

## **Nordic paper on a comprehensive Action Plan for the Assessment of IER recommendations**

The Nordic Countries, Denmark, Finland, Iceland, Norway and Sweden welcome the work undertaken by the Review Mechanism in categorizing the recommendations of the Independent Expert Review and in commencing the preparation of a detailed action plan for the assessment thereof. We emphasize that this State-driven process must be transparent and inclusive and conducted in full cooperation between the Court, the Assembly and other stakeholders as set out in Resolution ICC-ASP/19/Res.7.

While we welcome the categorization already produced by the Review Mechanism as part of the Action Plan we underline the need for continued involvement of all stakeholders in assessing the recommendations. This goes for recommendations allocated to the Assembly alone but also for those allocated specifically to the Court. In order to build and maintain ownership and support for the process it must continue to be a joint and transparent endeavor, while fully respecting the judicial and prosecutorial independence of the Court as well as the oversight functions entrusted to the Assembly. We will appreciate regular updates and information-sharing from the Review Mechanism to the extent possible.

Furthermore, we are only at the beginning of the assessment process. It is conceivable that the Court, States Parties or both may decide on an alternative course of action than the one recommended by the experts on some specific recommendations. This may in turn impact the review process and alter the need for Court and/or Assembly involvement. To enable the process to run as smoothly as possible it is therefore important to ensure dialogue, involvement and ownership over the whole process for both the Court and the Assembly throughout, with civil society as well.

The report of the independent experts, the Overall Response of the Court and the categorization of recommendations by the mechanism constitute a very large volume of material. The review process is comprehensive and complex in both scope and nature. This poses a great challenge for individual States Parties, in particular smaller delegations like the Nordics, to form in a short period of time a comprehensive and holistic view. This is necessary for a coherent and effective continuation of the Review. We therefore encourage the Review Mechanism to exercise as much leadership as possible in paving the way forward. Whilst the inclusivity in inviting input from all stakeholders as an initial step is appreciated and appropriate, coordination and guidance are also very welcome. We would greatly appreciate and support proposals from the Review Mechanism which would also minimize the overlap and duplication of work carried out by delegations and in capitals. We have full confidence and trust in the ability of the State Party Representatives and Focal points in this respect.

In a similar vein, it is important that recommendations are allocated to Assembly mandate holders in a systematic manner and without overburdening the respective chairs and facilitators. We thus encourage the Review Mechanism to retain overall coordination and provide the necessary guidance, leadership and input to all subsidiary bodies. Discussions involving the Review Mechanism, Heads of Organs and ASP mandate holders are useful in this respect. At the same time, the Review Mechanism itself should function as a forum for addressing some key issues of a cross-cutting or particularly complicated nature. We have included some broad observations on this in the attached annex.

The Assembly Resolution creating the Review Mechanism and setting out its mandate was thoroughly discussed at the 19<sup>th</sup> Session of the Assembly. Nevertheless, it is a mechanism to enable the Review Process to move forward expeditiously and with efficiency, not a constraint. We therefore encourage the Bureau to consider any requests or proposals from the Review Mechanism to alter timelines or other specifications concerning work streams, including requests related to the resources of the Mechanism itself. At the time of the negotiations, the exact nature of the process to come could not be foreseen, and flexibility and adaption is needed. The mechanism should steer the process with a view to maximizing productivity and efficiency.

In broad terms the Nordic States Parties agree with the prioritization – and hence short timelines – of the Independent Experts set out in Annex 1 of the IER Report. We place particular importance on the priorities related to Governance and Management of the Court, Budget Management Oversight and Gender Mainstreaming as well as Human Resource issues and Staff Welfare. We also see a clear role for the mechanism in addressing these issues, as many of them have no clear mandate holder. This is particularly relevant for recommendations concerning the overall governance of the Court, as these underpin the entire review process, as well as those pertaining to the Assembly oversight functions. In addition, while we appreciate the aim to avoid creating new Assembly mandates such a step may warrant further consideration in a few instances, for example concerning the Trust Fund for Victims. We underline the importance of the Court pursuing organ-specific recommendations in a timely manner, including efficiency of the judicial process and fair trial rights; development of processes and procedures to promote coherent and accessible jurisprudence and decision-making; prosecutorial strategies of selection, prioritisation, hibernation and closure; length of PE activities, time limits and investigative strategies; as well as OTP internal quality control mechanisms. Additional observations are included in the annex.

Lastly, it is important to note that the Review Mechanism is now creating an Action Plan for the consideration of the IER recommendations. In many instances, once a recommendation is ready for further action, this may in turn necessitate a new work stream, within either the Court or the Assembly. To the extent possible, this should be taken into consideration at an early stage as this will have implications later on, for instance in preparing decisions for the 20<sup>th</sup> Session of the Assembly.

In conclusion, the Nordic States Parties reiterate their gratitude to the Review Mechanism for the work carried so far and express our full support for the continuing stewardship and guidance of the Review Process. Regrettably, we were not able at this stage to submit detailed observations on priorities and timelines in the template provided by the mechanism within the given timeframe, due to the complexities and scope of the IER Report and the Court's Overall Response. Some broader non-exhaustive observations and suggestions are included in the annex. We do hope to be able to provide comments on the draft action plan once it is completed. We continue to stand ready to support the process to the fullest extent in the time to come.

## Annex 1

### **Broad priorities, timelines and allocation to mandate holders<sup>1</sup>**

- Unified Governance: The IER report makes a number of important observations and findings concerning the overall governance of the Court (Unified Governance). These inform and underpin a high number of recommendations and are aimed at ensuring a harmonious and efficient governance of the ICC. The Court has welcomed the recommendations of the IER in this respect but also expressed reservations on the feasibility of some of the proposals. The Nordic countries support the inclusion of a dialogue between the ASP and the Court with input from the experts in the Action Plan as a matter of priority. Given the cross-cutting nature of the issue the assessment of recommendations concerning Unified Governance should be concluded before the next session of the ASP and should be undertaken by the Review Mechanism itself acting as an ASP Mandate holder.
- OTP Situations and Cases; Preliminary Examinations and Investigations; and Internal Quality Control Mechanisms: The IER report makes a number of recommendations on these issues, most of which have been categorized as being the responsibility of the Court/OTP. As noted in the Court's Overall Response, the time is appropriate for addressing these recommendations as a matter of priority, with the OTP taking the lead in close consultation with States Parties. The assessment of the key recommendations in sections XII-XV of the IER report should commence as soon as possible. The dialogue with States Parties seems, on most of these issues, to be best placed in the framework of the Complementarity facilitation, while fully respecting the categorization of IER recommendations put forward by the Review Mechanism, and we encourage its inclusion in the Action Plan. In terms of achievable, concrete short-term priorities the Nordic Countries would – cognizant of the prerogatives of the OTP – defer to the views of the OTP and the co-Facilitators on Complementarity under the overall guidance of the Review Mechanism.
- Ethics, Internal Grievance Procedures: The IER experts have expressed concerns over the Court's work environment and the existing procedures and mechanisms for handling misconduct. This poses a significant risk to staff well-being and productivity, efficient operations of the Court and the reputation of the ICC. These issues must be addressed as a matter of priority, not least since actual implementation will take time. The Court seems to agree in its overall response. At the same time the creation of a Court-wide Ethics Charter, an Ethics Committee and other amendments to the regulatory framework is complicated and necessitates a holistic approach. A related point, as noted in the Court's overall response in paragraph 245, is that full implementation of the (revised) ethics framework is equally important. When misconduct occurs, it must be sanctioned appropriately. This is necessary for staff to feel safe and have full confidence and trust in management at different levels. A special responsibility applies to elected officials to lead by example in this respect. We welcome the fact that the Court has already established a Gender Focal-Point, which is an important first step in

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<sup>1</sup> In general, the Nordic Countries support the priorities identified by the IER experts in annex 1 to their report. The priorities highlighted in this document put forward some additional observations on what we deem important to address in the short term, and should be read flexibly.

gender-mainstreaming. Likewise, the Court's work on the establishment of an ombudsman is welcomed. Given the risks mentioned above, the assessment of the relevant recommendations should commence immediately and be included in this way in the Action Plan. An appropriate venue for comprehensive consultations on these issues seems to be the IOM-facilitation, subject to the capacity of the facilitation. The Court and the IOM will need to play a key role. In terms of achievable, concrete short-term priorities the Nordic Countries would – cognizant of the categorization prepared by the Review Mechanism and of the complexities and connectedness of the issues involved – defer to the views of the IOM-Facilitator, the Court and the IOM under the overall guidance of the Review Mechanism with a view to make progress by ASP20.

- Tenure: The IER report recommends the introduction of a system of tenure. We believe that the assessment of this and related HR-recommendations should be taken up as a matter of priority, possibly by the Mechanism itself or The Hague Working Group.
- The Trust Fund for Victims and its Secretariat: Governance and Functioning: The Nordic Countries are staunch supporters of the Trust Fund for Victims and its important mandate and work. The IER-report puts forward some far-reaching proposals on the TFV concerning its governance and functioning. Given the importance of the work of the TFV for the impact of the Court in situation countries, these recommendations should be assessed as a matter of priority, as their possible implementation may be lengthy and require regulatory amendments and/or involve organs of the Court. The prospective workload of the TFV only adds to the urgency. As there does not seem to be an appropriate venue for Assembly, Court and stakeholder consultations, this can be done by the Mechanism. However, given that the TFV can be considered a discrete cluster of recommendations we are also open to consider, exceptionally, the creation of a new ASP-mandate to assess the recommendations and subsequently carry the work forward<sup>2</sup>.
- Efficiency of the judicial process and fair trial rights; development of processes and procedures to promote coherent and accessible jurisprudence and decision-making; judicial collegiality: These issues are of paramount importance to the overall efficiency, impact and reputation of the Court. We welcome that fact that the Court appreciates the importance of these issues and that work is ongoing on a number of recommendations even before the publication of the IER report, as set out in the Court's overall response. This shows convergence of views between the IER experts and the Court. We urge the Court to continue its efforts in this respect as a matter of priority. Some of the recommendations will require Assembly action for their full implementation and in general, the importance of these issues warrants dialogue between the ASP, the Court and other stakeholders. The Study Group on Governance seems an appropriate forum for such dialogue. In terms of the concrete organization of work and drafting of the Action Plan the Nordic Countries would defer to the co-Chairs of the Study Group on Governance under the guidance of the Review Mechanism, with the aim of achieving concrete results by ASP20.

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<sup>2</sup> In the past the Assembly did have a mandate-holder for victims-issues.