

**Civil Society Observations on the**  
***“Matrix over possible areas of strengthening the Court and the Rome Statute System”***

Following the Hague Working Group meeting held on 19 July 2019 the Presidency of the Assembly of States Parties (“ASP”) invited civil society, among other stakeholders, to submit comments on the working methods and topics reflected in the Draft Non-Paper entitled “Meeting the challenges of today for a stronger Court tomorrow: Matrix over possible areas of strengthening the Court and the Rome Statute System” (“the Matrix”), dated 15 July 2019.

The Non-Paper highlights many challenges faced by the International Criminal Court (“ICC”).

Members of the Coalition for the International Criminal Court (CICC) are considering and will engage with all key stakeholders on the best review process – including the proposed the Matrix - that will both protect and strengthen the ICC and Rome Statute system.

Members of the CICC are yet to fully consult and consider the Matrix. Consequently, we wish to restrict our observations to the following issues of principle.

**I. Guiding principles**

The proposed review and the mechanisms adopted should seek to protect and strengthen the ICC and Rome Statute system (RSS). In addition, all proposed changes must be supported by detailed explanations outlining how, if implemented, they will result in the protection and/or strengthening of the ICC and RSS.

Care should be taken to ensure that the issues raised in the Matrix and the suggested review mechanisms and framework do not impinge on the independence, effectiveness and integrity of the Court, the transparency and the openness and inclusivity of the review process.

The CICC also urges all stakeholders to observe and respect the following principles throughout the review process, including with regards the Matrix:

**1. Prosecutorial and Judicial Independence:**

- a. The following issues touch upon the independence of the Office of The Prosecutor and the Judiciary. *Preliminary examinations (2.1); Case selection and prioritization (2.2); Investigation and case-preparation (2.3); Current structure of OTP (2.4); OTP completion strategies (2.5); Efficiency of the Judicial Process (2.6); Development of process and procedures to promote coherent Jurisprudence and decision-making (2.7); Victims (2.10); and Reparations (2.11)*. For this reason, proposals regarding these and other related issues must be (i) specific; (ii) detailed; (iii) objectively connected to and necessary for the strengthening of the ICC’s capacity to discharge its mandate;

- b. To safeguard prosecutorial and judicial independence, decisions on policy and practice changes on the topics listed should be informed by the 2019 – 2021 Strategic Plans produced by the respective organs of the ICC and objectively protect and strengthen the effectiveness, independence and integrity of the ICC.

## **2. Transparency:**

- a. The review of the ICC and the RSS must be open, transparent, inclusive and meaningful. It must include and involve all key stakeholders, including civil society. Civil society, led by the CICC, played a key role in the adoption of the Rome Statute in 1998 and the establishment of the ICC in 2002.

## **3. Independence of the panel of experts:**

- a. The Matrix proposes the use of an Independent Panel of Experts as the means to review a select few issues. This points to a lack of clarity and agreement among key stakeholders on the mechanism and framework that should be used to determine and inform how the ICC's effectiveness, independence and integrity should be protected and strengthened.
- b. Since the RSS has many stakeholders, including the ICC's Organs, States Parties and Civil Society, it is important that a truly independent and adequately resourced panel of experts is appointed with a broad mandate to assess the changes/reforms that need to be implemented with the Goal of Protecting and Strengthening the ICC's ability to discharge its mandate.
- c. Further, the panel of experts must be appointed on merit, be highly qualified, experienced and have the rights skills-set.
- d. It is not clear from the proposed working methods whether the experts' review will follow or precede the discussion of the topics among other stakeholders. Discussions on each of the proposed topics among States Parties, the Court and other stakeholders, should take place only after the independent panel of experts has issued its recommendations for the topic to be discussed. It would be preferable if the independent panel of experts works as one review body and not as separate panels for each of the clusters. Having separate panels of experts working independently of each other on different specific topics may result in contradictory recommendations.

The CICC calls on all stakeholders to respect these and other principles ensuring that the Goal is to protect and to strengthen the ICC and RSS. More specific comments on the working methods and topics listed in the Matrix are included as an Annex of this submission, on the understanding that the Matrix is intended to be an evolving document and is not a final decision.

## **II. Topics missing from the Matrix**

The Matrix is proposing a wide range of important topics to be considered as part of an ICC review process. Nonetheless, the Coalition is concerned about the lack of reference to some key topics that may also require consideration in the context of a review process.

Without prejudice to including additional topics later on, the Coalition is of the view that the following topics should be considered for the purposes of the Matrix and, consequently, their potential review:

- a. Defence and fair trial issues;

- b. Outreach and engagement with affected communities; and
- c. Legal Aid

### **III. Conclusions**

The CICC appreciates the opportunity given to civil society to provide comments and observations on the working methods of the Matrix proposed by the ASP Presidency. The Coalition stresses the importance of keeping an open and transparent dialogue going forward among all stakeholders involved in the discussions of the Matrix. Civil society, as a key stakeholder in this process, should constantly be allowed to participate.

Lastly, the critical impact that a review process like the one proposed can have on the Court and the RSS should not be underestimated. Not providing adequate safeguards to protect the fundamental principles of prosecutorial and judicial independence along the process, can severely damage the pillars that uphold international criminal justice. The CICC is looking forward to working with all stakeholders to propose, discuss and agree on changes that will both protect and strengthen the ICC's ability to discharge its mandate.

## Annex I

### *Civil Society Observations on the Working Methods and Topics of the Matrix*

<b>Governance, Management &amp; Leadership</b>		
<b>Item</b>	<b>Topic/Objective</b>	<b>Comments</b>
<b>1.1</b>	<b>Election of Judges</b>	<ul style="list-style-type: none"> <li>• Consideration should be given to extending the timeline for the execution of some the actions listed in the Matrix – particularly those proposed to take place before ASP 18.</li> <li>• Amendments to the Rome Statute are listed as a possible instrument to be considered. Accordingly, the Working Group on Amendments should be added as a possible forum for discussion. In addition, all proposed amendments to the Rome Statute should be strictly necessary and supported/justified by clear evidence and limited to addressing an objectively verifiable serious concern/issue.</li> <li>• Civil society should be included in the discussions</li> </ul>
<b>1.2</b>	<b>Election of the Prosecutor</b>	<ul style="list-style-type: none"> <li>• The Matrix lists the “Election of the Prosecutor” as an action to achieve the objective “Election of the Prosecutor”. It is unclear what is meant by this.</li> <li>• Amendments to the Rome Statute are listed as a possible instrument to be considered. Accordingly, the Working Group on Amendments should be added as a possible forum for discussion. As above, all proposed amendments to the Rome Statute should be strictly necessary and supported/justified by clear evidence and limited to addressing an objectively verifiable serious concern/issue.</li> <li>• Civil society should be included in the discussions</li> </ul>
<b>1.5</b>	<b>Management and Governance Culture</b>	<ul style="list-style-type: none"> <li>• More clarity regarding the proposed action is needed.</li> </ul>
<b>1.7</b>	<b>Unified governance and leadership</b>	<ul style="list-style-type: none"> <li>• The Court’s management should be included as participants to the discussions.</li> </ul>
<b>1.9</b>	<b>Staff Engagement</b>	<ul style="list-style-type: none"> <li>• Participation and involvement of ICC staff in the discussions should be considered.</li> <li>• It is unclear why the Bureau’s involvement is necessary.</li> <li>• The Court’s management should be included as participants to the discussions.</li> </ul>
<b>1.17</b>	<b>Enhanced transparency in Court staffing and structure</b>	<ul style="list-style-type: none"> <li>• Working Group on Geographical Representation and Gender Balance Working Group could be considered as a forum for discussion.</li> </ul>

<b>Investigations, Prosecutions and the Judicial Process</b>		
<b>Item</b>	<b>Topic/Objective</b>	<b>Comments</b>
<b>2.1</b>	<b>Preliminary examinations</b>	<ul style="list-style-type: none"> <li>• The principle of prosecutorial independence should be safeguarded and respected</li> <li>• It is unclear who would take part in the “Dialogue on OTP Strategy &amp; implementation”</li> <li>• Decisions on policy changes and implementation must remain with the OTP</li> <li>• The ICC-OTP’s 2019-2021 Strategic Plan should be considered as well.</li> <li>• Civil society should be included in the discussions</li> </ul>
<b>2.2</b>	<b>Case Selection and Prioritization</b>	<ul style="list-style-type: none"> <li>• The principle of prosecutorial independence should be safeguarded and respected</li> <li>• Decisions on policy changes and implementation must remain with the OTP</li> <li>• The ICC-OTP’s 2019-2021 Strategic Plan should be considered as well.</li> </ul>
<b>2.3</b>	<b>Investigation and case-preparation</b>	<ul style="list-style-type: none"> <li>• The principle of prosecutorial independence should be safeguarded and respected</li> <li>• Registry should be considered as one of the Court’s organs to be involved in the discussions</li> <li>• Decisions on policy changes and implementation must remain with the OTP</li> <li>• The ICC-OTP’s 2019-2021 Strategic Plan should be considered as well.</li> </ul>
<b>2.4</b>	<b>Current Structure of OTP</b>	<ul style="list-style-type: none"> <li>• The principle of prosecutorial independence should be safeguarded and respected</li> <li>• Panel of experts could provide relevant input</li> <li>• Decisions on policy changes and implementation must remain with the OTP</li> <li>• The ICC-OTP’s 2019-2021 Strategic Plan should be considered as well.</li> </ul>
<b>2.5</b>	<b>OTP Completion Strategies</b>	<ul style="list-style-type: none"> <li>• Registry should be considered as one of the Court organs to be involved in the discussions</li> <li>• The ICC-OTP’s 2019-2021 Strategic Plan should be considered as well.</li> </ul>
<b>2.6</b>	<b>Efficiency of the Judicial Process</b>	<ul style="list-style-type: none"> <li>• The principle of judicial independence should be safeguarded and respected</li> <li>• Decisions on policy changes and implementation must remain with the Judiciary</li> <li>• Amendments to the Rome Statute are listed as a possible instrument to be considered. Accordingly, the Working Group on Amendments should be added as a possible forum for discussion.</li> </ul>
<b>2.7</b>	<b>Development of Process and Procedures to Promote Coherent Jurisprudence and Decision-Making</b>	<ul style="list-style-type: none"> <li>• The principle of judicial independence should be safeguarded and respected</li> <li>• Decisions on policy changes and implementation must remain with the Judiciary</li> <li>• Amendments to the Rules of Procedure and Evidence are listed as a possible instrument to be considered. Accordingly, the Working Group on Amendments should be added as a possible forum of discussion.</li> </ul>
<b>2.8</b>	<b>Management of transitions in the Judiciary</b>	<ul style="list-style-type: none"> <li>• Amendments to the Rules of Procedure and Evidence are listed as a possible instrument to be considered. Accordingly, the Working Group on Amendments</li> </ul>

		<p>should be added as a possible forum of discussion.</p> <ul style="list-style-type: none"> <li>• Registry could be considered as one of the Court’s organs to be involved in the discussions</li> </ul>
<b>2.10</b>	<b>Victims</b>	<ul style="list-style-type: none"> <li>• The principle of judicial independence should be safeguarded and respected.</li> <li>• Civil society and other stakeholders working with or for victims should be included in the discussions</li> <li>• Amendments to the Rules of Procedure and Evidence are listed as a possible instrument to be considered. Accordingly, the Working Group on Amendments should be added as a possible forum of discussion.</li> <li>• More clarity regarding the proposed action is suggested</li> </ul>
<b>2.11</b>	<b>Reparations</b>	<ul style="list-style-type: none"> <li>• The principle of judicial independence should be safeguarded and respected.</li> <li>• Civil society should be included in the discussions</li> </ul>

<b>External environment</b>		
<b>Item</b>	<b>Topic/Objective</b>	<b>Comments</b>
<b>3.1</b>	<b>Strengthening Cooperation in general</b>	<ul style="list-style-type: none"> <li>• New York Working Group’s co-facilitators on Non-Cooperation could be considered as a forum for discussion</li> <li>• Civil society should be included in the discussions</li> </ul>
<b>3.2</b>	<b>Implementation of Arrest Warrants</b>	<ul style="list-style-type: none"> <li>• The inclusion of the ASP as a whole, and not only The Hague Working Group, should be considered as a potential forum for discussion.</li> <li>• New York Working Group’s co-facilitators on Non-Cooperation could be considered as a forum for discussion</li> <li>• A Seminar on arrest warrants could be considered as a possible action</li> </ul>
<b>3.3</b>	<b>Non-cooperation</b>	<ul style="list-style-type: none"> <li>• A separate ASP session on non-cooperation could be considered as a possible action</li> <li>• Civil society should be included in the discussions</li> </ul>
<b>3.4</b>	<b>Cooperation with the UN and UNSC (including cases of non-cooperation)</b>	<ul style="list-style-type: none"> <li>• The inclusion of the ASP as a whole should be considered as a potential forum for discussion.</li> </ul>
<b>3.5</b>	<b>External political measures against the Court</b>	<ul style="list-style-type: none"> <li>• New York Working Group’s co-facilitators on Non-Cooperation could be considered as a forum for discussion</li> <li>• The inclusion of the ASP as a whole should be considered as a potential forum for discussion.</li> <li>• Civil society should be included in the discussions</li> </ul>