



## **BUREAU OF THE ASSEMBLY OF STATES PARTIES**

### **First meeting**

**31 January 2023**

### Agenda and decisions

*The meeting was chaired by the President, Ms. Silvia Fernández de Gurmendi. Vice-Presidents Ambassador Robert Rae (Canada) and Ambassador Kateřina Sequensová (Czech Republic) also participated.*

The President welcomed Bangladesh, which had replaced the State of Palestine on the Bureau until the end of the Bureau's mandate in December 2023, in accordance with the arrangements approved by the Assembly.

#### **1. Review Mechanism: update**

Ambassador Michael Kanu (Sierra Leone), a State Party representative on the Review Mechanism, briefed the Bureau, also on behalf of Ambassador Paul van den IJssel (Netherlands), on the proposed work of the Review Mechanism for 2023.

Ambassador Kanu recalled that the Assembly had, via resolution ICC-ASP/21/Res.4, decided to extend to the twenty-second session the mandate of the Review Mechanism.<sup>1</sup> The continuing mandate was also contained in the same resolution.<sup>2</sup>

As regards the programme of work for the first semester of 2023, the Review Mechanism had begun considering the same. It was being finalized and would be shared with States Parties and all stakeholders.

The Mechanism would facilitate roundtable discussions on the implementation of positively assessed recommendations and would look at, in particular, recommendations on the Secretariat of the Trust Fund for Victims (first/second half of March); on Relations with civil society and media; and Communications (second half of March); and on Governance issues (second half of April). The latter would relate to Unified governance as well as to other governance issues that had arisen.

It would return to the remaining recommendations to be assessed by the Court in mid-to late-June, after the judges had held their retreat. These would include recommendations on Victims participation and Victims reparations and assistance that were led principally by the judiciary.<sup>3</sup> The Mechanism noted that the Registry, OTP and Trust Fund for Victims were responsible for the other recommendations concerning victims' issues, which had been addressed in previous discussions.

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<sup>1</sup> Para. 5.

<sup>2</sup> Paras. 5 and 6.

<sup>3</sup> IER recommendations R336, R337, R345, R348, R349 and R352.

As regards the future of the Review Mechanism, Ambassador Kanu noted that in both the general debate, as well as in the plenary discussions on the “Review of the International Criminal Court and the Rome Statute system”, some States had seemed keen on keeping a Mechanism to keep track of the Review process and monitor the implementation of the IER recommendations. The Mechanism noted that the future of the Review Mechanism was a decision for States Parties, and there was no clear view yet. On the basis of the summary of the discussions at the twenty-first session, the Review Mechanism planned to hold at least one round of discussions with States Parties on this issue, and would also speak with the Assembly President thereon.

As regards its meetings, the Review Mechanism had held one meeting to discuss its work plan for 2023, and had also met with the Court focal points to discuss it.

Regarding the Matrix, which would be contained in annex IV to the Review Mechanism’s report to the Assembly,<sup>4</sup> this document would be updated as necessary. When the Mechanism had received the final comments from the Court, it would review the document with a view to issuing it by the end of the week or early next week. Ambassador Kanu recalled that the Matrix was a living document which would change to reflect developments.

Finally, as regards the mandate of the Assembly contained in the Review Mechanism resolution that directly concerned the Bureau, i.e. the mandate on tenure,<sup>5</sup> Ambassador Kanu informed the Bureau that the Court focal points had indicated that the Court was ready to present the detailed proposal for a tenure policy to the Bureau. He hoped that the Court would be able to do so as soon as possible. Further, the Court might also wish to brief the Committee on Budget and Finance on its progress at its May session, and would need to submit the budget for the implementation of the policy to the Committee by July.

The Review Mechanism would continue to consult with States Parties, facilitators, the Court, civil society and all stakeholders, in the interest of inclusiveness and transparency. It would also continue to regularly brief States Parties and all stakeholders on the Mechanism’s work through our briefings to the Bureau and its working groups, its reports,

The President noted that the Court was ready to present the detailed proposal to the Bureau and it was urgent that the Court do so. The Bureau meeting scheduled for 10 March might be too late and there would be a need for a meeting of the Bureau by mid-February. The Bureau would also need consider the future of the Review Mechanism. She planned to discuss this with Ambassador Kanu during her visit to New York.

## **2. Due diligence mechanism for judges**

The President recalled the mandate to the Bureau regarding the establishment of a due diligence process for candidates for the 2023 judicial elections<sup>6</sup> and noted in that regard that the timeline for the adoption of the terms of reference was very short, i.e. by March 2023.

On 13 January, she had convened a meeting with the Chair and Vice-Chair of the Advisory Committee on Nominations of Judges (ACN), Ms. Sanji Monageng, and Mr. Julian Fernández, respectively, and with the Head of the Independent Oversight Mechanism (IOM), Mr. Saklaine Hedaraly, in order to put both bodies in contact and start the consultation process.

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<sup>4</sup> ICC-ASP/21/34/Rev.1.

<sup>5</sup> ICC-ASP/21/Res.4, para. 9.

<sup>6</sup> ICC-ASP/21/Res.2, para. 82, states as follows:

“Requests 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 which shall be established by the Bureau on the basis of a proposal developed by the Independent Oversight Mechanism in consultation with the Advisory Committee on Nomination of Judges, taking into account the experience of the recent due diligence processes applied to the candidates for Deputy Prosecutor and Registrar;”

The Head of the IOM introduced the draft proposal for the new due diligence mechanism, dated 23 January 2023<sup>7</sup>, which was based on previous mechanisms set up for the election of the Deputy Prosecutors and the Registrar. It was based on preliminary discussions with the President and the Chair and Vice-Chair of the ACN. The ACN members had not seen the draft but were supportive of the IOM process which would focus on the element of “high moral character”,<sup>8</sup> while the Committee would focus on the assessment of candidates. An innovative feature of the IOM process was the possibility to interview staff who had worked with the candidate, which due to lack of resources, had not been done in the past. The IOM and ACN processes were two separate processes, but each body would have the ability to transmit information to the other that was relevant to the respective mandates, if they came across such information.

States made comments on paragraphs 7, 9, 10, 18 and 21 of the draft. The President noted that the conversation would continue in The Hague Working Group and the New York Working Group at their meetings on 1 and 2 February. She hoped that, on the basis of those discussions, there would be a revised proposal which the Bureau would adopt by 10 March latest.

### **3. Appointment of Assembly mandate holders**

The Bureau appointed the mandate holders of The Hague Working Group indicated in the annex. It took note that the Coordinators of the working groups would continue their consultations to identify the facilitators and focal points for the outstanding mandates.

### **4. Twenty-second session of the Assembly**

The President indicated that the Secretariat had secured Conference Room 4, as well as additional rooms, including for the Bureau meetings, at the United Nations Headquarters in New York, for the twenty-second session. The Secretariat of the Assembly has also conveyed a draft Memorandum of Understanding to the United Nations and would await the costing for the associated services to be provided by the United Nations, hoping that the inflationary pressures would be minimal given that the budget for major programme IV was prepared in May 2022.

#### ***a) Provisional agenda***

The Bureau approved the provisional agenda for the twenty-second session of the Assembly, dated 13 January 2023, drawn up by the Secretariat in accordance with rule 11 of the Rules of Procedure of the Assembly of States Parties.

The President requested the Secretariat to disseminate the provisional agenda for the twenty-second session.

#### ***b) Elections***

##### ***i) Election of six judges***

The Bureau took note that the nomination period for the presentation of candidates had opened on 2 January 2023 and would run until 26 March 2023. On 19 December 2022, the Secretariat had circulated a note verbale, informing States of the opening of the nomination period, as well as the minimum voting requirements in the categories of list, gender and region.<sup>9</sup> Nominations received by the Secretariat would be posted on the webpage of the Assembly.

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<sup>7</sup> [Draft] Proposal by the Bureau on a due diligence process for candidates for 2023 judicial elections, circulated by the Secretariat on 25 January 2023.

<sup>8</sup> Rome Statute, article 36, paragraph 3.

<sup>9</sup> <https://asp.icc-cpi.int/sites/asp/files/2022-12/ICC-ASP-22-SP-01-ENG.pdf>

The Bureau also took note that the Advisory Committee on Nominations of Judges would hold its ninth session from 3 to 14 July 2023 in The Hague, in order to conduct in-person interviews with candidates.

In addition, the President reminded the Bureau that the Assembly had, by resolution ICC-ASP/21/Res.2,<sup>10</sup> required the Bureau to “facilitate public roundtable discussions to be held with all candidates”, and that the New York Working Group would determine the remaining modalities for the roundtable discussions with “particular regard to aspects of the assessments of the candidates highlighted in the report of the Advisory Committee on Nominations of Judges and include on the agenda topics aimed at supplementing the report in relation to these aspects.”<sup>11</sup> Some of the modalities were already determined, namely that the roundtable discussions be open to States Parties and other stakeholders, that they be conducted in the working languages of the Court, that candidates may participate in either of these languages and by videoconference, and finally that they be recorded.

As regards the timing, the amendment adopted by the Assembly in December 2022 indicated that the roundtables should be held after the Advisory Committee had made its assessments of candidates, and as early as possible prior to elections.<sup>12</sup> The ACN’s report was expected to be issued by the end of July.

The Bureau would return to this item at a later meeting, once the input had been received from New York.

*ii) Election of members of the Committee on Budget and Finance*

The President recalled that, at the twenty-second session, the Assembly would elect six members of the Committee to fill the vacancies that would arise on 31 December 2023. The Bureau also had to take into account the issue of allocation of seats on the Committee. The President drew to the Bureau’s attention the decision of the Assembly in ICC-ASP/21/Dec.1.<sup>13</sup>

The President proposed that the Secretariat disseminate the usual note verbal on the basis of the existing allocation of seats, informing States Parties that the nomination period would run from 5 June to 27 August 2023.

In parallel, the Bureau would appoint a facilitator via a silence procedure to deal with the issue of allocation of seats on the Committee on Budget and Finance, and on how to proceed with the elections should the composition of the Committee change. The facilitator would ideally be based in New York since the election would be held in New York and there was greater representation from the States Parties in that city. He/she should consult with delegations in both New York and The Hague on the allocation of seats on the Committee, as well on how to proceed with the incoming election to be held at the next Assembly session, taking into account that the decision on the allocation of seats would also be taken at that session.

The President proposed that the working groups consult in order to identify an individual who would serve as facilitator for this issue during 2023.

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<sup>10</sup> Annex II.D.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<sup>13</sup> In its Decision, the Assembly “Request[ed] the Bureau, in consultation with all States Parties, to discuss the allocation of seats on the Committee on Budget and Finance and to submit a report on its discussions by the twenty-second session of the Assembly.”

### *c) Future Bureau for the twenty-third to twenty-fifth sessions*

The President recalled that at the Bureau's 7 September 2022 meeting,<sup>14</sup> she had informed members that it was for the Western Europe and other States group (WEOG) to propose the name of the next President of the Assembly before or during the summer of 2023, so that the Bureau could make a recommendation to the twenty-second session of the Assembly. The two posts of Vice-President of the Assembly, as well as the eighteen members of the Bureau, should also be agreed before the next session of the Assembly. She invited the regional groups to begin discussions in order to identify the candidates for Vice-President and the eighteen members of the Bureau, taking into account the principle of rotation.

In response to a query, the President clarified that the incoming President and Vice-Presidents had to be from Bureau members. Therefore, as regards the President, WEOG had first to agree on which countries would be members of the Bureau and then agree on the individual who would be proposed as the President. Hopefully this could be done by the summer but she noted that the process could run until the very last minute.

Members of the Asia-Pacific group drew to the attention of the Bureau the under-representation of that regional group on the Bureau, in particular taking into account that the Bureau should have a representative character.<sup>15</sup> They requested that the issue be addressed as soon as possible and that Bureau members give serious consideration thereto. A member of the Latin American and Caribbean group (GRULAC) expressed the view that the regional group was also underrepresented in the Bureau, and this issue should also be considered.

The President noted that the issue of underrepresentation on the Bureau had been flagged by two regional groups and the Bureau had to consider how to begin discussions on the matter.

## **5. Commemoration of the twenty-fifth anniversary of the adoption of the Rome Statute**

Consultations were ongoing with the United Nations and other relevant stakeholders to implement the concept note and proposed program.<sup>16</sup> The Assembly Presidency hoped to finalize the date of the event to be held in New York, as well as secure the high-level presence of the Secretary-General at the event. She would provide an updated program for the commemoration which, in accordance with the concept note, foresaw events in New York and Siracusa (Italy). She indicated that consultations were ongoing with the Host country in relation to an event to be held in The Hague.

In addition, the President recalled that the Bureau had invited all stakeholders to organize commemorative events throughout the year. The Secretariat had set up a webpage where information about such events would be posted.<sup>17</sup> The President invited all stakeholders that might be preparing events to consult the webpage of the Assembly in order to avoid possible simultaneous events.

## **6. Status of contributions**

The Bureau took note that, as at 31 December 2022, the Court had received 94 per cent of the assessed contributions to the approved budget for 2022. The total amount of outstanding contributions was €40.7 million. 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.

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<sup>14</sup> <https://asp.icc-cpi.int/sites/asp/files/2022-11/2022-Bureau7-Agenda-Decisions.pdf>

<sup>15</sup> Rome Statute, article 112, para. 3 (b).

<sup>16</sup> Dated 30 November 2022.

<sup>17</sup> <https://asp.icc-cpi.int/asp-events/25a-Adoption-RS>

The President acknowledged and thanked the States Parties that made advance payments of their 2023 contributions, amounting to a total of €18 million, which had enabled the Court to avoid a liquidity shortfall at the end of 2022.

In 2023, the Presidency and the facilitator for arrears would continue to deploy all efforts to obtain the timely payment of contributions in consultation and coordination with the Court.

## **7. Other matters**

### *a) Election of the Registrar*

The President noted that the issue was in the hands of the judges who would meet in plenary session to elect the Registrar.

The Chef de Cabinet of the ICC Presidency, Mr. Hiram Abtahi, informed the Bureau that the interviews of the 10 candidates would be held on 8 and 9 February and the election of the Registrar on 10 February. The Court would thereafter issue a press release.

The solemn undertaking pursuant to article 45 was scheduled for 5 April 2023. This would enable the outgoing Registrar, whose mandate would end on 16 April, to hand over to the incoming Registrar, whose mandate would begin on 17 April. The new Registrar would take the oath effective as of 17 April.

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## **Annex**

### **Mandate holders of The Hague Working Group appointed by the Bureau**

#### Facilitators

##### *a) Cooperation*

- H.E. Mr. François Alabrune (France)
- H.E. Mr. Momar Gueye (Senegal)

##### *b) Legal aid*

- H.E. Ms. Carmen Maria Gallardo (El Salvador)

##### *c) Review of the work and operational mandate of the Independent Oversight Mechanism*

- H.E. Ms. Beti Jacheva (North Macedonia)

#### Ad country focal points

##### *a) Complementarity, including sexual and gender-based crimes*

- Australia
- Uganda

##### *b) Plan of action for achieving universality and full implementation of the Rome Statute*

- The Netherlands
- Republic of Korea

## Study Group on Governance

### *Co-Chairs*

- H.E. Mr. Arnoldo Brenes Castro (Costa Rica)
- H.E. Mr. Heinz Walker-Nederkoorn (Switzerland)

### *SGG focal points*

- Mr. Jan Christoph Nemitz (Germany)
- Ms. Mio Takanashi (Japan)
- Mr. Cornelius Scholtz (South Africa)

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