhance the legal aid system, to ensure meaningful support for, and representation of, victims, and welcomes promising steps such as an automatic presumption of indigence for victims (with the recognition that "since the first participation of victims, no victim has been found to have sufficient financial means to engage legal representation"<sup>24</sup>). However, FIDH continues to have a number of concerns over the current legal aid proposal. For example, many costs are structured in fixed lump sum payments, rather than open for annual reassessment,<sup>25</sup> and victims are only supported after the arrest of the accused and not in the preliminary phases.<sup>26</sup> The draft policy also fails to automatically consider the individual characteristics of victims – including those who may need additional support in the legal process due to age or disability, or because of the nature of the crimes alleged, which would have to be raised in each case by the common legal representative.<sup>27</sup> Furthermore the policy foresees a potentially small composition of victims teams at certain phases,<sup>28</sup> and resources are provided for victims on the basis of only one legal team, which lumps victims together and reduces individuality and diversity of representation.<sup>29</sup> Accordingly FIDH hopes there will be a meaningful opportunity for in-depth engagement and dialogue with civil society, victims and their legal representatives on these issues before the legal aid policy is finalised. Looking forward, the ICC's budget from 2024 must simultaneously ensure sufficient financial resources are requested and devoted to fully implementing this renewed legal aid system.

Finally, FIDH closely followed recent discussions in relation to the recommendations on victims' participation and reparation made by the IER,<sup>30</sup> particularly in relation to the judiciary. FIDH noted with regret that a number of recommendations continue to be negatively assessed, with many deferred to the Registry. It is particularly concerning that judges are barring victims' automatic participation in additional cases for the same situation, and declining to extend the range of proceedings in

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23. FIDH, [Dominic Ongwen: Ugandan Victims Must Be at the Centre of Reparations Proceedings](#), 8 February 2022.

24. Submissions to the Committee on Budget and Finance on the Full Reform of the Registry's Single Policy Document on the Court's Legal Aid System (ICC-ASP/12/3), para. 20.

25. Submissions to the Committee on Budget and Finance on the Full Reform of the Registry's Single Policy Document on the Court's Legal Aid System (ICC-ASP/12/3), para. 72.

26. Submissions to the Committee on Budget and Finance on the Full Reform of the Registry's Single Policy Document on the Court's Legal Aid System (ICC-ASP/12/3), paras. 37-41, p. 73.

27. Submissions to the Committee on Budget and Finance on the Full Reform of the Registry's Single Policy Document on the Court's Legal Aid System (ICC-ASP/12/3), paras. 52-54.

28. Submissions to the Committee on Budget and Finance on the Full Reform of the Registry's Single Policy Document on the Court's Legal Aid System (ICC-ASP/12/3), para. 61.

29. Submissions to the Committee on Budget and Finance on the Full Reform of the Registry's Single Policy Document on the Court's Legal Aid System (ICC-ASP/12/3), para. 63, p. 64.

30. Victim participation R336-341 and reparations R342-349 & R352.

which the Court can appoint counsel for victims to include preliminary examinations and requests for authorisation to open an investigation, and instead encouraging victims to submit observations directly to the Prosecutor. FIDH reiterated that the application process for victim participation should begin as early as possible to enable comprehensive participation. FIDH also continues to request prioritisation of the IER recommendation for consistent and coherent reparations principles. Moving forward, the judiciary must make further efforts to implement the IER's recommendations, both in terms of their administration and conduct of proceedings, to enable effective victim participation and reparation.

#### **FIDH calls upon States Parties to:**

- 1. Request the OTP to consistently justify its decisions and significant situation developments, such as when closing a preliminary examination or investigation, to ensure victims and impacted communities understand, are kept abreast, can share their views and concerns about Court processes and reasoning, and can fulfil their mandate as a participant in ICC proceedings.**
- 2. Urge the Court to implement outreach plans that are situation specific and adopt a Court-wide outreach strategy to ensure that victims and affected communities are promptly and properly informed and engaged throughout all phases, including during preliminary examinations.**
- 3. Encourage the Court to guarantee meaningful victim participation and inclusion throughout all phases of reparations proceedings, and recommend the adoption of a victim-centred methodology for the design, identification and implementation of reparations, with effective and meaningful victim participation and enhanced victim identification.**
- 4. Support meaningful engagement and dialogue with civil society, victims and their legal representatives on the draft legal aid policy, and anticipate allocating sufficient financial resources for the revised policy in the ICC's 2024 budget.**
- 5. Promote implementation of the IER's recommendations in relation to victims' participation and reparation.**

## **2. Civil society protection and participation must be assured, with its role and expertise recognised**

FIDH welcomed new OTP initiatives to strengthen engagement with civil society and the expressed desire to deepen partnerships with impacted communities.<sup>31</sup> These measures include hosting two thematic roundtables each year with non-governmental organisations ("NGOs"), developing and publishing the OTP/Eurojust Guidelines,<sup>32</sup> and introducing new programmes for field office engagement with national NGOs and local community-based organisations. Unfortunately FIDH continues to note

31. ICC, [ICC Prosecutor Karim A.A. Khan QC announces new initiative to strengthen engagement with civil society](#), 13 May 2022.

32. ICC, [ICC Prosecutor and Eurojust launch practical guidelines for documenting and preserving information on international crimes](#), 21 September 2022.

missed opportunities for meaningful civil society engagement, which often remains limited or selective. FIDH reaffirms that the Court's work will be strengthened by dedicating time, resources and funding to engaging with survivors and civil society, both in terms of conducting effective investigations and prosecutions and in the development of broader ICC policy and governance (for example on proposed reform of the ICC's legal aid system).

After several years of calls from civil society for clearer guidance on elements and materials to submit to the OTP, the OTP/Eurojust Guidelines<sup>33</sup> are welcomed by FIDH as important guidance material to support NGO engagement with witnesses and survivors whilst preserving the integrity of potential testimony and reducing the risk of re-traumatisation. FIDH appreciated the recognition of civil society's role and expertise, which was ultimately included in the final version, and hopes that the OTP/Eurojust Guidelines will promote increased engagement between civil society and the OTP, by reference to its guidance on how to engage and support the OTP's work. Whilst FIDH was pleased to see that civil society comments and feedback on the first draft were actively considered, and many implemented in the final version, it regrets that the process and tight turnaround times requested for comments did not ultimately allow for a full breadth of civil society consultation and participation, with it primarily limited to international NGOs. It was also disappointing that consultations, as well as the launch and publication of the OTP/Eurojust Guidelines, occurred only in English, without regard to other languages of relevance to the Court and its situation countries. Within the foreword, the OTP/Eurojust Guidelines specifically refer to the situation in Ukraine, which demonstrates significant risks relating to over-documentation; however, it is vital for the Court to recall civil society's efforts over many years in documenting grave violations in numerous other situations. Moving forward, FIDH recommends that the OTP work closely with civil society to ensure effective implementation of the OTP/Eurojust Guidelines, to monitor and evaluate their impact, and facilitate their contribution to potential revisions or further editions of this valuable tool.

FIDH has repeatedly spoken out against a decision by Israeli authorities in October 2021 to designate six prominent Palestinian rights groups as 'terrorists', thereby banning their work, in one of many Israeli attempts to delegitimise, discredit and isolate those defending Palestinian rights to self-determination.<sup>34</sup> Whilst many in the international community, including nine European States<sup>35</sup> and several international organisations and experts,<sup>36</sup> have also publicly condemned the unfounded targetting and oppression of Palestinian civil society, there remain notable gaps in terms of solidarity and support. States Parties must also establish concrete measures of protection for targeted human rights defenders and civil society. FIDH highlights and condemns that during the course of 2022, certain States took strong positions on limiting civil society involvement in discussions related to the Court. Going forward, it is imperative for all States Parties to recognise civil society's vital and independent work as a check and balance on State and non-State actors, and to denounce unjustified political pressure on NGOs.

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33. ICC, [ICC Prosecutor and Eurojust launch practical guidelines for documenting and preserving information on international crimes](#), 21 September 2022.

34. Organisations are Al-Haq, Addameer, Defense for Children Palestine, Bisan Center, Union of Agricultural Work Committees and Union of Palestinian Women's Committees. FIDH, [FIDH condemns Israel's assault on prominent Palestinian human rights organisations](#), 18 August 2022; FIDH, [States should act to protect human rights in Palestine, and dismantle Israel's apartheid](#), 28 September 2022.

35. [Joint Statement by the Foreign Ministries of Belgium, Denmark, France, Germany, Ireland, Italy, the Netherlands, Spain and Sweden on the designation of Palestinian civil society organisations as terrorist organisations](#), 12 July 2022.

36. UN, [UN experts condemn Israel's designation of Palestinian human rights defenders as terrorist organisations](#), 25 October 2021. UN, [UN High Commissioner for Human Rights Bachelet Calls Israel's "Terrorism" Designation an Unjustified Attack on Palestinian Civil Society](#), 26 October 2021.

## **FIDH calls upon States Parties to:**

- 1. Ensure the Court continues strengthening its engagement and partnerships with civil society and impacted communities.**
- 2. Encourage the OTP to work closely and meaningfully with civil society, including to ensure effective implementation of the OTP/Eurojust Guidelines, to monitor and evaluate their impact and enable their contribution to potential revisions or further editions.**
- 3. Demonstrate solidarity and support in response to unfounded targeting and oppression of civil society.**
- 4. Establish concrete measures of protection for targeted human rights defenders and civil society.**
- 5. Recognise civil society's vital and independent mandate and work, and denounce unjustified political pressure on NGOs.**

### **3. Commitment to complementarity and cooperation with the ICC must be evidenced**

States Parties cooperation is essential for the ICC's work and under the Rome Statute, they are obliged to fully cooperate with the Court.<sup>37</sup> Only through the support and active cooperation of States Parties can the Court be empowered, its work legitimised and mandate realised. FIDH therefore reminds States Parties of the importance of actively cooperating with the Court, including by providing access to territory and information, cooperating during an investigation, taking all measures necessary to execute arrest warrants and transfer suspects to the seat of the Court, and of openly expressing their determination to do so in public statements or at international, regional or national fora, including this 21st ASP session.

FIDH welcomes support given by States Parties and the ICC to the situation in Ukraine, including the opening of an investigation<sup>38</sup> (following referral by 41 States<sup>39</sup>), participation in the joint investigation team<sup>40</sup> and deployment of forensics and investigative teams.<sup>41</sup> Several States Parties, and their citizens, also took additional measures of support, including opening their borders and providing funding and humanitarian assistance to those fleeing Ukraine. However, such unprecedented support should be considered as a baseline reaction to all situations where serious human rights violations are committed. FIDH remains concerned about the lack of, or limited, mobilisation of the international community towards accountability for other serious, on-going, long-lasting and often well documented

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

38. ICC, [Statement of ICC Prosecutor, Karim A.A. Khan QC, on the Situation in Ukraine: "I have decided to proceed with opening an investigation"](#), 28 February 2022.

39. ICC, [Statement of ICC Prosecutor, Karim A.A. Khan QC, on the Situation in Ukraine: Receipt of Referrals from 39 States Parties and the Opening of an Investigation](#), 2 March 2022. ICC, [Statement of ICC Prosecutor, Karim A.A. Khan QC, on the Situation in Ukraine: Additional Referrals from Japan and North Macedonia; Contact portal launched for provision of information](#), 11 March 2022.

40. ICC, [Statement by ICC Prosecutor, Karim A.A. Khan QC: Office of the Prosecutor joins national authorities in Joint Investigation Team on international crimes committed in Ukraine](#), 25 April 2022.

41. ICC, [ICC Prosecutor Karim A.A. Khan QC announces deployment of forensics and investigative team to Ukraine, welcomes strong cooperation with the Government of the Netherlands](#), 17 May 2022.

situations, such as Afghanistan, Belarus, Colombia, Libya, Mexico, Palestine, Syria and Yemen.<sup>42</sup> FIDH recommends building upon this unprecedented support for accountability for crimes committed in Ukraine to strengthen the cause of justice equally, worldwide.<sup>43</sup>

FIDH is also encouraged by the recent actions of certain States. For instance, FIDH welcomes the steps taken earlier this year by the authorities of Chad to cooperate with the Court, leading to the transfer of Maxime Mokom in March 2022.<sup>44</sup> FIDH takes notes of the cooperation efforts between accountability actors in various situations, under the principle of complementarity between the ICC and national jurisdictions. In October 2022, FIDH and its member organisations published a report on complementarity between relevant national and international accountability actors for the international crimes committed in CAR.<sup>45</sup> It revealed efforts to enhance the fight against impunity by multiplying efforts of justice and cooperation between the national jurisdictions, the hybrid Special Criminal Court and the ICC – while also highlighting challenges and areas for improvement. In the same situation, FIDH welcomes the partnership established by the OTP with national authorities and international experts to conduct forensic analysis of victims' remains.<sup>46</sup> Such steps demonstrate how complementarity and cooperation – between jurisdictions and with national authorities – can be important tools in establishing truth and fighting against impunity. Another example is cooperation efforts in the Libya situation, including on crimes committed against migrants and refugees. FIDH welcomes the OTP's joining of the joint investigative team with national authorities from Italy, the Netherlands, Spain and the United Kingdom.<sup>47</sup> FIDH, together with Lawyers for Justice in Libya and the European Center for Constitutional and Human Rights, sent a comprehensive article 15 communication to the OTP on the crimes against humanity committed against migrants and refugees in Libya, which are so far unaddressed by the OTP in the framework of the Libya investigation.<sup>48</sup> This is an important step to break the cycle of violence on the territory. However, we firmly believe that this cooperation should not prevent the OTP from conducting its own investigation into the crimes committed against migrants and refugees and prosecute those most responsible, who are often protected at the national level.

FIDH also notes that Bangladesh,<sup>49</sup> Guinea,<sup>50</sup> Libya,<sup>51</sup> Nigeria,<sup>52</sup> Sudan,<sup>53</sup> Ukraine and Poland,<sup>54</sup> and Venezuela<sup>55</sup> supported visits on their territory from the Prosecutor or Deputy Prosecutor in 2022.

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42. FIDH, Resolution adopted by the FIDH's 41st Congress on the fight against impunity for serious human rights violations, October 2022.

43. FIDH, European Day Against Impunity: Bolster justice efforts worldwide, 23 May 2022.

44. ICC, Situation in Central African Republic II: Maxime Jeoffroy Eli Mokom Gawaka surrendered to the ICC for crimes against humanity and war crimes, 14 March 2022.

45. FIDH (with LCDH, OCDH), What prospects for Justice in the Central African Republic, Complementarity between national and international mechanisms: status and challenges, October 2022.

46. ICC, Office of the Prosecutor of the International Criminal Court partners with national authorities and international experts in the forensic analysis of remains of victims in the Central African Republic, 23 June 2022.

47. ICC, Statement of ICC Prosecutor, Karim A.A. Khan QC: Office of the Prosecutor joins national authorities in Joint Team on crimes against migrants in Libya, 7 September 2022.

48. FIDH (with ECCHR and LFJL), Migrants and refugees in Libya face crimes against humanity: ICC must investigate, EU must stop support, 23 November 2021.

49. ICC, ICC Prosecutor, Karim A. A. Khan QC, concludes first visit to Bangladesh, underlines commitment to advance investigations into alleged atrocity crimes against the Rohingya, 1 March 2022.

50. ICC, Statement by ICC Prosecutor Karim A.A. Khan KC regarding the opening of the trial related to events of 28 September 2009 in Guinea, signature of Agreement with Transitional Government on complementarity and closure of the Preliminary Examination, 29 September 2022.

51. ICC, ICC Deputy Prosecutor, Ms Nazhat Shameem Khan, concludes technical visit to Tripoli, underlines commitment of the Office of the Prosecutor to renewed strategy for action in relation to the Situation in Libya, 1 July 2022.

52. ICC, ICC Prosecutor, Mr Karim A.A. Khan QC, concludes first official visit to Nigeria, 22 April 2022.

53. ICC, Statement of ICC Prosecutor, Karim A.A. Khan QC upon conclusion of his visit to Khartoum and Darfur: "Together we must ensure that our initial steps towards justice are not a false dawn", 29 August 2022.

54. ICC, Statement of ICC Prosecutor, Karim A.A. Khan QC, on his visits to Ukraine and Poland: "Engagement with all actors critical for effective, independent investigations.", 16 March 2022. ICC, ICC Prosecutor Karim A. A. Khan QC visits Kharkiv, Ukraine on 15 June 2022, 17 June 2022.

55. ICC, Statement of ICC Prosecutor, Karim A.A. Khan QC, on completion of second visit to Venezuela: "Through cooperation we

However, FIDH recalls that welcoming ICC official visits are only one small aspect of international cooperation, and that much more must be done by States, including those steps mentioned above, to address the ongoing commission of, and impunity arising for, crimes in these territories.<sup>56</sup> Similarly, all States' complementarity and cooperation efforts should be assessed and reviewed with caution. FIDH and various member organisations have regretted the OTP's decision to close the preliminary examination in Colombia following the signature of a cooperation agreement with the State, as national efforts still show important lacunas, a lack of resources and crucially a lack of sufficient political will.

The ICC's ability to fulfil its mandate heavily depends on States Parties' cooperation, yet this remains an ongoing and critical challenge. In last year's ASP position paper, ahead of the 20th session in 2021, FIDH expressed deep concern about failures to execute outstanding arrest warrants,<sup>57</sup> which were recently reiterated in response to developments in the CAR situation.<sup>58</sup> This year again, the numbers speak for themselves, as 14 ICC suspects remain at large.<sup>59</sup> For example, despite welcoming the ICC's first trial on Darfur,<sup>60</sup> four arrest warrants, issued against former president Omar Al-Bashir, Abel Raheem Muhammad Hussein, Ahmad Harun, and Abdallah Banda Abakaer Nourain, have yet to be executed in Sudan – despite three of these individuals being in Sudan's custody. FIDH awaits concrete measures from Sudan to act upon its past commitments and stated enthusiasm for ICC cooperation.<sup>61</sup>

FIDH has consistently advocated for an appropriate way to address non-cooperation.<sup>62</sup> Beyond the standing session on cooperation during the ASP, which invites States to broadly discuss the issue, FIDH calls for tangible ways to tackle specific instances of flagrant non-cooperation and consider appropriate measures and sanctions.

#### **FIDH calls upon States Parties to:**

- 1. Actively cooperate with the Court at all stages of proceedings, supporting and enabling the Court to fulfil its mandate.**
- 2. Undertake meaningful complementarity and cooperation efforts, and encourage the OTP to critically assess States' efforts.**
- 3. Improve and apply ASP procedures related to non-cooperation. Directly address instances of non-cooperation and envision adequate measures and sanctions.**
- 4. Reflect upon enhancing and equalising baseline support offered to all situations where serious human rights violations are committed.**

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*will accelerate our common work towards justice.*", 31 March 2022.

56. See for example, FIDH (with ACJPS), *Delays and Dilemmas: New Violence in Darfur and Uncertain Justice Efforts within Sudan's Fragile Transition*, 30 November 2021; FIDH (with ECCHR and LFJL), *NO WAY OUT: Migrants and Refugees Trapped in Libya Face Crimes Against Humanity*, 23 November 2021.

57. FIDH, *December 2021: FIDH Recommendations to the 20th session of the Assembly of States Parties to the ICC Statute*, November 2021, p. 5.

58. FIDH, *CAR: Justice efforts weakened by the non-execution of arrest warrants*, 5 August 2022.

59. ICC, *About the Court "Facts and Figures"*, available here: <https://www.icc-cpi.int/about> (accessed 1 November 2022).

60. FIDH, *International Criminal Court opens first trial on Darfur: historic moment for Sudanese victims and survivors*, 4 April 2022.

61. ICC, *Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, at a media briefing in Khartoum, Sudan: "There is an urgent need for justice in Sudan. Sustainable peace and reconciliation are built on the stabilizing pillar of justice."*, 20 October 2020. ICC, *Statement of ICC Prosecutor, Karim A.A. Khan QC upon conclusion of his visit to Khartoum and Darfur: "Together we must ensure that our initial steps towards justice are not a false dawn"*, 29 August 2022.

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

## 4. States must establish a long-term, forward-thinking and unrestricted budget for the ICC

The ICC's annual budget is proposed by the Court,<sup>63</sup> examined by the Committee on Budget and Finance ("CBF"), which then provides recommendations,<sup>64</sup> and is adopted at the ASP. For 2023, the Court ultimately proposed a budget of approximately €186.8 million, representing a 20.6% increase from its 2022 budget of approximately €154.85 million.<sup>65</sup> The CBF has however recommended the Assembly approve a budget of €179.6 million, a 16% budget increase.<sup>66</sup> Whilst FIDH is pleased overall to see Court sections request realistic estimates based on their needs to ensure fulfilment of their mandate, it recalls past years of zero nominal growth and continues to propose a meaningful discussion on multi-year budgeting for the ICC. FIDH continues to express significant concern on the Court's liquidity, with outstanding contributions at the end of 2021 amounting to approximately €36.3 million.<sup>67</sup> FIDH reiterates that timely contribution should be standard practice, and the importance of States Parties paying their assessed contributions without delay.

The OTP has requested an increase of 26.6% from its 2022 budget, amounting to approximately €62.7 million for 2023.<sup>68</sup> Such increase is well merited as the OTP is currently seized with two situations under preliminary examination (Nigeria and Venezuela II), 17 investigations (Afghanistan, Bangladesh/ Myanmar, Burundi, CAR I/II, Côte d'Ivoire, Darfur, Democratic Republic of the Congo, Georgia, Kenya, Libya, Mali, Philippines, State of Palestine, Uganda, Ukraine, and Venezuela I), and 31 cases including the ongoing trials of Alfred Yekatom/Patrice-Edouard Ngaissona (CAR),<sup>69</sup> Mahamat Said Abdel Kani (CAR),<sup>70</sup> Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud (Mali),<sup>71</sup> and Ali Muhammad Ali Abd-Al-Rahman (Sudan).<sup>72</sup> FIDH also welcomes the OTP's budgetary request to enable its establishment of a formal field presence in Bangladesh, Sudan, Venezuela and Ukraine.<sup>73</sup> Such a step has the positive potential to deepen the OTP's cooperation with national authorities and civil society and bring its work closer to victims and communities. However, FIDH simultaneously notes the significant downsizing of the country office in Georgia (despite three outstanding arrest warrants), as well as reductions of field presence in the Democratic Republic of the Congo and Côte d'Ivoire.

FIDH welcomes the first contributions to the Trust Fund for Advanced Technology and Specialized Capacity, with 14 States Parties having made contributions or stated their wish to do so, which will help accelerate action across investigations.<sup>74</sup>

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63. ASP, [Proposed Programme Budget for 2023 of the International Criminal Court](#), 19 August 2022. ASP, [Proposed Programme Budget for 2023 of the International Criminal Court, Corrigendum](#), 9 September 2022. ASP, [Addendum to the Proposed Programme Budget of the International Criminal Court for 2023](#), 27 September 2022.

64. ASP, [Report of the Committee on Budget and Finance on the work of its thirty-ninth session](#), 15 October 2022.

65. Following the submission of the initial Proposed Program Budget which requested a 15.9% increase, inflation in the Netherlands increased rapidly which led the Court to revise its proposal to reflect the necessary increases to staff costs. ASP, [Proposed Programme Budget for 2023 of the International Criminal Court](#), 19 August 2022. ASP, [Proposed Programme Budget for 2023 of the International Criminal Court, Corrigendum](#), 9 September 2022. ASP, [Addendum to the Proposed Programme Budget of the International Criminal Court for 2023](#), 27 September 2022, p. 14.

66. ASP, [Report of the Committee on Budget and Finance on the work of its thirty-ninth session](#), 15 October 2022, p. 4.

67. ASP, [Financial statements of the International Criminal Court for the year ended 31 December 2021](#), 22 August 2022, p. 15.

68. ASP, [Addendum to the Proposed Programme Budget of the International Criminal Court for 2023](#), 27 September 2022, p. 16.

69. ICC, [Yekatom and Ngaissona Case](#).

70. ICC, [Said Case](#).

71. ICC, [Al Hassan Case](#).

72. ICC, [Abd-Al-Rahman Case](#).

73. ASP, [Proposed Programme Budget for 2023 of the International Criminal Court](#), 19 August 2022, p. 36.

74. ICC, [Statement of ICC Prosecutor, Karim A.A. Khan QC: Contributions and support from States Parties will accelerate action across our investigations](#), 28 March 2022.

The Registry has requested an increase of 17.9% from its 2022 budget, amounting to approximately €93.4 million for 2023.<sup>75</sup> FIDH has previously expressed concern over the lack of adequate financial and human resources allocated to ensure meaningful victim participation and legal representation.<sup>76</sup> Considering the forecasted judicial activity in 2023, as the Court envisages supporting up to eleven defence teams and eight teams of victims' legal representatives, FIDH supports the proposed approximate €424.1 thousand increase in legal aid.<sup>77</sup> However, it also reiterates the need for States to anticipate the proposed reforms to legal aid policy from 2024, and calls on them to be forward-thinking and anticipate adequate resources to fully implement new or revised initiatives. FIDH also acknowledges the 16.5% increase requested by the Division of External Operations, including the Public Information and Outreach Section, and the positive developments this increased funding could bring in terms of witness protection and support, as well as victim and community outreach in a variety of situations.

An adequate budget is also central to the TFV work and FIDH welcomes its Secretariat requesting an increase of 37.8% from its 2022 budget, amounting to approximately €4.4 million for 2023.<sup>78</sup> Together with the Victims Participation and Reparation Section, the TFV plays a critical role in facilitating victims' access to Court ordered reparations,<sup>79</sup> particularly as all individuals convicted to date have been declared indigent, leaving the financial burden to be shouldered by voluntary contributions. The negative impact that inadequate resources have on victims is becoming clearer each year, and must be addressed urgently.<sup>80</sup> In 2023, reparation activities will extend to five cases (Germain Katanga, Thomas Lubanga Dyilo, Ahmad Al Faqi Al Mahdi, Bosco Ntaganda,<sup>81</sup> and Dominic Ongwen). Considering the large victim base in the latter two cases, the reparation orders need to be carefully anticipated and provided for in the 2023 budget.<sup>82</sup> FIDH welcomed the announcement in April 2022 that the United Kingdom will make a £70,000 voluntary contribution to the TFV, earmarked to support survivors of conflict-related sexual and gender-based violence.<sup>83</sup> However, FIDH calls on further States to make meaningful, regular financial contributions to the TFV, preferably with general, unrestricted funds.

Following his decision to open a Ukraine investigation, the Prosecutor called on "all States Parties to provide assistance to [his] Office including through voluntary financial contributions and the provision of national experts on a secondment basis. This will be essential in addressing the urgent resource needs of my Office and in allowing us to effectively address all situations presently under investigation or in trial".<sup>84</sup> FIDH welcomes the substantial voluntary support given by States Parties to the situation in Ukraine, but whilst the positive response of States Parties signals a commitment to justice, it also reflects an acknowledgment that the Court does not have the resources necessary to fulfil its mandate.<sup>85</sup> States Parties making substantial pledges earmarked in the context of one specific situation risks perceptions of politicisation and selectivity in the Court's work, which could

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75. ASP, *Addendum to the Proposed Programme Budget of the International Criminal Court for 2023*, 27 September 2022, p. 18.

76. FIDH, *FIDH Recommendations to the 19th Session of the Assembly of States Parties to the ICC Statute: The Hague, 14-16 December 2020, New York, 17-23 December 2020*, December 2020, p. 13.

77. ASP, *Proposed Programme Budget for 2023 of the International Criminal Court*, 19 August 2022, p. 116; FIDH, *Whose Court Is It? Judicial Handbook on victims' rights at the International Criminal Court*, April 2021, p. 28.

78. ASP, *Addendum to the Proposed Programme Budget of the International Criminal Court for 2023*, 27 September 2022, p. 24.

79. FIDH, *Whose Court Is It? Judicial Handbook on victims' rights at the International Criminal Court*, April 2021, pp. 56-71.

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

81. ICC, *Ntaganda Case: Appeals Chamber directs the Trial Chamber to issue a new reparations order*, 12 September 2022.

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

83. ICC, *The United Kingdom contributes GBP 70,000 to the Trust Fund for Victims, in support of victim survivors of conflict related sexual and gender-based violence*, 4 April 2022.

84. ICC, *Statement of ICC Prosecutor Karim A.A. Khan QC, on the Situation in Ukraine: Additional Referrals from Japan and North Macedonia: Contact portal launched for provision of information*, 11 March 2022.

85. FIDH, *European Day Against Impunity: Bolster justice efforts worldwide*, 23 May 2022.

undermine its long-term legitimacy.<sup>86</sup> FIDH calls on States Parties to adopt a principled approach and ensure long-term financial support for the Court and for all situations of international crimes by contributing to its general, unrestricted budget and national justice programmes, including reparations programmes, rather than allocating funds for specific situations.<sup>87</sup>

#### **FIDH calls upon States Parties to:**

- 1. Adopt the 2023 budget requested by the Court, and develop a multi-year budgetary plan that is sustainable, needs-based, and ensures effective implementation of new or revised initiatives.**
- 2. Ensure long-term financial support for the Court and for all situations of international crimes by contributing to the Court's general, unrestricted budget rather than allocating funds for specific situations.**
- 3. Ensure that adequate resources are dedicated to sections of the Court working to support meaningful victim participation at all stages of the proceedings, and consider making meaningful, regular financial contributions to the TFV to enable prompt and adequate reparations for victims.**
- 4. Punctually disburse financial contributions to avoid liquidity issues.**

## **5. The Independent Expert Review findings and recommendations must be carefully and punctually assessed and implemented**

Almost three years after the establishment of the IER and two years after the publication of the experts' final report – including 384 recommendations to enhance the performance of the Court and the Rome Statute system – lessons can already be drawn on the process and recommendations made for 2023.<sup>88</sup> Since July 2021, numerous discussions have been held by the Review Mechanism, as well as other relevant ASP facilitations, to assess the IER recommendations. Steps have been taken, particularly by the ICC, to implement some of the positively assessed and most urgent recommendations.

FIDH particularly welcomes the numerous steps taken to address workplace misconduct and gender inequality at the Court, including the three Principals pledging their “commitment to achieving gender equality and a safe and inclusive workplace culture and environment”, in their High-Level Statement on Gender Equality adopted in 2021; the Prosecutor commissioning an Ad Hoc External Advisory Panel on Work Culture for the OTP;<sup>89</sup> a new Administrative Issuance adopted in 2022 on ‘Addressing Discrimination, Harassment, including Sexual Harassment, and Abuse of Authority’ for all ICC staff

86. CICC Open Letter to the ICC and the ASP, *Victims could lose out with states' double-standard on International Criminal Court resources*, 30 March 2022.

87. FIDH, *War in Ukraine: Statement of the International Federation for Human Rights (FIDH)*, 15 April 2022.

88. IER, *Independent Expert Review of the International Criminal Court and the Rome Statute System Final Report*, September 2020. IER, *Comprehensive Action Plan for the Assessment of the Recommendations of the Group of Independent Experts*, 30 June 2021.

89. ICC, *Annual Report of the Head of the Independent Oversight Mechanism*, 31 October 2022, p. 4.

and personnel;<sup>90</sup> reforms to the Code of Judicial Ethics to enhance transparency and accountability for judicial conduct and improve working conditions within the judiciary;<sup>91</sup> establishing an informal mechanism within the judiciary to address discrimination, harassment and abuse of authority by judges;<sup>92</sup> and the Court appointing the first ever ICC Focal Point for Gender Equality, to strengthen the Court's gender-related policies and address issues, including the employment conditions of women in the institution.<sup>93</sup>

Nonetheless, the Court faces a long road ahead in advancing gender equality and developing a healthy workplace culture, as demonstrated in the recent Annual Report of the Head of the Independent Oversight Mechanism (IOM). The Report notes that the Prosecutor forwarded to the IOM a 142-page report in March describing various forms of misconduct in the OTP, including allegations of "Serious Misconduct" against 12 current and former staff members of the OTP. The IOM's Annual Report also summarises their 2022 evaluation of the Judiciary's workplace culture, finding "that there existed a perceived atmosphere of impunity created over many years with regard to harassing and bullying behaviour from judges" and that "[a]lthough staff demonstrated awareness of the IOM investigation mandate, there was reluctance to formally report matters to the IOM for fear of retaliation."<sup>94</sup>

Overall the IER process and discussions have engaged both the Court and civil society. However, the complexity of the process, as well as uncertainty on stakeholder roles, created some hurdles and at times resulted in brief, seemingly tick-box discussions. Despite this, FIDH welcomes its regular exchanges with the Review Mechanism, which has placed great emphasis on establishing timely and transparent reporting.

FIDH was disappointed that there were limited opportunities for direct engagement with the Court in 2022, particularly on recommendations which directly impact on victims and affected communities, and on topics of primary concern to them such as legal representation, participation, reparations, outreach and field presence. Whilst the Coalition for the International Criminal Court ("CICC") led a Review Team to track, and help contribute to effective implementation of all the IER recommendations, not all members were able to actively participate in the Review Mechanism assessment discussions. Meetings were often held only in English, with no opportunity for simultaneous interpretation into other languages of relevance to the Court and its situation countries.

FIDH welcomed judges reflecting on the IER at their annual judicial retreat in September 2022, and in particular their focus on recommendations concerning victims' participation and the reparations process, as well as their commitment to maintaining a working group on these issues. While their position on victim participation at the initial stages of proceedings remains to be clarified, the judges acknowledged the benefits of using the 'A-B-C Approach' for considering applications for victims participation,<sup>95</sup> as supported by FIDH for its efficient and consistent approach.

Over recent years, the IER has made positive progress. It is however crucial to recall that beyond the initial work plan established by the Review Mechanism, which is scheduled to end in 2023, much more remains to be done in terms of ICC reform. Whether States Parties decide to renew, in full or in part, or terminate the Review Mechanism's mandate, or take other measures, efforts to improve

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90. ICC, [Administrative Instruction – Addressing Discrimination, Harassment, including Sexual Harassment, and Abuse of Authority](#), 6 April 2022.

91. ICC, [ICC Judges amend Code of Judicial Ethics](#), 7 October 2022.

92. ICC, [ICC judges agree on reforms in response to Independent Expert Review at annual retreat](#), 19 September 2022.

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

94. ICC, [Annual Report of the Head of the Independent Oversight Mechanism](#), 31 October 2022, pp. 4, 9.

95. ICC, [ICC judges agree on reforms in response to Independent Expert Review at annual retreat](#), 19 September 2022.

the Court's performance must continue and become part of its regular work stream. FIDH strongly affirms that the review process should not end with the Review Mechanism's mandate, and that we must all keep striving towards the ultimate goal of strengthening the ICC's performance and the Rome Statute system. At this stage, it is therefore crucial for the Court to reaffirm its efforts and for States Parties to maintain their advocacy and expertise, whilst respecting the Court's independence. FIDH also recalls the key role played by civil society during the IER process and, moving forward, calls on all stakeholders to continue promoting civil society engagement and consultation, and making the process accessible to NGOs from situation countries.

#### **FIDH calls upon States Parties to:**

- 1. Ensure the Court's continued proactive reflection and commitment to implementing all IER recommendations in a timely manner.**
- 2. Encourage the ICC to continue addressing gender equality and establishing a positive workplace culture throughout the Court.**
- 3. Promote increased opportunities for direct and inclusive civil society consultation and engagement, particularly on IER recommendations directly impacting victims and affected communities.**

## **6. Diversity and integrity must underline ICC election processes**

During the 20th ASP session, States Parties adopted a resolution strengthening the participation of States Parties in the election process for the next ICC Registrar, to take place in early 2023.<sup>96</sup> Following the application process in spring 2022, the ICC Presidency prepared a shortlist of twelve candidates who, in line with the criteria laid down in the Rome Statute, are considered "highly competent and have an excellent knowledge of and be fluent in at least one of the working languages of the Court".<sup>97</sup>

#### **The ten remaining shortlisted candidates are:<sup>98</sup>**

Mr Juan Pablo Albán Alencastro (Ecuador)  
Ms Fidelma Teresa Donlon (Ireland)  
Mr Luis Mariano Hermosillo Sosa (Mexico)  
Mr Pouraogo Julien Kouda (Burkina Faso)  
Mr Christian Mahr (Japan)  
Ms Gabrielle McIntyre (Australia)  
Ms Rosette Muzigo Morrison (Uganda)  
Mr Ibrahim James Pam (Nigeria)  
Ms Marie Inger Tuma (Sweden)  
Mr Oswaldo Zavala Giler (Ecuador)

96. ASP, [Election of the Registrar \(R76-R78\)](#), adopted at the 8th plenary meeting, on 9 December 2021.

97. Article 43(3) of the Rome Statute. ASP, [Letter dated 17 June 2022 from the President of the International Criminal Court addressed to the President of the Assembly of States Parties to the Rome Statute of the International Criminal Court](#), 17 June 2022.

98. Mr Amady Ba (Senegal) and Ms Kate Mackintosh (United Kingdom of Great Britain and Northern Ireland) later withdrew from the process, ASP, [Election of the Registrar of the International Criminal Court, Addendum, Withdrawal of candidatures](#), 11 October 2022.

The President of the Court also shared a statistical overview of the gender and geographic representation of candidates.<sup>99</sup> FIDH welcomes the overall diversity of the candidates – further calling on States Parties to ensure that establishing and maintaining diversity among the Court’s personnel is a consideration during the 2023 election.

Ahead of this important election, FIDH also recalls that candidates for the position of Registrar, as with other Court officials, must be of ‘high moral character’.<sup>100</sup> It accordingly welcomes the inclusion of a vetting process for the Registrar candidates, taking place through an Independent Oversight Mechanism channel.<sup>101</sup> Moving forward, FIDH continues to strongly urge States Parties to create a permanent mechanism to vet candidates for all ICC elected positions, which is well publicised and includes genuine reputational interviews, as well as opportunities for confidential whistleblowing, in order to properly measure the ‘high moral character’ requirement.

FIDH also welcomed the opportunity for States Parties and civil society to participate in the October 2022 public hearings of candidates and particularly appreciated candidates taking the time to complete the CICC’s questionnaire on their background, relevant qualifications and experience.<sup>102</sup> The Registrar plays a key role in the Court’s mandate, particularly in relation to victims’ rights and their participation throughout ICC processes. The CICC’s questionnaire therefore included specific questions on the candidates’ expertise and experience on these fundamental topics, which must be taken into account by States Parties during the upcoming election.

Finally, in line with its previous recommendations made to States Parties, FIDH recalls that it is important to avoid unilateral nominations, vote trading, endorsements, campaigning or any other forms of support to individual candidates.

#### **FIDH calls upon States Parties to:**

- 1. Ensure gender and geographic diversity among Court personnel.**
- 2. Actively consider expertise on victims’ rights and participation during ICC election processes.**
- 3. Create a permanent mechanism to vet the ‘high moral character’ of candidates for elected positions.**
- 4. 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.**

99. Of the shortlisted candidates: 5 females and 7 males, 4 from Africa, 1 from Asia-Pacific, 0 from Eastern Europe, 3 from Group of Latin America and the Caribbean, 4 from Western European and Others Group. ASP, [Letter dated 17 June 2022 from the President of the International Criminal Court addressed to the President of the Assembly of States Parties to the Rome Statute of the International Criminal Court](#), 17 June 2022.

100. Article 43(3) of the Rome Statute. See FIDH, [Position paper: Judges seeking to join ICC’s bench must have proven expertise on victims’ rights](#), 2 November 2020; FIDH, [Recommendations for the 18th Session of the ICC Assembly of States Parties: The Hague, 2-7 December 2019](#), November 2019, pp. 14-15; FIDH, [FIDH Recommendations to the 19th Session of the Assembly of States Parties to the ICC Statute: The Hague, 14-16 December 2020, New York, 17-23 December 2020](#), December 2020, pp. 7-9; FIDH, [December 2021: FIDH Recommendations to the 20th session of the Assembly of States Parties to the ICC Statute](#), November 2021, pp. 9-10.

101. ASP, [Proposal by the Presidency on due diligence process for candidates for Registrar agreed by the Bureau of the Assembly on 8 June 2022](#).

102. CICC, [Questionnaires to ICC Registrar candidates - 2023 Election](#).

# 2022 in Review: FIDH's Work on International Justice

## Centenary of FIDH

FIDH turned 100 in 2022, and the centenary was celebrated by a series of events showcasing throughout the year the Federation's many accomplishments and looking ahead to its future on the front-line of human rights defence.



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## 41st FIDH Congress

In October 2022, FIDH held its 41st Congress in Paris. During the opening ceremony at the Paris Hôtel de Ville, which also marked the centenary of FIDH's establishment, we heard from civil society, human rights defenders, the European Parliament Subcommittee on Human Rights, the United Nations Secretary-General, the President of France,<sup>103</sup> and the ICC Prosecutor.

The 41st FIDH Congress brought together its member organisations, international experts and over 180 participants from local civil society groups. The event was an opportunity for human rights organisations from around the world to share experiences and “best” practices in addressing the challenges of human rights protection.

This year's FIDH Congress and Forum focused on the complexity and evolution of human rights issues such as the environmental crisis, the explosion of poverty, the effectiveness of international human rights mechanisms, and the universality of rights in a context of rising anti-rights movements. The Congress is also a milestone in the democratic governance of FIDH.



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103. Élysée, [Message du Président Emmanuel Macron à l'occasion du centenaire de la Fédération internationale pour les droits humains](#), 23 October 2022.

## 20th Anniversary of the International Criminal Court's Establishment

1 July 2022 marked twenty years since the ICC's establishment. Shortly after, the Day of International Criminal Justice marked the historic adoption of the Rome Statute and commemorated the importance of continuing the fight against impunity and bringing justice to the victims of war crimes, crimes against humanity, and genocide. For this occasion, FIDH profiled its staff, members, and allies in [six video portraits](#) to highlight their vital efforts and personal commitment to victims and international justice, and their main recommendations for the years to come.

## Reactions to International Criminal Court Situations and Case Developments

Over the course of 2022, FIDH continued to closely monitor situations under the jurisdiction of the Court, react to any case evolutions, and where necessary to call on the respective organs and bodies of the Court to act according to their mandate.

Following several communications by FIDH, in close collaboration with member and partner organisations, to the OTP over the [past seven years](#), in February 2022 the Prosecutor announced that he would proceed with the opening of an investigation into crimes against humanity and war crimes committed in **Ukraine** since 2014. FIDH and the Center for Civil Liberties (CCL), its member organisation in Ukraine, [welcomed this commitment](#) towards accountability and [called for States Parties](#) to fully cooperate and support the Court in the context of the upcoming investigation into Ukraine.

FIDH and its member organisations in **CAR** welcomed the [transfer](#) from Chad of anti-balaka Maxime Mokom to the ICC to answer for the war crimes and crimes against humanity he allegedly committed in CAR between 2013 and 2014. Yet FIDH recalled the need to [execute further arrest warrants](#), prosecute those responsible for international crimes on both sides of the armed conflict to avoid unbalanced justice, and to ensure effective complementarity between national and international jurisdictions so that all victims are taken into account.

In April 2022, FIDH and its Sudanese member organisations welcomed the opening of the ICC's [first trial](#) on **Darfur**, as a historic moment for Sudanese victims and survivors, as well as notably the first trial stemming from a situation referred to the ICC by the UNSC. Nearly twenty years since they faced grave atrocities, survivors saw former Janjaweed leader Ali Muhammad Ali Abd-Al-Rahman charged with 31 counts of crimes against humanity and war crimes.

Following the Prosecutor's decision in October 2021 to close the preliminary examination into crimes under the jurisdiction of the Court committed in **Colombia**, FIDH and its member organisation in Colombia, the Colectivo de Abogados José Alvear Restrepo (CAJAR), [submitted a request](#) in representation of Colombian victims of crimes against humanity, to the ICC for review and reverse the decision. In May 2022, the President of the Pre-Trial Division [appointed a Pre-Trial Chamber](#) to review the Prosecutor's decision. In July 2022, Pre-Trial Chamber I rejected FIDH and CAJAR's request; however, the Chamber found that the Prosecutor must [promptly inform](#) of the reasons for his decision to victims, organisations, or others who provided information during the 17-year preliminary examination – such as FIDH and CAJAR.

Following the landmark decision in February 2021 recognising the ICC's territorial jurisdiction over **Palestine**, including Gaza and the West Bank, FIDH with member organisations submitted communications in the framework of the Palestine investigation. In May 2022, FIDH and its member organisation the Center for Constitutional Rights (CCR) filed a submission to the ICC Office of the Prosecutor on behalf of Salah Hamouri, imprisoned Palestinian lawyer and activist. The submission places Mr Hamouri's case in the larger context of crimes committed daily, as part of the settler-colonial enterprise, against Palestinians in East Jerusalem, which is where he was born. These include forced evictions, house demolitions, restrictions on movements, family separation, and arbitrary arrests and violence by both Israeli forces and settlers. In June 2022, FIDH and the Public Committee against torture in Israel (PCATI) presented a communication to the OTP denouncing alleged crimes committed by Israeli security agents and other State officials against Palestinian detainees. These shed light on Israeli authorities' systematic policy of torture, inhuman treatment, and forcible transfer of Palestinians, amounting to war crimes.

One year on from the Taliban's seizure of power, FIDH and its member organisations OPEN ASIA/ Armanshahr called on the ICC to immediately resume its investigation into the situation in **Afghanistan**. FIDH and its member organisations OPEN ASIA/Armanshahr and CCR accordingly welcomed Pre-Trial Chamber II's decision in October 2022 to resume the investigation into all parties' alleged war crimes and crimes against humanity, urging the Prosecutor to dedicate sufficient resources to a complete investigation without delay, and strongly calling for more effective outreach to affected communities and meaningful victim participation throughout the proceedings.

Following last year's welcomed 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, in 2022 FIDH filed a joint Amicus Curiae brief requesting that the ICC put Ugandan victims at the centre of ongoing and complex reparations proceedings.

FIDH reported on the aftermath of **Côte d'Ivoire's** post-electoral crisis, including the lack of international justice and the expectations of victims in the face of ongoing impunity. FIDH also reported on the state of justice in **CAR**, analysing the complementarity between national and international justice mechanisms, and providing recommendations for a more complete, lasting, and effective justice system.

## FIDH's 2022 International Justice Publications

Included below is a summary of FIDH's international justice publications to date in 2022, many produced jointly with member and partner organisations.

### Reports

1. [EN] [January 2022] (with KHRC) *Sexual and gender-based violence as one of the major components of election-related violence in Kenya: risks and actions needed for 2022*
2. [EN] [April 2022] (with TRIAL, Civitas Maxima, CJA, ECCHR and REDRESS) *Universal Jurisdiction Annual Review 2022: Universal jurisdiction, an overlooked tool to fight conflict-related sexual violence*

3. [FR] [July 2022] (with MIDH and LIDHO) *Côte d'Ivoire: From Justice Sacrificed in the Name of 'Reconciliation' to Justice Instrumentalised by Politics*
4. [EN | FR] [October 2022] (with OCDH and LCDH) *What Prospects for Justice in the Central African Republic?*
5. [EN | ES] [October 2022] *"Hasta encontrarlos": Enforced Disappearances by Security Forces in Veracruz Constitute Crimes Against Humanity*

## Open letters

1. [EN | ES | FR] [July 2022] *Visit to France by the President of the United Arab Emirates: Open letter to Emmanuel Macron*

## Statements

1. [EN | ES | FR | RU] [February 2022] *FIDH and CCL deplore Russia's armed attack and occupation of Ukraine, call for action*
2. [EN | ES | FR] [March 2022] *Call to Action: Sexual and reproductive health and rights are affected by the conflict in Ukraine*
3. [FR] [March 2022] *Troisième anti-balaka à la CPI : la lutte contre l'impunité en République centrafricaine continue*
4. [EN | ES | FR] [April 2022] *War in Ukraine: Statement of the International Federation for Human Rights (FIDH)*
5. [EN | ES | FR] [April 2022] *International Criminal Court opens first trial on Darfur: historic moment for Sudanese victims and survivors*
6. [EN | ES | FR] [April 2022] *Syria: The Paris Court of Appeal confirms the jurisdiction of French courts in Majdi Nema case*
7. [EN | ES | FR] [May 2022] *European Day Against Impunity: Bolster justice efforts worldwide*
8. [EN | ES | FR] [May 2022] *Crimes in Colombia: ICC to reconsider closure of preliminary examination*
9. [EN | ES | FR] [July 2022] *Day of International Criminal Justice: FIDH video portraits commemorating #17July*
10. [EN | ES | FR] [July 2022] *Rwanda-Bucyibaruta case: Former Gikongoro prefect sentenced in France for 1994 massacres of Tutsis*
11. [EN | FR] [August 2022] *CAR: Justice efforts weakened by the non-execution of arrest warrants*
12. [EN | ES | FR] [August 2022] *Afghanistan: Ensure justice, one year after Taliban takeover*

13. [AR | EN | ES | FR] [August 2022] [Gaza: International community must act after deadly Israeli bombardment](#)
14. [EN] [November 2022] [Afghanistan: As ICC probe gets green light, rights groups and victims' representatives urge investigation into all crimes and perpetrators](#)

## **Press releases and Questions & Answers**

1. [EN | ES | FR] [January 2022] [Syria: Landmark ruling offers hope to regime's victims](#)
2. [EN | ES | FR | RU] [January 2022] [Wagner in Syria: Ruling by Russian court entrenches impunity for brutal murder](#)
3. [EN] [February 2022] [Dominic Ongwen: Ugandan Victims Must Be at the Centre of Reparations Proceedings](#)
4. [EN | ES] [February 2022] [Wagner in Syria: Moscow court upholds decision in murder case, obstructing accountability](#)
5. [EN | ES | FR] [March 2022] [Ukraine: FIDH and CCL welcome ICC Prosecutor's decision to open investigation](#)
6. [EN | ES | FR] [March 2022] [DRC: How rampant impunity for crimes leads to endless cycles of violence](#)
7. [EN | ES | FR] [March 2022] [Victims provide testimony on BNP Paribas' alleged role in mass atrocities in Sudan](#)
8. [EN | FR] [March 2022] [Urgent Resolution on the Situation of Human Rights Defenders and Civil Society Organisations in Palestine](#)
9. [EN | ES | FR] [April 2022] [Peru: Human rights organisations call for Alberto Fujimori's release to be cancelled](#)
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# Keep your eyes open

**fidh**

**Establishing the facts** - Investigative and trial observation missions

**Supporting civil society** - Training and exchange

**Mobilising 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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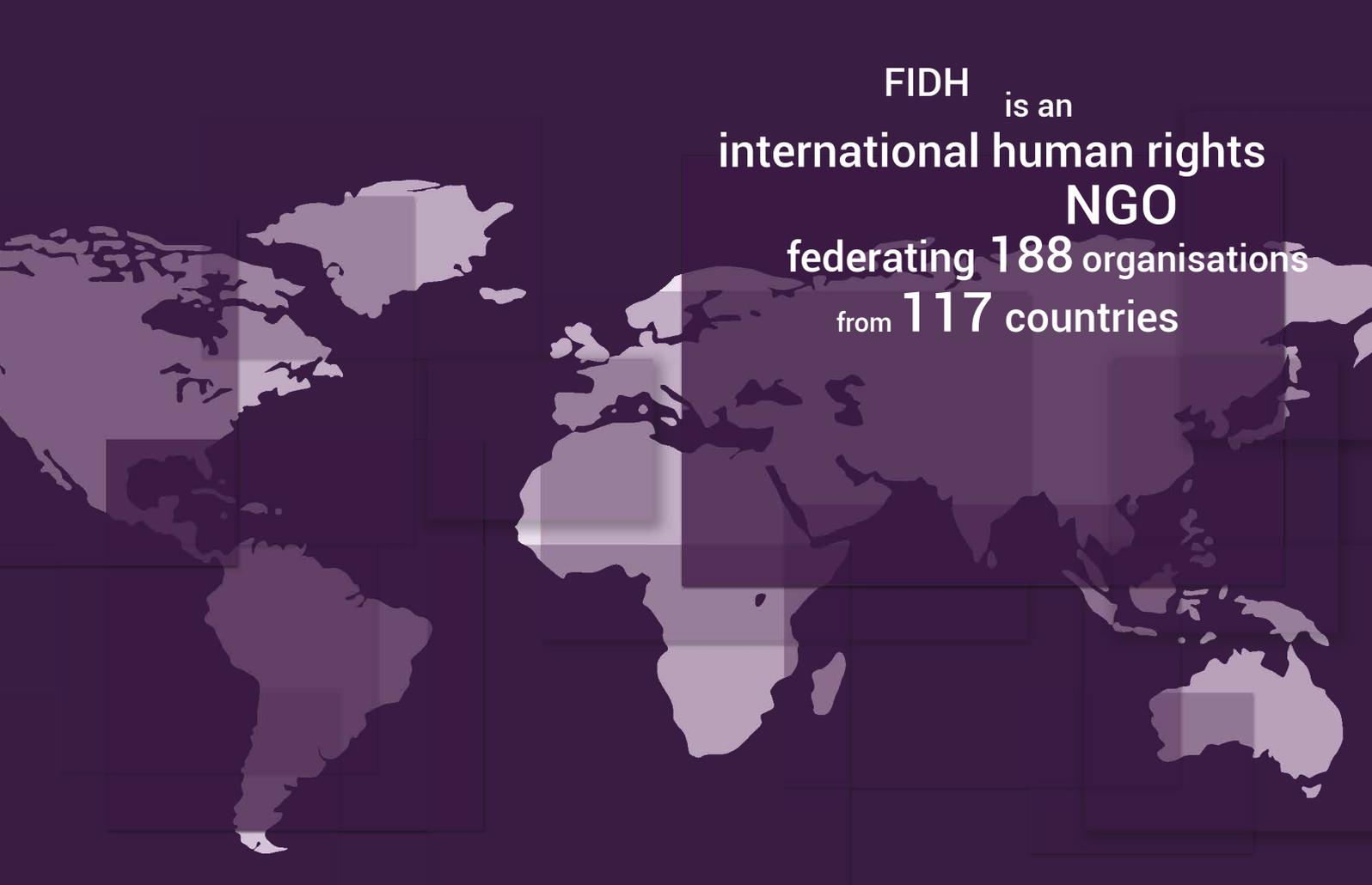
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FIDH is an  
international human rights  
NGO  
federating 188 organisations  
from 117 countries

**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 188 member organisations 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 organisations, FIDH is not linked to any party or religion and is independent of all governments.

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