



**BUREAU OF THE ASSEMBLY OF STATES PARTIES**

**Second meeting**

8 April 2021

*(via remote link)*

Agenda and decisions

*The meeting was chaired by the President of the Assembly, Ms. Silvia Fernández de Gurmendi (Argentina). The Vice-Presidents of the Assembly, Ambassador Robert Rae (Canada) and Ambassador Kateřina Sequensová (Czech Republic), also participated.*

**1. Review Mechanism- update**

The State Party representatives on the Review Mechanism, Ambassador Paul van den Ijssel (Netherlands) and Ambassador Michael Imran Kanu (Sierra Leone), briefed the Bureau on the work of the Review Mechanism. In line with the principles of transparency and inclusiveness, they had briefed States Parties and all stakeholders, and would continue to do so in accordance with resolution ICC-ASP/19/Res.7.<sup>1</sup>

Since the Review Mechanism's 18 February 2021 briefing to the Bureau, it had held a number of internal and external meetings. On 4 March, Ambassador van den Ijssel had briefed The Hague Working Group, and on 9 March, Ambassador Kanu had briefed the New York Working Group on the progress of the work of the Review Mechanism. The Mechanism would hold its fourth meeting on 9 April to discuss the draft proposal on categorization.<sup>2</sup>

The Review Mechanism had held two meetings with the Court focal points and at the next meeting, on 12 April, it would focus on its proposal for categorization and seek the Court's views and comments thereon. At the 24 March meeting, the request of the Court for an extension of the 31 March deadline<sup>3</sup> was discussed. The Bureau subsequently, on 30 March 2021, granted the requested extension until 14 April 2021. It was understood that this extension would not affect the overall timelines of the work of the Mechanism.

The Review Mechanism had also met with potential mandate-holders<sup>4</sup> of The Hague Working Group, and had encouraged them not to wait for the outcome of the Review Mechanism's work but to proceed with their mandates where possible. The Mechanism would hold meetings with the mandate-holders of both Bureau working groups when they had been appointed, and would maintain contact with them on an on-going basis, especially in the second phase of its work, where the facilitators would play an important role.

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<sup>1</sup> Review of the International Criminal Court and the Rome Statute system.

<sup>2</sup> Prepared by the Review Mechanism.

<sup>3</sup> ICC-ASP/19/Res.7, para. 5.

<sup>4</sup> Those State representatives who had indicated their availability to take up the mandates assigned to the working group but had not yet been appointed.

The Review Mechanism had also met with representatives of the functionally independent offices of the Court<sup>5</sup> and had invited the President of the Staff Union Council to participate. The heads of some offices had indicated that they would submit separate responses, which the Mechanism intended to annex to the Court's overall response. It also met with representatives of the Coalition for the International Criminal Court (CICC) and with the International Criminal Court Bar Association (ICCBA).

The President welcomed the fact that the two-week extension would not affect the overall timeline of the Review Mechanism's mandate. In addition, she noted the importance of the Review Mechanism reaching out to all Assembly mandate-holders, some of which were expected to be appointed at that meeting.

As regards the work of the Mechanism, Ambassador Michael Imran Kanu indicated that the Court had, on 8 March 2021, submitted to the Mechanism "the first part of the Court's response to the IER report, concerning recommendations 1-11, on unified governance". In the interest of transparency, the Mechanism had informed the Bureau and States Parties that it had received the partial submission and noted that resolution ICC-ASP/19/Res.7<sup>6</sup> clearly called for an overall response of the Court to the final report<sup>7</sup> of the Group of Independent Experts. Therefore, when the Court focal points submit the overall response, which may include this first reaction, the Mechanism would circulate the overall response to Bureau members and all States Parties, as required by the resolution.

On 12 March 2021, the Review Mechanism had issued a call for comments<sup>8</sup> on categorization of the IER recommendations and conveyed a model for the submission of comments, whereby States and stakeholders would indicate the categorization of recommendations according to the entity responsible. The Review Mechanism members had consulted thereon with their respective regional groups. The Mechanism had received 14 submissions from States Parties, including one from the Co-Chairs and focal points of the Study Group on Governance, and one submitted jointly by the Nordic countries; additionally, some CICC member organizations, the ICCBA and the Staff Union had submitted comments. The Mechanism would carefully study the comments received.

The State Part representatives had noted that some comments were directed more towards the second phase of the Mechanism's work, i.e. the action plan, rather than to categorization. The Mechanism would bear these comments in mind in its consideration of the action plan and would also reach out to all States Parties and stakeholders again at that stage.

Further, as regards the involvement of the Assembly in the implementation of recommendations that had budgetary implications, as some States had suggested, the Mechanism agreed but noted that the Assembly might not be the first to act on a recommendation, as it was the Court that might be required to take the first step. In that case, the Assembly would be involved at a later stage.

In addition, many States Parties had stressed the importance of some Assembly involvement in many of the discussions on important recommendations, including those where it was clear that the first steps had to be taken by the Court. It was therefore clear that intensive interaction between the Assembly and the Court would be needed. Some States had also stressed the need to respect judicial independence in the interaction between the Assembly and the Court.

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<sup>5</sup> The offices that participated were the Independent Oversight Mechanism, the Office of Internal Audit, the Secretariat of the Trust Fund for Victims, the Office of Public Counsel for the Defence, and the Office of Public Counsel for Victims.

<sup>6</sup> Para. 5.

<sup>7</sup> ICC-ASP/19/16: [https://asp.icc-cpi.int/en\\_menus/asp/Review-Court/Pages/default.aspx](https://asp.icc-cpi.int/en_menus/asp/Review-Court/Pages/default.aspx)

<sup>8</sup> The call was sent to States Parties, the CICC and the ICCBA.

Finally, Ambassador Kanu indicated that the point had been raised on the need for translation of the documents of the Mechanism, which would enable all stakeholders to participate in its work. The Mechanism had raised this issue with the Secretariat of the Assembly, and he noted that it might be necessary to rely on the provisions of paragraph 10 of resolution ICC-ASP/19/Res.7.<sup>9</sup> The Review Mechanism was awaiting the response of the Secretariat.

As regards further meetings, the Review Mechanism would meet with The Hague Working Group and the New York Working Group on the categorization of recommendations. The Mechanism remained open to further meetings with all stakeholders and encouraged the latter to approach them.

The Review Mechanism had adopted a step-by-step approach to its work, the first part of which was the categorization. They had taken note of the comments submitted on prioritization at this first stage. Ambassador Kanu noted that the IER Experts had indicated areas of priority, but States and the Court may have additional or other priorities. There were certain anchor recommendations, and some recommendations that would be easier to implement. The Mechanism encouraged the mandate-holders to continue working on those recommendations but noted that, in the final analysis, States Parties would decide on the priorities.

The consultation process was on-going and the Review Mechanism intended to continue consulting with all stakeholders at all stages of its mandate.

## **2. Election to fill a vacancy on the Board of Directors of the Trust Fund for Victims**

The Bureau elected a member of the Board of Directors of the Trust Fund for Victims to fill a vacancy on the Board, pursuant to resolution ICC-ASP/1/Res.6, annex, paragraph 3 (b). Since the number of candidates corresponded to the number of vacancies (one), the Bureau decided to elect Mr. Andres Parmas (Estonia) by acclamation to the Board of Directors of the Trust Fund for Victims to complete the term of his predecessor, i.e. until 5 December 2021. Under the terms of resolution ICC-ASP/1/Res.6, he may be re-elected once.

## **3. Proposals for amendments to Assembly resolutions on the Trust Fund for Victims**

The Bureau had before it a letter, dated 10 March 2021, from the Chair of the Board of Directors of the Trust Fund for Victims, Ms. Mama Koité Doumbia, containing proposals for amendments to Assembly resolution ICC-ASP/1/Res.6. The Bureau received a briefing by the Executive Director of the Secretariat of the Trust Fund for Victims on the amendment proposals.

The President recalled that, in 2019, the Board had also proposed some amendments to the Assembly resolutions on the Trust Fund and to the Regulations of the Trust Fund. At its 17 September 2019 meeting, the Bureau had referred those proposals to The Hague Working Group, and the proposals remained on the agenda of the working group.

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<sup>9</sup> Paragraph 10 states as follows:

“10. *Invites* the ASP Secretariat to assist the work of the Review Mechanism and *requests* the Bureau to invite the Registrar to consider making available to the ASP Secretariat necessary additional resources, to support the Review Mechanism, on its request, and within the existing budget, only when the Bureau is satisfied that the work of the Review Mechanism so requires;”

It was noted that some of the proposals may not require an amendment *per se*, but could be submitted to States Parties when they considered making nominations for candidates for election.

The Bureau decided to refer the new proposals to the Hague Working Group for its consideration, alongside the existing proposals, and requested it to report to the Assembly, through the Bureau, at its twentieth session.

#### **4. Appointment of mandate-holders**

On the recommendation of the New York Working Group, the Bureau appointed the facilitators and focal points, and the Chair of the Working Group on Amendments, as reflected in annex I.

The President recalled that, on 6 April 2021, on the recommendation of The Hague Working Group, the Bureau had appointed the facilitators and focal points, as well as the Co-Chairs of the Study Group on Governance, as reflected in annex II.

In addition, the Bureau agreed that the mandate on sexual and gender-based crimes contained in the omnibus resolution<sup>10</sup> would form part of the facilitation on complementarity in 2021, as it had in 2020.

#### **5. Lessons learnt exercise regarding the Prosecutor election process**

The President recalled that at the first meeting, on 18 February, a proposal had been made that the Bureau engage in a lessons learnt exercise with respect to the Prosecutor election process. The Assembly had also called upon the Bureau to examine ways to continue strengthening the process by which the Prosecutor is elected in the omnibus resolution adopted at its nineteenth session.<sup>11</sup>

Bureau members had an initial and preliminary exchange on some options for how the Bureau might proceed in its evaluation of the process and the lessons learnt. The Bureau agreed that the process should be inclusive and transparent, and should involve extensive consultation with all those who had been involved. Some Bureau members emphasized that the process should lead to clear recommendations for future elections.

Regarding the format, the President noted that one option would be to appoint one or more State representatives as facilitators. The Secretariat of the Assembly could provide support, but this might be limited to logistical support only, as staff members who supported the process had been required to sign confidentiality declarations. A second option would be to hire an external expert (and a junior assistant), also with limited logistical support from the Secretariat. A third option would be to hire an external expert (and a junior assistant), with coordination, methodological and secretariat support by the Independent Oversight Mechanism (IOM). Some Bureau members indicated a preference for a State-driven process, led by one or more State representatives. On the other hand, some Bureau members saw value in an external expert evaluating the process. The point was made that a combination of these elements could be a way forward.

It was agreed that the Bureau would return to the topic at a future meeting, after further reflection on the parameters.

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<sup>10</sup> ICC-ASP/19/Res.6, annex I, para. 10 (d).

<sup>11</sup> See ICC-ASP/19/Res.6, para. 78, in which the Assembly “call[ed] upon the Bureau, through transparent and inclusive consultations with States Parties and civil society, and with the feedback of the Committee on the Election of the Prosecutor and the Panel of Experts on the implementation of their mandate, within existing resources, to examine ways to continue strengthening the process by which the Prosecutor is elected”.

## **6. Vetting of future candidates**

The Bureau had an initial exchange of views on how the Assembly might assess in the future whether candidates for elected positions at the Court meet the high moral character requirement in the Rome Statute.<sup>12</sup> The President outlined some possible options in this regard. In terms of the entity to undertake such vetting, she noted that the mandate could be assigned to the IOM, which could work with the cooperation of other relevant sections of the Court (such as the Security and Safety Section for the checking of criminal records). Another option would be to engage an external company with specific expertise in this type of vetting. A third option could be to establish a panel of experts, with support capacity. A combination of all or some of these options could also be considered.

Some Bureau members indicated a preference for hiring an external company with specific expertise in this type of vetting, possibly with assistance from relevant sections of the Court. Some Bureau members were open to assigning the task to the IOM. It was noted that the mandate would need to be carefully elaborated, and that issues of due process would need to be considered. The point was made that it would be useful to consider how other international organizations address the issue. The view was expressed that it may be valuable to have a process in place before the election of the Deputy Prosecutor in December 2021.

Some Bureau members considered that the issue of vetting would be best dealt with as part of the overall evaluation of the Prosecutor election process, with discussions on the establishment of vetting commencing on the basis of the outcome of the overall evaluation of the Prosecutor election process. The point was made that the development of a comprehensive process for vetting would require careful consideration and should not be rushed. The point was also made that the identification of the entity to undertake the vetting should take place after the scope of vetting has been defined.

It was agreed that the Bureau would return to the topic at a future meeting.

## **7. Status of contributions**

The President provided an update regarding the status of contributions to the budget of the Court. As of 31 March 2021, the Court had received 52 per cent of the contributions for 2021. The total amount of outstanding contributions, for 2021 and for previous years, stood at €104.9 million, and nine States Parties were subject to the provisions regarding the loss of voting rights in article 112, paragraph 8, of the Rome Statute.

The President noted that she had met with the Registrar to discuss the impact of arrears on the liquidity of the Court, and to coordinate efforts to encourage all States Parties that had not yet done so to make every effort to pay their assessed contributions to the 2021 budget of the Court as soon as possible. The Bureau would return to these issues and the related topic of liquidity in future meetings.

## **8. Other matters**

### *a) Ratification of amendments to the Rome Statute*

The President noted that, at the 9 February meeting of the New York Working Group, in which she had participated, there had been a request for the Secretariat to be more proactive in sharing information on ratifications of amendments to the Rome Statute. The

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<sup>12</sup> Article 36, paragraph 3(a) of the Rome Statute: “[t]he judges shall be chosen from among persons of high moral character, impartiality and integrity ...”; article 42, paragraph 3: “[t]he Prosecutor and the Deputy Prosecutors shall be persons of high moral character ...”; article 43, paragraph 3: “[t]he Registrar and the Deputy Registrar shall be persons of high moral character ...”.

President recalled that the Secretariat must itself rely on information provided by the UN Secretary General, who acts as Depository. She had therefore requested the Secretariat to promptly send to all States Parties, on a regular basis, any information received from the Depository on ratifications of amendments and all other treaty actions in respect of the Rome Statute.

The Bureau took note of the 18 January 2021 ratification by Mongolia of amendments to the Rome Statute,<sup>13</sup> and the 22 March 2021 acceptance by Norway of amendments.<sup>14</sup>

*b) Pillar assessment by the External Auditor*

The President recalled that, on 31 March 2021, the Bureau had adopted a proposal that the External Auditor, the *Cour des comptes*, be requested to complete a “pillar assessment” in relation to voluntary contributions to the Court from the European Commission. The Court and the External Auditor had been informed accordingly.

## **Annex I**

### **Appointments by the Bureau of mandate-holders of the New York Working Group**

#### Facilitators

- a) Arrears*
  - H.E. Mr. Rodrigo Alberto Carazo Zeledón (Costa Rica), Ambassador and Permanent Representative
- b) Geographical representation and gender balance in the recruitment of staff of the Court*
  - Mr. Choi Taeun (Republic of Korea)
- c) Omnibus resolution*
  - Mr. Vincent Rittener (Switzerland)
- d) Review of the procedure for the nomination and election of judges*
  - Mr. Luke Roughton (New Zealand)

#### Ad country focal points

- a) Non-cooperation*
  - Argentina
  - Croatia
  - Ireland
  - Timor Leste

#### Working Group on Amendments

##### *Chair*

- H.E. Mr. Juan Sandoval Mendiola (Mexico), Ambassador and Deputy Permanent Representative

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<sup>13</sup> See Depository Notifications C.N.65.2021 (<https://treaties.un.org/doc/Publication/CN/2021/CN.65.2021-Eng.pdf>) and C.N.66.2021 (<https://treaties.un.org/doc/Publication/CN/2021/CN.66.2021-Eng.pdf>).

<sup>14</sup> See Depository Notifications C.N.103.2021 (<https://treaties.un.org/doc/Publication/CN/2021/CN.103.2021-Eng.pdf>), C.N.104.2021 (<https://treaties.un.org/doc/Publication/CN/2021/CN.104.2021-Eng.pdf>), C.N.105.2021 (<https://treaties.un.org/doc/Publication/CN/2021/CN.105.2021-Eng.pdf>) and C.N.106.2021 (<https://treaties.un.org/doc/Publication/CN/2021/CN.106.2021-Eng.pdf>).

## **Annex II**

### **Appointments by the Bureau of mandate-holders of The Hague Working Group**

On 6 April 2021, the Bureau appointed the following mandate-holders on the recommendation of The Hague Working Group:

#### Facilitators

- a) *Budget*
  - Ambassador Frances-Galatia Lanitou Williams (Cyprus)
  - Sub-topic of the budget facilitation:*
    - Premises: Ms. Marija Stajic-Radivojsa (Serbia)
- b) *Cooperation*
  - Ambassador Luis Vassy (France)
  - Ambassador Momar Gueye (Senegal)
- c) *Legal aid*
  - Ambassador Carmen Maria Gallardo (El Salvador)
- d) *Review of the work and operational mandate of the Independent Oversight Mechanism*
  - Ambassador Päivi Kaukoranta (Finland)

#### Ad country focal points

- a) *Complementarity*
  - Australia
  - Uganda
- b) *Plan of action for achieving universality and full implementation of the Rome Statute*
  - Netherlands
  - Republic of Korea

#### Study Group on Governance

##### *Co-Chairs*

- Ambassador Heinz Walker-Nederkoorn (Switzerland)
- Ambassador Laura Dupuy (Uruguay)

##### *Focal points*

- Mr. Jan Christoph Nemitz (Germany)
- Ms. Edith K. Ngungu (Kenya)
- Ms. Francis Chávez (Peru)

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