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Report of the Review Mechanism submitted pursuant to resolution ICC-ASP/20/Res.3, paragraph 11

I. Introduction

1. The present report of the Review Mechanism (“Mechanism”), which is further to the Report of the Mechanism on the overall progress of its work which covered its first to eighth meetings as the platform for discussion of independent expert review recommendations assigned to it,¹ is submitted pursuant to resolution ICC-ASP/20/Res.3, paragraph 11, which states as follows:

“11. *Requests* the Review Mechanism, in close coordination with the Court focal points and relevant Assembly mandates, to provide regular updates to all States Parties through the Bureau Working Groups, on the review process including on any impediments to progress identified, to brief the Assembly in writing on the overall progress of its work, before 30 June 2022, and to submit a report on the review process to the Assembly well in advance of its twenty-first session on:

- a) Progress in the assessment of and possible further action on the recommendations of the Independent Experts and measures for the implementation of the review process;
- b) Progress in the work of the relevant Assembly mandates on the issues referenced in resolution ICC-ASP/18/Res.7 paragraphs 18 and 19; and
- c) Any other progress in the review process.”

II. Mandate of the Review Mechanism

2. The mandate of the Mechanism is set out in resolution ICC-ASP/20/Res.3, with specific deadlines for the completion of each stage of its mandate.²

a) *Proposal for a comprehensive action plan for the assessment of the recommendations of the Group of Independent Experts, including requirements for possible further action*

3. The Review Mechanism recalls that it submitted to the Bureau on 30 June 2021 the “Proposal for a comprehensive action plan for the assessment of the recommendations of the Group of Independent Experts, including requirements for possible further action” (“CAP”),³

¹ See: annex I, Report of the Review Mechanism on the overall progress of its work, dated 30 June 2022: <https://asp.icc-cpi.int/sites/asp/files/2022-11/2022-RM-report-progress.pdf>

² ICC-ASP/20/Res.3, paras. 9 and 11.

³ https://asp.icc-cpi.int/iccdocs/asp_docs/ASP20/RM-Comprehensive%20Action%20Plan-ENG.pdf

in accordance with paragraph 4 (b) resolution ICC-ASP/19/Res.7. The Bureau adopted the CAP on 28 July 2021.⁴

4. Like the Categorization of IER recommendations submitted in 2021, the Review Mechanism considers the CAP as the roadmap for the assessment of all the recommendations throughout the Review process. The Mechanism is aware that not all the recommendations that according to the CAP were due for assessment in 2022 were fully assessed in the meetings of some Assembly mandate-holders. The RM has always realized that with the CAP it has laid down a very ambitious timetable that comes on top of an already high work load. In that respect, a certain amount of flexibility as to the timelines for assessment set out in the CAP is understandable. The Mechanism nevertheless hopes that overall, we can continue the ambitious approach, keep up the pace in the review process and complete the assessment of all the outstanding recommendations in the first half of 2023. The Mechanism hopes that the implementation of all the positively assessed recommendations can be started or, if appropriate, completed in 2023.

5. The Mechanism recalls that, in allocating the IER recommendations in the CAP, it had decided to work through existing Assembly structures and to itself take up the assessment where there was no corresponding Assembly mandate. Given the need for further consideration of IER recommendations relating to the Trust Fund for Victims and its Secretariat, the Mechanism recommends that the Assembly establish a mandate on those recommendations.

b) The Review Mechanism as the platform for discussion

6. The Mechanism held 10 meetings this year as the platform for discussion on the assessment of IER recommendations, on 28 February, 3 March, 24 March, 21 April, 29 April, 3 June, 13 June, 4 October and 24 October 2022, respectively. It invited the Court organs, independent offices, the Assembly, Bureau and Assembly mandates (“actors”) to which it had allocated recommendations in the CAP to inform States and other stakeholders on the status of their assessment of the recommendations. Some actors informed the meeting of the status of implementation of the recommendations, in addition to the status of their assessment. The Review Mechanism meetings assessed recommendations with a timeline in the CAP for assessment of the first and second half of 2022.

7. On 30 June 2022, the Review Mechanism submitted to the Bureau and States Parties its report on the overall progress of its work, in accordance with resolution ICC-ASP/20/Res.3,⁵ which set out the outcome of the assessment of the recommendations carried out by the Review Mechanism in the first half of 2022.

8. The Review Mechanism is pleased that the Chair of the Group of Independent Experts, Mr. Richard Goldstone, and/or some of the IER Experts or the IER Assistants participated in the majority of its meetings. They participated in their personal capacity and were always willing to share information on the thinking of the IER Experts on the respective recommendations. Participants welcomed and appreciated their presence and very helpful contributions.

9. At its 4 October meeting, the Review Mechanism considered Communications Strategy and Outreach Strategy (R167 and R168), as well as External political measures against the Court (R170).

10. The Registry noted that R167 contains three main parts. The first part indicates that the Publish and Information Outreach Section (PIOS) should retain coordination over outreach officers in field offices, working in cooperation with the Heads of said offices. In this regard, the Registry noted that the Court agreed with this part of the recommendation indicating that this is their preferred and currently existing working method. The coordination aspect is something that the Court tries to ensure through regular meetings of the headquarter outreach personnel and their counterparts in the field.

⁴ https://asp.icc-cpi.int/iccdocs/asp_docs/ASP20/ICC-ASP20-BD-CPA-ENG.pdf

⁵ See annex I.

11. The second part of this recommendation is that PIOS should have available a centralised outreach budget that enables them to more flexibly allocate resources based on needs (workload, judicial developments and priorities among the different situations). The Registry indicated that the Court does this in practice, in the sense that while the budget is not centralized out of the outreach office in headquarters, because all the field budgets are combined, the Court has the ability to very easily move between the budgets of different field operations to ensure the reallocation of funds to cover specific needs. While in principle, the Court agreed that it was a good idea it questioned whether the physical act of centralizing the outreach budget was required given that the Court already has de facto the ability to move it around when needed.

12. Regarding the final part of the recommendation, which stipulates that the OTP should consult the PIOS in designing its outreach activities to ensure a coordinated approach and avoiding overlaps, the Registry noted that this is the nature of the existing cooperation with the OTP, and intend to continue in such manner going forward.

13. The Registry indicated that the same logic applies to R168, regarding improving media access to the Court/OTP and simultaneously hosting video press conferences with situation/regional countries. Namely that the Registry and the OTP will coordinate whenever possible.

14. Civil society highlighted the importance of the Court's outreach to victims in affected communities and the crucial role it plays for the effectiveness of victims' rights and in facilitating meaningful participation in the Courts proceedings. On the other hand, the lack of effective outreach can lead to misconceptions, confusion and loss of trust towards the Court, and increases burden on civil society to fill the information gap. CICC called for efforts to be made to ensure that the limited resources of the Court are used as effectively as possible and avoid any overlap.

15. In response to a budget related question, the Court indicated that it had factored in its needs with regards these two recommendations in the current budget proposal but that they were not reflected as a specific distinctive allocation within the budget, as this represented a general principle in terms of working methods of the Court on outreach.

16. The RM concluded that both recommendations were positively assessed and that the IER experts in the implementation phase would provide further clarifications on the use of the word 'simultaneously' in R168.

17. Concerning R170 on the formalization of a crisis management policy, the Registry noted its agreement, save for the formalization aspect of it. The Registry indicated that given the recent experience with the COVID pandemic and the US sanctions, the Court has learnt that it needs a flexible crisis management approach rather than the formalization of a strict policy, an updated operating procedure that incorporates the lessons learnt in the past few years would be the best way to go forward. This procedure would include at its core the ability to put in place a command-and-control structure that is accountable to the Principals of the Court in a very short period of time, and ensuring that the Court has the operational set up to deal with any crisis. Following the past two crises the Court learnt that mapping out scenarios and formalized command management structures proved inadequate to meet the challenges. Instead, the Court needs to be able to have a functional, flexible and responsive mechanism in place. It was agreed that interpretation of the term 'formalising' would entail the propagation of a standard operating procedure.

18. In response to a question on the definition of crisis, the Court preliminary observations would define it as occasions where the Court is unable to operate using the normal response mechanisms, and where urgency and a separate enhanced fast track decision mechanism that allows the Court to respond in a timely manner is required.

The RM concluded that R170 was positively assessed with modifications. Instead of a formalized policy, the Court would develop a standard operating procedure. The Court was requested to share information on this procedure with States Parties. In this regard, the Court

raised some concerns with sharing its standing operating procedure on this matter, as it may need to be redacted to avoid exposing the Court's crisis response "play book". It was then agreed that a verbal presentation by the Court with further information on the standard operating procedure without specific details would suffice.

19. At its 24 October 2022 meeting, for reasons of efficiency and upon consultations with the Court focal points, the Chairs decided to merge the agendas of the two meetings relating to victims' issues indicated in the 12 September 2022 work programme for the second semester. The issues considered were (a) Chapter XVII- Victim Participation: Assessment of IER recommendations R336 to R341; and (b) Chapter XVIII- Victims: Reparations and assistance: Assessment of IER recommendations R342-R349 and R351.

20. The Review Mechanism took note that, 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. 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 which highlighted that victims' participation was at the core of the Rome Statute system, and welcomed that the IER `experts had found that in order to give effect to the recommendation, the steps undertaken by the Court should be meaningful and not symbolic. Their interventions highlighted to participants the realities of their work in the field with victims, and they also pointed out some areas that need the attention of States Parties and the Court.

21. In the form of introductory remarks, the Chef de Cabinet of the Presidency explained that some recommendations are still under consideration and could not always be concluded by way of a clear assessment, as the underlying issues are often dependent on the specific circumstances of cases and the development of the jurisprudence. The Chef de Cabinet further indicated that the three assessment categories do not always provide an appropriate classification for the status of the assessment of recommendations by the Judiciary.

22. The Chef de Cabinet indicated that the assessment of recommendations R336 and R337 was under consideration. R338 on the automatic admission of victims had been negatively assessed because the judges considered the participation of victims was directly related to whether or not a person qualified as a victim of at least one of the crimes in the arrest warrant or charges that have been confirmed.

23. Further, the Chef de Cabinet noted that R339 was linked to R359, and first required an assessment of R359. Recommendations R340 and R341 had been negatively assessed. For R340, the judges had agreed that a general notification by the Legal Representatives of Victims of the intention to pose question, would suffice and that the necessity and propriety of the questions would be assessed on a case-by-case basis. Recommendation R341 had also been negatively assessed, as the judges had agreed that victims should be encouraged by the Registry's outreach to submit observations and views directly to the Prosecution during the preliminary examination and investigation stages. Generally, only when judicial proceedings had been initiated, victims would be heard by the Chamber, and counsel be appointed.

24. The recommendations falling under Chapter XVIII- Victims: Reparations and assistance had also been assessed by the judiciary (R342-349 and R351, with exception of R346). Recommendations R342 and R343 had been positively assessed with modifications. For R342, the judges agreed to the need to apply the principles consistently and coherently, but were of the view that the principles should be developed through jurisprudence, and that they would continue to advance the principles through future reparations orders. As regards R343, the judges assessed this recommendation positively with the modification that while they agreed that the reparations phase of proceedings should be guided by standardized, streamlined and consistent procedures and best practices, they were of the view that at this point, further development of procedures was needed before considering whether these procedures should be included in an official document.

25. He indicated that recommendation R344 had been negatively assessed, and the judges had agreed that there are no limitations in the Court's legal framework that would prevent reparations and appeals proceedings from running in parallel and accordingly there was no

need to amend the normative framework of the Court. Also, depending on the specific circumstances of a case, the judges would decide whether a stay in proceedings was merited.

26. R345 was assessed positively with modifications, as the judges had agreed that the combined application forms should be collected as early in the proceedings as possible. They had also suggested that the latest application form be reviewed to streamline or eliminate the section on the types of modalities of reparations in order to manage the victims' expectations.

27. The judges had assessed recommendation R347 positively and had agreed that prior to the issuance of a reparations order, the responsibility for identifying, facilitating, collecting, registering and processing of all applications fall within the mandate of the Court's Victims Participation and Reparations Section.

28. Recommendations R348 and 349 are still under consideration.

29. As regards recommendation R351, this had been positively assessed with modifications. The Judiciary supported it as far as the efficiency and effectiveness of reparations in all phases should be enhanced, and that it was fruitful to encourage the parties in orders or decisions to efficient cooperation. However, their modification related to how this was to be done: the IER Experts had recommended protocols, but in the judges' view, it was for the parties and participants, not the judges, to decide how this would be done.

30. The Court focal point of the Registry indicated, regarding recommendation R346, that it had been positively assessed by the Registry. The first part of the recommendation relating to measures to be taken by the Court, Office of Public Counsel for Victims, the Legal representatives of victims and the Trust Fund would be included in the new Communication and Outreach Strategy on which the Court was working. The Registry does not have advance notice of whether a conviction would be overturned on appeal, so it was positively assessed with the caveat that the Registry does not receive advance notice of a decision and considers all scenarios when preparing its communication response. The second part of the recommendation would be addressed in the Registry's Communication and Outreach strategy in coordination with the Trust Fund for Victims.

31. No contrary views were expressed on the assessment by the judges and views expressed by the Registry's focal point and the Acting Executive Director of the Secretariat of the Trust Fund for Victims. The Review Mechanism therefore concluded the assessment of the recommendations on the basis of the Judiciary's assessment, with recommendations R348 and 349 to remain under consideration.

c) Roundtables

32. The Review Mechanism held two roundtables which considered the progress on the implementation of some recommendations that had been positively assessed. The first roundtable, held on 23 June 2022, considered the implementation of the IER recommendations R14, R15, R87, R129 and R130 relating to workplace culture at the Court. The IER recommendations on workplace culture had been identified by all stakeholders as a priority at the Review Mechanism's 30 September 2021 meeting, when the issue was first discussed.

33. The Registrar, on behalf of all organs of the Court, provided an update on the activities that had taken place in the court since his briefing to the September 2021 meeting on workplace culture. The efforts being were led by the three Heads of organs, with the support of the Gender Focal Point, the Staff Union Council and the respective offices and mandates within the Court, including the three Immediate Offices and the Court focal points.

34. The main efforts undertaken by the Court were (i) on 14 March, the issuance of two Administrative Instructions (AIs) that were important in the context of ensuring a clear legal framework on misconduct, i.e. on Investigations of unsatisfactory conduct; and on Disciplinary proceedings. The AI on investigations of unsatisfactory conduct was new and set out the rights and obligations of Court personnel in reporting and cooperating with the Independent Oversight Mechanism (IOM). The AI on Disciplinary proceedings was designed to have the role of the IOM fully integrated into the system, as it had previously run parallel to the Disciplinary Advisory Board system; the process was therefore more streamlined. (ii)

On 6 April, the issuance of a new AI on addressing discrimination, harassment, including sexual harassment and abuse of authority; (ii) The Court was developing an AI on sexual exploitation and sexual abuse, which is at an advanced stage; (iv) updating its Whistleblowing policy. In addition, the Court was in the process of recruitment of an Ombudsperson.

35. As regards workplace culture, the Court had begun efforts to establish a set of core values for the Court as a whole, and aimed to involve as many staff members as possible in formulating these values, so as not to have a top-down exercise. In addition, each organ measures with respect to workplace culture: the President had requested the IOM to conduct an evaluation of the workplace culture of the judiciary; the Prosecutor had established a workplace culture panel, and the Registry would hold a series of roundtables addressing specifics, to ensure that staff understood what the framework was and what they could do as individuals.

36. The Court had taken these actions to respond directly to the IER recommendations on workplace culture. The actions also gave the staff the opportunity to share their views directly with the Principals of the Court.

37. The second triennial Staff Engagement Survey had taken place at the end of 2021 had identified and confirmed many of the issues IER had identified as priorities, including gender equality, ethics and standards, engagement and internal communications, staff well-being. A recurring theme was staff selection and career development. The Staff Survey had, for the first time, gathered data on alleged discrimination, harassment and abuse of authority at the Court.

38. In order to take the work of the staff engagement survey forward, the Court had strengthened the composition of Court-wide staff well-being and engagement Committee by including the Gender Focal Point as a permanent member.

39. The Court had set five priorities from the staff survey which had been shared with staff. Will take forward that work, together with the implementation of the IER recommendations.

40. The Registrar provided an update on other issues of importance to the Court: recruitment (including gender parity, outreach to unrepresented and underrepresented States Parties, the use of social media, a new Staff selection policy) , training, and the launch of a second mentoring programme focused on women at Headquarters and in the Field Offices.

41. The Gender Focal Point had been conducting training on sexism and unconscious bias as part of a campaign. The Principals of the Court had committed to having a Strategy on Gender Equality and Workplace Culture in place by 2025. They had shared the zero draft with everyone in December 2021 and hoped to publish the Strategy before the twenty-first session. It was built around the three pillars of a safe and inclusive workplace; work-life balance; and gender parity and equal opportunities.

42. The Court focal point of the Office of the Prosecutor indicated that the Prosecutor was awaiting the report of the Panel on OTP workplace culture.

43. The President of the Staff Union Council stated that since the September 2021 meeting of the Review Mechanism on workplace culture, there had been improvements. She welcomed the steps taken by the Court, which the Staff Union supported, and underlined the importance of workplace culture. Although the respective organs had started different exercises on workplace culture, the Staff Union Council believed that the Staff Engagement Survey and the five priorities could have been included in the framework of the strategy and clearly communicated to all staff members. The President of the Staff Union Council hoped the outcome of the work of the Panel on workplace culture in the Office of the Prosecutor and of the Evaluation report on the judiciary would be shared with all staff members. She reiterated the willingness of the Staff Union Council to cooperate with the Court in the implementation of all workplace culture processes.

44. The Staff Union Council believed that the zero draft strategy could be enlarged to other pillars such as accountability which should be articulated around three points: strengthened communication and inclusion, zero tolerance policy and architecture for conflict prevention and resolution, leadership accountability and responsibility for the decision

making process. In addition, the strategy should dedicate another pillar to growth and development around the following three points: healthy working environment and work life balance; continuous learning and knowledge sharing; career development of Court staff member keeping in mind that the court is career promotion. It recommended that, in order to implement the workplace culture strategy of the Court, the Court should strengthen the role for the Human Resources Section, which should actively involve the leadership, ensure a strong communication strategy, and create key performance indicators.

45. The Chair of the IER Experts, Mr. Richard Goldstone, stated that the response of the Court to the IER recommendations was highly satisfactory; and recalled that the IER had attributed high importance to workplace, which was crucial for the Court. Their study of workplace culture had found problems in the Registry, Chambers and the Office of the Prosecutor. An IER Expert, Me. Mike Smith, was encouraged by the response of the Court. He noted that cultures do not change overnight and there was a long way to go. In the coming years, the IER Experts would see, through the Staff Surveys, the effects of the measures implemented.

46. On 17 November 2022, the Review Mechanism held a second Roundtable dedicated to Progress in the Court's implementation of IER recommendations concerning the Court's working culture, Strategy to address zero tolerance of bullying, harassment, and sexual harassment; and Gender equality and inclusiveness regardless of gender or sexual orientation, and geographical representation in the recruitment of staff. The Registrar of the Court, Mr. Peter Lewis, the facilitator on geographical representation and gender balance in the recruitment of staff of the Court, Mr. Taeun Choi (Republic of Korea) and the President of the Staff Union Council, Ms. Géraldine Danhoui, made introductory presentations.

47. The Registrar, on behalf of all organs of the Court, provided an update on the activities that had taken place in the Court since his briefing to the Review Mechanism since the first roundtable held on 22 June 2022. The efforts undertaken by the Court on its working culture, the strategy to deal with and zero tolerance of bullying, harassment and sexual harassment, and gender equality and inclusiveness regardless of gender or sexual orientation, and geographical representation in the recruitment of staff were led by the three Heads of organs, with the support of the Gender Focal Point, the Staff Union Council and the respective offices and mandates within the Court, and would be featured prominently in the Court's strategic plans for 2023-2025, which were in the final stages of internal consultation, as well as in the strategic plans of the organs of the Court.

48. In addition, the recruitment process of the Ombudsperson had been finalized, and it was expected that the selected candidate would be onboarded by the end of 2022, and begin their work in January 2023. The selected candidate would be recruited on a consultancy basis for a limited term, to comply with the stipulations of IER recommendation 18 that the person was an outsider and would bring objectivity to the process, and there was an expectation that the Ombudsman would prepare a report annually that would be submitted to the Assembly, as was the case with the Head of the IOM. On the recruitment of the gender focal point, the recruitment process was ongoing and there was an expectation that it would be concluded by the end of 2022. However, the candidate selected from the recruitment process would not be onboarded until March 2023, as the Committee on Budget and Finance approved the funding of the position on a GTA basis for 10 months, despite the efforts of the Court to ensure an established post funded from the regular budget. The Court would continue to request for the post to become established in future years.

49. The Court continued to engage with staff on the development of a Court-wide set of core values, which it envisioned would continue into 2023.

50. In addition to the three administrative instructions issued during the first half of 2022, the Court was establishing a policy on sexual exploitation and sexual abuse, which is at an advanced stage, and has started a comprehensive revision of its Whistleblowing policy as a Presidential Directive, following the best practices of the United Nations and other international organisations, with work continuing in 2023. With the aim to further the zero-tolerance policy strategy, the judges of the Court had updated the Code of Judicial Ethics to indicate that the Court's Administrative Instructions on harassment and investigations would also apply to them as elected officials. The other elected officials, the Prosecutor, Deputy Prosecutors and the Registrar, had made similar declarations. The Registrar had received

proposals from the ICCBA that would modify its code of conduct to be in line with these Administrative Instructions.

51. Reiterating its commitment to addressing the concerns on its working culture, the Court undertook a staff wellbeing survey from 25 October to 14 November 2022, and a pulse survey would be launched in late November, which it envisioned would be undertaken annually as add-ons to the triennial diagnostic Staff Engagement Surveys.

52. As regards geographical representation and gender balance, the Court was in the process of establishing a new staff selection policy, which would include best practices, taking into consideration the recommendations of the expert consultancy undertaken to improve the recruitment framework. The Court had also begun providing mandatory training on unconscious bias for panel members in recruitment processes, and would provide mandatory training on the new policies on harassment in 2023. The Registrar noted that the facilitator's draft report on Geographical representation and gender balance made a number of recommendations, which the Court would consider in the elaboration of a new Staff Selection Policy. He would discuss it with the facilitator, as it was important for the policy to have the support of States.

53. The Court was in the process of recruiting a permanent Gender Focal Point. The Registrar thanked all States Parties that had participated in the Court's first strategy on gender equality and indicated that there had been many consultations thereon within the Court. The Strategy would be officially launched at the twenty-first session of the Assembly. He noted that the new policy would take forward many of the IER recommendations. Further, the three Principals of the Court had committed to make tangible progress during the United Nations Decade of Action 2020-2030 and would deliver on the Sustainable Development Goal of Gender Equality, including the Generation Equality Movement. Gender equality would be incorporated into the new strategic planning framework of the Court. An issue that arose in the consultations was the importance of having a clear pathway for delivery and, in that regard, the Court had attached to the strategy and implementation checklist, which the Court would closely monitor. An evaluation of the implementation would be requested of the IOM at the end of the planning cycle.

54. In addition to these Court-wide activities, special initiatives had been undertaken by the Presidency and the Office of the Prosecutor. Further to the President's September 2021 request for an evaluation of the workplace culture in the judiciary, the Independent Oversight Mechanism had issued its report on 30 June 2022. Eighty per cent of staff members of the Judiciary and all the judges had participated. The judges were considering the IOM's recommendations or were in the process of implementing them and had, in that regard, made amendments to the Code of Judicial Ethics. Further, the Prosecutor had undertaken a programme to address workplace culture in the OTP. These include the reorganization of the office along with the adoption of a new seating plan, the creation of a core transition team (CTT) to ensure ownership of the reorganization efforts, the implementation of an open-door policy for the Prosecutor and the Deputy Prosecutors, regular town-hall meetings with staff, and availability to OTP staff of a virtual and physical "Suggestions" box. Further, the ad-hoc advisory panel on workplace culture appointed in August 2021 to study, assess the findings of the IER report, conduct voluntary interviews with OTP staff and provide advice to the Prosecutor with regard to the workplace environment, presented its final report on 27 October 2022. Through nine goals, the Panel set out a roadmap for the sought-after cultural transformation of the OTP. In addition, the Special Adviser to the Prosecutor on Workplace Culture, Mrs. Purna Sen, presented a proposed way forward to the OTP which focuses on the procedural and cultural change required for the OTP to fulfil its potential as an inclusive, diverse and accepting workplace. The proposed way forward, which was discussed at the OTP town hall meeting on 31 October 2022, include actions that can be built upon in relation to communication and work-climate and the short- to long term. On 10 November, a call had gone out to all OTP for an expression of interest to join a working group to further develop and implement the "way forward". In terms of gender equality, the first ever OTP focal point on gender had been appointed in December 2021 by the Prosecutor and will work closely and in a complementary manner with the Court-wide Gender Focal Point.

55. The facilitator on geographical representation and gender balance in the recruitment of staff of the Court recalled that geographical representation and gender balance were cross-cutting issues, and that the recommendations allocated to the facilitation in the

Comprehensive Action Plan had been also co-allocated to either other facilitations, Court organs or, in the case of IER recommendation 15, to the Review Mechanism itself. In that regard, the most efficient way of addressing the topic was for the New York Working Group to participate in those facilitations, in order to avoid duplication of efforts. He welcomed that the Court had positively assessed all gender balance and geographical representation-related recommendations, and that some had been already implemented. He emphasized that geographical distribution and gender equality should be widely considered in the implementation of the recommendations. Concerning the implementation of IER recommendation 91, while the Court had provided the explanation on its implementation, questions arose on whether the implementation was being done rigorously. The facilitation would continue to pay attention to the implementation process of GRGB-related recommendations and provide active and productive feedback in an appropriate way.

56. The President of the Staff Union Council indicated that since the June 2022 roundtable, the Court had launched many activities with the involvement of the Staff Union Council. The Staff Union had also signed the updated version of the recognition agreement, which included the possibility for a meeting between the Court Principals and the Staff Union Council to meet every six months within the framework of the Coordination Council. Reiterating the importance of having a leadership that acted as a role model, the Staff Union Council welcomed the Court's efforts in implementing the IER recommendations to further improve the workplace culture of the Court, but recalled the need for continued, regular engagement with staff, as well as the need to better inform staff about policies on harassment and the roles of all stakeholders in investigations and disciplinary processes. The Staff Union Council welcomed the recruitment of an Ombudsperson, and reiterated the importance of the reinforcement of the Human Resources Section.

57. States Parties welcomed the Court's efforts to discuss and implement the IER recommendations concerning the Court's working culture. They welcomed also the strategy to address bullying, harassment, and sexual harassment and its zero-tolerance policy; and gender equality and inclusiveness regardless of gender or sexual orientation, and geographical representation in the recruitment of staff. It was noted that those were core issues that would have an effect on the credibility of the Court, and States welcomed inclusion of staff in the process. States also welcomed that a genuine process was being conducted, and that it would ensure transparency and accountability in the Court. It was a long-term process which must lead to a permanent change of attitudes at all levels of the Court. In addition, it was important that a vetting process was now being carried out for the different elected officials, and it was noted that the Court was totally dependent on its reputation.

58. A view was expressed that equitable geographical representation for positions in the professional category and elected positions of the Court had a direct nexus to the universality of the Court. Some States welcomed the request of the Assembly for the Bureau to continue engaging with the Court to identify ways to improve equitable representation and gender balance in professional posts, but noted that the status quo required further attention; they called upon the Court to redouble its efforts to address the imbalances. The African group made a statement which, *inter alia*, included concerns about the data on geographical representation of professional staff, staff mobility, and the chronic imbalance of female staff at senior positions. In addition, a concern was raised about equitable geographical representation in the Secretariat and other subsidiary bodies of the Assembly, including the Committee on Budget and Finance. The group stressed the importance of equitable geographical distribution on the Committee and urged the Bureau to take action in that regard. It also stated that a tenure policy should take into consideration equitable geographical distribution and gender balance.

59. It was stated that the recommendations of the Assembly on the election of the new Registrar, should place emphasis on the issue of geographical rotation and gender balance.

60. An IER Expert, Mr. Ian Bonomy, stated that he was encouraged by the briefing of the Court. He was impressed by the range of measures explored as well as the thorough and intensive way in which they were being considered.

61. In response to enquiries on the recruitment of the Ombudsperson, the Registrar indicated that the recruitment process was not yet concluded and he committed to providing this information to States when the Ombudsperson had assumed duty. In addition, he clarified

that the Ombudsperson's reporting lines would not be to the Heads of organs but he/she would exercise the functions of the post independently. The Ombudsperson would be external, in line with the IER recommendation that he/she be a "true outsider".⁶ The contract would not be permanent, and the Ombudsperson would be on board for the period of one year initially. He noted that the IER Experts' message to the Court stated that the person should not become institutionalized.

62. In addition, regarding whether there were any early visible effects of the implementation of the Administrative Instructions promulgated during the first half of 2022, the Registrar stated that while the latest annual report of the IOM reflected disciplinary cases under the previous regime against bullying, harassment, and sexual harassment, the next reporting cycle the IOM would reflect cases investigated under the new Administrative Instructions.

Progress in the assessment of and possible further action on the recommendations of the Independent Experts and measures for the implementation of the review process

63. The Mechanism has carefully considered the reports of the facilitations referred to in annexes II and III, as well as the discussions held in the ten meetings of the Mechanism as the platform for discussion. In this regard, the Mechanism submits herewith a Matrix, titled "Progress in the assessment of the IER recommendations" (annex IV). The Matrix provides an overview of the progress in the assessment of and possible further action on the respective recommendations of the Independent Experts with a timeline for assessment of 2021 and 2022.

64. The Mechanism notes that the mandate holders have discussed the recommendations assigned to them as the platform for discussion, and that where appropriate, the Court has briefed the respective facilitations on its assessment of the recommendations, indicating which recommendations it had assessed positively or negatively and which recommendations the assessment is still ongoing.

65. In the view of the Mechanism, the Matrix presents to States Parties and all stakeholders an overview of the status of the review process. To get the full picture, the Matrix should be read in conjunction with the CAP. The Matrix is a purely factual document and is based on the reports of the different facilitations and the Mechanism. The Mechanism sees the Matrix as a living document that will incorporate further progress on the assessment, and on the implementation of those recommendations that have been positively assessed.

(i) Any other progress in the review process

66. The Mechanism has always been striving to observe the principles of transparency and inclusiveness throughout its mandate and, to this end has, at each stage of its work, consulted broadly with States Parties, the Assembly President and Vice-Presidents, the Court, in particular the Court focal points, as well as civil society and all relevant stakeholders. The meetings of the Mechanism as the platform for discussion benefited from interpretation into the working languages of the Court, which greatly assisted in ensuring inclusiveness in its work. The Mechanism is grateful to the Registrar and the Language Services Section for their valuable assistance in this regard.

III. Next steps

67. The Mechanism intends to continue its work in 2023 in line with the CAP and as mandated by the Assembly. Pursuant to the CAP, the Mechanism will continue to function as a platform for discussion in the assessment of those recommendations it has assigned to itself in 2023. A more detailed work plan will be presented at the beginning of 2023.

68. The Mechanism will, in conformity with its mandate, continue to monitor the overall progress of the review process both regarding assessment and further action and where appropriate, including implementation. The Mechanism will continue to regularly brief States Parties and all stakeholders on its work through its briefings, reports, and through the Matrix.

⁶ IER recommendation R118.

69. Finally, and where necessary, the Mechanism intends to continue to serve in 2023 as a platform for/or facilitate round table discussions on the implementation of positively assessed recommendations. The Review Mechanism is pleased with the progress made in the assessment of the IER recommendations by both the Mechanism itself and the Assembly mandate holders, the Review Mechanism plans to conclude its work in 2023, and would then request the mandate-holders to carry on the work on the overview of the implementation of the IER recommendations. The RM also intends to conclude its work with a report containing any other recommendations to the Bureau how best to take the work on the implementation of positively assessed recommendations forward.

Acknowledgements

70. The State Party representatives (Co-Chairs) of the Review Mechanism firstly want to express deep gratitude to the *ad country* focal points, Ms. Monica Mosammat Shahanara, Ms. Nawrid Sharmin, and Mr. Nasir Uddin (Bangladesh), Mr. Jaime Moscoso and Mr. José Juan Hernández (Chile), and Ms. Paulina Dudzik and Mr. Władysław Manteuffel, succeeded by Ms. Katarzyna Padlo-Pekala (Poland), for their supportive role and valuable inputs in the work of the Mechanism.

71. The members of the Mechanism would also like to express their gratitude to the three Court focal points, Mr. Hiram Abtahi, Chef de Cabinet of the Presidency, Mr. Mamadou-Racine Ly, Adviser to the Prosecutor, Immediate Office of the Prosecutor and Mr. Juan Antonio Escudero, Chief of Staff of the Registrar, for the collaborative work and high spirit of engagement in the work of the Mechanism.

72. The Mechanism also acknowledges the support and advice of the President of the Assembly, Ms. Silvia Fernández de Gurmendi, and the Vice-Presidents, Ambassador Robert Rae (Canada) and Ambassador Kateřina Sequensová (Czech Republic). The Mechanism is deeply indebted to the Assembly Secretariat, in particular Ms. Gaile Ramoutar and Mr. Aaron Matta, for consistent efficient and responsive assistance throughout the work of the Mechanism.

Annexes

Annex I

Report of the Review Mechanism on the overall progress of its work

<https://asp.icc-cpi.int/sites/asp/files/2022-11/2022-RM-report-progress.pdf>

Annex II

Reports of Assembly mandate holders on the issues assigned to them as the platform for discussion

1) Reports of the Assembly mandate holders

- a) Report of the Bureau on the Study Group on Governance (ICC-ASP/21/18)
- b) Report of the Bureau on complementarity (ICC-ASP/21/19)
- c) 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 (ICC-ASP/21/21)
- d) Report on the Review of the work and the Operational Mandate of the Independent Oversight Mechanism (ICC-ASP/21/25)
- e) Report of the Bureau on equitable geographical representation and gender balance in the recruitment of staff of the International Criminal Court (ICC-ASP/21/27)
- f) Report of the Bureau on the scheduling of Assembly sessions (ICC-ASP/21/28)
- g) Report of the Review of the Procedure for the Nomination and Election of Judges (ICC-ASP/21/29)
- h) Report of the Bureau on the arrears of States Parties (ICC-ASP/21/32)
- i) Report of the Bureau on non-cooperation (ICC-ASP/21/33)
- j) Report of the Bureau on legal aid (ICC-ASP/21/26) Report of the Bureau on cooperation (ICC-ASP/21/35)

Annex III

Reports of the Assembly mandate holders on the IER recommendations

a) Report of the budget facilitation on IER recommendations

A. Introduction

1. The mandate for the budget facilitation is derived from the Rome Statute, which provides that the Assembly shall “[c]onsider and decide the budget for the Court”.

¹ On 21 February 2022 the Bureau of the Assembly decided to re-appoint Ambassador Frances-Galatia Lanitou Williams (Cyprus) as the facilitator for the budget.

2. The comprehensive action plan² submitted to the Bureau by the Review Mechanism listed the following Independent Expert Review (IER) recommendations for consideration in the budget facilitation in 2022: i) R132, R133, R135, R136, R137 and R138 to be considered in the first half of 2022; and ii) R134 to be considered in the second half of 2022. In addition, the following recommendations listed for consideration in 2021 were the subject of further consideration in 2022: R139, R140, R141, and R142.

3. Pursuant to paragraph 9 of resolution ICC-ASP/20/Res.3, this report reflects the outcome of the consideration of the relevant IER recommendations in 2022, including action already taken and proposals for next steps, and is submitted to the Bureau for its consideration.

B. Meetings and discussions

4. For the purpose of considering the budget-related IER recommendations, meetings were held on 19 May, 27 May and 11 November. The meetings held on 27 May and 11 November were joint meetings of The Hague Working Group facilitation on the budget and the New York Working Group facilitation on arrears, held in conjunction with the arrears facilitator.³ The Chair of the Committee on Budget and Finance (“the Committee”), Mr. Werner Druml (Austria), participated in the meetings.

5. During the meetings, States Parties considered the recommendations which had been listed in the comprehensive action plan for consideration in 2022. The meetings also provided an opportunity to continue consideration of recommendations which had been discussed in 2021.

6. A mid-year progress report was submitted to the Review Mechanism on 8 July 2022. This report incorporates the outcomes contained in that report, and is therefore a comprehensive record of the consideration of the budget-related IER recommendations in 2022.

C. Consideration of recommendations

Recommendation 132 (R132)

In parallel with or subsequent to the elaboration of high-level assumptions, inter-organ consultations should be held on a cohesive strategic vision to guide Organs in their budget planning. Additional close consultations should be held between the OTP and Registry on these strategic priorities and the Registry’s expected capacity.

7. R132, which was allocated to the Court in the comprehensive action plan, was discussed at the meeting held on 19 May. It was noted that the Court had submitted a report to the Committee providing an update on progress made in relation to this recommendation.⁴ The Court had assessed the recommendation positively, and

¹ Rome Statute, article 112 (2)(d).

² https://asp.icc-cpi.int/iccdocs/asp_docs/ASP20/RM-Comprehensive%20Action%20Plan-ENG.pdf

³ On 9 March 2022, the Bureau appointed Ambassador Rodrigo Alberto Carazo Zeledon (Costa Rica) as the facilitator for arrears. Following his resignation, on 7 September 2022 the Bureau appointed Ambassador Maritza Chan Valverde (Costa Rica) as the facilitator for arrears.

⁴ CBF/38R/6.

both the Court and the Committee considered that it had been implemented. A representative of the Registry indicated that close inter-organ consultations took place regularly throughout every phase of the budget process, from budget planning to implementation, and the Court was committed to continuing such consultations.

Recommendation 133 (R133)

An enhanced role for the Registrar, in line with the Experts' recommendations in the Unified Governance section, would also enable a more centralised budget process, in line with the One Court principle. The Court should be represented by the Registrar at budget oversight meetings.

8. R133, which was allocated to the Court in the comprehensive action plan, was discussed at the meeting held on 19 May. The Review Mechanism had noted in the comprehensive action plan that there was a link with the recommendations on unified governance, in particular recommendation 4. A representative of the Registry noted that the recommendation was already being implemented, as the Registrar has a leading role as regards a centralized budget process, as per the One-Court principle, and as elaborated in the context of R132. It was agreed that further consideration of the implementation of this recommendation would take place in the context of discussions on unified governance.

Recommendation 134 (R134)

Financial Regulations of the Court should be amended to enable the Registrar to make transfers across Major Programmes, to adapt based on workload. Similarly, ways through which the Registrar could be given more flexibility in implementing CBF/ASP decided cuts ought to be explored. Such increased flexibility should be accompanied by appropriate reporting and transparency mechanisms.

9. R134, which was allocated to the Registry and the budget facilitation in the comprehensive action plan, was discussed at the meeting held on 11 November. As regards the proposed amendment to the Financial Regulations and Rules (FRR), a representative of the Registry recalled that the impediment to transferring funds between Major Programmes without authorization by the Assembly had been put in place to respect the independence of the organs. It was, however, important that the Court had the possibility to use its resources flexibly, and in this context a proposal to amend the FRR to facilitate inter-organ mobility of staff had been put forward by the Court and recommended by the Committee in its report on the work of its resumed thirty-eighth session.⁵ States Parties expressed general support for the proposal, which the facilitator noted would be considered in the context of the draft budget resolution to be adopted by the Assembly at its twenty-first session.

10. Regarding the suggestion that the Registrar could be given more flexibility in “implementing CBF/ASP decided cuts”, the importance of respecting the independence of the organs was emphasized by the representatives of the Court. The idea of exploring ways for each Major Programme to have more flexibility to implement reductions within that Major Programme was welcomed by the Court, however. The Chair of the Committee noted that the Committee did not recommend general reductions, but rather specific reductions, in particular Major Programmes, and therefore flexibility in implementing those reductions would not be appropriate.

Recommendation 135 (R135)

The CBF should make an inventory of the most important topics it considers should form its 'standing agenda', for ASP endorsement. This should result in more concise reports, issued as soon as possible after the CBF's session.

11. R135 was allocated to the budget facilitation and the Committee in the comprehensive action plan. It was considered at the meetings held on 19 May and 11 November. In its report on the work of its thirty-ninth session,⁶ the Committee noted that it considered its agenda items to be in line with its mandate, and that many items were added at the request of the Assembly or the Court. The Committee had also noted in the report that it would attempt to streamline its agenda and in cooperation with the Court try to reduce written reporting obligations. The Chair of the Committee noted that there was *de facto* a standing agenda, and therefore the recommendation was being followed in practice and could be assessed positively. The point was made that it would not be practical for the Assembly to formally endorse the Committee's agenda in advance.

⁵ ICC-ASP/21/5/Add.1, para. 75.

⁶ ICC-ASP/21/15, paras. 328-329.

Recommendation 136 (R136)

The Committee should include alongside its recommendation, sufficiently detailed explanations of its reasons, as well as the Court's position on the proposal.

12. R136 was allocated to the budget facilitation and the Committee in the comprehensive action plan. It was considered at the meetings held on 19 May and 11 November. In its report on the work of its thirty-ninth session,⁷ the Committee stressed that its recommendations were always provided with a justification, and recalled that it does not negotiate the budget with the Court but rather it assesses the budget proposal in close cooperation with the Court and provides independent advice to the Assembly. The Committee also noted that requesting the Court's position on the recommendations and including that position in its report would considerably lengthen both the process and the report. The view was expressed that it was more appropriate for States Parties to receive the Court's reaction to the Committee's recommendations in the context of the budget facilitation.

Recommendation 137 (R137)

States Parties are encouraged to consider a meeting with the CBF and the Court after consulting the Court-issued budget proposal, to share preliminary indications as to questions and concerns relating to which they wish to receive the CBF's advice.

13. R137 was allocated to the budget facilitation and the Committee in the comprehensive action plan. The recommendation was considered at the meeting held on 19 May. States Parties were of the view that meetings with the Committee were most useful and should continue.

Recommendation 138 (R138)

Additional (remote) workshops between the Court and the CBF should be held, ahead of the Committee's fall session, as the main forum for dialogue between the two on the Court-issued budget proposal.

14. R138 was allocated to the Court, the budget facilitation and the Committee in the comprehensive action plan. The recommendation was considered at the meeting held on 19 May. The Court had submitted a paper to the Committee containing its assessment of this recommendation.⁸ The Committee and the Court were of the view that the existing arrangements were satisfactory and effective, and that they would continue with the format, frequency and scope of the workshops.

Recommendation 139 (R139)

To maximise the potential of ASP sessions, States Parties are suggested to defer to the CBF on technical budgetary details, reach consensus on the budget ahead of the ASP session, and dedicate an early slot of the session on budget, attended by specialised state representatives, before the political part of the conference, where high-level political participation can be encouraged.

15. R139 was allocated to the budget facilitation in the comprehensive action plan. The recommendation had been considered in 2021 and different views had been expressed regarding the various elements of the recommendation.⁹ The recommendation was considered again at the meeting held on 11 November. The point was made that the Committee was a subsidiary body of the Assembly, and as such it may not be appropriate for the Assembly to "defer to" the Committee.

Recommendation 140 (R140)

Noting the concerning state of arrears and potential liquidity crisis facing the Court, the Experts recommend that the ASP explore additional means to encourage timely and in full payment of contributions by States Parties, taking into account practices from other international organisations. For example, the ASP could explore setting a lower threshold of arrears beyond which States Parties

⁷ ICC-ASP/21/15, para. 331.

⁸ CBF/38R/08P01.

⁹ ICC-ASP/20/38, Part C, paras. 8-10.

lose their voting rights or inability of States Parties in arrears to present candidates for elected officials' positions.

16. R140 was allocated to the arrears facilitation in the comprehensive action plan, with the budget facilitation as the platform for discussion. The recommendation had been considered in joint meetings of the budget and arrears facilitations in 2021, and States Parties had expressed wide support for further consideration of the issue of liquidity and arrears as a strategic priority for the future of the Court.¹⁰

17. The recommendation was considered further in joint meetings of the budget and arrears facilitations held on 27 May and 11 November 2022. At the meeting held on 27 May, States Parties considered a report prepared by the Court compiling the various recommendations made by the different oversight bodies concerning the issue of liquidity and reserve funds.¹¹ At the meeting held on 11 November, States Parties had before them a compilation of practices in other international organizations on the topic of arrears and loss of voting rights which had been prepared by the Secretariat of the Assembly in response to the discussions held during 2021.¹²

18. States Parties expressed concern at the level of outstanding contributions and arrears, and the liquidity difficulties which the Court continued to face. Some States Parties emphasized the need to explore further measures to encourage timely and in full payment of contributions, as set out in the first part of the recommendation, taking into account the compilation prepared by the Secretariat. The point was made that the situation regarding persistent outstanding contributions was not a result of a lack of political will, but rather a lack of financial resources. A view was expressed that the examples provided in the second part of the recommendation were incompatible with article 112 of the Rome Statute.

Recommendation 141 (R141)

At a minimum, the ASP should ensure the levels of the Working Capital Fund and the Contingency Fund are maintained at the fixed levels, if not increased.

19. R141 was allocated to the budget facilitation and the Committee in the comprehensive action plan. The recommendation had been considered in 2021,¹³ and was considered again at the meetings held on 19 May and 11 November. It was noted that the compilation prepared by the Court of the various recommendations made by the different oversight bodies concerning the issue of liquidity and reserve funds was also relevant to this recommendation.¹⁴

Recommendation 142 (R142)

Increased transparency on the organisational structure and organigram should be introduced, with the number of full-time equivalent posts by Section and Office indicated.

20. R142 was assessed positively in 2021. As regards its implementation, at the meeting on 19 May States Parties had before them a report from the Court¹⁵ containing the requested organigrams in an annex. A representative of the Court noted that the Court would continue the practice of reporting to States on the organigrams in the context of the annual approved programme budget.

D. Conclusion and way forward

21. A record of the outcome of the consideration of the recommendations, including on action already taken and proposals for next steps, is contained in the appendix to this report. The consideration of some recommendations will continue in 2023.

Appendix

¹⁰ ICC-ASP/20/38, Part C, paras. 11-16.

¹¹ CBF/38R/3.

¹² See ICC-ASP/20/38, Part C, para. 15, and ICC-ASP/20/27, para. 12.

¹³ ICC-ASP/20/38, Part C, paras. 17-18.

¹⁴ CBF/38R/3.

¹⁵ CBF/38R/6.

Matrix
Progress in the assessment of the IER recommendations
Updates submitted by the budget facilitation

Recommendation	Result of assessment	Implementation date	Comments
R132	positive	implemented (2022)	The Committee on Budget and Finance and the Court were of the view that this recommendation was already being implemented.
R133	positive	implemented (2022)	The CAP notes the link between this recommendation and those on Unified Governance, in particular R4. The Court noted that R133 is already being implemented as the Registrar already has a leading role as regards a centralized budget process, as per the One-Court principle, and as elaborated in the context of R132.
R134	positive with modifications	on-going	<p>The first sentence of the recommendation was assessed positively, on the understanding that it referred to temporary transfers of staff, but not transfers of funds, and that both the Registrar and the Prosecutor could make such transfers. In this regard, an amendment to the Financial Regulations and Rules to facilitate inter-organ mobility of staff would be considered further by States Parties.</p> <p>The second and third sentences were assessed positively, on the understanding that they applied to flexibility in implementing reductions decided by the Assembly, not the Committee, and within but not between Major Programmes.</p>
R135	positive with modifications	implemented (2022)	The recommendation was assessed positively, with the caveat that it would not be practical for the Committee's agenda to be endorsed in advance by the Assembly. It was noted that the Committee will attempt to streamline its agenda and in cooperation with the Court try to reduce written reporting obligations.
R136	positive with modifications	implemented (2022)	The recommendation was assessed positively, with the modification that it would not be practical for the Committee to include the Court's position on its recommendations in its reports.
R137	positive	implemented (2022)	States Parties were of the view that meetings with the Committee on Budget

			and Finance were most useful and should continue.
R138	positive	implemented (2022)	The Committee on Budget and Finance and the Court were of the view that the existing arrangements were satisfactory and effective and that they would continue with the format, frequency and scope of the workshops.
R139	pending		Discussions are on-going.
R140	pending		States Parties continued their discussion from 2021 on the issue of liquidity and arrears as a strategic priority for the continued sustainability of the Court's operations. Discussions are on-going.
R141	pending		Discussions are on-going.
R142	positive (assessed in 2021)	implemented (2022)	This recommendation had been assessed positively in 2021. As regards its implementation, the Court submitted a report which contained as an annex the organigrams requested, and will continue the practice of reporting to States on the organigrams in the context of the annual approved programme budget.

Annex IV

Matrix

Progress in the assessment of the IER recommendations

Submitted pursuant to resolution ICC-ASP/20/Res.3, para. 11

[...]

(To be inserted)

Annex V

Draft resolution on the review of the International Criminal Court and the Rome Statute system

Review of the International Criminal Court and the Rome Statute system

The Assembly of States Parties,

PP1 Recognizing the Court's central role and achievements in the fight against impunity at the international level, as the only permanent International Criminal Court, based on the principle of complementarity,

PP2 Reiterating the need for continuous improvement in the performance, efficiency and effectiveness of the Court's operations and *welcoming* the Court's efforts in this respect,

PP3 Recalling its resolutions ICC-ASP/18/Res.7 of 6 December 2019, ICC-ASP/19/Res.7 of 18 December 2020 and ICC-ASP/20/Res.3 of 9 December 2021, and *reiterating* its commitment to a transparent, inclusive State-Party driven process for identifying and implementing measures to strengthen the Court and improve its performance, and *underlining* that, for such a process to be successful, it must involve all States Parties, the Court and other relevant stakeholders,

PP4 Welcoming the willingness of the Independent Experts to assist with the continuing review process in providing additional background information on their findings and recommendations, as appropriate and feasible,

PP5 Taking note of the continued active consideration by the Court or in the Bureau working groups, facilitations and other forums (hereinafter Assembly mandates or mandate holders) of the issues identified by the Group of Independent Experts, with the participation of and input from other stakeholders, *emphasizing* that such work should continue with a focus on implementation, as appropriate, and should be coordinated with the larger review process with a view to avoid duplication and benefit from synergies

PP6 Welcoming the ongoing engagement of the Court and its focal points in the planning, coordinating, monitoring, and reporting on the assessment and implementation of the positively assessed recommendations contained in the Report of the Group of Independent Experts.

PP7 Stressing the statutory mandates of the organs of the Court and of the Assembly of States Parties and that these independent mandates should inform the assessment of the recommendations of the Group of Independent Experts and possible further action, as appropriate, by the Court, the Assembly, or both depending on the nature and purpose of the individual recommendations, and the entity identified as responsible for implementation,

PP8 Encouraging the continued engagement of States Parties, the Court and other relevant stakeholders in an efficient and results oriented manner in the review process,

PP9 Acknowledging the importance of the Bureau's decision of 31 May 2021 that welcomed the efforts of the Review Mechanism to be inclusive and transparent in the exercise of its mandate within this State Party-driven process, as well as its reassurance that States Parties will be involved in the discussions on assessment and implementation of recommendations, regardless of whether they have been allocated to the Court or to the Assembly, with respect for existing mandates as well as judicial and prosecutorial independence; and decided to adopt the "Categorization of recommendations and remaining issues", dated 30 April 2021, submitted by the Review Mechanism in accordance with paragraph 4 (a) of Assembly resolution ICC-ASP/19/Res.7,

OPI Welcomes again the report and recommendations of the Independent Expert Review contained in the document titled "Independent Expert Review of the International Criminal Court and the Rome Statute System - Final Report", dated 30 September 2020, and *takes note* of the diverse, thorough and

extensive nature of the Experts' recommendations and the need to address them in a structured, holistic, and results-oriented way, and of annex I of the final report identifying a number of proposed priorities;

OP2 Also welcomes the work of the Court, the Review Mechanism, the Bureau working groups, and Assembly mandate-holders on the review process and, *takes note with appreciation* of the significant progress that has been achieved in assessing and taking further action on the recommendations of the Independent Experts, and resolves to spare no effort in advancing this work further in line with the Comprehensive Action Plan¹;

OP3 Takes note again of the overall response of the Court² to the report of the Independent Expert Review submitted pursuant to resolution ICC-ASP/19/Res.7;

OP4 Underlines the need to continuously observe and safeguard the judicial and prosecutorial independence of the Court and the integrity of the Rome Statute throughout the review process as well as the need to ensure proper management oversight, good governance and administrative accountability throughout the prosecutorial and judicial activities, and to continuously take into account the mandate identified by the Independent Experts for each of the recommendations in the review process;

OP5 Decides to extend, to the twenty-second session of the Assembly, the mandate of the Review Mechanism established by resolution ICC-ASP/19/Res.7 under the auspices of the Assembly, led by two State Party Representatives and supported by three *ad country* focal points, dedicated to planning, coordinating, keeping track and regularly reporting to the Assembly Presidency and the Bureau on the assessment of the recommendations contained in the Report of the Group of Independent Experts and further action, as appropriate, as well as the issues referenced in resolution ICC-ASP/18/Res.7 paragraphs 18 and 19, and in general in accordance with that resolution. In the event of a vacancy, the Bureau shall, without delay, appoint a member of the Review Mechanism, in the same manner as set out in resolution ICC-ASP/19/Res.7, paragraph 4.

OP6 The Review Mechanism shall specifically continue to coordinate the assessment of the recommendations, and continue to serve as a platform for assessment of recommendations in conformity with the comprehensive action plan, as well as monitor further action and implementation, as appropriate, of the assessed recommendations;

OP7 Welcomes again the Bureau's adoption of the categorization of recommendations³ and the Comprehensive action plan⁴ referred to in operative paragraph 4 of resolution ICC-ASP/19/Res.7, based on the proposals of the Review Mechanism;

OP8 Recognizes that the relevant Assembly mandates designated as responsible for assessing and taking possible further action as appropriate on relevant recommendations, including the Review Mechanism, commenced assessment of the recommendations in 2021 and have been continuing it in 2022, and submitted to the Bureau the outcome of their consideration, including on action already taken, as well as proposals for the next steps;⁵

OP8bis Endorses the positive assessment of recommendation 105 (Tenure) to which the Review Mechanism served as a 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.

OP9 Requests the relevant Assembly mandates designated as responsible for assessing and taking possible further action as appropriate on relevant recommendations to continue with the assessment and, where appropriate, implementation in 2023 and to submit to the Bureau the outcome of its consideration, including on action already taken and proposals for next steps, by 15 November 2023;

¹ https://asp.icc-cpi.int/iccdocs/asp_docs/ASP20/RM-Comprehensive%20Action%20Plan-ENG.pdf

² https://asp.icc-cpi.int/iccdocs/asp_docs/ASP20/Overall%20Response%20of%20the%20ICC%20to%20the%20IER%20Final%20Report%20-%20ENG%20-%202014April21.pdf

³ https://asp.icc-cpi.int/EN_Menu/asp/review-court/pages/categorization-recommendations.aspx

⁴ https://asp.icc-cpi.int/EN_Menu/asp/review-court/pages/action-plan.aspx

⁵ See: Report of the Review Mechanism submitted pursuant to ICC-ASP/20/Res.3, annex I.

OP10 Requests the Court through its focal points to provide regular updates to the Review Mechanism on progress achieved, including on any impediments to progress identified, and to evaluate the progress in the assessment, possible further action, and, where appropriate, implementation of the recommendations of the Group of Independent Experts, and report to the Assembly ahead of its twenty-second session;

OP11 Requests the Review Mechanism, in close coordination with the Court focal points and relevant Assembly mandates, to provide regular updates to all States Parties through the Bureau Working Groups, on the review process including on any impediments to progress identified, to brief the Assembly in writing on the overall progress of its work, before 30 June 2023, and to submit a comprehensive report on the review process to the Assembly well in advance of its twenty-second session on:

- a) Progress in the assessment of and possible further action on the recommendations of the Independent Experts and measures for the implementation of the review process;
- b) Progress in the work of the relevant Assembly mandates on the issues referenced in resolution ICC-ASP/18/Res.7 paragraphs 18 and 19; and
- c) Any other progress in the review process

OP12 Invites the Secretariat of the Assembly of States Parties to assist the work of the Review Mechanism and requests the Bureau to invite the Registrar to consider making available to the Secretariat the necessary additional resources, to support the Review Mechanism, on its request, and within the existing budget, only when the Bureau is satisfied that the work of the Review Mechanism so requires; and

OP13 Underlines that the Review Mechanism shall work in an inclusive and transparent manner, consulting regularly with all States Parties, the three organs of the Court, civil society and other relevant stakeholders.
