

# **Independent Expert Review on the International Criminal Court and the Rome Statute System**

## **Interim Report**

**30 June 2020**

### **A. INTRODUCTION**

1. On 6 December 2019 the Assembly of States Parties to the Rome Statute for the International Criminal Court (ASP) unanimously adopted [Resolution ICC-ASP/Res.7](#). The resolution established the Independent Expert Review Group of the ICC (hereinafter ‘the Experts’ or ‘IER’). The mandate of the Experts is to provide concrete, achievable and actionable recommendations aimed at enhancing the performance, efficiency and effectiveness of the Court and the Rome Statute system as a whole.<sup>1</sup>
2. Under the resolution, the IER is further mandated to make its recommendations to the ASP and the Court ‘on specific complex technical issues’ under the following clusters of issues: (a) Governance; (b) Judiciary; and (c) Investigations and prosecutions.<sup>2</sup>
3. The members of the IER were appointed in Annex II as follows:  
  
Cluster 1: Governance - Mr. Nicolas Guillou (France), Ms. Mónica Pinto (Argentina) and Mr. Mike Smith (Australia);  
Cluster 2: Judiciary - Ms. Anna Bednarek (Poland), Mr. Iain Bonomy (U.K.) and Mr. Mohamed Chande Othman (Tanzania);  
Cluster 3: Prosecution and investigation - Mr. Richard Goldstone (South Africa), Mr. Hassan Jallow (The Gambia); and Ms. Cristina Schwannsee Romano (Brazil).
4. At its first meeting Mr. Richard Goldstone was appointed as the chair of the IER.
5. In terms of paragraph 9 of the resolution, the Chair of the IER is requested to update States Parties and other relevant stakeholders on the progress and coordination on their work by the end of June 2020. Pursuant to that request, this Report is submitted by the Chair to the Bureau of the ASP. It enjoys the concurrence of all of the Experts.
6. The main purpose of this report is to update the States Parties and other stakeholders on the work carried out by the Experts thus far. It sets out the working methods, data collection and consultations held. It also highlights the issues the Experts aim to address in their final report.

<sup>1</sup> ICC-ASP/18/Res.7, para.6.

<sup>2</sup> ICC-ASP/18/Res.7, Annex 1, para.2.

## **B. WORKING METHODS**

7. During their initial plenary meeting in The Hague held between 21 – 23 January 2020, the Experts set the timeline for their work and agreed on cluster and plenary meetings.
8. At the end of the first plenary, the IER issued a '[Statement at the end of the first meeting of the Independent Expert Review of the ICC](#)' in which they announced modalities of consultations: States Parties and civil society organisations were invited to make submissions on the issues set out in the IER's Terms of Reference and request meetings with one or more clusters. NGOs were invited to a round table with civil society and were also encouraged to furnish written submissions on the issues contained in the mandate given to the IER. Current and former staff and officials at the Court were also requested to share their views with the Experts, through written submissions or meetings, either in person or via video conference.<sup>3</sup>

### *Phases of the Review*

9. The first phase of the Review focused on information gathering. As the Experts aimed to acquire a comprehensive view of the Court both from the inside and out, consultations (carried out in English, French and Spanish) were held and documentation was acquired from States Parties, current and former judges, Court staff, Defence and Victims representatives, civil society and other stakeholders. A detailed overview of the meetings held by the IER and written submissions received are referred to below.<sup>4</sup> The Experts sought to take into account past and ongoing work carried out within the Court and the ASP with regard to the issues falling under its mandate.
10. The second phase, April-June, consisted of analysing the information gathered, identifying cross-cutting issues and formulating findings. It included holding further (virtual) consultations between the Experts and gathering additional information in terms of documentation or clarifications from internal and external stakeholders. The Experts held joint consultations on preliminary findings in mid-June in order to ensure that their final report at the end of September 2020 would be a coherent synthesis of all of their work.
11. In the third and final phase, between June and August, the IER will focus on the formulation of recommendations and completion of the drafting of its report, thus adhering to the timelines indicated in its terms of reference. The internal deadline for cluster work is 31 July. This will enable the Experts to discuss all recommendations put forward by the clusters, ensure a consistent approach and avoid any overlap. It is therefore not possible at

<sup>3</sup> The Statement was complemented by '[Message from the Chair of the IER](#)' (14.02.2020).

<sup>4</sup> See Appendix.

this stage to accede to the request from some States Parties to preview some of the recommendations in this report.

12. Divergent views were expressed by some of the parties who made submissions to the IER as to whether amendments to the Rome Statute should be considered by the IER. At this stage, the IER anticipates formulating proposals on a range of actions, some achievable in the short-term and others in the longer term. Some of the latter may require consideration being given to possible amendments to the Rome Statute. The Experts remain mindful of the ASP's request for concrete, achievable and actionable recommendations towards improving the Court and the Rome Statute system as a whole.
13. A final Plenary, hopefully taking place in The Hague, is scheduled for 1 - 3 September.

#### *Access to and interaction with the Court*

14. The Experts enjoyed full support and cooperation from the ASP Presidency, the Court and the ASP Secretariat. Each organ of the Court identified a focal point for the Review process, to facilitate the Experts' requests for information, documentation or meetings with senior Court officials. The Experts had unrestricted access to all of the Court's staff and documentary materials, subject to appropriate confidentiality agreements.

#### *Effects of COVID-19 on the Working Methods of the IER*

15. On 13 March, meetings of two clusters in The Hague were cancelled due to the COVID-19 measures taken by the Court in response to those announced by the Government of The Netherlands. The Experts who were in The Hague at the time returned to their home countries and continued the work remotely. Further consultations were held by videoconferences and written submissions.
16. A representative from each cluster planned to meet in New York in the middle of April with the New York Working Group and civil society representatives based there. Unfortunately, due to the travel restrictions, the mission had to be abandoned. Some of the scheduled meetings took place remotely.
17. A Plenary meeting scheduled for June was also conducted virtually. Preliminary discussions on findings and recommendations were held on 14 and 15 June.
18. The IER remains committed to timeously issuing its 30 September report to the Assembly of States Parties.<sup>5</sup>

<sup>5</sup> See in this regard the '[Message from the Chair of the IER to States Parties and civil society organisations](#)' (26.03.2020).

## **C. CONSULTATIONS**

### ***Internal views***

19. The views of Court officials and staff, both current and former, were sought from the outset of the Review. The Experts wished to have a comprehensive understanding of the challenges facing the Court and the Rome Statute system from all levels: elected officials, management, and staff, including junior staff, from both the P-levels and G-levels; from headquarters and field offices. Aside from elected officials and staff, the Experts also met with Victims and Defence Representatives.
20. The IER received a large number of interview requests and made every effort to accommodate as many of them as possible. A number of group meetings with staff were held. Where a meeting in person was not possible owing to conflicts of dates or lack of time, written submissions were encouraged and were found to be helpful. Most of the in-person meetings scheduled had already taken place in The Hague by the time the COVID-19 restrictions were imposed.<sup>6</sup> From mid-March, the Experts continued to hold interviews by video-conference.
21. The Experts requested, received and consulted a substantial number of internal data and documentation.

### ***Input from States Parties and ASP bodies***

22. The IER engaged with States Parties and different ASP bodies in both The Hague and New York. The Experts held discussions with the ASP President, Mr. O-Gon Kwon, and the ASP Vice-President, Mr. Jens-Otto Horslund, and joined meetings of The Hague and the New York Working Groups in which they updated States Parties and other stakeholders of the progress of the IER. They also responded to questions. Further, depending on the issues that each cluster is investigating, and in order to avoid duplication and overlap, meetings with other ASP bodies (e.g. the Study Group on Governance) and facilitators were held.
23. States Parties also held meetings with one or more clusters and furnished written submissions.

### ***Input from civil society***

24. On 24 February 2020, the Experts held a round table meeting at the seat of the Court with civil society organisations. 47 NGOs were represented by 70 individuals (23 attending in person and 47 connecting through video-conference). The IER is grateful to the Court for enabling such a high number of representatives to take part, both from The Hague and beyond.

<sup>6</sup> Ibid.

25. Additionally, the IER received 24 submissions from 22 NGOs on their mandate and on substantive matters. Several meetings between NGOs and individual clusters also took place, as detailed in the Appendix.

#### **D. Limitations**

26. The IER is grateful for the extensive support they received from the Court and the ASP. However, due to time and resource constraints, the Experts regret that they were unable to visit situation countries, and directly consult with Court staff and local civil society organizations. All efforts were made to gather their views remotely, either through video conferences or written submissions. The IER is grateful to NGOs who organised consultations and surveys designed to receive input from civil society organisations, especially in situation countries, and who shared the results with the IER.<sup>7</sup>

27. Similarly, the Experts were not able to benefit from visiting the ICC field offices. Despite the distance, the IER was able to engage with some staff from the field, albeit in a more limited number than staff from headquarters.

#### **E. Communication policy of the IER**

28. At its initial meeting, the Experts decided to adopt a policy whereby they would ‘speak’ solely through their written reports. This meant that other than their initial statement and other necessary communications on procedural matters, they would not engage in any press conferences or express themselves on any media platforms or other public fora. Apart from the IER’s initial statement, the Chair issued three messages of clarification on procedural matters. All communications from the IER is available on the [ASP website](#).

#### **F. Topics**

29. The Terms of Reference set out by the ASP indicate the Matrix<sup>8</sup> should be considered as the point of departure for Experts’ discussions.<sup>9</sup> Further, the ASP, in its resolution of 6 December 2019, provided the list of topics that should be given priority by the IER.<sup>10</sup> At the same time, the Terms of Reference state that the list of topics is not exhaustive and that

<sup>7</sup> The African Network on International Criminal Justice conducted extensive consultations with a wide range of civil society organisations across 34 countries in the continent, including through questionnaires distributed to 175 civil society organisations in Africa, and direct virtual consultations.

The International Federation for Human Rights and Kenya Human Rights Commission submitted joint observations based on input received during a stakeholder consultation they convened, which brought together participants from 12 ICC situation or preliminary examinations countries.

The Coalition for the International Criminal Court were instrumental in sharing the Experts’ invitation for civil society organisations to contribute to the Review process with their member organizations, and actively encouraged entities from situation countries to provide their views to the Experts.

The Afghan Civil Society Organisations submitted observations on behalf of almost 30 human rights organisations in Afghanistan.

<sup>8</sup> An informal document summarizing discussions among States Parties, the Court and other stakeholders - ‘[Matrix over possible areas of strengthening the Court and the Rome Statute system](#)’ (27.11.2019).

<sup>9</sup> ICC-ASP/18/Res.7, Appendix II, para.1.

<sup>10</sup> ICC-ASP/18/Res.7, Appendix II, pp.8-9.

each cluster may modify its content in the course of its work and findings. In such cases, the Chair is requested to inform the Presidency of the ASP.<sup>11</sup>

30. In line with the above provisions, the Chair informed the ASP Presidency on 8 May 2020 of the following additional issues the clusters are looking into:

**Cluster 1: Governance**

- (1) Ethics and prevention of conflicts of interests;
- (2) Under External Governance: ASP - Court relations; ASP Secretariat;
- (3) Under Human Resources: Multilingualism, Geographical and gender balance and representation (in recruitment and staffing); Recruitment; Skills development; Secondments;
- (4) Under Budget Process: Performance indicators;
- (5) Under External Relations: Cooperation with the UN (mostly in relation to the role of the ICC Liaison Office; relations with OLA; and potentially relations with UN Resident Representative offices in the field); Court's response to external political measures against it.

**Cluster 2: Judiciary and the judicial process**

- (1) Improvement of the system of nomination of judges;
- (2) Management of transitions in the judiciary;
- (3) Legislative amendments (Amendment of the Rules of Procedure and Evidence);
- (4) Role of the President as Representative of the Court.

**Cluster 3: Preliminary examinations, investigations and prosecutions**

- (1) Relationship between the OTP and international organisations and civil society organisations;
- (2) Complementarity, to the extent that it is relevant to preliminary examinations, prosecutorial and completion strategies;
- (3) Non-cooperation by, or dilatory responses from, some States Parties and international organisations.

The above-mentioned topics were added after consulting relevant stakeholders including ASP facilitators (see paragraphs 9 and 22 above). Every effort was made to ensure that the issues considered by the IER in no way constitute a duplication of efforts by the ASP or other stakeholders. Each of the topics relate directly to issues contained in the mandate of the IER.

31. The main issues that will be considered by the Experts and on which recommendations will be made are the following:

<sup>11</sup> ICC-ASP/18/Res.7, Annex, paras.3, 12.

### **Cluster 1: Governance**

- (1) Internal governance;
- (2) External governance;
- (3) Human resources;
- (4) Budget process;
- (5) External relations;
- (6) Defence and Legal Aid (structural /governance issues);
- (7) Victims (Role, mandate and functioning of the Trust Fund for Victims);
- (8) Internal grievances procedures;
- (9) Ethics and prevention of conflicts of interests.

### **Cluster 2: Judiciary and the judicial process**

- (1) Election of the President and Vice Presidents of the Court;
- (2) Role of the President as Representative of the Court;
- (3) Improvement of the system of nomination process for Judges;
- (4) Efficiency of the judicial process;
- (5) Development of process and procedures to promote coherent and accessible jurisprudence and decision making;
- (6) Working methods of the Judiciary;
- (7) Victims (Participation);
- (8) Reparations;
- (9) Fair Trial, defence and legal aid (equality of arms, fair trial perspective);
- (10) Legislative amendments (Amendment of the Rules of Procedure and Evidence);
- (11) Management of transitions in the judiciary.

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

- (1) Number and function of deputy prosecutors;
- (2) Preliminary examinations;
- (3) Prosecutorial strategies, including case selection and prioritisation of cases;
- (4) Investigations and case-preparation (including investigative techniques, strategies and tools, and financial investigations);
- (5) Structure of the OTP (including staffing levels and competences);
- (6) Completion strategies with a focus on mechanisms for closure;
- (7) Relationship between the OTP, international organisations and civil society organisations;
- (8) Complementarity, to the extent that it is relevant to preliminary examinations, prosecutorial and completion strategies;
- (9) Non-cooperation by, or dilatory responses from, some States Parties and international organisations.

## **G. Conclusion**

32. The IER has enjoyed and much appreciates the cooperation it has received from all of the many bodies, organisations and persons mentioned in this report. The Experts are committed to submit the final report timeously, i.e. 30 September 2020.

## Appendix

### CONSULTATIONS IN NUMBERS

#### A. Interviews and meetings

1. During the consultations phase (January - April), the IER held a total of 272 interviews and meetings with 243 current and former officials, staff and external defence and victims representatives, alongside meetings with the Heads of Organs, Staff Union Council, 9 States Parties, 12 ASP representatives/bodies, 54 NGOs and 6 academics. The details follow.

#### *Court officials, staff, (external) defence and victims' representatives:*

2. In total, 243 individuals met with one or more clusters. Several individuals met with more than one cluster; some met with a cluster both in a group meeting and individually. This explains the difference between the number of interviews and the total number of individuals listed below.
3. Interviews held per Cluster:
  - Cluster 1: 76 interviews with 80 individuals;
  - Cluster 2: 72 interviews with 102 individuals;
  - Cluster 3: 69 interviews with 129 individuals.
4. In addition, joint meetings, with all Experts in attendance or held on behalf of all Experts either through cluster representatives or by the Chair, were held with:
  - The Court Presidency;
  - The Prosecutor, OTP Senior Management and the Immediate Office of the Prosecutor;
  - The Registrar and Immediate Office of the Registrar representatives;
  - Staff Union Council (2);
  - Heads of Organs, chaired by the ASP Presidency.

#### *States Parties:*

5. In total, the IER held 16 meetings with representatives of 9 States Parties. Some States Parties met with more than one cluster.
  - Cluster 1: 6 States Parties;
  - Cluster 2: 4 States Parties;
  - Cluster 3: 4 States Parties;
  - Joint meetings: 2 States Parties.

***Assembly of States Parties:***

6. In total, the IER held 17 meetings with 12 ASP representatives/bodies. Some ASP representatives/bodies met with more than one cluster.
  - Cluster 1: 11 ASP facilitators and working groups;
  - Cluster 2: 2 ASP facilitators and working groups;
  - Cluster 3: 1 ASP facilitator;
  - Joint meetings:
    - The Hague Working Group;
    - New York Working Group (by VTC);
    - ASP President, Mr. O-Gon Kwon, and the ASP Vice-President, Mr. Jens-Otto Horslund.

***Civil society:***

7. In total, the IER held 14 meetings with 54 NGOs and 5 meetings with 6 academics.
  - Cluster 1: 3 NGOs, 2 academics;
  - Cluster 2: 4 NGOs, 3 academics;
  - Cluster 3: 6 NGOs, 1 academic;
  - Round table with civil society: 47 NGOs (represented by 23 individuals attending in person, 47 connecting through video-conference). Some of the NGOs that met with clusters individually were also represented at the round table.
8. Of the 47 NGOs represented at the round table, 27 were from situation countries.

***Other:***

9. Cluster 1 also met with representatives of the UN Office for Legal Affairs and the ICC External Auditor working on carrying out an assessment of ICC oversight bodies.

## B. Written submissions<sup>12</sup>

10. The Experts received **130** written submissions:

	<b>On mandate</b>	<b>On substance</b>	<b>Other</b>	<b>Total</b>
States Parties	0	15	0	15
Civil society (NGO and academics)	7	20	6	33
Staff	0	49	7	56
Elected officials	0	4	1	5
Court unit/division	2	5	1	8
Defence representatives (externals)	0	3	1	4
Victims representatives (externals)	0	2	0	2
Former elected officials	0	4	2	6
Former staff	0	1	0	1
<b>Total:</b>	<b>9</b>	<b>103</b>	<b>18</b>	<b>130</b>

## C. Representativeness

11. In total, **285** current and former Court officials, staff and external representatives met with one or more clusters and/or submitted written observations.<sup>13</sup>

- Current Court staff and elected officials per grade level:  
**G4: 2 G5: 10 G6: 2 G7: 2**  
**P1: 13 P2: 56 P3: 55 P4: 43 P5 : 37**  
**D1: 9 ASG: 2 USG: 20**  
Other elected individuals: 3

<sup>12</sup> Information and documents requested, received and consulted by the various clusters from specific units, sections, organs or ASP subsidiary bodies are not included. The figures include the number of submissions received. Joint submissions received from several individuals/entities/States are counted as one.

<sup>13</sup> Written submissions presented on behalf of a Court entity (e.g. unit) have not been included here.

- (External) defence and victims' representatives:  
Defence representatives (external): 8  
Victims representatives (external): 2
  
- Former staff and elected officials:  
Former staff: 6  
Former elected officials: 1

***Regional representation***

12. The following presents a breakdown, by ASP regional group, of the States Parties that submitted written observations or whose representatives met with one or more of the clusters:
- African States: 1
  - Asia-Pacific States: 2
  - Eastern European States: 1
  - Latin American and Caribbean States: 3
  - Western European and Other States: 15
13. With regard to States Parties subject to Preliminary Examinations or Investigations, the IER received the views of 3.

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