

1 ! JI
**EMBASSY OF
FRANCE TO
THE
NETHERLANDS**

*Liberté
Egalité
Fraternité*



No 2021-0251620

The Hague, 27 May 2021

Dear Representatives of the Review of the International Criminal Court and the Rome Statute system -
Review Mechanism

We would like to thank you for this opportunity to contribute to your work with a view to drafting an action plan for the recommendations made by the Group of Independent Experts pursuant to the resolution adopted by the Assembly of States Parties (ASP/19/Res.7). We are grateful for your commitment to this task, which is crucial for the future of the Court.

We would like to share with you the following comments in our capacity as co-facilitators on cooperation.

1. Firstly, we would like to emphasise the need to carry out a review on the implementation of pre-existing recommendations concerning cooperation. Solutions to the major cooperation challenges have already been put forward, for example as part of the “66 recommendations on cooperation” from 2007 or the “Declaration of Paris on Financial Investigations and Asset Recovery” of 2017. The report by the independent experts contributes to this discussion by making recommendations which concern both the Office of the Prosecutor and the ASP.

These proposals are part of the framework for the wider discussion kicked off by facilitation.

Furthermore, we note that the Independent Expert Review addresses the issue of cooperation primarily from the angle of improving the tools and techniques used for investigations with a view to evidence gathering by the Office of the Prosecutor.

Yet facilitation on cooperation deals with the issues of cooperation from a wider perspective, which does not just include judicial cooperation involving the Office of the Prosecutor, but also voluntary cooperation involving all the Organs of the Court (including, for example, framework agreements for cooperation and logistical support).

2. We had identified 17 recommendations from the Independent Expert Review involving cooperation¹ in the context of the preparatory document for the meeting in November 2020, which was sent to all States Parties.

A large number of recommendations on cooperation were categorised by the Mechanism as being the sole responsibility of the Court as the entity responsible for implementation (only 6 recommendations of the 17 concerning cooperation were categorised as being the responsibility of both the Court and the ASP). In fact, we consider that all the recommendations warrant being examined in the context of facilitation.

Indeed, although most of these 17 recommendations appear to concern the internal organisation of the Office of the Prosecutor, in reality they also concern the States Parties since they involve the way in which the Office of the Prosecutor interacts with States. However, the quality of these interactions depends both on the way in which the Court makes its requests, but also on the internal and practical constraints States face in order to be able to respond.

Therefore, we have produced an Annex for your attention, with the recommendations which could be flagged as needing to be discussed as a priority in the context of facilitation in orange, although the others could also be discussed.

3. With regard to establishing priorities, in Annex I of their report the independent experts drew up a list of priority recommendations of which only recommendations 274 and 275 were identified as being a priority for cooperation. They involve respectively the development by the OTP and the ASP of a uniform cooperation framework for all States Parties, or for regional groups of states, along with revisiting agreements the Court has with international organisations with which the OTP engages frequently. The small number of recommendations in the Annex perhaps illustrates the fact that contrary to certain generally accepted ideas, the situation involving cooperation with the Court is not all bad; quite the opposite in fact, it is pretty positive overall, as acknowledged by our points of contact within the various organs. Challenges remain, however, and the facilitation endeavours to rise to these.

In addition, we echo the preliminary response of the Court concerning the implementation of recommendation 274. It has pointed out the practical challenges: Each State has its own internal constraints and structures and it would no doubt be difficult to achieve such a result, especially as the Office of the Prosecutor already uses templates for cooperation requests amended to suit the specific requirements of each State.

We would like to emphasise the fact that these two recommendations did not specifically come to light in recent years during the work on facilitation as being the answer to all cooperation-related challenges. In our view, the main challenges which lie at the heart of improving the quality of judicial cooperation, as also noted by the experts, involve the Court making the necessary effort in terms of educating States about its requirements and its case law, and also in terms of sharing best practice and experience with all States. In our view these two recommendations are no more of a priority than any other. We are therefore prepared to start a discussion with all the States Parties on these two recommendations of course but also on the others.

With regard to the schedule, although consideration of the afore-mentioned recommendations might give rise to initial discussions this year, they will certainly not be concluded and aspects involving implementation will require more time.

¹ See Annexe - List of recommendations on cooperation.

4. As far as concrete actions are concerned, we intend to take part in the coming weeks in the work following the review by:

-Organising a meeting on the issue of the review which could act as a framework or scope for dialogue with all relevant points of contact at the Court on the recommendations of the report on cooperation, whilst leaving open the possibility of discussions on other subjects which will not be addressed in these recommendations (which the States Parties and the Court might like to raise and which come under the framework of the mandate and discussions taking place as part of facilitation);

-Organising a meeting with representatives of the three organs with a view to identifying the most frequent obstacles to cooperation in practice, involving all their aspects and at every level. This work to identify the most salient challenges might involve a half-day meeting, with an introduction by the main representatives of the Court, followed by more technical and operational sessions.

-Better promotion of the ASP's digital platform for cooperation, which was launched by the facilitation in 2020 to encourage those involved to take ownership of it. The platform is a tool for the benefit of the Court and the States Parties to address some of the issues raised by the experts; specifically sharing best practice and experience, and to clarify the requirements, the legal framework and the relevant case law of the Court.

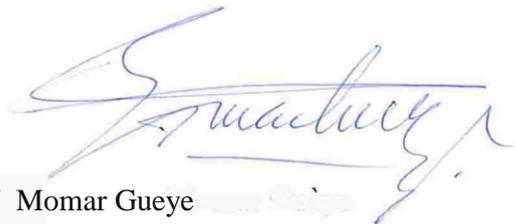
We hope that this information will be useful for the discussions and work carried out by the Mechanism and please do not hesitate to contact us if you wish to discuss further.

Finally, we would like to reiterate the full support of our respective countries for the International Criminal Court along with our commitment regarding the integrity of its mandate.

Yours faithfully,



Luis Vassy



Momar Gueye

Recommendations on cooperation proposed by		categorisation the Review Mechanism Priorities	IER Annex -
Relationship with the UN (possible implications for cooperation on the field)			
149	The Court leadership should decide on and identify a focal point in The Hague responsible for relations with the UN Secretariat.	Court	
152	The leadership of the Court, particularly the Prosecutor, should establish regular consultations with the heads of the UN agencies most relevant to the Court's operation, in cooperation with the UN Office of Legal Affairs, in order to facilitate the assistance required by Court officials in the field.	Assembly & Court	
in relation with OTP cooperation for collection of evidence			
272	The OTP should continue to develop strong partnerships and enter into Memoranda of Understanding with States Parties, international and intergovernmental organisations, and private companies.	Court	
273	The OTP should consider requesting assistance from the ASP in raising the awareness of States Parties to the needs of the OTP. Best practices and lessons learnt could be shared.	Assembly & Court	
274	The OTP and the ASP should consider improvements in cooperation. Consideration might be given to the development of a uniform cooperation framework for all States Parties, or for regional groups of states.	Assembly & Court	X
275	The OTP and the ASP could consider revisiting agreements with international and intergovernmental agencies with which the OTP engages frequently, such as the UNHCR and International Organisation for Migration.	Assembly & Court	X
276	The OTP should consider a review of relevant domestic cooperation laws, procedures, and policies for the purpose of enabling cooperation with States Parties for evidence collection.	Court	
277	The OTP should consider establishing joint training with Court staff and investigators from States Parties, not only to improve capacity, but also to strengthen an informal network of contacts.	Court	
278	The OTP should consider strategic secondment of national law enforcement agents to assist in achieving same goals.	Court	
Cooperation Requests - JCCD International Cooperation Section			
279	The efficiency of the Requests for Assistance (RFA) process should be improved. Many delays could be averted by eliminating the additional review process, leaving the ICAs responsible for the consistency and reliability of judicial cooperation practices. The Senior Trial A framework for informal operational contacts should be established in all situation countries. Investigators could then make informal enquiries to law enforcement or national authorities to ascertain whether the information sought actually exists/and is available. RFAs should, if necessary, then follow.	Court	
280	Consideration should be given to the RFA database being made more accessible to appropriate leadership of Prosecution Division and Investigation Division.	Court	
281	The recommendations made in the section on staff quantity should be taken into account with regard to requests for cooperation.	Court	
Developing technical expertise within the Investigation Division			
284	The ASP should consider appointing a focal point for arrests. In order to improve the tracking of suspects, the OTP should continue to develop mechanisms for	Assembly	
285	coordination and cooperation at the technical level (national law enforcement), and focus on Informal cooperation networks.	Court	
289	The Court needs a rewards program in order to facilitate access to information from the general public for the location and arrest of fugitives. The ASP should consider setting up a	Assembly & Court	
290	working group to consider the possible ways such a program could be set up and funded. There is a need for a special operations fund for the OTP. It would enable the teams carrying out the tracking and arrests of suspects to plan for and cover expenses in the field without delays.	Assembly & Court	