

**Twentieth session**

The Hague, 6-11 December 2021

**Report of the Review Mechanism submitted pursuant to
ICC-ASP/19/Res.7, paragraph 9****I. Introduction**

1. The present report of the Review Mechanism (“Mechanism”) is submitted pursuant to paragraph 9 of resolution ICC-ASP/19/Res.7 and further to the Report of the Review Mechanism on the overall progress of its work¹, also submitted pursuant to this resolution. Paragraph 9 states as follows:

“9. *Requests* the Review Mechanism, in close coordination with the Court Focal Points and relevant Assembly Mandates, to provide regular updates to all States Parties through the Bureau Working Groups, on the review process including on any impediments to progress identified, to brief the Assembly in writing on the overall progress of its work, ideally before 30 June 2021, and to submit a report on the review process to the Assembly well in advance of its twentieth session, on:

- a) Progress in the assessment of and possible further action on the recommendations of the Independent Experts and measures for the implementation of the review process;
- b) Progress in the work of the relevant Assembly Mandates on the issues referenced in resolution ICC-ASP/18/Res.7 paragraphs 18 and 19; and
- c) Any other progress in the review process;”

II. Mandate of the Review Mechanism

2. The mandate of the Mechanism is set out in the resolution with specific deadlines for the completion of each stage of its mandate.²

a) *Proposal for a categorization of the Independent Experts’ recommendations and remaining review issues*

3. The Mechanism submitted to the Bureau and States Parties the “Categorization of recommendations and remaining issues” on 30 April 2021, in accordance with the deadline set out in paragraph 4 (a) of the resolution ICC-ASP/19/Res.7.³

4. The Bureau considered and adopted the “Categorization of recommendations and remaining issues” on 31 May 2021.⁴ At that stage of the work of the Mechanism, the involvement of States Parties in the discussions on the recommendations, regardless of their

* Re-issued due to technical reasons.

¹ https://asp.icc-cpi.int/iccdocs/asp_docs/ASP20/RM.Overall-progress.30Jun21.1950-ENG.pdf

² ICC-ASP/19/Res.7, paras. 4 (a), 4 (b), and 9.

³ https://asp.icc-cpi.int/iccdocs/asp_docs/ASP20/Categorization%20of%20the%20IER%20Recommendations-final.29Apr21.1945.pdf.

⁴ https://asp.icc-cpi.int/iccdocs/asp_docs/ASP20/Bureau%20decision-Categorization.31May21.2400.docx.pdf.

allocation, constitute an important element of the future work on the review of the Court, and a number of States Parties had sought assurances that they would have the opportunity to participate in those discussions. The Mechanism underscored that the “Categorization” will serve as a guide throughout the review process both on the assessment, and implementation where appropriate.

b) *Proposal for a comprehensive action plan for the assessment of the recommendations of the Group of Independent Experts, including requirements for possible further action*

5. The Mechanism submitted to the Bureau the “Proposal for a comprehensive action plan for the assessment of the recommendations of the Group of Independent Experts, including requirements for possible further action” (“CAP”) on 30 June 2021,⁵ in accordance with paragraph 4 (b) of the resolution. The Bureau adopted the CAP on 28 July 2021.⁶

6. Like the Categorization, the Review Mechanism considers the CAP as the road map for the assessment of all the recommendations throughout the Review process.

7. The Mechanism is well aware that not all the recommendations that according to the CAP were due for assessment in 2021 were indeed assessed in the facilitations. Sometimes there was a discussion but more time and/or information was needed to come to a conclusion. In other cases, the discussion on the assessment was postponed because those responsible according to the categorization were not yet in a position to give their definitive assessment. In view of the ambitious timelines as set out above, the Mechanism recognizes that certain amount of flexibility as to the timelines is needed. The Mechanism nevertheless hopes that overall, we can continue the ambitious approach and keep up the pace in the review process. With a few exceptions we hope that the assessment, not the implementation, can be completed as planned.

c) *The Review Mechanism as the platform for discussion*

8. In its 1 November 2021 “Report of the Review Mechanism as the platform for discussion of IER recommendations”, dated 1 November 2021, the Mechanism recalled that, in allocating the IER recommendations in the CAP, it had decided to work through existing Assembly structures.

9. The Mechanism held six meetings as the platform for discussion, on 13 and 30 September, 11, 22, 27 and 28 October 2021, and invited the Court and actors to which it had allocated recommendations in the CAP to inform States and other stakeholders on the status of their assessment of the recommendations. Some actors informed the meeting of the status of implementation of the recommendations in addition to the status of their assessment. The meetings assessed recommendations with a timeline for assessment of the end of second half of 2021, in the following order: R48 on the Election of two Deputy Prosecutors; R14 on Rebuilding internal trust and reshaping the Court’s working culture; R87, R129 and R130 on Strategy to deal with and zero tolerance to bullying, harassment, and sexual harassment; R15 on gender equality; R16-20 and R88 on human resources; R354-360 on the Secretariat of the Trust Fund for Victims and R350 on the register of reparations experts; R169 on external political measures against the Court, R361-362 on ASP-Court relations, R163 on communications strategy, R181-188 on Code of judicial ethics, R185-188 on judicial collegiality. Finally, the Mechanism held a preliminary discussion on R1-13 on unified governance. Information on those discussions is set out fully in the 1 November 2021 report.

10. The Mechanism takes note of the reports of the facilitations on the respective issues assigned to them as the platform for discussion, and of the status of the assessment of the recommendations by the actors to which they were allocated in the CAP (see annex I).

(i) *Progress in the assessment of and possible further action on the recommendations of the Independent Experts and measures for the implementation of the review process*⁷

11. The Mechanism has carefully considered the reports of the facilitations referred to in annex I, as well as the discussions held in the six meetings of the Mechanism as the platform for discussion. In this regard, the Mechanism submits herewith a Matrix, titled “Progress in

⁵ https://asp.icc-cpi.int/iccdocs/asp_docs/ASP20/RM-Comprehensive%20Action%20Plan-ENG.pdf

⁶ https://asp.icc-cpi.int/iccdocs/asp_docs/ASP20/ICC-ASP20-BD-CPA-ENG.pdf

⁷ Ibid., para. 9 (a)

the assessment of the IER recommendations” (annex II). The Matrix provides an overview of the progress in the assessment of and possible further action on the respective recommendations of the Independent Experts with a timeline for assessment of the second half of 2021 in the CAP, and those recommendations for which discussion should start early, that is, in 2021.

12. The Mechanism notes that the mandate holders have discussed the recommendations assigned to them as the platform, and that where appropriate the Court has briefed the respective facilitations on its assessment of the recommendations, indicating in that regard which recommendations it assessed positively or negatively and which recommendations the assessment is still ongoing.

13. In the view of the Mechanism, the Matrix presents to States Parties and all stakeholders an overview of the status of the review process. To get the full picture, the Matrix should be read in conjunction with the CAP. The Matrix is a purely factual document and is based on the reports of the different facilitations and the Mechanism. The Mechanism sees the Matrix as a living document that will incorporate further progress on the assessment, and further action including implementation of those recommendations that are positively assessed. The Mechanism proposes to circulate an updated version of the Matrix in the first half of 2022 and a further update in advance of the twenty-first session of the Assembly.

(ii) *Progress in the work of the relevant Assembly mandates on the issues referenced in resolution ICC-ASP/18/Res.7 paragraphs 18 and 19*⁸

14. As regards the issues referred to in paragraphs 18 and 19 of resolution ICC-ASP/18/Res.7⁹ the Mechanism notes that the relevant Assembly mandates have reported to the Bureau on the outcome of their work during 2021, taking into account the respective recommendations of the IER Experts. Paragraphs 18 and 19 provide as follows:

“18. *Requests* the Bureau to address the following issues as a matter of priority in 2020 through its working groups and facilitations, in a fully inclusive manner, in line with their mandates, commencing consultations at the beginning of the year, and to report back to the Assembly at its next regular session on progress achieved:

- a) Strengthening cooperation,
- b) Non-cooperation,
- c) Complementarity, and the relationship between national jurisdictions and the Court,
- e) Equitable geographical representation and gender balance;

19. *Also requests* the Bureau through its working groups and facilitations to examine any remaining issues to be addressed, with a view to identifying concrete measures to be taken and to report back to the Presidency of the Assembly as part of the preparations for the nineteenth session;”

15. The Mechanism notes that the Assembly mandates have reported on the status of the Court’s assessment of the recommendations, as well as of steps taken towards their implementation. The Mechanism recommends that the mandate holders for the issues mentioned in paragraphs 18 and 19 of ICC-ASP/18/Res.7 continue their work on the recommendations for which they have been designated as the platform for discussion in the CAP and report to the twenty-first session of the Assembly.¹⁰

(iii) *Any other progress in the review process*

16. The Mechanism has always been striving to observe the principles of transparency and inclusiveness throughout its mandate and, to this end has, at each stage of its work, consulted broadly with States Parties, the Assembly President and Vice-Presidents, the Court, in particular the Court focal points, as well as civil society and all relevant stakeholders. The meetings of the Mechanism as the platform for discussion benefited from interpretation into the working languages of the Court, which greatly assisted in ensuring inclusiveness in its

⁸ Ibid., para. 9 (b).

⁹ Review of the International Criminal Court and the Rome Statute system.

¹⁰ This mandate will be included in the Review resolution.

work. The Mechanism is grateful to the Registrar and the Language Services Section for their valuable assistance in this regard.

III. Next steps

17. The Mechanism intends to continue its work in 2022 in line with the CAP and as mandated by the Assembly. Pursuant to the CAP, the Mechanism will continue to function as a platform for discussion in the assessment of those recommendations it has assigned to itself in 2022. In this regard, the Mechanism notes, *inter alia*, the continued assessment of the recommendations on unified governance; the assessment of the recommendations on victim participation; on the issue of tenure and of the assessment of the recommendations on relations with civil society and media. A more detailed work plan will be presented at the beginning of 2022.

18. The Mechanism will, in conformity with its mandate, continue to monitor the overall progress of the review process both regarding assessment and further action and where appropriate, including implementation. The Mechanism proposes to further keep track of implementation through a timeline that will be developed in the assessment process. The Mechanism will regularly brief States Parties and all stakeholders on its work through its briefings, reports, and through the Matrix.

19. Finally, and where necessary, the Mechanism may serve as a platform for/or facilitate round table discussions on the implementation of positively assessed recommendations.

Acknowledgements

20. The State Party representatives (Co-Chairs) of the Review Mechanism firstly want to express deep gratitude to the *ad country* focal points, Ms. Monica Mosammat Shahanara, Ms. Nawrid Sharmin, and Mr. Nasir Uddin (Bangladesh), Mr. Jaime Moscoso and Mr. José Juan Hernández (Chile), and Ms. Paulina Dudzik and Mr. Władysław Manteuffel, succeeded by Ms. Katarzyna Padlo-Pekala (Poland), for their supportive role and valuable inputs in the work of the Mechanism.

21. The members of the Mechanism would also like to express their gratitude to the three Court focal points, Mr. James Stewart, Deputy Prosecutor, Mr. Hiram Abtahi, Chef de Cabinet of the Presidency, and Mr. Osvaldo Zavala Giler, Senior Special Assistant to the Registrar, for the collaborative work and high spirit of engagement in the work of the Mechanism and acknowledge their efforts in spite of challenging transition processes for the Judiciary and the Office of the Prosecutor.

22. The Mechanism also acknowledges the support and advice of the President of the Assembly, Ms. Silvia Fernández de Gurmendi, and the Vice-Presidents, Ambassador Robert Rae (Canada) and Ambassador Kateřina Sequensová (Czech Republic). The Mechanism is deeply indebted to the Assembly Secretariat, in particular Ms. Gaile Ramoutar, for consistent efficient and responsive assistance throughout the work of the Mechanism.

Annexes

Annex I

Reports of Assembly mandate holders on the issues assigned to them as the platform for discussion

1) Reports of the Assembly mandate holders

- a) Report of the Bureau on the Study Group on Governance (ICC-ASP/20/21)
- b) Report of the Bureau on complementarity (ICC-ASP/20/22)
- c) Report of the Bureau on non-cooperation (ICC-ASP/20/23)
- d) Report of the Bureau on cooperation (ICC-ASP/20/26)
- e) Report of the Bureau on arrears (ICC-ASP/20/27)
- f) Report of the Bureau on equitable geographical representation and gender balance in the recruitment of staff of the International Criminal Court (ICC-ASP/20/29)
- g) Report of the Review of the Procedure for the Nomination and Election of Judges pursuant to resolution ICC-ASP/19/Res.7 (ICC-ASP/20/30)
- h) Report of the Bureau on the scheduling of Assembly sessions (ICC-ASP/20/33)
- i) Report of the Bureau on legal aid (ICC-ASP/20/39)

2) Compilation of reports of the Assembly mandate holders on the IER recommendations (ICC-ASP/20/38)

- a) 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.
- b) Report of the budget facilitation on IER related recommendations, dated 1 November 2021.
- c) Report on the topic of Complementarity on the IER related recommendations, dated 1 November 2021
- d) Report of the Review Mechanism as the platform for discussion of IER recommendations, dated 1 November 2021.

Annex II

Matrix

Progress in the assessment of the IER recommendations

Submitted pursuant to resolution ICC-ASP/19/Res.7, para. 9

Recommendation	Result assessment (plus date)	Implementation date	Comments
R14	positive	immediately	Ongoing implementation
R15	positive	immediately	Ongoing implementation
R16	positive	beginning of 2022	
R17	positive	implemented in 2020	
R18	positive	end of 2021	
R19	positive	1st quarter 2022	
R20	positive	implemented in 2020	Already implemented
R35			
R48	negative		The structure of two Deputy Prosecutors reinstated, but the financial consequences are part of budget discussion
R55	positive	2022	final result dependent on budget discussion
R65	positive	2022	
R67	positive	2022	
R68	positive	2022	
R71	positive	2022	Prosecutor can set priorities after budget has been approved
R76	partially pending	2022 (partial implementation)	Decision to strengthen State Party participation within existing legal framework; further consideration pending in relation to governance model discussions
R77	pending		Related to governance model discussions
R87	positive	immediately	Ongoing commitment
R88	positive	immediately	Ongoing commitment
R91	positive	immediately	Court already implements the recommendation
R93	positive	immediately	Already implemented by the Court
R110	negative		Feedback by the UN FDP was that the FDP was not suited for judges. A possibility where candidates make declarations to the IOM at the time of their election. (New) ACN to be consulted.
R115	pending		The Court continues to consider the implications. Ways could be explored in order to capture the spirit of this recommendation for certain categories that are not staff members
R116	pending		To be read together with R117
R117	pending	2022	The Court will explore the possibility of the first instance judge in line with R117. Nonetheless it was highlighted that the costs

			would be higher compared to the disputes being handled by the volunteer staff members.
R118	positive	2022	A proposal has been made in the budget proposal for 2022 in order to have resources for six months for the services of an Ombudsperson. If the Court moves to UNAT, the Court would have to avail itself of UMOMS's services.
R119	pending		Linked to R117. As a general practice, Ombudsperson goes together with mediation.
R120	pending		Assessment of the advantages and disadvantages of moving from ILOAT to UNAT is ongoing and will be part of the study to be prepared by the Court. SUC prefers staying with ILOAT.
R121	pending		
R129	positive	immediately	Ongoing commitment
R130	positive	immediately	Ongoing commitment
R139	pending		
R140	pending		States Parties expressed wide support for the further consideration of the issue of liquidity and arrears as a strategic priority for the future of the Court
R141	pending		
R142	positive	early 2022	Such organigrams will be made available by the Court to States Parties early 2022 along with the approved budget for 2022
R146	positive	2022	
R148	pending		
R149	negative		Court is not in a position to support it, as the ICC already has a Court-wide channel of communication to the UN in the form of the New York Liaison Office. The Court agrees with the overall idea but the recommendation is not applicable as such due to concerns with the independence of the OTP, neutrality of the Registrar or confidentiality safeguards.
R151			
R152	positive	immediately	Already implemented by Court
R153	positive	immediately	Already implemented by Court
R163	1st part- positive 2nd part- "an outreach plan for every situation country"	2nd half 2022	
R169	positive	1st half 2022	RM thinks implementation should take place under auspices of Bureau
R171	positive	immediately	Already implemented by Court
R172	positive	immediately	Already implemented by Court
R174	positive	immediately	Already implemented by Court
R178	positive	immediately	Already implemented by Court
R179	positive	immediately	Already implemented by Court
R180	positive	immediately	Already implemented
R181	positive	immediately	Already implemented
R182	positive	immediately	Already implemented

R183	positive	immediately	Already implemented
R184	positive	immediately	Already implemented
R185	positive	immediately	Already implemented
R186	positive	immediately	Already implemented
R187	positive	immediately	Already implemented
R188	positive	immediately	Already implemented
R189	positive	immediately	Court reports “de-facto implementation”
R190	positive	2022	Implementation may be complex. Judges want to have a say in composition of review team
R191	positive	immediately	
R192	positive	immediately	This recommendation has already been implemented by the Chambers Practice Manual.
R193	positive	immediately	The judges will always try to follow the Chambers Practice Manual
R199	positive	immediately	As reflected in the Court’s press release, the judges agreed on concrete measures to implement this recommendation at their retreat in November 2021
R204	positive	immediately	Already implemented
R206	positive	2022	SGG propose a way forward in 2022
R213	pending		The judges will discuss this recommendation in the retreat in November 2021
R214	pending		
R215	pending		
R219	positive	immediately	The Presidency of the Court does not see a role for itself but should be left to the judges in Chambers.
R220	positive	immediately	This recommendation had been implemented with the adoption in 2019 of the Internal Guidelines on Judgment Drafting and Guidelines on judgment structure
R221	positive	2022	Further modalities discussed during Judges retreat in November 2021
R225	positive	immediately	Already implemented
R226	pending		
R227	pending		Assessment commenced but outcome deferred to 1st half 2022 to allow for OTP input
R228	pending		Already implemented
R232	pending		
R233	pending		
R234	pending		
R235	pending		
R237	pending		
R238	pending		Assessment postponed to 1st half 2022
R239	positive	immediate	Already implemented
R240	pending		Assessment postponed to 1st half 2022 to allow for OTP input
R241	pending		Assessment postponed to 1st half 2022 to allow for OTP input
R242	pending		Assessment postponed to 1st half 2022 to allow for OTP input
R243	pending		Assessment commenced but outcome deferred to 1st half 2022 to allow for OTP input
R244	pending		Assessment commenced but outcome deferred to 1st half 2022 to allow for OTP input
R245	pending		Assessment commenced but outcome deferred to 1st half 2022 to allow for OTP input

R246	pending		Assessment commenced but outcome deferred to 1st half 2022 to allow for OTP input
R247	pending		Assessment commenced but outcome deferred to 1st half 2022 to allow for OTP input
R248	pending		Assessment commenced but outcome deferred to 1st half 2022 to allow for OTP input
R249	pending		Assessment commenced but outcome deferred to 1st half 2022 to allow for OTP input
R250	pending		Assessment commenced but outcome deferred to 1st half 2022 to allow for OTP input
R251	pending		Assessment postponed to 1st half 2022 to allow for OTP input
R252	pending		Assessment postponed to 1st half 2022 to allow for OTP input
R254	pending		Assessment postponed to 1st half 2022 to allow for OTP input
R255	pending		Assessment postponed to 1st half 2022 to allow for OTP input
R256	pending		Assessment postponed to 1st half 2022 to allow for OTP input
R257	pending		Assessment postponed to 1st half 2022 to allow for OTP input
R258	pending		Assessment postponed to 1st half 2022 to allow for OTP input
R259	pending		Assessment postponed to 1st half 2022 to allow for OTP input
R260	pending		Assessment postponed to 1st half 2022 to allow for OTP input
R262	pending		Assessment commenced but outcome deferred to 1st half 2022 to allow for OTP input
R263	pending		Assessment commenced but outcome deferred to 1st half 2022 to allow for OTP input
R264	pending		Assessment commenced but outcome deferred to 1st half 2022 to allow for OTP input
R265	pending		Assessment commenced but outcome deferred to 1st half 2022 to allow for OTP input
R266	pending		Assessment postponed to 1 st half of 2022 to allow for OTP input
R267	pending		Assessment postponed to 1 st half of 2022 to allow for OTP input
R269	pending		Assessment postponed to 1 st half 2022 to allow for OTP input
R270	pending		Assessment postponed to 1 st half 2022 to allow for OTP input
R271	pending		Assessment postponed to 1 st half 2022 to allow for OTP input
R272	positive	immediate	The OTP points out that it remains flexible in its approach because it believes that not all partnerships need to be translated into agreements and arrangements.
R273	positive	immediate	Positively assessed for implementation but within certain practical constraints. The OTP continues to explore and promote standard practices and procedures, where possible.
R274	positive	immediate	Positively assessed for implementation but within certain practical constraints. The OTP has encountered some difficulties with the number of different laws and legal requirements in the different States Parties,

			and added that it was challenging to have a one-size fits all approach.
R275	positive	immediate	Ongoing commitment
R276	positive	immediate	Already partially implemented
R277	positive	2022	OTP notes that its implementation would require time and resources
R278	positive	immediate	Implementation may be limited in its scope by the current statutory restrictions
R279	positive	immediate	Already practised by OTP
R281	positive	immediate	Already implemented by the OTP
R284			Assessment postponed to 1st half 2022
R285	positive	immediate	OTP is making efforts to increase the involvement of the Suspects-At-Large Tracking Team (SALTT) with national law enforcement agencies
R292			Assessment postponed to 1 st half 2022
R305	positive	immediately	Already implemented
R306	positive	immediately	Already implemented
R307	positive	immediately	Already implemented
R308	pending		Court concerned about budgetary consequences
R309	positive	immediately	already practised
R310	positive	immediately	Implemented through the multifaceted test of “a reasonable prospect of conviction”
R311	positive	immediately	Already done incidentally but will be done in a more structured way
R312	positive	immediately	Already done incidentally but will be done in a more structured way
R313	positive	immediately	Would be institutionalized, including through the KPIs
R314	positive	immediately	Would be institutionalized, including through the KPIs
R315	positive	immediately	Would be institutionalized, including through the KPIs
R316	positive	immediately	Would be institutionalized, including through the KPIs
R317	positive	immediately	Would be institutionalized, including through the KPIs
R318	positive	immediately	Would be institutionalized, including through the KPIs
R319	positive	immediately	Would be institutionalized, including through the KPIs
R320	positive	immediately	
R321	negative		Court prefers to keep present rules regarding composition ACLT
R322	pending		
R323	pending		
R324	pending		
R325	pending		
R326	pending		
R327	pending		
R328	positive	to be determined	This has been assessed positively, as modified by the agreed draft resolution on Legal aid requesting the Court to review the legal aid system (see OP1)
R329	positive	1st half 2022	Court will further study adequate modalities

R331	positive	1st half 2022	modalities of implementation are being looked at by the Court
R332	positive	immediately	
R333	positive	immediately	Will be included in reform of Legal aid policy
R334	positive	immediately	Will be included in reform of Legal aid policy
R335	partially positive		See Court's comments on R115
R350	positive	immediately	Already implemented
R352	pending	1st half 2022	
R353	positive	1st half 2022	TFV agrees with the recommendation
R354	positive	1st half 2022	
R355	positive	immediately	Already implemented
R356	positive	immediately	Already implemented
R357	positive	immediately	Being implemented
R358	pending	1st half 2022	Related to assessment of R354
R361	positive	immediately	Ongoing commitment
R362	positive	immediately	Ongoing commitment
R371	pending		To be concluded in 2022.
R372	pending		To be concluded in 2022.
R373	pending		To be concluded in 2022
R374	pending		To be concluded in 2022
R375	pending		To be concluded in 2022
R376	pending		To be concluded in 1st half of 2022
R377	pending		To be concluded in 1 st half of 2022
R378	pending		To be concluded in 2022
R379	pending		To be concluded in 2022
R380	pending		To be concluded in 2022
R381	positive	2022	modalities of implementation further discussed in SGG
R382	positive	2022	modalities of implementation further discussed in SGG
R383	positive	2022	modalities of implementation further discussed in SGG
R384	positive	2022	modalities of implementation further discussed in SGG