



BUREAU OF THE ASSEMBLY OF STATES PARTIES

Third meeting

12 May 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

i) Update by the Review Mechanism

Further to their 8 April 2021 briefing to the Bureau, the State Party representatives on the Review Mechanism, Ambassador Paul van den Ijssel (Netherlands) and Ambassador Michael Imran Kanu (Sierra Leone), presented an overview of the developments in the work of the Review Mechanism.

The Review Mechanism had submitted to the Bureau and States Parties the “Categorization of recommendations and remaining issues” on 30 April 2021, in accordance with resolution ICC-ASP/19/Res.7.¹ That report was before the Bureau for its consideration and adoption by 30 May 2021.² In light of the tight timelines in the resolution, the Mechanism was proceeding with its work on the second phase of its mandate, the action plan, due by 30 June 2021,³ and also had another deadline of 30 June, “to brief the Assembly in writing on the overall progress of its work, ideally before 30 June 2021...”.⁴ The Review Mechanism was discussing the format for these two reports.

The representatives recalled that the resolution⁵ set out three components of the action plan: the allocation of the recommendations; the prioritization of recommendations, based on annex I of IER report; and timelines for the consideration of the recommendations. They had met with the Court focal points and Assembly mandate-holders to discuss their approach on and to seek views on these elements and would similarly reach out to other stakeholders. They had invited the Assembly mandate-holders to submit their comments on the three components in writing by 20 May, and would make the same request of States Parties and other stakeholders, with a later deadline.

The Mechanism had held six internal meetings and, in addition, had met with the ASP mandate-holders, the Co-Chairs of the Study Group on Governance and the Court focal

¹ Para. 4 (a).

² Para. 6.

³ Para 4 (b) requests the Mechanism to submit “a proposal for a comprehensive action plan for the assessment of the recommendations of the Group of Independent Experts, including requirements for possible further action, as appropriate, by 30 June 2021.”

⁴ Para. 9.

⁵ ICC-ASP/19/Res.7.

points. They would also meet with the President of the Assembly, the independent offices of the Court and the Staff Union Council, the Coalition for the International Criminal Court (CICC), and the International Criminal Court Bar Association (ICCBA).

They drew to the Bureau's attention an important element in the Introductory note,⁶ the appropriate platform for discussions between States Parties and the Court. In their consultations, there had been much interest by States Parties in participating in discussions on the recommendations, including those categorized as the Court's responsibility, and it was foreseen that there would be a need for much discussion; the Court was open to such dialogue. The Mechanism was considering the options for a platform for discussion.

In commenting, Bureau members commended the Review Mechanism for the progress of its work and appreciated that its comprehensive work was being done under tight deadlines.

It was suggested that States should be mindful of the budgetary implications of the recommendations, in particular where they involved increased costs, e.g. recruitment, field offices etc., and the views of the Committee on Budget and Finance thereon should be sought. In addition, the Assembly should follow closely the recommendations that related to structure, such as governance, including the recommendation on merging the Assembly Secretariat with the Registry. All such recommendations should be carefully discussed in both working groups of the Bureau.

Some Bureau members indicated their readiness to adopt the "Categorization of recommendations and remaining issues". While some had categorized some recommendations differently, they noted that the Review Mechanism had taken on board some of their suggestions. Some Bureau members noted the importance of discussions between States Parties and the Court on the recommendations, with respect for judicial and prosecutorial independence, regardless of whether the Court would be the primary actor.

It was suggested that the Review Mechanism should invite comments from stakeholders on a draft action plan that they would prepare, which would contribute to transparency.

ii) *Consideration of the "Categorization of recommendations and remaining issues", submitted by the Review Mechanism*

The Bureau decided that it would adopt the "Categorization of recommendations and remaining issues" via a silence procedure by 30 May 2021 in accordance with the resolution,⁷ and that its decision would include reassurances that there would be sufficient involvement of States Parties in a comprehensive dialogue with the Court on the IER recommendations.

The President reiterated the Bureau's full support for the Review Mechanism's very important mandate.

2. Lessons learnt exercise of the Prosecutor's selection process

The Bureau had before it a discussion paper, prepared by the Presidency, entitled "Third election of the Prosecutor of the ICC - Lessons learnt", dated 3 May 2021.

⁶ Submitted together with the "Categorization of recommendations and remaining issues", on 30 April 2021.

⁷ In para. 6, the Assembly requested the Bureau "to consider and adopt the categorization of recommendations referred to in operative paragraph 4, by 30 May 2021 (...);"

The President recalled that the objective of the lessons learnt process would be to implement paragraph 78 of Assembly resolution ICC-ASP/19/Res.6, which “*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”. The Presidency proposed a State-driven process, led by two co-facilitators. The co-facilitators would be assisted by a junior expert with expertise in human resources and recruitment, to be hired within existing resources. The Secretariat would provide logistical support. The co-facilitators would be requested to produce an evaluation report for the Assembly. The objective would be to strengthen the selection process in the future, by clearly identifying any gaps, ambiguities, inconsistencies or issues to be addressed in future elections. The discussion paper did not seek to determine to what extent the report should include recommendations for the future, as that matter would be the subject of future discussions. The precise scope of the mandate of the co-facilitators could also be decided later.

In addition, bearing in mind the importance of seeking the views of those directly involved in the process as soon as possible, and pending the appointment of the facilitators and the recruitment of the junior expert, the Bureau could request a report from the former Presidency on the general conduct of the process, as well as reports from the Committee on the Election of the Prosecutor and the Panel of Experts on the implementation of their mandate.

Bureau members discussed the Presidency’s proposal as outlined in the discussion paper, including preferences regarding the assignment of the task. Additional clarifications regarding the scope and tasks of the junior assistant were requested. Different views were expressed as to whether the mandate should include a request for recommendations. It was noted that the process should be open, transparent and thorough. It was emphasized that the exercise was in no way intended to question the outcome of the recent election of the third Prosecutor, and full support was expressed for the Prosecutor-elect.

The point was made that the co-facilitators should not be representatives of States that had been involved in the process in any capacity (e.g. States who had candidates on the longlist or shortlist, or States whose nationals served as members of the Presidency, the Committee, the Panel of Experts, or as focal points).

The Bureau decided to request reports from the former Presidency of the Assembly, the Committee on the Election of the Prosecutor, and the Panel of Experts. The President indicated that these reports would be requested together with an indication from them on an estimated time as to when they could be submitted. She would return to the topic at the next meeting of the Bureau.

3. Vetting of future candidates

The Bureau had before it a discussion paper, prepared by the Presidency, entitled “Proposal by the Presidency on due diligence process (vetting) for candidates for Deputy Prosecutor”, dated 9 May 2021. The President noted that, in light of the views that had been expressed rather than developing a vetting process for *all* future candidates to elected positions at the Court, the Presidency proposed instead to agree a process for the election of the Deputy Prosecutor, scheduled to take place at the twentieth session of the Assembly, and then to use that experience to shape the mechanism which would apply in the future. In order to prepare the proposal, the Presidency had consulted with the Prosecutor-elect, the Independent Oversight Mechanism (IOM), and the Office of Independent Oversight Services at the United Nations (OIOS).

The process for the election of the Deputy Prosecutor had two distinct phases: the selection process, which would be the responsibility of the Prosecutor, and the election process, which would be the responsibility of the Assembly. In the first phase, an in-depth background check would be carried out under the responsibility of the Prosecutor, with the consent of the candidates and the assistance of the IOM. Upon completion of the background check, the Prosecutor would submit a public list of candidates to the Assembly. If, upon publication of the list, there were allegations of misconduct against one or more candidates, such allegations could be submitted confidentially to the Presidency and the IOM, which would make a preliminary assessment thereon. If necessary, the OIOS could assist in the assessment. A report would then be submitted to the Presidency and the Prosecutor.

Bureau members had an initial discussion on the proposal contained in the discussion paper. The proposal to agree a process for the Deputy Prosecutor election, with the opportunity to subsequently review and strengthen that process for the future, was welcomed. The point was made that vetting should still form part of the lessons learnt process for the election of the Prosecutor. Further information was requested as to how the details of the process would operate, including how due process rights would be respected.

It was decided that the Bureau would return to the topic at its next meeting, on the basis of further information and elaboration by the Presidency in consultation with the Prosecutor-elect and the IOM.

4. Advisory Committee on Nominations of Judges- nomination period

The Bureau fixed the nomination period for the presentation of candidates to the Advisory Committee on Nominations of Judges to run from 7 June to 29 August 2021.⁸

Elections to the Board of Directors of the Trust Fund for Victims

As regards the elections to the Board of Directors of the Trust Fund for Victims, the Bureau took note that The Hague Working Group would consider the amendment proposals of the Board of Directors of the Trust Fund for Victims at its meeting on 18 May, following the Bureau's 8 April referral of the proposals to the working group. The Bureau would consider the issue further when it had received the outcome of those discussions.

5. Interim Report, Independent Oversight Mechanism: 1 October 2020 – 31 March 2021

The Bureau took note of the Interim report⁹ of the Independent Oversight Mechanism (IOM) for the period 1 October 2020 to 31 March 2021, dated 12 April 2021, which the Head of the IOM, Mr. Saklaine Hedaraly, introduced. The report addressed, inter alia, the internal disciplinary structure, the difficult work environment, and the prevalence of bullying and harassment at the Court, which the IER Experts had also identified in their report.

He informed the Bureau that the IOM was not in a position to investigate all allegations of misconduct, given its limited resources. Since what was at stake were the important principles of oversight and accountability to States Parties, he hoped that the Assembly would be in a position to support the request in the 2022 budget for additional resources for the IOM's mandate.

⁸ According to past practice, based on resolution ICC-ASP/3/Res.6.

⁹ Submitted pursuant to para. 41 of the revised Operational mandate of the IOM contained in ICC-ASP/19/Res.6, annex II.

IOM Evaluation report on “The interaction of victims with the Court”

The Head of the IOM introduced the report titled “Evaluation of the interaction of victims with the Court, dated 30 April 2021, which he had submitted to the President on 3 May 2021.¹⁰ The IOM had sought to look at the issue from the perspective of victims; it had experienced difficulty in accessing many victims. Areas identified as requiring attention included the need for standard messaging by all interlocutors, and the lack of oversight for counsel.

The President noted, as explicitly indicated in the report, that some of the recommendations were complementary to the recommendations on the topics addressed by the IER Experts. In light of the content of the evaluation report and the recommendations to improve the current system at the Court, she had shared it with the Heads of organs and with the Trust Fund for Victims. For these reasons, she considered that they may be taken up and considered by the Assembly in the context of substantive discussion of the relevant topics.

Future evaluation theme

The President referred to a letter, dated 10 May 2021, from the Head of the IOM in which he proposed three evaluation themes for the consideration of the Bureau, so that it may refer a theme to the IOM for the remainder of 2021.¹¹

The Head of the IOM had indicated that the evaluation of the Registry’s Strategic Plan had been discussed with the IOM in 2019, and following agreement with the States Parties, it was included in the Registry Strategic Plan. The Registrar had indicated that the result of this evaluation would be helpful in finalizing the Strategic Plan for the next cycle.

The President would request the views of Bureau members on how they wished to proceed with the proposal of the IOM. The Bureau would return to this item at a future meeting.

6. Status of contributions

The President provided an update regarding the status of contributions to the budget of the Court. As of 30 April 2021, the Court had received 57 per cent of the assessed contributions to the approved budget for 2021. The total amount of outstanding contributions, for 2021 and for prior years, stood at €96 million. A total of 34 States Parties had outstanding contributions of more than one year, and nine States Parties were subject to the provisions regarding the loss of voting rights in article 112, paragraph 8, of the Rome Statute.

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¹⁰ On 28 May 2020, the Bureau had requested the IOM to conduct an evaluation of this theme.

¹¹ Theme 1: Evaluation of the Results of the Registry’s Strategic Plan 2019-21; Theme 2: Evaluation of the Internship Programme at the ICC; and Theme 3: Follow up to the Evaluation of the Administration of the Secretariat of the Trust Fund for Victims.