

Resolution ICC-ASP/20/Res.4

Adopted at the 8th plenary meeting, on 9 December 2021, by consensus

ICC-ASP/20/Res.4

Review of the International Criminal Court and the Rome Statute system

Outcome of the work of the Study Group on Governance on recommendations of the Group of Independent Experts

I. Procedure to amend the Rules of Procedure and Evidence (R381-R384)

The Assembly of States Parties,

Recalling the findings in the Report of the Group of Independent Experts (“IER report”) that “[t]here is an urgent need for the Court to consider and adopt practices enhancing the efficiency, effectiveness, considerateness, courtesy, and fairness of proceedings”, and that a deadlock exists that disables the Court from “steadily introducing measures to improve the multifarious aspects of its procedures” (IER Report, para. 983),

Recalling further that the Experts found that, currently, “proposed amendments lie in limbo in the absence of consensus”, while article 51(2) of the Rome Statute provides that such an amendment proposal “shall enter into force upon adoption by a two-thirds majority of the members of the Assembly of States Parties”,¹

Recalling the “Roadmap on reviewing the criminal procedures of the International Criminal Court”;² (“Roadmap”) which, *inter alia*, states that States Parties and the Court will keep under review the effectiveness of the Roadmap,

Considering that recommendation 381 of the IER report states: “Article 51(2) of the Rome Statute should be amended to provide that amendments to the RPE may be proposed by a Judge, the Prosecutor, the Defence Office or any State Party, and that any amendment will enter into force if agreed to by an absolute majority of the Judges at a plenary meeting convened with notice of the proposal. It would have immediate effect. Until such an amendment enters into force, the Assembly should vote on RPE amendments by two thirds majority, rather than consensus, in line with the provisions of Article 51(2)”,

Considering that the efficiency and effectiveness of the Court, a common interest for both the Assembly and the Court, require a procedure that enables the Court as well as States Parties to provide for rule amendments, and that such procedure should respect the provisions of articles 112(7) and 51(2) of the Rome Statute regarding, respectively, the taking of decisions by the Assembly by consensus and, in the absence of consensus, upon adoption by a two-thirds majority of the members of the Assembly of States Parties,

Considering that, in accordance with the Roadmap, the Study Group on Governance engages in a dialogue with the Working Group on Lessons Learnt (WGLL) and the Advisory Committee on Legal Texts (ACLT) on recommendations for rule amendments, and that the Study Group will consider the views of the WGLL and the ACLT before it decides to endorse any such proposal and to send it to the Working Group on Amendments,

1. *Calls upon* all States Parties, in cooperation with the Court, to rigorously and thoroughly review, in accordance with the Roadmap, each rule amendment proposal within the Study Group on Governance as well as the Working Group on Amendments, in line with the “Terms of reference of the Working Group on Amendments” (ICC-ASP/11/20, Annex II);

2. *Decides* that, in accordance with articles 112(7) and 51(2) of the Rome Statute, a decision on the adoption of a rule amendment proposal shall be taken at the session of the Assembly of States Parties that follows the submission of this proposal to the Working Group on Amendments, in accordance with the procedure set out in paragraph 1;

¹ IER Report, para. 980.

² ICC-ASP/12/37 (2013), annex 1.

3. *Requests* the Study Group on Governance to consider the remainder of recommendations 381-384, and to report thereon to the twenty-first session of the Assembly.

II. Election of the Registrar (R76-R78)

The Assembly of States Parties

Recalling the provisions of article 43, paragraph 4, of the Rome Statute according to which the judges shall elect the Registrar by absolute majority, taking into account any recommendation by the Assembly of States Parties,

Recalling further the provisions of rule 12, paragraph 1, of the Rules of Procedure and Evidence that it is the responsibility of the Presidency of the Court to establish a list of candidates who satisfy the criteria laid down in article 43, paragraph 3, of the Rome Statute and transmit the list to the Assembly of States Parties with a request for any recommendations,

Considering the findings of the “Independent Expert Review of the International Criminal Court and the Rome Statute System Final Report” (“IER report”) in paragraph 186 that “the process ought to be more thorough and that States Parties should play a stronger role in the process, in line with the provisions of the Rome Statute.”

Noting that the full implementation of recommendation 76 of the IER report would require an amendment of the Rules of Procedure and Evidence with respect to the entity responsible for the establishment of a list of candidates to be presented to the Assembly of States Parties,

Noting further that the process of the election of the Registrar will commence in the first quarter of 2022, leaving not sufficient time to fully assess and implement recommendation 76 of the IER report beforehand,

1. *Decides* to strengthen the participation of States Parties in the upcoming election of the Registrar in 2023 within the existing legal framework and *decides further* to continue its consideration and possible implementation of recommendation 76 of the IER report for future elections;

2. *Invites* the Court to consult with States Parties on the drafting of the vacancy announcement and collaborate with States Parties on its dissemination in the first quarter of 2022;

3. *Further invites* the Court to take measures to encourage a wider diversity of eligible candidates who satisfy the Rome Statute requirements of article 43, paragraph 3, i.e. persons of high moral character, highly competent and with an excellent knowledge of and fluency in at least one of the working languages of the Court; and also with respect to representation of the principal legal systems of the world, equitable geographical representation and a fair representation of female and male among the candidates;

4. *Requests* the Bureau to establish a due diligence process before September 2022 for candidates for Registrar in consultation with the Presidency of the Court and the Independent Oversight Mechanism, to assist in the determination of the criterion of “high moral character” as required by article 43, paragraph 3, of the Rome Statute;

5. *Requests* the Bureau, through The Hague Working Group, to consider facilitating public roundtable discussions with the candidates in the list transmitted by the President of the Court open to States Parties and civil society and conducted in both working languages of the Court;

6. *Requests* 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 of States Parties at its twenty-first session;

7. *Requests* the Study Group on Governance to consider recommendation 77 on the position of the Deputy Registrar and recommendation 78 on a proposed Rome Statute amendment to limit the Registrar’s term to a 7-9 year non-renewable mandate, and to report thereon to the twenty-first session of the Assembly.