

Nordic Non-paper for the ICC Review of the Rome Statute System

The Nordic Countries, Denmark, Finland, Iceland, Norway and Sweden welcome the Review Process as set out in Resolution ICC-ASP/19/Res.7. We emphasize that the process must be transparent and inclusive and conducted in full cooperation between the Court, the Assembly and other stakeholders.

We welcome the appointment of the Review Mechanism by the Bureau and commend the State Parties Representatives and the Focal Points for the timely commencement of their work. Given the volume of work ahead, it is important to maintain momentum and strive for results. In our view, real progress in substance should be given priority over procedural and bureaucratic challenges in the Review Process, and we are ready to show the necessary flexibility on our part.

As requested by the Review Mechanism, we submit our observations on the categorization of the recommendations using the prepared form. In addition, we take the liberty of submitting this paper containing some broader principles that we believe should form the basis of the categorization and the process to come. The categorization in the form is indicative and should be read in conjunction with this paper.

1. The Review Process is a Staten-driven process aimed at strengthening the operation of the Court and the Rome Statute System. Observing the mandate of the Assembly of States Parties laid down in particular in Article 112, and in Article 51 and 121 of the Statute, the Assembly is charged with a wide range of oversight, legislative and budgetary functions. As such, apart from explicit decision-making powers granted to the Court or the Assembly of States Parties, the Assembly has a shared interest with the Court in most of the recommendations of the IER. This applies to recommendations addressed in the first instance to the Court or to the Assembly alike. Thus, the categorization of recommendations, and the further follow up, should reflect and be based on this shared interest.
2. The integrity of the Court and the Rome Statute must be preserved. Recommendations pertaining directly to the judicial and prosecutorial functions/activities of the Court should be addressed in full respect of the Court's independence. Correspondingly, recommendations falling exclusively within the remit of the Assembly should be considered in respect with its statutory mandate.
3. The recommendations proposed by the IER should not be seen as either/or proposals, that must be accepted or rejected without further discussion. The findings underlying the recommendations are as important as the proposed solutions. It may be that variations of the recommendations made by the IER could be considered as a better way forward. The allocation of recommendations should take this into account, in particular when recommendations are of a complex or far-reaching nature and should not prejudge any final outcome of the discussions.
4. Recommendations related to governance, the relationship between the organs of the Court as well as recommendations with potentially significant budgetary implications should as a principle be addressed jointly by the Court and the Assembly. The same goes with issues pertaining to other independent bodies not part of the Court itself such

as the Trust Fund for Victims and The Independent Oversight Mechanism. The IER report also contains a number of recommendations that may appear to be very technical in nature but are closely related to the overall governance arrangements of the Court. Such issues should also be discussed collectively as well as important policy-matters such as gender mainstreaming and sexual harassment. The Court should preferably engage with States Parties under the one-Court principle.

5. Concerning recommendations deemed to be the responsibility of the Court, transparent and inclusive reporting to States Parties on progress and impediments must take place. The Assembly must also have the opportunity to provide input when relevant.
6. When relevant, the Court and other stakeholders should be appropriately involved in discussions and afforded the opportunity to provide input concerning recommendations deemed to be the responsibility of the Assembly.
7. For a number of recommendations, several different ways exist for implementation. The Court and the Assembly would have to make a choice between different types of instruments, e.g. policy document of the Court, Regulations of the Court, Resolutions of the ASP, Rules of Procedure and Evidence or the Statute. Such a determination may ultimately impact the categorization of a given recommendation itself.
8. The IER-report is both comprehensive and detailed, and identifies many different issues that need attention. The Assembly should adopt an ambitious and comprehensive approach to taking the process forward. Some issues identified by the IER are sensitive or political in nature, but while it is tempting to focus on low hanging fruits, we believe that we should not shy away from tackling any recommendations put forward. This includes also consideration of issues identified by the IER relating to complementarity, to cooperation by States Parties as well as to the application of other key provisions of the Statute.
9. It would have been useful to have the Courts input prior to submitting our views on the categorization, but we recognize that this is not possible due to the strict timelines adopted by the Assembly. We are, however, ready to discuss the final proposal for a categorization of the IER recommendations for the Mechanism in light of the observations of the Court and the views of other State Parties.

The Nordic countries look forward to a comprehensive, inclusive, transparent and substance-focused process and we stand ready to support the Mechanism in the months ahead.