

**Coalition for the International Criminal Court (CICC)
ICC Review Team Paper**

Recommendations for the proposal of an action plan for the assessment of the Independent Expert Review recommendations

The Coalition for the ICC (CICC) Review Team¹ submits the following recommendations for the consideration of the Review Mechanism. The Team's submission focuses on:

1. Recommendations on priorities; and
2. Recommendations on the action plan process.

1. Recommendations on priorities

Team members have different mandates and will make contributions throughout the review process based on their different areas of expertise. As a Team, however, we have the common goal of seeing through the much-needed changes that will strengthen the Court's delivery of justice. To this end, the Team has identified a number of key topics in the IER report and related recommendations that we believe should be prioritized for assessment. The following does not amount to a comprehensive prioritization exercise covering all the IER recommendations but recalls (in no specific order) areas of longstanding interest and concern to civil society.

The Team suggests that these topics be prioritized for assessment:

- a. Put victims and affected communities at the centre of the Court's work;
- b. Ensure effectiveness of victims' rights, including participation;
- c. Guarantee the highest standards of fair trial rights;
- d. Improve the Office of the Prosecutor's methodologies;
- e. Address issues of gender equality and workplace conduct;
- f. Ensure the Court has adequate resources to carry out its mandate;
- g. Improve cooperation and strengthen political support;
- h. Ensure merit-based elections of highly qualified Court officials.

¹ This paper has been prepared by Coalition members most active on the issue of the review of the ICC and the Rome Statute system. It does not represent the views of all Coalition members. Since the Rome Diplomatic Conference, Coalition members have organised themselves into thematic teams to follow issues addressed by the ASP or its subsidiary mechanisms and by the ICC. Teams are a forum to discuss and follow issues and with a view to developing advocacy. All Coalition members can join any team.

For further information contact the CICC Review Team co-leaders Dorine Llanta (International Federation for Human Rights, FIDH), at dllanta@fidh.org and Maria Elena Vignoli (Human Rights Watch), at vignolm@hrw.org, or the Team's focal point in the CICC's International Secretariat, Virginie Amato at amato@coalitionfortheicc.org.

a. Put victims and affected communities at the centre of the Court’s work

| WHAT? | WHY? | Key recommendations |
|---|--|--|
| Outreach and communications | | |
| <p>Outreach to victims and affected communities is crucial to the Court’s work; it is a prerequisite of the effectiveness of victims’ rights and, done properly, facilitates meaningful participation in ICC proceedings. The experts acknowledged this is a central cross-organ issue and made key recommendations to improve the Court’s outreach, including by highlighting the need for better cooperation among Court organs to adopt and implement a coordinated communications strategy. They also recognized the need for timely, continued and strategic outreach from the earliest stages of the proceedings, including during preliminary examinations. At the same time, they acknowledged the importance of communicating with the broader public, particularly in situation countries and countries under preliminary examination, and recommended the adoption of a cross-organ, coordinated communication strategy.</p> | <p>The lack of proper public information and outreach from the earliest stages of the proceedings, delays, and poor coordination across Court organs have led in some situations to: limited participation from victims; misconceptions, confusion, resentment and lack of trust towards the Court; limited cooperation with the Court; re-traumatization or additional trauma to victims and their families; and an increased burden on local civil society organisations to fill the information gap. These can result in difficulties conducting and completing investigations and trials and increased resource needs to overcome perception challenges, among other things.</p> | <p>R156-159 [on relations between the Office of the Prosecutor (OTP) and civil society organisations], R163-167 [on outreach and communication strategies], R267 [on the establishment of an OTP focal point in charge of communication with stakeholders during preliminary examinations], and R326 [on the need to consult the defense in developing outreach and communication strategies].</p> |
| Field presence | | |
| <p>There is a severe geographical and cultural gap between the ICC and the situations in which it operates. The experts suggest that this gap can be reduced by a more adequate, long-term and systematic field presence of the Court, including for the OTP during investigations.</p> | <p>Enhanced field presence and outreach that is closer to affected communities will result in better understanding by the Court of the situations in which it operates. It will also increase access to witnesses and local civil society. Altogether this can lead to stronger evidence and cases.</p> | <p>R80-86 [on field offices] and R293-298 [on OTP/investigators’ presence in situation countries].</p> |

b. Ensure effectiveness of victims’ rights, including participation

| WHAT? | WHY? | Key recommendations |
|--|---|--|
| Victim Participation | | |
| <p>A key attribute of the Rome Statute is the innovative inclusion of rights for victims, including the right to participate in the proceedings and to be represented by counsel. However, inconsistent practices and overly narrow interpretation of those rights over the years have created confusion among victims and legal representatives and have at times limited access to the proceedings. This is particularly true when it comes to legal representation, including choice of counsel and modalities of participation. The process for victims to be authorized to participate also needs to be streamlined. While the IER recommendations on this topic are somehow limited, the experts’ findings reflect concerns that need to be addressed in the assessment phase.</p> | <p>Ensuring victims’ right to participation is at the core of the Court’s work. There cannot be meaningful justice without meaningful participation from those most affected by its work and decisions, and without their effective representation during the proceedings. Inconsistencies in the process have impacted and continue to affect hundreds, if not thousands of victims from all over the world engaged or who wish to engage in ICC proceedings. As new situations are opening and new cases brought to the Court, it is crucial to prioritize the assessment of the findings and recommendations addressing the existing issues in order to facilitate and enhance victim participation. Although not extensively addressed – or not addressed at all – in the IER recommendations, these discussions should also touch on issues related to legal representation and witness and victim protection.</p> | <p>R337-338 [on the process of victims’ applications to participate in proceedings], R341 [on appointing counsels at early stages], and R345 [on the early completion, collection and processing of the combined standard application form for victim participation and reparations].</p> |
| Reparations | | |
| <p>As highlighted in the final IER report, “[t]he Experts’ assessment of the effectiveness, functioning and operation of the reparations scheme leads to the conclusion that it has not delivered fair, adequate, effective and prompt reparations to victims of crimes under the jurisdiction of the Court.” This is highly problematic for an institution delivering international justice as a last resort for thousands of victims of the most serious crimes around the world. While we acknowledge the complexity of reparations involving so many victims, the complicated processes and late consideration of reparations at the ICC has negatively impacted victims and affected communities and created lack of trust in the system.</p> | <p>Reparations, whatever form they take, are key to ensure redress to victims. At the ICC, due to the nature of the crimes under the jurisdiction of the Court and the widespread impact they have, it is all the more important to ensure that clear, coordinated, consistent and victim-centred reparation processes are implemented, and that resources are available for meaningful reparations. As more cases reach the reparation phase, it is crucial to assess the experts’ recommendations as soon as possible.</p> | <p>R342-343 [on the development of principles, procedures and best practices for reparations], R348 [on continued collection of applications], R350 [on reparations experts], and R356 [on TFV fundraising strategy].</p> |

| Coordination among relevant Court organs | | |
|--|--|--|
| <p>Various stakeholders, including civil society organisations, as well as the independent experts, have raised the shortcomings in terms of coordination among the different organs of the Court in charge of implementing victims' rights. This has led to inconsistent practices and created uncertainty particularly among victims and affected communities, legal representatives, and within the Court itself with regard to the respective mandates of various actors. The lack of coordination is also an obstacle to a comprehensive assessment of the systems in place and the identification of effective solutions. In response, the experts have proposed that a standing coordination body be created.</p> | <p>Whether in the form of a standing coordination body or otherwise, there needs to be a better coordination among those with victim-related mandates, for clarity and consistency. Currently, this lack of coordination results in duplication of tasks in some instances and significant gaps in others. It is of utmost importance that all relevant actors jointly evaluate the current systems for implementation of victims' rights and develop effective strategies and policies in a comprehensive and coordinated manner. As such, we consider the assessment of the relevant recommendations a priority.</p> | <p>R339, R359-360 [on the establishment of a standing coordination body].</p> |

c. Guarantee the highest standards of fair trial rights

| WHAT? | WHY? | Key recommendations |
|---|--|---|
| Legal aid policy | | |
| <p>The current legal aid policy is outdated and has been under review since 2012. The experts recommend finalizing a reform of this policy as a matter of priority, taking into account past assessments and consultations. The goal is to adopt an accessible, effective, sustainable and credible policy that ensures equality of arms and adequate facilities to prepare an effective defence.</p> | <p>Fair trials are a cornerstone of the Rome Statute system. Defence teams are underfunded and have limited facilities that impair their ability to prepare and conduct an effective defence. Junior team members and women are particularly disadvantaged in the current system, which contains no minimum rate requirement for their remuneration, inadequate protections against discrimination and workplace misconduct, and no provisions for maternity or sick leave. All counsels and team members face financial penalties due to the failure to resolve the question of taxation with the host state. The cumulative effect of the current legal aid system being not fit for purpose is an inequality of arms for the defence which can affect the right to a fair trial at the ICC – in addition to having to prepare their cases with limited resources compared to the prosecution, defence team members carry additional financial and administrative burdens and contend with workplace insecurity.</p> | <p>R328-335 [on various aspects of legal aid].</p> |
| Institutional representation of the defence | | |
| <p>The experts recommend strengthening the institutional representation of the defence by consolidating defence support functions in a Defence Office and formalizing defence representation and participation in Court-wide coordination mechanisms and processes. This should be assessed as a priority.</p> | <p>Given the permanent nature of the ICC and the critical importance of respecting defence rights, it is essential to ensure the ICC's structure fully supports the defence's institutional representation. Prior assessments have recommended, for example, the establishment of a dedicated organ.</p> | <p>R320-327 [on various aspect of the defence's institutional representation].</p> |

d. Improve the Office of the Prosecutor’s methodologies

| WHAT? | WHY? | Key recommendations |
|--|---|--|
| <p>The OTP has faced significant setbacks in court. While acquittals must occur where the evidence does not support conviction, the low rate of convictions before the Court suggests considerable room for improvement. While the experts’ analysis and recommendations cover some important issues, the Team believes that there may be a need for further study of steps needed to improve the OTP’s performance.</p> | <p>The OTP is the engine of the Court—fair, expeditious and successful proceedings are contingent on a dynamic, well-equipped and efficient prosecutor’s office. To afford victims access to justice, the OTP needs to be equipped and adequately resourced to move forward the strongest possible cases.</p> | <p>R269-271 [on situation-specific strategic plans], R293-298 – already mentioned above—[on OTP presence in situation countries], R299-304 [on evidence assessment and analysis], and R305-310 [on evidence review].</p> |

e. Address issues of gender equality² and workplace conduct

| WHAT? | WHY? | Key recommendations |
|--|---|---|
| <p>Ensuring gender equality in staff and leadership positions at the Court is essential. This issue has been raised for several years by many stakeholders and it was reflected in the IER final report. The experts have also raised the existence within the Court, and particularly within the OTP, of an unacceptable “toxic” workplace environment, including bullying and harassment, deeply impacting staff at all levels, and particularly female staff.</p> | <p>Gender equality is not only a right, but also a driver of performance and success for any organisation. Gender equality being a key component of a healthy workplace culture, it will also aid in addressing the fraught organisational culture as well as workplace misconduct, including sexual harassment, at the ICC. The current toxic and discriminatory environment affects the well-being of staff and the quality of the work of the Court. We believe the Review Mechanism should identify these recommendations as priorities for assessment. In addition, the Court and the ASP should apply a gender lens in their assessment of all the IER recommendations.</p> | <p>R14-15 [on addressing the Court’s working culture and ensuring gender equality], and R87-88 [on addressing bullying and harassment].</p> |

² While the following reflections primarily refer to women, we are aware that trans and non-binary people who do not identify as women may face similar challenges and we intend to be inclusive of them.

f. Ensure the Court has adequate resources to carry out its mandate

| WHAT? | WHY? | Key recommendations |
|--|---|---|
| <p>States parties should provide the Court with the resources it needs to carry out its mandate. At the same time, the Court should present a budget proposal that adequately reflects its needs. Improving the budgeting process and soliciting long-term strategic discussions among all stakeholders should be prioritized as steps toward closing the gap between the work the Court has to do and the resources it has available.</p> | <p>There is a clear inconsistency between the Court’s workload and its resources, contributing to long delays in victims accessing justice. This has contributed to a lack of trust in the Court among some affected communities. Such delays may also lead to added challenges in the preservation of evidence. Assessing the experts’ recommendations when it comes to the budget process, as well as long-term strategy setting, should be a priority in order to advance efforts to ensure the Court has resources adequate to its mandate.</p> | <p>R132-143 [on the budget process], R247 [on supporting positive complementarity], and R363 [on stakeholder discussions around a 10-year strategic vision for the Court].</p> |

g. Improve cooperation and strengthen political support

| WHAT? | WHY? | Key recommendations |
|---|--|---|
| <p>Steps aimed at strengthening state party cooperation, including in the face of politicized attacks, should be prioritized. Although not specifically addressed in the IER report, state party support should also include support to human rights defenders and civil society organisations who are targeted because of their work to advance justice on behalf of victims and affected communities, including before the Court.</p> | <p>The Court simply cannot operate without the cooperation and support from states as well as other stakeholders. It needs this cooperation to facilitate arrests, secure evidence and enhance the quality and impact of its operations. States parties can also benefit from this cooperation through access to information and increased capacity of their own investigative personnel (for example through the joint trainings suggested in R277). Without support from its states parties in the face of political attacks, the Court is prone to becoming weakened in terms of public perceptions, which has a negative impact on its ability to carry out its mandate and make a positive difference in the lives of victims and affected communities.</p> | <p>R169 [on support against political attacks], and R284-285, 289-290 [on cooperation regarding arrests].</p> |

h. Ensure merit-based elections of highly qualified Court officials³

| WHAT? | WHY? | Key recommendations |
|---|---|--|
| <p>The nomination and election of the most qualified individuals as ICC officials with high moral character through fair, transparent and merit-based processes is among the most important responsibilities of states parties. Regrettably, ICC judicial elections in particular have been marked in the past by vote-trading, in which states agree to support one another's candidates with minimal regard to the individual's qualifications and expertise. There are also significant gaps in national nominations, which impact the pool of candidates presented for election. The recently concluded election of the Prosecutor also raised significant concerns regarding the lack of proper vetting of candidates for high moral character. A lessons learned exercise on this process is urgently needed; however, it should not be perceived as an effort to question the outcome of the election or the standing of the new prosecutor. In addition, the current process for the election of the Registrar needs further strengthening.</p> | <p>Even if judicial elections have just taken place, there is an urgency in improving the process to ensure the most suitable candidates are nominated and elected in the next rounds of elections. Improving such process can take time. Therefore, it should be prioritized to ensure it is fully operational for the next election cycle. Ensuring fair, transparent and merit-based processes is an essential step towards strengthening the institution's credibility, transparency and impartiality.</p> <p>Similar observations can be made about the process for electing the Prosecutor and the Registrar, both of whom should also be elected solely on merit and demonstrate high moral character.</p> <p>The practice of vote-trading seen in other international institutions runs contrary to the fair and effective functioning of international justice and must be prevented at the ICC.</p> | <p>R371-380 [on judicial nominations], and R76 [on the election of the Registrar].</p> <p>Although not addressed by the experts, the ASP should promptly begin to work on establishing a system to ensure future Assembly election processes include the fair, transparent and professional vetting of candidates, including with regard to any past record of misconduct.</p> |

Finally, the Team encourages the Review Mechanism, in setting appropriate timelines for the assessment of recommendations, to take into account that assessment of some recommendations will likely require considerable amount of time given the complexity of the proposals or the underlying issues, even beyond the six-month periods indicated in the zero draft of the comprehensive action plan. Sufficient time, including so as to permit appropriate consultation, should be built into the timelines for assessment.

³ The Coalition as a whole does not endorse or oppose individual candidates, but rather advocates for the integrity of the nomination and election procedures.

2. Recommendations on the action plan process

The Team submits the following concrete recommendations to ensure that the follow-up to the IER report continues to be guided by transparency, inclusivity, and respect for the court’s judicial and prosecutorial independence. Although these recommendations mostly refer to the discussions that will take place to assess the IER recommendations following the adoption of the action plan, we believe they will benefit the Review Mechanisms’ formulation of the action plan as well as its own engagement—and the engagement of other bodies tasked with assessing specific recommendations—with civil society moving forward.

Transparency

The proposed action plan should promote transparency, including by requiring the timely circulation and publication (in at least the two working languages of the Court) of all relevant documents and advance notice of consultations.

Inclusive and meaningful engagement with stakeholders

Civil society organisations and human rights defenders, particularly those from situation countries and countries under preliminary examination, should be able to contribute to and genuinely participate in all discussions on the substance of the IER recommendations and other review topics. They can provide unique and invaluable perspectives; they have worked directly with victims and affected communities for many years and have experienced first-hand the ICC’s work, including the effects of shortcomings in the Court’s performance. Despite a broad interest in contributing to this crucial process, if the exercise is too complex, overly technical, and rigid, it may prevent interested actors from contributing due to limited capacity.

- a) Where recommendations directly relate to the work of civil society organisations, they should be included as early as possible in the assessment process.
- b) The platforms chosen for those discussions should guarantee inclusive and meaningful engagement in this process of all stakeholders, including by:
 - i. Securing simultaneous interpretation in at least the two working languages of the Court for all meetings;
 - ii. Ensuring the timely translation in at least the two working languages of the Court of all the relevant documents, including the proposed action plan;
 - iii. Communicating timely requests for input from stakeholders within reasonable timeframes, taking into consideration the capacity constraints that several civil society organisations, as well as states parties, may face;
 - iv. Giving careful consideration to the format in which written contributions are solicited. In particular, flexibility should be guaranteed, and alternative options – such as simple text documents– explored to facilitate receiving the views of groups and individuals working with victims and affected communities, particularly in situation countries and countries under preliminary examination.
- c) For those recommendations that do not fall neatly within existing ASP mandates, and that will be taken up by the Review Mechanism, discussions on their substance could be carried out in the context of joint meetings of The Hague Working Group and New York Working Group.
- d) The independent experts who authored the IER report should be invited to the substantive discussions relevant to the cluster they worked on during the review of the Court to provide clarifications on their findings and recommendations, if needed.

In addition to joint discussions with all stakeholders and written submission, efforts should be made to organise dedicated consultations with civil society organisations and human rights defenders, particularly from situation countries and countries under preliminary examination.

Respect for the Court's judicial and prosecutorial independence

All stakeholders should be able to discuss issues of interest stemming from specific IER recommendations, regardless of the entity responsible for their assessment and potential implementation. Within that framework, states parties should actively encourage the ICC to take the necessary steps to significantly improve the institutions' effectiveness. However, it is imperative that the Court remains the ultimate decision-maker on issues under its purview that go to the heart of its judicial and prosecutorial independence, as well as in deference to its professional and policy expertise.