



PERMANENT MISSION
OF THE PRINCIPALITY OF LIECHTENSTEIN
TO THE UNITED NATIONS
NEW YORK

Comments to the State Party representatives on the Review Mechanism on proposed Action Plan

10 June 2021

Introductory remarks:

Liechtenstein would like to thank the Review Mechanism for inviting States Parties to make written submissions in relation to the proposed elements of the Action Plan as requested in Assembly resolution ICC-ASP/19/Res.7, “Review of the International Criminal Court and the Rome Statute system”.

We strongly support the mandate of the Review Mechanism to plan, coordinate, keep track and regularly report to the Assembly Presidency and the Bureau on the **assessment** of the recommendations aimed at enhancing the performance, efficiency and effectiveness of the Court as provided for in OP 4 of resolution ICC-ASP/19/Res.7.

We look forward to a swift follow up to the Report of the Independent Experts, which “**continuously observes and safeguards the judicial and prosecutorial independence of the Court and the integrity of the Rome Statute throughout the review process**” and ensures close cooperation with the Court while remaining within the mandates given to the ASP and to the Court respectively.¹ **The consensual agreement reflected in ICC-ASP/19/Res.7 and achieved after lengthy and difficult negotiations is to be implemented meticulously, in particular the agreed upon parameters of the review process as outlined in said resolution.**

Elements of proposed Action Plan:

We support the agreed structure of the Action Plan as provided for in OP 4 (b) of resolution ICC-ASP/19/Res.7. We would therefore like to see the Action Plan fully align with the allocation of the IER recommendations by the Independent Group of Experts in their Final Report of 30 September 2020.

We wish to emphasize the importance of a common purpose among States Parties, the Court and other relevant stakeholders to implement the IER recommendations in the most efficient and timely manner possible, which in many instances is best achieved by the rapid implementation of the “Court-facing” recommendations by the Court itself.

¹ ICC-ASP/19/Res.7 at OP 7

ASP Dialogue:

States Parties have a key role in discussing IER recommendations, while recalling that many of the recommendations have already been directed to the entity responsible by the Group of Independent Experts and further categorized by the Review Mechanism. Within that role, the final assessment as well as the **implementation** of recommendations directed at the Court by the Independent Group of Experts should ultimately be left to the Court, which is necessary to safeguard judicial and prosecutorial independence.

We welcome an inclusive review process, involving all States Parties on an equal basis, the Court and other relevant stakeholders (including the Group of Independent Experts) to discuss issues of interest stemming from specific IER recommendations, regardless of the entity responsible for their potential implementation. We are convinced that the review process will benefit from a broad contribution of viewpoints regarding the IER recommendations. Conversely, the implementation of “ASP-facing” recommendations should be reserved solely to the States Parties, while the Court should not be excluded from a relevant dialogue thereon. In this regard, we recall that **“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 [by the Independent Group of Experts]”**.² We therefore emphasize the need for a clear distinction between “ASP-facing” and “Court-facing” recommendations when it comes to their implementation. We recall that the ASP’s legislative function is by and large limited to amendments to the Rome Statute. Hence, the exercise of statutory interpretation does not fall within the competence of the ASP. This concern relates in particular to the recommendations categorized **for assessment** by both the ASP and the Court’s independent organs.

With regard to IER recommendations on complementarity, we support an inclusive dialogue between all State Parties, the Court and other relevant stakeholders. Ultimately, however, the application and interpretation of Article 17 of the Rome Statute is within the authority of the Court. Consequently, the implementation of complementarity-specific recommendations, according to their nature and purpose as they relate to policy decisions by the Office of the Prosecutor, fall exclusively within the Court’s statutory mandate.

² ICC-ASP/19/Res.7 stresses at PP6