



BUREAU OF THE ASSEMBLY OF STATES PARTIES

Fourth meeting

19 May 2022

(via remote link)

Agenda and decisions

The meeting was chaired by the President of the Assembly, Ms. Silvia Fernández de Gurmendi (Argentina). Vice-President Ambassador Kateřina Sequeñsová (Czech Republic) also participated

1. Lesson learnt on the election of the Prosecutor process: update

Ambassador Milenković informed the Bureau that the process of consultations as well as the process of collecting the responses to the technical questionnaire had been completed. The co-facilitators had also held in-person consultations with States Parties in New York and The Hague, as well as with civil society, and had held bilateral meetings with those interested in a more in-depth discussion. She noted that currently the facilitators are in the process of reading all the materials received and that in the second half of June the facilitators plan to start the drafting process of their report. She also indicated that the co-facilitator Ambassador Marschik would arrive in The Hague to discuss the process leading to the final report. In response to a question regarding the number of responses to the questionnaire received, ambassador Milenković indicated that the number received was of 21. She also thanked all States Parties that took an active role by replying to the questionnaire.

The Bureau took note of the progress on the work of the facilitators. The President noted that a more detailed discussion would take place on this item once the report had been finalized.

2. Review Mechanism: update

Ambassador Paul van den IJssel (Netherlands), also on behalf of Ambassador Michael Kanu (Sierra Leone), briefed the Bureau on the work of the Review Mechanism.

Since the Review Mechanism's briefing to the Bureau on 13 April, Ambassador van den IJssel had briefed The Hague Working Group on 21 April. The Review Mechanism had held two additional meetings as the platform for discussion, according to the Comprehensive action plan.

On 21 April, the Mechanism held the third meeting on the assessment of the IER recommendations on Unified governance (R1-R13) and concluded this discussion. On the conceptual issues relating to compatibility with the Rome Statute, there was a general understanding that the Rome Statute would not be amended, but States Parties, the Court and

all stakeholders would ensure efficiency, streamlining of processes, safeguard staff wellbeing and accountability.

At its 29 April meeting, the Mechanism focused on the assessment of recommendations on Relations with civil society and media (R153-R162) and on Communications Strategy (R164-R166). Most recommendations were assessed positively, one negatively, and a couple would be implemented in a modified form.

At both meetings, the Chair of the IER Experts, Mr. Richard Goldstone, and some of the Experts had attended in their personal capacity, in order to explain and share the rationale behind the recommendations. This had become the practice in some facilitations, which the Review Mechanism saw as a good development.

The Review Mechanism had held a meeting with the ASP mandate holders, to discuss any challenges and how these might be addressed. Many facilitations were proceeding according to the timeline set out in the comprehensive action plan. (i.e. CAP). Some facilitations¹ were facing some delays as they were awaiting documentation from the Court, including a document that would be available only after the judges' retreat in September. The Review Mechanism Chairs were available to reach out to the Court, if requested.

The Review Mechanism would hold meetings on the remaining issues on its agenda for the first semester, i.e. Induction and continuing professional development (R174-R177) and Secretariat of the Assembly of States Parties (R369-R370). It would return to R105 on Tenure after the report of the CBF on its resumed thirty-eighth session had been received, to R354, R358 on the Secretariat of the Trust Fund for Victims in June and would also hold a roundtable on workplace culture in June. As per resolution ICC-ASP/20/Res.3, it would submit a report to the Assembly on the overall progress of its work before 30 June 2022, which would contain the update of the Matrix. The Mechanism continued to consult with States Parties, facilitators, the Court, civil society and all stakeholders, in the interest of inclusiveness and transparency, and would continue to regularly brief States Parties and all stakeholders on its work through briefings to the Bureau and its working groups and its reports.

3. IER recommendation 169: update

The President recalled that R169 had been positively assessed at the 27 October 2021 meeting of the Review Mechanism, and that the Matrix² indicated that implementation should take place under the auspices of the Bureau. Further to the 13 April request of the Bureau, she had met with the Bureau focal points on non-cooperation on 6 May. While the issue did not fall within their mandate, the focal points gave some useful insights on their experience in New York in countering recent restrictive measures and sanctions against the Court and some officials.

The Bureau had before it a paper titled "Draft proposal by the Presidency for implementation of IER recommendation 169", which took into account the Bureau's preliminary comments and advice at the 13 April meeting. The proposal sought to retain as much flexibility as possible and took into account the request of some Bureau members that it should not introduce any architectural mechanism. It aimed at clarifying the primary responsibility of the Presidency in ensuring an adequate response to political attacks against the Court, and it recalled that the Assembly and the Court have a shared responsibility in promoting a positive image of the Court. It was the primary responsibility of the Assembly

¹ Review of the work and operational mandate of the IOM, Complementarity and Cooperation

² Report of the Review Mechanism submitted pursuant to ICC-ASP/19/Res.7, paragraph 9 (ICC-ASP/20/36, annex II, titled Matrix - Progress in the assessment of the IER recommendations)

Presidency to ensure an adequate response to an attack to the Court and Court officials. It was also suggested to include attacks on individuals threatened for working in support of the Court, such as human rights defenders. The proposal aimed at defining what is meant by an attack that affects the effectiveness and impartiality of the Court over the long term as recommended by the language of the IER recommendations.

It was noted regarding the proposal that the Bureau should take immediate action on the one hand, to protect the President and on the other hand, bring a more balanced discussion at the Bureau. Another point was made for more flexibility of measures to be taken. The point was also made to differentiate between the response of the Presidency and those made by other actors, because the Presidency is already ensuring for an appropriate repose. The point was also made that the long-term criteria for an attack might make sense for integrity or impartiality, but not necessarily for effectiveness.

It was proposed that the Director of the ASP Secretariat could be responsible for information sharing for any matters regarding an attack on the Court, rather than waiting for a focal point to be appointed. It was noted that rather than appointing focal points, diplomats in New York could serve as a contact point, thus avoiding additional nomination procedures. It was also noted that it would be useful to have a list of contact points to be able to react swiftly.

The President indicated that the Bureau would adopt the proposal that would then go in the report of the review mechanism to the Assembly, but before that, it would be necessary to elicit views from States Parties, the Court and civil society to ensure an inclusive and transparent dialogue with respect to the assessment of the IER recommendations. The President indicated that she would make herself available for the discussions at the HWG and the NYWG to present the proposal and later come back to the Bureau for adoption.

4. Election of the Registrar: update on due diligence

The Bureau had before it a revised proposal on the due diligence process, dated 16 May 2022, which the Assembly Presidency had prepared in consultation with the Independent Oversight Mechanism and the ICC Presidency, which took into account, to the extent feasible, the comments of States Parties and civil society. The Assembly had explicitly requested that the Bureau establish a due diligence process before September 2022 for candidates for Registrar, in consultation with the Presidency of the Court and the Independent Oversight Mechanism. It was necessary for the Bureau to do so as soon as possible since the proposal related to vetting and background checks on the shortlist of candidates, and the vacancy announcement had already closed on 1 May.

The Presidency had not taken some comments into account, including a proposal that sought to expand background checks to include a reputational investigation, i.e. interviewing former employers, colleagues, subordinates. This seemed unfeasible in light of the resources of the IOM. The revised text included the phrase “when feasible” in relation to contacting former employers. Another proposal not included related to not allowing candidates to retaliate in any way against a complainant, due to the impossibility of enforcing it.

Bureau members made comments and proposals relating to the detailed questionnaire,³ the capacity of the IOM to contact former employers and the need to keep in mind the limited resources of the IOM, which also had other priority mandates,⁴ the 45-day period during which the confidential channel would remain open,⁵ and confidentiality of the

³ Paragraph 5.

⁴ Para. 6.

⁵ Para. 7.

complaint mechanism.⁶ A concern was expressed that the availability of the report five working days before the election, even as a last resort, would introduce a major disruption at a very late stage that would put pressure on the judges. In addition, it was stated that background checks should be carried out equally on all candidates.

In response to a query on the adequacy of the six-week period to enable the IOM to complete its assessment of any allegations of misconduct, the IOM Head noted that it was important to strike the right balance between giving individuals enough time to file a complaint and the IOM not having time. In his view, a period of 30 days would be sufficient. Further, if the IOM report was submitted too early, the IOM might not have sufficient time to produce a meaningful report.

As regards the detailed questionnaire, the IOM had amended the Court's document of the Safety and Security Services. The questionnaire would put candidates on notice that they must be forthcoming.

Regarding confidentiality of the channel for reporting misconduct, different views were expressed on whether the IOM should continue its consideration of the complaint if the complainant was not willing to disclose his/her identity. It was stated that the channel needed to be secure, but also that requiring complainant to disclose their identity could have the effect of discouraging them from reporting the alleged misconduct; therefore the chances of disclosure should be minimized.

A view was expressed that the allegation should be dismissed if it was not substantiated, but the mere fact of a complainant's failure to disclose his/her name should not be sufficient for the IOM to dismiss the complaint. It was stated, on the other hand, that if there was a real complaint, the complainant should have the courage to disclose his/her name. Bureau members agreed that personal vendetta by the candidate had to be avoided.

The Presidency indicated that further consultations would be held and revised version of the proposal would be prepared in light of comments received. She stressed the importance of establishing the mechanism on an urgent basis.

Views on improving the format of roundtables

The President recalled that, at the Bureau's 2 February meeting, she had invited Bureau members to submit comments on improving the format of roundtables to the Secretariat by the end of May. The Bureau would then consider the modalities of the roundtable discussions at a future meeting. The Secretariat had not received any comments so far. She noted that, since the election would be conducted by the judges, it was important that the roundtables be organized at a time at which most judges could indeed attend. She had stressed this to the President of the Court already. The President requested the Secretariat to look into this together with the Court when organising the round tables.

The President once more invited Bureau members to submit their views, which would be considered in the next Bureau meeting.

5. Independent Oversight Mechanism- Interim report

The Bureau had before it the "Interim report of the activities of the Independent Oversight Mechanism", dated 25 April 2022, submitted by the Head of the Independent Oversight Mechanism (IOM), pursuant to the revised operational mandate of the IOM.⁷

⁶ Para. 11.

⁷ ICC-ASP/19/Res.6 (annex II).

The Head of the IOM introduced the Interim report. The Court had adopted internal policies relating to the work of the IOM, including revised disciplinary proceedings, investigation guidelines, policies on harassment, including sexual harassment, modelled on the policies of other international organizations. The policies deal only with court staff, contractors, etc. but not elected officials. He would enquire of the elected officials whether they would be willing to subject themselves to these processes, so as to have a uniform approach.

He provided information on the staffing situation of the IOM, that with the recruitment of a GTA position and a P-2 position, which was ongoing, he hoped to have a full complement of staff. Regarding the proposed programme budget for 2023, provision would be made for the IOM to support States Parties for the election of judges, should they so require. Further, the 2023 budget would enable the IOM to carry out investigations in Field Offices.

In response to a query on the impact of the new policies and guidelines on the IOM's work, the Head of the IOM indicated that there was some impact of new policies. The new policy on harassment, for example, abolished the statute of limitations, so there would be an evidentiary challenge. The policies would also have an impact on how the process is carried out. It was still in the preliminary phase and he was still assessing the larger impact.

In response to a query on whether the IOM had sufficient resources to carry out its mandate in a sustainable way, which was of high importance for staff well-being, the IOM Head noted that it was difficult to estimate sustainability since the office had never had a full complement of staff. He hoped, with a full complement of staff, to clear the backlog.

In its annual report, the IOM would track the number of cases, see whether there were any specific trends, whether increasing or decreasing. He noted that there had been many cases after the *ReVision* project and he would track the trends in the next report.

The Bureau took note of the Interim report of the Independent Oversight Mechanism, dated 25 April 2022.

The 26 April 2022 report

The President recalled that the Bureau had received a report of the IOM, dated 26 April 2022, on "Allegation received against an Elected Official". This report had been submitted by the IOM to the Assembly of States Parties and the Presidency of the Court pursuant to rule 26 of the Rules of Procedure and Evidence.

The Bureau took note of the report titled "Allegation received against an Elected Official".

6. Other matters

a) Compilation of legal opinions on article 42 (2) of the Rome Statute

Further to a request at the Bureau's 2 February meeting, the Bureau had before it a compilation of the material that had been submitted regarding the interpretation of article 42, paragraph 4, of the Rome Statute concerning the 2021 election of Deputy Prosecutors, so that these could be placed on the record and be available for future elections.

The Bureau took note of the compilation of views and decision on article 42, paragraph 4, of the Rome Statute, and requested the Secretariat to maintain this record of the Bureau's views and decision regarding article 42, paragraph 4, of the Rome Statute in its archives so that they would be readily available for future elections of deputy prosecutors.

b) Status of contributions

The Bureau took note of the status of contributions to the budget of the Court as at 30 April 2022. As of that date, the Court had received 82 per cent of the assessed contributions to the approved budget for 2022. The total amount of outstanding contributions, for 2022 and for prior years, stood at €32,7 million. A total of 26 States Parties had outstanding contributions of more than one year, and 12 of those were ineligible to vote under article 112, paragraph 8, of the Rome Statute.

The Bureau requested those States Parties with outstanding contributions to make every effort to pay their assessed contributions as soon as possible.

c) Commemoration of the twentieth anniversary of the entry into force of the Rome Statute

Activities by States Parties

The Republic of Korea informed the Bureau of the successful seminar on universality which it had hosted, together with the Netherlands, on 18 May in Brussels. The Assembly President, representatives of the Court, and the Secretariat had participated. The event had been held to mark the twentieth anniversary.

Further, the Republic of Korea would hold a luncheon event on 7 July in Seoul, to which it would invite 120 Ambassadors of States Parties and non-State Parties accredited to Seoul.

Activity by the Court

The President recalled that at the 13 April meeting of the Bureau, the Chef de Cabinet of the ICC Presidency had informed the Bureau of an event that the Court would hold on 1 July to mark the twentieth anniversary. Additional information on this event is available on the Court's website.⁸

The President invited all States and stakeholders that were planning events to consult the webpage of the Assembly, in order to avoid simultaneous events. They should send the details of the events to the Secretariat, which would post it on the ASP webpage.

d) Appointment of the facilitator for the omnibus resolution

The Bureau appointed Ms. Virpi Laukkanen (Finland) as the facilitator for the omnibus resolution, on the recommendation of the New York Working Group.

e) Meetings of the subsidiary bodies of the Assembly

(i) Advisory Committee on Nominations of Judges

The Advisory Committee on Nominations of Judges (ACN) would hold its meeting in person at the ICC premises on 5 and 6 September 2022 to discuss the issues on its agenda and

⁸ [International Criminal Court \(icc-cpi.int\)](https://www.icc-cpi.int), linked to the ASP webpage: <https://www.icc-cpi.int/icc-20a-cpi>

also to start to prepare its future work. In December 2023, the Assembly would elect six judges of the Court and the ACN would play a key role regarding the evaluation of the candidates.

(ii) Committee on Budget and Finance

The Committee on Budget and Finance had held its resumed thirty-eighth session in person on 9 to 13 May 2022. The Chair of the Committee had briefed States Parties and all stakeholders on 17 May, and indicated that the Committee will issue its report as soon as possible.

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