



# **Review of the International Criminal Court**

Views and Recommendations  
from Civil Society

**November 2020**

# Acknowledgements

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The views and positions advanced in this report reflect the views of participating civil society representatives and do not necessarily reflect the views of the WFM/IGP.

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## **Acronyms**

ASP	Assembly of States Parties
CSO	Civil Society Organization
ICC	International Criminal Court
OTP	ICC Office of the Prosecutor
WFM/IGP	World Federalist Movement/Institute for Global Policy

# Foreword

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The decision of the Assembly of States Parties (ASP) in December 2019 to conduct a Review of the International Criminal Court (ICC Review) was a potentially pivotal moment in the global fight against impunity.

For many complex reasons within and beyond the control of the International Criminal Court (ICC), it has yet to advance the fight against impunity as far as expected at the time the Rome Statute was adopted and entered into force. If anything, impunity is more entrenched globally in 2020 than it was when the Court was established in 2002.

The ICC Review is therefore an opportunity to identify and implement reforms that will strengthen the ICC and the Rome Statute system, ensuring that it operates as a just, fair and effective system of international justice, stepping in to deliver justice to victims of the most serious crimes of concern to the international community when national authorities fail to act.

Civil society organizations (CSOs) working against impunity in their countries and regions are situated to make unique and important contributions to this process. However, ICC-related processes typically center on CSOs with presences in The Hague or New York. For this reason, between June and October this year, the World Federalist Movement/Institute of Global Policy (WFM/IGP) launched a new project to: inform CSOs in Africa, Asia-Pacific, Eastern Europe, Latin America and the Caribbean, and the Middle East and North Africa about the ICC Review; seek their assessment of the ICC's performance in key areas; and amplify their views on where reforms are required.

When we started the project, it was not clear how much interest it would generate. However, the strong response from representatives of CSOs in all regions demonstrates that many remain committed to advancing international justice and open to engaging with efforts to strengthen the ICC and the Rome Statute system.

This report sets out the views and recommendations of 90 CSO representatives covering 43 countries regarding the ICC Review. Like the report of the Independent Expert Review issued at the end of September 2020, it may not provide easy reading for the ICC, States Parties to the Rome Statute or supporters of the Court. Many participants have serious concerns about the performance of the Court. They are dismayed at the lack of support by the States Parties that championed its creation. Nonetheless, they provide an insightful assessment of the work of the Court and constructive recommendations on where reforms are required.

The report also provides CSO representatives' initial reactions to some of the key findings and recommendations of the Independent Expert Review. They strongly support many of the reforms proposed. But many oppose or express caution regarding some recommendations that, if implemented, would scale back on the scope of the ICC's work.

It is often remarked that, but for the support of the global civil society movement that arose during the drafting of the Rome Statute, the ICC would not exist. The support of civil society is equally vital for the future success of the Court. WFM/IGP urges the Court and the ASP to take into account the views and recommendations of civil society in this report and their other submissions to the ICC Review in deciding which reforms to take forward

and to consult meaningfully with CSOs throughout the process of implementing the Review.

A handwritten signature in black ink that reads "Keith Best". The signature is written in a cursive style with a large, stylized "K" and "B".

**Keith Best**

Interim Executive Director & Joint Chair Executive Committee  
WFM/IGP

# Executive Summary

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Between June and October 2020, 90 CSO representatives (23 from sub-Saharan Africa; 27 from Asia-Pacific; 26 from Latin America and the Caribbean; 2 from Eastern Europe; and 12 from the Middle East and North Africa) participated in WFM/IGP's project to ensure civil society's input into the Review of the ICC.

77 CSO representatives completed a detailed questionnaire (see Annex 1) setting out their general perceptions of the ICC and views on the effectiveness of—and reforms required to strengthen—its preliminary examinations, investigations, cases, victim participation and reparations as well as the activities of the Trust Fund for Victims. Nearly all participants who completed the questionnaire were interviewed by WFM/IGP researchers to obtain further input on these issues.

Following the release of the final report of the Independent Expert Review of the ICC on 30 September 2020, 38 CSO representatives (7 from sub-Saharan Africa; 13 from Asia-Pacific; 13 from Latin America and the Caribbean; and 5 from the Middle East and North Africa), including 13 CSO representatives who had not completed the questionnaire, attended webinars organized by WFM/IGP seeking their initial reactions to some of the Experts' key findings and recommendations.

## General Perceptions of the ICC

While a number of CSO representatives commented on the importance of the ICC, more than 50% of those who completed the questionnaire considered the ICC and the Rome Statute system's contribution to the fight against impunity to be less than effective.

Responses to follow-up questions show that while many CSOs are focused on the ICC's efforts to address impunity in their countries, most considered the extent and effectiveness of the Court's efforts globally in reaching their assessment. Some expressed concerns that the ICC is not doing enough to advance the fight against impunity and that it lacks a deep understanding of the causes of impunity in different countries and regions. One participant from Asia-Pacific stated:

Nowhere can we claim success. The culture of impunity is on the rise.

In reaching their assessment, they also considered a broad range of other factors relating to the outcomes of the Office of the Prosecutor's (OTP) investigations and cases and how the Court conducts its work, with particular emphasis on the Court's implementation of victims' rights. Some stressed that the work of the ICC is not sufficiently visible.

Other concerns were expressed about the lack of support and cooperation by States Parties.

## Support for the ICC Review

While most CSO representatives support the ICC Review, some are concerned that there has not been more civil society engagement. 56 of the 77 CSOs that completed the questionnaire were aware of the ICC Review, but only 25 had been consulted or had provided input to the process so far.



Many expressed distrust in the “State Party-driven process” and concern that political and financial considerations could lead to weakening the ICC. Some were unconvinced that States will support measures to improve the functioning of the ICC in important areas. One participant from Kenya said:

They might be unwilling to take on the proposals meant to improve the operations of the ICC and especially those related to the OTP, Victim and Witness Protection, and Victims Reparation.

### **Initial General Comments on the Independent Experts’ Report**

CSO representatives who participated in the webinars to review the final report of the Independent Expert Review supported many of the Experts’ recommendations. Recommendations for the ICC to strengthen its relationship with civil society were particularly welcomed. One participant from Nicaragua stated in their questionnaire answers:

Only high-profile international organizations have direct access to the Court. The Court needs to engage with civil society in different countries and regions.

Webinar participants took particular note of the findings and recommendations of the Experts in relation to the internal functioning of the ICC, including distrust between its organs, strong perceptions of a lack of leadership and accountability, gender inequality, staff dissatisfaction and accounts of bullying and harassment. Many stressed serious concerns regarding the institutional situation’s impact on the effective operation and credibility of the Court.

Many were disappointed that, although the Experts had highlighted underfunding of the Court, they did not recommend that the ASP increase the resources available to the Court. Instead, the Experts proposed a number of measures to limit and delay investigations and reduce the scope of the ICC’s cases, which would curtail the Court’s efforts to address impunity, much to the dismay of many CSO representatives.

### **Preliminary Examinations**

Many concerns were raised about the length of some preliminary examinations as well as the coherence, consistency and transparency of how some have been conducted. For example, one participant from Côte d’Ivoire said:

Preliminary examinations rarely lead to real investigations. They are lengthy and ineffective. There is not much transparency in the choice of countries and not much information on the process. [They have] no influence and/or impact on the reduction and cessation of crimes committed in the countries under review.

CSO representatives participating in the webinars overwhelmingly supported the Experts’ recommendations that: transparent criteria should be adopted for opening preliminary examinations; strategy plans, including timelines and benchmarks, should be established for each preliminary examination; and outreach should start at the opening of a preliminary examination.

However, many were concerned that the Experts’ recommendation for the OTP to consider a higher threshold of gravity in determining whether to open an investigation

could establish an opaque standard that may be applied inconsistently to different situations, despite the fact that all Rome Statute crimes are among the most serious of crimes of concern to the international community. One CSO representative from Singapore remarked:

Nuancing of gravity against a backdrop of atrocity crimes is very hard to delineate.

### Investigations

83% of all questionnaire participants stated that strengthening investigations should be a high priority, with some expressing concern about the promptness, thoroughness and effectiveness of OTP's investigations and inadequate outreach. The majority of CSO representatives thought that investigations are not adequately resourced, and that States do not provide the Court with effective cooperation. One participant from Afghanistan stated:

I believe that [the] ICC/OTP investigates cases differently and ... they do not receive enough support from the State Parties if the crimes involve countries, such as [the] USA and Israel or members of NATO countries.

Webinar participants overwhelmingly supported the Experts' recommendations that the OTP should prepare a policy on investigations and strategies for specific situations. The vast majority also supported recommendations to strengthen the OTP's field presence, including by increasing the number of country experts and recruiting local investigative staff.

However, most CSO representatives opposed or expressed caution regarding the Experts' recommendation that challenging situations should be hibernated (temporarily suspended) if sufficient resources are not available to conduct serious investigations. One participant from Asia-Pacific commented:

This approach would give extra leverage to States to put more obstacles in the way of the ICC and justice.

Referring to Experts' indication that the lack of State cooperation may be a factor considered by the OTP in deciding whether to hibernate a situation, a participant focused on Burma/Myanmar questioned whether this approach would be consistent with the purpose of the Rome Statute, stating:

In most cases we need an investigation because the state has refused cooperation.

Another participant from Malaysia asked:

Isn't it the responsibility of the ASP to provide resources if the ICC decides to proceed with an investigation?

### Cases

Although most CSO representatives agreed with the OTP's policies in relation to case selection and charging, many thought that the policies have not been implemented consistently. One participant from the Democratic Republic of Congo stated:

In the majority of cases, [the] OTP has focused on the cases of those opposed to the government (armed groups, opposition political actors). As a result, this policy, which is not in line with the spirit of the Rome Statute, has left several key perpetrators of crimes unpunished.

Most were less than confident that States would arrest and surrender suspects to the ICC or that the ASP would ensure that States cooperate.

Most participating CSO representatives perceived ICC trials to be fair and to respect the rights of the accused. However, some expressed concern about the implementation of victims' rights during cases. A number of CSO representatives considered that the ICC's trials are not expeditious.

While many CSOs agreed with the Experts that the quality and quantity of evidence should be the OTP's main concern in case selection and charging, some stressed that this approach should not result in the ICC further scaling back on its efforts to prosecute crimes, including sexual and gender-based violence, that are often challenging to investigate.

Representatives cautioned that the Experts' recommendation to limit the scope of cases (temporally, geographically and with regard to modes of liability) is not consistent with the OTP's policy to bring charges that, as much as possible, reflect the true extent of criminality that occurred in a given situation—a policy that the vast majority of CSO representatives who completed the questionnaire expressed strong support for.

### **Outreach**

Most CSO representatives who completed the questionnaire considered that outreach is insufficient at all stages of the ICC process and called for this to be addressed as a priority, including through the provision of additional resources by the ASP to support the Court's efforts. One participant focused on the Darfur situation stated:

In terms of outreach to victims and the affected communities, in our case it wasn't the ICC's initiative, it's us who have worked very hard to establish [a] relationship with the Court.

The vast majority of webinar participants supported the Experts' recommendation that an outreach plan should be developed for each ICC situation. However, many opposed the Experts' recommendation that, if additional resources are not provided to the ICC to conduct outreach, CSOs could conduct outreach for the Court. Some explained that while the ICC and CSOs may collaborate in relation to outreach, CSOs cannot speak on behalf of the Court and they also lack resources. One participant from Asia-Pacific stated:

It is outrageous to suggest that the ICC should use the very limited resources of civil society groups. The burden is on the ASP to give the ICC resources to function effectively.

### **Victim Participation**

CSO representatives who completed the questionnaire expressed mixed views regarding the effectiveness of the ICC's victim participation system. While many expressed confidence in the system, others were concerned about the ability of victims, especially

marginalized victims, to access the process. Some commented that the requirements of applications and timelines were onerous and inconsistent. One participant focused on a situation under investigation stated:

The limited time period given to [the Victims Participation and Reparations Section of the Registry] and the victims for filling and submitting the application forms [undermines] victims' effective participation.

CSO representatives also questioned the effectiveness of the ICC systems in place to protect victims who want to participate. One participant focused on Venezuela emphasized:

Many victims are afraid to participate. The system needs to take into account the risks to victims and provide appropriate protection mechanisms.

Although a significant majority of webinar participants supported the Experts' recommendation for the ICC to conduct what appears to be an internal review of victim participation, some thought that the Experts should have gone further, especially in light of the long-standing nature of some of the concerns that the ICC has yet to address. One participant from Asia-Pacific stated:

[The Experts] have put a lot of trust in the ICC to take appropriate steps [even though] these issues have existed for a long time. [It is a] missed opportunity to leave this to the ICC without providing detailed recommendations based on their findings.

### Reparations

Only a small number of CSO representatives who completed the questionnaire said they had been following the ICC's reparations proceedings, which have been completed in four cases so far. Some concerns were raised about the length and clarity of the proceedings in some cases. One participant focused on the Democratic Republic of Congo stated in relation to reparations in the *Lubanga* case:

[The ICC should expedite reparations because] the [situation for] victims who participated in the proceedings more than 8 years ago ... is getting worse and they are tired of waiting.

During the webinars, CSO representatives expressed overwhelming support for the Experts' recommendations that the Court further develop consistent and coherent principles relating to reparations as well as standardized, streamlined and consistent procedures and best practices applicable in the reparations phase of proceedings.

Many supported the Experts' recommendation that reparations proceedings should commence pending the outcome of an appeal against conviction, subject to effective outreach being conducted to manage victims' expectations. However, the fact that more CSO representatives did not support the recommendation indicates that some may be concerned about starting the process before a final conviction, since a conviction overturned on appeal would result in the termination of the reparations proceedings and disappointment of victims.

## **Trust Fund for Victims**

All CSO representatives who completed the section of the questionnaire about the Trust Fund agreed that it is a vital part of the Rome Statute system. However, some expressed concerns and uncertainty about the coherence, consistency, timeliness and accessibility of its activities.

Some highlighted the need to increase the funds and capacity of the Trust Fund. The vast majority of CSO representatives participating in the webinars supported the Experts' recommendation that the Trust Fund develop a fundraising strategy.

However, many were opposed or expressed caution regarding the Experts' recommendation that the Trust Fund's functions be restricted to fundraising, administering the funds and releasing the funds as ordered by the Court. Although some recognized that this would allow the Trust Fund to focus on fundraising, concern was raised as to whether its other functions would be performed effectively if they were reassigned to the Registry, especially without a significant increase in the resources of the Registry's Victims Participation and Reparations Section.

## **WFM/IGP's Recommendations**

The ICC and States Parties should:

- Fully consider the views and detailed recommendations of civil society set out in this report and other submissions by CSOs, including their feedback on the Independent Experts' recommendations, in determining which reforms to take forward and how to implement them;
- Consult broadly with civil society, especially CSOs that are working against impunity in Africa, Asia-Pacific, Eastern Europe, Latin America and the Caribbean, and the Middle East and North Africa, throughout the process to obtain their further input in operationalizing reforms; and
- Keep civil society fully informed of progress with implementation efforts and the impacts of reforms.

# 1 Introduction

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At its eighteenth session in December 2019, the Assembly of States Parties (ASP) decided to establish a Review of the International Criminal Court and the Rome Statute system (ICC Review), including an Independent Expert Review that was conducted in 2020.<sup>1</sup>

12 Experts were appointed to make concrete, achievable and actionable recommendations aimed at enhancing the performance, efficiency and effectiveness of the International Criminal Court (ICC) and the Rome Statute system as a whole.<sup>2</sup> On 30 September 2020, the Experts issued their final report (Independent Experts' Report),<sup>3</sup> including 384 recommendations for reforms, which at the time of writing are under consideration by the ICC and the ASP.

During the Independent Expert Review, the Experts consulted with a significant number of civil society organizations (CSOs).<sup>4</sup> Nevertheless, the extent of these consultations appears to have been limited by the short timelines provided for the ICC Review.

Recognizing the critical and unique contributions that CSOs, which are on the front line of the fight against impunity in their countries and regions, can make to the ICC Review process, between June and October 2020, the World Federalist Movement/Institute for Global Policy (WFM/IGP) consulted with 90 CSO representatives covering 43 countries in order to obtain their input on the ICC Review and initial reactions to some key findings and recommendations in the Independent Experts' Report.

WFM/IGP researchers sought, in particular, to inform and engage CSOs that are working to end impunity in their countries and regions where the ICC is currently active: sub-Saharan Africa, Asia-Pacific, Eastern Europe, Latin America and the Caribbean, and the Middle East and North Africa. Despite their geographic positioning and contextual knowledge of ICC situations, organizations in these regions face challenges in accessing ICC processes that typically center on CSOs with presences in New York and The Hague.

This report documents the participating CSOs':

- General perceptions of the effectiveness of the ICC, the Rome Statute system and the ASP's ICC Review;
- Assessment of the effectiveness of the ICC's preliminary examinations, investigations, cases, victim participation, reparations and the activities of the Trust Fund for Victims, including their recommendations for reforms in these areas; and
- Initial reactions to some of the key findings and recommendations in the Independent Experts' Report.

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<sup>1</sup> Review of the International Criminal Court and the Rome Statute System, ICC-ASP/18/Res.7, 6 December 2019.

<sup>2</sup> Ibid., para. 6.

<sup>3</sup> Independent Expert Review of the International Criminal Court and the Rome Statute System – Final Report, 30 September 2020 (Independent Expert Report).

<sup>4</sup> Independent Expert Review of the International Criminal Court and the Rome Statute – Interim Report, 30 June 2020, paras. 24–25.



# 2 Methodology

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## 2.1 Research Questions

For this report, WFM/IGP employed mixed methods to answer four research questions:

1. To what extent is the ICC meeting the expectations of CSO representatives working to end impunity for atrocity crimes?
2. What are CSO representatives' assessments of the ICC's current performance regarding preliminary examinations, investigations, cases, victim participation, reparations and the Trust Fund for Victims?
3. Where do CSO representatives see the need for reforms?
4. What are CSO representatives' initial reactions to selected findings and recommendations of the Independent Expert Review, in particular those relating to preliminary examinations, investigations, cases, victim participation, reparations and the Trust Fund for Victims?

## 2.2 CSO Engagement

Between June and October 2020, WFM/IGP researchers reached out through the organization's networks and referrals to CSO representatives in Africa, Asia-Pacific, Eastern Europe, Latin America and the Caribbean, and the Middle East and North Africa to inform them about the ICC Review and ask them to participate in the project to ensure CSO input to the process.

Emphasis was placed on reaching out to CSOs working against impunity for serious human rights violations. This included CSOs working in or focusing on situations under ICC preliminary examination or investigation as well as those working against impunity in situations that are not currently the focus of ICC activities. It also included CSOs in non-States Parties that are campaigning for their governments to ratify and implement the Rome Statute.

In doing so, WFM/IGP sought to identify and engage organizations working on women's rights, children's rights, the rights of persons with disabilities and indigenous rights in order to amplify the views of those working with marginalized groups.

In June, WFM/IGP organized and promoted three webinars to CSO representatives in Africa, Asia-Pacific and Latin America and the Caribbean to introduce the project. Other CSO representatives in these regions, Eastern Europe and the Middle East and North Africa were contacted between June and October by e-mail and informed about the project during individual or small group meetings. WFM/IGP organized three additional webinars in October to inform CSO representatives about the Independent Experts' Report and promoted the webinars to all organizations that were invited to participate in the project.

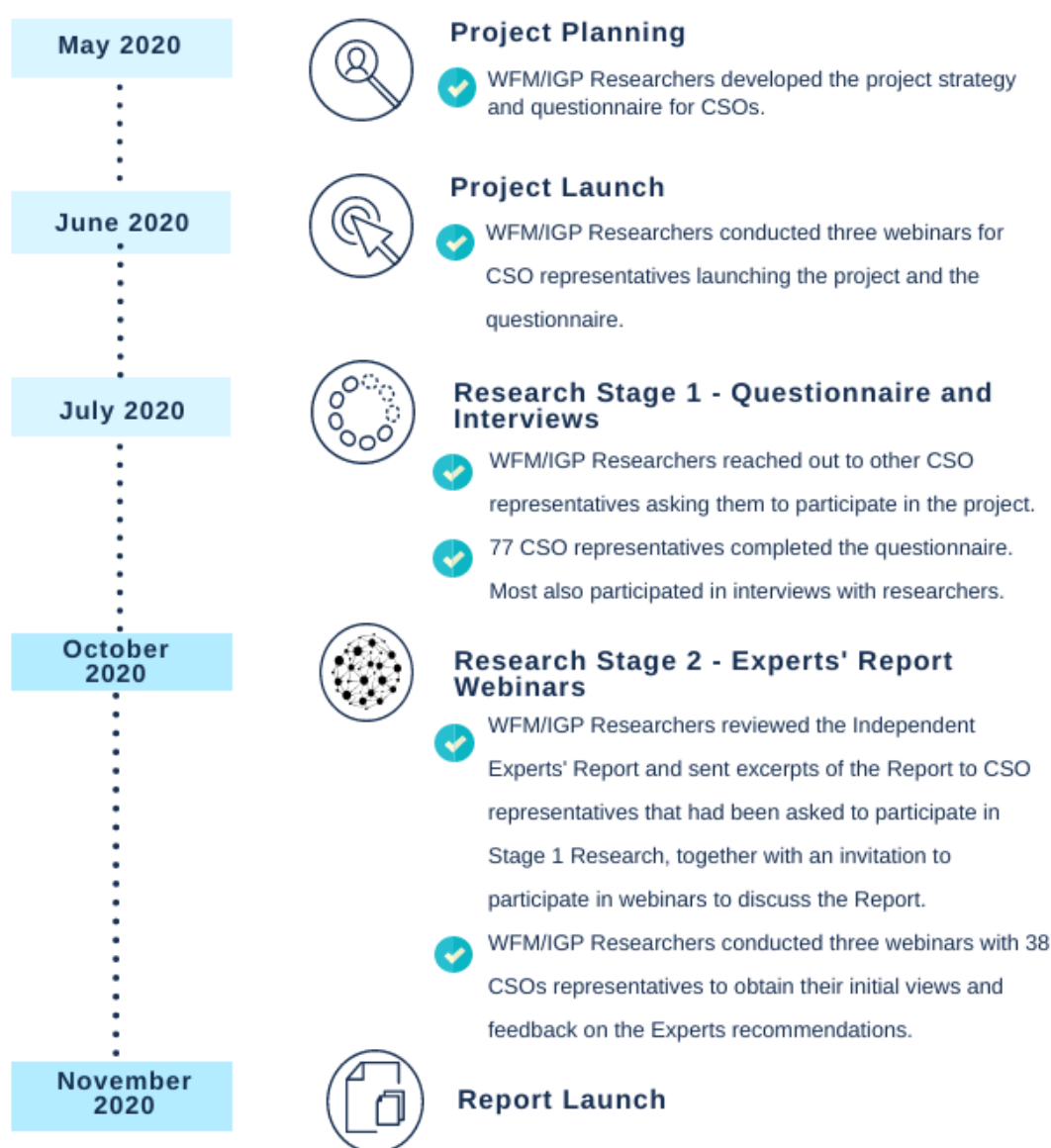
## 2.3 Research Design

Of the 90 CSO representatives who agreed to participate in the project, 77 completed a detailed questionnaire (see Annex 1) to document their perceptions of the ICC, assessment of the Court's performance in a number of areas under review and obtain their recommendations for ICC reforms (addressing Research Questions 1-3). In almost

all cases, individual interviews were conducted with the representatives before or after completing the questionnaire to discuss the ICC Review and key issues of concern.

Immediately following the release of the Independent Experts' Report on 30 September 2020, WFM/IGP researchers provided CSO representatives with the Report, highlighting the Experts' summary of priority recommendations. A paper containing excerpts of the Experts' main findings and recommendations in relation to preliminary examinations, investigations, case selections and prioritization, outreach, victim participation, reparations and the Trust Fund for Victims was also developed and provided to CSO representatives soon afterwards.

All CSO representatives who had been asked to participate in the project were then invited to participate in three webinars to consider and discuss the Independent Experts' Report (addressing Research Question 4). 38 CSO representatives (including 13 representatives who had not completed the questionnaire) participated in the webinars. During the discussions, electronic polls were conducted to document their support for or opposition to certain recommendations. The webinars were recorded so that quotes explaining the views of participants could be accurately transcribed.





## 2.4 Data Analysis

WFM/IGP researchers conducted a detailed analysis of the questionnaire data to identify relevant themes. WFM/IGP researchers also reviewed interview notes and recordings of the webinars to identify quotes that further illustrate CSOs views and inform the analysis of the questionnaire data.

WFM/IGP has sought to reflect the full range of views raised on issues throughout the report, acknowledging differences in views where they exist. Information that was not relevant to issues covered in the report or which may present legal or security issues has been omitted.

An advanced version of this report was sent to all CSO representatives for their review before the launch of the report. Each representative was given an opportunity to amend or withdraw any of their quotes that had been drawn from their questionnaire response, interviews or webinars.

## 2.5 Security

Conscious that many CSOs working against impunity face serious security issues, WFM/IGP researchers asked participants in the questionnaire and/or during interviews whether they had any security concerns related to their participation in the project. 18 CSO representatives indicated that they had security concerns about participating in the project. Many requested not to be named or that their organization not be identified in the report. The contributions of these CSO representatives and other participants from all countries where security concerns were raised are therefore anonymous. In most cases, input from these civil society representatives is attributed to civil society focused on a specific country. In some instances, input is completely anonymous.

A number of other participants that had not raised specific security concerns also asked that neither they nor their organizations be named in the report. In order to respect these requests and to ensure consistency throughout the report, WFM/IGP decided not to name individual participants in this report. Organizations are only named where permission has been expressly granted and where no security concerns have been identified.

## 2.6 Limitations

Due to resource and time constraints, it was not possible to identify and reach out to more CSOs that are actively engaged with the ICC or following its work. Nonetheless, WFM/IGP endeavored as far as possible in the time available to identify and engage a broad range of CSO representatives from the target regions.

In some instances, WFM/IGP researchers attempted but were unable to engage CSO representatives in the project. There are many possible reasons for this. Many CSOs have very high workloads and participating in the ICC Review may not have been a priority for them or their organization. Due to time constraints and difficulties in identifying organizations in some countries, WFM/IGP researchers may not have identified the CSOs that are most actively engaged or following the work of the ICC. Some CSOs contacted had already provided input to the ICC Review process through other initiatives.

CSOs had differing levels of knowledge of and insights into the work of the ICC depending on the ICC's activities in the situations on which they were focused. For example, more CSO representatives provided views and recommendations on the earlier stages of the

process—including preliminary examinations and investigations, which have or are being conducted in a growing number of situations—than on the later stages of the ICC process—including reparations proceedings, which have only been reached in a small number of cases.

Finally, it should be noted that the webinars organized to discuss the 350-page Independent Experts' Report took place only two weeks after its launch. Reactions to the report should therefore be viewed as initial feedback. In some cases, CSOs showed overwhelming support for some of the Experts' recommendations. However, some recommendations raised complex issues and mixed views, indicating the need for further consideration and consultation.

## **2.7 Next Steps**

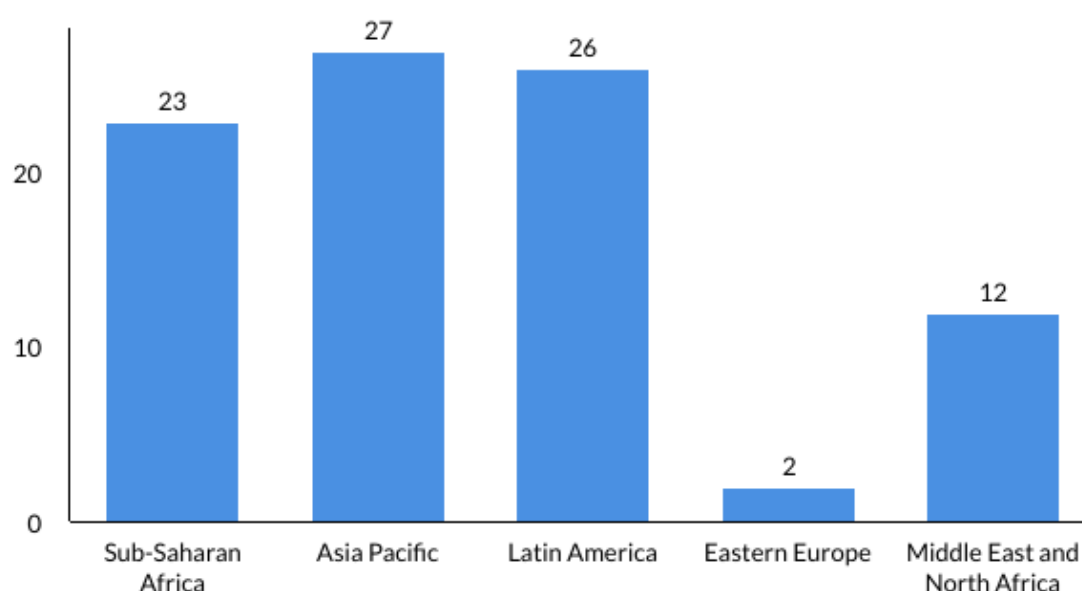
WFM/IGP hopes to build upon the interest and engagement of the CSO representatives who participated in this project so far to ensure that civil society around the world continue to make important contributions to the implementation of the reforms resulting from the ICC Review.

WFM/IGP aims to keep the participating CSOs informed about the ICC Review, provide them with updates on the development and implementation of specific parts of the reform agenda, seek their further input at relevant stages and amplify their advocacy to the ICC and the ASP during the process.

CSO representatives interested in participating in the project are encouraged to contact WFM/IGP by emailing Mr. Ricardo Izquierdo at [izquierdo@wfm-igp.org](mailto:izquierdo@wfm-igp.org).

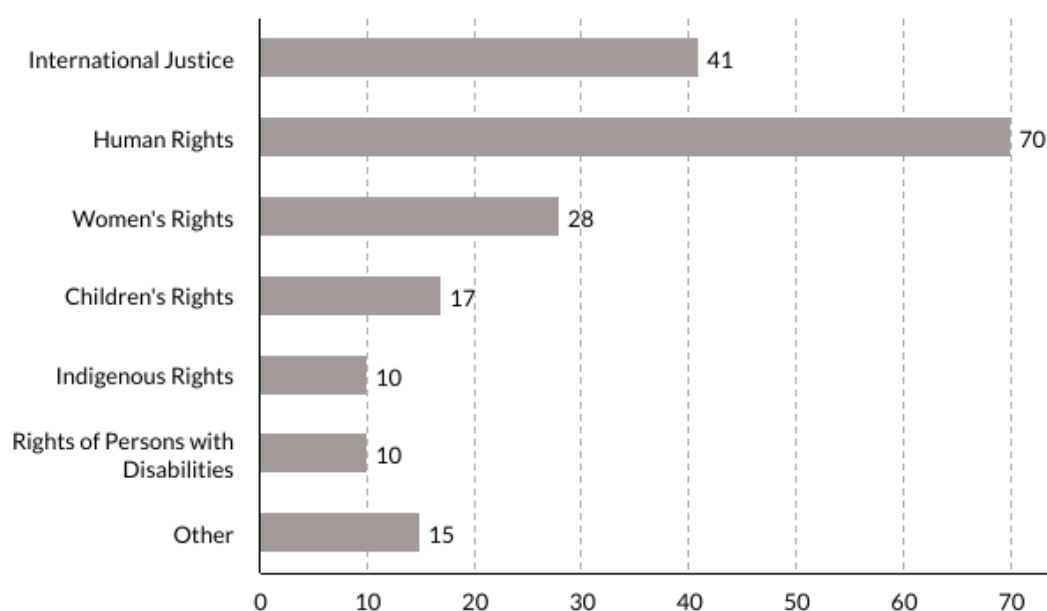


## 3.2 CSO Participants by Region



## 3.3 Types of CSOs and their Mandates

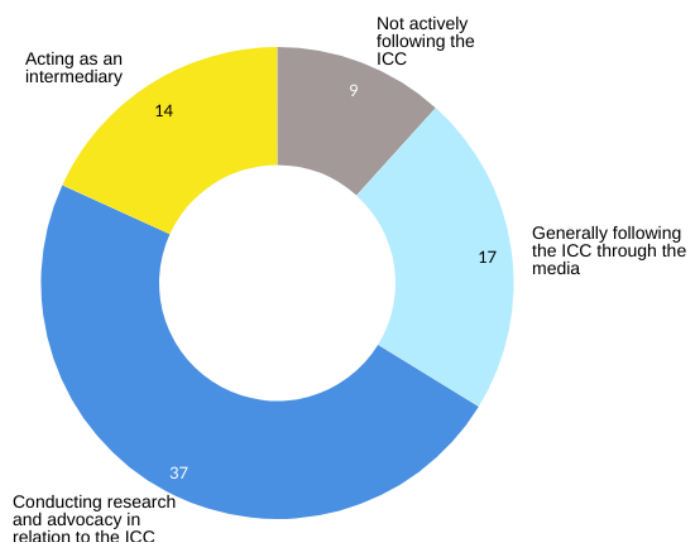
Of the 77 CSO representatives who completed the questionnaire, 74 participants described their organizations as non-governmental organizations, two as academic organizations and one as a professional body. The vast majority of participants stated that the mandate of their organization is human rights, with many focused specifically on women's rights, children's rights, indigenous rights, rights of persons with disabilities and other rights.<sup>6</sup>



<sup>6</sup> Answers to 'Other' included: rights of human rights defenders; economic justice; justice, truth, reparation and guarantees of non-repetition; ratification of the Rome Statute; rights of victims of international crimes and affected communities; security sector reform; rights of workers; atrocity prevention and countering violent extremism; rights of refugees and migrants; rule of law/democracy; strategic litigation; conflicts, HIV, LGBTQI; and transitional justice.

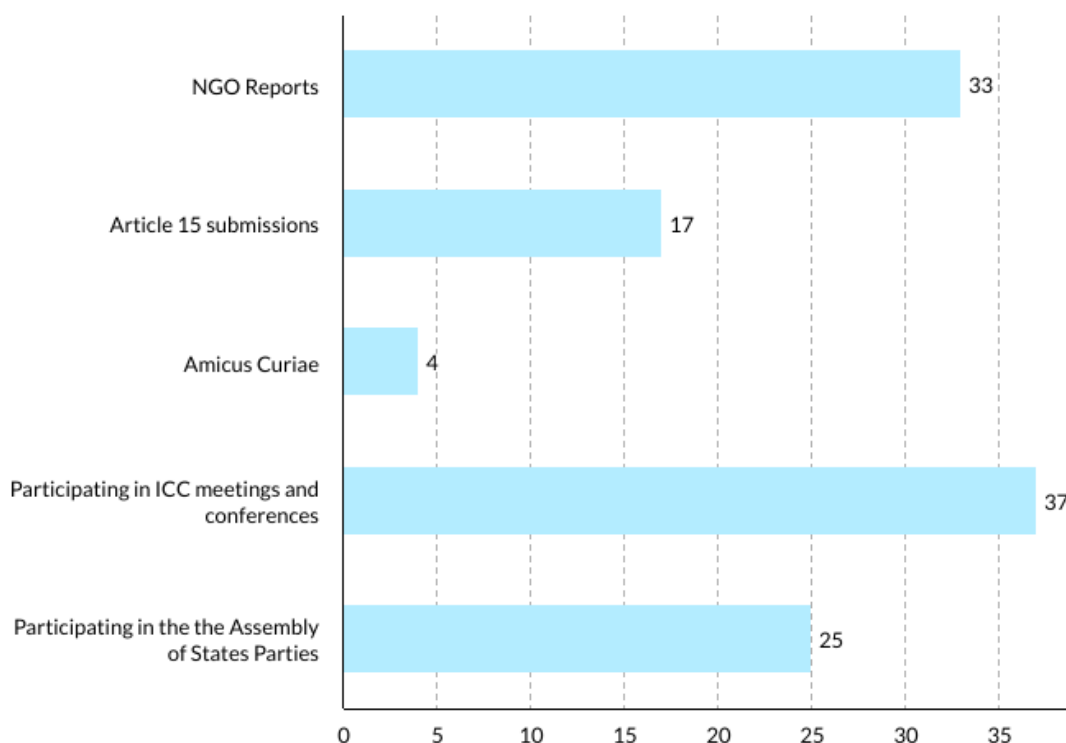
### 3.4 Knowledge or Engagement with the ICC

CSO representatives who completed the questionnaire were asked how actively their organization has been following the work of the ICC.<sup>7</sup>



### 3.5 Previous ICC Advocacy

49 participants in the questionnaire reported that their organizations had previously conducted ICC-related advocacy or participated in ICC meetings or conferences or the ASP.

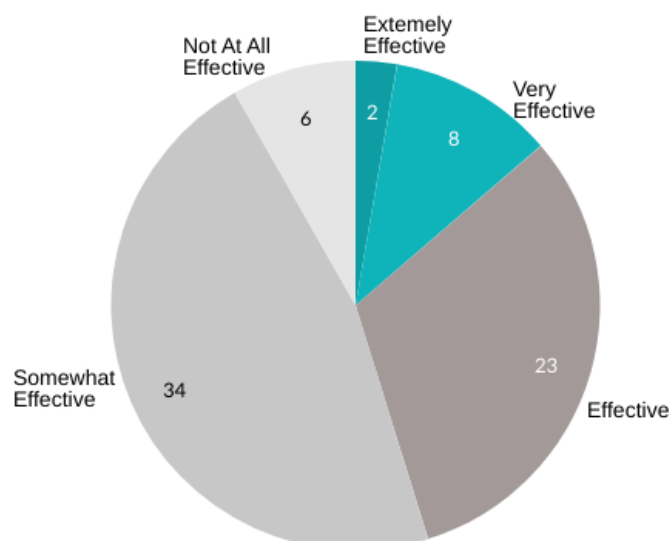


<sup>7</sup> As noted in the ICC's *Guidelines Governing the Relations between the Court and Intermediaries*: “[d]escribing an individual or organisation as an intermediary does not necessarily imply that the organ or unit of the Court or Counsel has requested the individual or organisation to assist.”

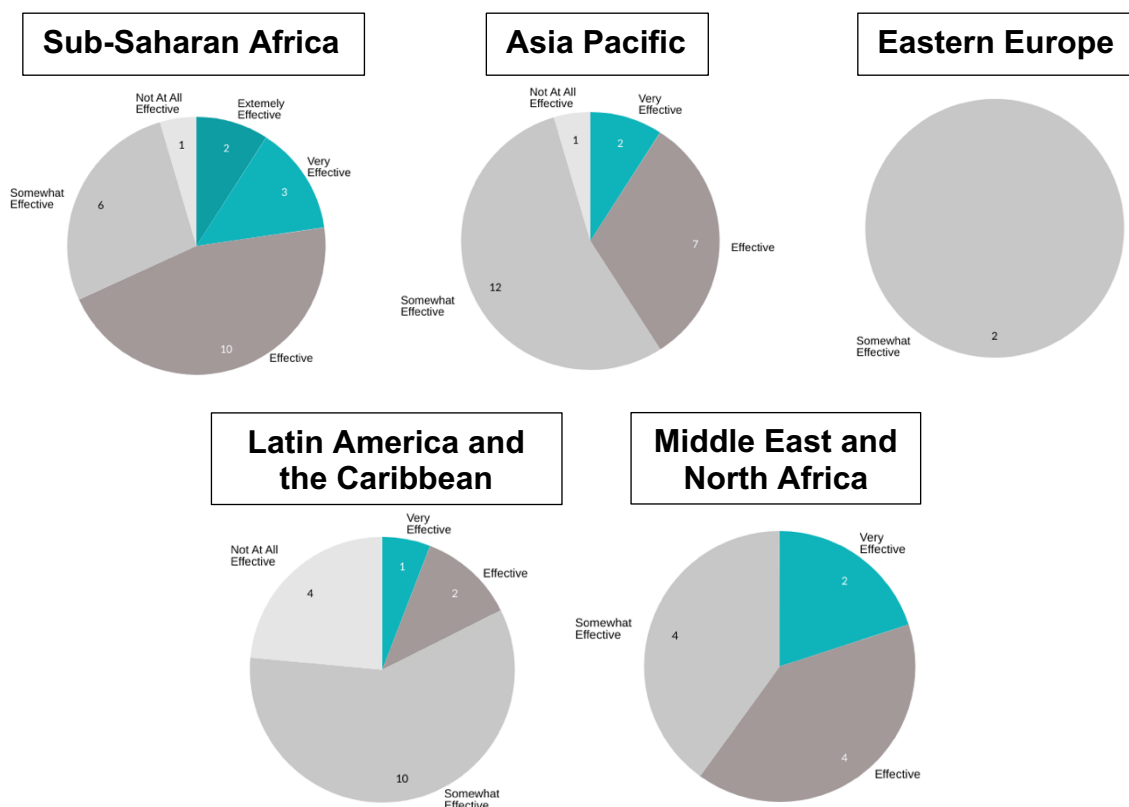
# 4 General Perceptions of the ICC

## 4.1 Assessment of the Performance of the ICC and the Rome Statute System's Contribution to the Fight against Impunity

73 CSO representatives who completed the questionnaire provided mixed responses regarding their assessment of the overall performance of the ICC and the Rome Statute system's contribution to the fight against impunity. More than 50% responded that they were less than effective.



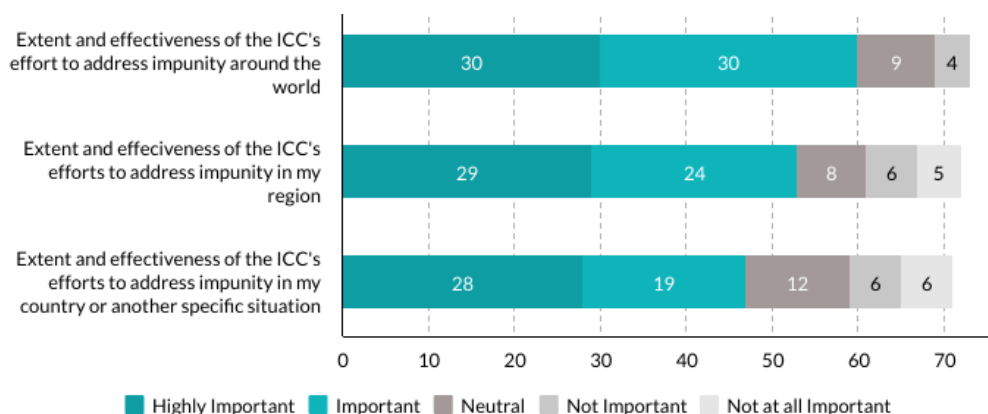
A regional breakdown of the responses demonstrates that the Court is considered to be most effective by CSO representatives in Sub-Saharan Africa—the region where the Court has been most active.



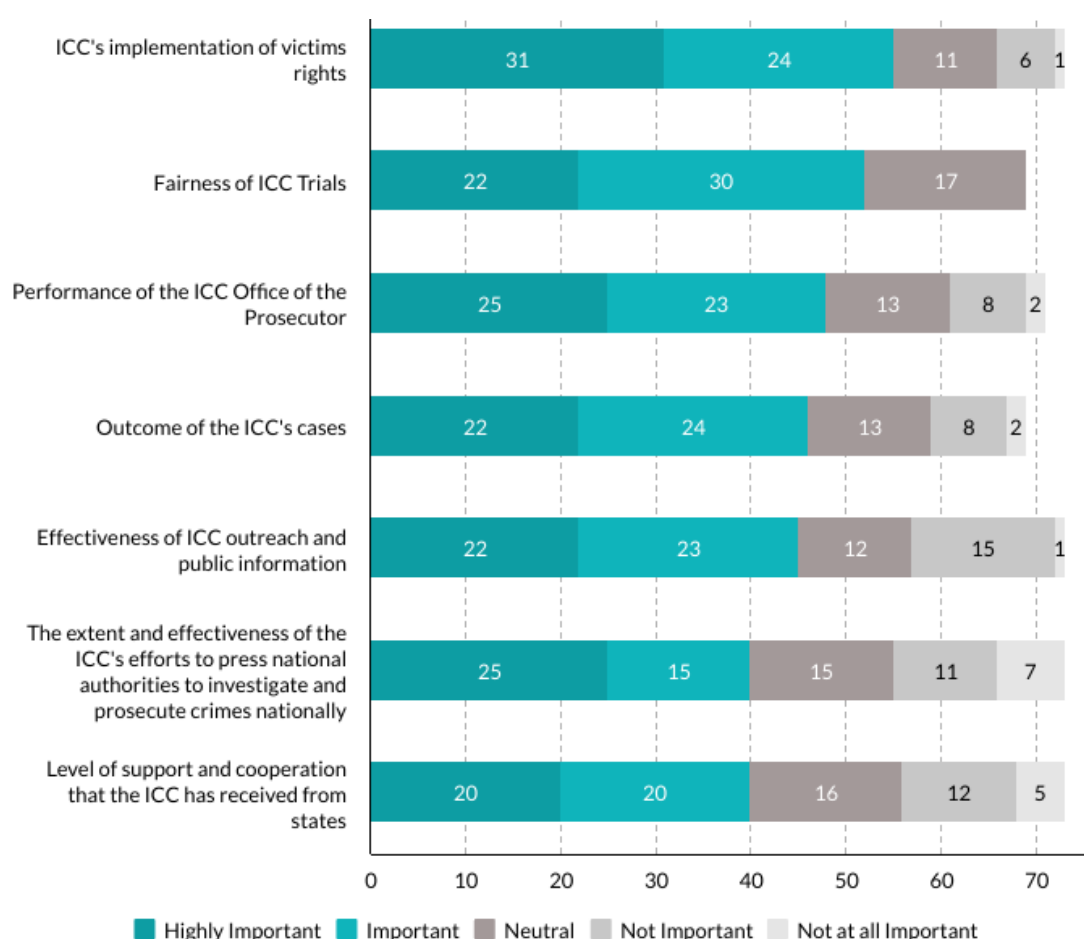
## 4.2 Factors that Influenced CSO Representatives' Assessment

In order to further understand the basis for CSO representatives' assessment of the ICC and Rome Statute system, they were asked to indicate the importance of a number of factors in reaching their assessment.

While many CSO representatives clearly focused on the ICC's efforts to address impunity in their countries, most considered the extent and effectiveness of the Court's global efforts to be highly important or important.



CSO representatives also considered a broad range of other factors in reaching their assessment that related to the outcome of its investigations and cases and how the Court conducts its work.



### 4.3 Common Themes Arising in CSO Representatives' Assessments

In questionnaire responses and during interviews, a number of CSO representatives recognized the significance of the ICC and the Rome Statute system.

The work of the ICC is extremely important and continues to remain paramount. **Representative of Malaysian Coalition for the ICC, Malaysia**

[The] ICC [can] have a direct effect in checkmating the excesses and impunity of high-handed leaders, ... knowing sooner or later, they will be called to account for their excesses. **Representative of Wuro Development Concerns, Nigeria**

It is very important for the ICC to intervene and to show that impunity is no longer acceptable particularly for international crimes and war crimes that happen around the world. **Representative of civil society, Afghanistan**

The creation of the ICC had been an extraordinary step in the history of law and in the fight against impunity in the world. It has the legal instruments and material means to do a great job. **Representative of Prisoners Defenders, focused on Cuba**

However, many expressed concerns that the ICC is not doing enough to advance the fight against impunity.

The ICC is making an effort to fight impunity. But its work is too focused on Africa. **Representative of the Coalition Ivoirienne pour la CPI, Côte d'Ivoire**

It is very important that the ICC show and demonstrate its independence and bring war criminals to justice regardless of their status and country they are coming from. **Representative of civil society, Afghanistan**

[T]here has been no [new] prosecution of the alleged perpetrators [in the Democratic Republic of Congo] and as a result, the belligerents feel untouchable. It is a young generation that does not pay enough attention to the ICC and the ICC is no longer scary in terms of deterrence.... [T]he result is that crimes are being committed every day and on a large scale. **Representative of civil society, Democratic Republic of Congo**

Nowhere can we claim success. The culture of impunity is on the increase. **Representative of the Asian Human Rights Commission, focused on Asia**

Some emphasized that a deeper understanding of the causes of impunity in different regions and countries was required for the ICC to make progress.

[T]he Office of the Prosecutor should have national representation in each state party to the Rome Statute of the ICC to better understand the realities of each country with a view to a lasting solution. **Representative of civil society, Democratic Republic of Congo**

[W]ithout broadening the expertise and giving up Eurocentrism in its operations, [the] ICC [will] have very little to contribute to countries outside that jurisdiction. [The] ICC will not even understand the highly



sophisticated manner through which it is undermined. **Representative of the Asian Human Rights Commission, focused on Asia**

Some CSO representatives expressed general disappointment at the performance of the ICC.

Very little is known about the work of the ICC in the fight against impunity. It has emerged as an institution that once generated great expectations in the world, but which has not yet been fully consolidated. The effectiveness of this complementary body is severely challenged by the lack of concrete results. **Representative of civil society, Nicaragua**

Trials are impartial but too long and verdicts unsatisfactory. **Representative of the Coalition Ivoirienne pour la CPI, Côte d'Ivoire**

I believe that the actions of the Prosecutor's Office have frustrated many expectations. It has been negative to focus almost exclusively on African issues for years ... [T]hen the most relevant [cases] have failed, as has happened with the cases of Bemba and Gbagbo, or the case of Kenya. They should have made progress in other cases affecting, for example, Latin America. Even though the cases before the ICC are extremely complex, the Prosecutor's Office should act more quickly, aggressively and firmly. This would send to the world a message of effectiveness in the fight against international crimes. **Representative of Prisoners Defenders, focused on Cuba**

[T]he Court's failing in many directions rais[ed] disappointment in the victims and affected communities, as well as the general public. **Representative of civil society focused on a situation country**

Several CSO representatives emphasized that the work of the ICC was not sufficiently visible.

There is no visibility of the ICC in the Americas. The delay in the complaints, and the lack of presence of the ICC in Latin American countries, had allowed the increase of impunity in the region. **Representative of Asamblea Permanente de Derechos Humanos de Bolivia, Bolivia**

There has been very little ICC presence in Mexico. **Representative of Instituto Mexicano de Derechos Humanos y Democracia, Mexico**

[T]here is need for more awareness on the activities of the institution in Africa. **Representative of civil society, Nigeria**

ICC information is still very poor, and its effect is not very well felt. **Representative of Women Advocates Research and Documentation Center, Nigeria**

Some civil society representatives expressed concern about a lack of support by States Parties.

The effectiveness of the ICC is in a greatest measure dependent on the cooperation of State Parties in a whole range of areas as the ICC has limited resources or capacity to arrest. When State Parties renege on their obligation to cooperate fully with ICC, the effectiveness of the Court is somewhat impaired. **Representative of civil society, Uganda**

The level of support and cooperation from States is declining.

**Representative of the Coalition Ivoirienne pour la CPI, Côte d'Ivoire**

[The political support of States] is currently declining, thus making [the ICC] look as [though] it is a toothless bulldog, especially with the level of largescale impunity at national levels. **Representative of COMPPART Foundation for Justice and Peacebuilding, Nigeria**

95% were concerned, very concerned or extremely concerned about recent political attacks against the ICC.

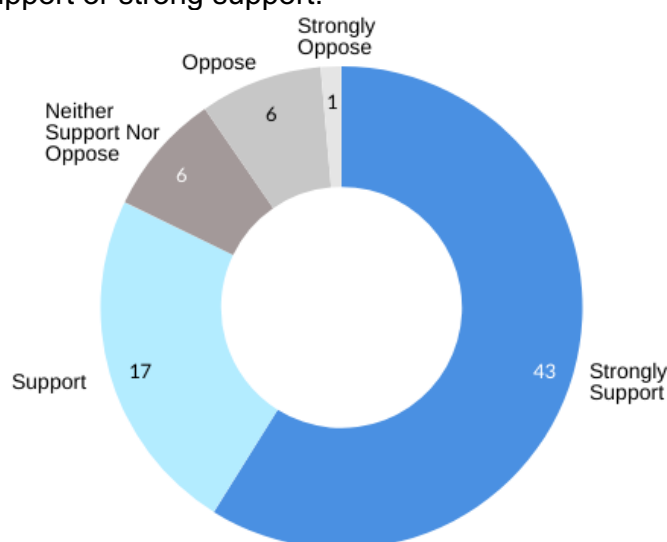
# 5 General Perceptions of the ICC Review

## 5.1 Knowledge of and Engagement in the ICC Review Process

56 out of the 77 CSO representatives who completed the questionnaire (73%) said that they were aware of the ASP's initiative to review the ICC. However, only 25 (32%) had been consulted or had provided input to the process.

## 5.2 Support for the ICC Review Process

Asked whether they support the state-driven Review process, most CSO representatives expressed either support or strong support.



## 5.3 Concerns about the ICC Review Process

However, 41 CSO representatives expressed concerns about how the Review is being conducted and how it would be implemented. Some of their concerns relate to the need for greater involvement of civil society in the ICC Review process.

I am concerned by the lack of priority given to civil society groups, who are often better in touch with the understandings and desires of local communities.

**Representative of civil society, Burma/Myanmar**

The extent to which civil society, victims/survivors and other stakeholders are included in the review is crucial to ensure that the conclusions or recommendations are legitimate and widely accepted. **Representative of Asian Forum for Human Rights and Development, focused on Asia**

The ICC Review process should include civil society organizations and should not be limited to the State Parties of the ICC. Considering that we are aiming at achieving universal ratification of the Rome Statute, the review process should be open to even non-State Parties. **Representatives of civil society, South Africa**

Many CSOs do not trust that States Parties will implement the reforms required in areas such as victims' rights and some are concerned that the "State Party-driven process" may actually weaken the ICC.

I am concerned that political and financial issues will supersede the interests of victims and affected communities in the ASP Review. **Representative of Asia Justice and Rights (AJAR), focused on the Asia-Pacific region**

My concern is how States' politics will play into this review of the ICC when the ICC is already on such shaky ground for state cooperation and support. I'm worried this review may lead to a weakening of the independence of the OTP for the ICC rather than a broadening of support for the ICC. **Representative of civil society, Sri Lanka**

States within the ASP are part of the problem, so there's a lack of independence and impartiality in the review process. However, with an external body taking [up] part of the process, that issue is partially mitigated. The key will be what information is published and which recommendations are actually adopted (or even acknowledged for their validity). **Representative of civil society, Palestine**

It is necessary to prevent this review from taking on a political aspect, with partisan interest or the settling of scores by certain States in order to weaken the ICC. **Representative of civil society focused on a situation country**

[P]olitical interests and the search for impunity in current or future cases may lead States with qualified technical teams to backtrack on this process.

**Representative of civil society, Venezuela**

My main concerns are the dishonest interventions from some countries that do not support the efforts of the International Criminal Court. **Representative of civil society, Egypt**

I welcome the ICC review process.... However, I sometimes doubt that the elaborated recommendations and suggestions on how to improve the work of the Court will be left on paper without effectively reflecting them in practice, which will further undermine the independence, integrity and effectiveness of the ICC. **Representative of civil society, Eastern Europe**

They might be unwilling to take on the proposals meant to improve the operations of the ICC and especially those related to the OTP, Victim and Witness Protection, and Victims Reparation. **Representative of civil society, Kenya**

The lack of consensus among States ... could result in not achieving the objective of the review. **Representative of Tutela Legal Dra. Maria Julia Hernandez, El Salvador**

# 6 Initial General Comments on the Independent Experts' Report

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## 6.1 Initial Feedback

Webinars were conducted with 38 CSO representatives (7 from sub-Saharan Africa; 13 from Asia-Pacific; 13 from Latin America and the Caribbean; and 5 from the Middle East and North Africa) between 13–15 October to review some of the key findings and recommendations in the Independent Experts' Report, which had been issued on 30 September. At the time of the webinars, most CSO participants had not been able to review the full 350-page Report. However, many had partially reviewed the report, including the priority recommendations identified by the Experts, and a paper prepared and circulated by WFM/IGP containing excerpts of the Experts' main findings and recommendations relating to preliminary examinations, investigations, case selection and prioritization, outreach, victim participation, reparations and the Trust Fund for Victims.

Discussions and polls conducted during the webinars indicated strong support for many of the Experts' recommendations. However, some of the Experts' recommendations raised serious concerns for many CSO representatives, which are addressed in the following sections.

The following overarching comments regarding the Experts' approach also emerged during the webinar discussions.

### 6.1.1 CSO representatives welcomed the Experts' recommendations to strengthen the ICC's relationship with civil society

Civil society representatives participating in the webinars strongly welcomed the Experts' recommendations for the ICC, including the OTP, to strengthen its relationship with CSOs.<sup>8</sup> One participant stressed the need for more dialogue between the ICC and civil society.

The need for stronger engagement with CSOs was also emphasized in questionnaire responses and interviews:

It is highly important that [the] ICC further strengthen[s] [its] relationship with human rights organizations by giving support required on outreach programme. **Representative of Regional Watch for Human Rights, Liberia**

Only high-profile international organizations have direct access to the Court. The Court needs to engage with civil society in different countries and regions. **Representative of civil society, Nicaragua**

### 6.1.2 CSO representatives were concerned by the internal institutional issues raised in the Independent Experts' Report

Although this report focuses primarily on the ICC's performance of specific functions, CSOs were provided with an overview of the Experts' substantial findings and recommendations relating to the internal functioning of the Court, including the distrust

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<sup>8</sup> Independent Expert Report, R154-160.

between its organs,<sup>9</sup> strong perceptions of a lack of leadership and accountability,<sup>10</sup> gender inequality,<sup>11</sup> staff dissatisfaction<sup>12</sup> and accounts of bullying and harassment.<sup>13</sup> When asked whether these issues should be addressed in the report, 22 participants in the webinars asked WFM/IGP to communicate to the ICC and the ASP their concerns regarding the findings, including the negative impacts the institutional situation will have on the effective operation and credibility of the Court. One CSO remarked “these issues do indeed impact on the legitimacy and the productivity of the Court.”

#### **6.1.3 CSO representatives were concerned that the Experts did not recommend that the ASP increase the ICC’s resources**

Some CSO representatives raised resource restrictions imposed by the ASP as a major obstacle to the effective functioning of the ICC. During the webinars, some expressed disappointment that, although the Experts documented underfunding at several stages of the report, they did not recommend an increase in the Court’s budget.

#### **6.1.4 CSO representatives were concerned that some measures recommended by the Experts would reduce the scope of the ICC’s efforts to address impunity**

Some CSOs were concerned that, instead of requesting more resources for the ICC, the Experts proposed a number of measures to limit and delay investigations and reduce the scope of the ICC’s cases, which would curtail the ICC’s contribution to the fight against impunity.

These general comments are further reflected in the following analysis of the Court’s performance of specific functions.

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<sup>9</sup> Independent Expert Report, para. 62.

<sup>10</sup> Independent Expert Report, para. 63

<sup>11</sup> Independent Expert Report, para. 64

<sup>12</sup> Independent Expert Report, para. 202

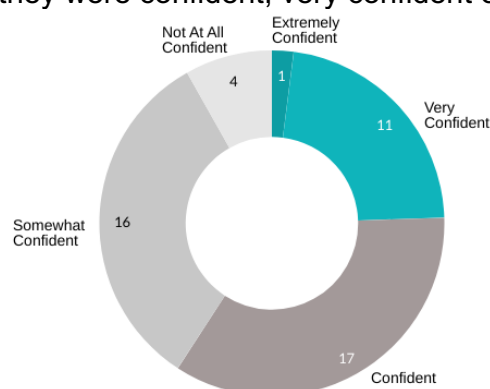
<sup>13</sup> Independent Expert Report, para. 209

# 7 Preliminary Examinations

## 7.1 CSO Representatives' Assessment of ICC Preliminary Examinations

49 of the 77 CSO representatives who completed the questionnaire stated that they were following one or more ICC preliminary examinations or have previously followed completed preliminary examinations. More than 30 were working on countries where preliminary examinations have been or are being conducted.

When asked about their level of confidence in the OTP's preliminary examinations, more than half responded that they were confident, very confident or extremely confident.



However, 70% stated that strengthening preliminary examinations should be a high priority. Participants provided mixed responses to the following statements relating to how preliminary examinations are conducted.



The reasons for some of these responses were explained further in the questionnaire or in interviews.

Although almost half of CSO representatives agreed or strongly agreed that the OTP takes a coherent, consistent and transparent approach to opening preliminary examinations, some organizations following situations where preliminary examinations have not been opened disagreed.

From the submission of the first communications to the decision to open the preliminary examination, the information is opaque, and the decisions appear to be discretionary. **Representative of civil society, Mexico**

[There should have been] more transparency [regarding] the examination of Australia's offshore detention facilities in Nauru and Papua New Guinea. The recent letters from the OTP were insufficient to understand reasons why OTP refused to progress on the matter [by opening a preliminary examination] and didn't provide any information on what was used to conduct the assessment. **Representative of Australian Centre for International Justice**

Similarly, while around half of CSO representatives agreed or strongly agreed that the OTP conducts preliminary examinations in a coherent, consistent and transparent manner, a number of criticisms were also raised.

Preliminary examinations rarely lead to real investigations. They are lengthy and ineffective. There is not much transparency in the choice of countries and not much information on the process. [They have] no influence and/or impact on the reduction and cessation of crimes committed in the countries under review. **Representative of the Coalition Ivoirienne pour la CPI, Côte d'Ivoire**

Preliminary Examinations are unclear in terms of criteria and process. [The preliminary examination conducted in Uganda] was shrouded in secrecy and it was unclear why this was so.... Things should have been more open, and the security measures should have been balanced with transparency. **Representative of civil society, Uganda**

The process of preliminary examination has been muddled in controversy. Things improved during Fatou Bensouda's tenure, but a lot of issues are yet to be dealt with effectively. **Representative of CLEEN Foundation, Nigeria**

Lack of judicial scrutiny over the Prosecutor's decisions and determinations during [preliminary examination] is the key factor in deficiencies of conducting a PE. **Representative of Iranian Center for International Criminal Law**

Only eight CSO representatives agreed or strongly agreed that preliminary examinations are conducted in a timely manner. Many others raised concerns about the length of preliminary examinations and its impact on the fight against impunity.

It frustrates me and gives me a certain unease, that ... there are preliminary examinations that are sleeping the "sleep of the just" as we say, and that nevertheless torture, murder, crimes against humanity are being committed in these countries.... If preliminary examinations drag on as they are, they can create an image of lack of effectiveness of the Court, impunity for the perpetrators, and despair for the victims. **Representative of Prisoners Defenders, focused on Cuba**



We have noted with concern that the lack of a time limit on the duration of preliminary examination has affected the timely progress of the criminal process before the ICC, giving a perception of impunity and consequently of ineffectiveness that favours the commission of more and more bloody crimes. **Representative from civil society, Venezuela**

There has been a huge delay. OTP had enough information to open an investigation years ago. **Representative of civil society, Palestine**

There [has] to be a time-limit for the OTP [setting out] how many years of preliminary examinations are enough to ask for opening the investigation. For some countries there is none, for some countries a couple of years, while for Afghanistan over a decade! **Representative of civil society, Afghanistan**

The closing of the second [preliminary examination] [in Palestine] was accompanied by the initiation of an article 19[(3)] process [seeking a judicial ruling on the Court's territorial jurisdiction in Palestine] whose validity is unclear, and which has functioned to delay the opening of an investigation. This process is neither helpful in terms of a [preliminary examination] being timely, nor does it represent consistency with other situations. We are used to Palestine being treated as 'unique' and 'exceptional' but reject such contentions and see their effect as more unjustified delay. **Representative of civil society, Palestine**

Some highlighted the lack of outreach to victims and affected communities.

There has not been much outreach of the work of the Prosecutor's office on the ongoing preliminary examinations in the region. **Representative of civil society, Nicaragua**

More time and resources should be allocated to comprehensively inform the victims, to reach as many victims as possible and to reflect the views of as many victims as possible in the preliminary examination stage. **Representative of civil society, Eastern Europe**

It should not be so hard to understand what is happening at the ICC. Some victims do not want to engage — [they are] extremely distrustful of the justice system. **Representative of civil society, Palestine**

Some were concerned about OTP's level of engagement with civil society.

More work could be done to encourage NGOs to build a more direct relationship with the Prosecutor's Office and achieve greater participation in the preliminary examination. **Representative of civil society, Venezuela**

It has not been clear how the Prosecutor's Office has handled the information provided by civil society. There are doubts regarding the information and the diligence with which the Prosecutor's Office handles it. **Representative of civil society focused on a situation country**

The OTP must deconstruct its "experts of experts" mentality and adapt to learning and working with local individuals with knowledge and experience of human rights and violations in the localities. **Representative of civil society, Uganda**

One representative said that the ICC had not put in place secure systems for CSOs to submit information to the Court.

No secure channel was offered by the ICC for CSOs to engage [in the preliminary examination]. Some CSOs had to set them up. Others who want to engage can't do so. **Representative of civil society focused on a situation country**

Only 12 CSO representatives agreed that the OTP makes coherent, consistent and transparent determinations on whether to open a formal investigation or not.

30 CSO representatives indicated that the ICC should conduct additional preliminary examinations, citing situations within the immediate jurisdiction of the Court, as well as situations that may require a UN Security Council referral.

## **7.2 CSO Representatives' Recommendations to Strengthen ICC Preliminary Examinations**

Asked what legal, practice and/or policy reforms should be considered to improve the ICC OTP's performance during preliminary examinations, CSO representatives recommended:

- ⇒ The OTP should conduct preliminary examinations more transparently,<sup>14</sup> providing public updates at least twice a year.<sup>15</sup>
- ⇒ The OTP and the Registry should prioritize outreach to constantly engage with victims and affected communities during preliminary examinations,<sup>16</sup> reflecting the views of as many victims as possible.<sup>17</sup>
- ⇒ The OTP should inform CSOs more about its information-gathering processes and protection of victims so that CSOs can work with OTP better and more coherently.<sup>18</sup>
- ⇒ The ICC should strengthen victim and witness protection<sup>19</sup> as well as protection for human rights defenders who are submitting information to the Court.<sup>20</sup>
- ⇒ The OTP should engage and listen more to local actors and should not be dismissive of their views, especially on the local dynamics.<sup>21</sup>
- ⇒ The ICC should review the length of preliminary examinations<sup>22</sup> and establish possible timelines for completing preliminary examinations.<sup>23</sup>
- ⇒ The ICC should abandon the use of the article 19(3) procedure unless clarity as to its validity can be provided.<sup>24</sup>
- ⇒ The OTP should strengthen preliminary examination teams.<sup>25</sup>

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<sup>14</sup> Representatives of the Australian Centre for International Justice; MARUAH, Singapore; and civil society, Eastern Europe and South Africa.

<sup>15</sup> Representative of civil society, Venezuela.

<sup>16</sup> Representatives of civil society, Eastern Europe and Uganda.

<sup>17</sup> Representatives of civil society, Eastern Europe.

<sup>18</sup> Representative of MARUAH, Singapore.

<sup>19</sup> Representatives of civil society, Venezuela.

<sup>20</sup> Representative of civil society focused on a situation country.

<sup>21</sup> Representative of civil society, Kenya

<sup>22</sup> Representative of CLEEN Foundation, Nigeria.

<sup>23</sup> Representatives of civil society, Afghanistan and Eastern Europe.

<sup>24</sup> Representative of civil society, Palestine.

<sup>25</sup> Representative of civil society, Venezuela.

### 7.3 CSO Representatives' Initial Reactions to the Experts' Recommendations

During the webinars, civil society representatives considered the Experts' findings and recommendations in relation to preliminary examinations and responded to polls on some of their recommendations.

CSO representatives that responded to the polls strongly supported a number of the Experts' recommendations that are consistent with their proposals to strengthen transparency, outreach and timing of preliminary examinations.

**93%** of participants **supported** the Experts' recommendation that the OTP should adopt transparent criteria for opening a preliminary examination.<sup>26</sup>

**100%** **supported** the Experts' recommendation that the OTP should establish a strategy plan for each preliminary examination opened, including timelines and benchmarks.<sup>27</sup>

**100%** **supported** the Experts' recommendation that outreach should start at the opening of a preliminary examination.<sup>28</sup>

In answering the questionnaire, one CSO representative stated:

The OTP needs to prioritize an outreach strategy to constantly engage with communities at preliminary [examination] phase all the way to investigation phase ... being in the field, sharing information and engaging communities helps you to build trust and through trust, you can uncover information that you would ordinarily not. **Representative of civil society, Uganda**

However, concerns were raised regarding one of the Experts' recommendations.

**76%** either **opposed** or **did not know** whether to support or oppose the Experts' recommendation that OTP should consider a higher threshold of gravity in determining whether to open an investigation.<sup>29</sup>

Some CSO representatives explained that this recommendation could establish an opaque standard that may be applied inconsistently to different situations, despite the fact that all Rome Statute crimes are among the most serious of crimes of concern to the international community:

I am worried about the gravity threshold ... [which] can be discretionary. If we set gravity thresholds, there are more limits to the Prosecutor's acts. **Representative of Prisoners Defenders, focused on Cuba**

Nuancing of gravity against a background of atrocity crimes is very hard to delineate. **Representative of MARUAH, Singapore**

<sup>26</sup> Independent Experts Report, R226.

<sup>27</sup> Independent Experts Report, R255.

<sup>28</sup> Independent Experts Report, R163.

<sup>29</sup> Independent Experts Report, R227.

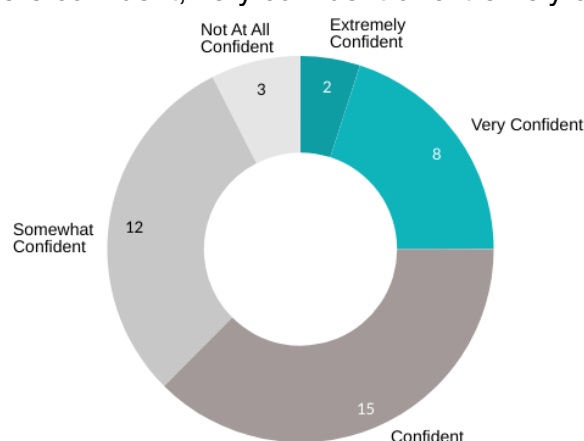
[A] level of caution [should] be applied [to the Experts' recommendation], when the [Court's] jurisprudence tells us gravity should be understood in the negative, in the sense that what is excluded are crimes of marginal gravity. **Representative of civil society, Palestine**

# 8 Investigations

## 8.1 CSO Representatives' Assessment of ICC Investigations

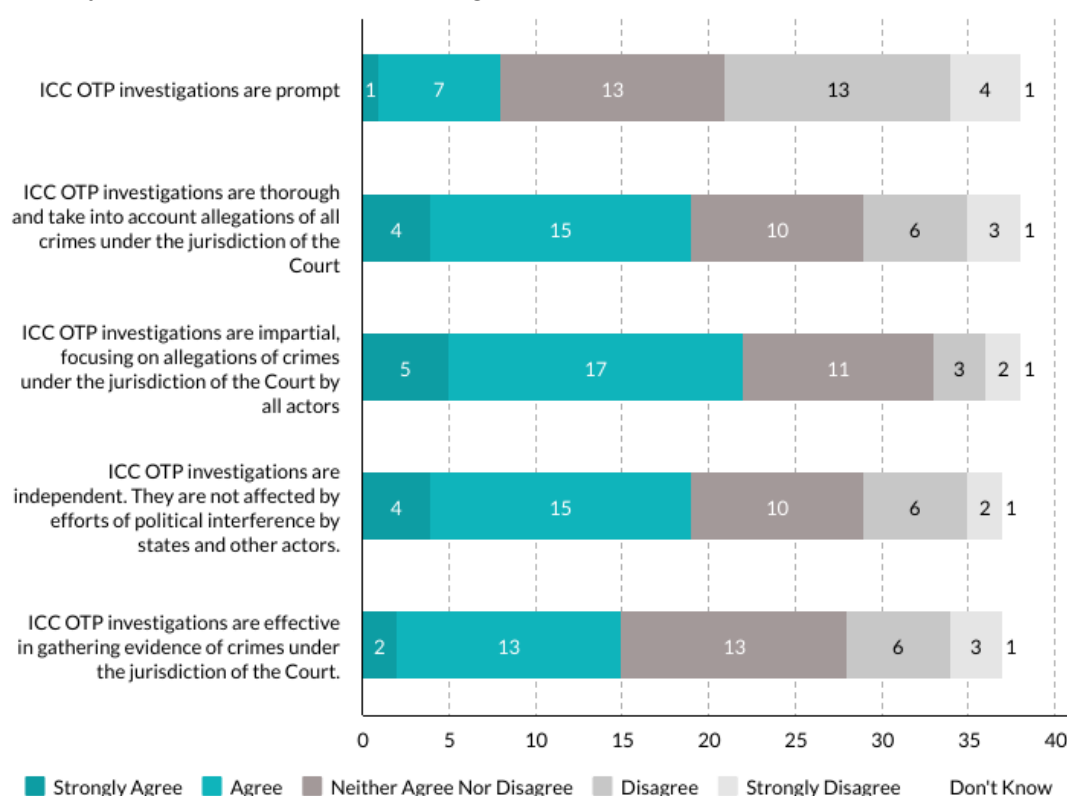
40 CSO representatives stated that they are following or have followed ICC investigations.

When asked about their level of confidence in the OTP's investigations, more than half responded that they were confident, very confident or extremely confident.



Nonetheless, 83% of all questionnaire participants stated that strengthening investigations should be a high priority.

CSO representatives following investigations provided mixed assessments as to whether ICC investigations are prompt, thorough, impartial, independent and effective, in consistency with international human rights law and standards.



The investigations are very slow and often produce results that fall short of the expectations of victims, national and international opinion. **Representative of the Coalition Ivoirienne pour la CPI, Côte d'Ivoire**

The investigations [are] often [conducted] too late after the facts, not in a timely manner. **Representative of the Cameroon Coalition for the ICC, Afrique Justice, Cameroon**

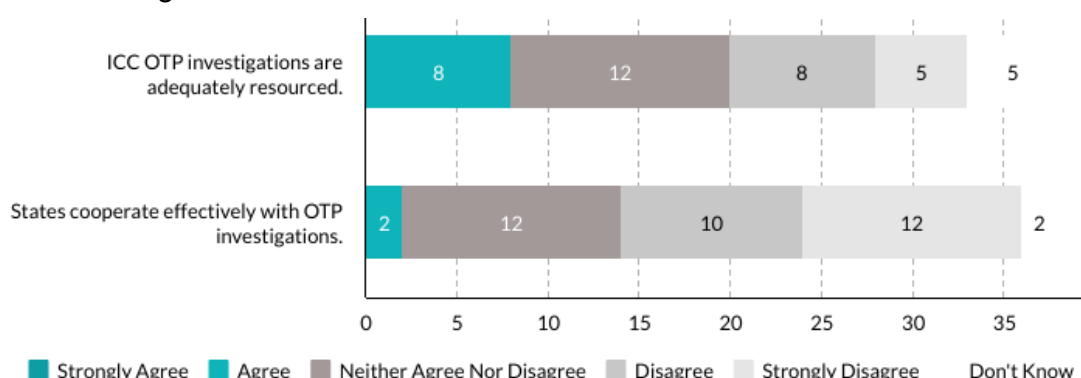
Not only were the investigations deemed to have lacked thoroughness, but it was felt that the investigators relied heavily on what was provided by civil society organizations instead of conducting their own thorough investigations. **Representative of civil society focused on a situation country**

The scope of the commission of international crimes in the DRC is more significant than the repressive acts [addressed by] the Office of the Prosecutor. Investigations are time-consuming. There are no prosecutions although reports from the United Nations and civil society organizations attest that serious crimes [were] committed there. **Representative of civil society, Democratic Republic of Congo**

In Uganda [there] is a very strong perception that the investigations were lopsided ... and the OTP may have sacrificed impartiality for state cooperation. **Representative of civil society, Uganda**

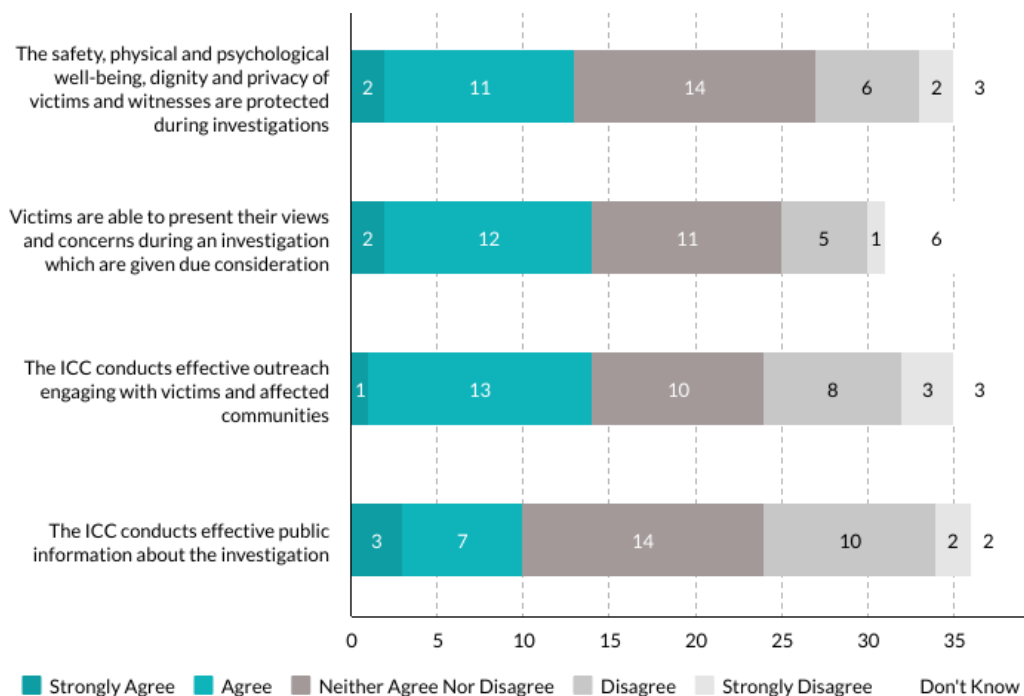
[A]bove all there must be [an] expert base which include persons who have thorough knowledge about the conditions of legal systems and nature of crimes in [situation] countries. Without this there is no way for ICC to find ways to be more effective. **Representative of civil society, Malaysia**

CSO representatives' responses to other statements demonstrate that they consider underfunding by the ASP and the lack of state cooperation to be significant obstacles to effective investigations.



I believe that [the] ICC/OTP investigates cases differently and ... they do not receive enough support from the State Parties if the crimes involve countries, such as USA and Israel or members of NATO countries. **Representative of civil society, Afghanistan**

CSO representatives provided mixed reactions regarding the ICC's engagement with victims and affected communities during investigations.



In particular, some CSO representatives highlighted the need for more outreach and public information during investigations.

The outreach and public information [in Kenya] were ineffective as they were very weak and mostly relied on CSOs to conduct outreach on the ICC. **Representative of civil society, Kenya**

Some CSO representatives emphasized the need for the OTP to engage with civil society during investigations, recognizing that they may face security risks.

When the OTP is on the field to investigate, it is welcome[d] by [the] State's authorities. Some CSOs are persecuted by those same authorities, therefore there should be work between the OTP and CSOs before the OTP arrives to ensure confidentiality. **Representative of the Cameroon Coalition for the ICC, Afrique Justice, Cameroon**

[The Court should] assert its independence and come out from the subservient position of serving the regime in power where investigations are conducted. **Representative of civil society, Bangladesh**

## 8.2 CSO Representatives' Recommendations to Strengthen ICC Investigations

Asked what legal, practice and/or policy reforms should be considered to improve the OTP's investigations, CSO representatives recommended:

- ⇒ The OTP should review its investigation strategy.<sup>30</sup>
- ⇒ The OTP should build strong, competent and reliable investigation teams.<sup>31</sup>
- ⇒ The OTP should take time and build a solid case rather than rushing to prosecute.<sup>32</sup>

<sup>30</sup> Representatives of the Coalition Ivoirienne pour la CPI, Côte d'Ivoire and CLEEN Foundation, Nigeria.

<sup>31</sup> Representatives of civil society, Kenya.

<sup>32</sup> Representative of civil society, Democratic Republic of Congo.

- ⇒ The OTP should consider evidence against all perpetrators instead of only targeting cases against the high-level perpetrators.<sup>33</sup>
- ⇒ The OTP should not seek the minimum charges and take into account all of the [crimes] within the jurisdiction of the Court.<sup>34</sup>
- ⇒ The OTP should be more transparent in conducting its investigations.<sup>35</sup>
- ⇒ The ICC should improve its outreach to victims and affected communities and its public information during investigations.<sup>36</sup>
- ⇒ The ICC should give victims an opportunity to submit information, views and concerns at the investigation stage.<sup>37</sup>
- ⇒ The OTP should engage effectively with independent civil society entities in the field.<sup>38</sup>

### 8.3 CSO Representatives' Initial Reactions to the Experts' Recommendations

During the webinars, civil society representatives considered the Experts' findings in relation to investigations and responded to polls on some of their recommendations.

Consistent with some CSO representatives' recommendations, webinar participants who responded to polls expressed very strong support for further developing the OTP's investigation strategies and strengthening its field presence:

**100%** of participants **supported** the Experts' recommendation that the OTP should prepare a policy on investigations and strategies for specific situations.<sup>39</sup>

**92%** **supported** the Experts' recommendation to strengthen the OTP's field presence, including by increasing the number of country experts and recruiting local investigative staff.<sup>40</sup>

However, while many CSOs supported the consideration of feasibility-related factors in conducting investigations, many were concerned at the Experts' proposal to hibernate challenging investigations.

**71%** **supported** the Experts' recommendation that feasibility-related factors should be seriously considered after the opening of an investigation.<sup>41</sup>

**76%** either **opposed** or **did not know** whether to support or oppose the Experts' recommendation that challenging situations should

<sup>33</sup> Representative of civil society, Kenya.

<sup>34</sup> Representative of the Coalition Ivoirienne pour la CPI, Côte d'Ivoire.

<sup>35</sup> Representative of the Malaysian Coalition for the ICC, Malaysia.

<sup>36</sup> Representatives of Asia Justice and Rights (AJAR) and CLEEN Foundation, Nigeria.

<sup>37</sup> Representative of civil society focused on a situation country.

<sup>38</sup> Representative of civil society, Bangladesh.

<sup>39</sup> Independent Experts Report, R268-269.

<sup>40</sup> Independent Experts Report, R294-297.

<sup>41</sup> Independent Experts Report, R244.



be hibernated if sufficient resources are not available to conduct serious investigations.<sup>42</sup>

Some CSO representatives explained their initial concerns regarding the recommendation to hibernate investigations on feasibility grounds.

Isn't it the responsibility of the ASP to provide resources if the ICC decides to proceed with an investigation? [The Experts' proposed] approach brings in subjectivity and makes it difficult to include neutral standards. **Representative of civil society, Malaysia**

Including cooperation as a criterion [of feasibility] is a counter argument. In most cases we need an investigation because the state has refused cooperation. **Representative of civil society, Burma/Myanmar**

This approach would give extra leverage to States to put more obstacles in the way of the ICC and justice.... This would create the potential for many more misunderstandings and difficulties in managing expectations.... The burden should be put back on the ASP to provide more resources. **Representative of Asia Justice and Rights (AJAR), focused on the Asia-Pacific region**

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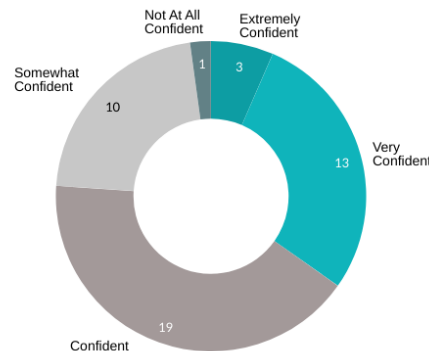
<sup>42</sup> Independent Experts Report, R244-245.

# 9 Cases

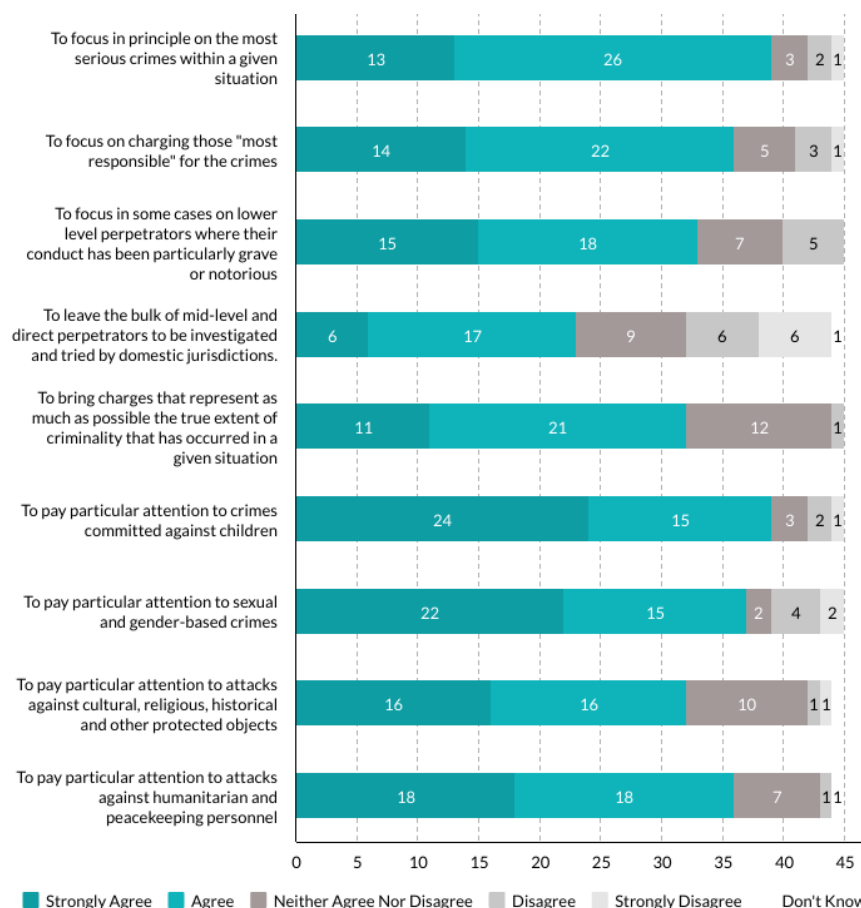
## 9.1 CSO Representatives' Assessment of ICC Cases

46 CSO representatives stated that they are following or have followed ICC cases.

When asked about their level of confidence in the ICC's ability to deliver justice fairly and effectively in its cases, more than three-quarters responded that they were confident, very confident or extremely confident.



Asked about the extent to which they agreed or disagreed with OTP policies relating to case selection and charging, most participants either strongly agreed or agreed with the OTP's approaches, with the exception that some CSO representatives wanted the ICC to prosecute more mid-level and direct perpetrators.



However, 24 out of 43 CSO representatives (56%) were of the view that these policies have not been implemented consistently. In particular, mixed views were expressed about the OTP's practice of targeting those most responsible for the most serious crimes in a situation.

In the majority of cases, [the] OTP has focused on the cases of those opposed to the government (armed groups, opposition political actors). As a result, this policy, which is not in line with the spirit of the Rome Statute, has left several key perpetrators of crimes unpunished.

**Representative of civil society, Democratic Republic of Congo**

Currently, the ICC is perceived to be focusing mainly in principle on the most serious crimes within a given situation and on charging those "most responsible" for the crimes, and somewhat on crimes committed against children.

**Representative of civil society, Kenya**

The policy of the Office of the Prosecutor since its inception has been to go against those who are most responsible, a policy that has been strategically reformulated recently. Investigations must be carried out based on evidence and information gathered, and not on a targeted approach. **Representative of civil society, Venezuela**

Some commented that insufficient attention has been paid to sexual and gender-based crimes.

There have been discrepancies in the charges for crimes against humanity, war crimes etc. Sometimes, the ICC has gone for lesser crimes when sexual and gender-based crimes have also been committed. **Representative of Wuro Development Concerns, Nigeria**

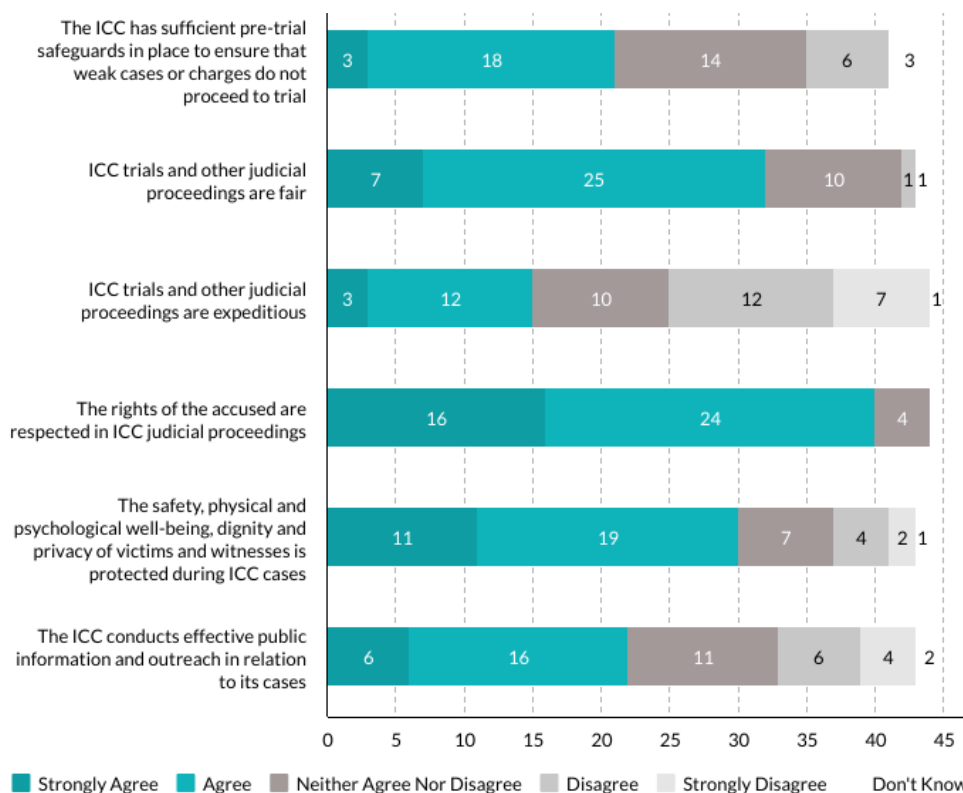
[Due to strength of evidence] sometimes ... lesser charges are levelled and ... at lesser in rank officers. It is understandable but it becomes unfortunate if this is the norm.... What gets less attention still are the deliberate sexual crimes against women and children caught in the process as child-soldiers. **Representative of MARUAH, Singapore**

Moreover, 33 out of 45 CSO representatives (73%) were less than confident that States will arrest and surrender suspects to the ICC and 27 (60%) were less than confident that the ASP would ensure that individual States cooperate with arrest and surrender.

State cooperation should be an area of focus. As we saw during Al-Bashir's visit to South Africa, without State cooperation, [the] ICC cannot fulfill its mandate.

**Representative of the Cameroon Coalition for the ICC, Afrique Justice, Cameroon**

CSO representatives provided mixed assessments of ICC case proceedings, including trial and pre-trial proceedings.



Most participating CSO representatives perceived ICC trials to be fair and to respect the rights of accused. However, some expressed concern about the implementation of the rights of victims.

The rights of the accused are respected by the ICC often to the detriment of the victims. **Representative of the Coalition Ivoirienne pour la CPI, Côte d'Ivoire**

Protection of the rights of the accused sometimes takes on a greater priority than the rights of victims. **Representative of civil society, Malaysia**

A number of CSO representatives did not think that the proceedings are expeditious.

[The] confirmation of charges ... make the trials long and ... can also be considered as a trial within the trial. **Representative of the Coalition Ivoirienne pour la CPI, Côte d'Ivoire**

When proceedings end, some victims are not aware of the fate of their tormentors.... [S]ome of them die before the perpetrators are sentenced because the trials last longer and yet this would be the only and best way to compensate them for their damages. **Representative of civil society, Democratic Republic of Congo**

## 9.2 CSO Representatives' Recommendations to Strengthen ICC Cases

Asked what legal, practice and/or policy reforms should be considered to improve ICC judicial proceedings, CSO representatives recommended:

- ⇒ The Court should conduct more outreach and public information regarding its cases.<sup>43</sup>
- ⇒ The Court should proactively deal with unexpected surrenders to decrease waiting time for the accused.<sup>44</sup>
- ⇒ The Court should provide greater attention to, relevance of and protection of the victims in the process.<sup>45</sup>
- ⇒ The Court should develop a policy on effective victim participation.<sup>46</sup>
- ⇒ The Court should encourage victims to choose their own preferred legal counsel and ensure equal treatment of external team members in terms of work environment when they are appointed.<sup>47</sup>
- ⇒ The Court should improve procedural rules regarding translations of proceedings, documents and judgments and ensure the right to translation properly ensures the rights of the accused and victims.<sup>48</sup>
- ⇒ The Court should improve rules regarding the time limit requirement of providing a written judgment.<sup>49</sup>
- ⇒ The ASP should rethink the policy of choosing judges, requiring judges with extensive training in criminal law and international criminal law<sup>50</sup> and not appointing List B judges, without judicial experience.<sup>51</sup>

### 9.3 CSO Representatives' Initial Reactions to the Experts' Recommendations

During the webinars, civil society representatives considered the Experts' findings in relation to case selection and charging and responded to polls on some of their recommendations. Of those present:

**72%** **agreed** with the Experts that the quality and quantity of evidence should be the OTP's main consideration in case selection and charging.<sup>52</sup>

However, a number of concerns were raised that this approach should not result in the ICC further scaling back on its efforts to prosecute crimes, including sexual and gender-based violence, that are challenging to investigate.

**68%** either **opposed** or **did not know** whether to support or oppose the Experts' recommendation to limit the scope of cases temporally, geographically and with regard to modes of liability.<sup>53</sup>

This is consistent with the strong support of CSO representatives for the OTP's policy to bring charges that, as much as possible, reflect the true extent of criminality that occurred in a given situation.

<sup>43</sup> Representatives of the Malaysian Coalition for the ICC and civil society, South Africa and Uganda.

<sup>44</sup> Representative of Darfur Women Action Group, Sudan.

<sup>45</sup> Representative of civil society, Venezuela.

<sup>46</sup> Representative of civil society Uganda.

<sup>47</sup> Representative of civil society Uganda.

<sup>48</sup> Representative of civil society, Democratic Republic of Congo.

<sup>49</sup> Representative of civil society, Democratic Republic of Congo.

<sup>50</sup> Representative of civil society, Venezuela.

<sup>51</sup> Representative of Comisión Mexicana de Defensa y Promoción de los Derechos Humanos, Mexico.

<sup>52</sup> Independent Experts Report, para. 675.

<sup>53</sup> Independent Experts Report, R236.

# 10 Outreach

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## 10.1 CSO Representatives' Assessment of ICC Outreach

As explained in previous sections, the effectiveness of ICC outreach to victims and affected communities was a concern for many CSO representatives.

**93%** supported the Independent Experts' recommendation for outreach to commence at the preliminary examination stage.

Only **37%** agreed that the ICC conducts effective outreach during investigations.

Only **49%** agreed that the ICC conducts effective outreach in relation to its cases.

71 out of 74 questionnaire participants (96%) said that the ICC should seek to strengthen outreach as a high or medium priority. This point was emphasized by a number CSO representatives, including those working on situations currently under preliminary examination and investigation.

[P]ublic outreach must happen in a good level so that the people are aware of what is the ICC ..., why they are doing the investigation and what to expect from the outcome of the investigation. **Representative of civil society, Afghanistan**

Communication between [the] ICC and the victims and witnesses should be prioritized and stronger. **Representative of civil society, Burma/Myanmar**

Public information and outreach need to be strengthened in the case of Palestine because there has been very little. **Representative of civil society, Palestine**

In terms of the outreach to victims and the affected communities, in our case it wasn't the ICC's initiative, it's us who have worked very hard to establish [a] relationship with the ICC. **Darfur Women Action Group, Sudan**

## 10.2 CSO Representatives' Recommendations to Strengthen Outreach

In addition to the specific recommendations to increase outreach at each stage of the ICC process, CSO representatives provided the following general recommendations to improve ICC outreach:

- ⇒ The ICC should adapt outreach strategies for each country.<sup>54</sup>
- ⇒ The ICC and the ASP should allocate more resources for engagement with affected communities through outreach and public information.<sup>55</sup>

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<sup>54</sup> Representative of the Coalition Ivoirienne pour la CPI.

<sup>55</sup> Representative of Asia Justice and Rights (AJAR).

### 10.3 CSO Representatives' Initial Reactions to the Experts' Recommendations

During the webinars, civil society representatives considered the Experts' and recommendations in relation to outreach.

In accordance with the recommendations of many CSOs for the ICC to strengthen its outreach, the vast majority who responded to the polls supported the Experts' recommendations for more detailed strategies.

**88%** **supported** the Experts' recommendation that an outreach plan should be developed for each ICC situation.<sup>56</sup>

However, concerns were raised about the role of civil society in supporting ICC outreach as envisioned by the Experts' recommendations.

**50%** either **opposed** or **did not know** whether to support or oppose the Experts' recommendation that, if additional resources are not provided, CSOs could conduct outreach for the ICC.<sup>57</sup>

Some explained that, while the ICC and CSOs can collaborate in relation to outreach, it would be inappropriate and unrealistic to expect CSOs to fill this gap for the ICC because CSOs cannot speak on behalf of the Court and they also lack resources.

[It is] outraging to suggest that ICC should use the very limited resources of civil society groups. The burden is on the ASP to give the ICC resources to function effectively. **Representative of Asia Justice and Rights (AJAR), focused on the Asia-Pacific region**

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<sup>56</sup> Independent Experts Report, R163 .

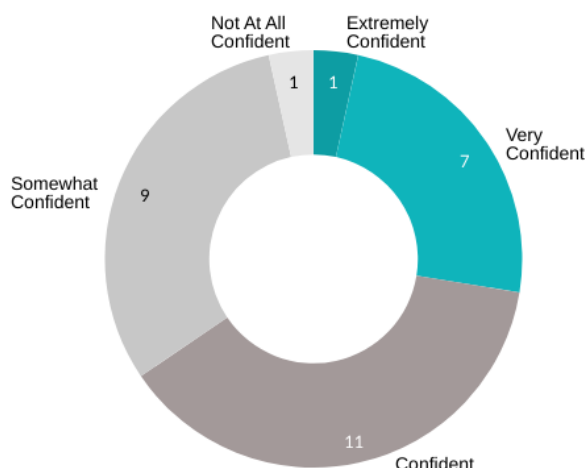
<sup>57</sup> Independent Experts Report, R165.

# 11 Victim Participation

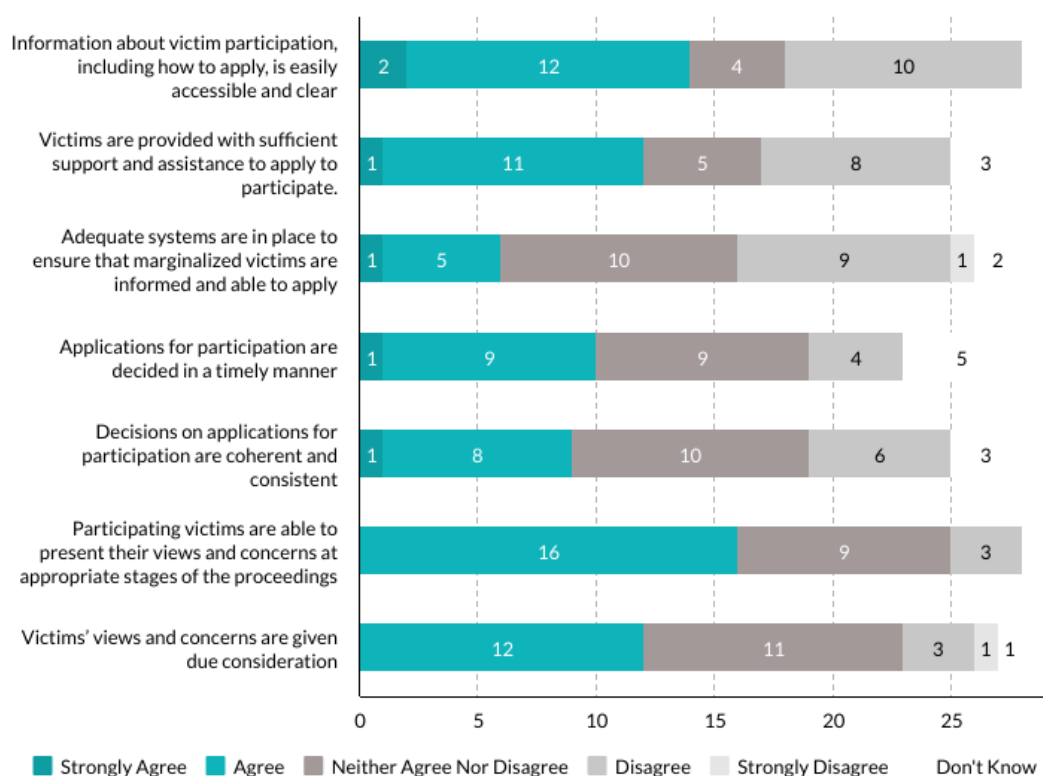
## 11.1 CSO Representatives' Assessment of ICC Victim Participation

29 CSO representatives stated that they are following or have followed victim participation in ICC cases.

When asked about their level of confidence in the effectiveness of victim participation at the ICC, more than half responded that they were confident, very confident or extremely confident.



However, mixed responses to some of the following statements demonstrate concerns and uncertainty about the effectiveness of some elements of the ICC's victim participation system.





Some CSO representatives highlighted the many challenges that victims face in participating in ICC proceedings and that, because these obstacles have not been addressed, many victims have been excluded.

Many countries still lack electricity connectivity and internet connection. Many victims, beyond the victimization suffered, live in abject poverty and in very remote locations. Victims in many countries are also illiterate. Victims in some cases are still exposed to insecurity and threats to their lives. The combination of these and other factors makes victims' application in participation proceedings impossible due to the fact that they are unable to access sources of information and material on the one hand and, often times, the time set by chambers in given cases is limited to allow for outreach followed by completing of the application forms.

**Representative of civil society, Uganda**

The majority of victims cannot participate in the proceedings and often do not feel concerned by what is said on their behalf. They do not have enough support to participate. They are very often disappointed with the outcome of trials and their management before and after.

**Representative of the Coalition Ivoirienne pour la CPI, Côte d'Ivoire**

CSO representatives indicated that access to information for marginalized groups was a significant barrier to participation that has not been addressed effectively by the Court.

Information about victim participation, including how to apply, is easily accessible and clear but not for marginalized victims who might not have access to online platforms. **Representative of civil society, Kenya**

Some highlighted the onerous and inconsistent requirements of applications and short timelines for applications as significant obstacles.

[The] limited time period given to the VPRS and the victims for filling and submitting the application forms [undermines] victims' effective participation.... Another problem is that only the case victims can file applications, and this may be confusing to other victims. For avoiding this, the victims should be informed about the ICC process. The ICC is creating frustration and disappointing ... the victims. The application form is being changed many times. **Representative of civil society focused on a situation country**

There have been some inconsistencies in relation to victims' participation and the jurisprudence is not clear on who is a victim and how to effectively participate in the proceedings at the ICC. **Representative of Wuro Development Concerns, Nigeria**

The requirements for victim participation are based on conditions that are not adapted to the realities faced by the victims. In the DRC, communication systems and access to official documents are very expensive. Victims' applications are rejected without taking into account their limited means to gather the elements required to participate in the proceedings. **Representative of civil society, Democratic Republic of Congo**

Some questioned the effectiveness of ICC systems to protect victims who want to participate.

Many victims are afraid to participate. The system needs to take into account the risks to victims and provide appropriate protection mechanisms. **Representative of civil society, Venezuela**

[I]n practice only victims participating as witnesses in the case usually will receive attention for protection needs from the Victims' and Witnesses Section of the Court. The other witnesses are not catered for. Moreover, Counsel will often have no training and expertise in counselling or psychological responses when faced with emotional breakdowns stemming as it were from narration and recollection by victims of their victimization—during the course of engaging with their clients. The ICC does not seem to be sensitive to these needs. **Representative of civil society, Uganda**

## 11.2 CSO Representatives' Recommendations to Strengthen ICC Victim Participation

Asked what legal, practice and/or policy reforms should be considered to strengthen victim participation at the ICC, CSO representatives recommended:

- ⇒ A review of ICC victim participation should be conducted to ensure that victims are fully represented and given every opportunity to be part of the proceedings.<sup>58</sup>
- ⇒ The procedure for victim participation should be clearly defined.<sup>59</sup>
- ⇒ The ICC should conduct more outreach and public information on victim participation aimed at victims and NGOs.<sup>60</sup>
- ⇒ The ICC should conduct more in-person meetings and interviews with victims to complete forms versus e-mailing the form to victims.<sup>61</sup>
- ⇒ The ICC should strengthen security and protection for victim participants.<sup>62</sup>
- ⇒ The ICC/ASP should increase funding for legal representation for victims.<sup>63</sup>
- ⇒ The ICC/ASP should increase resources for the Victims Participation and Reparation Section, the Public Information and Outreach Section and the Office of Public Counsel for Victims.<sup>64</sup>
- ⇒ The ICC should conduct more *in situ* trials as opposed to The Hague-based trials.<sup>65</sup>

## 11.3 CSO Representatives' Initial Reactions to the Experts' Recommendations

During the webinars, civil society representatives considered the Experts' findings in relation to victim participation and responded to polls on some of their recommendations.

In line with CSOs' recommendations to strengthen victim participation, most webinar participants who responded to the polls supported the Experts' proposal for what appears to be an internal review of victim participation.

**84%** supported the Experts' recommendation that the ICC should conduct an internal review of victim participation.<sup>66</sup>

<sup>58</sup> Representative of Wuro Development Concerns, Nigeria.

<sup>59</sup> Representatives of Prisoners Defenders, focused on Cuba and civil society, Democratic Republic of Congo and Eastern Europe.

<sup>60</sup> Representative of civil society, Malaysia.

<sup>61</sup> Representative of Darfur Women Action Group, Sudan.

<sup>62</sup> Representatives of Cameroon Coalition for the ICC, Afrique Justice, Cameroon and civil society, Democratic Republic of Congo, Kenya, and Venezuela.

<sup>63</sup> Representative of civil society, Malaysia.

<sup>64</sup> Representative of Asia Justice and Rights (AJAR).

<sup>65</sup> Representative of civil society, Uganda.

<sup>66</sup> Independent Experts Report, paras. 863–864, R339.

However, some thought the Experts should have gone further than leaving this to the Court.

[The Experts] had collected a wide range of concerns and challenges relating to [victims' participation].... They have put a lot of trust in the ICC to take the appropriate steps [even though] these issues have existed for a long time. [It is a] missed opportunity to leave this to the ICC without providing detailed recommendations based on their findings. **Representative Asia Justice and Rights (AJAR), focused on the Asia-Pacific region**

# 12 Reparations

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## 12.1 CSO Representatives' Assessment of ICC Reparations

Only 12 out of the 77 CSO representatives who responded to the questionnaire said that they followed the ICC's reparations proceedings. This may be because the ICC has only completed four reparations proceedings so far and awarded reparations to victims in three of those cases: the *Lubanga* and *Katanga* cases in the Democratic Republic of Congo situation and the *Al Mahdi* case in the Mali situation.

Of those 12 organizations, many provided answers to questions about reparations proceedings that indicated they did not have sufficient information to provide an opinion on key aspects of the process. As one participant commented: "this area is still in its infancy." Only one representative was working on a situation where reparations had been ordered by the Court.

Although it was not possible to gather detailed data and recommendations on this topic, some participants commented on the length of the proceedings and the need to clarify the ICC's procedures.

[ICC] reparations are subject to conditions which often appear complicated for victims.... Victims [in the *Lubanga* case] who agreed to give their views and concerns to the chambers, after a decade of waiting, they [were] subject to several evaluations which eliminated some. So, the victims are not treated fairly.... [The ICC should] prioritize the victims who participated in the proceedings more than 8 years ago because their situation is getting worse and they are tired of waiting.

**Representative of civil society, Democratic Republic of Congo**

ICC reparations are subject to judicial interpretations which has limited the scope of intervention because of the fact that it can only take place after conviction by the appeals chamber. There is need to review this and give reparations proceedings a human face. **Representative of Wuro Development Concerns, Nigeria**

It is necessary to regulate a clear procedure for the reparation of victims.

**Representative of Prisoner Defenders, focused on Cuba**

## 12.2 CSO Representatives' Initial Reactions to the Experts' Recommendations

During the webinars, civil society representatives considered the Experts' findings in relation to ICC reparations and responded to polls on some of their recommendations.

In line with the concerns expressed by some CSO representatives about the complexity and length of the reparations process, webinar participants who responded to the polls overwhelmingly supported the Experts' recommendations to clarify the principles applied by the Court and the reparations process.

**100%** **supported** the Experts' recommendation that consistent and coherent principles relating to reparations should be further developed.<sup>67</sup>

**100%** **supported** the Experts' recommendation that standardized, streamlined and consistent procedures and best practices applicable in the reparations phase of proceedings should be developed.<sup>68</sup>

Reflecting the concerns of some CSO representatives about delaying the commencement of the reparations processes until after appeals against the judgement have been completed, many CSOs supported the Experts' recommendation to commence the process sooner.

**64%** **supported** the Experts' recommendation that, subject to outreach to manage the expectations of victims, reparations proceedings should commence pending the outcome of an appeal against conviction.<sup>69</sup>

However, the fact that more CSO representatives did not support the recommendation, indicates that some may have concerns about starting the process before a final conviction, because an overturned conviction would result in the termination of the reparations proceedings and disappointment for the victims involved.

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<sup>67</sup> Independent Experts Report, R342.

<sup>68</sup> Independent Experts Report, R343.

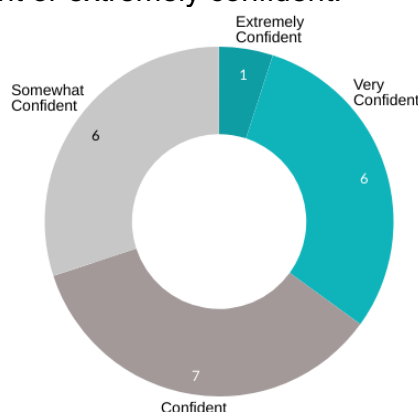
<sup>69</sup> Independent Experts Report, R344, R346.

# 13 Trust Fund for Victims

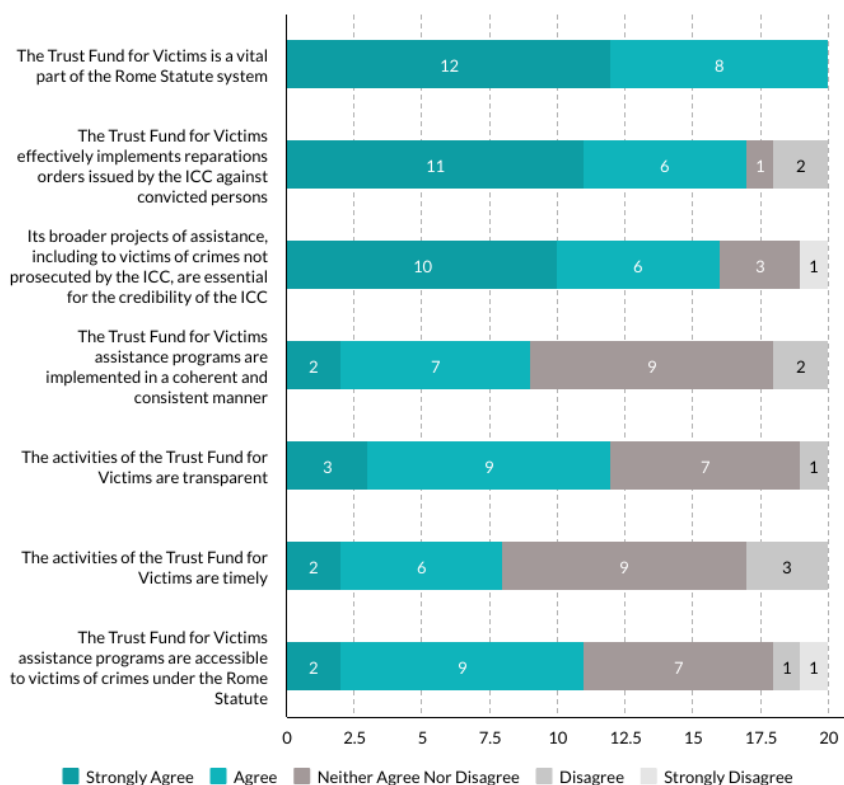
## 13.1 CSO Representatives' Assessment of the Trust Fund for Victims

46 of the 77 CSO representatives said that they were aware of the Trust Fund, its role and its mandate, but only 20 have been following its work. This may be partly because the Trust Fund has so far been involved in implementing three ICC reparations orders and has launched projects of assistance to victims in three situations: Central African Republic, Democratic Republic of Congo and Uganda.

When asked about their level of confidence in the Trust Fund's ability to benefit victims and their families, 70% of those that have been following its work responded that they were confident, very confident or extremely confident.



Responses to the following statements indicate that, while CSO representatives strongly supported the Trust Fund, there was some uncertainty and concerns about the coherence, consistency, transparency, timeliness and accessibility of its activities.



90% agreed that States Parties must find ways to increase the resources of the Trust Fund if it is to deliver on its mandate across all ICC situations.

### 13.2 CSO Representatives' Recommendations to Strengthen the Trust Fund for Victims

Asked what legal, practice and/or policy reforms should be considered to strengthen the Trust Fund for Victims, CSO representatives recommended:

- ⇒ The ASP should increase the resources available to the Trust Fund to expand its capacity.<sup>70</sup>
- ⇒ The Trust Fund should increase fundraising.<sup>71</sup>
- ⇒ The Trust Fund should be more transparent.<sup>72</sup>
- ⇒ The Trust Fund should increase its outreach.<sup>73</sup>
- ⇒ The Trust Fund should provide more timely support to victims.<sup>74</sup>
- ⇒ The Trust Fund should be detached from the Registry to ensure its expediency in the execution of reparations and assistance mandates.<sup>75</sup>
- ⇒ The Trust Fund should engage in situations and conduct needs assessments at an early stage of an investigation, especially in those situations where a significant amount of time has elapsed between the commission of crimes and the opening of an investigation.<sup>76</sup>

### 13.3 CSO Representatives' Initial Reactions to the Experts' Recommendations

During webinars, civil society representatives considered the Experts' findings in relation to the Trust Fund for Victims and responded to polls on some of their recommendations.

**87%** **support** the Experts' recommendation that the Trust Fund should develop a fundraising strategy.<sup>77</sup>

**65%** either **oppose** or **do not know** whether to support or oppose the Experts' recommendation that the Trust Fund's functions should be restricted to fundraising, administering the funds and releasing the funds as ordered by the Court.<sup>78</sup>

Although some recognized this would allow the Trust Fund to focus on fundraising, concern was raised as to whether its other functions would be performed effectively if they

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<sup>70</sup> Representatives of Centre marocain pour la paix at la loi, Morocco; Laboratoire de Recherche en Droit International et Européen et Relations Maghreb-Europe, Tunisia; and MARUAH, Singapore.

<sup>71</sup> Representative of civil society, Uganda.

<sup>72</sup> Representative of Laboratoire de Recherche en Droit International et Européen et Relations Maghreb-Europe, Tunisia.

<sup>73</sup> Representative of MARUAH, Singapore.

<sup>74</sup> Representatives of civil society, Eastern Europe; and MARUAH, Singapore.

<sup>75</sup> Representative of civil society, Democratic Republic of Congo.

<sup>76</sup> Representative of civil society focused on a situation country.

<sup>77</sup> Independent Experts Report, R356.

<sup>78</sup> Independent Experts Report, R354.

are handed over to the Registry, without a significant increase in resources for the Registry's Victims Participation and Reparations Section (VPRS).

At the moment the VPRS does not have the capacity and resources to take on these roles. They have the expertise and knowledge, but resources could make it a risky move unless VPRS's budget is increased dramatically. **Representative of Asia Justice and Rights (AJAR), focused on the Asia-Pacific region**



# Conclusions and Recommendations

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Despite the problems and challenges that have led to the ICC Review, the views and constructive recommendations of the CSO representatives set out in this report reflect the continuing support of civil society around the world for a just, fair and effective ICC.

The ICC Review is an important opportunity to improve the performance of the ICC and the Rome Statute system and to build confidence in and support for the Court's work.

WFM/IGP recommends that the ICC and States Parties:

- Fully consider the views and detailed recommendations of civil society set out in this report and other submissions by CSOs, including their feedback on the Independent Experts' recommendations, in determining which reforms to take forward and how to implement them;
- Consult broadly with civil society, especially with CSOs that are working against impunity in Africa, Asia-Pacific, Eastern Europe, Latin America and the Caribbean, and the Middle East and North Africa throughout the process to obtain their further input in operationalizing reforms; and
- Keep civil society fully informed of progress with implementation efforts and the impacts of reforms.

# Annex 1: Questionnaire

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## About Your Organization

1. *From which of the following regions is your organization?*
2. *Contact details*
3. *Is your organization*
  - An academic organization
  - A non-governmental organization
  - A professional body
  - Other (please specify)
4. *What is the focus of your organization's mandate?*
  - International Justice
  - Human Rights
  - Women's Rights
  - Children's Rights
  - Youth's Rights
  - Rights of persons with disabilities
  - Indigenous Rights
  - Other (please specify)
5. *How actively is your organization following the work of the ICC?*
  - Not actively
  - Generally following the ICC's work through specific media
  - Conducting research and advocacy in relation to the ICC
  - Acting as intermediary
6. *Which media?*
  - ICC's website
  - CICC's e-mail listservs
  - CICC website
  - Other NGOs websites
  - International Justice Monitor
  - International law blogs
  - Facebook
  - Twitter
  - YouTube
  - Law journal articles
  - Other (please specify)
7. *What types of advocacy has your organization conducted?*
  - NGO reports
  - Article 15 submissions providing information on crimes to the ICC Office of the Prosecutor
  - Amicus curiae
  - Participating in ICC meetings and other conferences
  - Participating in the Assembly of States Parties

- Other (please specify)

8. *Before being asked to participate in this survey, were you aware of the Assembly of States Parties' initiative to Review the ICC to strengthen the Court and improve its performance?*

- Yes
- No

9. *Have you been consulted or provided input during the ICC Review process?*

- Yes
- No

## **General Perceptions of the ICC and the ICC Review Process**

10. *Overall, how do you assess the performance of the ICC and the Rome Statute systems' contribution to the fight against impunity?*

- Extremely effective
- Very effective
- Effective
- Somewhat effective
- Not at all effective

11. *In reaching your overall assessment, how important were each of the following factors? Highly Important, Important, Neutral, Not Important, Not at All Important*

- The extent and effectiveness of the ICC's efforts to address impunity around the world.
- The extent and effectiveness of the ICC's efforts to address impunity in your region.
- The extent and effectiveness of the ICC's efforts to address impunity in your country or another specific situation.
- The extent and effectiveness of the ICC's efforts to press national authorities to investigate and prosecute crimes nationally.
- The outcomes of ICC cases.
- The performance of the ICC Office of the Prosecutor.
- The fairness of ICC trials.
- The ICC's implementation of victims' rights.
- The effectiveness of ICC outreach and public information.
- The level of support and cooperation that the ICC has received from states.

Please explain your assessment further, including any other criteria you may have applied.

12. *How much priority should be given to strengthening the following aspects of the ICC's work? High priority, Medium priority, low priority, don't know*

- Preliminary Examinations
- Investigations
- Prosecutions
- ICC Trials
- Public Information and Outreach
- Victim and Witness Protection
- Victims Reparations
- The Trust Fund for Victims
- Funding the operations of the ICC
- State Cooperation

- Promoting justice before national courts

Please add any explanations for your answer or highlight other aspects of the ICC's work that should be strengthened as a priority

*13. Do you support the Assembly of States Parties' initiative to conduct a 'State Party driven' process in 2020 to review the ICC and the Rome Statute system aimed at strengthening the ICC and improving its performance?*

- Strongly support
- Support
- Neither support nor oppose
- Oppose
- Strongly oppose

*14. Do you have any concerns about the Assembly of States Parties Review of the ICC?*

- Yes
- No

If yes, please explain your concerns.

*15. Are you concerned about recent political attacks against the ICC, including by the government of the United States of America and Israel?*

- Extremely concerned
- Very concerned
- Concerned
- A little concerned
- Not concerned at all

## **Assessment of ICC Preliminary Examinations**

*16. Have you been following any of the International Criminal Court's preliminary examinations?*

- Yes
- No

*17. Which ICC preliminary examinations have you followed or are you following?*

*18. How confident are you in the ICC OTP's preliminary examinations?*

- Extremely confident
- Very confident
- Confident
- Somewhat confident
- Not at all confident

*19. Please indicate the extent to which you agree or disagree with the following statements relating to Preliminary Examinations: Strongly Agree, Agree, Neither Agree nor Disagree, Disagree, Strongly Disagree, Don't Know*

- The ICC OTP takes coherent, consistent and transparent decisions on whether to open Preliminary Examinations.
- The ICC OTP conducts preliminary examinations in a consistent and coherent manner.
- The ICC OTP conducts its preliminary examinations in a transparent manner.

- The ICC OTP takes appropriate measures during preliminary examinations to promote national investigations and prosecutions of crimes (positive complementarity).
- The ICC OTP takes appropriate measures during preliminary examinations to deter the further commission of crimes under the Rome Statute.
- The ICC OTP conducts preliminary examinations in a timely manner.
- The ICC OTP makes coherent, consistent and transparent determinations on whether to open a formal investigation or not.

Please provide any reasons or explanations for your answers, including any assessment of preliminary examinations conducted in your country or region.

*20. In your view, are there situations in your region where the ICC should be conducting other preliminary examinations?*

- Yes
- No

If so, please identify where

*21. In your view, what legal, practice and/or policy reforms should be considered to improve the ICC OTP's performance during preliminary examinations?*

## **Assessment of ICC Investigations**

*22. Have you been following any of the International Criminal Court's investigations?*

- Yes
- No

*23. Which ICC investigations have you followed or are you following?*

*24. How confident are you in the ICC OTP's investigations?*

- Extremely confident
- Very confident
- Confident
- Somewhat confident
- Not at all confident

*25. Please indicate the extent to which you agree or disagree with the following statements: Strongly Agree, Agree, Neither Agree nor Disagree, Disagree, Strongly Disagree, Don't Know*

- ICC OTP investigations are prompt.
- ICC OTP investigations are thorough and take into account allegations of all crimes under the jurisdiction of the Court.
- ICC OTP investigations are impartial, focusing on allegations of crimes under the jurisdiction of the Court by all actors.
- ICC OTP investigations are independent. They are not affected by efforts of political interference by states and other actors.
- ICC OTP investigations are effective in gathering evidence of crimes under the jurisdiction of the Court.
- ICC OTP investigations are adequately resourced.
- States cooperate effectively with OTP investigations.
- The safety, physical and psychological well-being, dignity and privacy of victims and witnesses are protected during investigations.

- Victims are able to present their views and concerns during an investigation which are given due consideration.
- The ICC conducts effective outreach engaging with victims and affected communities.
- The ICC conducts effective public information about the investigation.

Please provide any reasons or explanations for your answers, including any assessment of investigations conducted in your country or region.

*26. In your view, what legal, practice and/or policy reforms do you consider necessary to improve the ICC OTP's investigation?*

## **Assessment of ICC Cases**

*27. Have you been following any of the International Criminal Court's cases?*

- Yes
- No

*28. Which ICC cases have you followed or are you following?*

*29. How confident are you in the ICC's ability to deliver justice fairly and effectively in its cases?*

- Extremely confident
- Very confident
- Confident
- Somewhat confident
- Not at all confident

*30. Please indicate the extent to which you agree or disagree with the following OTP policies: Strongly Agree, Agree, Neither Agree nor Disagree, Disagree, Strongly Disagree, Don't Know*

- To focus in principle on the most serious crimes within a given situation.
- To focus on charging those "most responsible" for the crimes.
- To focus in some cases on lower level perpetrators where their conduct has been particularly grave or notorious.
- To leave the bulk of mid-level and direct perpetrators to be investigated and tried by domestic jurisdictions.
- To bring charges that represent as much as possible the true extent of criminality that has occurred in a given situation.
- To pay particular attention to crimes committed against children.
- To pay particular attention to sexual and gender-based crimes.
- To pay particular attention to attacks against cultural, religious, historical and other protected objects.
- To pay particular attention to attacks against humanitarian and peacekeeping personnel.

*31. In your view, has the OTP implemented these policies consistently?*

- Yes
- No

*32. How confident are you that states will arrest and surrender suspects to the ICC?*

- Extremely confident

- Very confident
- Confident
- Somewhat confident
- Not at all confident

33. *How confident are you in the Assembly of States Parties to ensure that individual states cooperate with arresting and surrendering suspects to the ICC?*

- Extremely confident
- Very confident
- Confident
- Somewhat confident
- Not at all confident

34. *Please indicate the extent to which you agree or disagree with the following statements regarding ICC cases: Strongly Agree, Agree, Neither Agree nor Disagree, Disagree, Strongly Disagree, Don't Know*

- The ICC has sufficient pre-trial safeguards in place to ensure that weak cases or charges do not proceed to trial.
- ICC trials and other judicial proceedings are fair.
- ICC trials and other judicial proceedings are expeditious.
- The rights of the accused are respected in ICC judicial proceedings.
- The safety, physical and psychological well-being, dignity and privacy of victims and witnesses is protected during ICC cases.
- The ICC conducts effective public information and outreach in relation to its cases.

Please provide any reasons or explanations for your answers, including any assessment of cases conducted in relation to crimes committed in your country or region.

35. *In your view, what legal, practice and/or policy reforms do you consider necessary to improve ICC judicial proceedings?*

## **Assessment of ICC Victim Participation**

36. *Have you been following victim participation in proceedings at the International Criminal Court's cases?*

- Yes
- No

37. *How confident are you in the ICC's ability to ensure that victims participate effectively in ICC proceedings?*

- Extremely confident
- Very confident
- Confident
- Somewhat confident
- Not at all confident

38. *Please indicate the extent to which you agree or disagree with the following statements regarding the victim participation at the ICC: Strongly Agree, Agree, Neither Agree nor Disagree, Disagree, Strongly Disagree, Don't Know*

- Information about victim participation, including how to apply, is easily accessible and clear.
- Victims are provided with sufficient support and assistance to apply to participate.

- Adequate systems are in place to ensure that marginalized victims are informed and able to apply.
- Applications for participation are decided in a timely manner.
- Decisions on applications for participation are coherent and consistent.
- Participating victims are able to present their views and concerns at appropriate stages of the proceedings.
- Victims' views and concerns are given due consideration.

Please provide any reasons or explanations for your answers, including any assessment of ICC victim participation in relation to your country or region.

*39. In your view what reforms should be adopted to strengthen victim participation at the ICC?*

## **Assessment of ICC Reparations**

*40. Have you been following the International Criminal Court's reparations proceedings?*

- Yes
- No

*41. How confident are you in the ICC's ability to deliver effective reparations to victims in its cases?*

- Extremely confident
- Very confident
- Confident
- Somewhat confident
- Not at all confident

*42. Please indicate the extent to which you agree or disagree with the following statements regarding ICC reparations: Strongly Agree, Agree, Neither Agree nor Disagree, Disagree, Strongly Disagree, Don't Know*

- The ICC reparations process is clear, coherent and consistent.
- The ICC reparations process is expedient.
- Information about victims' reparations, including how to apply, is easily accessible for victims.
- Victims are provided with sufficient support and assistance to apply for reparations.
- Adequate procedures are in place to ensure that marginalized victims are able to apply.
- Adequate procedures are applied to establish the harm suffered by victims.
- Victims are sufficiently consulted on the forms of reparations required to address the harm they have suffered and their views are considered.
- Reparations orders consider and address the harms suffered by women, children, persons with disabilities and other marginalized groups as well as the barriers they face in accessing reparations.
- Reparations orders are coherent and consistent.
- The Assembly of States Parties has put in place sufficient mechanisms to ensure that reparations orders are enforced.

Please provide any reasons or explanations for your answers, including any assessment of ICC reparations in relation to your country or region.



43. *In your view what are the key reforms that should be adopted to strengthen ICC reparations?*

## **Assessment of the Trust Fund for Victims**

44. *Are you aware of the ICC Trust Fund for Victims, its role and mandate?*

- ☐ Yes
- ☐ No

45. *Have you been following the work of Trust Fund for Victims?*

- ☐ Yes
- ☐ No

46. *How confident are you in the Trust Fund for Victims' ability to benefit victims and their families?*

- ☐ Extremely confident
- ☐ Very confident
- ☐ Confident
- ☐ Somewhat confident
- ☐ Not at all confident

47. *Please indicate the extent to which you agree or disagree with the following statements regarding the work of the Trust Fund for Victims: Strongly Agree, Agree, Neither Agree nor Disagree, Disagree, Strongly Disagree*

- ☐ The Trust Fund for Victims is a vital part of the Rome Statute system.
- ☐ The Trust Fund for Victims plays a vital role in implementing ICC reparations orders.
- ☐ The Trust Fund for Victims effectively implements reparations orders issued by the ICC against convicted persons.
- ☐ Its broader projects of assistance, including to victims of crimes not prosecuted by the ICC, are essential for the credibility of the ICC.
- ☐ The Trust Fund for Victims assistance programs are implemented in a coherent and consistent manner.
- ☐ The activities of the Trust Fund for Victims are transparent.
- ☐ The activities of the Trust Fund for Victims are timely.
- ☐ The Trust Fund for Victims assistance programs are accessible to victims of crimes under the Rome Statute, including women, children, persons with disabilities and other marginalized groups.
- ☐ States Parties must find ways to increase the resources of the Trust Fund for Victims if it is to deliver on its mandates across all ICC situations.

48. *In your view, what are the key reforms that should be adopted to strengthen the Trust Fund for Victims?*

## Security

49. *Do you have any security or other concerns in connection with participating in this survey or other aspects of the project?*

- ☐ Yes
- ☐ No

50. *In any reports of the results of this survey:*

- ☐ I grant permission to use my name and the name of my organization in the research reports.
- ☐ I grant permission to use my name in the research reports, but the name of my organization should not be mentioned.
- ☐ I grant permission to use the name of my organization in the research reports, but my name should not be mentioned.
- ☐ I do not grant permission to use my name nor the name of my organization in the research reports.

# Annex 2: Polls Conducted during Webinars Reviewing the Experts' Recommendations

## General

1: Should the CSO report address internal institutional issues [raised in the Experts Report]?

Yes	No	Don't Know	Total
22	4	1	27

## Preliminary Examinations

2: Do you agree that the OTP should adopt transparent criteria for opening a preliminary examination?

Yes	No	Don't Know	Total
28	1	1	30

3: Do you agree that the OTP should establish a strategy plan for each preliminary examination opened, including timelines and benchmarks?

Yes	No	Don't Know	Total
30	0	0	30

4: Do you agree that the OTP should consider a higher threshold of gravity in determining whether to open an investigation?

Yes	No	Don't Know	Total
7	14	9	30

## Investigations

5: Do you agree that the OTP should prepare a policy on investigations and strategies for specific situations?

Yes	No	Don't Know	Total
25	0	0	25

6: Do you support strengthening the OTP's field presence, including country experts and local staff?

Yes	No	Don't Know	Total
23	1	1	25

7: Do you agree that feasibility related factors should be seriously considered after the opening of an investigation?

Yes	No	Don't Know	Total
10	3	1	14

8: Do you agree that challenging situations should be hibernated if sufficient resources are not available to conduct serious investigations?

Yes	No	Don't Know	Total
6	14	5	25

## Case Selection and Charging

9: Do you agree that the quality and quantity of evidence should be the OTP's main consideration in case selection and charging?

Yes	No	Don't Know	Total
18	6	1	25

10: Do you agree with the recommendation to limit the scope of cases temporally, geographically and with regard to modes of liability?

Yes	No	Don't Know	Total
8	10	7	25

## Outreach

11: Do you agree that outreach should start from the preliminary examination stage?

Yes	No	Don't Know	Total
26	0	0	26

12: Do you agree that an outreach plan should be developed for each ICC situation?

Yes	No	Don't Know	Total
23	1	2	26

13: Is the Experts' recommendation that, if additional resources are not provided, CSOs could conduct outreach for the ICC appropriate and realistic?

Yes	No	Don't Know	Total
13	9	4	26

## Victim Participation

14: Do you support an internal review of the ICC's system of victim participation?

Yes	No	Don't Know	Total
21	0	4	25

## Reparations

15: Do you support the development of consistent and coherent principles relating to reparations?

Yes	No	Don't Know	Total
21	0	1	22

16: Do you support the development of standardized, streamlined and consistent procedures and best practices applicable in the reparations phase of proceedings?

Yes	No	Don't Know	Total
22	0	0	22

17: Do you agree that, subject to effective outreach, reparations proceedings should commence pending the outcome of an appeal against conviction?

Yes	No	Don't Know	Total
14	2	6	22

## Trust Fund for Victims

18: Do you support restricting the functions of the Trust Fund to fundraising, administration of the funds, and release of the funds as ordered by the Court?

Yes	No	Don't Know	Total
8	7	8	23

19: Do you support the development of a Trust Fund fundraising strategy?

Yes	No	Don't Know	Total
20	1	2	23