

REVIEW MECHANISM

Report of the Review Mechanism as the platform for discussion of IER recommendations

I. Introduction

1. The present report of the Review Mechanism is submitted pursuant to paragraph 7 of resolution ICC-ASP/19/Res.7, “Review of the International Criminal Court and the Rome Statute system” (“the resolution”) which provides as follows:

“7. Requests the relevant Assembly Mandates designated as responsible for assessing and taking possible further action as appropriate on relevant recommendations to commence implementation in 2021 and to submit to the Bureau the outcome of its consideration, including on action already taken and proposals for next steps, by 1 November 2021”

2. The Review Mechanism recalls that, in allocating the IER recommendations in the Comprehensive action plan, it had decided to work through existing Assembly structures in order to avoid burdening the Assembly with new structures. As far as possible, the Mechanism had allocated recommendations on the basis of the existing platforms,¹ or to itself, acting as a focal point for States Parties, where no relevant mandate exists.²

II. Meetings of the Review Mechanism as the platform for discussion

3. The Review Mechanism held six meetings as the platform for discussion, on 13 and 30 September, 11, 22, 27 and 28 October 2021, and invited the Court and bodies to which it had allocated recommendations to inform States and other stakeholders on the status of their assessment of the recommendations. Mindful of the mandate to the Court to evaluate the progress in the assessment of the recommendations of the Group of Independent Experts and possible further action, and report to the Assembly ahead of its twentieth session,³ the present report provides an overview of the recommendations discussed.

Meeting of 13 September

Assessment of recommendation 48- Election of two Deputy Prosecutors

4. At the first meeting, on 13 September 2021, the assessment of R48 was considered. The Prosecutor had decided, pursuant to article 42 of the Rome Statute, to establish the structure of two Deputy Prosecutors. He had therefore decided not to implement R48. A number of States Parties expressed support for the proposal to have two Deputy Prosecutors and for the restructuring of the Office of the Prosecutor. Some States Parties expressed concern on the budgetary aspect and requested further clarification in this regard, but as explained in the Introductory note to the Comprehensive Action Plan, the budgetary implication of establishing the structure of the two Deputy Prosecutors will be discussed in the Budget Facilitation.

¹ Introductory note, Proposal for a Comprehensive Action Plan for the assessment of the recommendations of the Group of Independent Experts, including requirements for possible further action, para. 7. See: https://asp.icc-cpi.int/iccdocs/asp_docs/ASP20/RM-CAP-Introductory-Note-ENG.pdf

² ICC-ASP/19/Res.7, para. 4 (b) (ii).

³ Ibid., para. 8.

Meetings of 30 September and 11 October

Assessment of IER recommendations on workplace culture

Rebuilding internal trust and reshaping the Court's working culture (R14)

Strategy to deal with and zero tolerance of bullying, harassment, and sexual harassment (R87, R129 and R130)

5. The Court informed States Parties and other stakeholders of the steps being undertaken in relation to the recommendations referred to in sub-paragraphs (b) above. The Court had assessed recommendations 14, 87, 129 and 130 positively and was already working towards their implementation. The Court and States Parties underlined the great importance of taking action on these recommendations, and for the majority of the said recommendations, implementation will be continuous.

6. The Court was committed to strengthening internal trust and improving working culture, which had been identified as a strategic objective of the Strategic Plan of the Registry 2019-2021. Strategic initiatives with the potential to improve the working culture at the Court included the Leadership framework and development, Staff engagement survey, Staff well-being and Engagement Committee, anti-harassing training, unconscious bias. The Court was working on a package of three comprehensive and inter-related administrative instructions addressing (i) discrimination, harassment, including sexual harassment and abuse of authority; (ii) unsatisfactory conduct and disciplinary proceedings; and (iii) investigations of unsatisfactory conduct. The Court agreed with the IER Experts that conflicts should be resolved in an informal manner and at an early stage and had included in the budget for 2022 resources for an ombudsperson.

Assessment of IER recommendation on gender equality R15

7. As regards R15, the Court assessed this recommendation positively. It was fully committed to achieving gender equality and ensuring the dignity, wellbeing, safety and inclusion of all individuals affiliated with the Court, regardless of gender or sexual orientation. It had, in this regard, in 2021 appointed a Gender Equality Focal Point, developed an unconscious bias training, a mentoring programme for women, and started actively sourcing female candidates for vacant positions at the P-4 level and above. The Court had also committed to consult on, adopt and implement the first Strategy on Gender Equality and Workplace Culture by 2025, but would in the meantime implement and evaluate the strategy so as to have a sustainable and actionable strategy. The Court's Gender Equality Focal Point indicated the measures she was promoting in her mandate.

8. There was general agreement that R15 would require on-going, longer-term focus.

Assessment of IER recommendations on Human Resources issues (R16-20 and R88)

9. As regards the assessment of Human resources issues R16-20 and R88, the Court had assessed the recommendations positively and was working towards their implementation. It had put measures in place relating to recruitment, the leadership framework, and had implemented a dashboard on sick leave. It had recognized the important role of the Staff Union Council (R20). The Court had assessed these recommendations positively and was already working on them.

Meeting of 12 October

Assessment of IER recommendations on the Secretariat of the Trust Fund for Victims (R354-360) and recommendation 350 on the register of reparations experts

10. At the fourth meeting, on 22 October, the Review Mechanism discussed the recommendations relating to the Secretariat of the Trust Fund for Victims and on the register of reparations experts. A member of the Board of Directors participated.

11. The Board informed the meeting that it had identified the need to improve the Trust Fund's performance in the past years and had initiated a review by the Independent Oversight Mechanism (IOM), which reported in 2019. The IOM report identified major concerns regarding governance and performance of the Trust Fund and was shared with the Independent Experts that started their work in January 2020.

12. When the IER report was issued on 30 September 2020, the Trust Fund was already proactively addressing a number of the issues identified by the IER Experts and the related recommendations.

13. The Registrar indicated that the Trust Fund was a very different body from when the IOM and the IER did their reports, and the underlying areas of concern of the IER, i.e., that the Trust Fund could not reform itself, had not been borne out. Regarding R358, he expressed concerns that a trust fund that focused solely on fundraising would not be effective.

14. On R352, the meeting took note that the judiciary had established a working group that would look at the recommendations allocated to it. The judiciary would then be in a position to look at any possible amendments to the Rules of Procedure and Evidence and the Chambers Practice Manual.

15. The meeting took note that recommendations R352, R353, R355, R356 and R357 were already being implemented. Regarding R354 and R358, a number of States Parties noted that more time was needed for assessment and that the assessment would therefore continue in 2022.

16. The Court made a presentation on the steps being taken to implement recommendation 350 on the register of reparations experts, having assessed it positively.

Meeting of 27 October

Assessment of IER recommendations 163/169/R181-188/361,362.

Assessment of R169

17. The President of the Assembly, Ms. Silvia Fernández de Gurmendi noted that R169, which was assigned to the ASP, called for the Assembly to develop a strategy for responding to attacks on the Court and to further conduct public campaigns in their countries. She expressed support for the recommendation and noted that a number of States were already taking the action indicated by R169, either individually or in groups, and that she also had publicly spoken in support of the Court and defended the Court. The recommendation should be discussed in order to develop the strategy mentioned therein. The Court focal points endorsed the President's views.

18. The meeting concluded that there was no objection to the implementation of R169 and that further discussions on the substance and a strategy to respond to external political measures were needed.

Assessment of IER recommendations on ASP-Court relations (R361 and R362)

19. The meeting agreed that the recommendations contained general principles that were already being followed and that were acceptable to the Assembly. The meeting assessed the recommendations positively.

Assessment of IER recommendation on Communication strategy (R163)

20. The meeting took note that, in addition to R163, there were 22 other IER recommendations related to communication which will be assessed at a later stage.

21. The first two elements of the recommendation, i.e. the need for a cross-organ strategy on communication and for coordination among the organs on public information responses were positively assessed and there was already work underway. The Court would initiate a cross-organ dialogue in the first half of 2022 to put the inter-organ strategy in place. The absence of a strategy to ensure coordinated responses from the Court did not mean that there was a vacuum and there were already outreach plans and strategies in place, including for situation countries. Regarding the inclusion of outreach activities as part of the preliminary examination stage, this was a new element, and the Registry would consult with the Office of the Prosecutor thereon.

22. The meeting concluded that the first two elements of the recommendation were positively assessed and the third required further internal discussion

Assessment of IER recommendations on Code of judicial ethics (R181-184)

23. The meeting took note that some recommendations had already been implemented while others were being assessed.

24. The Code of judicial ethics had been amended at the end of 2020. Work had previously been on-going, but the IER enabled the judges to place greater focus on amendments that needed to be introduced. The amended Code now included provisions on integrity, collegiality, harassment, including sexual harassment, the election of the ICC Presidency.

25. The recommendations on the Code of judicial ethics had been positively assessed, the Code had been amended, and would remain under review and amended as necessary.

Assessment of IER recommendations on judicial collegiality (R185-188)

26. The recommendations on judicial collegiality were welcomed. This had been an on-going process, as evidenced by the Chambers Practice manual and the Guidelines for the drafting of judgments, the drafting of which were examples of judicial collegiality as the exercise required all judges to work together.

27. The meeting took note that the recommendations had been positively assessed and were being implemented. They looked forward to a further report in 2022.

Meeting of 28 October

First discussion on assessment of IER recommendations on Unified governance (R1 to R13)

28. On 28 October, the Review Mechanism held a preliminary meeting on R1 to R13 on Unified governance, with the understanding that they would return to the recommendations in 2022, as these were for assessment in the first half of 2022.

29. The Court welcomed the IER recommendations to improve and further develop the Court's governance and would continue to look into the recommendations. In introducing the legal analysis paper on three-layered governance model as recommended by the Independent Experts, the Court spotlighted the risks, in particular the risk to the judicial and prosecutorial independence, and legal

obstacles in implementing the recommendations on “unified governance” to the full. There was a preliminary exchange of views by States Parties.

30. The Court indicated, regarding the outcome sought by the IER and the obstacles the Experts had identified, that it did not believe that there was a need to make a drastic change of a statutory nature, but this could be achieved through tools such as strategic planning, risk management, synergies, the budget. The Court intended to implement some recommendations, and had done so in some cases e.g. stricter guidelines for recruitment, standardized Human Resources reports.

31. States noted the great importance of these recommendations since they concerned the overall governance of the Court; they were interlinked and informed a number of other recommendations aimed at ensuring an efficient governance of the Court. The recommendations were fundamental to the entire process, and it was important to begin the process now. It was recalled that the purpose of the recommendations was to improve the efficiency and effectiveness of the overall governance of the Court, so as to be expeditious in discharging the overall work of the Court. There should therefore be greater focus on the “One-Court principle” and the underlying issues that informed the recommendations. There should also be guarantees that the process would not jeopardise the independence of the judiciary. In addition, it was recommended that the staff of the Court be equally involved in the discussions on unified governance.

32. States suggested that, moving forward, the Court present a tabular presentation that will be focused on each recommendation (i.e. what had been done, what it intended to do, and what could not be done). The risks and obstacles mentioned by the Court should also be specified in such a response.

33. States suggested that the IER Experts be invited to explain the recommendations to States, taking into account the Court’s “Overall response”.

34. In conclusion, the Review Mechanism will have more detailed discussions of the recommendations on unified governance in 2022. The IER Experts would be invited to be involved in the process. The Court would present information on each recommendation in a tabular format.

III. The way forward to ASP20

35. The Review Mechanism intends to prepare a stand-alone resolution on the outcome of the work of the Review Mechanism and would liaise with the facilitator for the omnibus resolution to avoid duplication. In addition, a procedural decision would be necessary if the Assembly wished to extend the mandate of the Review Mechanism.

36. The Review Mechanism will also submit a report on the review process to the Assembly well in advance of its twentieth session, as indicated in ICC-ASP/19/Res.7, para. 9.
