



BUREAU OF THE ASSEMBLY OF STATES PARTIES

Third meeting

10 March 2023

(via remote link)

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.

1. Consideration of detailed proposal for a tenure policy

The President recalled that the mandate for this agenda item stemmed from resolution ICC-ASP/21/Res.4.¹ The IER recommendation on tenure (R105) had been positively assessed by the Court in the meetings of the Review Mechanism in 2022. The Assembly had endorsed that assessment and had invited the Court, in close consultation with the Bureau, to develop a detailed proposal for a tenure policy for approval by the Assembly at its twenty-second session and implementation as of 1 January 2024.²

The President recalled that the Registrar had presented the Court's detailed proposal for a tenure policy at the Bureau's 14 February meeting and, given the importance of the issue, she had requested the Coordinators of the Bureau's working groups to discuss the detailed proposal with their respective working groups. At their meetings on 22 and 24 February, the Registrar had briefed the working groups and the Coordinators had reported to the President. The Bureau also had before it the following additional documents: (a) Paper prepared by the Court on "Exceptional extensions beyond tenure", dated 7 March; and (b) Paper outlining the position of the Staff Union Council on the tenure policy, dated 3 March.

The President underscored that, in order to fulfil the mandate of the Assembly, the Court needed to begin preparing draft amendments to the Staff Rules and Regulations for adoption by the Assembly at its twenty-second session. The proposed amendments would also assist States to better understand the implications of the tenure policy prepared by the Court and to therefore have a more focused debate.

The Registrar, Mr. Peter Lewis, confirmed that the Court needed time to prepare the draft amendments, which were quite extensive. The drafts would be presented to States and there would therefore be an opportunity for all States to comment.

A discussion followed among Bureau members on the tenure policy presented by the Court and on tenure, more broadly.

¹ Para. 9: "Endorses the positive assessment of recommendation R105 (Tenure) for which the Review Mechanism served as the platform for assessment, and invites the Court through the Registry, in close consultation with the Bureau, to develop a detailed proposal for a tenure policy addressing also the financial implications, for its introduction as of 1 January 2024 for approval by the Assembly at its twenty-second session;"

² Ibid.

Uganda, on behalf of the African group, recalled that it had expressed reservations at the 24 February meeting of the New York Working Group. The group's observations related to the budgetary implications of the policy, as well as the fact that there was no guarantee it would lead to more equitable geographical and geographical representation among staff. The group noted that the paper of the Staff Union Council had suggested that the Court explore other options, e.g. greater staff mobility. The group reiterated that it was premature to adopt the tenure system before all other options were explored.

The President noted that many comments had been made in the Bureau and its working groups, and it was necessary to continue the discussions. The Bureau was not the forum to indicate a positive or negative assessment of the IER recommendation on tenure or to change the Assembly's mandate to proceed with its implementation. The Assembly could ultimately decide not to proceed but in the meantime, the Court needed to begin work on the legal amendments that were necessary to implement its policy.

As the way forward, the President proposed that the Court immediately begin the internal work needed in order to implement the tenure policy. The Court should also brief the Bureau and States on its progress, as appropriate. In parallel, States Parties' discussions on the tenure policy should continue and would be fed by progress made by the Court. Further, the President would discuss with the State Party representatives on the Review Mechanism the most appropriate format to continue the discussions. The Bureau agreed with the President's suggested way forward.

2. Twenty-fifth anniversary of the adoption of the Rome Statute- update

The President recalled that "Save the date" messages had been sent for the commemorative events scheduled to take place on: a) 12 July in The Hague; b) 17 July in New York; and c) 12 and 13 October in Siracusa, Italy.

The events would be organized in consultation with the United Nations, various key officials in New York and The Hague, as well as with the cooperation of the Court, the Trust Fund for Victims and the Netherlands as host State.

In New York, the President had met with the President of the Economic and Social Council (ECOSOC), and indicated that the commemorative event would take place at the United Nations during the High-level Political Forum on Sustainable Development. The date for the twenty-fifth anniversary had been chosen to benefit from the high-level presence during that forum, which would bring advantages but also raised some challenges in relation to room reservations.

The President informed the Bureau that the United Nations Secretary-General had informed that he could not participate personally and had designated the Under-Secretary-General for Legal Affairs and United Nations Legal Counsel, Mr. Miguel de Serpa Soares, to represent him at the opening ceremony.

She further recalled that the morning segment would include a Treaty event for the deposit of instruments of ratification of or accession to the Rome Statute, its amendments, the Agreement on Privileges and Immunities, as well as signature of cooperation agreements with the Court. Further, the afternoon segment would consist of three panels.

The President of the Court had already confirmed his attendance, and hopefully the Prosecutor and the newly elected Registrar would also be able to attend, in order to steer some

of the discussions on the strategic vision for the Court for the next ten years.³ An updated concept note and a draft program would be disseminated in due course.

Regarding the 12 July event in The Hague, the President had engaged with the host State and the Public Information and Outreach Section of the Court regarding the opening the exhibit “Life After Conflict”, which would be followed by a reception at The Hague City Hall Atrium. If necessary funds were available, the exhibit would also include outdoor billboards to raise visibility of the Court in two other locations in The Hague. The host State would fund part of the event, including a reception, but additional funds were still needed to proceed with the exhibit in the three locations.

The event at the Siracusa International Institute for Criminal Justice and Human Rights would allow for a more in-depth discussion of the issues raised in the New York segment. The event would allow for online interaction and would be streamed on social media platforms.

In addition, the President noted that any declaration or recommendations resulting from discussions during these events could be adopted by the Assembly in December 2023.

The President once again encouraged States Parties and other stakeholders to consider holding events to mark the twenty-fifth anniversary, recalling that information should be shared with the Secretariat in order to be posted on the respective webpage of the Assembly.⁴

3. Status of contributions

The Bureau took note that, as at 28 February 2023, the Court had received 64 per cent of the assessed contributions to the approved budget for 2023. The total amount of outstanding contributions, for 2023 and for prior years, was €95.8 million. A total of 38 States Parties had outstanding contributions of more than one year, and 17 of those were ineligible to vote under article 112, paragraph 8, of the Rome Statute.

The President expressed her appreciation to those States Parties that had paid their assessed contributions, as well as to those States Parties that were making efforts to pay their outstanding contributions. She noted that the Presidency would continue to deploy all efforts to obtain the timely payment of contributions, in consultation and coordination with the Court and the facilitator for arrears.

In response to a comment, the President indicated that many efforts were made throughout the year by States Parties, the Assembly Presidency, the Court, and the facilitator behind the scenes in order to address the issue, which was a difficult one.

4. Other matters

a) Adoption of the due diligence process

The President recalled that, on 28 February 2023, the Bureau had adopted the “Due diligence process for candidates for 2023 judicial elections”, via a silence procedure (see annex). The adopted text has been sent to States Parties, the Advisory Committee on Nominations of Judges (ACN) and the IOM. All States had been requested to bear in mind the due diligence process when nominating candidates for the 2023 judicial elections and to draw to the attention of their respective candidates the due diligence process.

³ IER recommendation R363.

⁴ <https://asp.icc-cpi.int/asp-events/25a-Adoption-RS>.

She noted that the Head of the IOM could now proceed to carry out due diligence on the candidates presented for the elections to be held in December 2023, in accordance with those terms of reference.

The President thanked all delegations for their active participation in the discussions in the Bureau and in its working groups, and also thanked the ACN for its contributions.

The President recalled another mandate regarding Due diligence in resolution ICC-ASP/21/Res.2,⁵ and indicated that the Bureau would start work as soon as possible on the permanent mechanism, taking into account the experience so far. It would return to this mandate at a later date.

b) Appointment of Assembly mandate holders

(i) Facilitator for the omnibus resolution

The Bureau appointed Ms. Alexandra Hutchison (Australia) as the facilitator for the omnibus resolution.

(ii) Bureau focal point for non-cooperation

The Bureau appointed Sierra Leone as the focal point for non-cooperation for the African group.

The President congratulated the two Assembly mandate-holders whom the Bureau had appointed and thanked them for taking up these issues on behalf of the Assembly.

c) Appointment of a facilitator for consultations under ICC-ASP/21/Dec.1

The Bureau took note that Vice-President Ambassador Bob Rae was continuing his consultations in New York in order to identify a facilitator for discussions on the allocation of seats on the Committee on Budget and Finance, pursuant to ICC-ASP/21/Dec.1.

The President stressed the importance of appointing a facilitator, which could be done via a silence procedure.

The Secretariat recalled that the Bureau had decided at its 31 January meeting to proceed with opening the nomination period for the six regular seats and the Secretariat would await information on any additional information that should be conveyed to States.

d) Next meeting of the Bureau

The next meeting of the Bureau was tentatively scheduled for Wednesday, 12 April 2023.

⁵ Para. 82 provides:

“ Requests the Bureau to continue consultations with States Parties, the Court and civil society for the development of a vetting process for all elected ICC officials, and to report to the Assembly with a view to adoption of a vetting process as soon as feasible and no later than its twenty-second session, taking into account the ongoing consideration of the relevant IER recommendations, the outcomes of the lessons learnt exercise of the Prosecutor’s selection process including by liaising with its co-facilitators and the Bureau’s review of the due diligence process for candidates for Deputy Prosecutor;”

Annex

BUREAU OF THE ASSEMBLY OF STATES PARTIES

DUE DILIGENCE PROCESS FOR CANDIDATES FOR 2023 JUDICIAL ELECTIONS

1. At its twenty-first session, the Assembly of States Parties (the “Assembly”) requested 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*”.⁶
2. In accordance with the request by the Assembly, the Bureau establishes the following due diligence process on the basis of a proposal developed by the Independent Oversight Mechanism (IOM) in consultation with the Advisory Committee on Nomination of Judges (ACN).
3. The due diligence process shall be conducted by the IOM with the assistance of the Registry and the Secretariat of the Assembly of States Parties as appropriate. It shall comprise two parts: A first part to review existing background information concerning the nominated candidates, and a second one to receive and review any allegations of misconduct made against any of the nominated candidates.

Review of background information

4. The Secretariat of the Assembly shall provide to the IOM, as they are received, the nominations of the candidates with all accompanying supporting documentation.
5. The IOM shall contact the nominated candidates and require them to complete a detailed questionnaire, and provide consent to contact former employers and employees, state authorities, or academic institutions. Failure to submit a completed questionnaire or provide the required consent may lead to the nominating State Party being informed and the candidate not being further considered.
6. The IOM shall conduct an in-depth background check of criminal, academic and employment records of the nominated candidates with the assistance of relevant sections of the Registry of the International Criminal Court as appropriate. The check shall include a review and analysis of open-source information and contacts with former employers and, where feasible, staff who may have worked with the nominated candidates.
7. States Parties, including those nominating candidates, commit to assisting the IOM fully in any inquiries regarding this review, and to respond to any IOM request in a timely manner.

Receipt and review of allegations of misconduct

8. Upon the adoption of this due diligence process, the IOM shall establish a confidential channel for the receipt of allegations of misconduct against any of the nominated candidates.

⁶ Resolution ICC-ASP/21/Res.2, para. 82.

9. For the purposes of this due diligence process, “misconduct” refers to human rights violations, incidents of harassment, including sexual harassment, abuse of authority, discrimination and bullying in the workplace, as well as other ethical or legal breaches of a serious nature such as fraud or corruption.⁷
10. The opening of the confidential channel shall be communicated to all States Parties by the Secretariat of the Assembly of States Parties and shall be disseminated through the Court’s website and social media accounts, as well as through efforts by States Parties and civil society to provide information thereon to relevant agencies and professional associations. In particular, States Parties who have nominated candidates shall ensure that the process for submitting information to the channel, including how allegations received will be treated, is provided to the organizations where the candidate has previously worked or is currently working, noting that they are being considered as judicial candidates at the International Criminal Court. The confidential channel shall remain open until 30 June 2023.

Process for review

11. Any allegation made shall be accompanied by relevant information and documentation to the extent that it is available to the complainant.
12. The IOM shall acknowledge receipt of any allegation received, and explain the process of review, and how the information received will be treated. The complainant shall also be informed that they may be contacted by the IOM to provide additional details of their allegations, and that failure to provide such additional information may lead to the allegation not being reviewed any further. Anonymous complaints shall not be accepted.
13. The allegation and its review by the IOM shall be confidential and remain so at all times. Under no circumstances shall the identity of the complainant be disclosed without his or her prior consent. Only when the allegation cannot be reviewed and assessed on the basis of available corroborative evidence, and disclosure is necessary to ensure due process, may the IOM seek the consent of the complainant to any such disclosure. When such conditions are met and the IOM does not obtain the required consent from the complainant, the IOM shall set aside the allegation and discontinue its review.
14. The IOM shall first review the allegation and consider whether it relates to misconduct. If it does not, and relates rather to concerns about the candidate’s qualifications, abilities, or past performance, it will discuss the allegation, taking into consideration any confidentiality concerns expressed by the complainant, with the Chair of the ACN, who will then decide, after consultation with the IOM, whether the matter should be referred to the entire ACN, for it to decide whether or not to consider the issue further.
15. When the allegation relates to misconduct, the IOM shall review the credibility of the allegation, including by obtaining further information and details from the complainant, either in writing or through an interview, and corroborating, to the extent possible, the information obtained.
16. The IOM shall also assess the materiality of the allegation, determining the type of misconduct at issue and its seriousness.
17. Any allegation found to be credible and material by the IOM shall be put to the candidate, to allow them a full and fair opportunity to respond to the allegation,

⁷ In this context, the definitions of harassment, sexual harassment, abuse of authority, and discrimination shall be those found in the International Criminal Court’s Administrative Instruction *Addressing Harassment, Including Sexual Harassment, and Abuse of Authority* (Ref. ICC/AI/2022/003), 6 April 2022, available online.

either in writing or through an interview. Any nominated candidate contacted by the IOM in this context shall be warned not to retaliate against any complainant.

Reporting

18. No later than 31 October 2023 and before the planned roundtables for judicial candidates, the IOM shall submit to the Presidency of the Assembly a report regarding any concerns it may have identified with respect to the high moral character of any of the nominated candidates. In particular, it shall include an assessment as to whether any allegation made is supported by sufficient evidence to raise concerns about the candidate's high moral character, taking into account the credibility and materiality of the allegation. A copy of this report shall be transmitted to the ACN.
19. The IOM report shall also include information on the overall number of allegations received that lacked sufficient credibility or materiality to be put to the candidates, or that otherwise were not reviewed by the IOM such as anonymous complaints, lack of consent to disclose identity when necessary or performance-related allegations. In order to preserve the confidentiality of the process, only general information on the reasons to set aside the complaint shall be provided.
20. If an allegation was presented to a candidate, a short summary of that allegation and the response provided by the candidate shall be included in the report in a manner that ensures that the complainant's identity is not disclosed and no identifying details are provided.
21. Should the IOM be unable to reach a definite conclusion on the allegation by the time of its report, it shall identify whether it would be possible to take further investigative steps to confirm or refute the allegation, and what these steps would entail in terms of time and resources, including any impact these steps may have on the overall process.
22. The IOM shall provide any candidate who was notified of an allegation against them the IOM's assessment of the allegation, at the same time as the report is submitted to the Presidency of the Assembly. The IOM shall also inform the complainant in such cases.
