

REVIEW MECHANISM

Proposal for categorization of the Independent Experts Review Recommendations and remaining Review issues

Introductory note

Introduction

1. The Review Mechanism, established under the auspices of the Assembly of States Parties (“the Assembly”) to the Rome Statute of the International Criminal Court (“the Court”) by Assembly resolution ICC-ASP/19/Res.7, is mandated to submit to the Bureau of the Assembly for consideration a proposal for categorization of the Independent Experts Review (“IER”) recommendations and the remaining review issues according to the entity (i.e., the Assembly, the Court or both) responsible for addressing the issue concerned by 30 April 2021.¹
2. The Review Mechanism, in accordance with Assembly resolution ICC-ASP/19/Res.7, hereby submits the “proposal for categorization of the IER recommendations and remaining review issues”, attached hereto as an annex.
3. Since its establishment and mindful that the work of the Review Mechanism is mandated to be inclusive and transparent in this State-Party driven process to identify and implement measures to strengthen the Court and improve its performance, the Review Mechanism held series of consultations with States Parties, Bureau working groups, facilitations and other forums (Assembly mandates or mandate-holders), the Court (focal points and independent offices), civil society and other relevant stakeholders, in the process of preparing the proposal for categorization. All meetings of the Review Mechanism were held virtually, in light of the COVID-19 pandemic.
4. The Review Mechanism, on 12 March 2021, sent out a call for comments on the categorization of the IER recommendations and remaining review issues. A model for the submission of comments, the structure of which followed the final report of the Independent Experts, and the remaining review items² was attached to the call for comments. The call was directed to States Parties, civil society and other stakeholders, with a request to propose/suggest categorization of the recommendations according to resolution ICC-ASP/19/Res.7. The Review Mechanism further held consultations with regional groups on the call for comments. A total of 19 submissions were received by the Review Mechanism³ and are

¹ Resolution ICC-ASP/19/Res.7, para 4(a).

² Ibid., para 18 and appendix II, para 5.

³ The Review Mechanism received submissions from the following States Parties: Argentina, Austria, Belgium, Brazil, Colombia, France, Germany, Japan, Kenya, Mexico, Spain, Switzerland, United Kingdom of Great Britain and Northern Ireland, one joint submission by the Nordic countries (Denmark, Finland, Iceland, Norway and Sweden) and one from the Study Group on Governance (SGG) Co-Chairs and focal points. The Court, the Office of Public Counsel for the Defence (OPCD), the Coalition of the International Criminal Court (CICC) member organizations, including Human Rights Watch, Maruah, SALC and the Philippines-CICC, the International Criminal Court Bar Association (ICCBA), and the ICC Staff Union Council also submitted comments. The Review Mechanism further received communications regarding the call for comments from El Salvador and the ICC Office of Public Counsel for Victims (OPCV).

posted on the webpage of the Assembly.⁴ Some comments that are not directly related to categorization will be taken into account in due course.

5. The Court, through the focal points, was duly informed of the call for comments, and a copy of the model was shared for their information. The Review Mechanism also met with the Court focal points on 7 April 2021 and discussed the model for the submission of comments and the categorization of the recommendations. The Court focal points also submitted to the Review Mechanism and to the Bureau and all States Parties an overall response to the ‘Independent Expert Review of the International Criminal Court and the Rome Statute System – Final Report’ as well as a preliminary analysis of the recommendations and information on relevant activities already taken by the Court (the “Overall Response”) by the extended deadline of 14 April 2021. The Review Mechanism accordingly took note of the overall response in the process of categorization of the recommendations.

The basis for categorization of the recommendations

6. The Assembly resolution states that the IER recommendations and remaining issues be categorized according to the entity responsible for addressing the issues, i.e. the Court, States Parties, or both.⁵ Accordingly, the Review Mechanism adopted the approach to categorize on the basis of which entity is formally and in practice responsible to assess and take possible further action as appropriate to commence implementation of the recommendations as the critical factor in the categorization.
7. The Mechanism, however, would like to point out that the categorization is not an explicit, i.e., scientific endeavour. If a recommendation is classified as being the responsibility of one actor, it does not mean that the other actor cannot be involved in the assessment and/or implementation through extensive consultations and engagement. The Mechanism in general would encourage States Parties to use (preferably) existing Assembly mandates or mandate-holders to engage and discuss on the assessment and/or implementation of the recommendations, without of course affecting the judicial and prosecutorial independence of the Court and the integrity of the Rome Statute. This is of particular relevance taking into account the comprehensive nature of some of the recommendations.
8. The Review Mechanism remains mindful that if it comes to implementation, a number of the recommendations may give rise to budgetary implications that would require the involvement of the Assembly. The case may be the same for recommendations with legal implications, including possible amendment of the Rome Statute or the Rules of Procedure and Evidence. Where the Assembly would be involved in the implementation of a recommendation, owing to budgetary and/or a legal implication, the Review Mechanism has taken the position to still categorize on the basis of the entity that is formally and in practice responsible to assess and take possible further action as appropriate to commence implementation of the recommendations.
9. Further, the Review Mechanism notes that during the process of consultations, some States Parties stressed the importance of Assembly involvement in many of the discussions to take place on important recommendations, even if it is clear that the Court is the entity responsible. Therefore, the need for a

⁴ https://asp.icc-cpi.int/en_menus/asp/Review-Court/Pages/Review-Mechanism.aspx.

⁵ Resolution ICC-ASP/18/Res.7, para 4(a).

collaborative approach and intensive interaction will be needed between the Assembly and the Court on the assessment and/or implementation of the recommendations, having due regard to the judicial and prosecutorial independence of the Court and the integrity of the Rome Statute.

Observations on the model for categorization

10. The Review Mechanism has taken the position to limit the categorization of the recommendations to the three categories specified in the Assembly resolution, i.e. the Assembly, the Court or both, without any further allocation to the Assembly mandates or Court organs since such a step is only required in the proposal for a comprehensive action plan, the preparation of which is the next task entrusted to the Review Mechanism.⁶ Further, the IER recommendations that may be eventually allocated to the Court's independent offices have been categorized as Court, even though the reporting entity for the independent offices may be the Assembly. A comment column has been included in the categorization model to further explain or clarify specific categorizations.

Conclusion

11. The Review Mechanism uses this opportunity to express its deep appreciation of the support and cooperation of the States Parties, the Court, civil society and other stakeholders in the execution of its mandate and commits to concluding its work within the timeline specified by the Assembly resolution.

Annex I

Categorization of the IER recommendations and remaining review issues.

⁶ Resolution ICC-ASP/18/Res.7, para 4(b).