

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

I. Introduction

1. The present report of the Review Mechanism (“Mechanism”) is submitted pursuant to paragraph 12 of resolution ICC-ASP/22/Res.6,¹ which states as follows:

“12. *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 2024, and to submit a comprehensive report on the review process to the Assembly well in advance of its twenty- third session on:

- a) Progress in the implementation of 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 Review Mechanism is set out in resolution ICC-ASP/20/Res.3:

“6. 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;”

3. As of the establishment of the Review Mechanism in 2021, it served as the platform for discussion of the IER recommendations which it had allocated to itself in the Comprehensive Action Plan.²

4. At its twenty-first session, the Assembly requested the Court, through the Registry, “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.”³

5. At the twenty-second session, some States were of the view that additional time was required to consider the proposal on tenure. The Assembly “stress[ed] the importance of implementing a tenure policy as of 1 January 2025 and of having a facilitation to that end”.⁴ It also noted the benefit of a continued review of the tenure policy over time, after its implementation on 1 January 2025, and decided as follows:

1. *Decides* to implement a tenure policy as of 1 January 2025;

¹ https://asp.icc-cpi.int/sites/default/files/asp_docs/ICC-ASP-22-Res6-AV-ENG.pdf (para. 12).

² <https://asp.icc-cpi.int/Review-Court/Action-Plan>

³ ICC-ASP/21/4, para. 9: <https://asp.icc-cpi.int/sites/asp/files/2022-12/ICC-ASP-21-Res4-ENG.pdf>

⁴ ICC-ASP/22/Res.7, preambular para. 6: https://asp.icc-cpi.int/sites/default/files/asp_docs/ICC-ASP-22-Res7-AV-ENG.pdf

2. *Decides also* to consider further the Court’s proposal on how to implement the tenure policy within the timeframe referred to in paragraph 1;
3. *Requests* the Review Mechanism to facilitate the work referred to in paragraph 2 in 2024, and to report thereon to the Assembly in advance of its twenty-third session.

The Review Mechanism as the platform for discussion

6. The Review Mechanism held four meetings in the first semester of 2024, on 12 February, 14 March, 22 April and 13 June. At the 12 February 2024 meeting, States Parties approved the work programme of the Review Mechanism for 2024, which covered the first semester. All the meetings held in the first semester were dedicated to tenure and were led by Ambassador van den IJssel (Netherlands), as State Party representative on the Review Mechanism. At the request of a State Party, the meetings on tenure as of 14 March were open to States Parties only, given the sensitive nature of some of the discussions. They were held pursuant to rule 42 (3) of the Rules of Procedure of the Assembly of States Parties and the Bureau’s decision of 18 October 2017 adopting the “Understanding on the participation of Observer States in meetings of the Assembly of States Parties”, which allow for closed meetings. The Review Mechanism reiterated on each occasion that the approach adopted for these meetings was the exception rather than the rule, as the Review Mechanism had always operated in a spirit of transparency and inclusiveness.

7. In addition to inviting States Parties, the Mechanism also invited the Court focal points and relevant representatives of the Registry to the closed meetings, to present information on the Court’s legal regime requested by States Parties, and react to proposals or questions by States Parties.

8. The meetings considered a revised proposal on tenure submitted on 9 February 2024 by Sweden, Canada, Estonia and South Africa, by which tenure would be attached to the person, not the post, and heard interventions from the Registry on behalf of the Court on the legal aspects of the proposal.

9. No opposition was expressed to this revised joint proposal. The Court submitted amendments to the ICC Staff Rules and Regulations which reflected the position of States Parties on the revised joint proposal. At the 22 April 2024 meeting, the Review Mechanism invited comments from States Parties on the draft amendments. It received comments from two States Parties, relating to (a) modifications to the Staff Rules relating to downward mobility of staff of the Court; and (b) the non-inclusion of the period of parental leave in the calculation of the period of tenure.

10. At the 13 June 2024 meeting, States continued consideration of the amendments to the Staff Rules and Regulations proposed by the Court, as well as modifications to the Court’s draft text which a delegation had proposed in relation to downward mobility. There was no opposition to the revised text on downward mobility.

11. On the issue of the non-inclusion of parental leave in calculating the seven-year period of tenure, the proponent stated that it was important to have a gendered perspective in the implementation of the tenure policy, which would ensure, for example, that the career progression of women was not affected. The Registry presented the views of the Focal Point for Gender and Equality. The Focal Point had stated that non-inclusion of parental leave could discourage women from taking their full leave entitlement, or could cause them to feel pressured to return to work. On the other hand, including parental leave in the calculation of time limits could ensure a healthy work-life balance, and such a progressive tenure policy could be useful in attracting and retaining talent, especially in senior management posts. The Registry noted that a decision on the inclusion of parental leave would be a policy issue, not a legal issue.

12. States Parties agreed that the tenure policy should not include the calculation of the time of parental leave in the seven-year period.

13. On 8 July 2024, the Review Mechanism circulated for consideration the revised amendments to the Staff Rules and Regulations, prepared by the Court, which included the text on downward mobility proposed by a delegation as well as on parental leave.

14. Another point considered by the Review Mechanism was the revised proposal of the African group on a moratorium on the recruitment of professional staff from non-States Parties, in view of the poor status of geographical representation of staff at the Court. According to that proposal, the tenure policy would not apply to GTA and STA staff, consultants, visiting professionals, interns and gratis personnel.

15. There was some support for the proposal, on the basis that it could ensure better geographical representation, as well as a better representation of languages and of different legal systems. Other States raised concerns about the exclusion of country experts and language staff, the effect on universality of the staff profile, the broad application of the policy to all levels of professional staff, not only those at the P5 and D1 levels. It was also suggested that the policy would offer an opportunity for the Court to look at its procedures for recruitment, and that the moratorium should be reduced to seven years.

16. Ambassador van den Ijssel noted that further work on the moratorium was needed and suggested that interested delegations have consultations in order to work on a text to address their concerns.

17. On 5 July 2024, a delegation submitted a paper titled “Informal Negotiated Moratorium Text”, which the Secretariat circulated to all States Parties. A future meeting of the Review Mechanism will consider these further amendments. The same delegation also posed certain questions to the Court relating to the breakdown of the professional staff per level, including gender; language services staff; and legal precedents in international tribunals regarding discrimination against staff from non-States Parties. When received, the Court’s responses will be considered by States Parties.

18. In addition, Ambassador van den Ijssel has spoken informally with interested States Parties on this matter. The Review Mechanism continues to encourage States Parties to consult among themselves in order to try to reach agreement on this point.

III. Next steps

19. The Mechanism intends to continue its work in the second semester of 2024 in line with the mandate of the Assembly contained in resolution ICC-ASP/22/Res.7. It also intends to hold a roundtable on Workplace culture during the second semester.

20. The Mechanism will continue to regularly brief States Parties and all stakeholders on its work through its briefings, reports, and through the Matrix.

Acknowledgements

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

22. The members of the Mechanism would also like to express their gratitude to the Court focal points, Mr. Hiram Abtahi, Chef de Cabinet of the Presidency, Mr. Mamadou-Racine-Ly, Advisor,

Immediate Office of the Prosecutor, and Ms. Antônia Pereira De Sousa, Chief of Office to the Registrar, for the collaborative work and high spirit of engagement in the work of the Mechanism.

23. The Mechanism also acknowledges the support and advice of the President of the Assembly, Ambassador Päivi Kaukoranta, and Vice-President Ambassador Margareta Kassangana (Poland). The Mechanism is deeply indebted to the Assembly Secretariat, in particular Ms. Gaile Ramoutar and Mr. Aaron Matta, for their consistent efficient and responsive assistance throughout the work of the Mechanism.

Annex

Matrix

Progress in the assessment of the IER recommendations

Submitted pursuant to resolution ICC-ASP/22/Res.6, para. 12

[to be inserted]