



BUREAU OF THE ASSEMBLY OF STATES PARTIES

Fifth meeting

7 July 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 (Action Plan)

The President congratulated the Review Mechanism for its submission of the proposed Comprehensive action plan by the deadline set in resolution ICC-ASP/19/Res.7 and recognized that the Mechanism had undergone a period of very intensive work. She welcomed the Mechanism's continued observance of the principles of inclusivity and transparency in its work.

The State Party representatives on the Review Mechanism, Ambassador Paul van den Ijssel (Netherlands) and Ambassador Michael Imran Kanu (Sierra Leone), updated the Bureau on the work of the Review Mechanism.

The Review Mechanism had submitted the Comprehensive action plan¹ on 30 June 2021 in accordance with resolution ICC-ASP/19/Res.7,² as well as the Report on the overall progress of its work.³ The Introductory note which accompanied the Comprehensive action plan shed light on the choices made by the Review Mechanism, and suggested the next steps in the process. The Comprehensive action plan aimed to give a roadmap for the assessment of the recommendations of the Group of Independent Experts,⁴ not for their implementation, which was the next step and which would likely require time.

The Review Mechanism recognized that it had submitted an ambitious roadmap, but noted that this reflected the importance of the review exercise. It had assigned the discussions on the respective recommendations to existing Assembly mandates, and some to the Mechanism itself where there was no existing mandate holder. The Mechanism had added to the action plan the assignment of the discussion of the recommendations, regardless of their categorization. Due to time constraints, it had not been possible for the Mechanism to have detailed discussions with Assembly mandate holders and it planned to have a meeting with them to fine-tune the elements of the action plan.

¹ https://asp.icc-cpi.int/EN_Menu/asp/review-court/pages/action-plan.aspx

² Para. 4 (b)

³ Ibid., para. 9. See: https://asp.icc-cpi.int/en_menus/asp/Review-Court/Pages/Review-Mechanism.aspx

⁴ Independent Expert Review of the International Criminal Court and the Rome Statute System Final Report - 30 September 2020 at: https://asp.icc-cpi.int/iccdocs/asp_docs/ASP19/ICC-ASP-19-16-ENG-IER-Report-9nov20-1800.pdf

The Review Mechanism had sought to ensure that the entire process was transparent and inclusive, and had taken into account the views submitted by all stakeholders.⁵

The Mechanism drew attention to the issues referred to in paragraph 8 of the Introductory note regarding the allocation of the remaining review issues contained in resolution ICC-ASP/18/Res.7.⁶ The next step would be for the mandate holders to report on the remaining issues.

Recommendations having legal implications that would require the involvement of the Assembly had been categorized on the basis of the entity that was responsible for assessing and taking possible further action to commence implementation.

Regarding recommendations having budgetary implications, it was important for the substantive consideration to take place separately from budgetary considerations, a concern that had been raised at the beginning of the review process. The Review Mechanism had therefore suggested that a practice similar to that of the United Nations be observed.⁷

Bureau members commended the Review Mechanism for its timely submission of the Comprehensive action plan, given the tight deadlines and challenging circumstances. They welcomed the action plan, as well as its ambitious nature, and viewed it as a good basis for the next stage of work. The fact that each recommendation was allocated, irrespective of whether it was primarily for the Court or the Assembly was also welcomed. Bureau members welcomed that the Mechanism would take the lead on issues where the appropriate mandate did not exist, and also that it would continue to engage with all stakeholders. Appreciation was expressed for the fact that the Review Mechanism intended to serve as a forum to deal with cross-cutting issues, especially unified governance.

It was crucial for the Bureau to adopt the Comprehensive action plan by the 30 July 2021 deadline set out in the resolution, so that work on the recommendations could begin. Some support was expressed for the action plan and some members indicated that they were ready to adopt it.

Regarding the practicalities of the process suggested for recommendations with budgetary implications, the Mechanism had consulted with the Committee on Budget and Finance before making the proposal in the Introductory note.⁸ It was hoped that this would help ensure that there were no blockages regarding these recommendations. The Mechanism would meet again with the Committee to further discuss this matter.

The Mechanism was still discussing with the Court the follow-up on recommendations that were primarily for the Court. It hoped that the Court would inform States Parties regarding their implementation, and that there would be a dialogue between the Court and States. For recommendations allocated to the Assembly, the modalities of how the Mechanism would interact with Assembly mandate holders were still to be fine-tuned, and there was a need to find a model that would avoid overlaps for facilitators.

The President thanked the Review Mechanism for the Comprehensive action plan, and noted that there was much work still to be done. The time to start the substantive discussion was now. Although it had not been required to do so, the Review Mechanism had assigned recommendations to existing platforms, which was a positive step. The timelines were ambitious, as the assessment of some recommendations was expected to start

⁵ A total of 25 submissions.

⁶ Introductory note, para. 8.

⁷ That the Registrar be requested to provide the budgetary implications of a recommendation; the Committee on Budget and Finance would then advise the Assembly thereon, and the Assembly would take a decision on the basis of that advice.

⁸ Para. 19.

immediately, during the second semester of 2021 and would conclude by the end of October in order for mandate holders to submit reports in a timely manner; other recommendations had timelines in 2022. Further, the timelines were indicative and could be fine-tuned and adjusted as necessary.

As regards the platforms for discussions, the assignment of recommendations had been done pursuant to previous understandings that discussions should be held within already existing facilitations. The allocation of platforms may be fine-tuned in consultation with the mandate holders, in order to ensure the most appropriate forum and proper coordination.

The President had convened a meeting of all mandate holders on 15 July to discuss the proposed allocation and coordinate the work moving forward. She stressed the importance of preserving the inclusive and transparent process that had existed so far and hoped that this would continue throughout. In this vein, the Review Mechanism would present the Comprehensive action plan to The Hague Working Group and to the New York Working Group on 13 and 14 July, respectively.

Regarding the Assembly's mandate to the Bureau that it consider and adopt the action plan by 30 July 2021,⁹ depending on how discussions proceeded in the coming weeks, the Bureau would approve the action plan either by a silence procedure or by organizing additional meetings. If needed, a Bureau meeting would be held on 29 July at the latest.

2. Due diligence for candidates for Deputy Prosecutor

The President noted that, on 6 July 2021, the Bureau had adopted the "Proposal by the Presidency of the Assembly and the Prosecutor on a due diligence process for candidates for Deputy Prosecutor" (see annex). The President thanked Bureau members for their active engagement and cooperation, which had enabled a thorough process to be put in place for the upcoming election. The process would be reviewed and adjusted as required for future elections.

3. Event to mark the Day of International Criminal Justice

The President informed the Bureau that the Coordinator of the ICC Group of Friends in New York, Ms. Maitê de Souza Schmitz (Brazil), would organize a virtual event to commemorate the Day of International Criminal Justice on Wednesday, 21 July at 09:00 New York / 15:00 The Hague time. She thanked Brazil for that initiative.

The President would also participate in a social media campaign being organized by the Court.

She hoped that the respective Embassies/UN Missions of States Parties would continue the tradition of flying the ICC flag during that weekend.

4. Status of contributions

The President provided an update regarding the status of contributions to the budget of the Court. As of 30 June 2021, the Court had received 78 per cent of the assessed contributions to the approved budget for 2021 (excluding the host State loan), an increase of 10 per cent since 31 May 2021. The total amount of outstanding contributions, for 2021 and for prior years, stood at €64 million, compared to €79 million at the end of May. 66 States Parties had fully paid their contributions, compared to 54 at the end of May. A total of 31 States Parties had outstanding contributions of more than one year, and nine States Parties

⁹ ICC-ASP/19/Res.7, para. 6.

were subject to the provisions regarding the loss of voting rights in article 112, paragraph 8, of the Rome Statute.

The President noted that, while the figures again indicated some improvement, more efforts were needed, in particular to address the outstanding contributions from prior years. The Presidency continued to deploy all efforts, in consultation with the Registry, to encourage States Parties that had not yet done so to make every effort to pay their assessed contributions as soon as possible.

5. Other matters

a) IOM evaluation theme for 2021 – Terms of Reference

Further to the Bureau's 10 June 2021 request to the Independent Oversight Mechanism (IOM) to conduct an evaluation of the Registry's Strategic Plan 2019-2021, the Bureau took note of the "Terms of Reference for the Evaluation of the International Criminal Court Registry's Strategic Plan 2019 - 2021", dated 21 June 2021, which the Head of the IOM, Mr. Saklaine Hedaraly, had conveyed to the President.

The Bureau further took note that the facilitation on Budget Management Oversight would take up this topic once the evaluation report has been received by the Bureau.

b) Nomination period for candidates for the Advisory Committee on Nominations of Judges

Further to the Bureau's 12 May and 2 June decisions to open the respective nomination periods for candidates to the Advisory Committee on Nominations of Judges, and to the Board of Directors of the Trust Fund for Victims, to run from 7 June and until 29 August 2021 (Central European Time), the Bureau took note that all nominations received by the Secretariat were posted on the website of the Assembly as soon as possible.¹⁰

Annex

PROPOSAL BY THE PRESIDENCY OF THE ASSEMBLY AND THE PROSECUTOR ON DUE DILIGENCE PROCESS FOR CANDIDATES FOR DEPUTY PROSECUTOR¹¹

1. The Prosecutor and the Presidency of the Assembly of States Parties have discussed the election process for the position of Deputy Prosecutor and have agreed that the process shall include due diligence measures intended to assist in the determination of "high moral character" as required by article 42, paragraph 3, of the Rome Statute. The contours of this process will be detailed in the vacancy announcement that the Prosecutor will draft and shall include:

(a) a requirement for candidates that apply to the position to complete a detailed questionnaire, providing consent to contact former employers, state authorities, or academic institutions;

(b) an in-depth background check of criminal, academic and employment records of candidates to be included in the list provided by the Prosecutor to the

¹⁰ https://asp.icc-cpi.int/en_menus/asp/elections/advisorycommitteeenominations/ACN2021/Pages/Nominations.aspx and https://asp.icc-cpi.int/en_menus/asp/elections/trust%20fund%20for%20victims/2021-7th-Election/Pages/default.aspx

¹¹ Adopted by the Bureau of the Assembly of States Parties on 6 July 2021.

Assembly of States Parties, in accordance with article 42, paragraph 4, of the Statute; and

(c) an enquiry into any allegations of misconduct against any such candidates. “Misconduct” for the purpose of this due diligence process refers to human rights violations, incidents of sexual harassment, bullying in the work place and other ethical or legal breaches of a serious nature such as fraud or corruption.

2. The Prosecutor shall determine the modalities of the in-depth background check referred to in paragraph 1(b) which shall be carried out under his supervision, with the expert assistance of the Independent Oversight Mechanism (IOM) and also from relevant sections of the Registry of the International Criminal Court, as appropriate.

3. Any allegations of misconduct against any of the candidates included in the public list provided by the Prosecutor to the Assembly of States Parties shall be submitted in writing to the IOM which shall handle them in accordance with the procedure contained in the annex.

4. Within 45 days of the receipt of any allegations, the IOM shall submit to the Prosecutor and the Presidency of the Assembly a report with respect to the allegations received, as outlined in the appendix.

5. If the IOM report on allegations contains any matters of concern regarding the high moral character of any of the candidates, the Presidency shall transmit to the Bureau the written observations of the Prosecutor on such matters and shall recommend a course of action to be adopted by the Bureau.

Appendix

Handling of Allegations of Misconduct of Candidates for Deputy Prosecutor Proposal by the Independent Oversight Mechanism

This proposal is presented by the Independent Oversight Mechanism (IOM) at the request of the Presidency of the Assembly of States Parties and the Prosecutor, to suggest a process for receiving and reviewing allegations in order to ensure that candidates for the position of Deputy Prosecutor meet the “high moral character” requirement detailed in article 42, paragraph 3, of the Rome Statute.

1) Confidential Channel

Anyone may submit written allegations of misconduct confidentially to the IOM within 14 days of the public announcement of the list of candidates provided by the Prosecutor to the Assembly. The allegation should be accompanied by all relevant information and documentation available to the complainant.

The Secretariat of the Assembly shall provide all necessary information to that effect concurrently with the public announcement of the list of candidates provided by the Prosecutor.

2) Receipt of Allegations

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.

The allegation and the review of it conducted by the IOM shall be and remain confidential. The IOM shall seek the consent of the complainant prior to any disclosure of his or her identity, including to the candidate concerned for due process purposes. Objections to such disclosure when it is required for the legitimate needs of the review and assessment of the allegation may be grounds for the IOM to set aside the allegation and discontinue its review.

3) Initial Review

The IOM shall first review the allegation and consider whether it relates to misconduct. If it does not, and relates rather to concerns about their qualifications, abilities, or past performance, it shall forward the allegation to the Prosecutor, but only after obtaining the consent from the complainant to do so. It will be for the Prosecutor to decide whether or not to consider the issue further.

4) IOM Assessment

The IOM shall assess 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. The IOM will initially review the credibility of the allegation.

The IOM shall also assess the materiality of the allegation, determining the type of misconduct at issue and its seriousness.

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.

5) Reporting

The IOM shall submit, within 45 days of the receipt of any allegations, a report to the Prosecutor and the President of the Assembly, including details in terms of the overall number of allegations received that lacked sufficient credibility to put to the candidates, or that otherwise were not reviewed by the IOM (e.g., anonymous, performance-related, etc.). In order to preserve the confidentiality of the process, no substantive details of these allegations will be provided.

If an allegation was presented to the candidate, a short summary of that allegation (taking efforts to not provide details that would identify the complainant) will be included in the report, as well as the response provided by the candidate.

The IOM report shall also include an assessment as to whether the allegation is supported by sufficient evidence to raise concerns about the candidate's high moral character, taking into account the credibility, materiality and verifiability of the allegation. Should the IOM be unable to reach a definite conclusion on the allegation, it shall identify whether it would be possible to take further investigative steps to confirm or refute the allegation, and what these steps would entail in terms of time and resources.

The IOM shall provide the candidate with the summary of any allegation concerning them, as well as the IOM's assessment of the allegation, at the same time as the report is submitted to the Prosecutor and the Presidency of the Assembly.