



Twenty-second session
New York, 4-14 December 2023

**Report of the Review Mechanism submitted
pursuant to resolution ICC-ASP/21/Res.4,
paragraph 12**

I. Introduction

1. The present report of the Review Mechanism (“Mechanism”) is submitted further to the Report of the Mechanism on the overall progress of its work¹ which covered its first and second roundtable meetings to discuss the implementation of the recommendations of the Group of Independent Experts that had been assessed either positively or positively with modifications. The Review Mechanism also concluded the assessment of the recommendations for which it was the platform for discussion. The report is submitted pursuant to resolution ICC-ASP/21/Res.4, paragraph 12, 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 2023, and to submit a comprehensive report on the review process to the Assembly well in advance of its twenty-second session on:

- a) Progress in the assessment of and possible further action on 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 Mechanism is set out in resolution ICC-ASP/20/Res.3, with specific deadlines for the completion of each stage of its mandate.²

- a) Proposal for a comprehensive action plan for the assessment of the recommendations of the Group of Independent Experts, including requirements for possible further action*

3. The Review Mechanism recalls that it submitted to the Bureau on 30 June 2021 the “Proposal for a comprehensive action plan for the assessment of the recommendations of the

¹ https://asp.icc-cpi.int/sites/default/files/asp_docs/RM-report-overall-progress-2023.pdf.

² ICC-ASP/20/Res.3, paras. 9 and 11.

Group of Independent Experts, including requirements for possible further action” (“CAP”),³ in accordance with paragraph 4 (b) resolution ICC-ASP/19/Res.7. The Bureau adopted the CAP on 28 July 2021.⁴

4. Like the Categorization of IER recommendations submitted in 2021, the Review Mechanism considers the CAP as the roadmap for the assessment of all the recommendations throughout the Review process. The Mechanism is aware that not all the recommendations that according to the CAP were due for assessment in 2022 were fully assessed in the meetings of some Assembly mandate-holders. The Mechanism has always realized that with the CAP it has laid down a very ambitious timetable that comes on top of an already high workload. In that respect, a certain amount of flexibility as to the timelines for assessment set out in the CAP is understandable. The Mechanism is pleased that the assessment of almost all the IER recommendations was completed by the end of 2023 and much progress had been made on the implementation of all the positively assessed recommendations. The assessment of the IER recommendations is reflected in the Matrix: Progress in the assessment of the IER recommendations (annex V).

5. The Mechanism recalls that, in allocating the IER recommendations in the CAP, it had decided to work through existing Assembly structures and to itself take up the assessment where there was no corresponding Assembly mandate. Given the need for monitoring the implementation of IER recommendations relating to the Trust Fund for Victims, its Secretariat and victims participation, as well as media policy and relations with civil society, the Mechanism recommends that the Assembly establish a mandate on those recommendations or add these topics to existing mandates.

6. The Review Mechanism is pleased that the Chair of the Group of Independent Experts, Mr. Richard Goldstone, and some of the IER Experts or the IER Assistants participated in the majority of its meetings. They participated in their personal capacity and were always willing to share information on the thinking of the IER Experts on the respective recommendations. Participants welcomed and appreciated their presence and very helpful contributions.

b) *The Review Mechanism as the platform for discussion*

7. In the second half of 2023 (second semester), the Review Mechanism held one meeting at which it continued its role as the platform for discussion. In addition to the Roundtable discussion held on the STFV, its 20 October meeting included an assessment of outstanding IER recommendations R365 and R163 (second part), which had not yet been assessed.

8. R365 concerns the full cooperation by the heads of Organ with oversight and disciplinary mechanisms, and also that additional confidentiality agreements could be envisaged for individuals in the relevant oversight bodies. This recommendation was assessed positively. The Court noted that such commitment by the heads of Organ already exists. With regards the second part of the recommendation the Court indicated that is already provided for by different legal frameworks of the Court (the Office of the Internal Audit and the Independent Oversight Mechanism are composed by staff members of the Court and as such are bound by confidentiality measures). It was added that while the members of the CBF and the Audit Committee don't sign individual confidentiality agreements they are bound by confidentiality by their respective rules and procedures. The External Auditors sign confidentiality agreements. It was agreed that additional confidentiality arrangements should be set in place for other oversight bodies, such as the Board of the Trust Fund for Victims to ensure confidentiality.

9. The second part of R163 concerned the Court's outreach plans for at least every situation country to be implemented from the Preliminary Examination stage of every situation, was assessed positively with modifications. The modification relates to addressing the issue of resources as well as the particular context or stages of a situation for developing

³ https://asp.icc-cpi.int/iccdocs/asp_docs/ASP20/RM-Comprehensive%20Action%20Plan-ENG.pdf.

⁴ https://asp.icc-cpi.int/iccdocs/asp_docs/ASP20/ICC-ASP20-BD-CPA-ENG.pdf.

an outreach plan, strategic framework or public information activities when necessary for each situation country and as required for the Court to be able to manage expectations.

10. With the assessment of these two recommendations, the Review Mechanism finished the assessment of the recommendations which it had allocated to itself as the platform for discussion.

c) Roundtables

11. In the second semester, the Review Mechanism held one Roundtable for the discussion of the implementation of recommendations which had been assessed either positively or positively with recommendations. Its 20 October meeting focused on the implementation of recommendations relating to the Secretariat of the Trust Fund for Victims (R355 (finalization of a strategy document); R356 (adoption of a comprehensive and effective fundraising strategy); and R357 (oversight by ASP and Board of Directors)). The Executive Director of the Secretariat of the Trust Fund for Victims, Ms. Deborah Verduzco, made a presentation on, inter alia, the reparations programmes under implementation; cases with ongoing reparations proceedings; situations with TFV programmes for the benefit of victims and situation with no TFV programmes. She also spoke on the TFV Strategic Plan 2023-2025 and the Strategic Goals and identified the priority areas for these goals. The presentation also covered the Comprehensive fundraising strategy. The CICC, which is very active on the ground on the issues of victims, also made a presentation on its work. Finally, an IER Expert, Lord Iain Bonomy, welcomed the work that was being done and the progress in the implementation of the IER recommendations.

12. Regarding R355, the Executive Director indicated that the TFV Strategic Plan for 2023 to 2025 was adopted in April 2023, then revised in May 2023 and issued with the Court's Strategic Plans on 14 June 2023. The Strategic Plan was then presented to States Parties at the Budget Management Oversight Facilitation (BMO) on 22 June 2023. She noted that the TFV had four main goals aimed at reparations and other programmes for the benefit of victims; visibility and financial resilience; knowledge and experience-sharing; and organizational performance. She indicated that the next steps for the TFV included developing a risk management framework by November 2023, action plans per priority area by December 2023, and key performance indicators based on the approved 2024 budget, to be set in March 2024.

13. The Executive Director enumerated the measures taken in 2022 and 2023 to implement R356. These included engagement of Fundraising Consultant Research Advisors and Expert Europe, mapping of fundraising associated needed in January 2022, consultation with selected contributing States Parties in 2022, presentation of findings to Board of the TFV in April 2022, consultants Fundraising Strategy in July 2022, consultants Proposed Acquisition Strategy in November 2022, financial resilience as Goal 2 in the Strategic Plan in April 2023, Executive Director review of status May – October 2022/23, fundraising Strategy for approval by the Board of Directors expected in December 2023. The Executive Director highlighted the 2024-2025 priority streams of funding with public and private stakeholders. She also noted the internal measures taken to strengthen fund mobilization capacity such as developing internal capacity for grant/project development, engagement and support from current donors and States Parties to the Board of Directors, develop organizational readiness to comply with requirements from major donors, and develop a communication strategy. In terms of the next steps, she expected that the TFV would adopt a fundraising strategy by the Board of Directors in December 2023 and develop an implementation plan for 2024-2025.

14. The Executive Director indicated that the Board of Directors had adopted measures with regards to implementation of R357. These included on the one hand, regular and substantive interaction between Board of Directors and the Assembly via presentations at Bureau, The Hague and New York working groups and working closely with the ASP President. On the other hand, the Board enhanced oversight over the Executive Director's leadership transition, including a tenure of maximum 7 years appointment adopted by the ASP at its 22nd session through amendments to regulations to the TFV and an agreement of the Board of Directors with the Registrar on developing a process to ensure performance appraisal of the Executive Director.

d) Meetings on IER recommendation R105 (Tenure)

15. The Review Mechanism held two additional meetings on IER recommendation R105 on Tenure in the second semester. This recommendation had been positively assessed by the Court and by States Parties at the two meetings of the Review Mechanism dedicated to tenure on 28 February and 28 June 2022. Consequently, the twenty-first session of the Assembly had “*Endorse[d]* the positive assessment of recommendation R105 (Tenure) for which the Review Mechanism served as the platform for assessment, and *invite[d]* the Court through the Registry, in close consultation with the Bureau, 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.”⁵

16. In implementation of this mandate of the twenty-first session, the previous Registrar, Mr. Peter Lewis, addressed the Bureau at its 14 February and 10 March meetings, and presented the detailed proposal for a tenure policy which the Assembly had requested. He also briefed the meetings of The Hague Working Group and the New York Working Group on 22 and 24 February 2023, respectively, on how the Registry intended to proceed pursuant to the mandate of the Assembly resolution. At the 10 March 2023 meeting of the Bureau, “the President proposed that the Court immediately begin the internal work needed in order to implement the tenure policy. The Court should also brief the Bureau and States on its progress, as appropriate. In parallel, States Parties’ discussions on the tenure policy should continue and would be fed by progress made by the Court. Further, the President would discuss with the State Party representatives on the Review Mechanism the most appropriate format to continue the discussions. The Bureau agreed with the President’s suggested way forward.”⁶

17. The Mechanism took note that, in the meetings of the working groups that followed, some States had linked the issue of “Geographical representation and gender balance” (GRGB) to the issue of Tenure.

18. As a result, on 29 September 2023, the Review Mechanism held a meeting on Tenure, which gave the opportunity for the Registrar, Mr. Osvaldo Zavala Giler, to brief the meeting on the steps that the Court had taken to implement the mandate of ICC-ASP/21/Res.4. The meeting also gave the opportunity to different States Parties and other stakeholders to express their views on Tenure. That meeting was not meant to draw conclusions, but the Review Mechanism shared the views expressed with the President. As a consequence, the President asked the Mechanism to facilitate another meeting to discuss the way forward.

19. On 22 November 2023, the Review Mechanism held its fourth meeting on “Tenure”. First, the Court introduced its updated proposals for amendment to the Staff Rules and Regulations in relation to the tenure policy. The Court then introduced its response, which had been requested by the Bureau, to the “Non-Paper on Concurrent Amendments to the Staff Rules and Regulations in Relation to Geographical Representation and Gender Balance (GRGB) and the Introduction of Tenure Policy at the International Criminal Court (ICC)” - October 2023”, which had been submitted by Kenya on behalf of the African group. The Staff Union Council spoke on the proposals of the African group which, in the view of the SUC, would be detrimental to the staff of the Court.

20. At that meeting, different views were expressed by States Parties and there was no final outcome, although some areas of agreement seemed to be emerging.

21. Taking into account the views expressed in all its meetings, the Review Mechanism will continue its consultations on the issue of Tenure with hope that the upcoming Assembly can take a decision on the way forward.

e) The future of the Review Mechanism

22. On 13 November, the Review Mechanism held a meeting on the “Future of the Review Mechanism”, where States Parties commented on the options contained in a paper

⁵ ICC-ASP/21/Res.4, para. 12.

⁶ Agenda and decisions of the third meeting of the Bureau: https://asp.icc-cpi.int/sites/default/files/asp_docs/Bureau3-Agenda-Decisions.pdf.

titled “Future of the Review Mechanism”, prepared by the Review Mechanism, dated 6 October 2023. The options suggested are:

- (i) The RM thinks that in view of the present state of the review process it possible to step back and let the further steps be the subject of the regular ASP system of facilitations.
- (ii) Monitoring and discussing of the implementation of the recommendations will take place in the existing facilitations that to a significant extent were already involved in their assessment.
- (iii) In case of topics for which there was no facilitation so far the Bureau/ASP can decide to establish a new facilitation or to add these topics to existing facilitations, to avoid creating gaps in the system.
- (iv) The overall monitoring of the process could lie in the hands of the Bureau that can decide to assign the role to the Vice-Presidents of the ASP as Coordinators of The Hague and New York Working Groups. The ASP can of course also decide to appoint specific coordinators.
- (v) The RM further thinks that it is useful to keep making use of the Matrix and keep updating it (on implementation) to ensure transparency and as a basis and tool for discussion in the Bureau and or ASP on the progress and challenges in the review process.

23. The Mechanism listened carefully to the views expressed and were grateful for the comments and suggestions offered. The Review Mechanism noted that while many States Parties indicated flexibility the issue was not yet concluded and that it planned to hold a plenary discussion at the twenty-second session, on Wednesday, 13 December at 10:00 hours, which would focus on this topic.

24. The Review Mechanism recalled that the Assembly had held a plenary meeting on this topic at the twenty-first session, in 2021 where some views were expressed, of which the Mechanism had taken note. Further, Ambassador van den Ijssel had participated in the commemoration of the twenty-fifth anniversary of the adoption of the Rome Statute, held in New York on 17 July, in a panel discussion on the future of the Review Mechanism, where he had expressed some personal views.

25. The Review Mechanism is aware that the final decision on the future of the Mechanism will be up to States Parties and hope that the upcoming Assembly can take a decision on the future of the Review Mechanism which will ensure that the work on the review process and oversight of the implementation of the IER recommendations will continue.

Recommendations of the Review Mechanism

26. The Review Mechanism recommends the adoption of the following resolutions by the twenty-second session of the Assembly of States Parties:

- a) Draft resolution of the Assembly of States Parties regarding the implementation of the tenure policy (annex II);
- b) Draft resolution on the Review Mechanism of the International Criminal Court and the Rome Statute system (annex III)

Acknowledgements

27. The State Party representatives (Co-Chairs) of the Review Mechanism firstly want to express deep gratitude to the *ad country* focal points, 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 Mr. Władysław Manteuffel, succeeded by Ms. Katarzyna Padlo-Pekala (Poland), for their supportive role and valuable inputs in the work of the Mechanism.

28. The members of the Mechanism would also like to express their gratitude to the three Court focal points, Mr. Hiram Abtahi, Chef de Cabinet of the Presidency, Mr. Mamadou-Racine Ly, Adviser to the Prosecutor, Immediate Office of the Prosecutor and Mr. Juan Antonio Escudero, Chief of Staff of the Registrar, for the collaborative work and high spirit of engagement in the work of the Mechanism.

29. The Mechanism also acknowledges the support and advice of the President of the Assembly, Ms. Silvia Fernández de Gurmendi, and the Vice-Presidents, Ambassador Robert Rae (Canada) and Ambassador Kateřina Sequeñsová (Czech Republic). The Mechanism is deeply indebted to the Assembly Secretariat, in particular Ms. Gaile Ramoutar and Mr. Aaron Matta, for consistent efficient and responsive assistance throughout the work of the Mechanism.

Annexes

Annex I

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

Available at:

https://asp.icc-cpi.int/sites/default/files/asp_docs/RM-report-overall-progress-2023.pdf

Annex II

Draft resolution of the Assembly of States Parties regarding the implementation of the tenure policy

[to be inserted]

Annex III

Draft resolution on the review of the International Criminal Court and the Rome Statute system

[to be inserted]

Annex IV

Reports of the ASP mandate holders

[to be inserted]

Annex V

Matrix

Progress in the assessment of the IER recommendations

Submitted pursuant to resolution ICC-ASP/20/Res.3, para. 11

[to be inserted]
