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The Hague, 6-11 December 2021

**Compilation of reports of Assembly mandate holders on Independent
Expert Review recommendations**

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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

A. Introduction

1. This report to the Bureau on the outcome of consideration of the relevant Independent Expert Recommendations (IER) is submitted pursuant to resolution ICC-ASP/19/Res.7, paragraph 7:

“Requests the relevant Assembly Mandates designated as responsible for assessing and taking possible further action as appropriate on relevant recommendations to commence implementation in 2021 and to submit to the Bureau the outcome of its consideration, including on action already taken and proposals for next steps, by 1 November 2021.”

2. The comprehensive action plan for the assessment of the recommendations of the group of independent experts, including requirements for possible further action, which was proposed by the Review Mechanism on 30 June 2021 and adopted by the Bureau on 28 July, has allocated ten IER recommendations to the facilitation on the review of the procedure for the nomination and election of judges (“the facilitation”), being R371 to R380.

B. Consideration of IER recommendations

3. The facilitation is in the process of considering the allocated recommendations. Two meetings of the facilitation have been convened so far. The first meeting, held on 22 June, discussed the programme of work for 2021 for the facilitation, including the timeline for consideration of the relevant IER recommendations. The second meeting, held on 14 October, undertook consideration of the IER recommendations R371 to R380. At that meeting, States Parties exchanged general comments on the recommendations, including overall perspectives, questions, and initial views on assessment and implementation.

4. Further meetings of the facilitation are planned before the twentieth session of the Assembly of States Parties starts, to continue consideration of these recommendations. The facilitation expects that subject to the views of States Parties and the outcome of this consideration, the Assembly at its twentieth session may take action to assess and implement some or all of the recommendations or decide to continue consideration of some or all of the recommendations in 2022.

C. Next steps

5. The facilitation proposes that the next steps for recommendations R371 to R380 be decided by the Assembly at its twentieth session, based on the outcome of the continued consideration of these recommendations in the facilitation in 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.

A. Introduction

1. At its nineteenth session the Assembly of States Parties (Assembly) adopted the revised operational mandate for the Independent Oversight Mechanism (IOM).¹ The Assembly also requested the Bureau to remain seized of the review of the work and the operational mandate of the Independent Oversight Mechanism, with a view to considering recommendations of the Independent Expert Review in this regard, subject to relevant decisions of the Assembly on the implementation of the report of the Independent Expert Review, and to report thereon to the Assembly at its twentieth session.² On 6 April 2021 the Bureau of the Assembly decided to appoint Ambassador Päivi Kaukoranta (Finland) as facilitator to review the work and the operational mandate of the Independent Oversight Mechanism.

2. In line with the mandate of the IOM facilitation and considering the timelines for consideration in the Review Mechanism's Comprehensive action plan³, the IOM facilitation commenced in 2021 the assessment on recommendations R110 and R115-R121.

3. This report to the Bureau on the outcome of consideration of the relevant Independent Expert Recommendations is submitted pursuant to resolution IC-ASP/19/Res.7, paragraph 7:

“Requests the relevant Assembly Mandates designated as responsible for assessing and taking possible further action as appropriate on relevant recommendations to commence implementation in 2021 and to submit to the Bureau the outcome of its consideration, including on action already taken and proposals for next steps, by 1 November 2021.”

B. Meetings and discussions

4. Three meetings were held on the topic of review of the work and the operational mandate of the Independent Oversight Mechanism, on 28 May, 4 and 25 October 2021, with the Court, States Parties, Observer States and the civil society. The meetings were held by remote-link due to the restrictions imposed by COVID-19. In addition, participants were requested in June to submit any written comments on the recommendations relating to the IOM.

5. The meetings included representatives of the Court, the head of the Independent Oversight Mechanism and of the Staff Union Council.

6. The meetings provided an opportunity for States Parties to discuss the Independent Expert Recommendations (IER) allocated to the review of the work and operational mandate of the Independent Oversight Mechanism by the Comprehensive action plan.

C. Independent Expert recommendations allocated to the review of the work and operational mandate of the Independent Oversight Mechanism

1. Background

7. The overall goal of the facilitation was to discuss and assess the implementation of the recommendations of the Independent Expert Review (IER) touching upon the IOM, and to facilitate discussions on recommendations for which the IOM facilitation has been assigned as the platform for discussion by the Review Mechanism.

8. In the preparation for the work on the topic, consideration had been given to the IER report, the Review Mechanism's proposal for categorisation of the recommendations and its Comprehensive action plan, the Court's overall response to the IER report, and the IOM's response to the IER report. The Review Mechanism's Comprehensive action plan assigned the IOM facilitation as platform for discussions for recommendations R106-R128 and R131

¹ ICC-ASP/19/Res.6, section R, para.141.

² ICC-ASP/19/Res.6, annex I, para.15.

³ https://asp.icc-cpi.int/iccdocs/asp_docs/ASP19/IER-Final-Report-ENG.pdf

and foresaw that recommendations R129, R130, R364 and R368 would be assessed under the Review Mechanism. R368 was going to be addressed also in the Budget Management Oversight (BMO) facilitation and R120 in the Study Group of Governance.

9. At its second meeting the facilitation on IOM commenced with the assessment and provided a platform for discussion on recommendations R110 and R115-R121. The overall objective was to agree on a way forward with regard to the recommendations touching upon the IOM.

2. Assessment of recommendations R110 and R115-R121 of the IER report

10. The Court indicated that it would start working on a comprehensive study at the beginning of 2022 in order to consider all the legal, financial and practical considerations of IER recommendations 115-121 with the aim to submit it for the consideration of States Parties by the end of June 2022.

Recommendation 110 (R110)

11. The Registry indicated that the Court uses the United Nations Financial disclosure programme (FDP) for staff members. Such programme does not cover judges except for the President who discloses financial information because of his administrative and managerial functions on a voluntary basis.

12. During the last election of judges, the candidates were asked if they would agree to voluntarily submit financial disclosure statements based on the programme and the feedback received was positive. Around March-April, the question on the FDP for the judges was raised by the Court with the United Nations FDP in New York and the feedback received was that the FDP was not suited for judges. The United Nations FDP is suited for staff members of international organizations. In addition the FDP stated that it was unclear to them what kind of questions could be asked of judges to assess conflict of interest for their functions.

13. Although there were two UN officials in the UN system who did not participate in the FDP: the President of the General Assembly and the Secretary-General, the matter was dealt at a previous stage when they applied as candidates for those positions and made some disclosure with the United Nations Office of Internal Oversight Services (OIOS). Following this system, the possibility where candidates would make declarations at the time of their election to the IOM could be explored.

14. Lastly, the Registry shared the view that a disclosure programme only for judges could be expensive for the Court to set up and run and that is why the Court uses the UN disclosure programme instead of developing its own.

Recommendation 115 (R115)

15. The Registry acknowledged the spirit of the recommendation, nonetheless indicated that making the internal justice system of the Court available to “all” may be complicated. Besides staff members, different categories of people work at the Court, such as elected officials, interns and visiting professionals, who are not staff, as well as Counsel and members of their teams. In addition, consultants and contractors are bound by the terms and conditions of their contracts with their own dispute resolution clauses.

16. Staff members and (elected officials) are the two categories who have access to the ILOAT jurisdiction or that would have access to UNAT if the Court made this change in the future. On the other hand, Counsel and members of their teams are regulated by rules 20, 21, 22 of the Rules of Procedure and Evidence (Rules) and Chapter 4 of the Regulations of the Court (RoC) and of the Regulations of the Registry (RoR), and the Code of Professional Conduct for Counsel.

17. Nonetheless, it was suggested that ways could be explored in order to capture the spirit of this recommendation for certain categories that are not staff members. The suggestion that Counsel (and their team members), as well as interns/visiting professionals could be given access to the Ombudsperson and/or Staff Counsellor was put forward. The new harassment policy at the Court was also one of the ways where other categories of personnel could be taken into consideration for various purposes.

Recommendation 116 (R116)

18. The Registry indicated that the main difference of moving away from peer based panels (Appeals Board, Disciplinary Advisory Board) would be that the first instance judge would be totally independent and would make final decisions instead of recommendations to the Prosecutor and the Registrar.

19. This practice of the first instance judge has been adopted by many organizations in particular those that accept UNAT's jurisdiction since it is a pre-requirement for having access to UNAT. Another option was put forward which is for organizations to accept the jurisdiction of the UN Dispute Tribunal, as first instance and the UNAT as a second and final instance.

20. The IER assumption seems to be that having independent administrative judges instead of the two Boards will be more cost-effective because it will enhance the settlement of disputes and conflicts and reduce escalation to the ILOAT. However, by having to pay the first instance judge there will be more expenditures in the short run since volunteers on the Boards do not get any remuneration for their work.

Recommendation 117 (R117)

21. The Registry suggested to read this recommendation in conjunction with recommendation 116. It was indicated that the Court has two peer based appeal mechanisms: one for disciplinary matters, which is the disciplinary advisory board, and one for all other administrative matters relating to the conditions of service of staff, which is the Appeals Board.

22. It was further explained that whenever there are cases whether disciplinary or administrative in nature, panels, composed of staff members, would make recommendations to the head of the respective organ. As the IER has noted staff members who volunteer may end up not having sufficient time and/or the right training in order to carry out their duties.

23. As other organizations have already implemented this change, the Court will explore the possibility of the first instance judge in line with recommendation 117. Nonetheless it was highlighted that the costs would be higher compared to the disputes being handled by the volunteer staff members.

24. The Registry also recalled that complaints against judges, Prosecutor and Deputy Prosecutor, are based on a different system which is regulated in the Rome Statute (articles 46 and 47).

25. Support for this recommendation was shown by the IOM which indicated that it would welcome the idea of rethinking the system, thus, removing peer panels and instead having a more specialized body. The IOM stated that peers are just not well equipped in dealing with the legal nuances of the cases, while acknowledging that the peers are not to be blamed for that situation since it is not their job and they are not trained for it. Nonetheless, the IOM did not exclude the idea of a peer-based panel, however it would be crucial for those peers to be experts in the field, such as legal officers, as was the case of many organizations which have legal officers focused only on that issue.

26. The Staff Union Council referred to their submission of 31 March 2021 to the Review Mechanism, specifically on internal grievances procedures, indicating that it is closely involved with the procedure at the Court. They nominate staff to the Advisory Board and Appeals Board. In addition, they also have the Staff Advisory Committee within their members who frequently act as advisers to Staff, so they are familiar with the internal framework. The Staff Union Council agreed that the internal grievances procedure require improvements, but what is mostly needed is the creation of a more efficient, transparent and fair system which also provides confidentiality to staff members.

27. The Staff Union Council also touched upon the issue of moving from the Disciplinary Advisory Board, Appeals Board to the UNDT and the UNAT, and stated that such issue is also linked to recommendation 120. Such change was welcomed, however it was suggested to be done in consultation with the Council. Lastly support was shown for resorting to external consultants since the latter would add more voice and authority to such change.

28. Some additional explanations were asked as regards the recommended move from peer based panels to a first instance dispute judge. A few queries as regards the ad hoc investigative panels were raised:

a) A view was shared that there could be a scenario where this situation could become complex especially considering bringing different people together to carry out investigations. It was further asked how the ad hoc investigative panel would be established and who would sit on them.

b) As regards the investigative aspect, the question whether that aspect would continue to be done by the IOM was posed. In addition, the issue of the amendment of rule 26 of the Rules of Procedure and Evidence was raised. According to Section IV of the Rules, the latter seem to have a set of relevant rules, thus, the query as to whether amendments would be needed were raised. This issue was suggested to be useful and thus be considered before this exercise.

29. In giving a response to such query, the IOM indicated that it was clear that the latter shall investigate complaints against elected officials, and that it was for the States Parties to decide whether they want the involvement of external judges or experts for these issues but thought that there is a separation between the investigative process and the disciplinary one which is why it is linked to recommendation 117.

30. Furthermore, the IOM stated that so far there had been no issues with the IOM carrying out investigations, however complications could arise with the arrival of the external parties with access to the Court systems and documents. In order not to amend rule 26, the investigation framework of elected officials should be left to the IOM. Once the IOM report is complete, it could then be given to the panel of experts for assessment on whether it constituted misconduct or serious misconduct according to the rules, which would be similar to the system for staff members. This approach would address one of the issues which is that currently in the cases of judges for instance, it is judges of the Court who make that assessment against other judges, which raise a number of issues. Hence, the view was shared that there is a way to reconcile the recommendations of the IER and the weakness of the system that have been identified within the existing framework and rule 26.

31. Further assessment was requested in relation to recommendation 120 which stated that for administrative matters the Court resorts to UNAT rather than ILOAT.

32. A view was shared that recommendations 116-121 were very useful. There was strong support for further discussions in order to find the right solution and move away from the voluntary system.

33. Given the importance and the complex nature of these recommendations, another query as to whether the Court representatives could provide their views and also their plans as regards implementing these recommendations in writing, was raised.

34. The point was made that since this recommendation was directly related to the Staff Union Council, it would be very important to engage them in the discussion.

Recommendation 118 (R118)

35. There was strong support for this recommendation among the Court, subsidiary bodies such as IOM and States Parties. The Court indicated that in line with the recommendation, this is an essential feature in any international organizations and as such 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. Furthermore, the Committee had been presented with a proposal to have a consultant providing these services in line with the IER recommendation to have “an ungraded position”, a “true outsider”.

36. Should it be decided in the future to move from ILOAT to UNAT, the Court would have to avail itself of UMOMS’ services. Based on a preliminary conversation with the UN Ombudsperson, while exploring the move to UNAT, it was noted that the UN office does not have a branch or an office in the Hague, however the proposal was to have a P-5 and an administrative assistant at the Court paid by the Court, but reporting to the UN office.

37. The IOM stated that not having informal resolution mechanisms for staffing constituted a critical gap in the system of the Court, that an informal resolution mechanism

would be able to help staff in a more suitable and efficient way and thus that it supported the mechanism, which would be important not only for the Court but also for the work of the IOM.

38. A view was expressed about the importance of this recommendation and furthermore that the IER recommendations were associated with the idea that the latter are cost-neutral, however it was said that this was not necessarily the case. It was highlighted that everyone should be aware that at a later stage, both the legal and financial implications of the possible implementation of specific recommendations will have to be assessed, bearing in mind the difficult discussions ahead for States Parties, when considering the requested 2022 budget increase of 9,5 per cent by the Court.

Recommendation 119 (R119)

39. The Court stated that as a general practice, the Ombudsperson whether it is the UN Office or not, goes together with mediation. Such service in an informal way is fundamental when it comes to solving disputes between staff members who do not get along, compared to going through formal mechanisms and all the stress, time and expenditure it involves. It was stated that mediation is always voluntarily accepted by both parties to a conflict, which is what gives the Ombudsperson the space to do his/her job. Nevertheless in some national jurisdiction a mandatory conciliation attempt is mandatory before going before the judge.

Recommendation 120 (R120)

40. The Court indicated that there had been discussions with organizations that made the change to UN Appeals Tribunals. Accepting UNAT's jurisdiction has costs that are calculated on the basis of the number of staff of the organization and whether that organisation is part of the UN system or not. It was acknowledged by the Court that there could be good reasons to move to UNAT but assessing the advantages and disadvantages of doing so would be part of the study to be prepared.

41. However, according to a different view, the Staff Union Council by referring to its submission on 31 March 2021 to the Review Mechanism, stated that they believed that the change from ILOAT to the UNAT would be detrimental to staff and that ILOAT is entirely adequate to adjudicate complaints and guarantees effective and independent oversight. In addition, the Staff Union Council again made reference to their submission where they proposed to look at the UN Secretary-General report on the review of jurisdiction set up of UN Common System which outlines benefits and disadvantages of ILOAT and UN tribunals and to be informed from there.

Recommendation (R121)

42. The Court indicated that this recommendation is a general one that touches upon many different issues. Some of the initiatives that the Court has engaged in the last few years, such as the staff engagement survey, as well as the importance of consulting the Staff Union Council have the objective of improving the staff trust in relation to internal grievances procedures. Major consideration was also given to the importance of transparency and confidentiality when dealing with issues that are disciplinary by nature, discussions upon which, would be held in the context of all recommendations.

New proposal

43. A proposal on the establishment of a Grievance Committee in the Bureau of the Assembly, which would constitute a confidential channel to convey complaints, was submitted by Mexico. An initial exchange of views between States Parties and the Court took place. There was an understanding that elements contained in the proposal can be considered in the work on internal grievance procedures.

3. Way forward

44. Given the discussion held by the IOM facilitation, the corresponding discussion held in coordination with Budget Management Oversight on the IOM related IER recommendations, and the allocation set out by the Comprehensive action plan, it is suggested that the discussions and follow-up of the work on the recommendations assigned to the IOM facilitation as a platform continue in 2022 on the basis of these discussions. The

assessment of these IER recommendations should be finalized in advance of the twenty-first session of the Assembly.

C. Report of the budget facilitation on IER related recommendations, dated 1 November 2021.

A. Introduction

1. The mandate for the budget facilitation is derived from the Rome Statute, which provides that the Assembly shall “Consider and decide the budget for the Court”.⁴ On 6 April 2021 the Bureau of the Assembly decided to appoint Ambassador Frances-Galatia Lanitou Williams (Cyprus) as the facilitator for budget.

2. The Comprehensive action plan submitted to the Bureau by the Review Mechanism⁵ allocated the following Independent Expert Review (IER) recommendations to the budget facilitation: i) R139, R140, R141 and R142 to be considered during the second half of 2021; ii) R132, R133, R135, R136, R137 and R138 to be considered in the first half of 2022; and iii) R134 to be considered in the second half of 2022.

3. Pursuant to paragraph 7 of resolution ICC-ASP/19/Res.7, this report reflects the outcome of the consideration by States Parties of the relevant IER recommendations allocated to the budget facilitation, including on proposals for next steps, and it is submitted to the Bureau for its consideration.

B. Meetings and discussions

4. For the purpose of assessing the relevant IER recommendations allocated to the budget facilitation, meetings were held on 21 and 28 October 2021 with representatives of States Parties and the Court. The second meeting was a joint meeting of The Hague and New York States Parties delegations which served as an opportunity to continue the assessment of IER recommendation R140, and was held in conjunction with the arrears facilitator, H.E. Mr. Rodrigo Carazo (Costa Rica).

5. The meetings were held by remote-link due to the restrictions imposed by COVID-19.

C. Independent Expert Review (IER) recommendations allocated to the budget facilitation

1. Background

6. At its meeting on 21 October 2021 the budget facilitation commenced with the assessment of recommendations R139 to R142 which have been prioritized for consideration during the second half of 2021, and, at its first joint meeting with the arrears facilitation on 28 October 2021 it continued with further discussion on recommendation R140.

7. During these meetings, it was recalled that, at this stage of the process, States Parties, were only expected to assess whether particular recommendations should advance for further consideration with a view to their possible implementation. It was thus not the objective of these meetings to conclude the discussion on all the substantive and procedural aspects of these recommendations or to necessarily decide on their implementation should further consideration be required. In this regard, concrete next steps were discussed with a view to further facilitating the consideration among States Parties on the modalities and scope of the respective implementation of recommendations, as appropriate.

2. Assessment of recommendations R139-142 of the IER report

Recommendation 139 (R139)

8. The facilitator noted that the IER report argues that Assembly meetings tend to be dominated by technical budgetary discussions at the expense of political discussions, and that, according to the IER, one way of addressing this issue was proposed in R139, namely: by deferring to the CBF recommendations, concluding the negotiations on the budget prior to the Assembly meeting and by dedicating an initial technical session to the budget prior to the Assembly discussion so that States Parties can focus on strategic policy discussions as a

⁴ Rome Statute, article 112 (2)(d).

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

higher political level. To frame the assessment of the recommendation, the facilitator invited States Parties to consider if the underlying concerns identified by the IER are shared and, if so, if the way to address this concern would indeed entail the implementation of the proposals contained in R139 or perhaps other possible measures.

9. During the discussions, while delegations shared the goal to, when possible, strive for consensus on the budget proposal before the Assembly, it was also noted by some that the budget is a very delicate and important responsibility of the Assembly and that may, as appropriate, require additional discussions. States Parties noted that considering ways of further improving or enhancing the budget negotiation process was indeed desirable. In this regard, a number of delegations recalled the importance of deferring to the CBF recommendations on technical matters. For this reason, some States Parties indicated that having specialized representatives to negotiate the budget during the Assembly was not only difficult for smaller delegations, but also seemed to contradict the notion of deferring to the technical role of the CBF, and thus may be perceived as a duplication.

10. Furthermore, some States Parties did not necessarily agree that Assembly sessions are dominated by budget discussions and noted in this regard the different strategic and policy discussions normally held during the meetings. Other delegations, on the other hand, highlighted that indeed budget negotiations have a prominent role during the Assembly, which presents challenges for smaller delegations to participate in other political and strategic discussions, but also noted that the solution should be avoiding overlaps and ensuring separate times allocated to budget negotiations.

Recommendation 140 (R140)

11. Recommendation R140 was considered in two different meetings, the latter of which was jointly held with the facilitation on arrears and the New York Working Group.

12. During the first meeting, the budget facilitator noted and that although the responsibility to assess, and as appropriate, implement R140 falls under the Assembly, and not the Court, it has been of great assistance to receive information from the Registry on the steps it has taken to address the situation. She further recalled that the issue of liquidity has been consistently considered by the different oversight bodies, including the External Auditors, the Audit Committee, and more recently the CBF. In this regard, the facilitator proposed to continue the consideration of this recommendation building on the information already available. Accordingly, she noted that the Registry had suggested to compile in one document, by the second half of 2022, all reports and recommendations by the different oversight bodies concerning the issue of liquidity. Such a report, was suggested, could be a technical basis for further consideration of this recommendation in 2022.

13. A number of delegations indicated that it was the responsibility of States Parties to make sure contributions are paid. In this regard, it was considered that the proper assessment of this recommendation would benefit from the recommendations made by the different oversight bodies, and thus, having a compilation by the Registry would be a useful basis on which to continue. Some States Parties emphasized the importance of this issue and the current financial challenges faced by the Court in the light of the level of arrears. It was noted that R140 suggests looking into the practices of other international organizations regarding the measures used to dealing with arrears, and whether such comparative analysis could also be made available.

14. At the suggestion of the budget facilitator, States Parties agreed with having a second meeting dedicated to the consideration of this recommendation, together with the facilitator on arrears and the New York Working Group.

15. At the joint meeting with the facilitator on arrears, on 28 October 2021, 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. Some State Parties noted that further consideration of this recommendation should not include any additional measures other than those already provided for in the Rome Statute, while a number of States Parties emphasized the need to consider possible further measures and, in this regard, look into practices of other relevant international organizations, as recommended by the IER. To this end, the budget facilitator will engage with the Secretariat of the Assembly to discuss the modalities for such a comparative analysis.

16. A more detailed report on the discussions that took place during the meeting on 28 October 2021 has been prepared under the auspices of the facilitator on arrears.

Recommendation 141 (R141)

17. The facilitator mentioned that in the Comprehensive action plan the Review Mechanism noted its understanding that this recommendation is an ongoing commitment. Furthermore, the facilitator put forward to States Parties' consideration a proposal for the Registry to compile in a report, by the second half of next year, all comments and recommendations that have been made in relation to the levels of the Working Capital Fund and the Contingency Fund by the different oversight bodies, namely, the External Auditors, the Audit Committee and the CBF. The facilitator suggested that such a compilation could aid States Parties in their consideration of this recommendation by providing a consolidated technical basis.

18. The States Parties who intervened agreed with the importance of the recommendation made by the IER, highlighting the significance these matters have had in previous budgetary negotiations for some delegations. It was also indicated that having a report compiled by the Registry would indeed assist the continued consideration of this recommendation, noting that the different oversight bodies have also made relevant and similar recommendations on these issues. Accordingly, support was expressed for the facilitator's proposal as a way forward.

Recommendation 142 (R142)

19. The facilitator reported that she had been informed by the Court that such organigrams will be made available to States Parties in early 2022 along with the Approved Budget for 2022, reflecting the structure as approved. Accordingly, a representative of the Registry stressed the Court's commitment to implement this recommendation by enhancing the level of details of the organigrams with a view to providing more transparency, as recommended by the IER. To do so, the Registry explained that the organs of the Court were considering how to best address this recommendation with the aim of delivering a new organigram as soon as possible after the approval of the budget, for the consideration of both States Parties and the CBF.

20. While the delegations who intervened agreed with having the new organigram reflecting a more detailed and transparent structure of the Court once the budget for 2022 is approved by the Assembly, it was also proposed having a revised organigram reflecting the Court's structure as currently approved, enquiring whether this could not be done in the short-term. At the request of the facilitator, the Registry explained that in the light of ongoing changes in the organizational structure of the OTP, which still require approval by the Assembly the exercise would be more accurate if done based on the 2022 approved programme budget. Furthermore, it was noted that internal considerations are still underway on how to present some sensitive information in a more transparent manner.

3. Way forward

21. The facilitator indicated that, from what transpired in the meetings, States Parties will revisit these recommendations in 2022, where appropriate, based on the concrete actions and next steps discussed. She further recalled that the report on the assessment of IER recommendations is expected to be submitted to the Bureau by 1 November 2021. To this end, this report of the discussions on the IER recommendations in the context of the budget facilitation is submitted to the consideration of States Parties.

D. Report of the focal points for complementarity pursuant to Review Resolution ICC-ASP/19/Res.7, dated 1 November 2021.

1. At its second meeting on 6 April 2021, the Bureau appointed Australia and Uganda as *ad country* focal points for the topic of complementarity (also considered an “Assembly Mandate”).
2. At its nineteenth session the Assembly of States Parties (Assembly) requested the Bureau to remain seized of the topic of complementarity and continue dialogue with the Court.⁶ Separately, the Assembly in its ICC Review Resolution ICC-ASP/19/Res.7 indicated work should continue on the priority topic of “Complementarity, and the relationship between national jurisdictions and the Court” and that progress should be reported to the Assembly in advance of its twentieth session.⁷
3. Paragraph 7 of ICC Review Resolution ICC-ASP/19/Res.7 also required Assembly Mandates designated as responsible for “assessing and taking possible further action on relevant [IER] recommendations” to submit to the Bureau the outcome of its consideration and proposals for next steps by 1 November 2021.
4. In the Review Mechanism’s Comprehensive Action Plan,⁸ the complementarity focal points were assigned as the “platform for assessment” of IER recommendations 226 – 267, with the Office of the Prosecutor (OTP) formally “allocated” all recommendations except for 247(ii) and 262 – 265 (which listed both the OTP *and* complementarity focal points).
5. This report is therefore submitted pursuant to paragraph 7 of Resolution ICC-ASP/19/Res.7, noting that not all complementarity-related IER recommendations were allocated to both the OTP and focal points for assessment. The focal points therefore intend to submit their more comprehensive annual “Report to the Bureau on complementarity” in coming weeks. This will set out a more detailed summary of all complementarity-related activities this year (including on sexual and gender-based crimes), along with general findings, and draft language for the omnibus resolution. This will include a more detailed overview of those IER-related meetings outlined below, as well as proposed focus for future work.
6. The co-focal points facilitated a first meeting on 30 April 2021 to discuss the OTP’s *draft Policy on Situation Completion*, particularly in light of relevant IER recommendations. The Office underscored that many had already been captured in the draft policy (e.g. R244 (in part), R245, and R247 (in part)), while others may be better situated in a broader Court-wide protocol (e.g. R247 (in part)), and several others were still being internally discussed (in particular R243-244, R249 and R250) to see whether and how the Office could better address them in the policy. A revised and final version of the Policy was subsequently published on 15 June 2021. There was significant interest in holding additional meetings in the future to discuss the Policy.
7. The co-focal points facilitated a second meeting on 1 October 2021 on IER recommendations pertaining to complementarity, including the concept of “positive complementarity” (R262 – 265) and the “gravity threshold” (R227). This was a fruitful but preliminary discussion. It was noted by the Deputy Prosecutor that the OTP was engaged in a significant process of transition, with the new Prosecutor re-examining policies and practices, and that the Prosecutor needed further time in which to accomplish this process. In that context, the discussion focused on establishing a baseline understanding of the concepts of “gravity” and “complementarity and positive complementarity”. Some delegations were in a position to express their views on the recommendations, while others indicated they needed more time. It is envisaged that discussions on these recommendations will resume in 2022 in light of the OTP’s ongoing review of relevant OTP policies on these issues.

⁶ ICC-ASP/19/Res.6, para.133.

⁷ ICC-ASP/19/Res.7, para. 9(b) (referencing ICC-ASP/18/Res.7 paras 18 and 19).

⁸ https://asp.icc-cpi.int/iccdocs/asp_docs/ASP20/RM-Comprehensive_Action_Plan-ENG.pdf.

8. A planned third joint meeting on complementarity and cooperation, focusing on the division of labour between the ASP and the Court (linked to consideration of recommendation 247(ii)), was deferred to 2022 due to scheduling issues.

E. Report of the Review Mechanism as the platform for discussion of IER recommendations, dated 1 November 2021.

I. Introduction

1. The present report of the Review Mechanism is submitted pursuant to paragraph 7 of resolution ICC-ASP/19/Res.7, “Review of the International Criminal Court and the Rome Statute system” (“the resolution”) which provides as follows:

“7. Requests the relevant Assembly Mandates designated as responsible for assessing and taking possible further action as appropriate on relevant recommendations to commence implementation in 2021 and to submit to the Bureau the outcome of its consideration, including on action already taken and proposals for next steps, by 1 November 2021”

2. The Review Mechanism recalls that, in allocating the IER recommendations in the Comprehensive action plan, it had decided to work through existing Assembly structures in order to avoid burdening the Assembly with new structures. As far as possible, the Mechanism had allocated recommendations on the basis of the existing platforms,⁹ or to itself, acting as a focal point for States Parties, where no relevant mandate exists.¹⁰

II. Meetings of the Review Mechanism as the platform for discussion

3. The Review 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 bodies to which it had allocated recommendations to inform States and other stakeholders on the status of their assessment of the recommendations. Mindful of the mandate to the Court to evaluate the progress in the assessment of the recommendations of the Group of Independent Experts and possible further action, and report to the Assembly ahead of its twentieth session,¹¹ the present report provides an overview of the recommendations discussed.

Meeting of 13 September

Assessment of recommendation 48- Election of two Deputy Prosecutors

4. At the first meeting, on 13 September 2021, the assessment of R48 was considered. The Prosecutor had decided, pursuant to article 42 of the Rome Statute, to establish the structure of two Deputy Prosecutors. He had therefore decided not to implement R48. A number of States Parties expressed support for the proposal to have two Deputy Prosecutors and for the restructuring of the Office of the Prosecutor. Some States Parties expressed concern on the budgetary aspect and requested further clarification in this regard, but as explained in the Introductory note to the Comprehensive Action Plan, the budgetary implication of establishing the structure of the two Deputy Prosecutors will be discussed in the Budget Facilitation.

Meetings of 30 September and 11 October

Assessment of IER recommendations on workplace culture

Rebuilding internal trust and reshaping the Court’s working culture (R14)

Strategy to deal with and zero tolerance of bullying, harassment, and sexual harassment (R87, R129 and R130)

5. The Court informed States Parties and other stakeholders of the steps being undertaken in relation to the recommendations referred to in sub-paragraphs (b) above. The Court had assessed recommendations 14, 87, 129 and 130 positively and was already working towards their implementation. The Court and States Parties underlined the great importance

⁹ Introductory note, Proposal for a Comprehensive Action Plan for the assessment of the recommendations of the Group of Independent Experts, including requirements for possible further action, para. 7. See: https://asp.icc-cpi.int/iccdocs/asp_docs/ASP20/RM-CAP-Introductory-Note-ENG.pdf

¹⁰ ICC-ASP/19/Res.7, para. 4 (b) (ii).

¹¹ Ibid., para. 8.

of taking action on these recommendations, and for the majority of the said recommendations, implementation will be continuous.

6. The Court was committed to strengthening internal trust and improving working culture, which had been identified as a strategic objective of the Strategic Plan of the Registry 2019-2021. Strategic initiatives with the potential to improve the working culture at the Court included the Leadership framework and development, Staff engagement survey, Staff well-being and Engagement Committee, anti-harassing training, unconscious bias. The Court was working on a package of three comprehensive and inter-related administrative instructions addressing (i) discrimination, harassment, including sexual harassment and abuse of authority; (ii) unsatisfactory conduct and disciplinary proceedings; and (iii) investigations of unsatisfactory conduct. The Court agreed with the IER Experts that conflicts should be resolved in an informal manner and at an early stage and had included in the budget for 2022 resources for an ombudsperson.

Assessment of IER recommendation on gender equality R15

7. As regards R15, the Court assessed this recommendation positively. It was fully committed to achieving gender equality and ensuring the dignity, wellbeing, safety and inclusion of all individuals affiliated with the Court, regardless of gender or sexual orientation. It had, in this regard, in 2021 appointed a Gender Equality Focal Point, developed an unconscious bias training, a mentoring programme for women, and started actively sourcing female candidates for vacant positions at the P-4 level and above. The Court had also committed to consult on, adopt and implement the first Strategy on Gender Equality and Workplace Culture by 2025, but would in the meantime implement and evaluate the strategy so as to have a sustainable and actionable strategy. The Court's Gender Equality Focal Point indicated the measures she was promoting in her mandate.

8. There was general agreement that R15 would require on-going, longer-term focus.

Assessment of IER recommendations on and finally we had a first discussion on Unified governance (R16-20 and R88)

9. As regards the assessment of Human resources issues R16-20 and R88, the Court had assessed the recommendations positively and was working towards their implementation. It had put measures in place relating to recruitment, the leadership framework, and had implemented a dashboard on sick leave. It had recognized the important role of the Staff Union Council (R20). The Court had assessed these recommendations positively and was already working on them.

Meeting of 12 October

Assessment of IER recommendations on the Secretariat of the Trust Fund for Victims (R354-360) and recommendation 350 on the register of reparations experts

10. At the fourth meeting, on 22 October, the Review Mechanism discussed the recommendations relating to the Secretariat of the Trust Fund for Victims and on the register of reparations experts. A member of the Board of Directors participated.

11. The Board informed the meeting that it had identified the need to improve the Trust Fund's performance in the past years and had initiated a review by the Independent Oversight Mechanism (IOM), which reported in 2019. The IOM report identified major concerns regarding governance and performance of the Trust Fund and was shared with the Independent Experts that started their work in January 2020.

12. When the IER report was issued on 30 September 2020, the Trust Fund was already proactively addressing a number of the issues identified by the IER Experts and the related recommendations.

13. The Registrar indicated that the Trust Fund was a very different body from when the IOM and the IER did their reports, and the underlying areas of concern of the IER, i.e., that the Trust Fund could not reform itself, had not been borne out. Regarding R358, he expressed concerns that a trust fund that focused solely on fundraising would not be effective.

14. On R352, the meeting took note that the judiciary had established a working group that would look at the recommendations allocated to it. The judiciary would then be in a

position to look at any possible amendments to the Rules of Procedure and Evidence and the Chambers Practice Manual.

15. The meeting took note that recommendations R352, R353, R355, R356 and R357 were already being implemented. Regarding R354 and R358, a number of States Parties noted that more time was needed for assessment and that the assessment would therefore continue in 2022.

16. The Court made a presentation on the steps being taken to implement recommendation 350 on the register of reparations experts, having assessed it positively.

Meeting of 27 October

Assessment of IER recommendations 163/169/R181-188/361,362.

Assessment of R169

17. The President of the Assembly, Ms. Silvia Fernández de Gurmendi noted that R169, which was assigned to the ASP, called for the Assembly to develop a strategy for responding to attacks on the Court and to further conduct public campaigns in their countries. She expressed support for the recommendation and noted that a number of States were already taking the action indicated by R169, either individually or in groups, and that she also had publicly spoken in support of the Court and defended the Court. The recommendation should be discussed in order to develop the strategy mentioned therein. The Court focal points endorsed the President's views.

18. The meeting concluded that there was no objection to the implementation of R169 and that further discussions on the substance and a strategy to respond to external political measures were needed.

Assessment of IER recommendations on ASP-Court relations (R361 and R362)

19. The meeting agreed that the recommendations contained general principles that were already being followed and that were acceptable to the Assembly. The meeting assessed the recommendations positively.

Assessment of IER recommendation on Communication strategy (R163)

20. The meeting took note that, in addition to R163, there were 22 other IER recommendations related to communication which will be assessed at a later stage.

21. The first two elements of the recommendation, i.e. the need for a cross-organ strategy on communication and for coordination among the organs on public information responses were positively assessed and there was already work underway. The Court would initiate a cross-organ dialogue in the first half of 2022 to put the inter-organ strategy in place. The absence of a strategy to ensure coordinated responses from the Court did not mean that there was a vacuum and there were already outreach plans and strategies in place, including for situation countries. Regarding the inclusion of outreach activities as part of the preliminary examination stage, this was a new element, and the Registry would consult with the Office of the Prosecutor thereon.

22. The meeting concluded that the first two elements of the recommendation were positively assessed and the third required further internal discussion

Assessment of IER recommendations on Code of judicial ethics (R181-184)

23. The meeting took note that some recommendations had already been implemented while others were being assessed.

24. The Code of judicial ethics had been amended at the end of 2020. Work had previously been on-going, but the IER enabled the judges to place greater focus on amendments that needed to be introduced. The amended Code now included provisions on integrity, collegiality, harassment, including sexual harassment, the election of the ICC Presidency.

25. The recommendations on the Code of judicial ethics had been positively assessed, the Code had been amended, and would remain under review and amended as necessary.

Assessment of IER recommendations on judicial collegiality (R185-188)

26. The recommendations on judicial collegiality were welcomed. This had been an on-going process, as evidenced by the Chambers Practice manual and the Guidelines for the drafting of judgments, the drafting of which were examples of judicial collegiality as the exercise required all judges to work together.

27. The meeting took note that the recommendations had been positively assessed and were being implemented. They looked forward to a further report in 2022.

Meeting of 28 October

First discussion on assessment of IER recommendations on Unified governance (R1 to R13)

28. On 28 October, the Review Mechanism held a preliminary meeting on R1 to R13 on Unified governance, with the understanding that they would return to the recommendations in 2022, as these were for assessment in the first half of 2022.

29. The Court welcomed the IER recommendations to improve and further develop the Court's governance and would continue to look into the recommendations. In introducing the legal analysis paper on three-layered governance model as recommended by the Independent Experts, the Court spotlighted the risks, in particular the risk to the judicial and prosecutorial independence, and legal obstacles in implementing the recommendations on "unified governance" to the full. There was a preliminary exchange of views by States Parties.

30. The Court indicated, regarding the outcome sought by the IER and the obstacles the Experts had identified, that it did not believe that there was a need to make a drastic change of a statutory nature, but this could be achieved through tools such as strategic planning, risk management, synergies, the budget. The Court intended to implement some recommendations, and had done so in some cases e.g. stricter guidelines for recruitment, standardized Human Resources reports.

31. States noted the great importance of these recommendations since they concerned the overall governance of the Court; they were interlinked and informed a number of other recommendations aimed at ensuring an efficient governance of the Court. The recommendations were fundamental to the entire process, and it was important to begin the process now. It was recalled that the purpose of the recommendations was to improve the efficiency and effectiveness of the overall governance of the Court, so as to be expeditious in discharging the overall work of the Court. There should therefore be greater focus on the "One-Court principle" and the underlying issues that informed the recommendations. There should also be guarantees that the process would not jeopardise the independence of the judiciary. In addition, it was recommended that the staff of the Court be equally involved in the discussions on unified governance.

32. States suggested that, moving forward, the Court present a tabular presentation that will be focused on each recommendation (i.e. what had been done, what it intended to do, and what could not be done). The risks and obstacles mentioned by the Court should also be specified in such a response.

33. States suggested that the IER Experts be invited to explain the recommendations to States, taking into account the Court's "Overall response".

34. In conclusion, the Review Mechanism will have more detailed discussions of the recommendations on unified governance in 2022. The IER Experts would be invited to be involved in the process. The Court would present information on each recommendation in a tabular format.

III. The way forward to ASP20

35. The Review Mechanism intends to prepare a stand-alone resolution on the outcome of the work of the Review Mechanism and would liaise with the facilitator for the omnibus resolution to avoid duplication. In addition, a procedural decision would be necessary if the Assembly wished to extend the mandate of the Review Mechanism.

36. The Review Mechanism will also submit a report on the review process to the Assembly well in advance of its twentieth session, as indicated in ICC-ASP/19/Res.7, para. 9.
