



Human Rights Watch’s comments for the proposal of an action plan for the assessment of the Independent Expert Review recommendations

June 10, 2021

Human Rights Watch endorses the Coalition for the ICC (CICC) Review Team paper, “Recommendations for the proposal of an action plan for the assessment of the Independent Expert Review recommendations,” submitted to the Review Mechanism on June 9, 2021. The Team paper includes recommendations on priorities as well as recommendations aimed at ensuring genuine civil society participation in the assessment of the Independent Expert Review (IER) recommendations and remaining review issues.

In addition to the Team’s recommendations, Human Rights Watch welcomes the opportunity to submit the following comments for the consideration of the Review Mechanism.

Strengthening the court’s strategic vision

The court’s lack of long-term strategic vision in a number of areas is a recurrent theme throughout the IER final report. The experts raised this concern, in relation to court-wide matters as well as for certain aspects of organ-specific work. For example, the experts noted the lack of “a joint or integrated communications strategy,”¹ a court-wide strategic plan for outreach that has not been adequately implemented,² and “a lack of long-term planning for the life-cycle of PEs [preliminary examinations] and investigations, including their (de-)prioritisation and eventual closure.”³ To address these gaps, the experts made a number of specific recommendations.⁴ They also called for state party strategies to defend the court against external attacks, to secure arrests, and to support positive complementarity efforts in national jurisdictions as a component of completion strategies for ICC investigations.⁵

¹ Independent Expert Review (IER), “Final Report,” September 30, 2020, https://asp.icc-cpi.int/iccdocs/asp_docs/ASP19/IER-Final-Report-ENG.pdf (accessed June 10, 2021), para. 386.

² IER, “Final Report,” paras. 393-394.

³ IER, “Final Report,” para. 634.

⁴ Some of these recommendations are already reflected in the CICC Review Team paper and include, but are not limited to: IER, “Final Report,” R163-167 (on outreach and communication strategies); R241-242 (on situation-specific strategic plans); R247 (on the OTP policy paper on completion strategies); R248-250 (on a comprehensive strategy for the “life-cycle” of the OTP’s involvement in a given situation); R255-261 (on a strategy plan for each preliminary examination); and R269-271 (on situation-specific investigative strategies).

⁵ See IER, “Final Report,” R169 (on support against political attacks), R284 (on the appointment of an Assembly focal point on arrests), R289 (on setting up a reward program), and R247(ii) (on the Assembly role in supporting positive complementarity in the context of completion strategies).

The action plan should include as a priority assessing recommendations relevant to ensuring development of the strong strategic vision needed to enhance the court's performance and support by states parties.

We have in the past highlighted different dimensions of this issue based on our research and observation of the court's practice over a number of years, and the experts' findings match some of our concerns.⁶ A lack of strategic vision in certain areas has negatively affected the court's ability to deliver meaningful justice and maximize its impact, a factor in disappointing the legitimate expectations of victims and affected communities.

In addition to improvements in some of the areas highlighted above and reflected in our own research (including outreach, public information, positive complementarity, and the Office of the Prosecutor's own strategic planning) we believe that reflections around a long-term strategic vision for the court would be helpful to improve the dialogue between the court and states parties around crucial issues such as resources and cooperation. In this regard, the experts recommend convening a discussion among all relevant stakeholders (the court, states parties, and civil society) on a strategic vision for the court for the next 10 years (R363). The outcomes could include an agreement on the "the level of activity that the Court is expected and desired to reach in ten years' time and the steps (resources, cooperation and institutional development) that need to gradually occur for the organisation to reach that point."⁷ ***We believe the court and states parties should assess this recommendation as a matter of priority, and the court should lead in its implementation by setting the vision.*** The articulation of such a vision could provide a platform to renew state party consideration of how budgetary resources could be made available and on what timeframe, as well as how to meet the court's cooperation needs.

Avoiding the over-bureaucratization of the process

The assessment of the IER recommendations is the crucial next step in the follow-up to the IER report. Considering the number of recommendations and the extensive nature of the experts' assessment, this is no easy task; it will require adequate time, careful organization, and extensive coordination among all relevant stakeholders. However, in our view, this process should not be overly bureaucratized. While it will be important to have transparent and inclusive discussions among all relevant stakeholder on the substance of the recommendations, these should not be used as excuse to stall or slow down processes that could already be initiated or advanced by both the court and states parties.

⁶ See for example, Human Rights Watch, *Making Justice Count: Lessons from the ICC's Work in Côte d'Ivoire*, August 2015, https://www.hrw.org/sites/default/files/report_pdf/cdio815_4up.pdf; Human Rights Watch, "Comments on the ICC Office of the Prosecutor Draft Policy Paper on Case Selection and Prioritisation," May 3, 2016, <https://www.hrw.org/news/2016/05/03/human-rights-watch-comments-icc-office-prosecutor-draft-policy-paper-case-selection>; Human Rights Watch, *Pressure Point: The ICC's Impact on National Justice: Lessons from Colombia, Georgia, Guinea, and the United Kingdom*, May 2018, https://www.hrw.org/sites/default/files/report_pdf/ijo418_web_o.pdf; Human Rights Watch, "No Peace Without Justice and Human Rights Watch Joint Submission on the Draft OTP Policy on Situation Completion," April 22, 2021, <https://www.hrw.org/news/2021/04/22/no-peace-without-justice-and-human-rights-watch-joint-submission-draft-otp-policy>.

⁷ See IER, "Final Report," R169.