



**ASP STRUCTURES TEAM**  
**COALITION FOR THE INTERNATIONAL CRIMINAL COURT (CICC)**  
**COMMENTS AND RECOMMENDATIONS<sup>1</sup>**  
**TO THE EIGHTH SESSION OF THE ASSEMBLY OF STATES PARTIES**  
**18 - 26 NOVEMBER 2009, THE HAGUE**

---

**1. TEAM RECOMMENDATIONS REGARDING DECISIONS TO BE MADE AT THE EIGHTH SESSION OF THE ASSEMBLY OF STATES PARTIES**

**Review Conference Preparations**

The effectiveness of the Review Conference relies heavily on adequate and timely preparations by both the Assembly of States Parties and individual states. With only a few months to prepare for the Conference, there is a pressing need for states to plan the conference, review proposals for amendments and define the important stocktaking exercise.

**For these reasons, the Team urges the Assembly to set up a follow-up structure in the form of an inter-sessional mechanism mandated to deal with all issues concerning the Review Conference arising between the Assembly's session in November 2009 and the Review Conference in May 2010.**

**Independent Oversight Mechanism**

The Bureau of the Assembly has recommended the establishment of an independent oversight mechanism with the power to initiate its own investigations into incidents of misconduct at the ICC (including criminal conduct) and with a view to provide for a system of checks and balances which does not presently exist at the Court.

The Team calls on the Assembly to establish oversight mechanism and to ensure that it is truly independent and tailored to the specific needs and nuances of the ICC. With the setting up of the investigative operations of the mechanism, the Assembly should now turn its attention to developing the inspection and evaluation responsibilities of the mechanism in accordance with article 112 (4) of the Rome Statute.

**The Assembly's response to the Presidency's decision of funding family visits of one particular detainee**

On 10 March, 2009, the Presidency of the ICC made a judicial decision that in the particular circumstances of a detainee, there was a positive obligation for the Court to fund family visits in order to make a right effective. Further, the Presidency found that this entitlement did not extend to unlimited family visits and that it will be restricted by the resource constraints faced by the Court.

---

<sup>1</sup>While the work of the CICC Team on ASP Structures reflects the positions of those Coalition members most active on particular issues and this paper has been prepared in consultation with other Coalition teams, this paper cannot be construed to represent the views of all organizations/members of the CICC.

With reference to the Assembly's role in considering and deciding the budget for the Court, as well as its management oversight function, the Team notes the concerns of states expressed at previous sessions regarding the budgetary consequences of funding such visits. The Team notes that prior to the Presidency's decision the Assembly had mandated ongoing dialogue between the Assembly and the Court, but had nevertheless agreed on an exceptional basis to partially fund family visits, pending a final policy determination of the matter.

The Team acknowledges that the question of the obligation to fund family visits is a sensitive one that has been extensively considered by the Assembly. The Team is however seriously concerned that the ASP, in its draft resolution, seeks to contradict the judicial decision by stating that no such obligation for the Court exists in spite of the Court's finding.

The Team is further concerned that the proposed resolution by the Assembly places the Registrar in a difficult position in implementing the Presidency's decision. More importantly, the draft resolution would undermine the independence of the judiciary - who have been elected by the Assembly. This would set an unwelcome precedent of interference of the ASP with judicial matters.

**The Team calls** on the Assembly not to adopt a resolution that could be interpreted as undermining the judicial independence of the Court.

### Cooperation

As reflected in the CICC Cooperation Team Paper, it is imperative that there be a subsidiary organ of the ASP responsible for overseeing the implementation of the Bureau's Report on Cooperation and in order to capitalize on the gains achieved to date by the outgoing focal point, Amb. Yves Haesendonck. In this regard the Team recommends that the ASP renew the mandate of the focal point and/or in the alternative, establish an intersessional working group on cooperation, with the additional responsibility of:

- preparing the issue of cooperation for the Review Conference in the context of stocktaking.
  - ensuring that the ASP is equipped with the appropriate mechanism and procedures before receiving its first referrals of non-compliance by the Court, pursuant to Articles 87(5)(b),(7) and 112(2)(f) and report on progress made in this regard to the ninth Session of the ASP (as referenced below).
  - To work with ICC officials in assessing the cost implications of non-cooperation as indicated by the Court in its report
  - Promoting the implementation of the Assembly's 66 recommendations on cooperation and the Plan of Action for Universality and Full Implementation of the Rome Statute.
  - Reviewing annual reports of the Court on the status of cooperation to identify key issues where the states parties needs to strengthen cooperation.
2. **TEAM RECOMMENDATIONS REGARDING ISSUES TO BE REFERRED TO THE BUREAU FOR PREPARATIONS FOR THE 9<sup>TH</sup> SESSION OF THE ASSEMBLY.**

### The role of ASP under Article 112(2)(f)

The Rome Statute provides that the ASP shall, in accordance with Article 87(7) consider

any question relating to non-cooperation.

While we hope that such finding from the Court will not be considered necessary, **the Team urges** the ASP to be procedurally prepared to deal with a potential judicial finding in order to avoid that the formation of an appropriate and constructive procedure is tainted by the existence of an actual pending finding and thereby causes unnecessary political division or an undue delay.

### Elections Committee

The Assembly has established a unique judicial elections procedure based on the merits of the candidate, legal diversity, gender balance and geographical representation. The first years of the Court's existence has demonstrated the utmost importance of these factors to the effectiveness and legitimacy of the Court. In order to ensure continued commitment from states to nominate and elect the most qualified candidates, the Team would like to reiterate its previously expressed support for the establishment of an Advisory Committee on nominations, as provided for in Article 36(4)(c) of the Rome Statute. While the nomination of a candidate is a sovereign decision, the elections can only be as successful as the quality of the pool of candidates.

**Thus, the Team urges** the Assembly to mandate the Bureau to consider the establishment of an Advisory Committee on nominations to effectively advise the nominating and other states regarding nominations, elections, terms of serving as well as on the required qualifications of candidates, and to report back to the 9th session of the Assembly of State Parties on the progress made in this regard.

### Elections of the ICC's 2<sup>nd</sup> Prosecutor

In June 2012, the term of Chief Prosecutor Luis Moreno Ocampo expires. The elections of his successor are thus foreseen to take place at the 10<sup>th</sup> session of the Assembly. Any revision of the nomination and elections procedures would therefore need to be initiated at the 8<sup>th</sup> session in order to be adopted at the ninth session. Resolution ICC-ASP/1/Res.2 states that: *"the procedures for the nomination of candidates for judges apply mutatis mutandis to the nomination of the Prosecutor, and a preference is expressed for nominations for the post of the Prosecutor being made with the support of multiple State Parties."*

Notwithstanding the consensus achieved in the first election, **the Team would like to call** on the ASP to mandate the Bureau to assess, with the lessons learned from the first elections, whether this nomination procedure is the most appropriate one in terms of generating a pool of available candidates in a transparent manner.

### Role of the Bureau in preparation for the stocktaking exercise at the Review Conference

The need for preparatory discussions cannot be over-emphasised insofar as they are essential to ensuring a legitimate, effective and efficient stocktaking process at the Review Conference. With a view to the limited timeline of the Conference, the CICC believes that sufficient preparation by the Assembly and states may alone mean the difference between success or failure of the stocktaking procedure.

For these reasons, the Team calls on the Assembly to mandate the relevant Bureau facilitators to assess -in coordination with the proposed inter-sessional mechanism- ways in which the issues identified for the stocktaking exercise could be considered at the Review Conference as well as possible achievable objectives.

### **ASP and Management Oversight**

The Team also calls on the ASP to consider whether the current management oversight structures of the ASP and the Bureau are sufficient to meet its obligations under article 112. While the current team of Working Group coordinators and facilitators are doing their utmost to bring the issues forward, they are presented with immense tasks with minimal support, working within informal structures with a large membership.

The team calls on the Assembly to mandate the Bureau to consider a restructuring of the means through which the Assembly carries out its oversight functions regarding the administration of the court in order to ensure effective and expert guidance the Court while respecting the independence of the Court as a judicial institution. This restructuring should include procedures and time plans that are conducive both to the Court's and the governments' agenda. This should also include consideration of a few standing committees, as in the governing bodies of other international organizations, to oversee the work of the major organs of the Court and to evaluate the performance of those organs without imposing on their independence.