

Input by Denmark, Finland, Iceland, Norway and Sweden to the ongoing Independent Expert Review of the International Criminal Court

1. Introduction

The Nordic States Parties to the Rome Statute, Denmark, Finland, Iceland, Norway and Sweden, welcome this opportunity to provide input to the ongoing Independent Expert Review of the International Criminal Court (ICC).

With this input, the Nordic States Parties would like to highlight a limited number of areas we believe to be of critical importance to the ongoing review process, and would like to provide concrete and realistic proposals for the Independent Group of Experts' consideration.

Our input should not be seen as an exhaustive list of issues or recommendations that should be considered by the Group of Experts, but rather as highlighting a few of the most important ones.

2. Governance

The Nordic States Parties recommend measures to ensure a **flexible and qualified work force**, which first and foremost is merit based, and with a continued focus on gender balance and geographical representation in recruitment. Specific measures may include a review of staffing models and arrangements, such as for example fixed-term contracts, as well as establishing a comprehensive framework for secondments, within the parameters of Article 44.4 of the Statute.

We recommend reviewing **internal grievance procedures** with a view to meeting needs and efficiently and cost-effectively resolving disputes.

The Nordic States Parties further recommend measures to **strengthen the management culture at the ICC**. Specific measures may include more emphasis on active staff participation, strengthening performance appraisal frameworks, as well as implementing systematic and recurrent staff satisfaction surveys, including gender sensitivity surveys and statistics, to contribute to a better working environment. We also encourage increased focus on the "one Court principle", with centralized and court-wide administrative procedures and better horizontal integration of services and workforce.

3. Judiciary and the judicial process

We recommend measures to improve the efficiency and consistency of proceedings, for instance to **amend the organization of the different chambers** of the Court, and the way they are composed. Particular attention should be paid to reviewing the role of the pre-trial

chamber, with a view to increasing expediency and eliminating unnecessary duplication between the pre-trial and trial stage.

The Nordic States Parties encourage the use of **active trial management** to promote more efficient judicial proceedings. Specific measures may include (1) instituting an overall strategy to trial management, including all branches of the Court in line with the “one Court principle”; (2) improving communication and coordination between the President, the chambers and the registry; (3) taking into consideration the overall effect of trial schedules on the efficient functioning of the Court when scheduling important trial events; (4) actively using pre-trial and pre-defense conferences to ensure that cases are trial-ready and will not be marred by unforeseen delays, and that proceedings will be focused and expeditious; (5) managing the pre-trial phase in such a way as to render it relatively short and conducive to a well-structured and expeditious trial; (6) actively using status conferences during trial; (7) actively managing the hearing of evidence; (8) considering motions on the basis of written submissions only, where appropriate; (9) introducing deadlines for motions and a general time-limit for responding to motions; and (10) strictly enforcing trial schedules.

We recommend measures to ensure a more **coherent and consistent jurisprudence** of the Court. Measures may include (1) continuous training of judges, including on established precedent of the Court; (2) more focus on internal deliberations and active use of drafting conferences; (3) active consultations, within chambers and of other chambers on legal issues arising in cases; (4) further harmonization and standardization of Court practices and procedures, including continued focus on a unified approach to the drafting and structuring of judgments and decisions; (5) review of rules of procedure and regulations to clarify common procedural issues; (6) ensuring that judgments and decisions fully comply with the Article 74.5 requirement that they contain a full and reasoned statement of the chamber’s findings; (7) ensuring that judgments and decisions contain full reasoning at the time they are issued; (8) increasing focus on issuing decisions with clear and transparent legal reasoning, bearing in mind the potential for positive influence on the development of international criminal law; (9) exchange of experiences between the judges to gain a better understanding of the various legal systems represented at the Court; and (10) exchange of experiences with other jurisdictions on how to promote coherent and accessible jurisprudence.

Relating *inter alia* to more coherent and consistent jurisprudence, we further recommend measures to **increase collegiality and cooperation** in the judiciary. Specific measures may include (1) developing an internal culture of striving for consensus in order to develop a jurisprudence capable of meaningfully guiding the work of the chambers and the prosecution; (2) instituting a process of deliberation and decision-making encouraging proper exchange of views and possibilities of arriving at consensus; (3) accentuating the responsibility of the President for overseeing the institution’s operational culture; (4) developing a common approach to the assessment of evidence; (5) encouraging a respectful discourse between judges; and (6) seeking to resolve differences within and between the branches of the Court internally.

In order for the Presidency of the Court to concentrate on the functions conferred upon it by the Rome Statute, the Nordic States Parties recommend to consider giving the **registrar and the ASP President more active roles** in promoting the universality of the Court, etc.

We recommend the introduction of measures to **better enable the Trust Fund for Victims to deal with a growing number of affected victims**, for instance by considering to change the focus/scope from individual to collective reparations.

We recognize that the States Parties have a role to play when the Judiciary – and the Court - sets out to realise the recommendations made by the independent experts. Revisiting the procedure for amending the Rules of Procedure and Evidence would strengthen the desired increased efficiency of the Judiciary and the judicial process and would benefit implementation of recommended measures, some of which may require amending the Rules. The current procedure and its application has not yielded the desired and necessary results.

4. Preliminary examinations, investigations and prosecutions

The Nordic States Parties recommend to introduce measures to ensure more **consistent and time-efficient preliminary examinations**. Measures may include reviewing policies of prioritization and the introduction of timelines. We would also encourage an examination of whether the phases currently used in the preliminary examinations contribute to consistent, effective and time-efficient preliminary examinations, or whether the introduction of other categories or stages may be merited, such as introducing the possibility to put an examination on “inactive” without formally closing it.

Finally, we recommend measures aimed at **increasing the quality of investigations and prosecutions**. Measures may include (1) reinforcing a practice of vigorous peer review of cases, investigations and important draft motions and other documents; (2) exchanging experiences with national and international jurisdictions on fact-finding, preliminary examinations and investigations; (3) reviewing investigative tools, organization and human resources; (4) developing uniform approaches to e.g. fact-finding, standards of proof and use and verification of open source material; (5) strengthening the ability to investigate in complex environments by e.g. focusing on recruitment and training of staff to enable the OTP to understand the languages, cultures, histories, political systems, reasons for conflicts etc. in situations under investigation; (6) giving increased consideration to bringing cases that are narrower in scope and stronger in terms of evidence where appropriate; (7) giving increased consideration to bringing cases against mid-level perpetrators where appropriate, building upwards towards the most responsible perpetrators; and (8) ensuring that cases are rigorously prepared and trial-ready at the confirmation of charges stage.