

BUREAU OF THE ASSEMBLY OF STATES PARTIES

Eighth meeting

3 November 2021

(via remote link)

[Draft] Agenda and decisions

The meeting was chaired by the President of the Assembly, Ms. Silvia Fernández de Gurmendi (Argentina). A Vice-President of the Assembly, Ambassador Robert Rae (Canada), also participated.

1. Review Mechanism- update

Ambassador Paul van den IJssel (Netherlands), a State Party representative on the Review Mechanism, briefed the Bureau on the work of the Review Mechanism, also on behalf of Ambassador Michael Imran Kanu (Sierra Leone), who could not be present.

Since the Ambassadors' briefing to the 6 October meeting of the Bureau, the Review Mechanism had held a number of meetings. It had met with groups of Assembly mandate-holders based in New York and The Hague, between 5 and 15 October, in order to discuss the progress of their respective mandates and any challenges faced. The meetings provided a useful overview of the work of the facilitations and the Review Mechanism's impression was that almost all facilitations were on track as far as the assessment of the recommendations was concerned. No particular challenges had been raised. In response to mandate-holders' query regarding reporting to the Bureau, the Review Mechanism was flexible on whether one or two reports should be submitted and on the dates, given the challenges of time and resources that many delegations faced.

In addition, the Mechanism had held a series of meetings in its role as the platform for discussion of the recommendations for which there was no existing facilitation,¹ which were allocated to the Court and the Assembly.² The Mechanism had decided to start the discussion of unified governance early, given the cross-cutting nature of recommendations 1-13 and their potential implications for other recommendations; the Mechanism expected to complete unified governance in 2022.

The Review Mechanism had submitted its report to the Bureau on its meetings as the platform for discussion, dated 1 November 2021, in accordance with paragraph 7 of the resolution.

The Mechanism expressed appreciation to the Registrar and the Language Services Section for providing interpretation for its meetings as the platform for discussion, which had contributed to achieving the objective of inclusivity. The meetings had also been held at an hour that allowed the participation of delegation in both New York and The Hague.

In preparation for the Assembly session, the Mechanism would submit the report to the Assembly required by resolution ICC-ASP/19/Res.7³ in sufficient time for States Parties and other stakeholders to be able to consider it in advance of the Assembly session. The Mechanism would also

¹ See: Introductory note to the Comprehensive Action Plan, para. 7: https://asp.icc-cpi.int/iccdocs/asp_docs/ASP20/RM-CAP-Introductory-Note-ENG.pdf

² Recommendation 48 on reinstating the structure of two Deputy Prosecutors; working culture-related recommendations; gender equality; some human resources issues; Secretariat of the Trust Fund for Victims; register of reparations experts; External political measures against the Court (in which was a meeting in which the Assembly President had participated); ASP-Court relations; Communications strategy; Code of judicial ethics and judicial collegiality; and a first meeting on unified governance.

³ Para.9.

prepare a stand-alone resolution containing both formal and substantive elements and would also keep other Assembly resolutions in view in order to avoid duplication, and intended to liaise closely with the omnibus facilitator.

The members of the Review Mechanism remained available for consultations with Assembly mandate-holders, States, the Court, civil society and all stakeholders.

2. Preparations for the twentieth session of the Assembly

a) Update by the Secretariat

The Secretariat informed the Bureau that the situation in the Netherlands regarding the COVID-19 pandemic was deteriorating and highlighted some of the new host State measures announced on 2 November 2021, including the extended requirement for a valid Dutch COVID-19 entry pass.

The Secretariat was exploring the possibility of contracting an external company to offer the antigen COVID-19 tests, which would provide participants with either the QR code which could be uploaded to the CoronaCheck app or a paper certificate. The test would be valid for 24 hours, allowing participants to enter other venues, such as restaurants, cafes, outside terraces, etc.

The Secretariat was also making preparations for web-streaming of the plenary meetings into three channels (floor language, English and French).

The Secretariat is also taking steps to use Webex for informal meetings which will take place in the main meeting room.

It would not be possible to book a room in the World Forum Centre for any consultations or meetings.

b) Elections

(i) Advisory Committee on Nominations of Judges

The Bureau recalled that the terms of reference of the Advisory Committee provided that the Committee should be designated by the Assembly by consensus on recommendation made by the Bureau of the Assembly also made by consensus.⁴

The Bureau decided to return to this agenda item at a future meeting, since there was a need for further consultations in the Eastern European group.

(ii) Board of Directors of the Trust Fund for Victims

The Bureau took note that the number of candidates corresponded to the number of seats on the Board, and that there was one nomination from each regional group. The Bureau decided to recommend that, pursuant to resolution ICC-ASP/1/Res.7,⁵ the Assembly dispense with the secret ballot and elect the following five candidates by acclamation as members of the Board of Directors of the Trust Fund for Victims: Sheikh Mohammed Belal (Bangladesh); Mr. Kevin Kelly (Ireland); Mr. Andres Parmas (Estonia); Ms. Minerva Josefina Tarávez Mirabal (Dominican Republic) and Mr. Ibrahim Sorie Yillah (Sierra Leone).

c) Credentials Committee

⁴ Report of the Bureau on the establishment of an Advisory Committee on nominations of judges of the International Criminal Court (ICC-ASP/10/36), annex, para.1.

⁵ Paragraph 7.

Further to the President's 8 September request that Bureau members consult within their respective regional groups in order to identify States willing to be appointed to the Credentials Committee,⁶ the Bureau was informed that the respective regional groups were still consulting.

The President requested the regional groups to inform the Secretariat of their nominees for appointment to the Credentials Committee before 22 November 2021.

d) Nomination of national tellers

Since the respective regional groups were still consulting on their nominees for appointment as national tellers for the elections to be held during the twentieth session, the President requested them to inform the Secretariat of their nominees before 22 November 2021.

e) Nomination of a Rapporteur for the twentieth session

The President encouraged the Asia-Pacific group and the African group⁷ to consult, with a view to presenting a candidate for appointment as Rapporteur for the twentieth session, and to inform the Secretariat as soon as possible.

3. Adoption of reports

The Bureau adopted the following reports submitted by the Assembly mandate-holders pursuant to resolution ICC-ASP/19/Res.7, paragraph 7:

- a) Report of the Review of the Procedure for the Nomination and Election of Judges pursuant to resolution ICC-ASP/19/Res.7, dated 28 October 2021.
- b) Report on the topic of Review of the work and operational mandate of the Independent Oversight Mechanism on the IER related recommendations, dated 29 October 2021.
- c) Report of the budget facilitation on IER related recommendations, dated 1 November 2021.
- d) Report of the focal points for complementarity, dated 1 November 2021.
- e) Report of the Review Mechanism as the platform for discussion of IER recommendations, dated 1 November 2021.

The reports would form the record of the work of the facilitations during 2021 on the recommendations of the Group of Independent Experts.

The President encouraged the Assembly mandate-holders for the remaining issues to do their utmost to submit the reports as soon as possible.

4. Election of the Deputy Prosecutor - update

The Bureau was informed that the Presidency of the Assembly had decided to hold a virtual roundtable with all the candidates for the positions of Deputy Prosecutors on 15 November, from 10:30-13:30 hours (New York) / 16:30-19:30 hours (The Hague). The President also indicated that the roundtable would have a duration of 3 hours with a 15-minute break and that States Parties and civil society had been invited to submit questions to be posed to the shortlisted candidates by the end of Friday, 5 November. The President also noted that the web-stream would be delayed by 30 minutes and that the recordings would be made available in the floor language, English and French on the website of the Assembly of States Parties following the roundtable.

⁶ Pursuant to rule 25 of the Rules of Procedure of the Assembly of States Parties.

⁷ The Rapporteur should be from a regional group not represented in the Presidency of the Assembly, and should also preferably be available for the twenty-first and twenty-second sessions of the Assembly.

The President indicated that all the candidates had agreed to participate in the roundtable. She noted that the roundtable would include two sessions, one for each list of candidates. With the assistance of the Secretariat, the President drew lots in order to determine the order of the lists for each session, and decided that List B would be first for session 1 and List A would be second in session 2. It was also decided that the Vice-President, Ambassador Bob Rae would moderate the first session with List B and that the Vice-President, Ambassador Kateřina Sequensová would moderate the second session with List A.

The President indicated that the Secretariat was preparing a Guide for the election, which would be circulated in the following days. The Guide would contain, inter alia, the two sample ballot papers, one with the three candidates for list A and a second ballot with the three candidates for list B, as indicated by the Prosecutor in his letter dated 10 October 2021, which has been issued as document ICC-ASP/20/34.

The President noted that unless a shorter term was decided at the time of their election, the two Deputy Prosecutors shall hold office for a term of nine years, in accordance with article 42, paragraph 4, of the Rome Statute. Pursuant to article 45 of the Statute, the term of office of the two Deputy Prosecutors shall commence on the date of the solemn undertaking, i.e. 8 March 2022. The term of the current Deputy Prosecutor ends on 7 March 2022.

5. Lessons learnt exercise of the Prosecutor's selection process - update

The Bureau took note that, on 2 November 2021, it had adopted the amended text for the Election of the Prosecutor lessons learnt exercise, dated 29 October 2021. The President welcomed the appointment of the facilitators H.E. Alexander Marschik, Permanent Representative of Austria to the United Nations in New York; and H.E. Ksenija Milenković, Ambassador of Serbia to the Kingdom of the Netherlands in The Hague, who would be informed so that they could begin their work as soon as possible.

6. Status of contributions

The Bureau was informed that the Court had received two important payments of €8,150,000 of outstanding contributions by a State Party, as well as an advance payment of €5 million for 2022 by another State Party. The President expressed her appreciation to the States Parties for the payments made and stated that it was a significant development which contributed to solving the liquidity situation at least for the rest of 2021.

The Bureau took note that there was an improvement in the level of arrears with the recent payments. Additional information would be provided to all States Parties via the monthly financial report.

7. Other matters

a) Response of the Bureau to Pre-Trial Chamber II

The President informed the Bureau that the formal response of the Bureau to Pre-Trial Chamber II following the Chamber's 8 October request⁸ to the Bureau to submit information on the identification of the authorities currently representing the Islamic Republic of Afghanistan, had been adopted by the Bureau on 25 October and conveyed to the Pre-Trial Chamber on 26 October.

⁸ Situation in the Islamic Republic of Afghanistan (2021/EOSS/169/JCA/jt), dated 8 October 2021.