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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

Cover picture : Adaptation to a growing virtual reality in times of global pandemic. Photos of ICC virtual hearings with candidates to the ICC Prosecutor and ICC Judges positions, with the Group of Independent Experts in charge of the Independent Expert Review of the ICC performance, and with States Parties to the ICC Statute. @ ICC_PASP; twitter account of Judge O-Gon Kwon, President of the Assembly of States Parties to the Rome Statute of the International Criminal Court.

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INTRODUCTION

The 19th session of the Assembly of States Parties (“ASP” or “Assembly”) to the Statute of the International Criminal Court (“ICC” or “Court”), initially planned to take place entirely in New York (USA), will be exceptionally held in two separate locations and sessions, mainly due to restrictions imposed by the global health crisis. A first session will be held from 14 to 16 December 2020 in The Hague (Netherlands), and a second session entirely dedicated to elections should take place from 17 to 23 December 2020 in New York. Whereas States will benefit from in-person participation, civil society representatives will be limited to mainly virtual attendance of the ASP session in The Hague.

This year, the worldwide COVID-19 crisis inevitably had an impact on international justice, and, more precisely, on the work of the Court itself. Whereas FIDH welcomes the fact that the ICC and its personnel seemed to have adapted to the situation and carried their activities to the extent possible, in accordance with the restrictions imposed, the situation did not facilitate the completion of its investigative, prosecutorial and outreach mandate, nor did it alleviate the sense of remoteness of the Court’s action. It is therefore even more crucial for the Court to ensure that victims remain at the centre and meaningfully participate in all ICC proceedings.

The upcoming session of the ASP will also conclude a critical year for the immediate present and the future of the ICC. While the attacks against the Court escalated throughout the year in an intimidation campaign lead by the US administration aimed at obstructing the Office of the Prosecutor’s work on international crimes situations relating to Afghanistan and Palestine, the ICC and the Rome Statute system have been put under close scrutiny. In an effort to respond to a call made by States Parties and civil society organisations to evaluate and improve the Court’s work and impact, independent experts were appointed to undertake an Independent Expert Review (IER) of the Court’s performance. The Group of Independent Experts unfold their main findings and recommendations in a final report published on 30 September 2020, which follow-up is now one of the critical issues at stake. In addition, 2020 marks an important change in the Court’s governance, with the election of the new and third ICC Prosecutor to serve a nine-year mandate starting in June 2021, and the replacement of a third of the Court’s bench through the election of six new Judges. Given the main challenges faced by the Court today and taking into account the issues at stake at this year’s ASP, FIDH would like to refer States Parties to the following specific issues closest to FIDH’s mandate: 1) the need to develop a strategy to implement the recommendations of the Independent Expert Review in the coming years; 2) the importance of ensuring that the elections of the ICC Judges and ICC Prosecutor will be based on merits only and free from political considerations; 3) the insufficient level of cooperation with the Court and the threats and attacks made by some States against the Court and its employees to undermine its independence and work; 4) the inadequacy of resources made available to the Court; and last but not least 5) the need to strengthen a victim-centred approach in all criminal proceedings, especially when adapting to the new remote reality imposed by the global pandemic.

FIDH has closely monitored the work of the Court and its States Parties over the course of 2020 and presents in this position paper its views and recommendations related to the above-mentioned issues.

FIDH's five recommendations for ICC States Parties at the 19th session of the ASP

FIDH makes the following five recommendations to States Parties for the upcoming session of the ASP on issues relevant to its mandate.

1. The findings and recommendations of the Independent Expert Review must be carefully assessed and timely implemented

During the previous ASP session, on 6 December 2019, a group of nine independent experts was mandated to conduct an assessment of the ICC's performance.¹ The Independent Expert Review (IER) started in January 2020, and concluded on 30 September 2020 with the submission of the Group of Independent Experts' final report to the Bureau of the Assembly of States Parties. While FIDH welcomes the fact that civil society and ICC personnel were engaged in the process through consultation, the short time frame allocated to these consultations, the lack of visibility of the process, and language barriers have limited civil society's input.² Furthermore, due to sanitary restrictions imposed by the global pandemic, as well as time and resource constraints, initial plans to conduct visits in situation countries and ICC field offices had to be revisited. The Experts made indeed an effort to remotely engage with staff in the field.³ FIDH welcomes the full support and cooperation that the Experts received from the ASP Presidency, the Court, and the ASP Secretariat.⁴

As a part of this Review process, FIDH, in partnership with its member organisation the Kenya Human Rights Commission (KHRC), transmitted on 15 April 2020 a confidential joint submission to the Group of Independent Experts conducting the IER, and released a public report in June 2020, following a workshop organised in Nairobi on 3-4 March 2020. This stakeholder consultation brought together 25 civil society and victims' legal representatives from 12 countries under ICC investigation or preliminary examination in order to assess how the performance of the Court has impacted those most affected by it. Recommendations were made to the IER on how to optimise the Court's performance.⁵ In addition to this report, FIDH also had the opportunity to meet with representatives of all three experts clusters to present its recommendations related to governance, the judiciary, and the investigation and prosecution process.

On 30 September 2020, the IER's final report was released and FIDH had the opportunity to participate and propose follow-up questions raised during a Q&A session with the Experts that was held on 7 October 2020 with the Hague and New York Working Group, States Parties' representatives, and other relevant stakeholders. FIDH welcomes the fact that the final report concretely tackles issues that were previously identified during the stakeholder consultations conducted by FIDH and KHRC. FIDH is particularly encouraged by the fact that the Experts' recommendations aimed at bolstering the place of the victims at the ICC, including their participation, their right to reparation, their understanding of the proceedings, and their interactions with the Court.⁶ States Parties are to adopt a resolution on the Review of the ICC and the Rome Statute system, and on the next steps ahead, during a plenary discussion at this ASP session in The Hague.

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

2. [Statement by FIDH, Happening in The Hague: How the Independent Expert Review of the ICC's Performance Can Strengthen the Court, 22 June 2020.](#)

3. [Independent Expert Review on the International Criminal Court and the Rome Statute System, Interim Report, 30 June 2020, p. 5.](#)

4. [Independent Expert Review on the International Criminal Court and the Rome Statute System, Final Report, 30 September 2020, p. 9.](#)

5. [FIDH and Kenya Human Rights Commission, The victims' mandate of the International Criminal Court: disappointments, concerns and options for the way forward: Observations and recommendations for the Independent Expert Review, June 2020.](#)

6. [Independent Expert Review on the International Criminal Court and the Rome Statute System, Final Report, 30 September 2020, p. 287-303, more precisely R342, R343, R345, R346, R347, R348 and R353; Press Release by FIDH and KHRC, ICC Review: Experts' Report Sheds Light on the Long Road to Optimising Court's Performance, 7 October 2020.](#)

While it is important that the independence of the Court and the integrity of the Rome Statute be safeguarded throughout the review process, States Parties must capitalise on the opportunity the IER presents to strengthen the performance of the Court, by seriously assessing the final report⁷, and contributing to the development of a comprehensive and goal-oriented implementation plan.⁸ While FIDH recognises the importance of conducting a phased approach where recommendations will be analysed and categorised in accordance to a proposed timeline, States Parties and the Court need to already take actions to implement easily attributable and implementable recommendations, especially in cases where initiatives have already been undertaken.

The next steps of the process must be transparent and inclusive and the voices of those living in affected communities must be given a central attention.⁹ FIDH stresses the importance of carefully precisising how an implementation mechanism will be set up as soon as possible and calls on States Parties to establish a Review Mechanism that, if not including all relevant stakeholders, at least consults and cooperates with civil society members working with victims and affected communities. This Review Mechanism, to be appointed by the Bureau, will have the task to plan, coordinate, monitor and report on the implementation of the IER recommendations. In addition, and to complement this Review Mechanism, the Court should create a Court Focal Point tasked with engaging with the Review Mechanism in the implementation of the recommendations, ensuring that cross-cutting issues are uniformly addressed within the Court's system, and facilitating the Court's own implementation of certain recommendations, when possible.

Finally, States Parties must not forget to involve the Independent Experts in the follow-up discussions since they can add a significant contribution through their observations and findings.

FIDH calls upon States Parties to:

- **Carefully assess the final report produced by the Group of Independent Experts and its recommendations;**
- **Establish a Review Mechanism appointed by the Bureau and with the clear task to plan, coordinate, monitor and report on the implementation of the IER recommendations, and which will consult and cooperate with civil society members;**
- **Create a realistic timeline for the consideration of the recommendations, while already implementing easily attributable and implementable recommendations as soon as possible rather than waiting for the first analysis of the entire report to be completed;**
- **Encourage the Court and its staff to implement the recommendations proposed by the IER, especially regarding the mandate of the ICC towards victims, including through the designation of a Court Focal Point to engage with and complement the work of the Review Mechanism;**
- **Continue the review that has been conducted in parallel with the work of the IER on various issues, including cooperation and non-cooperation with the ICC, complementarity, and equitable representation and gender-balance in the Court;**
- **Ensure that the implementation process of IER recommendations is transparent and includes all relevant stakeholders, notably victims, affected communities, and civil society representatives, in addition to the different working groups of the Bureau, the Court, and States Parties, and with the involvement of the Independent Experts themselves;**
- **Observe and safeguard the judicial and prosecutorial independence of the Court and the integrity of the Rome Statute throughout the review process;**
- **Adopt a resolution on the review of the ICC and the Rome Statute system at the 19th session of the ASP that reflects all previously mentioned considerations.**

7. [Joint Civil Society Statement, ICC Independent Expert Review: The court and States should seize opportunity to strengthen court's performance, 25 September 2020.](#)

8. [Press Release by FIDH and KHRC, ICC Review: Experts' Report Sheds Light on the Long Road to Optimising Court's Performance, 7 October 2020.](#)

9. [Joint Civil Society Statement, ICC Independent Expert Review: The court and States should seize opportunity to strengthen court's performance, 25 September 2020.](#)

2. A fair and transparent process for the election of the most suitable Judges and Prosecutor must be upheld

a. Election of Prosecutor

On 15 June 2021 the mandate of the current ICC Prosecutor, Fatou Bensouda, will come to an end. FIDH welcomes the creation in April 2019 of the Independent Committee on the Election of the Prosecutor (CEP) to assess the qualifications of the candidates enlisted to replace her and to take this leadership role for the next nine years, with the purpose to ensure a transparent and independent process.¹⁰ After an application period running from August to November 2019, the CEP, assisted by a panel of experts appointed by the Bureau of the Assembly of States Parties, carefully reviewed all applications and identified a longlist of 14 candidates to be interviewed. Competency-based interviews were conducted in the months of May and June 2020 via video-conference, due to the COVID-19 pandemic, based on which four candidates were shortlisted and recommended by the CEP in its report published on 30 June 2020.¹¹ Public hearings were organised with the four candidates on 29 and 30 July 2020, with States Parties and civil society representatives conveying consolidated questions to candidates, who could thereby present their vision and strategy.¹²

Unable to reach an agreement on a consensus candidate among the four persons shortlisted by the CEP¹³, States Parties then moved away from the previously agreed upon process. The ASP indeed decided on 13 November 2020 to expand the list of candidates to consider, beyond the CEP shortlist¹⁴, and extended the nomination period until 13 December 2020.¹⁵ It only announced on 1 December 2020, that virtual public hearings with an expanded list of nine candidates, including the already four shortlisted candidates, for the next ICC Prosecutor will be organised on 9 and 10 December 2020.

FIDH reminds States Parties of the importance of electing a candidate based on his or her merit, high moral character, and relevant experience in investigating and prosecuting complex criminal cases.¹⁶ The next Prosecutor must also show knowledge and expertise on victims' rights and have past experience working with victims, including children and victims of sexual and gender-based violence. These elections should not be tainted by political concerns, vote-trading or unilateral nominations.

Now that the list of candidates under consideration was expanded and the nomination period extended, FIDH urges States Parties to uphold their commitment to a structured, transparent and merit-based process.¹⁷ The public hearings with the expanded list of candidates, announced to take place on 9 and 10 December 2020, should be similar to the ones that were held in July 2020 for the initial four shortlisted candidates,¹⁸ in order for them to get the chance to present their background and vision and respond to questions from States and civil society.¹⁹

10. [Assembly of States Parties, Bureau of the Assembly of States Parties: Election of the Prosecutor – Terms of Reference, ICC-ASP/18/INF.2, 11 April 2019](#), p. 2-3.

11. [Report of the Committee on the Election of the Prosecutor, ICC-ASP/19/inf.2, 30 June 2020](#).

12. To view the public hearings of end of July 2020, see official recordings: https://www.dropbox.com/s/yr4oj6dpigwhryu/Prosecutor_Candidate_Hearing_session_one_FLOOR.mp4?dl=0; and https://www.dropbox.com/s/8pkctcmzet1h7dll/Prosecutor_Candidate_Hearing_session_TWO_FLOOR.mp4?dl=0

13. Paragraph 33 of the ASP resolution ICC-ASP/1/Res.2 states that “every effort shall be made to elect the Prosecutor by consensus”, [Assembly of States Parties, Procedure for the nomination and election of judges, the Prosecutor and Deputy Prosecutors of the International Criminal Court, Resolution ICC-ASP/1/Res.2, 9 September 2002](#).

14. [Bureau of the Assembly of States Parties Election of the Prosecutor – Way Forward, 13 November 2020](#).

15. [Letter of the President of the Assembly of States Parties, H.E. O-Gon Kwon, 20 November 2020](#).

16. [Press Release by FIDH, Shortlisted Candidates for ICC Prosecutor Announced: Election Process Must Be Transparent and Merit-Based, 1 July 2020](#).

17. [FIDH, Electing the Next ICC Prosecutor: States Should Respect Process they Established, 20 July 2020](#); [Bureau of the ASP: Election of the Prosecutor – Terms of Reference, ICC-ASP/18/INF.2, 11 April 2019](#).

18. [Rome Statute of the International Criminal Court Secretariat of the ASP, Modalities for hearings with shortlisted candidates for Prosecutor, 24 July 2020](#).

19. [Open Letter to the ICC Assembly of States Parties, 3 December 2020](#).

FIDH further urges States Parties to undertake comprehensive vetting of candidates, which includes conducting interviews with individuals who do not appear on the candidate's reference pools and to seriously consider third-party information received about the candidates' character.²⁰ Candidates who fail to show the highest moral character or who committed, condoned, or ignored sexual harassment, should be immediately excluded from the list. In that sense, FIDH urgently calls on the establishment of a vetting process by the CEP and welcomes the recommendation of the Committee to include, for future election processes, a specific provision on that matter.²¹

In light of the importance of this process and the impacts its result will have on the future of the Court, FIDH believes it is unrealistic for States Parties to aim at conducting the election of the next Prosecutor during the 19th session of the ASP and calls on States Parties to prepare a realistic timeline which will include the conduct of public hearings and a comprehensive vetting process.

FIDH calls upon States Parties to:

- **Prepare a new realistic timeline for the election of the next ICC Prosecutor, including the public hearings with all candidates announced to take place on 9 and 10 December 2020;**
- **Make sure that a comprehensive vetting process will be conducted and commit to exclude candidates who fail to show the highest moral character or who committed, condoned, or ignored sexual harassment;**
- **Elect a Prosecutor based on merit only, who has relevant experience in investigating and prosecuting complex criminal cases and in dealing with victims' rights and sexual and gender-based violence;**
- **Try as much as possible to reach a consensus on the most suitable candidate;**
- **Commit to an election that is fair, transparent, and free from any political interference.**

b. Election of six new Judges

In 2021, the bench of the ICC will see six of its judges replaced, including the President of the Court. This is an important turnover and an opportunity to strengthen the bench with highly qualified candidates. The election process begun in January 2020 with the nomination period which, due to exceptional circumstances caused by the COVID-19 pandemic, lasted until May 2020. At the end of the nomination process, 22 candidates had been nominated by States Parties, among which three withdrew since then, leaving a final list of 19 nominees.

Following the nomination period, the Advisory Committee on Nomination of Judges (ACN) was mandated to independently assess all nominations. The ACN issued its final report on 30 September 2020²², and classified all candidates as either "only formally qualified", "qualified" and "highly qualified". The performance of the candidates was further assessed during public virtual roundtables that were held between 3 to 6 November 2020, where participants responded to questions raised by States Parties and civil society representatives.

While the ACN concluded that most candidates were "qualified" or "highly qualified" for the position, FIDH is deeply concerned that seven candidates were classified as "only formally qualified" and showed only a limited understanding of the Rome Statute and the practices of the Court. Equally concerning is the lack of experience of some candidates on victims' rights and participation. States Parties must respect the independent assessment that was made by the ACN, to seriously take into account the suitability of the candidates for the position, and to base their votes on the candidates' merit only.²³ States should also ensure that gender and geographical balance is respected.

20. *Ibid.*

21. [Press Release by FIDH, Shortlisted Candidates for ICC Prosecutor Announced: Election Process Must Be Transparent and Merit-Based, 1 July 2020.](#)

22. [Report of the Advisory Committee on Nominations of Judges on the work of its seventh session, ICC-ASP/19/11, 30 September 2020.](#)

23. [Press Release by FIDH, 20 candidates under full scrutiny: ICC judges must be elected on merit alone, 6 October 2020.](#)

Civil society plays a crucial role in monitoring the election process to promote the election of only highly qualified candidates. FIDH encourages States Parties to consider the answers of the candidates to the questionnaire prepared by civil society organisations to better assess their views and their qualifications on important issues, including victims' rights, sexual and gender-based violence, and children's rights.²⁴ Accordingly, FIDH urges States Parties to elect candidates who have successfully demonstrated their proven experience and legal expertise on victims' rights – including through a clear track record showing their willingness to respect and fulfil these rights – and who have expressed their commitment to implement a victim-centred approach throughout all criminal proceedings before the ICC.²⁵

FIDH calls upon States Parties to:

- **Elect judges based solely on their merit, impartiality, and high-moral character, rather than on political considerations or alliances;**
- **Elect judges who have a demonstrated experience and legal expertise on victims' rights and have expressed their willingness to respect and fulfil these rights;**
- **Respect the minimum voting requirement to ensure gender balance and equitable geographical representation on the bench;**
- **Make sure that the elected candidates have an adequate knowledge and experience dealing with sexual and gender-based violence and children's rights;**
- **Seriously take into consideration the results of the independent assessment made by the Advisory Committee on Nomination of Judges and the results stemming from the roundtable discussions, including the concerns shared by civil society organisations.**

3. States Parties must publicly reaffirm their fundamental support to and cooperation with the ICC and condemn threats and acts of non-cooperation

a. Cooperation

Cooperation is crucial for the work of the Court. Only through the support and compliance of States can the Court be empowered, its work legitimised, and the realisation of its mandate rendered possible. FIDH therefore wishes to remind 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 ASP session.²⁶

FIDH welcomes the willingness expressed by the Sudanese transitional government to cooperate with the ICC – especially its willingness to facilitate the work of the OTP's investigative team on the ground²⁷, and its commitment to arrest those subject to pending ICC arrest warrants, including Omar Al-Bashir, Abel Raheem Muhammad Hussein, and Ahmad Harun.²⁸ FIDH is looking forward to the concrete measures that will be undertaken by the government to act upon this commitment. In addition, FIDH welcomes the cooperation of the Central African Republic in the surrender of Mr. Abd-Al-Rahman to the ICC.²⁹

24. See [Responses to the CSOs Questionnaire for candidates to the 2020 ICC Judicial Election](#).

25. [FIDH, New ICC Judges Must Ensure the Meaningful Participation of Victims in Criminal Proceedings, November 2020](#).

26. [Press Release by FIDH, ICC must be protected – Open Letter to the States Parties to the Rome Statute, 30 April 2020](#).

27. [ICC, Statement of the Prosecutor of the ICC, 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](#).

28. [Press Release by FIDH, Will Darfur victims finally see justice? Sudan official announces surrender of Omar al-Bashir to ICC, 12 February 2020](#)

29. [ICC Press Release, Situation in Darfur \(Sudan\): Ali Kushayb is in ICC custody, 9 June 2020](#); [Press Release by FIDH, the African Centre for Justice and Peace Studies and the Sudan Human Rights Monitor: Transfer of Ali Kushayb to ICC: A significant step toward Accountability in Darfur, 10 June 2020](#).

FIDH recognises the valuable support shown by the State Party of Bangladesh during the Office of the Prosecutor (OTP) delegation's visits to refugee camps and continues to urge the State of Myanmar to cooperate with the investigative teams of the OTP and allow them to perform their duties in relation to the ongoing investigation into international crimes committed in the framework of the Myanmar/Bangladesh situation.³⁰

In face of recent attacks against the Court and its personnel by the US administration in an escalation of an outrageous intimidation campaign³¹, FIDH welcomes the statement that was made by the 10 ICC States Parties member of the UN Security Council on 10 June 2020, which clearly confirmed their "support to the Court as an independent and impartial judicial institution"³², the public rejection expressed on 2 September 2020 by the ASP President of such attacks, the statement made by the European Union reiterating its support to the Rome Statute and the ICC on 3 September 2020³³, as well as the statement of support to the ICC of 74 States Parties on the occasion of the ICC report to the UN General Assembly on 2 November 2020.³⁴ FIDH urges all States participating in this ASP session to step up publicly and express their unwavering support towards the Court, its staff, and their essential work to end impunity.

b. Threats and Non-cooperation

This year the ICC has once again been at the receiving end of threats and intimidation campaigns made by States. On 20 January 2020, one month after the ICC Prosecutor announced that the Palestine situation merits investigation, Israeli Prime Minister Benjamin Netanyahu called for "sanctions against the international court, its officials, its prosecutors, everyone."³⁵ On 17 March 2020, after the ICC authorised an investigation into the situation in Afghanistan, U.S. Secretary of State Michael R. Pompeo threatened to impose punitive measures against ICC staffers, and their families.³⁶ Following through with these threats, the US Administration issued on 11 June 2020 an Executive Order on Blocking Property of Certain Persons Associated with the ICC³⁷, and announced on 2 September 2020 the imposition of direct sanctions to ICC Prosecutor, Fatou Bensouda, as well as the Head of the Jurisdiction, Complementarity and Cooperation Division, Phakiso Mochochoko, and "whoever directly engages with or materially supports these investigations, to which the US administration objects".³⁸

FIDH is appalled by the threats made against the Court and the escalation of the US lead intimidation campaign against the ICC and its personnel. FIDH deems it a direct attack against the independence of the Court and the rule of law, supporting impunity for the most serious crimes. These sanctions can have a disastrous impact on the rights of victims to seek justice and obtain reparation. As stated in the open letter addressed to the President of the ASP, Mr. O-Gon Kwon, FIDH, together with the Center for Constitutional Rights, the Center for Justice & Accountability, and 46 other co-signatories, urge States Parties to show their support and commitment, both collectively and individually, to the ICC, and to denounce such attacks in the strongest terms.³⁹ Such threats undermine the work of the Court and encourage a system of selective justice.

30. [ICC Statement, Statement of the Office of the Prosecutor of the International Criminal Court as delivered at the press conference in Dhaka, Bangladesh, 4 February 2020.](#)

31. [Press Release by FIDH, US Sanctions on ICC Officials Deplored as an Outrageous Escalation of Intimidation Campaign, 4 September 2020.](#)

32. [Virtual stakeout read by Marc Pecsteen de Buytswerve, Deputy Permanent Representative of Belgium to the United Nations on behalf of the 10 International Criminal Court members of the UN Security Council, 10 June 2020.](#)

33. [International Criminal Court: Statement by the High Representative/Vice-President Josep Borrell on US Sanctions, 3 September 2020.](#)

34. [Statement by Ambassador Christoph Heusgen on behalf of 74 States Parties to the Rome Statute in support of the International Criminal Court on the occasion of the ICC Report to the General Assembly, 2 November 2020.](#)

35. [Interview of Benjamin Netanyahu by Trinity Broadcasting Network, 20 January 2020.](#)

36. [Press Release by FIDH, ICC must be protected – Open Letter to the States Parties to the Rome Statute, 30 April 2020.](#)

37. [United States of America, Executive Order on Blocking Property of Certain Persons Associated with the International Criminal Court, 11 June 2020.](#)

38. [Press Release by FIDH, US Sanctions on ICC Officials Deplored as an Outrageous Escalation of Intimidation Campaign, 4 September 2020.](#)

39. [Open Letter by FIDH, Center for Constitutional Rights and Center for Justice & Accountability, In Face of Attacks, Support the ICC's Independence, Integrity and Mandate, 7 July 2020.](#)

Furthermore – and despite some States’ compliance with the Court or expressed intention to act accordingly – FIDH is alarmed by the lack of cooperation of States regarding the execution of arrest warrants issued by the Court. FIDH wishes to remind States Parties of their obligation to fully cooperate with the Court and its staff, at every stage of the criminal process.

Currently, the ICC does not receive enough support to deal with non-cooperation by States Parties. The various measures adopted by the ASP to enhance cooperation, including the toolkit on non-cooperation, have yet to make a difference.⁴⁰ The ASP must propose a serious and robust strategy to tackle non-cooperation, including concrete measures against the lack of cooperation by States Parties. The UN Security Council (UNSC) could play a central role in enhancing the cooperation of States with the work of the ICC. More specifically, the ASP should request the UNSC to develop a concrete framework to promote cooperation with the Court when it refers situations to the ICC and to actively support the execution of arrest warrant.⁴¹

FIDH calls upon States Parties to:

- **Effectively cooperate with the Court at every stage of criminal proceedings, in order for the Court to be able to fulfil its mandate;**
- **Sign and advocate for continued cooperation agreements with the ICC;**
- **Publicly condemn the threats made by governments that seek to intimidate the Court and its personnel;**
- **Improve and strengthen ASP procedures related to non-cooperation, and include a standing agenda item on non-cooperation at the ASP;**
- **Take advantage of public fora, including this ASP session, to express their commitment to the ICC and its independence.**

4. The Court must receive the budget it needs to carry out its mandate

The budget of the Court is adopted annually at the ASP and follows the recommendations of the Committee on Budget and Finance (CBF).⁴² Due to the extraordinary circumstances and the challenges caused by the global pandemic, the CBF proposes a budget decrease of € 703.3 thousand or 0.5 per cent against the approved budget of 2020.⁴³ Overall, the budget proposed amounts to € 148,502 million. However, FIDH notes that if the CBF’s recommendation is followed this year, the budget of the OTP, the Registry, and the Secretariat of the Trust Fund for Victims will not be affected by the decrease. The Judiciary, on the other hand, will see its budget compressed – a trend that has already been registered over the past two years.

FIDH understands the extraordinary situation which has affected world economies and welcomes the efforts of the Court to propose a lenient budget. Nevertheless, it urges States Parties to approve, as a minimum, the budget requested by the ICC, and the minimal requested increase made by the **OTP** of € 5.2 to support its work on ongoing and upcoming preliminary examinations, investigations and prosecutions.⁴⁴

FIDH is concerned by the fact that the **Trust Fund for Victims (TFV)** did not request for an increase even though the TFV will have three reparations cases to implement, in addition to an expected reparation order in 2021, and increasing assistance programmes.⁴⁵ FIDH encourages the TFV to

40. [Resolution ICC-ASP/17/Res.5, Annex II; ICC Toolkit for the implementation of the informal dimension of the Assembly procedures relating to non-cooperation, 28 November 2018.](#)

41. [FIDH and Kenya Human Rights Commission, The victims’ mandate of the International Criminal Court: disappointments, concerns and options for the way forward: Observations and recommendations for the Independent Expert Review, June 2020, p. 19-20.](#)

42. [Committee on Budget and Finance \(CBF\), Report of the Committee on Budget and Finance on the work of its thirty-fourth session, ICC-ASP/19/10, 10 September 2020.](#)

43. [ICC, Proposed Programme Budget for 2021, Overview of the Proposed Programme Budget for 2021, budget priorities and operating parameters, ICC-ASP/19/10*, 10 September 2020, para.5.](#)

44. *Ibid.*, paras. 188 and 194.

45. *Ibid.*, para. 697.

request the resources it needs to ensure it is able to fulfil its growing mandate. Furthermore, FIDH is alarmed by the cuts in the budget proposed by the TFV allocated for trainings and wishes to recall the importance of providing trainings to its staff, especially regarding the development of implementation plans that meet the expectations and needs of the judiciary.⁴⁶

Finally, FIDH is concerned by the commitment of the **Judiciary** to present a zero nominal growth budget despite the arrest and detention of Mr. Abd-Al-Rahamn⁴⁷ and the expected increase in workload at the Appeals Division for 2021.⁴⁸

FIDH reiterates that the financial support of the Court must be needs-driven and not resource-driven to ensure that the Court can effectively and efficiently conduct its mandate.

FIDH calls upon States Parties to:

- **Allow the budget requested by the Court for 2021 to provide it with the minimum resources necessary to function in 2021;**
- **Reject any zero nominal growth policy proposed by a number of States;**
- **Recognise the operational challenges and the impacts the current public health crisis can have on victims and avoid limiting responsiveness to unforeseen and/or unbudgeted needs of the Court;**
- **Initiate a debate on reforms to the budget process, including on separating the budget discussion from other discussion taking place at the ASP, as well as discussing the added value of multi-year budgeting;**
- **Engage with the United Nations Security Council on the role of the United Nations in funding the Court for the expenses incurred due to referrals of the situations of Darfur/ Sudan and Libya by the Council to the Court.**

5. The central position of victims in ICC proceedings must be guaranteed

The ICC was created with the express intention of giving a central role to victims in the judicial process, from their right to participate in the proceedings to their right to claim reparations.⁴⁹ 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.⁵⁰ FIDH has always been highly involved in monitoring the impact of the ICC on victims and affected communities and advocating for victims to have a voice in all stages of ICC proceedings and to be able to give their view on reforms towards an increased performance of the Court.

States Parties, the Court and all relevant stakeholders should take the opportunity of the analysis of the report and recommendations of the **ICC Independent Expert Review** and the reflections on their implementation to strengthen victims' role in ICC proceedings and to guarantee meaningful victims participation and representation as well as reparations. Building on the observations and recommendations that stemmed from FIDH-KHRC consultations on the Court's impact on victims and affected communities organised in Nairobi in March 2020 with 25 civil society and victim legal representatives, FIDH wishes to stress the importance of taking concrete measures to guarantee that victims are treated with empathy and respect, are kept informed at all stages of judicial proceedings, and have their views and concerns addressed.⁵¹ It is therefore essential for the Court to develop a Strategy on Victims with a focus on how to meaningfully implement victims'

46. [FIDH and Kenya Human Rights Commission, The victims' mandate of the International Criminal Court: disappointments, concerns and options for the way forward: Observations and recommendations for the Independent Expert Review, June 2020](#), p. 38.

47. [ICC, Proposed Programme Budget for 2021, Overview of the Proposed Programme Budget for 2021, budget priorities and operating parameters, ICC-ASP/19/10*, 10 September 2020](#), para. 86.

48. *Ibid.*, para. 94.

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

50. [FIDH, New ICC Judges Must Ensure the Meaningful Participation of Victims in Criminal Proceedings, November 2020](#), p. 5.

51. [FIDH and Kenya Human Rights Commission, The victims' mandate of the International Criminal Court: disappointments, concerns and options for the way forward: Observations and recommendations for the Independent Expert Review, June 2020](#), p. 33.

rights in all stages of the process.⁵² The revision of the ICC legal aid policy, that for now failed to effectively bolster victims' rights and which timeline still needs to be clarified, could be addressed in the context of the ICC Review and its implementation.

States Parties must also ensure that expertise on victims' rights and experience in working with victims of serious human rights violations are an important criteria they take into account in their choice during the coming **elections of the next Prosecutor and in particular the six new Judges**. Not only have victims' participatory rights been sometimes narrowly interpreted, but differing stances to victims' procedural rights could be observed.

For example, this year the Court has imposed some serious limitation to the participatory role of victims. In particular, the Appeals Chamber ruled that victims were not a party to the proceedings in the context of an Article 15 request (i.e. when the Prosecutor is seeking for an authorisation *proprio motu* to open an investigation in a situation country).⁵³ The Court's ruling is appalling, especially when taking into account the significant impact the decision of the Court had on the victims' prospect to ever obtain justice.⁵⁴

As a consequence of differing judicial decisions, there have been numerous interpretations and implementations as to how victims may apply to participate in proceedings, including the modalities of participation at the pre-trial, trial, and reparations stages, and how and by whom victims will be represented. FIDH therefore urges the ICC, and especially the Judges, to refrain from favouring a narrow interpretation of the victims' right to participate, and rather calls for a harmonious and comprehensive interpretation of their rights throughout all stages of the criminal proceedings.⁵⁵ States Parties must therefore ensure that elected candidates have the requisite knowledge and understanding of victims' rights at the ICC in order to enable them to make informed decisions relating to victim participation.

Finally, victims-related activities should not be the weakest link to be cut in discussions on the Court's annual **budget**. As an illustration, in 2015 funds dedicated to staff and activities of the Victims Participation and Reparations Section (VPRS) and the Office of Public Council for Victims (OPCV), as well as legal aid for victims – including funds for external LRVs –, represented a mere 4% of the overall ICC budget. However, victim participation at the ICC has been the brunt of the Court's financial difficulties, as cuts in budget lines and zero-growth policies have affected victim participation inordinately. For example, Legal Representatives for Victims have consistently faced budget cuts relating to legal aid, impacting their team composition and ability to represent victims and meet with them in person.⁵⁶ Therefore, FIDH urges States Parties to ensure that their decisions on the budget of the Court do not harm victims' effective participation, and that their budgetary cuts do not impact ICC victims-related activities.

FIDH calls upon States Parties to:

- **Dedicate the necessary means to victims-related activities of the Court (notably outreach activities to ensure that victims, civil society and affected communities are well-informed of the progress and setbacks of the judicial process), including by refraining from budgetary cuts that impact victims' participation directly;**
- **Encourage the Court to develop and present a strategy on victims;**
- **Dedicate time to discussions around the reform of the legal aid policy, that should be guided by the fundamental right of victims to choose their legal representative.**

52. *Ibid.*, p. 34.

53. [ICC Appeals Chambers, Situation in the Islamic Republic of Afghanistan, Reasons for the Appeals Chamber's oral decision dismissing as inadmissible the victims' appeals against the decision rejecting the authorisation of an investigation into the situation in Afghanistan, ICC-02/17 OA OA2 OA3 OA4, 4 March 2020, para. 21.](#)

54. [FIDH, New ICC Judges Must Ensure the Meaningful Participation of Victims in Criminal Proceedings, November 2020](#), p. 5.

55. *Ibid.*

56. [FIDH, New ICC Judges Must Ensure the Meaningful Participation of Victims in Criminal Proceedings, November 2020](#), p. 7-8.



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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.

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

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