



BUREAU OF THE ASSEMBLY OF STATES PARTIES

Ninth meeting

9 November 2022

(via Zoom)

Agenda and decisions

1. Review Mechanism: update

A State Party representative on the Review Mechanism, Ambassador Paul van den Ijssel (Netherlands), also on behalf of Ambassador Michel Kanu (Sierra Leone), informed the Bureau that, since the last Review Mechanism's briefing to the Bureau on 19 October, he had briefed the 20 October meeting of The Hague Working Group and Mr. Jose Juan Hernandez Chavez (Chile), an *ad country* focal point on the Review Mechanism, had briefed the 1 November meeting of the New York Working Group, on behalf of Ambassador Michael Kanu.

On 24 October, the Mechanism held its tenth and final meeting for 2022 as the platform for discussion. At that meeting, the Mechanism continued the assessment of recommendations falling under Chapter XVII (Victim Participation) and Chapter XVII (Victims: reparations and assistance). Given the substantive nature of some recommendations related to the judicial process, it was foreseen that the assessment of those recommendations would be ongoing, and some would be deferred until the first half of 2023. The Acting Executive Director of the Secretariat of the Trust Fund for Victims indicated that the Trust Fund was ready to engage regarding both the assessment and the implementation of these recommendations. Representatives of civil society made valuable contributions and brought home to participants the realities of their work in the field with victims, and pointed out some areas that need the attention of States Parties and the Court.

Given the time constraints and in order to ensure efficiency, the Review Mechanism had decided to merge the two remaining roundtables indicated in its 12 September work programme. The roundtable was tentatively scheduled for 17 November and the Mechanism planned to return to some recommendations that had already been positively assessed, in order to discuss the progress by the Court on their implementation. These included recommendations on the Court's working culture, the Court's strategy on zero tolerance of bullying, harassment, and sexual harassment; and gender equality and geographical representation.

The Review Mechanism was preparing its report to the Assembly.¹ The report would include as an annex the updated Matrix on "Progress in the assessment of the IER recommendations", which would reflect the assessment of the recommendations considered by the Review Mechanism as the platform for discussion in the second semester of 2022, as well as assessments included in the reports of the respective facilitators. The Chairs of the Mechanism had recently sent a message to all facilitators

¹ Pursuant to resolution ICC-ASP/20/Res.3, para. 11.

reminding them of the timeline set out in the Assembly resolution for the submission of their reports to the Bureau, i.e. 15 November.

Further, the Mechanism was preparing a stand-alone resolution, which would, among other things, take note of the work done by the Review Mechanism and the facilitators on the IER recommendations during 2022 and refer to the future work Review Mechanism. It would also include an in-principle decision of the Assembly on the implementation of the principle of tenure and would refer to the future work Review Mechanism.

The Bureau took note of the progress of the work of the Review Mechanism.

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 session², on the understanding that it may be updated in the coming weeks before the Assembly session, and was subject to modification during the session depending on the progress on different agenda items.

(ii) Preparations for the Assembly session

Bearing in mind the objective of minimizing the risk to the safety and well-being of delegates, Court officials and ICC staff, as well as the practice of the other intergovernmental organizations, including the United Nations, Bureau agreed to recommend that all attendees are requested:

- a) not to enter the World Forum if they have been diagnosed with COVID-19 in the last five days;
- b) not to enter the World Forum if they have had symptoms consistent with COVID-19 in the last five days; and
- c) to use the face mask at all times when inside the World Forum, except when directly addressing a meeting.

The Bureau would keep the ongoing health related situation under review and return to it, if necessary, at its next meeting.

(iii) Credentials Committee

The President recalled that, according to rule 25 of the Rules of Procedure of the Assembly of States Parties, the Credentials Committee shall be composed of nine States Parties. She once more requested Bureau members to consult within their regional groups in order to identify States Parties willing to be appointed to the Committee, and to inform the Secretariat before the end of November 2022. The Bureau would then make a recommendation to the Assembly on the appointment of the members of the Credentials Committee.

(iv) Nomination of a Rapporteur for the twenty-first session

The President recalled that it would be necessary for the Assembly to appoint an individual from one of the Bureau members to be Rapporteur for the twenty-first session, and that, at the twentieth session, the Assembly had appointed Mr. Jules Thierry Legbo (Côte d'Ivoire) as Rapporteur.

As the Rapporteur should be from a regional group not represented in the Presidency of the Assembly, she suggested that the Bureau members of the African Group and Asia-Pacific Group consult, to try to agree on one nomination for the position, and to inform the Secretariat, preferably

² <https://asp.icc-cpi.int/sites/asp/files/2022-11/ASP21.ProvWP.pdf>.

before the end of November. The individual nominated should, as far as possible, also be available for the twenty-second session of the Assembly.

(b) Elections

(i) Committee on Budget and Finance: recommendation by the Bureau

The President recalled the Bureau's 19 October 2022 decision to recommend to the Assembly the election of the candidates to the Committee on Budget and Finance from three regional groups.³ The Bureau had also requested the members of the African group to consult in order to identify a consensus candidate, given that two candidates had been nominated for election to the seat allocated to the African group that would become vacant in 2023.

A member of the African group referred to the statement of the African group at the 19 October meeting regarding the regional allocation of seats on the Committee, taking into account the provisions of ICC-ASP/1/Res.4 and ICC-ASP/1/Res.5. He noted that the distribution of seats indicated in ICC-ASP/1/Res.5⁴ was stated to be for the first election, and that that distribution had not been re-visited since the first election. The African group had requested that the allocation of seats be adapted to be in line with ICC-ASP/1/Res.4 on equitable geographical distribution,⁵ prior to the election of members of the Committee on Budget and Finance at the twenty-first session.

The Director of the Secretariat clarified that the composition of the Committee had to be revised by a resolution of the Assembly, not by the Bureau and that a concrete proposal would be needed to that effect.

A Bureau member also raised the issue of the distribution of seats on the Bureau, which should also be revisited

The President indicated that the item of the composition of the Committee on Budget and Finance would be addressed again at the next meeting of the Bureau, following discussions in the New York and The Hague working groups.

(ii) Registrar: update

Vice President Ambassador Kateřina Sequensová briefed the Bureau on developments in The Hague Working Group regarding the recommendations on the election of the Registrar. She recalled that this was a mandate of the Assembly contained in resolution ICC-ASP/20/Res.4, which requested the Bureau, through The Hague Working Group, and in an inclusive manner, to discuss the list of candidates for Registrar and submit a report and any recommendation for consideration by the Assembly at its twenty-first session. The working group had considered the issue at its 20 October meeting and discussed the format of the recommendations. There were two different positions on the format.

Some States favoured a more general approach, the 2017+ approach, i.e. to improve the 2017 recommendations in order to be more detailed and specific on criteria to be considered by the judges. These criteria should include the merits of the candidates; qualifications and competence; skill sets and values; specific expertise in management within an international organization; expertise in other fields such as the protection of victims, administrative law, familiarity with courtroom proceedings; a commitment to a transparency and a diverse workplace and working culture; a good knowledge of legal aid; and the ability to maintain good communication with States Parties.

³ <https://asp.icc-cpi.int/sites/asp/files/2022-11/2022-Bureau8-Agenda-Decisions.pdf>.

⁴ Para. 8.

⁵ Annex, para. 2.

On the other hand, some States were of the view that it was the responsibility of States Parties to make a more substantive contribution to assisting the judges in their decision, after having contributed to the roundtables on the candidates' interviews. In their view, States should classify the candidates into two groups, suitable and less suitable, and suggested that a ranking of candidates be done by States Parties. They felt that the Assembly's recommendations should not repeat general criteria contained in the Rome Statute. There was a view that, by limiting themselves to general criteria, States would fail in the fundamental role given to them by Assembly.

In addition, States highlighted the need for high importance to be given to geographical representation and rotation. The language capabilities of candidates and the need to ensure respect for the different legal systems were also important.

The Vice-President had invited States Parties to submit specific language for inclusion in the recommendations of the Assembly and had received proposals from some States Parties. She was looking into incorporating them into the text of the recommendations. She planned to hold a meeting of the working group in following week, dedicated to the discussion of the recommendations, and hoped that States would reach consensus on the nature of the recommendations to the judges, and subsequently on the content.

The President thanked the Vice-President and hoped that the working group would reach consensus soon, for the Bureau to be able to propose a recommendation for the consideration of the Assembly.

3. Due diligence for election of judges

The President recalled that, at the Bureau's 20 October meeting, she had indicated that if the Bureau wished to implement a due diligence or vetting procedure for the election of judges in 2023, the Assembly would need to take a decision on the establishment of such a mechanism at its twenty-first session. If the Assembly agreed, the establishment of the mechanism could be entrusted to the Bureau, and be developed along the lines of the procedures adopted for the election of the Deputy Prosecutors in 2021 and for the election of the Registrar in 2022. She noted that the omnibus resolution⁶ already contained a mandate to the Bureau on the development of a vetting process for all elected officials. The President further noted that should the Bureau decide to recommend the establishment of a due diligence process for the next election of judges in 2023, it would also be necessary to consider its budgetary implications.

The President also drew attention to the report of the Advisory Committee on Nominations of Judges on the work of its eighth session.⁷ The Committee had indicated that for the 2020 election of judges, the Court's Security and Safety Section had done background checks on the candidates and that there had also been the opportunity for external stakeholders to confidentially submit information on candidates. The Advisory Committee had indicated that in the absence of any specific decision by the Assembly on a different due diligence process for the next election, it would again rely on the assistance of the Security and Safety Section of the Registry in 2023.

Bureau members noted the importance of a establishing a due diligence process for the election of judges, and expressed support for a recommendation to the Assembly on the establishment of a due diligence process for the election of judges in 2023, taking into account the timelines of this election process.

⁶ ICC-ASP/20/Res.5, para. 81:

"Tasks 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 ahead of its twenty-first session 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 and the Bureau's review of the due diligence process for candidates for Deputy Prosecutor;"

⁷ ICC-ASP/21/4, paras, 12-13.

Regarding the budgetary implications, it was noted that the Independent Oversight Mechanism (IOM) had requested an additional sum of 30,000 euros in the 2023 budget in order to flag up the need for additional staff for a due diligence process, should such a process be decided with the involvement of the IOM. It was envisaged that the work of the IOM would then be supported by one or two additional investigators. The IOM would not duplicate the work of the Court's Security and Safety Section, which would still carry out the types of background checks typically done by the Court.

The Head of the IOM indicated that while his office had absorbed the costs of the due diligence processes for the Deputy Prosecutors and for the Registrar⁸, it would be difficult for the office to absorb a larger a new process involving a higher number of candidates. This would affect negatively the quality of the work of the IOM and its capacity to fulfil the activities of its core mandate

In summarizing, the President concluded that the Bureau appeared to agree 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, and with a role for the IOM. The precise terms of the system could be elaborated early next year, drawing on the experience of the previous vetting processes and in consultation with the Advisory Committee on Nominations of Judges.

The President proposed that discussions on this topic, including its budgetary implications continue in The Hague and the New York Working Groups. The Bureau would take a decision at its 2 December 2022 meeting.

4. Independent Oversight Mechanism- annual report

The Head of the Independent Oversight Mechanism (IOM), Mr. Saklaine Hedaraly, introduced the annual report of the Independent Oversight Mechanism.⁹ The report focused on some areas of the IOM's achievements. An important area was the alignment of the regulatory framework of the Court to the mandate of the IOM, e.g. the issuance of an Administrative Instruction (AI) on investigations, which updated a previous AI on Disciplinary proceedings; and an AI to address harassment and abuse of authority. He presented information on the investigation caseload of the IOM and on the Evaluation report on the Judiciary. In The Hague Working Group's discussion on the IOM, it had been noted that the Group of Independent Experts had made some recommendations, which the judges would assess in order to see what steps could be taken.

The Evaluation report also highlighted the flexibility of the evaluation mandate of the IOM, and how this could be of assistance to the Court. He was awaiting feedback from the Heads of organs on possible future evaluation mandates.

As regards staffing of IOM, he hoped to have a full complement in January 2023, to allow the office to begin the mandate of inspections.

He drew to the attention of the Bureau that the IOM had created a Junior Professional Officer (JPO) profile for evaluations and requested all States Parties to consider assigning a JPO, which would assist the office in this mandate.

In commenting, a Bureau member stressed that the Western Europe and other States group took the issue of working culture very seriously and had held some meetings with representatives of the Staff Union Council. The group was looking at this issue in relation to the Evaluation report, and noted that the it was not limited to the Court but also existed in other international tribunals. The efforts of the Head of the IOM to take the matter seriously were welcomed.

The Bureau took note of the annual report of the Independent Oversight Mechanism.

⁸ There had been six and twelve candidates, respectively.

⁹ ICC-ASP/21/8.

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

The President informed the Bureau that since its 19 October meeting, she had held further consultations concerning the commemoration process with the Court, civil society and academia, and had elaborated a draft concept note for the twenty-fifth anniversary of adoption of the Rome Statute, based on these consultations. The Bureau had before it the Draft concept note for the 25th anniversary of the Rome Statute, dated 26 October 2022.

In response to a request from some Bureau members for further clarification on the adoption of a declaration following the commemoration, the President noted that the declaration could contain recommendations further to the discussions held during the commemoration events, for adoption at the twenty-second session of the Assembly of States Parties.

The President also recalled that the commemoration of the twenty-fifth anniversary would also encompass the discussions on IER recommendation 363 on the strategic vision for the Court for the next ten years, as well as a treaty ratification event for States that may wish to deposit instruments of ratification. She provided further clarification on the format of the events outlined in the draft concept note.

It was agreed to continue the discussions on the format of the events for the commemoration of the twenty-fifth anniversary of the Rome Statute at the next Bureau meeting.

6. Status of contributions

The President informed the Bureau that, as at 31 October 2022, the Court had received 91 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 €44.6 million (of which €13.4 million related to 2022 and €31.2 million to prior years). 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.

7. Other matters

The President informed the Bureau that on 3 November, together with President of the Court Judge Piotr Hofmanski, she had met the President of Argentina and his Minister of Foreign Affairs, in Buenos Aires, to discuss issues related to political and financial support including specifically outstanding contributions as well as cooperation with the Court and the universality of the Rome Statute.

On 4-5 November, she had, together with the President of the Court, attended the 43rd Annual Forum of Parliamentarians for Global Action, hosted by the National Congress of Argentina in Buenos Aires. During the event, they had the opportunity to interact with Parliamentarians from over 40 countries and engage bilaterally with the representatives of United States and parliamentarians of other non-parties from Asia Pacific, African and Caribbean countries. One of the main focus of the meeting was the need to enhance universality of the Rome Statute and promote the adoption of implementing legislation.

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