

## Resolution ICC-ASP/18/Res.7

Adopted at the 9th plenary meeting, on 6 December 2019, by consensus

### ICC-ASP/18/Res.7

#### **Review of the International Criminal Court and the Rome Statute system**

*The Assembly of States Parties,*

*Recognizing* the Court's central role in the fight against impunity at the international level, as the only permanent International Criminal Court, based on the principle of complementarity,

*Recognizing also* the achievements made by the international community in the fight against impunity since the entry into force of the Rome Statute and the essential contribution of the International Criminal Court in this respect,

*Reaffirming* that the most serious crimes of concern to the international community as a whole must not go unpunished and that effective prosecution must be ensured by taking measures at the national level and enhancing international cooperation,

*Reaffirming also* its determination to end impunity for the perpetrators and bring justice to the victims of these crimes and thus contribute to the prevention of such crimes,

*Recalling* that the International Criminal Court is complementary to national criminal jurisdictions and that States have primary responsibility for genuinely investigating and prosecuting the crimes in the Statute,

*Emphasizing* that efficient and effective investigations, prosecutions and judicial proceedings are essential in fulfilling the mandate of the Court,

*Recognizing* that the full cooperation as well as diplomatic and political support by all States Parties are essential for the effective functioning of the Court,

*Recognizing also* the importance of good governance and accountability in the administration of the Court,

*Gravely concerned* by the multifaceted challenges facing the International Criminal Court and the Rome Statute system in ending impunity and preventing future crimes,

*Mindful* of the fact that those challenges have multiple causes and of the need for all stakeholders to undertake joint action to ensure the effectiveness of the International Criminal Court in the global fight against impunity,

*Committed* to further strengthening the Court and the Rome Statute system as a means to end impunity for the perpetrators and bring justice to the victims of these crimes and thus contribute to the prevention of such crimes as well as to achieve lasting and universal adherence to the Statute,

*Stressing the importance* of judicial and prosecutorial independence enshrined in the Statute,

*Emphasizing also* the responsibility of the Assembly of States Parties in providing management oversight regarding the administration of the Court,

1. *Welcomes* the efforts undertaken by the Bureau and its working groups in strengthening the operational performance of the Rome Statute system and the Court as set out in the report of the Bureau on its activities;
2. *Takes note* of the Bureau working document entitled "Matrix over possible areas of strengthening the Court and Rome Statute system", dated 27 November 2019, (Matrix) as a starting point for a comprehensive dialogue on a review of the Court and its status as a living document;
3. *Welcomes* the continuous efforts of the Court in strengthening its effectiveness and efficiency and the constructive dialogue with the Assembly in this regard;

4. *Decides* to establish a transparent, inclusive State-Party driven process for identifying and implementing measures to strengthen the Court and improve its performance, and *underlines* that, for this process to be successful, it must involve all States Parties, the Court and other relevant stakeholders;
5. *Underlines* that this process must fully respect the statutory independence of the Court;

## A. Independent Expert Review

6. *Decides* to commission an Independent Expert Review starting 1 January 2020 in accordance with the Terms of Reference contained in annex I to this resolution, with a view to making concrete, achievable and actionable recommendations aimed at enhancing the performance, efficiency and effectiveness of the Court and the Rome Statute system as a whole, taking full account of the working languages of the Court, and submit those to the Assembly and the Court for consideration;
7. *Appoints* a Group of Independent Experts composed of the persons set out in annex II to the present resolution;
8. *Decides* to fund the Independent Expert Review as set out in the budget resolution;<sup>1</sup>
9. *Requests* the Chair of the Group of Independent Experts to keep State Parties, The Court and other relevant Stakeholders informed of progress, through the Bureau and its Working Groups, to update States Parties and other relevant stakeholders on the progress and coordination of their work by the end of June 2020, and to submit no later than 30 September 2020 the final report and recommendations;
10. *Requests* the Court and the Presidency of the Assembly to undertake all necessary preparations for the Independent Expert Review immediately after the conclusion of the eighteenth session of the Assembly, including logistical requirements of and unhindered access for the Group of Independent Experts, subject to statutory and regulatory requirements, and appropriate confidentiality arrangements;
11. *Requests* the Court and States Parties to cooperate fully with the Group of Independent Experts, and *calls on* all other relevant stakeholders to do the same;
12. *Requests* the Bureau to take additional measures as necessary and reasonable to facilitate an expeditious conclusion of the Independent Expert Review;

## B. Assembly of States Parties and Court

13. *Welcomes* the engagement of the Court and States Parties as well as other relevant stakeholders in the process of reviewing and strengthening the Court and the Rome Statute system;
14. *Also welcomes* the steps already taken by the Court<sup>2</sup> and *underlines* the need for continuous improvement in its operations;
15. *Welcomes* the resolution on the review of the procedure for the nomination and election of judges;<sup>3</sup>
16. *Reaffirms* that States Parties have an important role in ensuring the efficiency and effectiveness of the Court and shall assume their responsibility and obligations as provided for by the Rome Statute;
17. *Notes* that a number of issues identified by States Parties and set out in the Matrix must be addressed by the Assembly, or the Assembly and the Court, together with other relevant stakeholders;

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<sup>1</sup> ICC-ASP/18/Res.1.

<sup>2</sup> Court Strategic Plan 2019/2021, OTP Strategic Plan 2019-2021, Registry Strategic Plan 2019-2021, and the outcomes of the judges' retreat held on 2-3 October 2019.

<sup>3</sup> ICC-ASP/18/Res.4.

18. *Requests* the Bureau to address the following issues as a matter of priority in 2020 through its working groups and facilitations, in a fully inclusive manner, in line with their mandates, commencing consultations at the beginning of the year, and to report back to the Assembly at its next regular session on progress achieved:

- (a) Strengthening cooperation,
- (b) Non-cooperation,
- (c) Complementarity, and the relationship between national jurisdictions and the Court,
- (d) Equitable geographical representation and gender balance;

19. *Also requests* the Bureau through its working groups and facilitations to examine any remaining issues to be addressed, with a view to identifying concrete measures to be taken and to report back to the Presidency of the Assembly as part of the preparations for the nineteenth session;

20. *Further requests* the Bureau and its working groups to remain seized of the overall review process and to make, in close coordination with the Court, all necessary preparations for the Assembly to consider the recommendations of the Independent Expert Review at its nineteenth session, with a view to taking further action as appropriate, while noting that the Court will also be responsible for considering those recommendations, within the Court's statutory mandate.

## Annex I

### Terms of Reference for the Independent Expert Review of the International Criminal Court

#### A. Mandate

1. The overall objective of the Independent Expert Review shall be to identify ways to strengthen the International Criminal Court and the Rome Statute system in order to promote universal recognition of their central role in the global fight against impunity and enhance their overall functioning, while upholding the key principles enshrined in the Statute, including those of complementarity, integrity and judicial and prosecutorial independence. To this end the independent expert review shall make concrete, achievable, actionable recommendations aimed at enhancing the performance, efficiency and effectiveness of the Court and the Rome Statute system as a whole. This shall be achieved through a thorough review of a technical nature of processes, procedures, practices, and the organization of and framework for the Court's operations as set out in the Statute. The results shall be submitted to the Assembly of States Parties for its consideration.

2. A Group of Independent Experts shall be mandated to make recommendations to the Assembly of States Parties and the Court on specific complex technical issues under the following clusters of issues:

- (a) Governance;
- (b) Judiciary; and
- (c) Investigations and prosecutions.

3. The specific legal and technical issues to be covered within each cluster are set out in appendix II to these Terms of Reference. Appendix II is not a fully exhaustive list of issues to be covered, and each cluster may modify the content in the course of its work and findings, bearing in mind the need to prioritize the issues set out in appendix II and in conformity with the mandate and the appendix.

4. The mandate of the Group of Independent Experts shall be of limited duration and shall run until they submit the final report to the Bureau, the Assembly of States Parties and the Court in accordance with section E below.

5. The Independent Expert Review is part of a wider State Party-driven review process with the Court. The experts shall endeavour to avoid overlap and seek synergies in line with the mandate given by the Assembly, lest their recommendations duplicate current activities undertaken by States Parties as specified in appendix II, some of which are of a political nature. The experts shall be mindful of on-going efforts by the Court to strengthen the efficiency and effectiveness of its operations.

#### B. Composition

6. The Bureau shall recommend to the Assembly of States Parties, on the nomination of the Presidency of the Assembly of States Parties, by consensus six to nine experts to undertake an independent review of the International Criminal Court pursuant to the mandate set out in these Terms of Reference.

7. For a period of three years after the end of the submission of the report, anyone who was an expert shall not be nominated as a candidate for the election to the Court nor apply for any post at the Court.

8. The Presidency shall nominate two to three experts for each cluster of issues as set out in section A and in accordance with the criteria contained in appendix I. The Assembly shall appoint the experts on the basis of the recommendation of the Bureau.

9. The experts shall be nationals of States Parties. The nomination and appointment of experts shall, to the extent possible, reflect the principal legal systems of the world,

equitable geographical representation and gender balance, with competence and expertise being the guiding principle.

10. The experts shall serve independently and in their personal expert capacity, and shall not take instructions from States Parties, the Court or any other organization or individual.

### **C. Working methods**

11. The Group of Independent Experts shall be organized in three clusters as set out in paragraph 2, working in close coordination. The experts shall appoint among themselves a Chair, who will act as contact point for the experts. The Chair shall act as overall coordinator for the three clusters, ensuring coherence, adherence to timelines, proper handling of cross-cutting issues, access to and cooperation from the Court, uniform reporting in terms of form, and other administrative matters. The Presidency of the Assembly shall facilitate the work of the Group of Independent Experts but shall not engage in or advise on matters of substance.

12. Each cluster of the Group of Independent Experts shall, under the coordination of the chair, organize its own work and shall complete its work stream as soon as feasible and within the timeframe set out in section E. As a matter of priority, taking into consideration confidentiality requirements, the Group of Independent Experts shall establish the modalities for access to and interaction with the Court, its elected officials and staff, counsel for the defence and victims and the Court's Staff Union Council. The Group of Independent Experts shall, through the Chair, inform the Presidency of the Assembly of the organization of its work and notify the Presidency of the Assembly prior to making any modifications to the list of topics for the three clusters set out in appendix II. The Court shall cooperate fully with the experts.

13. Prior to commencing the actual work, each expert shall familiarize him or herself with relevant documentation, analysis, and background material, including relevant Assembly, Bureau and working group documents as well as previous expert reviews of the Court, and informal documents forming part of the current review discussions.

14. The experts shall meet as often as necessary and may meet in person, by correspondence, or via remote links, as appropriate and in a cost-efficient manner. Electronic means of communication shall be used to the extent possible to facilitate the work.

15. With the assistance of the Court, the experts shall ensure the confidentiality of all communications, discussions, and documentation during and after the review in compliance with the requirements in the Statute and all relevant rules and regulations of the Court.

16. Each cluster of experts shall consult widely with all relevant stakeholders, including States Parties, the Court and civil society, on their designated cluster of issues. To facilitate such consultations, the experts shall work closely with the Court officials and have unhindered access to all staff and materials as required, subject to statutory and regulatory requirements, and appropriate confidentiality arrangements during and beyond their mandate, to be stipulated in coordination with the Court.

17. Consultations with States Parties, the Court, civil society and other stakeholders may be oral, in writing or a combination thereof. Timely consideration shall be given to establishing appropriate procedures for each cluster in this respect, such as written consultations, possible working group meetings, etc.

18. The three clusters shall coordinate their work and present a comprehensive report containing a single set of recommendations. Particular attention shall be paid to issues or problems of a cross-cutting nature and all efforts shall be made to address such issues in a uniform way and avoid duplication.

19. The Chair of the Group of Independent Experts and the Presidency of the Assembly shall regularly report on progress in the review through meetings of the Bureau and its working groups. The Group of Independent Experts shall submit an interim report or in the alternative, if a written report is not feasible, brief States Parties on the status of work.

20. As soon as the Group of Independent Experts has completed its work, it shall prepare a written report thereon and submit it to the Bureau, the Assembly of States Parties and the Court. The detailed findings of each cluster can be presented in the annexes to the report. The report will be a public document, subject to appropriate confidentiality measures.

21. The emphasis of the reporting shall be on providing concrete, practical and realistic solutions and the reports shall be as concise as possible. Priority shall be given to the issues with the greatest impact on performance, efficiency and effectiveness of the Court.

22. Following submission of the final report, the Presidency may call on the experts to provide further explanations in an appropriate form on specific aspects, conclusions or recommendations of particular interest.

23. Subject to available resources, each cluster may in coordination with the Presidency of the Assembly, be provided with such assistance as necessary for research, drafting and administrative purposes. The Secretariat of the Assembly shall provide logistical support as necessary.

## D. Financing

24. The cost for the Independent Expert Review shall be kept at a minimum without compromising on competence. The experts and assistance shall be remunerated and other costs covered as set out in the budget resolution.<sup>4</sup>

## E. Timeline

25. Upon adoption of a decision by the eighteenth session of the Assembly of States Parties, the experts may commence their work immediately as follows:

- (a) **January 2020: Preparation and organization of work.**
- (b) **Feb-Mar 2020: Consultations with States Parties, Court officials, and civil society.**
- (c) **Apr-Aug 2020: Analyzing information gathered and drafting reports.**
- (d) **June-July 2020: Interim report or briefing to States Parties**
- (e) **Sep 2020: submission of final report to the Bureau and Assembly of States Parties.**

26. The final report shall be submitted to the nineteenth session of the Assembly of States Parties through the Bureau, in strict accordance with the set timelines. Should modifications to the timelines be required due to severe, unforeseen circumstances, the experts shall inform the Presidency of the Assembly without delay, including if changes are made to the scope of work. The Presidency shall bring delays to the attention of the Bureau for appropriate action.

27. The Bureau may decide to commission further work on specific issues if required after the submission of the final report. This shall be done in coordination with the respective Bureau working groups and facilitations.

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<sup>4</sup> ICC-ASP/18/Res.1.

## Appendix I

### Profiles of experts for the three clusters

1. The Independent Expert Review shall be organized in three separate clusters as set out in section A of the Terms of Reference. The three clusters shall endeavour to work in coordination, in particular on cross-cutting issues, and bear in mind work undertaken by State Parties and the Court. The experts shall be eminent individuals of high moral character. The appointment of experts shall reflect the principal legal systems of the world, equitable geographical representation, and gender balance, with competence and expertise being the guiding principle. The experts shall not previously have served at the Court and shall be well respected and able to work independently and swiftly. The Presidency of the Assembly shall recommend experts to the Bureau based on the following criteria:

#### A. Cluster 1: Governance

2. Two to three internationally renowned experts in governance of international organizations:

(a) established expertise in and experience with governance of international organizations, in particular international criminal jurisdictions;

(b) established expertise in and experience with complex legal/judicial/political environments and constraints;

(c) established experience in international human resource management and leadership, preferably from working with other well-established international organizations;

(d) proven track-record in providing advice to public organizations in complex political environments; and

(e) established practical experience with successfully managing a comparable international organization, preferably including implementing a comprehensive review/reform-programme and change-management.

#### B. Cluster 2: Judiciary and the judicial process

3. Two to three internationally renowned experts with established expertise in and experience with international judicial criminal institutions:

(a) proven in-depth knowledge of international criminal law and procedure as well as trial-management at the national or international level, preferably including on issues relating to defence and victims' rights and sexual and gender-based crimes (SGBC);

(b) established practical experience with serving successfully in an international criminal jurisdiction as judge or equivalent, including positions of leadership or trust within a judicial college; and

(c) established practical experience with serving successfully in a multicultural, complex, and multifaceted international judicial organization.

#### C. Cluster 3: Preliminary examinations, investigations and prosecutions

4. Two to three internationally renowned experts in investigating and prosecuting international crimes:

(a) proven, extensive knowledge of and executive experience with large-scale investigations and prosecutions of international crimes at the national or international level, including issues relating to defence and victims' rights and SGBC;

(b) experience in formulating and implementing investigative and prosecutorial policies, preferably for atrocity crimes or crimes resulting from conflict situations, in complex operational and political environments; and

- (c) experience in investigating and prosecuting politically sensitive crimes in complex environments.

## Appendix II

### List of legal and technical issues to be covered in each cluster

1. The point of departure for the experts shall be the informal document summarizing the discussions among States Parties, the Court, and other stakeholders so far – the so-called “Matrix”<sup>5</sup>. The Matrix sets out a number of issues that States Parties wish the experts to consider. The issues are not exhaustive and can evolve as the work progresses. Priority shall be given to the issues listed below and those with the greatest impact on performance, efficiency and effectiveness of the Court. In addition, the experts shall familiarize themselves with the comments on the Matrix submitted by the Court, and other submitted comments. The topics drawn from the revised Matrix are listed in numerical order.

#### A. Cluster 1: Governance

2. The experts in cluster 1 shall review the governance framework and inter-organ coordination and cooperation as well as management policies and leadership culture paying special attention to:

- 1.5. Management and governance culture
- 1.6. Administrative role of the registrar (promoting uniform and transparent administrative processes and procedures)
- 1.7. Unified Governance and Leadership (one-Court principle, shared values)
- 1.9. Staff Engagement
- 1.10. Adequate qualitative and quantitative human resources (including secondments, recruitment policies).
- 1.11. Flexibility and scalability in staffing levels
- 1.12. Establishment of Ombudsman /internal grievance procedures
- 1.16. Strengthening performance appraisal framework
- 3.8. ASP oversight and audit bodies (minimise overlap, exploit synergies).
- 1.19. Mandate and functioning of the Trust Fund for Victims
- 1.18. The budget process of the Court
- 2.13. Fair Trial, Defence and Legal Aid
- X.X. Strengthening public awareness and image of the Court

#### B. Cluster 2: Judiciary and the judicial process

3. The experts in cluster 2 shall, respecting the judicial independence of the Court, review the structure, organization, management, staffing and working methods of the judiciary paying special attention to:

- 1.3. Election of the President and the Vice-Presidents of the Court
- 2.7. Efficiency of the judicial process (at all stages, including role of pre-trial, timelines and -limits)
- 2.8. Development of process and procedures to promote coherent and accessible jurisprudence and decision-making, including through learning from best

<sup>5</sup> “Matrix over possible areas of strengthening the Court and the Rome Statute system”, dated 27 November 2019.



practices from other jurisdictions, while respecting the judicial independence and powers of the judiciary.

- 2.10. Working methods of the judiciary (calling of newly-elected judges, training, collegiality, mechanisms for exchanging best practices with other international and national judges)
- 2.11. Victims (participation)
- 2.12. Reparations

### **C. Cluster 3: Preliminary examinations, investigations and prosecutions**

4. The experts in cluster 3 shall, respecting the prosecutorial independence of the Court, review the structure, organization, management, staffing and working methods of the Office of the Prosecutor paying special attention to:

- 1.2. (partial) Number and function of deputy prosecutors.
- 2.1. Preliminary examinations.
- 2.3. Prosecutorial strategies, including on case selection and prioritization.
- 2.4. Investigations and case-preparations (including investigative techniques, strategies and tools, financial investigations).
- 2.5. Structure of the OTP (including staffing levels and competences).
- 2.6. Completion strategies (focus on mechanism for closure).

5. The experts shall be aware that the States Parties are intending to address, where appropriate through dialogue with the Court, and in accordance with the mandates of the relevant facilitations and working groups, issues relating to the election of Judges (1.1.), Prosecutor (1.2.), and Registrar (1.4.), procedure for amending the Rules of Procedure and Evidence (1.13.), improvements in gender and geographical balance of staff (1.14), management of transitions in the judiciary (2.9.), Complementarity and the relationship between national jurisdictions and the Court (2.2.), state cooperation (3.1.), implementation of arrest warrants (3.2.), non-cooperation (3.3.), and reviewing Assembly working methods (3.7.).

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## Annex II

### List of independent experts

#### A. Cluster 1: Governance

- Mr. Nicolas Guillou (France)
- Ms. Mónica Pinto (Argentina)
- Mr. Mike Smith (Australia)

#### B. Cluster 2: Judiciary

- Ms. Anna Bednarek (Poland)
- Mr. Iain Bonomy (U.K.)
- Mr. Mohamed Chande Othman (Tanzania)

#### C. Cluster 3: Prosecution and investigation

- Mr. Richard Goldstone (South Africa)
  - Mr. Hassan Jallow (The Gambia)
  - Ms. Cristina Romano (Brazil)
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