



BUREAU OF THE ASSEMBLY OF STATES PARTIES

Tenth meeting

2 December 2022

(via Zoom)

Agenda and decisions

1. Review Mechanism: update

A State Party representative on the Review Mechanism, Ambassador Michel Kanu (Sierra Leone), also on behalf of Ambassador Paul van den IJssel (Netherlands), informed the Bureau that, following the last briefing on 9 November, the Review Mechanism had held two roundtables which focused on the Independent Expert Review (IER) recommendations relating to workplace culture, gender equality and geographical representation in the recruitment of staff of the Court. The Review Mechanism had identified the issue of workplace culture as a priority, as had all other stakeholders. At the roundtables, the Registrar, on behalf of the Principals of the Court, indicated the measures that the Court had taken in response to the IER recommendations in these areas. The measures included the issuance of new Administrative Instructions on investigations of unsatisfactory conduct, disciplinary proceedings, addressing discrimination, harassment, including sexual harassment and abuse of authority, sexual exploitation and sexual abuse. The Court had informed the Mechanism that it was also in the process of recruiting an Ombudsperson, who would be independent and would not report to the heads of organs, but would submit a report annually to the Assembly. The recruitment of a Focal Point on Gender Equality was also underway.

The Mechanism also held one round of informal consultations on its draft resolution, on 25 November 2022. The draft resolution contained updates to the resolution text adopted by the Assembly at its twentieth session (resolution ICC-ASP/20/Res.3). If adopted, the Assembly would take forward the implementation of the tenure policy which the Court and all stakeholders had assessed positively in the first meeting on tenure held in 2021. There was a need for an Assembly mandate in order for the Court to develop the detailed proposal and report to the next session of the Assembly, so that the modalities of implementation of the tenure policy could be adopted at the twenty-second session of the Assembly in 2023. The Court would begin implementation of the policy in 2024. The Mechanism would hold an additional round of informal consultations during the Assembly session to finalize the text.

The report of the Review Mechanism, submitted on 29 November 2022, reflected the discussions held by the Review Mechanism as the platform for discussion in the second semester of 2022. The report would also contain annexes, which would be included in the report.

2. Twenty-first session of the Assembly

- a) *Update on preparations*
- i) *Updated work programme*

The Bureau agreed on the modified programme of work for the twenty-first session, dated 1 December 2022,¹ on the understanding that it would be subject to modification during the session depending on the progress on different agenda items.

ii) Preparations for the Assembly session

Recalling its 7 September 2022 decision on the modalities of holding the General debate, the Bureau decided that all in-person General debate speakers in a respective category would be given precedence. The statements via pre-recorded videos would follow.

b) Elections

i) Election of members of the Committee on Budget and Finance

The President recalled that at the Bureau's 19 October meeting, it had recommended the election of five members of the Committee on Budget and Finance ("the Committee") and had requested the African group to consult in order to identify a candidate for election to the seat allocated to the African group. The Bureau had also heard a statement by the African group regarding the geographical distribution of seats on the Committee.

Côte d'Ivoire, on behalf of the African group, recalled its 19 October statement in which it asked the Bureau to take a decision on the distribution of seats on the Committee before the election of members of the Committee at the twenty-first session.

Under this item of the agenda, the Bureau also discussed the procedure to fill the casual vacancy produced by the resignation of the Kenyan expert, as well as the need to do this expeditiously.

The President took note of the African group's opposition to the Bureau's 19 October recommendation on the election of five members of the Committee and decided that the Bureau would appoint a facilitator to continue the discussions in order to reach an agreement on the vacancies available to the African Group in the Committee

ii) Recommendation on the election of the Registrar: update

The President briefed the Bureau on the confidential report of the Independent Oversight Mechanism (IOM) on the due diligence process which the IOM had carried out in 2022 for the candidates for election as Registrar. In his report to the Presidency, the Head of the IOM had indicated that all shortlisted candidates completed a detailed questionnaire and provided consent for the IOM to contact previous employers and academic institutions. The Security and Safety Section supplemented the IOM process, which involved contacting various stakeholders from the shortlisted candidates' current and previous employers.

The IOM had received communications and allegations through a confidential channel, but did not receive any allegations that it deemed sufficiently credible or material in relation to any of the ten remaining candidates. In its report the IOM concluded that based on the information reviewed and received, the IOM had no concerns regarding the high moral character of any of the ten candidates who were currently shortlisted for election as the Registrar of the Court.

Vice-President Ambassador Kateřina Sequensová briefed the Bureau on developments in The Hague Working Group regarding the draft recommendation on the election of the Registrar. The Hague Working Group held a meeting on 20 October at which the draft recommendation on the election of the Registrar had been discussed. The meeting was hybrid, which allowed New York-based delegations to participate. The matter was further discussed in the Hague Working Group on 16 and 23 November,

¹ <https://asp.icc-cpi.int/sites/asp/files/2022-12/ASP21.ProvWP.pdf>

and on 1 December. The Vice-President subsequently circulated a draft recommendation under a silence procedure until 2 December. As the silence procedure was not broken, the draft recommendation was considered approved by The Hague Working Group and was conveyed to the Bureau for its consideration.

The Bureau agreed to recommend to the Assembly the adoption of the draft recommendation, dated 1 December 2022.

c) Nomination of a Rapporteur for the twenty-first session

The Bureau recommended that the Assembly appoint Ms. Eva Niamke (Côte d'Ivoire) as Rapporteur for the twenty-first session, noting that Ms. Niamke would also be available for the twenty-second session.²

d) Nomination of members of the Credentials Committee

The Bureau recommended that the Assembly appoint the following States Parties as members of the Credentials Committee: Bulgaria, Dominican Republic, Ecuador, Germany, Japan, Norway. The President invited the regional groups to indicate additional three States Parties for appointment to the Committee.

e) Appointment of Coordinators for the twenty-first session

The Bureau agreed to recommend to the Assembly the appointment of two Coordinators for the twenty-first session, as follows:

- Working Group on the Programme Budget: Ambassador Frances-Galatia Lanitou Williams (Cyprus); and
- Omnibus resolution: Ms. Virpi Laukkanen (Finland).

3. Oral report of the Bureau

The President presented the draft oral report on the activities of the Bureau, dated 1 December 2022, and indicated that she would be delivering an abridged version thereof at the first plenary of the Assembly on 5 December 2022, with the full text to be included as an annex to the Official Records of the twenty-first session of the Assembly. Bureau members could submit comments on the draft oral report to the President via the Secretariat.

4. Due diligence for election of judges: recommendations by the Bureau

The President recalled that during the Bureau's 9 November meeting, it had agreed in principle that there was a need for a due diligence process for the judicial elections in 2023 and that such a process would be similar to the ones previously adopted, with a role for the IOM.

Further to the suggestion that discussions on this topic be continued in The Hague and the New York Working Groups, both working groups had supported the establishment of a due diligence process for candidates for election as judges in 2023, and considered that the IOM was the appropriate body to carry out the process. The Hague Working Group further expressed general support for the additional resources which the IOM would require to carry out this task.

The Bureau decided to recommend that the Assembly request the Bureau to establish a due diligence process by March 2023 for candidates for judges to be elected in 2023. The terms of reference of such a process would be established by the Bureau on the basis of a proposal developed by the

² On 5 December 2022, the Assembly appointed Mr. Bi Zah Nene (Côte d'Ivoire) as Rapporteur, at the request of Côte d'Ivoire.

Independent Oversight Mechanism (IOM) in consultation with the Advisory Committee on Nomination of Judges (ACN), taking into account the experience of recent due diligence processes applied to candidates for Deputy Prosecutors and Registrar. The Bureau also recommended that the Assembly consider approving additional resources in the range of €30,000 to enable the IOM to carry out the due diligence process for judicial candidates.

5. Bureau decision on implementation of IER recommendation R169: follow up

The President brought to the attention of the Bureau the document entitled “Proposed annex to Bureau decision on the Implementation of IER recommendation 169: Compilation of good practices”, dated 2 December 2022, prepared further to the 22 November invitation to States Parties for the submission of ideas for inclusion in the compilation.

The compilation, prepared by the Secretariat on the basis of inputs received, had the purpose of taking stock of actions undertaken on previous occasions when the Court had been under political attack, and to serve for future reference. It reflected a non-exhaustive menu of potential measures that could be taken to counter attacks, based on past experience, and included concrete examples of past statements and declarations.

A view was expressed that the compilation on good practices could be enhanced by further aligning the title of the compilation with the text of the Bureau decision on the implementation of IER recommendation 169, as well as adding a mention to practical measures of a political, legal, security and/or financial nature to the non-exhaustive list of potential measures in the compilation.

The Bureau decided to include the Compilation of good practices, dated 2 December 2022, as an annex to its 29 July 2022 decision on the implementation of IER recommendation 169.

6. Commemoration of the twenty-fifth anniversary of the adoption of the Rome Statute: recommendation by the Bureau

The President presented the concept note for the celebration of the twenty-fifth anniversary, dated 30 November 2022, which reflected updates on developments in the planning of the commemoration, and noted that, for the event to take place in New York, while there was flexibility to hold the event between 5 and 7 July 2022, the best date would be Thursday, 6 July 2023, as reflected in the concept note. The President also proposed that the treaty ceremony to be held in the framework of the commemoration also contemplate a moment for the signature of voluntary cooperation agreements by any State that may wish to do so.

The Bureau agreed to recommend that the Assembly continue the preparations for the commemoration of the twenty-fifth anniversary of the adoption of the Rome Statute on the basis of the concept note prepared by the Presidency. The President encouraged States Parties and relevant actors to engage in and promote these events as well as to organize their own commemorations at the national, regional and international levels, and to share, through the Secretariat of the Assembly, any information on planned commemorative events.

In addition, the President was exploring options with the Host State for a commemoration event to take place in The Hague in July 2023.

7. Independent Oversight Mechanism- 2023 Proposed programme of evaluation

The Bureau discussed the proposed programme of evaluation, which the Head of the Independent Oversight Mechanism, Mr. Saklaine Hedaraly, had presented in a letter to the President of the Assembly, dated 15 November 2022, and in which he indicated three themes for possible evaluation in 2023:

Theme 1: Evaluation of the Strategic Plan of the Office of the Prosecutor (2019 -2021/2022);
Theme 2: Evaluation of the Court’s Socio-Political and Country Analysis Capacity;
Theme 3: Evaluation of Victim Support by ICC Country Offices.

The President proposed that the Bureau recommend that the IOM start with Theme 1 and report to the Bureau after the first evaluation and, if time and resources allowed, to then start with Theme 2.

The Bureau decided to proceed accordingly.

8. Status of contributions

The President informed the Bureau that, as at 30 November 2022, the Court had received 94 per cent of the assessed contributions to the approved budget for 2022. The total amount of outstanding contributions, for 2022 and for prior years, was €40.9 million, of which €9.7 million related to 2022. A total of 23 States Parties had outstanding contributions of more than one year, and 12 of those were ineligible to vote under article 112, paragraph 8, of the Rome Statute. The President informed the Bureau that the Assembly Presidency and the facilitator on arrears, Ambassador Maritza Chan Valverde (Costa Rica), continued to deploy all efforts to obtain the timely payment of contributions, in consultation and coordination with the Court.

9. ASP21- request for waiver of loss of voting rights

The Bureau had before it a note verbale from the Bolivarian Republic of Venezuela in which it had requested an exemption from the loss of voting rights at the twenty-first session of the Assembly, pursuant to article 112, paragraph 8, of the Rome Statute.

The Bureau decided to recommend to that the Assembly grant requests for waivers at the twenty-first session on an exceptional basis, while also emphasizing the need for the States Parties concerned to engage with the Registrar of the Court on an urgent basis in order to establish a plan for payment of arrears. The Bureau also decided to revisit the issue next year, in order to determine the way forward.

10. List of meetings of subsidiary bodies of the Bureau held in private in 2022

Pursuant to the “Understanding on the participation of Observer States in meetings of the Assembly of States Parties”,³ which the Bureau adopted on 18 October 2017, the Bureau took note of a list of meetings in 2022 which were either wholly or partially open to States Parties only.

11. Other matters

a) Amendment to the Regulations of the Court

The Bureau took note of the amendment to the Regulations of the Court, regulation 153 *bis* titled “Transmission of the record of the proceedings following committal”, which the judges had adopted on 24 November 2022. On 25 November, the Secretariat informed all States Parties of the adoption of the amendment to the Regulations of the Court and circulated the amendment to States

³ https://asp.icc-cpi.int/iccdocs/asp_docs/Bureau/ASP2017-Bureau06-decision-ENG-ObsvrStates.pdf

The “Understanding on the participation of Observer States in meetings of the Assembly of States Parties” states inter alia:

“ 4. Bearing in mind the provisions of rule 42 of the Rules of Procedure of the Assembly of States Parties, according to which it is up to States Parties of the concerned subsidiary body with general membership to decide whether the in-principle public meetings shall be held in private, and thus whether interested Observer States shall not be allowed to participate in such meetings:

(a) The chairpersons and facilitators of the Assembly are requested to communicate to the Bureau any decision made by State Parties within their respective processes to hold meetings in private, without prejudice to case-by-case deviations as may be decided by the States Parties of the respective processes;

(b) The Bureau shall keep a list of such decisions.”

Parties for comments. If within six months, i.e. until 25 May 2023, there were no objections from a majority of States Parties, the amendment shall remain in force, as per article 52 (3) of the Rome Statute.

The President requested that delegates draw to the attention of their capitals the amendment to the Regulations of the Court as well as the provision of article 52 (3) regarding the six-month period for comments.

b) Adoption of reports of facilitations

The Bureau adopted the reports some facilitations and took note that it had adopted the reports of other facilitations via a silence procedure (see annex).

Annex

Adoption of reports

A. Reports adopted by the Bureau on 2 December 2022

The Bureau adopted the following reports which were before it, and which had been previously been approved by The Hague Working Group or the New York Working Group, via a silence procedure:

- 1) Draft report of the budget facilitation on IER recommendations, dated 1 December 2022.
- 2) Draft report of the Bureau on the Budget sub-topics of Budget Management Oversight and Premises, dated 1 December 2022.
- 3) Draft report on cooperation, dated 29 November 2022, which was circulated under a silence procedure at the HWG that ended at the end of 1 December 2022.
- 4) Draft report of the Bureau on non-cooperation, dated 30 November 2022.
- 5) Report of the Bureau on the scheduling of Assembly sessions, dated 15 November 2022.

The Bureau adopted the report at (5), which had been under discussion after the silence procedure was broken, on the understanding that (i) consultations on the issues of concern would be held also in The Hague and not only in New York; and (ii) the new language would in no way limit or preclude future discussions thereon.

B. Reports previously adopted by the Bureau

The Bureau took note of the reports that it had previously adopted via a silence procedure:

- 1) Report of the Bureau on the Plan of action of the Assembly of States Parties for achieving universality and full implementation of the Rome Statute of the International Criminal Court, dated 1 November 2022.
- 2) Report on complementarity, dated 10 November 2022.
- 3) Report of the Working Group on Amendments, dated 14 November 2022
- 4) Report on the review of the work and operational mandate of the Independent Oversight Mechanism, dated 11 November 2022.
- 5) Report of the Study Group on Governance, dated 16 November 2022.
- 6) Report of the Bureau on Legal aid, dated 18 November 2022.
- 7) Report of the Bureau on the arrears of States Parties, dated 21 November 2022.
- 8) Report of the Bureau on equitable geographical representation and gender balance in the recruitment of staff of the International Criminal Court, dated 22 November 2022.

As regards the report at (8), the Bureau took note that some omnibus resolution text proposed therein dealt with the issue of Tenure contained in the Review Mechanism's draft resolution text, and that the former resolution would quote the text of the Review Mechanism in its entirety.

C. Pending reports

The Bureau recalled that the draft report on the Procedure on the nomination and election of judges was before it under a silence procedure until the end of 2 December 2022.
