



FIDH Comments on the 2019-2021 Draft Strategic Plan of the Office of the Prosecutor

1. The International Federation for Human Rights (FIDH) welcomes the Draft Strategic Plan of the International Criminal Court's (ICC) Office of the Prosecutor (OTP) for 2019 to 2021 (hereinafter, the Strategic Plan). Our organisation notes that this Strategic Plan is the last under current Prosecutor Fatou Bensouda, and wishes to recognise the progress achieved in the Office's strategy and policy since 2012.
2. FIDH appreciates the continued openness of the Office in sharing its plans and policies with civil society for comment. Notwithstanding the short time-frame for carrying out consultations with FIDH's organisation's broad membership, including grassroots human rights organisations that have engaged with the OTP in nearly all its situations, FIDH hereby submits its preliminary comments based on its longterm engagement with and monitoring of the Office's activities.
3. The following comments are intended as general, succinct feedback. We look forward to further discussion with the OTP regarding the finalisation and implementation of the Strategic Plan.

Performance of the Office in 2016-2018

4. Our organisation welcomes the Strategic Plan's candid tone and description of the critical juncture the Court finds itself in today, including recognition of its mixed performance and the unprecedented external challenges. While the Strategic Plan sufficiently outlines the Office's external challenges, it addresses in brevity the identified internal challenges such as the residual effects of a previous strategy, and the need to further strengthen the Office's present strategy. Further information is required to better understand these challenges, including how the Office intends to counter them.
5. FIDH takes note that a report to be submitted to the Committee on Budget and Finance (CBF) in due course will address the performance of the Office in the implementation of the previous strategic plan for 2016-2018. While the Strategic Plan provides a number of points on the implementation of the 2016-2018 plan to better contextualize the approach taken in the 2019-2021 Plan, further information would have enriched the understanding of the evolution from the former to the current Strategic Plan, including reporting on the 14 performance indicators presented in the Strategic Plan for 2016-2018. FIDH urges the inclusion of this information in the finalised text. Additional information on the

implementation and assessment of the OTP's numerous policy papers and other guidelines, including on working with intermediaries, is of value.

6. The Strategic Plan rightly acknowledges the impact of limited resources on the Office's performance in the 2016-2018 period. In particular, the Strategic Plan states that 'due to limited resources, [other] investigations have not advanced as quickly as desired' (para. 9(b)). While the Court will likely continue to be faced with the pressure to function with even fewer resources, FIDH urges the Office to commit, in its strategy, to asking for a realistic increase of its budget to the ASP. The proposed budget should be based on a realistic state of activity, and not reduce the Office's budget to an absolute minimum of functioning.

General Comments on the 2019-2021 Plan

7. Our organisation is pleased to see development in the Strategic Plan that respond to numerous difficulties encountered by the Office in 2016-2018. Particularly, FIDH takes note of prosecutorial strategies that address the difficulty of holding those most responsible into account, as well as measures to ensure the speed, efficiency and effectiveness of investigations and prosecutions.
8. FIDH commends the Office's resilience in the face of complex environments that often entail numerous security challenges to its investigation. In particular, FIDH is pleased to see the Office's endeavors in collecting diverse evidence, as well as adapting its investigative strategies and methods, in consultation with partners.

Achieving a high rate of success in court

9. FIDH generally welcomes the in-depth approach taken by the office in the Strategic Plan, aiming for trial-readiness of cases at the moment of requesting a warrant for arrest or summons to appear, and by the confirmation of charges at latest. Nevertheless, FIDH calls for carefully balancing this objective with the objective of increasing the speed of proceedings. In particular, our organisation calls for acknowledging the important role that victims can play in the establishment of the facts, as well as the qualification of crimes, when participating in the proceedings of a case. As such, requesting a warrant of arrest or summons to appear at an earlier stage may ensure that victims are still willing to engage with the Court, and may further benefit the building and strengthening of a case.
10. While FIDH recognises the progress made by the OTP in the area of prosecuting sexual and gender based crimes (SGBC), both in developing a policy and in introducing more diverse SGBC charges in recent cases, the reality that to date the Office has not yet succeeded in achieving an SGBC conviction is in itself a challenge. This urges a specific reflection by the Office, including on the contextual elements necessary to link the underlying acts with those allegedly responsible for them.
11. While it remains difficult to speak of an acquittal that comes without a written judgment, as is the notable case of Gbagbo/Ble Goude, the oral decision and further proceedings cite exceptionally weak evidence presented by the OTP in this case. Even if the opposite is

proven to be true, FIDH recommends that the Office engages in a thorough assessment of its standards in relation to the collection of evidence and the case presentation as early as possible following the publishing of the written judgment.

Increasing the speed, efficiency and effectiveness of preliminary examinations, investigations and prosecutions

12. Our organisation takes note of the office's objective to optimise preliminary examinations, seen in developing methods to exploit the work done at the preliminary examination stage including by means of evidence preservation. While FIDH agrees that some preliminary examinations are more complex than others, and may therefore require resorting to such methods, including when time is required to sufficiently assess the admissibility component, our organisation retains its position that in general, preliminary examinations at the OTP need to be finalised in a shorter time-frame than they are now. It is neither in the interest of victims, nor in the potential investigation, to have delays like the ones seen in the situations of Georgia, Colombia, or Afghanistan.
13. FIDH is pleased to see the Office's prioritisation of developing completion strategies for situations under investigation, which to date have not been carried out. As stated in the Strategic Plan, completion strategies can contribute to reducing the time that a situation remains under investigation and guide the coordination between the Court and local authorities. FIDH adds that completion strategies should strive to provide clarity to the Court's constituency and partners and to leave behind a legacy of goals achieved in the situation's accountability agenda. Finally, FIDH urges the OTP to consult with civil society organizations, in each situation, as early as possible in the course of developing the completion strategies.
14. The Office's Strategic Plan states that it intends to pursue, where appropriate, narrower, sequential cases, including, when appropriate, cases against mid-level or notorious perpetrators that build toward successful cases against high level perpetrators. FIDH agrees that such an approach may achieve visible accountability as well as increase the speed, efficiency and investigation of prosecutions. However, and as stated by the Strategic Plan, the inability to predict the resource requirements for such an approach places at risk the feasibility of eventually bringing cases against those most responsible. In that vein, completion strategies developed early on in each situation may ensure accurate financial planning and resource availability.

The Office's approach to victims, with attention to victims of SGBC and crimes against or affecting children

15. The Strategic Plan states that the Office will review and strengthen the management of expectations of victims and affected communities. FIDH wishes to underline that misinformation, as well as inaccurate expectations, often result from inadequate public information and outreach programmes tailored to the needs of victims and their communities. To address these challenges, the Office, and the Court as a whole, should strive to be more present, visible and responsive - not less.

16. Our organisation urges the Office to develop a particular strategy for its engagement with victims of the situations of Ivory Coast II as well as Central African Republic II, to address the challenges posed by the acquittals in the earlier situations to the acceptance of the Court's investigative and prosecutorial activities in the new and future cases.
17. Our organisation calls on the OTP to integrate gender-responsive budgeting. Ensuring the necessary institutional capacity to deal with SGBV requires time, financial resources, and a long-term commitment to changing practices and addressing personal and institutional biases. Without the appropriate funds, improvements cannot be implemented.

Strengthening the ability of the Office and its partners to close the impunity gap

18. Throughout the Strategic Plan, the Office recognises the need to cooperate with external actors, often including members of civil society. FIDH encourages increased cooperation with NGOs, first responders and other actors, and looks forward to engaging with the Office on how to adapt to challenges in complex environments.
19. FIDH underlines the importance of the Office formalising its relationship with external partners, particularly if tasks otherwise the responsibility of the OTP are 'outsourced'. Although not all external partners would fall within the category of intermediaries, FIDH encourages the Office to include its interactions with intermediaries, as per the Intermediaries Guidelines, within the Strategic Plan. FIDH further urges the Office to undertake an assessment of its work with intermediaries, including the implementation of the Guidelines on working with intermediaries, under the Strategic Plan.
20. The Office, and the Court as a whole, should continue to strive for a transparent dialogue with civil society organisations about the constraints they face (without compromising confidentiality) in order to minimise frustrations and maximise positive outputs.