



## BUREAU OF THE ASSEMBLY OF STATES PARTIES

### Fifth meeting

8 June 2022

*(via remote link)*

Agenda and decisions

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

### 1. Review Mechanism: update

Since the last briefing of the Review Mechanism to the Bureau on 19 May, the Mechanism briefed The Hague Working Group and the New York Working Group on 31 May. The Mechanism indicated that many facilitations were proceeding according to the timeline but expressed some concerns with the progress of the facilitations of Complementarity and Cooperation, as they had been facing delays awaiting documentation from the Office of the Prosecutor (OTP). The Mechanism had urged the OTP to provide the necessary input as soon as possible so that the assessment work could be carried out in a timely manner.

The Review Mechanism held one meeting as the platform for discussion on 3 June on the IER recommendations on Induction and continuing professional development (R174-R177) and the Secretariat of the Assembly of States Parties (R369-R370). Some members of the Group of Independent Experts were also present in their personal capacity.

With regards the first set of recommendations, the first three recommendations (R174-R176) were addressed to the ICC Presidency, while the last one (R177) was addressed to the Court. The initial assessment in 2021 had been positive on all four recommendations, and they were already in the implementation phase. In their update, the ICC Presidency noted that a programme of induction for judges joining the Court already exists and that this program could take place online for those judges who had not yet joined the Court in person. It was noted that in 2021, the induction was shortened due to the issues related to the pandemic but was later expanded as the Court started to open up after the pandemic. Other activities include the annual judicial seminar and the yearly retreat of the judges, as well as occasional experts visits to the Court.

Following the discussion, the Review Mechanism indicated that, given that this group of recommendations was assessed positively, and that implementation was ongoing, it would return to the issue to check on implementation at a later stage. In this regard, the IER experts expressed satisfaction and commended the Presidency for the efforts undertaken in implementing this group of recommendations.

With regard to the second set of recommendations, namely on the Secretariat of the Assembly of States Parties (R369-R370), the Review Mechanism took note and welcomed the fact that the first part of R369 had been positively assessed and was being implemented. With regards to the second part of the recommendation (“In the long-term, the functions of the Secretariat of the Assembly of States Parties should be taken over by the Registry, and the Secretariat of the Assembly of States Parties, in its current form, dismantled”), the Review Mechanism heard presentations from the Director of the Secretariat of the Assembly of States Parties, Mr. Renan Villacis, the Chair of the Committee on Budget and Finance, Mr. Werner Druml and the Vice Chair of the Audit Committee, Mr. Aiman Hija.

After hearing the views of States Parties, the general view was that the second part of the recommendation of R369 and R370 would not be positively assessed, however a delegation was of the view that they needed more time to consider the recommendation. The Mechanism noted that it was currently awaiting the views of this delegation in order to definitively decide on the outcome of the assessment on these recommendations.

The Review Mechanism indicated that when discussing these recommendations delegations showed a great interest in the issue of resources, effectiveness, streamlining of functions and geographical representation within the Secretariat. The Mechanism noted that these matters could not be included in a discussion on assessment, but recommended to address these issues in the governance discussions, and that the Assembly could decide on the appropriate format to address the challenges highlighted.

The Review Mechanism noted that it would continue to hold meetings later in June on the remaining recommendations, for example on the Secretariat of the Trust Fund for Victims (R354, R358), recommendation on Tenure (R105), and a round table on workplace culture. The Mechanism also indicated that it would prepare a programme of work for the second semester, and would submit a report to the Assembly on the overall progress of its work, before 30 June 2022. The Mechanism acknowledged that due to delays in some of the facilitations it would have to submit the Matrix at a later date, maybe in July.

The Mechanism recalled that in the interest of inclusiveness and transparency, it continues to consult with all stakeholders, and invited all stakeholders to approach the Mechanism to address any points relating to its work.

## **2. Election of the Registrar: update on due diligence**

The Bureau had before it a revised proposal on the due diligence process, dated 7 June 2022, which the Assembly Presidency had prepared in consultation with the Independent Oversight Mechanism and the ICC Presidency. This updated version took into account, to some extent, the comments States Parties and civil society had made in prior weeks and at the meetings of The Hague Working Group and New York Working Groups on 31 May.

Bureau members made comments and final amendments on the proposal concerning the possibility for the IOM to seek consent of the complainant in relation to disclosure of the identity of the complainant.

The Bureau adopted the proposal of the Presidency on due diligence process for candidates for Registrar (see annex).

### ***Views on improving the format of round tables***

The President recalled that, at the Bureau's 2 February meeting, she had invited Bureau members to submit comments on improving the format of round tables to the Secretariat of the Assembly of States Parties by the end of May, in order to consider the modalities of the round table discussions at a future meeting. The Secretariat had not received any comments so far. The President invited Bureau members again to submit views to the Secretariat of the Assembly by 15 June, so that the Secretariat could take them into account in the organization of the round tables.

### **3. IER recommendation 169: update**

The Bureau had before it a paper titled "Draft proposal by the Presidency for implementation of IER recommendation 169" dated 7 June 2022, which incorporated to the extent possible comments received, including those made at The Hague Working Group and New York Working Group meetings held on 31 May 2022.

The revised proposal elicited an exchange of views with some Bureau members expressing preference for language contained in the previous version of the proposal and for a Mechanism that would give a stronger role to the Presidency. Others considered that the Bureau should have a stronger role to decide on additional measures while the President could take immediate action by way of a statement.

The view was expressed that if the proposal would allocate the new responsibilities to the focal points the mandate would need to be amended accordingly, and that more thought should be given to when and where they may be best placed, for example assisting the Presidency in implementing the measures rather than identifying the appropriate measures. In addition, it was stated that contact points on matters related to any attack should be permanent to avoid delays.

The President indicated that a new revision of the proposal would be presented at a later meeting taking into account the comments made during the meeting as well as comments made in further consultations with States and civil society. She also highlighted the importance of proceeding in an inclusive manner, while also taking into account the recommended deadline for implementation by the Review Mechanism.

### **4. Briefing by the Board of Directors of the Trust Fund for Victims**

The Chair of the Board of Directors of the Trust Fund for Victims, Ms. Minou Tavárez Mirabal, briefed the Bureau on the progress made on the ongoing transition at the Secretariat of the Trust Fund for Victims. Ms. Tavárez Mirabal was joined by the Registrar who is providing essential support in the process of recruitment and in the transition, and by Ms. Sandra Čolić, Lead for Strategic Workforce Planning, within the office of Human Resources of the Court, who is providing essential support to the Board.

Ms. Tavárez Mirabal indicated that since her last briefing to the Bureau on 13 April a vacancy notice for the position of Executive Director was issued on 6 May. All States Parties received the notification of the opening of the vacancy. She noted that the profile of the Executive Director has been set since the first recruitment of this post was held in 2006.

This profile is described in the vacancy announcement issued on 6 May on the website of the ICC. The announcement was circulated to all States Parties, notified to the Fund's donors, and promoted via the Court's website, the official social media channels and the United Nations Network.

The Board decided to extend the period for application from 5 to 19 June. This, in line with the assessment made by the Board on the representative features of the pool of applications received as of 3 June.

Ms. Tavárez Mirabal outlined additional short-term measures to strengthen the Secretariat: firstly, the duration of the term of the Executive Director; secondly, the performance appraisal of the Executive Director, and; thirdly, the revision with the new Executive Director of the Regulations of the Fund, and its governance structure, looking in particular at the delegation of powers from the Board to the Executive Director.

Regarding the first measure, the sixth Board of Directors, at its twenty-second meeting, held on 20 August 2019, had adopted a proposed amendment to article 17 of the Regulations of the Trust Fund. The amendment proposes to establish a fixed term of seven years for the Executive Director. This proposal was presented to The Hague Working Group in the autumn of 2019. The Board did not receive a formal response on this proposal, and in light of the transition, the Board seeks guidance from the Assembly to reactivate the discussions on this issue. The Board trusts that a fixed term can be included in the contractual conditions of the next Executive Director. For an entity like the Fund, the transition in its leadership is essential to promote institutional development and secure governance.

With regards the second measure, the Board would also be looking to the Assembly and the Registrar for guidance to set up a performance appraisal model for the Executive Director that is adequate to the nature of this position and to its accountability lines, as the Executive Director reports to a rotating political body appointed by the Assembly.

Concerning the last measure, as part of the transition, and once the new Executive Director is in office, the Board would be working with her or him to revise the Regulations of the Fund, and its governance structure, looking in particular at the delegation of powers from the Board to the Executive Director. The Board expects to be in a position of presenting proposals in this regard to the Assembly at its twenty-second session.

Ms. Sandra Čolić from the office of Human Resources briefed the Bureau on the ongoing recruitment process, describing the timeline and framework for recruitment, the description of the profile and role of the Executive Director position.

Ms. Tavárez Mirabal indicated that in the coming week, the Board would be finalizing the composition of the recruitment panel and would then inform the Bureau. The Board was considering a mix of Board members and Court officials and staff, also seeking to ensure geographic representation and gender balance. Then, after a proper training to reduce bias, the recruitment process would move to the next stage on 19 June when the vacancy closes.

Ms. Tavárez Mirabal stated that the Board would brief the Bureau in July or August. She would brief the Hague Working Group on 21 June, and that she had requested a briefing to the New York Working Group as well.

### **Other matters**

#### *a) Status of contributions*

The Bureau took note of the status of contributions to the budget of the Court as at 31 May 2022. As of that date, the Court had received 90 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 €47.7 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.

#### *b) Commemoration of the twentieth anniversary of the entry into force of the Rome Statute*

The President referred to an event was organized by Argentina, Canada and Liechtenstein on 11 July and noted that further details would be provided at the next Bureau meeting. The President further requested updates and details of any events to be sent to the Secretariat, so that the event could be posted on the webpage of the Assembly.

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## **Annex**

### **PROPOSAL BY THE PRESIDENCY ON DUE DILIGENCE PROCESS FOR CANDIDATES FOR REGISTRAR AGREED BY THE BUREAU OF THE ASSEMBLY ON 8 JUNE 2022**

1. The Assembly requested the Bureau to “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 (IOM), to assist in the determination of the criterion of “high moral character as required by article 43, paragraph 3, of the Rome Statute.”<sup>1</sup>
2. Following the required consultations with the Presidency of the Court and the IOM, the Bureau establishes the following process to be conducted by the IOM, with the assistance of the Registry as required.
3. The ICC Presidency shall provide to the IOM, no later than 15 August 2022, the list of candidates (the “shortlisted candidates”) that it is submitting to the Assembly for their recommendations. The Presidency shall also provide the IOM the complete applications of these candidates.
4. The assessment shall comprise two parts. One reviewing existing background information concerning the shortlisted candidates and a second receiving and reviewing allegations of misconduct made against them, if any.

#### **Review of Background Information**

5. The IOM shall contact the shortlisted candidates and require them to complete a detailed questionnaire, and provide consent to contact former employers and employees, State authorities, or academic institutions. Failure to submit a completed questionnaire or provide the required consent will automatically disqualify any candidate from being further considered.
6. The IOM shall conduct an in-depth background check of criminal, academic and employment records of the shortlisted candidates with the assistance of relevant sections of the Registry of the International Criminal Court as appropriate. The check may include a review and analysis of open-source information and contacts with former employers and employees.

#### **Receipt and Review of Allegations of Misconduct**

7. Upon receipt of the list of shortlisted candidates, the IOM shall establish and assist in widely disseminating a confidential channel for the receipt of allegations of misconduct against any of the shortlisted candidates. The opening of the confidential channel shall be communicated to all States Parties by the Secretariat of the Assembly of States Parties and its dissemination shall be conducted through the Court’s website and social media accounts, as well as through efforts by States Parties and Civil Society to provide information thereon to relevant agencies and professional associations. Such dissemination shall include details as to the process

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<sup>1</sup> Resolution ICC-ASP/20/Res.4 on the Review of the International Criminal Court and the Rome Statute system, Part II – Election of the Registrar, operative paragraph 4.

outlined below regarding how allegations received will be treated by the IOM. The confidential channel shall remain open for a minimum of forty-five calendar (45) days.

8. For the purposes of this process, “misconduct” refers to human rights violations, incidents of harassment, including sexual harassment, abuse of authority, discrimination and bullying in the workplace, as well as other ethical or legal breaches of a serious nature such as fraud or corruption.

### **Process for Review**

9. Any allegation made shall be accompanied by relevant information and documentation to the extent that it is available to the complainant.
10. The IOM shall acknowledge receipt of any allegation received, and explain the process of review, and how the information received will be treated. The complainant shall also be informed that they may be contacted by the IOM to provide additional details of their allegations, and that failure to provide such additional information may lead to the allegation not being reviewed any further. Anonymous complaints shall not be accepted.
11. The allegation and its review by the IOM shall be confidential and remain so at all times. Under no circumstances, the identity of the complainant shall be disclosed without his or her prior consent. Only when the allegation cannot be reviewed and assessed on the basis of available corroborative evidence, and disclosure is necessary to ensure due process may the IOM seek the consent of the complainant to any such disclosure. When such conditions are met and the IOM does not obtain the required consent from the complainant, the IOM shall set aside the allegation and discontinue its review.
12. The IOM shall first review the allegation and consider whether it relates to misconduct. If it does not, and relates rather to concerns about the candidate’s qualifications, abilities, or past performance, it shall forward the allegation to the Presidency of the Court, but only after obtaining the consent from the complainant to do so. It will be for the Presidency to decide whether or not to consider the issue further.
13. The IOM shall initially review the credibility of the allegation, including by obtaining further information and details from the complainant, either in writing or through an interview, and corroborating to the extent possible the information obtained.
14. The IOM shall also assess the materiality of the allegation, determining the type of misconduct at issue and its seriousness.
15. Any allegation found to be credible and material by the IOM shall be put to the candidate, to allow them a full and fair opportunity to respond to the allegation, either in writing or through an interview.

### **Reporting**

16. No later than 30 November 2022, the IOM shall submit to the Presidency of the Court and the Presidency of the Assembly a report regarding any

concerns it may have identified with respect to the high moral character of any of the shortlisted candidates. In particular, it shall include an assessment as to whether any allegation made is supported by sufficient evidence to raise concerns about the candidate's high moral character, taking into account the credibility and materiality of the allegation.

17. The IOM report shall also include information on the overall number of allegations received that lacked sufficient credibility or materiality to be put to the candidates, or that otherwise were not reviewed by the IOM such as anonymous complaints, lack of consent to disclose identity when necessary or performance-related allegations. In order to preserve the confidentiality of the process, only general information on the reasons to set aside the complaint shall be provided.
18. If an allegation was presented to a candidate, a short summary of that allegation and the response provided by the candidate (taking efforts to not provide details that would identify the complainant) will be included in the report.
19. Should the IOM be unable to reach a definite conclusion on the allegation by the time of its 30 November report, it shall assess, in consultation with the Presidency of the Court, whether it would be possible to take further investigative steps to confirm or refute the allegation. Should the IOM undertake such further steps, it shall submit a second report on such additional investigative steps to the Presidency of the Court and the Presidency of the Assembly at least ten (10) working days before the scheduled time of the election of the Registrar by the Judges of the Court.
20. The IOM shall provide any candidate who was notified of an allegation against them the IOM's assessment of the allegation, at the same time as the report is submitted to the Presidency of the Court and the Presidency of the Assembly. The IOM shall also inform the complainant in such cases.

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