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Final audit report on Human Resources management

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I. Terms of reference of the audit

1. In accordance with a notification letter sent to the Registrar on 8 January 2018, three members of the external audit team conducted a performance audit on Human Resources management at the International Criminal Court (ICC) from 3 to 13 April 2018.
2. The terms of reference for this audit were determined after consultation with the relevant managers and were communicated to them on 5 January 2018, followed by a questionnaire sent on 20 February 2018. These terms of reference are recalled below.

A. Scope

3. The audit is devoted to the Human Resources management of the ICC.
4. The scope of the audit covers all categories of Human Resources employed by the Court: statutory or temporary employees (managed by the Human Resources section of the Registry and by other relevant sections of Major Programmes) as well as intellectual services purchased by the Organization.

B. Objectives of the audit

5. The objective of the audit is to assess the extent to which, in accordance with the financial and staffing rules in force, the ICC controls the various risks related to Human Resources management, which includes, among other things:
 - (a) transparency and neutrality of recruitment, performance appraisal, career management, and training,
 - (b) financial transparency and sustainability of salaries, bonuses, and welfare benefits,
 - (c) budget monitoring and reporting of staff costs and related commitments to the Assembly of States Parties (ASP) and its Committees,
 - (d) effectiveness and efficiency of manpower and skills planning,
 - (e) control of legal and ethical risks.
6. Particular attention will be given to the various management alternatives available to the Court for recruiting staff not included in the budget: staff in non-established positions, consultants, temporary staff, specific case of interpreters, etc.
7. Based on his findings, the External auditor makes recommendations to improve the level of economy, efficiency, effectiveness and compliance with the ICC rules and regulations.

C. Method

8. The audit is based on:
 - (a) the analysis and review of relevant official sources (rules and regulations, notes to standing bodies – ASP, CBF,¹ etc. – internal recommendations, financial and budget documents, internal audit reports, etc.);
 - (b) questionnaires sent to the ICC, followed by interviews with the managers concerned, in order to collect and analyze their expectations and observations in terms of Human Resources management, with a view to identifying sources of dissatisfaction and proposing corrective solutions.
9. More specifically, beyond the initial high-level contacts established with the Office of the President, the Office of the Prosecutor, the Registry, and the Major Programme officers, most of the audit involved:

¹ Committee on Budget and Finance.

(a) at the Registry: the Human Resources Section, as well as all “users” of Human Resources, i.e., all section heads of the Court Registry;²

(b) at the Office of the President: those responsible for Human Resources issues in Major Programme 1 (judiciary branch) – namely, programmes 1100 (Office of the President), 1200 (chambers), and 1300 (NYLO);³

(c) at the Office of the Prosecutor: those responsible for Human Resources issues in Major Programme 2 (OTP),⁴ and particularly programme 2100 (IOP),⁵ 2120 (Services Section), 2200 (Jurisdiction, Complementarity, and Cooperation Division), 2300 (Investigation Division), and 2400 (Prosecution Division);

(d) other Major Programmes using Human Resources (Secretariat of the ASP, IOM,⁶ Secretariat of the Trust Fund for Victims, and Office of Internal Audit).

D. Timetable

10. A first questionnaire was sent to the ICC on 20 February 2018, and responses were received on 22 March 2018.

11. A launch meeting (3 April) and a closing meeting (12 April) were organized with the heads (or their representatives) of the relevant Major Programmes.

E. Preparation and communication of the audit report

12. Three phases were planned:

(a) Phase 1 (informal - not binding on the External auditor or the departments): a “briefing note” is sent to the audited departments, which must make comments and suggestions for amendments in writing promptly;

(b) Phase 2 (official): based on the comments and responses of the departments to the briefing note, the External auditor then prepares and sends an interim report to the ICC for objections;

(c) Phase 3 (official): based on the responses to the interim report, the final report is prepared and sent to the ICC. It will then be presented to the Assembly of States Parties at the session usually devoted to the External auditor’s reports. Before this presentation, the final report will be presented to the relevant *ad hoc* committees according to the ICC procedures and timetables (Audit Committee, Budget and Finance Committee), if these presentations are compatible with the audit timetable.

II. List of recommendations

Recommendation 1: In order to adequately address the issue of gender (im) balance at the ICC, the External auditor recommends to the Court, based on a study to be prepared by the Human Resources Section, to introduce additional measures aimed at increasing the representation of female staff, particularly at more senior levels, such as through a mentoring programme and the establishment of a Focal Point for Women.

Recommendation 2: The External auditor recommends that all organs strive to apply one set of HR management policies through the same operational rules, with the Registry HRS responsible for maintaining, developing and promoting these unified Court-wide HR rules, in consultation and cooperation with the other organs.

Recommendation 3: In the management of professional profiles, the External auditor recommends:

² The Heads of Field Offices were not present at Headquarters during the audit period, and the organization of teleconferences did not seem useful to the External auditor.

³ New York Liaison Office.

⁴ Office of the Prosecutor.

⁵ Immediate Office of the Prosecutor.

⁶ Independent Oversight Mechanism.

(a) organizing management reviews to better identify the development needs and the development potential of ICC employees;

(b) initiating negotiations with a view to achieving the integration of the ICC into the UN Inter-Organization Agreement in order to broaden the career prospects of its staff;

(c) proposing to the Court a limited modification of the rules of appointment by reserving a priority round for staff in place at ICC for a proportion of the positions to be filled that should remain limited to prevent the risk of killing de facto most of the external recruitment (10 per cent for example).

Recommendation 4: The External auditor recommends that the appraisers be instructed to ensure that the interview sheets are completed with the definition of training plans.

Recommendation 5: In terms of performance appraisal, the External auditor recommends that the new Registrar:

(a) quickly decide on the principle of the proposed change and, in the event of a positive conclusion, approve the procedure with the legal office and implement it;

(b) whatever the chosen performance appraisal system, put in place a mechanism to make the appraisals of the various departments more homogenous.

Recommendation 6: The External auditor recommends to the Court to establish:

(a) either an incompatibility between belonging to ICC staff and running for election;

(b) or strict conditions guaranteeing the absence of exposure of the Court's departments to risks of conflicts of interest in the performance of the duties of the internal candidates for elected functions.

Recommendation 7: The External auditor recommends that the Court periodically (for example every 2-3 years) carry out an opinion survey to monitor changes in staff perceptions and to identify areas for improvement.

Recommendation 8: The External auditor recommends that the ICC finalize its thoughts on the establishment of an Ombudsman function to be shared with one or more nearby institutions.

Recommendation 9: The External auditor recommends that the ICC develop and publish an ethics charter.

Recommendation 10: The External auditor recommends supplementing the annual report on the Human Resources management presented to the CBF with:

(a) the inclusion of all information relevant to a comprehensive HR report, i.e., a standardized document, addressing all the quantitative aspects (workforce, diversity, absenteeism, performance, training, etc.);

(b) the definition of a stable standard for calculating the number of recruitments done during the year presented in the annual Human Resources report to the CBF;

(c) the improvement of tools for inventory and identification of STA recruitments, by tracking all assessment reports and by precisely measuring the number of STA recruitments to be mentioned in the Human Resources report.

III. Observations and recommendations

13. On the basis of the terms of reference recalled above, the External auditor focused his analyses on:

(a) the ICC staff structure in 2018;

(b) the organization of the Human Resources function within the ICC;

(c) recruitment;

(d) career prospects at the ICC.

14. The External auditor conducted 25 hearings with the Office of the President, the Chambers, the Office of the Prosecutor, the Trust Fund for Victims, and the Registry, as

well as the heads of Internal Audit and the Independent Oversight Mechanism (IOM). The list is provided in the annex.

A. ICC staff structure in 2018

1. Established and actual headcounts

(a) 2018 established headcounts

15. In terms of headcounts, the annual budget documents provide precise figures for established positions, expressed in terms of the number of positions. For General Temporary Assistance (GTA) agreements, the figures in the budget are expressed as full-time equivalents (FTEs).

16. In order to provide the Court with a certain degree of flexibility, other categories of employment as staff do not appear as headcounts in the budget documents, since they are not foreseeable in advance, although some are the subject of budget appropriations. None of these categories requires additional resources other than those approved in the budget:

(a) unapproved GTAs and STAs,⁷ which are used to cover urgent and/or temporary needs, such as for instance to fill positions that are vacant but are crucial for the continued running of the Court's operations. These positions are funded from the underspend in the approved budget for staff costs;

(b) a special category, covered by voluntary contributions from the countries concerned: JPOs;⁸ their number is currently very limited (5, as of February 2018);

17. In addition, there are other categories of individuals working at the Court, but who are not considered as Court "staff", since they do not perform staff functions:

(a) TAMs⁹ and holders of special service agreements (formerly SSA, now replaced by individual consultants and individual service provider agreements) which do appear in the budget;

(b) lastly, two categories for which the compensation accounts for modest amounts in the budget: interns and visiting professionals, which are not budgeted for but entail modest costs and can be funded through voluntary contributions of States.

18. With regard to authorized established positions, on the basis of annex VI to the draft programme budget approved for 2018, the following table can be established:¹⁰

Table 1 : Allocation of established positions by body for 2018

Body	Grade				Total
	ASG/USG	DI	P	G	
Office of the President	0	0	40	13	53
Office of the Prosecutor	2	3	234	80	319
Registry	1	3	243	326	573
Other*		3	15	9	27
Total	3	9	532	428	972

* SASP, IOM, Office of Internal Audit, STFV.

Source: External auditor on the basis of data provided by ICC.

⁷ STA: Short Term Appointment.

⁸ Junior Professional Officers.

⁹ Temporary assistance for meetings.

¹⁰ This table considers that Major Programme 1 (judiciary) covers the Office of the President and the chambers, programme 2 (OTP) the Office of the Prosecutor, programme 3 (the Court Registry), while the "other" category (SASP, IOM, and Internal Audit) results from the consolidation of programmes 4 (SASP) and 7 (IOM and Internal Audit), with the observation that, although the independent Trust Fund for Victims (TFV) does not constitute an the ICC budget programme, the Secretariat of the Trust Fund for Victims constitutes a programme (No. 6).

19. The figure of 972 corresponds to the approved headcount and concerns employees with “established” agreements.

20. To these 972 established positions are added in 2018 budgetary appropriations to fund, in full-time equivalents (excluding headcount), 165.69 GTAs – the calculating in full-time equivalents obviously does not make it possible to presume the number of individuals concerned on a given date in a given financial year.

(b) *Actual workforce during the audit*

21. At the request of the External auditor, a spreadsheet was provided, listing the significant data relating to anyone working at the ICC as of 4 April 2018,¹¹ regardless of the nature of his or her agreement.

22. This spreadsheet shows that there are 1,287 persons, including 22 judges, working under agreements of all kinds as of this date, amongst which 1,116 are considered as “staff”. The following table shows the allocation.

Table 2 : Allocation by agreement type of the workforce present at 4 April 2018

<i>Agreement type</i>	<i>Office of the President and chambers</i>	<i>Office of the Prosecutor</i>	<i>Registry</i>	<i>Other*</i>	<i>Total</i>
Established	73	299	519	22	913
GTA	7	70	25	7	109
Unapproved GTAs	4	13	7	0	24
STA	11	17	34	3	65
SSA	0	42	16	1	59
TAM	0	0	0	0	0
JPO	0	2	3	0	5
Interns**	25	39	47	1	112
Total	120	482	651	34	1287

*SASP, IOM, OIA, STFV; **Under this heading are interns (recent graduates) and visiting professionals (with at least three years of work experience).

Source: ICC.

23. The comparison of budget and actual data at 4 April 2018 provides a clear measure of the actual vacancy rate of the established positions in the Office of the Prosecutor and the Registry: for OTP, 299 positions were actually filled as of this date compared with 319 authorized positions, i.e., an actual vacancy rate of 6.3 percent (versus 8 percent indicated during the budget vote), and 519 positions were filled for 573 authorized for the Registry, a rate of 10.5 percent (versus 10 percent indicated).

24. However, as the spot vacancy rate changes daily, and as the audit took place in the first half of 2018, the situation may well change by the end of the year and the data presented here is only for the orientation of where the Court stands at this moment in the implementation of its staffing budget, rather than an indication where the Court will be by the end of the year.

25. As mentioned above, the number of GTAs present at a given time is not comparable with the full-time equivalent GTAs authorized in the budget, since an FTE can correspond to several employees recruited over less than one year. While it is not relevant to reconcile the 109 GTAs present at 4 April 2018 with the 165.69 FTEs authorized for the 2018 financial year, it can be observed that, to reach the annual established level of 165.69 FTEs

¹¹ The main data recorded in this comprehensive spreadsheet are surname/first name, nationality, gender, agreement type, function, grade, affiliated body, position location, date of birth, current agreement start date, current agreement end date (where applicable), start date of an initial agreement followed by an interruption, and professional group.

over the entire year, it would be necessary in other periods of the year, earlier or later, for a number significantly greater than 109 individuals to hold this type of position.

26. On the same date, there were 24 “unapproved” GTAs, 65 STAs and 59 SSAs (according to the new terminology, “individual consultants” or “individual contractors”).

27. Although these 148 people do not appear as such in the budget, unapproved GTAs and STAs are funded from the underspend in the approved staff costs and/or from redeployment of resources from non-staff cost. Temporary staff is necessary to address any shortages of staff due to absences (maternity leave, long term sick leave, SLWOP) or any changes in the operational needs (such as higher workload or unplanned projects), whereas SSAs are specifically budgeted for.

28. Lastly, if interns and visiting professionals (112 people) are added, the bodies of the ICC have, beyond the approved headcount, a real flexibility – representing, at the time of the audit, 260 people beyond the established positions and GTAs, despite the vacancy rates of the established positions indicated above.

29. ICC proposes a different approach, underlining that for 2018, the Court has budgeted for 972 established posts and 165.69 GTAs in full-time equivalents, making the hypothetical total *budgeted* headcount of 1,137.69. As indicated above, the actual “staff” headcount is 1,116, with the latter including established posts (913),¹² approved GTAs (109), unapproved GTAs (24), STAs (65) and JPOs (5). ICC considers interns should not be calculated within the staff/headcount, as their functions are different and as they are at the Court as part of a learning experience. On that basis, ICC concludes that there is a rather close correlation between the *budgeted* headcount (1,137.69) and the *actual* headcount of staff at the time of audit (1,116).

(c) *Temporary reassignments*

30. The bodies of the ICC have additional flexibility in that they can, while maintaining the vested rights of their employees (position, agreement type, and grade), temporarily reassign them under STA agreements, often by giving them a higher grade (and therefore a higher salary) under this temporary status. As of 4 April 2018, this situation involved 16 employees, as shown in the following table:

Table 3 : Temporary reassignments of staff

<i>Initial position</i>			<i>Current position</i>		<i>Current assignment</i>	
<i>Body</i>	<i>Agreement type</i>	<i>Grade</i>	<i>Financing</i>	<i>Grade</i>	<i>Body</i>	<i>Grade</i>
Registry	Established	G-3	Established	G-4	Registry	P-2
Registry	STA	G-4	Established	G-4	Registry	P-2
Registry	Established	G-4	Established	G-5	TFV	P-2
TFV	GTA	G-3	Established	G-5	TFV	P-2
Registry	GTA	G-3	Established	G-5	Registry	P-1
Registry	GTA	G-3	Established	G-5	Registry	P-2
Registry	GTA	G-5	Established	G-5	Registry	P-2
Registry	Established	G-6	Established	G-6	Registry	P-2
Office of the Prosecutor	Established	G-6	Established	G-6	OTP	P-2
Office of the President	GTA	P-1	GTA	P-2	TFV	P-2
Office of the President	STA	P-2	Established	P-2	Registry	P-3
Office of the Prosecutor	GTA	G-4	Established	P-2	Office of the Prosecutor	P-3
Registry	Established	P-2	Established	P-3	TFV	P-2

¹² This figure includes 22 judges.

<i>Initial position</i>			<i>Current position</i>		<i>Current assignment</i>	
<i>Body</i>	<i>Agreement type</i>	<i>Grade</i>	<i>Financing</i>	<i>Grade</i>	<i>Body</i>	<i>Grade</i>
Office of the President	GTA	P-2	Established	P-3	Registry	P-3
Registry	Established	P-3	Established	P-3	Registry	P-4
Registry	GTA	P-2	Established	P-3	Office of the Prosecutor	P-3

Source: ICC.

31. The 16 STA positions were awarded after external competition. However, all the employees concerned will return to their situation after their temporary assignment – the corresponding positions are therefore not considered “vacant”, although they are not occupied in reality, which leads to putting into perspective the real meaning of the notion of “vacancy” as presented in the budget documents.

Finding. With regard to workforce, the difference between the budget data and the actual situation is 20 to 25 percent, which can be explained by:

(a) the actual vacancy rate of established positions may vary from the budget assumptions;

(b) the fact that beyond the GTAs, expressed in the budget in FTEs and not in individual positions, there are “unapproved” GTAs, which reduces clarity about the number of employees to be covered by this type of agreement;

(c) STAs, interns and JPOs are not budgeted for, whereas consultants/service providers and TAM are budgeted for but do not appear in terms of headcount in the budget documents;

(d) finally, marginally, some employees are temporarily reassigned to STA positions, which allows them to benefit from a higher grade for a few months, while continuing to formally occupy established positions, although these positions are functionally vacant for the duration of the temporary assignment.

In terms of workforce management, none of these four factors is questionable in itself, provided that the recruitment rules and the budget by Major Programme are respected. However, these findings raise questions about the relevance of the limitation on workforce by the budget document.

During the audit, the External auditor suggested another approach, similar to the one implemented by the “coordinated” European organizations, which does not refer to any predetermined budgeted “headcount”. But the ICC considers that implementing such an approach would require a substantial and potentially complete overhaul of the way the Court is presenting and managing its budget in terms of staff costs, which would entail significant costs, as well as consultations with a number of relevant actors, including notably the Committee on Budget and Finance, which could take a long time without a clear indication of the potential outcome.

2. Diversity

32. Traditionally, in international organizations, employee diversity has at least two components:

- (a) gender balance;
- (b) equitable geographical representation.

(a) Gender balance

33. Of 1,287 individuals (including staff and others) identified as working at the ICC as of 4 April 2018, 645 were women – the percentage of women was therefore 50.1 percent, which could give the impression of an almost perfect equality.

34. However, the qualitative analysis of positions reflects a very different picture of the real gender balance at the ICC, as shown in the following data.

35. A first qualitative criterion of gender discrimination is the contract type. The following table shows the percentage of women at the ICC according to the agreement type, ranging from the most stable (established) to the least stable (STA) as well as through the intermediate GTA form, whether it is approved in the budget or not.

Table 4 : Proportion of women by type of funding of the position

<i>Financing type</i>	<i>Number of women/total number</i>	<i>percent</i>
STA	41/65	63.1
GTA approved	54/109	49.5
Established	424/913	46.4

Source: External auditor on the basis of data provided by ICC.

36. This table leads to an initial finding: the position of women is balanced with men for GTA positions, and is inferior-in the most stable agreements.

37. A second qualitative criterion of discrimination is the job category – the main statutory categories at the ICC are categories G (general services), P (professional functions), D (management functions), and the special category of judges. As of 4 April 2018, the proportions of women by category were as follows.

Table 5 : Proportion of women by job category

<i>Job category</i>	<i>Number of women/total number</i>	<i>percent</i>
G	215/463	46.4
P	316/619	51.1
D	1/9	11.1
Judge	9/22	40.9

Source: External auditor on the basis of data provided by ICC.

38. This table leads to a second finding: the place of men is predominant in the highest employment categories (D and judges), while the allocation for categories G and P appears less unbalanced at first sight.

39. A third criterion of qualitative discrimination, which concerns exclusively categories G and P, is the level within the job category. It qualifies the preceding finding. The following table shows the proportion of women of each level:

Table 6 : Proportion of women by job level

<i>Job category</i>	<i>Level</i>	<i>Number of women/total number</i>	<i>percent</i>
G	1 and 3*	12/76	15.8
	4	71/105	67.6
	5	92/177	52.0
	6	32/86	37.2
	7	8/19	42.1
P	1	41/59	69.5
	2	138/224	61.6
	3	92/203	45.3
	4	32/90	35.6
	5	13/43	30.2

* As of 4/4/2018, there were no G2-grade employees.

Source: External auditor on the basis of data provided by ICC.

40. This table leads to a third observation – apart from the highly male-dominated G1 and G3 positions (maintenance employees, drivers, handymen, etc.), women are predominant at the bottom of the hierarchy and gradually become scarce going up the scale.

41. The External auditor notes, however, that the new Registrar has indicated his intention to introduce a number of measures aimed at addressing this issue, such as through a mentoring programme and the establishment of a Focal Point for Women.

Finding: In terms of gender balance, the situation at the ICC is quantitatively satisfactory (almost perfect numerical equality between men and women) but qualitatively unbalanced from the point of view of:

- (a) the contract type (women being mostly holders of the least stable contracts);
- (b) the job category (women have little presence in higher functions);
- (c) the level in the grade hierarchy (women occupy mainly the bottom of the grade scale).

Recommendation 1: In order to adequately address the issue of gender (im) balance at the ICC, the External auditor recommends to the Court, based on a study to be prepared by the Human Resources Section, to introduce additional measures aimed at increasing the representation of female staff, particularly at more senior levels, such as through a mentoring programme and the establishment of a Focal Point for Women.

(b) *Equitable geographical representation*

42. With regard to equitable geographical representation, the ICC presents a special case: recruitment is open to applicants from countries that are not party to the Rome Statute, the main criterion for recruitment remaining qualification, with due consideration given to the nationality of applicants when two or more applicants are equally qualified.

43. Although some international organizations provide for, as an exception, the possibility of recruiting non-national staff from Member States, there is no doubt that such a generalized “opening up” severely limits the possibilities, during recruitment, of ensuring rebalancing for the benefit of under-represented States Parties.

44. For this reason, the following observation is limited to a simple overview of the representation of the States Parties in the ICC staff, with no ambition of drawing any recommendations from it.

45. The following data are drawn from the spreadsheet mentioned above, prepared by the Human Resources Section (HRS), which covers the 1,287 individuals working at the ICC under any agreement type (including consultants and service providers), as of 4 April 2018.

46. Across all agreement types combined, the 1,287 individuals identified at the ICC as of 4 April 2018 were distributed among 117 different nationalities.

47. Overall, while 123 States were party to the Rome Statute as of 4 April 2018:

(a) 85 (69 percent) had nationals within the existing staff (all agreement types combined) as of the same date;

(b) 162 positions were filled by nationals from 32 States that are not party to the Rome Statute (the main countries concerned being the United States, Cameroon, India, and Egypt).

48. For only established/GTA/STA agreements, i.e., 1,111 employees as of the same date, the number of nationalities was 111.

49. Lastly, for only established agreements, i.e., 913 employees as of the same date, the number of nationalities was 106.

50. The following table summarizes, for all employees holding a grade within the ICC as of 4 April 2018, i.e., employees holding established, GTA (approved or unapproved), or STA agreements, the data on the 30 States with at least 10 nationals on the ICC staff.

Table 7 : Nationalities represented by at least 10 employees at 4 April 2018

<i>Rank</i>	<i>Nationality</i>	<i>No. of employees</i>	<i>Rank</i>	<i>Nationality</i>	<i>No. of employees</i>	<i>Rank</i>	<i>Nationality</i>	<i>No. of employees</i>
1	Dutch	141	12	German	24	23	Bosnian	12
2	French	122	13	Romanian	21	24	Georgian	12
3	British	73	14	Ivorian	18	25	Egyptian	11
4	Ugandan	40	15	Irish	16	26	Greek	11
5	Canadian	39	16	Cameroonian	15	27	Indian	11
6	Italian	36	17	Central African	14	28	Tanzanian	11
7	Belgian	31	18	Japanese	14	29	Argentine	10
8	Congolese (DR)	31	19	Sierra Leonean	14	30	Kenyan	10
9	American	30	20	Croat	13			
10	Spanish	26	21	Portuguese	13			
11	Australian	25	22	South African	13			

Nationals of States not party to the Rome Statute are greyed out.

Source: ICC.

51. All other nationalities present had fewer than 10 employees. The three most-represented nationalities held 336 positions, or approximately 30 percent, of the 1,116 positions within a grade in the ICC hierarchy.

52. However, it should be noted that, according to the established UN practice, only established posts at Professional level (excluding language staff) are counted for the purpose of geographical representation, whereas the total of 1,116 positions includes categories that do not count towards geographical representation. As such, out of mentioned 336 positions held by nationals of three most represented states, only 116 staff count towards geographical representation (French 61, United Kingdom 34 and Dutch 21). The large difference, for instance, in the number of Dutch nationals between those working at the Court (141) and those actually counting towards geographical representation (21) can be explained by the fact that the majority of Dutch nationals occupy general service positions which are all recruited locally and thus do not count for the purpose of geographical representation. Furthermore, ICC indicates that, the official representation of 116 staff from the three mentioned States (25.6 per cent of all staff counting towards geographical representation (116 out of 453) should be put in the context of the total target for representation of these States (14.12 per cent), which is based largely on the amount of contributions to the Court's yearly budget (these three States contribute jointly with 18.4 per cent).

53. Looking at possible qualitative factors differentiating the nationalities, it is possible to identify by nationality the employees who are part of middle to top management of the Court (excluding elected officials – Office of the President, Judges, Prosecutor, and Registrar), i.e., D1, P5, and P4 grade employees, all agreement types combined, i.e., 142 employees distributed among 51 nationalities: according to this criterion, there are two nationalities that are clearly over-represented – France (17 positions) and British (16 positions). The other countries are less represented (seven positions for Canada, six for Belgium, Italy, Spain, and the United States, and five for Germany and South Africa). It may be noted that the Host State, the Netherlands, has only three employees at these levels.

54. The Registrar intends to introduce additional measures, at every stage of the recruitment process – from the issuance of vacancy announcements to the selection for job – in order to improve geographical representation at the Court.

Finding: While geographical representation is advanced as a subsidiary selection criterion (“where skills are equal, the ICC recruits nationals of the least-represented States Parties”), the actual figures as of 4 April 2018 show that this approach has no tangible effect in reality, whatever the chosen criterion (agreement type, job level, nationality of a State Party or not).

B. Organization of the HR function

1. Recent reforms

(a) The structures established as part of ReVision

55. In terms of the organization of the HR function within the Court, the *ReVision* project aimed at correcting four deficiencies of the previous arrangements identified in the complete report on the reorganization of the Registry of August 2016, namely:

- (a) a structure considered too complex and uncoordinated;
- (b) lack of strategic direction and policy gaps;
- (c) insufficient capacities in the areas of staff assessment and training;
- (d) inefficient working methods, particularly due the weakness of the computer tools used.

56. To overcome these deficiencies, the reorganization in 2016 focused on six areas:

- (a) establish a more coherent, more efficient structure;
- (b) strengthen the Human Resources policy framework;
- (c) emphasize on performance management;
- (d) strengthen the training and development function;
- (e) make the Human Resources Section the focal point for all staff;
- (f) make better use of computer technology solutions.

57. Keeping in mind that the total payroll represents most of the Organization’s recurring expenditure and that the ICC is above all a service provider whose added value is exclusively based on the skill, vigour, and professionalism of the teams, it can be considered that the Human Resources function remains a relatively junior position within the Organization, in the Division of Management Services, at the same level as the technical sections whose roles are certainly very important but clearly more specific (safety/security, general services, budget, finances).

58. Such a choice of organization clearly assumed that the Director of the Division of Management Services himself appears, with regard to the entire Organization, as the true Director of Human Resources.

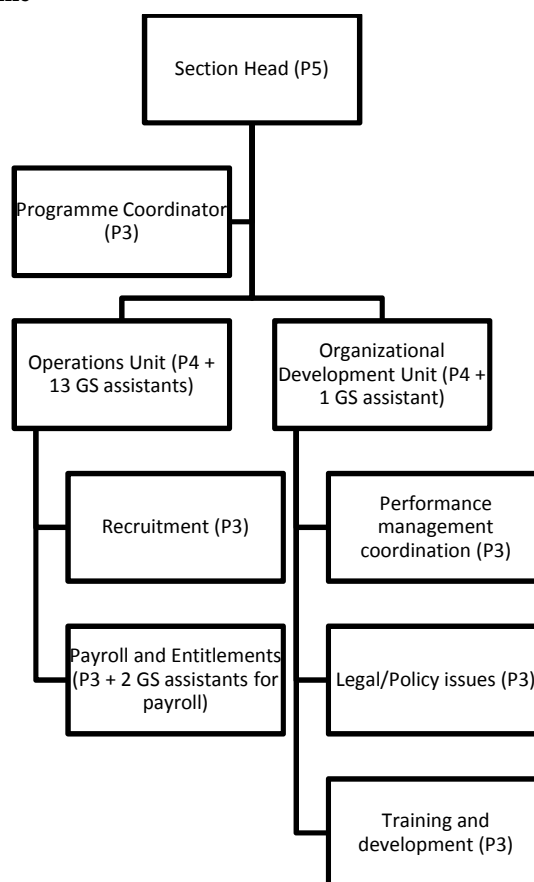
59. Designed as merely a simple specialized support structure, the Human Resources Section consists of two functional units:

- (a) operations: with 19 employees, this unit is responsible for supervising recruitment and managing employee payroll (the latter function having been directly attached to Human Resources and not to the Finance section);
- (b) organizational development: this second unit, which is much small (four employees), is responsible for managing performance management, handling legal/policy issues related to staff, and organizing training and development for the Court’s employees.

60. For recruitment and performance appraisal, a computing tool has been implemented (Success Factors, integrated software package with payroll in the SAP ERP).

61. The Section has a total of 25 officers distributed, through the *ReVision* reform, according to the following organizational chart:

Figure 1: Organizational chart of the Human Resources Section following the ReVision programme



Source: ICC.

62. If the size of HR Section is benchmarked against other international organizations, it can be seen that HRS at the ICC has a fairly lean structure. Based on benchmarking of similar organizations and current system resources, the ratio of HR operations staff members to fixed-term staff is 0.0225. Currently, there are more than 1,000 staff, which means that there should be more than 22 staff working in HR operations.¹³

(b) *The “realignment” of autumn 2017*

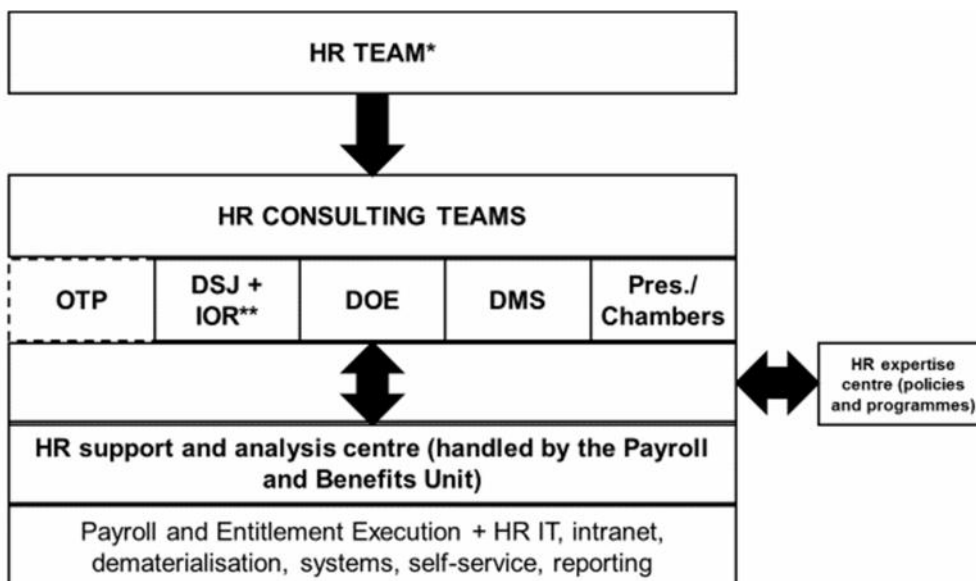
63. After a few months of breaking in the new structure, some deficiencies of the system put in place as part of *ReVision* to meet the expectations of users led the head of the section to have the Registrar approve, on 20 September 2017, a qualified “realignment” initiative, which entered into force on 1 October 2017. These were in line with the *ReVision* team considerations to implement a Front- and Back Office within HRS.

64. This “realignment” consisted in dividing the various employees of the Human Resources Section into four small “HR advisory teams” responsible for providing segmented customer service between the various departments of the Court. A similar HR liaison function exists under the authority of the Office of the Prosecutor, which does not report to the Human Resources Section, but closely consults and cooperates with HRS within the framework agreed as a result of the synergies exercise.

65. This operation replaced the organizational chart presented above with a new organization constructed as follows, with most of the employees now having a dual assignment – functional and relational:

¹³ This benchmarking is reported in the Annex X to proposed/approved budget for 2018, page 206.

Figure 2: Organizational chart of the Human Resources Section as from 1 October 2017



*OTP, Office of the Prosecutor; DJS, Division of Jurisdictional Services; IOR, Immediate Office of the Registrar, DEO, Division of External Operations; DMS, Division of Management Services.

Source: ICC.

66. In practice, compared with the organizational chart from *ReVision* mentioned above, the modification mainly concerns the teams of the former operations unit, which, instead of being divided between recruitment and payroll/entitlements, are now divided between “HR consulting teams”, assigned to customer groups and responsible for all HR services, and a “support and analysis” team, which provides shared services.

67. Although we must acknowledge principle of economy that led to this realignment with constant employee numbers, we can question the actual availability of employees now responsible for both a very specialized vertical function and a generalist horizontal function as well as the real visibility of this organization with regard to the other departments of the Court.

2. Limits of the current organization

68. In this new organizational chart, the Division of Management Services (DMS) appears as a “client” among others in the Human Resources Section, in the same way as the other divisions of the various bodies of the Court.

69. In practice, recent events have shown the practical limit of this arrangement: the Registrar has made the Human Resources Section responsible for preparing a reform of performance management – since the end of 2016, it has conducted the necessary internal consultations and prepared, in early 2018, a draft new regulation that seemed to be suitable for the other bodies of the Court.

70. As will be detailed in the chapter on performance management, a number of section heads of the Registry opposed the implementation of this reform and have succeeded for the time being, without it being possible for the External auditor to anticipate the decisions of the new Registrar. The External auditor notes that:

(a) Performance Management Project had its own governance structure, as introduced by the previous Registrar, whereby a Project Team was composed by staff members from the Registry, OTP and Judiciary, who developed a proposal and presented it to the Project Board (consisting of the members of OTP, Registry and Chambers), which then endorsed the report for consultation with the RMT, Judiciary, ExCom (OTP), Staff Union and Programmes;

(b) in October 2017, Chief HRS sought feedback from Director DMS in relation to procedure on consultation with him on the Performance Management Project and – given the outlined governance structure – she had proposed that the Director of DMS be consulted at the RMT stage, and not prior to it, to which he then agreed.

71. To the extent that Human Resources issues should be of interest at the highest level of all bodies of the Court, it was conceivable that the Coordination Committee (CoCo), which periodically brings together the Office of the President, the Prosecutor, and the Registrar, could guide, approve, and actively support such a reform – but the External auditor was told that such issues were too “technical” to merit the interest of this body.

72. However, Performance Management Project was just one specific project and, given the peculiar governance framework and the conditions under which the reform was to be undertaken, may not be reflective of HR management in general. Nonetheless, it is important that HRS be in a position to pursue a strong policy, with strong support inside and outside the Registry.

Finding: The Human Resources function should be in a position to pursue a strong policy, essential for the Court, with strong support inside and outside the Registry.

Recommendation 2: The External auditor recommends that all organs strive to apply one set of HR management policies through the same operational rules, with the Registry HRS responsible for maintaining, developing and promoting these unified Court-wide HR rules, in consultation and cooperation with the other organs.

C. Recruitment

1. General data

(a) Priority given to competitive recruitment

73. In its report dated 2 March 2018 to the CBF for its 30th session (16 to 20 April 2018), the ICC indicated that its top priority was to “ensure timely recruitment”. It affirmed its priority objective of recruitment of the best possible level to fill vacant positions by targeting a balance between genders and geographical regions of origin.

74. According to this report, the ICC carried out 197 recruitments in 2017 for established and temporary positions (GTA). It also indicated that it recruited 101 STA¹⁴ employees (short-term agreement) the same year. It will be seen later that the accuracy of these figures is to be confirmed, as different amounts appear in other documents produced by the ICC.

75. These recruitments do not all correspond to job creations, because the ICC must fill vacant positions, especially temporary vacancies, implying replacement recruitments. 2016 and 2017 were also marked by recruitments related to the implementation of the reform of the Registry (*ReVision*) to fill new or reformatted positions.

76. The points mentioned in this audit report mainly pertain to the recruitment of employees in three categories – established, GTA and STA – which constitute the core of the ICC staff. However, recruitment issues can also arise, in different terms, for TAM staff. JPOs are not selected by the ICC, but by their sponsoring countries. Lastly, as mentioned above, the recruitment of elected officials (Judges, Prosecutor, Deputy Prosecutor, Registrar) was not within the scope of the audit.

77. The principle of recruitment is based on opening up each vacant position to outside applicants, with the publication of a vacancy notice, particularly on the ICC’s *e-recruitment* website.

¹⁴ However, the External Auditor noted that the acronym STA was sometimes used to refer to “Short-Term Assignment” when the position to be filled was temporarily assigned to an employee already working at the ICC, with this employee returning to his/her original position at the end of his/her temporary assignment (see paragraphs 30 and 31).

78. The process of recruiting and selecting from among applicants follows a similar path for established and GTA staff. A simplified process is in place for STA staff, whose recruitment is in principle based on the urgency and short-term nature of the need.

79. Procedural documents govern these processes, mainly the ICC Recruitment Guidelines of November 2009 for established and GTA staff and the Regulation of 28 January 2016 for STAs, referring to the principles set out in the Staff Regulations and Rules of the Court.

(b) *Uncertainties about the actual number of recruitments*

80. The figures provided by the ICC in the aforementioned annual Human Resources report to CBF for 2017 and 2016 do not match those indicated in the lists of staff obtained in response to the audit questionnaire.

81. In 2017, the differences concern the STA category (see paragraphs 117 to 130). In 2016, they involve the three categories. The following table shows the observed differences.

Table 8 : Number of annual recruitments by source

2017	Established	GTA	STA
“Starters” * Staff lists	104	70	101
Report to the CBF	104	70 (Approved)	118
2016	Established	GTA	STA
“Starters” Staff lists	77	61	133
Report to the CBF	158 (corrected to 115)	43 (Approved)	-

*“Starters” are employees recruited from outside the ICC, as opposed to internal recruitments.
Source: ICC.

82. HRS explained that 2016 figures mentioned in the staff list (“77 starters”) were only “external candidates appointed to established posts”, while the 158 recruitments disclosed in the 2016 report to CBF add these 77 starters and movements from GTA to Established and movements inside Established. The 43 “approved GTA” (compare to 61 starters GTA in staff lists) did not include 18 conversions (GTA to Established). STA figures were not requested in the 2016 report to CBF because of recent implementation of STA contracts in 2016.

83. The HR Section informed the External auditor (message dated 4 April 2018) that the number of recruitments (established and GTA) for 2016 was 158: 37 internal formerly *established*, 44 internal formerly “approved” GTA), and 77 external. The figure of 158 mentioned in the 2016 report to the CBF (§ 10) therefore needs to be corrected.¹⁵ For 2017, the actual figure would be 127: 23 internal formerly *established*, 32 internal formerly approved GTA, and 72 external:

(a) in 2016, the information about established employees and GTA employees is not directly consistent, and the reported figure (158) is to be corrected for the conversion of GTA positions to established positions and the inclusion of staff movements within a Major Programme;

(b) in 2017, the conversion of GTA positions into established positions, in principle neutral in terms of recruitment, seems to have been excluded from the calculation. The report to the CBF only mentions the recruitment of approved (i.e., included in the budget) GTA employees, while the ICC can also recruit unapproved GTAs (therefore not budgeted): the reports to the CBF do not mention the recruitment of unapproved GTA employees;

(c) lastly, these reports mention recruitments “in progress” as of 31 December of each year.

¹⁵ Paragraph 10 of the 2016 report to the CBF mentions a total of 201: 158 established and 43 approved GTA.

84. It therefore appears that the only official report from the ICC to its major financial governance body, the CBF, contains inconsistent recruitment data, which should be normalized to put an end to the lack of clarity about the actual number of annual recruitments.

Finding: The methods of calculating the figures describing the recruitments appearing in the annual Human Resources reports to the CBF are not clearly defined, and uncertainty affects them. The ICC should adopt a stable reference system defining and specifying the method of calculation of the major concepts necessary for the knowledge and multi-year monitoring of staff movements by the CBF and the States Parties. The information contained in the Human Resources reports presented each year to the CBF should be consistent with the data available in the ICC staff files.

This finding reinforces the need to improve the ICC's reporting on Human Resources in several areas, which is the subject of recommendation 10 below.

2. Recruitment of established and GTA staff

85. The recruitment of staff (excluding STA and special cases of JPO and TAM employees) is governed by the recruitment guidelines established in November 2009, applicable to established and GTA positions.

86. These guidelines refer to article 44 of the Rome Statute, resolution 2005/10 of the ASP, and the Staff Rules, in particular 104.18, which set out the principles of merit-based recruitment, taking into account the qualifications and experience of the applicants and a balance between genders as well as between geographical origins, without exclusion of non-States Parties.

87. Since 2015, the process has been subject to the supervision of the Selection Review Board, which is not mentioned in the (previous) guidelines. This supervision was re-instituted by a Registrar's circular of February 2015, after being suspended for several years.

88. For the most part, the recruitment process for established and GTA staff is as follows:

1. Recruitment request
2. Vacancy notice
3. Receipt of applications
4. Screening and shortlisting
5. Panel review
6. Proposal of an applicant
7. Assessment of the process by the Selection Review Board
8. Offer of an employment agreement to the selected applicant
9. Medical clearances and vetting

89. This last phase can be completed after taking up the job during the probationary period if necessary. The recruitment is proposed to the Prosecutor (for OTP employees) or to the Registrar (for other employees). The panel's proposal is generally approved.

90. At first glance, this procedure is robust, since in principle nobody involved in the process is in a position to decide the outcome of a recruitment alone. The recruitment manager is assisted by HRS in the call for applications and applicant selection phases, and then by the "panel", composed of at least three people. The panel includes at most one person in a subordinate position or the immediate superior of the person in charge of the recruitment and a person from HRS. HRS needs to ensure that panels are geographically and gender balanced. The Selection Review Board oversees the conformity of the recruitment process.

91. Some specific procedures concern executives of Independent Major Programmes (IOM, Secretariat of the ASP, internal audit, Secretariat of the TFV, Secretariat of the CBF), reporting directly to the Assembly directly, whose individuals in charge of recruitment are people external to the ICC.

92. The External auditor requested all the assessment reports for 2016 and 2017. A collection of 155 reports was provided, but seven assessment reports were actually on STAs and were therefore excluded from the audit. During the on-site assignment, the External auditor requested two additional reports (one of which was for 2015). The External auditor therefore ultimately relied on 149 panel reports for 2016 and 2017 and one for 2015.

93. As mentioned above, the exact number of recruitments remains uncertain because of the lack of a precise definition of this concept and its method of calculation. The consistency between the number of panel reports and the number of recruitments could not be established. The number of starters on the lists gives 312 cases (2016 and 2017, established and GTA). However, the consultation of these lists shows, among these starters, several cases of direct appointments, limited to 5 in 2016 and 1 in 2017, for GS posts in Field Offices. Several employees appear to have been recruited in the same procedure (single panel report for several employees). The use of rosters and the panel transfers provided for in the guidelines introduce another difficulty in linking the number of panel reports communicated to the External auditor with the actual number of recruitments.

94. Nevertheless, the External auditor believes that the transmitted sample of 150 panel reports provides a representative basis for the analyses of the panel reports.

95. The External auditor takes note of the affirmation that all recruitment processes can be verified and that all relevant information is available for recruitments not included in the sample.

96. Overall, the consultation of these reports confirms compliance with the procedures and the conformity of the recruitments for which they are available, even though a few isolated cases may raise two types of issues:

- (a) The recruitment time frame;
- (b) Fairness between applicants and impartiality of the panel.

(a) *Recruitment time frame*

97. It was noted during the interview that the recruitment time frames were perceived to be long between the vacancy notice and the approval of a recruitment by the Registrar or the Prosecutor.

98. A calculation of the last 20 recruitment procedures finalized by the ICC in April 2018 showed that this period varied between four and 14 months, with an average of nine months. This time frame does not take into account margins before (between the recruitment request made by the recruitment manager and the publication of the announcement) and after (between the recruitment decision signed by the Registrar or the Prosecutor and when the job is taken up). The average figure (nine months) is certainly high but can be explained by a few cases exceeding a year (six cases of 12 to 14 months).

99. The interviewed individuals consider the time frame to be too long but unavoidable, especially for non-generic positions (investigators, VWS¹⁶ or TFV field employees, ASP employees, etc.). These time frames explain in part the high vacancy rate and the frequent use of STA recruitments, which take less time to finalize.

100. The External auditor investigated whether this time frame could be reduced without compromising the conformity of the process.

101. A first major time frame corresponds to the publication of the vacancy notice, which requires an extendable minimum period of four (P) or two (GS) weeks. It is posted on the ICC's *e-recruitment* application and can be extended to applications of the United Nations family. Vacancy notices set a deadline for submission of job applications. Reducing this time frame would reduce the roster of applicants, particularly for potential applicants from

¹⁶ Victims and Witnesses section.

under-represented geographical areas where access to information may be more difficult. It would give a decisive advantage to internal applicants, who are better informed.

102. A second time frame corresponds to the screening of applications to establish the shortlist to be submitted to the panel. One of the main ways to reduce time frames could concern this phase: the time between the application deadline and the dates of the first tests or interviews is rarely less than two months on the sample of the 20 most recent recruitments analysed and can sometimes reach or exceed five or even six months or more.

103. The screening is done in cooperation between HRS or/and the recruitment manager. Some recruitment managers believe that this operation is very onerous (the number of applications often exceeds one hundred), without proposing giving a monopoly to HRS. Others consider that these operations, even those that are time-consuming, are inherent to their responsibility as a recruiter. Improving the applicant screening time would require more effective cooperation between HRS and the recruitment managers or even the implementation of more efficient computerized recruitment tools and adapted training offered to recruiters.

104. An excessive amount of time is sometimes attributed to supervisory work by the Selection Review Board (SRB). In a few cases, several weeks passed between the panel's decision and the SRB's report. However, these cases are few and concentrated on specific periods, such as the months of July and August 2016, impacted by the *ReVision* project at the Registry. The SRB strives to submit its conclusions within one week, which, together with the transmission times, means an average of two weeks, which does not seem reducible. This time frame was maintained on the sample of the last 20 recruitments mentioned above, except in one case involving an employee at a field office (five weeks). Supervision by the SRB is a widespread practice, under various names, in international institutions. It stabilized at the ICC in 2015 in its current format of overseeing compliance with recruitment rules without calling into question the panels' choices.

105. The medical examination is sometimes mentioned as another time factor. There is room for improvement in this area. In the sample of the last 20 recruitments, eight were subject to a medical clearance (the other recruitments were either exempted – internal applicants already cleared – or a clearance application not yet submitted for recent decisions). For six of them, the medical fitness certificate required more than a month. Job offers are made “subject to medical examination” (or certificates), which applicants can undergo with a licensed practitioner near their home, depending on the date when they take up the job. For selected staff already working in the Netherlands, the ICC has an agreement with the KLM Medical Center in The Hague, which is required to provide the results of medical tests within a contractual time frame. However, it would be difficult for the ICC to restrict practices regarding privacy and the medical profession.

(b) *Fairness between applicants and impartiality of panel members*

106. The recruitment process aims to prevent the suspicions inherent in any human selection by providing assurance of perfect fairness between applicants and the impartiality of panel members.

107. The examined files do not show any signs calling into question the equal treatment of applicants. All panel reports are documented using identical analysis and scoring scales as well as an assessment notice approved, generally unanimously, by the panel members.

108. The reports, including the panel's scales and comments, are examined by the SRB, which may make comments, to which HRS must respond. However, these responses are not disputed with the SRB but are intended only for the Prosecutor or the Registrar as the ultimate recruitment decision-maker. The reservations and responses reviewed by the SRB relate to various points. Some relate to the absence of a representative of HRS during interviews, the quality of the record of screening operations, a particular characteristic of an applicant not mentioned in a document, etc.

109. Cases of decreased collegiality in recruitment were noted, such as use of a telephone to conduct interviews by the recruitment manager without the presence of another panel member or a member of the HR section. However, these cases concerned recruitment of GS staff in the field office with particular physical constraints.

110. The desire to increase the share of under-represented countries in the ICC workforce may lead to distortions between applicants. The risk especially concerns applicants with dual or triple nationality, who may present themselves as from an under-represented country while also having the nationality of an overrepresented country. It was thus noted the case of employees presenting themselves under a nationality to the recruitment, then registered, in the file of pay, under another nationality, overrepresented. The risk remains low since the employees in question had the most favourable scores and their nationality of origin was not an assessment criterion but only information given to the panel.

111. Risks of unequal treatment arise upstream, during the application screening phase, carried out by the recruitment manager and HRS to establish the short list. It is theoretically possible to put together an oriented short list, keeping a targeted applicant surrounded by competitors who are obviously not competitive. In this respect, some panel reports lead to very different scores between the proposed applicant and his or her shortlisted competitors, sometimes from non-States Parties. These cases can certainly be explained by a lack of good applicants. The panels and the SRB are informed only about the quantitative aspect of the operations resulting in the short list. Additional information detailing how the short-listing activities were performed would undoubtedly be useful.

112. The composition of the panels is in itself a topic of vigilance. The External auditor identified a case in which the previous Registrar's presence for the recruitment of a P5 position may have affected the independence of judgment of the other panel members, two of whom reported to him, and another was external to the ICC. This recruitment did not mention the identity of the recruitment manager and resulted in an atypical proposal for non-classification, entrusting the Registrar (who was also a member of this panel) with deciding between two unclassified applicants.

113. More generally, the recruitment manager's positioning within the panel is a delicate issue. The recruitment manager may chair the panel, which may consist of lower-ranking employees. To prevent this risk, many OTP panel reports include a clause stating that none of the panel members are in a position of subordination in relation to the chairman of the panel. This good practice could be generalized.

114. There is no automatic way to avoid excessive influence of one panel member on others. There are cases in which the immediate superior of the recruitment manager was a member of the panel, which casts doubt on the objectivity of the discussions. One solution might be to provide for the impossibility, especially for heads of bodies or high-ranking managers (directors, section heads) to chair or be a member of a panel other than for the selection of an employee of an immediately lower rank (with whom the trusted professional relationship implies participation in the selection process).

115. The panels sometimes propose a single applicant and sometimes a list of applicants ranked in order of preference. For example, the No. 2 applicant may be recruited if the No. 1 applicant withdraws, a situation that is always possible because people looking for work generally do not limit themselves to only one job application. If the selected employee was not the top-ranked choice, in the absence of a withdrawal, potential litigation could result for the ICC in case of an internal applicant, as the non selected employee is authorized to request the panel's report should he/she challenge the decision.

116. Panel reports indicate whether applicants are internal or external. Nevertheless, several panel reports apply the "external applicant" label to someone who has actually held a job at the ICC, particularly a temporary job, sometimes recently. Although the notices included in the panel reports sometimes mention, in their summary of the applicant's background, the functions performed in the past at the ICC, this is not always the case. It can be assumed that the panel members obtained full details during oral interviews, but external applicants who have already worked at the ICC should be identified so that the SRB can verify whether any panel member lacks independence due to his or her previous relationship with an applicant.

3. Recruitment of STA employees

(a) *A more flexible procedure*

117. The recruitment of STA employees is governed by a procedure defined by regulation IA 2016 01 (28 January 2016). This procedure is flexible in relation to fixed-term agreements to cover emergency or temporary needs, due to vacancies, holidays, unavailability, etc., or to cope with peak activity in a unit.

118. In principle, the STA agreement is limited to a few months and cannot exceed one year. The procedure is an exception to the general rules (article 4.5) and gives an increased role to the recruitment manager, who is not required to consult a panel and has discretion in the assessment of tests, interviews, and methods of choosing between applicants. HRS participates in these operations alongside the recruitment manager but is responsible for the proposal, subject to approval by the Prosecutor or the Registrar. The SRB is not involved in STA recruitment processes.

119. The assessment reports consulted from the collection of 92 reports sent by the ICC to the External auditor are presented in a standardized way and include information documenting the selection, but this varies from case to case. The number of applications, the identity of the short-listed applicants, and the scoring tables on the applicants' skills are included in many reports, but not in all of them.

120. There are few comments to be made through the analysis of the transmitted reports. A few details were noted: in one case, the Registrar signed the report without specifying a decision (failure to tick the proposal approval or rejection boxes, report 12201). The recruitment manager is not the only signatory of certain reports that also include the signature of a "panel member", although there was no panel according to the reports (STA selection reports 11641 and 14921). Several panels have been set up for STA recruitments, which is a good practice (report 4721, 9281, 14621, 8801, 5401, etc.).

121. The External auditor consulted the internal audit report dated 23 January 2018, which deals with the management of STA staff agreements (as well as individual contractors and consultants).¹⁷ In accordance with the internal audit and external audit standards, the findings and recommendations contained in this report, finalized on a date very close to this audit, were taken into consideration for the purposes of this audit.

122. The STA agreement is a recently created instrument (January 2016), aimed in particular at unifying, updating, and governing the previous instruments existing at the ICC, which has used various contractual forms since its founding to meet its urgent or short-term recruitment needs. Comparable work was done on agreements of consultants and individual contractors.

123. The January 2018 internal audit report concluded that the STA agreements generally conformed with the defined rules, subject to some imperfections mainly related to the newness of the system and its unequal handling between recruitment managers. In terms of recruitment, the internal audit report recommended modifying the drafting of the regulations on STAs and accompanying it with a guide of Standard Operating Procedures (SOP) and training and support actions to be organized by the HR section.

(b) *Statistical uncertainty on the number of STA recruitments*

124. The annexes to the internal audit report provide statistics on STAs, quarter by quarter, from January 2016 to June 2017.

125. As mentioned above, no figures for 2016 are provided in the paragraph on STA employees (status created in January of the same year but not requested at the time) of the report to the CBF. For 2017, the report to the CBF indicates that "118 temporary jobs were filled" (§58), a figure that is not consistent with the internal audit report, which indicates 167 STAs for the first two quarters of 2017 alone.

¹⁷ "Audit report on the management of contracts, individual contractors, consultants and short-term appointments STA" Office of Internal Auditor, 23 January 2018.

126. For 2017, the STA staff movement lists submitted to the External auditor mention 101 starter STAs, a figure that differs from the figure in the 2017 report to the CBF (118) and is inconsistent with the flows identified by the internal audit report for the first two quarters.

127. It is therefore necessary for the ICC not only to make STA recruitment flow knowledge tools and the reporting to the CBF more reliable (see recommendation 10), but also to ensure the internal consistency of these calculations.

128. The ICC provided 85 scanned assessment reports in support of the STA recruitments upon the External auditor's request for all these reports for 2016 and 2017. The External auditor also detected the presence of seven reports attached to the collection of panel reports that actually pertained to STA recruitments, and an additional report was obtained during the on-site audit. Recruitments are therefore documented by assessment reports in 93 cases. However, looking at the figures of 101 starter STAs for 2017, supplemented by a figure of 62 STA "in office" at 31 December 2016, which suggests that they were recruited in 2016, it can be assumed that 92 produced reports (85 +7) do not reflect all the recruitments of 2016 and 2017. This finding is corroborated by the figures mentioned in the internal audit report, which indicates 256 recruitments in 2016, assuming that it details incoming flows.

129. Several assumptions can explain the difference between the number of assessment reports and STA panel reports produced at the request of the External auditor and the number of STA recruitments. It is possible that the ICC was unable to send all the reports within the time permitted by the questionnaire. However, the existence of recruitments that were not the subject of a selection or panel procedure cannot be ruled out at first glance, which would reveal a risk and possible deviations in terms of fairness or control of payroll, given the observation that STA recruitment involves more discretionary decisions than established/GTA agreements.

130. However, the Court maintains that there are selection reports for all selection processes, and has indicated, at the end of the audit, that they could be provided. The External auditor still deems that the ICC should have produced them when requested.

(c) *Much shorter time frames than for established/GTA recruitments*

131. The time frames for finalizing STA agreements are very short compared with established/GTA agreements. These time frames were followed on a comparable sample of the last 20 recruitments reviewed during the audit. In 10 out of 20 cases, the time between the job vacancy announcement and the recruitment decision signed by the Prosecutor or the Registrar was less than a month. Eight cases took one to two months. Only two out of 20 cases have longer time frames (3.5 months and 5 months). There is only one case where the STA recruitment time (the slowest) proved to be longer than that of an established/GTA recruitment (the fastest). Recruitment by an STA agreement thus confirms its responsive nature.

132. However, the ICC must be sure to guarantee that STA recruitments actually obeyed not only emergency criteria but also criteria of merit and fairness between applicants, especially since the STA employees are an important source for later statutory recruitments. The amount of time between the application deadline and the date of the decision of the recruitment manager is sometimes revealing. In one case, this decision comes on the same day as the deadline; in another case, only a few days separate them, including a weekend.

133. STA recruitments are also subject to medical clearance and vetting requirements. For "vetting", 15 decisions (out of 20) were required (exemptions in five cases of STAs filled by movements of employees already recruited as permanent (established or GTA)). The majority of cases were approved in less than two days (8), with only two cases requiring more than 10 days (including one requiring 37 days).

134. Medical formalities require the same amount of time as for established/GTA employees. Only two cases (excluding exempt internal applicants) obtained their medical clearance in less than three weeks. Several cases took several months.

Finding: Since January 2016, the STA recruitment procedure has had a general framework for recruitment of this category of employees. This framework is designed to permit quick, more flexible recruitment than for other employees, adapted to emergency situations or occasional needs. The recruitment time frames noted for STA are actually much less than for other employees. The audit of the assessment reports did not show any particular failure and do not call into question the conclusion of the internal audit report on the overall compliance of the process. However, there is lack of clarity as to the number of assessment reports provided to the External auditor compared with the number of STA recruitments. The ICC must also ensure that the CBF gets robust data describing STA recruitments.

This finding is in line with the previous report on the improvements to be made to the ICC's Human Resources report, which is the subject of recommendation 10 below.

D. Career prospects at the ICC

1. Careers at the ICC

135. The Court does not organize any career advancement. In other words, it does not arrange any options for its employees to advance professionally, except applying for recruitment to move from one job to another, particularly to a higher-level job. In addition, there are no open-end contracts. This is why, like most Organizations in the United Nations system, the ICC is described as a “non-career Organization”.

136. This does not mean that it is not possible to stay at the ICC from the initial recruitment until retirement age (65 years). However, it implies that the professional advancement of a given employee, both in terms of level of responsibility and level of remuneration, depends on factors that are largely independent of his or her performance and the appraisal by the supervisors.

137. Further developments devoted to “performance appraisal” at the ICC will show the limits of what is at stake in such an assessment, in the absence of career management tools.

(a) *Principles*¹⁸

138. With a few limited exceptions for certain types of appointments, de facto mostly in lower-level grades, each appointment must undergo the complete recruitment procedure, with the opening of applications, along with the corresponding vacancy notice, to people outside the Organization.

139. In principle, selection panels and decision-makers must treat applicants, whether internal or external, according to the same criteria (see previous chapter on recruitments).

140. The only slight difference in this principle comes from article 4.4 of the Staff Regulations, which provides that “subject to the provisions of article 44 of the Rome Statute and without prejudice to the recruitment of new talent at all levels, the fullest regard shall be paid, in filling vacancies, to the requisite qualifications and experience of staff members already in the service of the Court”.

141. In other words, there is no formal benefit for staff members (job quotas or preferential posting of positions for them), but recruiters are advised to take into account their experience with the Court.

(b) *The reality*

142. The table below concerns only holders of established and GTA (approved or not) agreements, i.e., 1,046 people during the audit, it being observed that other agreements cannot be extended, and it is not possible to reach a significant level of length of service (1 to 2 years maximum according to agreement type). Recall that since the ICC's activity only started in 2002, the length of service of the ICC's employees could not exceed 16 years as of 4 April 2018.

¹⁸ The development that follows does not concern elected officials (Office of the President, Judges, Prosecutor, and Court Registrar).

Table 9 : Length of service by agreement type of employees present at the ICC as of 4 April 2018

<i>Length of service (years)</i>	<i>Established</i>	<i>GTA</i>	<i>Unapproved GTAs</i>	<i>Total</i>
>15	19	0	0	19
11 to 15	234	7	1	242
6 to 10	283	16	3	302
3 to 5	166	13	0	179
< 3	211	73	20	304
Total	913	109	24	1,046

Source: External auditor on the basis of data provided by ICC.

143. This table shows that, for employees who so wish, job stability is, in fact if not in law, virtually guaranteed for the holders of established positions, corresponding to the “core business” of the ICC.

144. For these functions, the general rule is that an initial agreement is granted for two years. Then, if the holder wants it and has not shown obvious incompetence (which remains exceptional), it is renewed for three years, then indefinitely in successive periods of five years, until retirement age is reached (65 years). This explains why:

(a) for “established” employees, as of 4 April 2018, nearly 59 percent had at least renewed their agreement three times (and therefore had length of service of more than five years and, if they last until the expiry of the agreement in progress at time of the audit, will mechanically reach a length of service of more than 10 years);

(b) the situation is apparently the reverse for GTA positions in the budget (third column of the table), since 2/3 of the employees in this category had a length of service of less than three years as of 4 April 2018, but it must be taken into account that many had previously been converted to “established” positions and are included in the second column (see chapter 1 of this report).

145. The case of “unapproved” GTAs is more anecdotal – in principle, these positions are intended to disappear or, if the need is confirmed, to be transformed into “approved” GTAs or even “established” positions rather quickly. Nevertheless, one employee managed to accumulate, under this transitional system, 14 years of service, and two others more than nine years.

(c) *Proportion of internal recruitments*

146. In recent years, almost half of the people appointed to positions open to recruitment were already working at the ICC, either in an established position or in a GTA position:

(a) in 2016, out of the 158 appointments to an established position mentioned in an HRS e-mail dated 4 April 2018, 37 came from another established position, and 44 came from a GTA position, representing a total of 51 percent;

(b) in 2017, out of 127 established positions that were the subject of a recruitment, 23 came from another established position, and 32 came from a GTA, or 43 percent;

(c) for the first quarter of 2018, 23 recruitments were for established positions (52 percent).¹⁹

147. There is a slight difference in the notion of career advancement insofar as, for some of the applicants coming from a GTA position, the status is consolidated in established, but, depending on the job, the position occupied under this new status corresponds to a professional promotion or not.

¹⁹ Source: HRS (4 April 2018).

148. In addition, the Court converted positions budgeted as GTAs into positions funded as established positions (79 positions in 2017). Of course, the principle is that this conversion concerns the position and not the person who occupies it. In practice, though, the holder most often benefits from a consolidation of his or her status without competing with other applicants.

149. The table of headcounts as of 4 April 2018 provides an exhaustive list of the employees who, since their recruitment, have benefited from a transformation of their agreement into a more stable category, it being recalled that, by increasing level of stability, the main agreement types may be classified in the following order: STA □ unapproved GTA □ GTA □ Established (excluding employees accessing the subsequent capacity of elected member).

Table 10 : Improved agreement stability

<i>Agreement type</i>		<i>No. of beneficiaries of an improvement</i>
<i>At recruitment</i>	<i>At 4/4/2018</i>	
STA	Unapproved GTAs	6
	GTA	14
	Established	25
GTA	Established	343
Total		388

Source: External auditor on the basis of data provided by ICC.

150. Of the staff members with “GTA” or even established agreements as of 4 April 2018, 45 some had joined the ICC in STA positions, in theory for a maximum of one year. In reality, STA agreements thus constitute an important roster of employees called to serve the Court for the longer term.

151. The table of headcounts as of 4 April 2018 also identifies the employees who, since their recruitment, have benefited from a category promotion (for example, from G4 during recruitment to P2 today) or a level promotion in the category (for example, from P2 to P5).

Table 11 : Category or level promotions

<i>Move from category G to P</i>		<i>Level move upward in the category</i>		
<i>Agreement type</i>	<i>No. of moves</i>	<i>Category</i>	<i>Agreement type</i>	<i>No. of moves upward</i>
Established	48	G	Established	68
			GTA	67
			STA	10
			<i>Subtotal</i>	<i>145</i>
GTA	61	P	Established	92
			GTA	62
			STA	2
			<i>Subtotal</i>	<i>156</i>
Total	109	Total	301	

Source: External auditor on the basis of data provided by ICC.

152. The number of staff who got a higher level position from category G (*general services*) to category P (*professional*) is relatively high compared with what is observed in United Nations organizations – 109 employees present at the ICC at the time of the audit, approximately 10 percent of the total workforce, had moved from general service positions to professional positions.

153. If level changes within each of the two categories G and P are added to this, there is a total of 410, i.e., approximately 40 percent of the employees who have got a higher level position since joining the ICC – this factor also puts the notion of “non-career Organization” into perspective. However, in most cases, these changes resulted from reopening of competition for the positions concerned.

154. Two questions rose from these figures:

155. Those figures relates only to actual staff. Would it be more relevant to take into account the staff who left ICC during the same period? The idea could be that the reason why they left was the fact that they did not get any upwards move.

156. The table below shows that 19 percent of them had got a higher position before they left. If you add actual staff and former staff for the 2005-2017 period of time, the ratio of staff having got a higher level post becomes 27.8 percent.

157. This being said, the real figure is probably between 27.8 percent and 40 percent, as if a part of the former staff may have left because they could not have the career they expected, others left too quickly to grasp such an opportunity and others left for many different reasons (family reasons, external job opportunity, etc.).

Table 12 : Level at separation

	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	Total
Same level at separation	55	98	106	134	110	71	74	97	70	27	87	56	91	1076
Higher level at separation	8	6	6	17	32	31	21	20	21	20	24	16	26	248
Total separations	63	104	112	151	142	102	95	117	91	47	111	72	117	1324
Percentage at higher level	13%	6%	5%	11%	23%	30%	22%	17%	23%	43%	22%	22%	22%	19%

Source: External auditor on the basis of data provided by ICC.

158. A second question, raised by ICC, is related to the meaning of those upwards moves: can they be called “promotions” as they are the result of a competitive process open to external candidates?

159. It is largely a question of semantic as the result is the same, whether the move is the result of a management choice or of an open competition. In addition to that, although competition gives a real chance to external candidates, as the figures show it, the internal ones can take advantage from their intimate knowledge of the Organization.

160. Lastly, the External auditor had exhaustive data on “returns” of former employees to the ICC. They were used to establish the following table:

Table 13 : Career development following a departure/return

	Category		Category change	Change of level in the category		
	Initial	Upon return		Higher level	Maintained	Decreased
G	98	75	-23*	22	48	5
P	27	50	+23*	15	12	0
Total		125	-	37	60	5

The “-” and “+” symbols mean that 23 G-category employees accessed a P position upon their return to the ICC.

Source: External auditor on the basis of data provided by ICC.

161. This table shows that:

(a) because of the large numbers, the practice of “returns” to the ICC is a characteristic specific to this institution and constitutes an objective sign of attractiveness: with 125 persons concerned as of 4 April 2018, these “return to the ICC” situations after an interruption accounted for more than 12 percent of the staff present at the Court on that date;

(b) in 60 cases of returns, or half of the employees concerned, returning to the Court after leaving it allow the people in question to obtain a substantially improved position. In 23 of these cases, the detour through the outside allowed the people to move from the “general services” category to the “professional” category, a proportion (18 percent) that is significantly greater than that of moves from G to P of employees who chose to advance by staying at the Court (10 percent).

162. These characteristics (large numbers of departures/returns and especially frequency and level of promotions accompanying them) could discourage those who choose to collaborate in the institution’s work for the long term, since they could give them the feeling that their merit would be more easily recognized outside than inside the Court.

(d) *Exemptions to competitive candidacy*

163. Several procedures allow certain employees to occupy, with limited competition, functions other than their current position. According to the annual Human Resources report to the CBF, in 2017, 39 employees were assigned for a limited period of 12 months, only to STA positions. Table 3 above shows that there were 16 at the time of the audit (4 April 2018).

164. Although the principle of a call for applicants remains, the need to fill positions quickly and the need to turn to people who are immediately operational, given the brevity of the agreement, provide a clear advantage to employees already working at the ICC.

165. Once the planned time has expired, the individuals concerned return to their previous position. The fact that, during the period of this temporary assignment, the established positions continue to be officially occupied although they are not actually occupied, was examined in the first part of this report (paragraphs 30 and 31).

166. The ICC does not formally participate in the UN Inter-Organization Agreement, which facilitates mobility between these Organizations, even though its employees are part of the same pension system. Some exchanges of employees, for a limited time, sometimes with reimbursement of costs, occur though: two in 2016, for example.

167. The Human Resources Section reports that it is preparing the Court’s Mobility Framework for the first half of 2018. The first project to which the auditors had access is an effort to supplement the existing system with two arrangements with possibilities for mobility internal – and not external – to the Court:

(a) the creation of temporary assignments in which the employee would continue to be funded at his/her starting position;

(b) a system of rotation between networks, in other words between specialists of the same function, with the employee again continuing to be paid in his or her original positions.

(e) *Weak professional incentives*

168. In an institution like the Court, the feeling of contributing to a great cause, as well as interest in the work, cannot be underestimated. However, other motivational tools remain limited:

(a) there are no variable bonuses;

(b) performance appraisals (see paragraphs 175 to 221) are rarely negative, as is the case in most international Organizations: for five possible rating levels, 99 percent of the employees were appraised in 2017 in three highest levels, 1 percent in the next (partially met expectations), and 0 percent in the bottom level (did not meet expectations).

(c) disciplinary measures are rare: three for the two years 2016 and 2017, all at OTP.

169. This is why professional advancement through competitive recruitment remains the main perspective.

(f) *Opportunities for improving career prospects*

170. The items above shows that the reality is certainly not that of a blocked system, especially since almost half of the appointments to established positions are given to internal applicants.

171. Could we go further without the risk of a deficit of external contribution and new ideas? Without prejudging the effects of a “mobility framework” currently under study, three avenues could be pursued:

(a) the first one could be to reserve a priority round for internal applicants for a limited proportion of the positions to be filled, by providing for these jobs a two-step procedure, already practiced in other Organizations: a) a first round reserved for internal applicants during a limited period (for example, one month) and b) in the absence of an applicant deemed satisfactory, a second round open to the outside. Given the already significant share of movements from within the Court, it would be essential for the proportion of positions thus filled to remain limited and not involve exclusively the most interesting positions. A figure of 10 percent could be considered;²⁰

(b) a second avenue would be to organize annual management reviews. This involves having the managers of a department collectively examine the performance and prospects of their employees. It would not necessarily be linked to the performance appraisal. This approach exists in many companies: it is an opportunity to take stock of the monitored individuals, provide a dual report from the immediate superior and a Human Resources manager, and think about development needs and possible career advice. It conveys the message to those concerned that their personal case is known beyond their direct contacts and is monitored;

(c) a third avenue, which could be favoured, would be to include the Court in the Inter-Organizational Mobility Agreement. Ad-hoc arrangements between Organizations with repayment and return clauses are a source of lost time in negotiating them and complexity in managing them. They also do not give employees the feeling of belonging to a group where diverse, rewarding careers are available. The ICC, already largely follows UN standards, which are based on ICSC²¹ recommendations, on several key issues, such as pay scales, and is part of the same pension system, which would facilitate the organization of transfers.

172. In the past, the ICC had indeed been a member of the United Nations inter-organizational mobility system. It left it when it was given a choice between full alignment, with the corresponding financial participation and limitation of independence, and departure.

173. When this issue is brought up, the ICC’s departments express concern that returning to a system common to the United Nations Organizations does not go hand in hand with an increased demand for financial contribution from this system, for example in the preparation of pay scales. The risk is that, for a staff exchange agreement, the Court would be forced to pay for benefits that it currently receives for free.

174. This fear is not invalid, but many years have passed since then. The Secretary-General of the United Nations has expressed his desire to better coordinate the entities that are part of the system. There is nothing precluding negotiation, pointing out the small size of the ICC as the need for independence attached to the jurisdictional status.

²⁰ Another solution could be to set objective criteria –number of years of experience, satisfactory job performance, etc. to limit such priority recruitment. However the risk exists that those criteria, which are less clearcut than a percentage, be progressively loosened under the pressure of internal staff, and that the opportunity for external ones become very limited. This is why, from our point of view, with the goal of keeping the door open, a percentage system could be a better solution.

²¹ International Civil Service Commission.

Finding: In theory, the ICC is an Organization in which the jobs are of a limited duration and in which there are no career prospects. However, the examination of actual data shows that employees remain in the Organization for the long term through renewal of agreements and that, through open recruitments, many of them manage to advance.

On the other hand, the range of performance incentives remains limited, and the perception of growth opportunities is much less positive than the reality, as far as can be assessed in the absence of an opinion survey.

Recommendation 3: In the management of professional profiles, the External auditor recommends:

- (a) organizing management reviews to better identify the development needs and the development potential of ICC employees;
- (b) initiating negotiations with a view to achieving the integration of the ICC into the UN Inter-Organization Agreement in order to broaden the career prospects of its staff;
- (c) proposing to the Court a limited modification of the rules of appointment by reserving a priority round for staff in place at ICC for a proportion of the positions to be filled that should remain limited to prevent the risk of killing de facto most of the external recruitment (10 per cent for example).

2. Performance appraisal

(a) Current arrangements

175. The current performance appraisal procedure was defined by a regulation dated 16 July 2012.²² It applies to all established position holders as well as all GTAs.

176. However, employees under contract for less than six months do not strictly fall under this category. Their superiors must conduct a simplified appraisal of their performance, which will be kept in their file. When the duration of the agreement is between six months and one year, though, the common procedure applies.²³

- (a) The performance appraisal cycle starts on 1 March and ends on 28 February of the following year. It includes six phases:
 - (b) an initial interview with the appraiser, who is the employee's immediate superior;
 - (c) production of a written document reporting on this interview;
 - (d) validation of this document by the appraiser's immediate superior;
 - (e) a mid-term interview, usually in September;
 - (f) a results appraisal interview conducted approximately four weeks before the end of the cycle between the employee and his/her appraiser;
 - (g) the signing of the appraisal document a) by the appraiser (the evaluated employee may include comments), b) by the appraiser's immediate superior, as validation, and c) by the employee in question.

177. Following the initial interview, a performance appraisal form is prepared, indicating:

- (a) the evaluated employee's goals for the year, which must meet the "SMART"²⁴ criteria;
- (b) the employee's appraisal in view of the Court's core competencies, as defined in the annex to the regulation of 16 July 2012;
- (c) a development (training) plan for the employee.

²² ICC/AI2012/001.

²³ Regulation ICC/AI/2016/001 of 28 January 2016 on short-term appointments, Section 7.

²⁴ Specific, Measurable, Achievable, Relevant, and Timed.

178. In case of disagreement between the employee and his or her appraiser on the goals, it is up to the appraiser's immediate superior to decide.

179. At the end of the cycle, following the appraisal interview, the appraiser expresses qualitative assessments of the achievement of the goals and the mastery of skills. The appraiser also includes a numerical rating.²⁵

180. In the event of insufficient performance, the appraiser must propose to or even impose on the evaluated employee a PIP,²⁶ with a particular focus on training.

181. Training in the setting of goals and the evaluation of their achievement is offered to employees. In 2016, some 200 employees participated. Awareness-raising campaigns have also been carried out in the Court since 2016, particularly at key moments in the process: setting goals, mid-year interview, and final results assessment interviews.

182. In addition, a new information system has been implemented for recording performance appraisal data.

(b) *Results*

183. The performance process completion rates have increased significantly in recent years to a high level:

(a) 94 percent of processes initiated, but not necessarily finalized, for the 2016-2017 cycle, versus 77 percent for 2014-2015;

(b) 92 percent of processes initiated and finalized for 2016-2017, versus 64 percent for 2014-2015.

184. However, the completion rates vary greatly between bodies of the Court. They reached 100 percent for the complete processes for the Office of the Prosecutor in 2016-2017, versus 93 percent for the Registry and only 44 percent for the Office of the President.

185. The percentage of processes initiated but not completed represents 100 percent for the Office of the Prosecutor, 95 percent for the Registry, and 64 percent for the Office of the President.

186. Nevertheless, the bodies of the Court show significant variations. The Registry had completed only 71 percent of processes for 2014-2015 and only 61 percent for the following year. The Office of the President's figure was 2 percent for 2014-2015 and 36 percent for the following year.

187. For 2016-2017, the appraisal ratings²⁷ were as follows:

- | | |
|--|-------|
| (a) did not meet expectations: | 0 %; |
| (b) partially met expectations: | 1 %; |
| (c) fully met expectations: | 75 %; |
| (d) exceeded expectations: | 20 %; |
| (e) significantly exceeded expectations: | 3%. |

188. HRS informed the External auditor that it was difficult for it to produce an extraction for comparison of the appraisals of the various departments for this cycle. For the 2016-2017 and 2017-2018 cycles, it was able to produce such an extraction for the Registry.

189. The examination of the performance plans of several D-level managers reveals goals that are mostly precise, with clear and measurable performance indicators. The appraisals are often detailed. However, none of the records provided to the External auditor provided for a training plan. Even though they involved exclusively goals of Directors, who by definition have reached a high level of skill, it would be normal for them to continue to seek progress and training.

²⁵ In the 2012 regulation, six rating levels were indicated. This figure has been reduced to five since then.

²⁶ Performance Improvement Programme.

²⁷ Source: Report to the CBF dated 2 March 2018; rounded amounts.

Finding: The performance interviews are often not completed with regard to the development and training of the employees concerned.

Recommendation 4: The External auditor recommends that the appraisers be instructed to ensure that the interview sheets are completed with the definition of training plans.

(c) *Attempted standardization within the Registry*

(i) *Appraisal campaign of the 2016-2017 cycle*

190. During the results appraisal campaign of the 2016-2017 cycle, the Registrar asked his three division Directors to award their ratings in a more consistent manner.

191. The idea was that the majority of the employees should receive an average score of 3 out of 5, reflecting fully satisfactory work while leaving room for improvement, with only 20 percent to 30 percent being statistically able to justify a higher rating through documentation.

192. The concern was also that the average rating of one division would not be different, in one way or the other, from that of the other divisions.

193. The requested result has not been achieved, as the Division of Judicial Support Services continued to award higher ratings than the other two divisions for its executives, as shown in the following tables:

Table 14 : Differences in performance appraisal between divisions of the Registry (2016-2017 cycle) (Directors)

<i>Appraiser</i>	<i>Number of appraisals</i>	<i>(percent) Partially met</i>	<i>(percent) Fully met</i>	<i>(percent) Exceeds</i>	<i>(percent) Significantly exceeds</i>
Registry	3	0	33	66	0
D-DMS	8	0	87	13	0
D-DJS	11	9	9	55	27
D-DEO	7	0	71	29	0

Source: ICC.

Table 15 : Differences in performance appraisal between divisions of the Registry (2017-2018 cycle) (All staff)

<i>Division</i>	<i>Not met</i>	<i>Partially met</i>	<i>Fully met</i>	<i>Exceeds</i>	<i>Significantly exceeds</i>
DJS	1.1%	0.56 %	71.5%	24.6%	2.2 %
DMS	0.0 %	1.1 %	82.3 %	16.5%	0.0 %
DEO	0.0 %	0.0 %	89.7 %	8.9 %	1.4%
Registry (total)	0.4 %	0.6 %	79.9 %	17.5 %	1.6 %

Source: ICC.

Table 16 : Differences in performance appraisals between divisions of the Registry for the directors (2017-2018 cycle)

	<i>Number of appraisals</i>	<i>Did not meet</i>	<i>Partially met</i>	<i>Fully met</i>	<i>Exceeds</i>	<i>Significantly exceeds</i>
D-DMS	9	0	11 %	78%	11%	0
D-DJS	11	0	0	64%	18%	18%
D-DEO	10	0	0	70%	30%	0

Source: ICC.

194. During the appraisal campaign of the 2017-2018 cycle, although it was largely initiated, the Registrar took the initiative, in an e-mail dated 8 February 2018 sent to his three Directors, to ask them not to communicate their appraisal to the section heads before a coordination meeting that he would lead with his three Directors and his Chief of staff.

195. This kind of informal coordination is frequent in many Organizations.

196. However, the Director of Judicial Support Services and his key employees considered this request to call into question the rules being implemented, without prior consultation and in contradiction with the administrative guideline of 16 July 2012. They challenged as illegal the fact that confidential individual appraisals could be communicated to and discussed by other people than the assessed staff and his/her supervisor, specifically by other supervisors.

197. Finally, in an e-mail dated 1 March 2018, the Registrar changed his view on these adjustments, confirming both the timetable and the method used previously.

198. It is difficult to know whether this dispute is linked with the more global planned reform of the appraisal procedure within the Court which was prepared by HRS and the Registrar.

(ii) *The proposed new administrative guideline reforming the appraisal procedure*

199. Starting in late 2016, the Human Resources Section began thinking about reforming the performance appraisal system for the entire Court.

200. The goals were varied: improve how performance goals are set, achieve 100 percent implementation of appraisals, develop the capacity for self-appraisal, better connect appraisal and training, better support under-performing employees, etc.

201. The steering of the project was organized on the establishment of:

(a) at the base, a Project Team of 11 experts from various bodies of the Court, assisted by specialized experts for specific subjects (legal, SAP software, etc.) according to the needs;

(b) at the top, a small Project Board bringing together the Human Resources Section and high-level representatives of the Court's bodies;

(c) a series of workshops, including nine in January 2017, each with between 6 and 10 participants (sometimes the same people);

(d) at the technical level, "test groups", which were particularly tasked with evaluating a new information for performance appraisals. Two sessions were proposed to these groups: for the first one (19 December 2017), out of 14 invited employees, 10 came, and for the second one (31 January and 1 February 2018), out of 52 invited employees, 26 actually participated.

202. The project that resulted from this work was approved by the Project Board on 6 October 2017. It was submitted to the Registry Management Team (RMT, consisting of the Registrar and his three Directors) on three occasions in October and November 2017, to the Executive Committee (ComEx) of the Office of the Prosecutor (OTP) on 29 November 2017, as well as to the Office of the President in October 2017.

203. Representatives of the Staff Union were consulted on the overall discussion starting in 2016 but did not become aware of the final plan until early February 2018. As of the date of this audit, they had not raise any objections in principle, but they wanted another consultation meeting.

204. The main features of the system proposed in February 2018 are as follows:

(a) elimination of numerical ratings, in keeping with a generally observed trend in appraisals;

(b) consultation of the Directors with the Heads of bodies within the Coordinating Committee (CoCo) – periodically bringing together the President, the Prosecutor, and the Registrar – before defining the goals within the divisions;

(c) definition of development plans consistent with the goals of each person at the beginning of the cycle;

(d) at least four recommended intermediate interviews serving as progress updates during the year;

(e) before the end of the cycle, an initial appraisal meeting between the employee in question, his or her appraiser, and the appraiser's immediate superior (reviewer);

(f) possibly, where feasible, collection of opinions from other appraisers;

(g) signing of the final assessment, first by the appraiser, then by his or her superior, before communication of the assessment to the employee in question, and finally signing by the employee. In this respect, the main innovation is that the reviewer may discuss the assessment with the appraiser before it is submitted to the assessed employee.

205. The draft regulation also mentions the possibility, during the year, of self-appraisals and consultation of peers or employees.

206. Each stage of the process, including interim reviews, should be recorded in the new information system.

207. As was the case before, instances of underperformance would lead to the implementation of specific written programmes to improve performance.

208. The draft regulation also recalls that, in accordance with article 103.8 of the Staff Rules, insufficient performance may justify the appraiser and the reviewer to request a stop in pay increases.

209. The intention was to launch the new process starting with the 2018-2019 performance cycle, i.e., from the end of first quarter 2018. Given that it was not physically possible to sign the regulation defining the new procedure before the end of the 2017-2018 cycle, in February 2018, the three bodies (Office of the President, OTP, and Registry) decided that the launch of the new cycle would be delayed by one month to 1 April 2018.

(iii) *Objections to the proposed new guideline*

210. In a letter dated 5 March 2018, a memorandum signed by 17 executives, including 15 from the Division of Judicial Services, but excluding the DJS Director himself, and including two Directors outside the Registry, was sent to all ICC Principals and Directors, with copy to all ICC Judges and the Staff Union Council, to challenge the legality of the proposed regulation on performance management.

211. The reasons were related not to the substance, but to the procedures used:

212. With respect to the end of the 2017-2018 cycle, the signatories felt that the Registrar's request for consultation with the Registry's Directors prior to the release of the ratings to the evaluated employees was tantamount to retroactively changing the applied rule given that it affected a process already initiated and was therefore contrary to the principle of non-retroactivity of texts:

(a) they challenged the idea that the Registrar had the right to postpone the appraisal closing date by one month, as this date was set by the 2013 regulation and could only be changed by a new regulation of the same level validly adopted;

(b) they added that this request came although some supervisors had already conducted some of the 2017-2018 performance appraisal interviews.

(c) With regard to the proposed regulation to reform the performance management system starting with the 2018-2019 cycle, the signatories felt that the necessary consultations had not taken place:

(d) they considered that the President's guideline ICC/PRES/D/G/2003/001 of 2003 required the prior formal consultation of the main units concerned as well as the "section heads" of all the affected divisions, that this consultation was supposed to give them the opportunity to make comments and possible objections, and that only after this complete process could a regulation be legally promulgated;

(e) they added that it was not because this formality had not always been respected that it could be considered as obsolete.

213. Following this reaction, the proposed regulation was not adopted, and the outgoing Registrar left the decision up to his successor.

214. The Judges, who were the addressees of the letter dated 5 March 2018, did not react.

(iv) *Lessons learned*

215. With regard to the request for coordination of appraisals of the Registry for the 2016-2017 cycle:

(a) the Registrar's request for consultation of the Directors before communicating the ratings undeniably came late in the cycle, even in case the one-month postponement of the deadline would have allowed the new administrative guideline to be formalized;

(b) however, in most Organizations, such a request would have been considered as a secondary management measure, especially since the Registrar did not have the power to change the ratings that any of his directors would have refused to adjust;

(c) given that one of the three Divisions (Division of Judicial Services) statistically rated higher than the others, the Registrar's concern for coordination, or at least an attempt at coordination, appeared legitimate.

216. With regard to the objection to the proposed regulation, the debate pertains to a possible lack of prior consultation, particularly with the section heads. The initiators of the proposal emphasize that:

(a) before the proposal was made, multiple consultations took place, based more on the search for a diversity of opinions than on the formal and systematic consultation of a particular category of managers (section heads). They indicate that the Registrar formally consulted all his Directors in the last quarter of 2017. These points are not disputed;

(b) it was up to the Directors to pass on the message to their own section heads, in line with best practices in cascading;

(c) the formal consultation of the unit heads under the authority of the Directors of the Registry had not been systematically done for years, without calling for any dispute until then, and that the use of such an argument was unexpected.

217. At the time of the audit, the legal department of the Registry was referred to but had not given its conclusions.

218. The External auditor notes that:

(a) of the 17 signatories of the letter of 5 March 2018, 15 belonged to the Judicial Services Division;

(b) two of the members of this division were candidates to take over the Registrar's role;

(c) the External auditor has no reason to suspect anyone's intent. However, from a pure point of view of objective appearance, in the context of an election, it not advisable to accept situations which could be interpreted as potential conflicts of interests.

219. Beyond the consultation questions, the timetable for implementing the proposed reform was not impossible to maintain but very tense: the launch of a new objective-setting procedure in February 2018 for a cycle normally starting on 1 March or even, with the shift of one month, 1 April left little time for communication and training of those involved, which were essential given the number of people concerned; the reform occurred at the end of the Registrar's term of office, with a close election, and therefore in a context not conducive to reform.

Finding: The ICC has developed performance appraisal procedures, and their actual implementation is making progress. However, it has not succeeded in making appraisals more uniform between divisions.

In a tense context of a change in leadership with little time before the launch of a new cycle, the proposed regulation reforming the performance appraisal system was disputed, mainly for procedural reasons, and could not be validated.

Recommendation 5: In terms of performance appraisal, the External auditor recommends that the new Registrar:

(a) quickly decide on the principle of the proposed change and, in the event of a positive conclusion, approve the procedure with the legal office and implement it;

(b) whatever the chosen performance appraisal system, put in place a mechanism to make the appraisals of the various departments more homogenous.

Finding: Employees working at the International Criminal Court may be candidates for an elected position at the same Court. There is a risk that the positions that they may be led to take in the run-up to the election will be perceived by third parties, rightly or wrongly, as inspired by electoral concerns and not necessarily by the concern for better cooperation between people in a competitive position. Based on recent experience, it appears necessary to avoid the recurrence of objective conflict of interest situations that are detrimental to the effective functioning of the ICC.

Recommendation 6: The External auditor recommends to the Court to establish:

(a) either an incompatibility between belonging to ICC staff and running for election;

(b) or strict conditions guaranteeing the absence of exposure of the Court's departments to risks of conflicts of interest in the performance of the duties of the internal candidates for elected functions.

3. Atmosphere at the Court

(a) *Material data*

220. The premises of the International Criminal Court in The Hague are very recent and provide remarkable comfort to the employees.

221. The Court has a medical service. This service reports to the Division of Management Services (DMS), although the Chief Medical Officer would consider it more logical to report directly to the Registrar, as such a relationship would facilitate the task in emergency situations. It should be noted, however, that the Occupational Health Unit, or the Medical Unit as it was previously called, has already been relocated from the Human Resources to the Office of the Director DMS, in the context of the reorganization in the Registry precisely in order to give it a more prominent role and one with a more direct access to the senior management. Other Organizations have different organizational settings with such units still under HRS or reporting to management.

222. The average duration of leave varies little:

Table 17 : Duration of leave

	2015	2016	2017
Independent Oversight Mechanism	-	-	14
Judiciary	24	12	18
Office Internal Audit	-	-	3
Office of the Prosecutor	14	15	14
Project office for permanent premise	7	40	-
Registry	16	15	18
Secretariat-Assembly of States Parties	14	7	16
Trust Fund for Victims	31	58	36
Grand Total	106	147	119

Source: ICC.

223. It should be noted that the head of the medical service does not track statistics on absenteeism. She believes that these statistics – without the ability to cross reference the sick leave with the medical files – are only of limited interest in that they only reflect epidemics (particularly influenza) depending on the year.

224. She is considering establishing, with outside help, a mapping of medical problems at the ICC. At this stage, she has not obtained the necessary appropriations.

225. She believes that many of the ICC’s employees experience specific stress related to the nature of their cases, for which they are ill-prepared, especially with regard to translators and interpreters.

(b) *Qualitative data*

226. The Court does not conduct a staff survey to track the perception of those who work there of their activities and their working conditions.

227. One indicator is the number of employee disputes against the institution, or even the number of “complaints” expressed, it being observed that the interviews that the auditors conducted with various managers were always vague about the procedure for filing such “complaints” (letters to superiors, formal disputes, call to the internal audit team, etc.).

228. Since 1 January 2016, the Administrative Tribunal of the International Labor Organization (ILOAT) has issued 19 judgments on ICC staff disputes. This figure should be viewed in relation to a staff of just over a thousand employees.

229. The Court has won eight of these disputes. It lost in the eleven other disputes, which pertained in particular to the consequences of the “*ReVision*” project and the amount of the pension of two judges appointed before the last pension reform for judges.

230. The External auditor was also alerted to the existence of various complaints, in particular for moral harassment, without having been able to gather any details to estimate the number.

231. The high number of disputes brought before the courts undoubtedly reflects the concentration of lawyers within the institution. However, the sending of a letter to the Judges to dispute a proposed regulation, which is clearly outside any established legal framework, reflects an abnormally tense atmosphere and leads the External auditor to question the prevention of conflicts within the Court.

232. There are currently four methods of conflict resolution within the Court:

(a) recourse to the Staff Union, knowing that 61 percent of the employees contribute to it. The union has created a Staff Union Advisory Council, a group of representatives designated by it, who individually support staff members in their actions or professional complaints;

(b) the Medical Service, when health issues are involved;

(c) several executives who were recently trained in mediation from a Great Britain institute in cooperation with another international Organization based in The Hague. This is a new option, but it has already been used in at least in one case;

(d) the possibility of a complaint of alleged misconduct of an elected official on the basis of article 26 of the Rules of Procedure and Evidence and Rule 120 of the Regulations of the Court.

233. The issue arises as to a better controlled mechanism for resolving internal conflicts in an institution subject to recurrent tensions due to its type of activity, the small number of incentives, and the feeling, which may or may not be justified (cf. the section on careers in the Court, paragraphs 135 to 174), that the professional prospects remain limited.

234. The creation of an Ombudsman function would undoubtedly be an option to consider. The Division of Management Services and particularly the Human Resources Section believe that the ICC's headcount does not warrant a full-time job, which would be a significant cost. However, they feel that sharing the function within another court based in The Hague or the part-time use of the services of the United Nations Ombudsman (based in New York) is worth examining.

Finding: The ICC is experiencing internal tensions that are sometimes intense, but there are insufficient data to measure the true extent.

Recommendation 7: The External auditor recommends that the Court periodically (for example every 2-3 years) carry out an opinion survey to monitor changes in staff perceptions and to identify areas for improvement.

Finding: The ICC has a relatively high number of internal conflicts. The means of attempting to settle them without going to litigation remain limited.

Recommendation 8: The External auditor recommends that the ICC finalizes its thoughts on the establishment of an Ombudsman function to be shared with one or more nearby institutions.

(c) *Workplace wellness*

235. Workplace wellness workshops were conducted in 2017. The medical team, the Human Resources Section, and the Staff Union participated.

236. The goal was to define a well-being framework dealing with topics such as working environment, motivation, training, personal development, etc.

237. At the time of the audit, a draft well-being framework has been written. The External auditor, at the time of the audit, had not the opportunity to assess whether it was completely ready or not. At that time, no documents had been presented to the Coordination Council.

(d) Ethics charter

238. The Court does not have an ethics charter. This situation may be surprising given its mission.

239. However, the first chapter of the Staff Regulations, in article 1.2 on “fundamental values”, addresses various points that may be covered by such a charter: general rights and obligations, confidentiality, honorary distinctions, gifts or remuneration, conflicts of interest, employment and activities outside the Court, and use of the Court’s property.

240. Although it has real legal significance, it does not have the moral impact of an ethics charter binding the staff.

Finding: In its regulations, the International Criminal Court has a series of legal rules regarding ethics but without requiring its staff to adhere to a more complete “ethics charter”, which would add to the statutory aspect a moral message adapted to a jurisdiction.

Recommendation 9: The External auditor recommends that the ICC develop and publish an ethics charter.

(e) Lack of a comprehensive HR yearly report

241. Each year, the Court publishes an annual report on the management of its Human Resources.

242. This document is comprehensive, but it does not follow a pre-established format. It is more akin to an activity report than a procedure for quantified monitoring of changes in the main social parameters.

243. It would benefit from being supplemented with such data, with a view to providing mainly the same data every year for better monitoring.

Finding: The Court does not produce an annual “social report”.

Recommendation 10: The External auditor recommends supplementing the annual report on the Human Resources management presented to the CBF with:

(a) the inclusion of all information relevant of a comprehensive HR report, i.e., a standardized document, addressing all the quantitative aspects (workforce, diversity, absenteeism, performance, training, etc.);

(b) the definition of a stable standard for calculating the number of recruitments done during the year presented in the annual Human Resources report to the CBF;

(c) the improvement of tools for inventory and identification of STA recruitments, by tracking all assessment reports and by precisely measuring the number of STA recruitments to be mentioned in the Human Resources report.

IV. Follow-up of previous recommendations

244. It was decided during the audit works that the follow up of all previous recommendations would be merged, and would be displayed altogether by the External auditor in his report on the 2017 financial statements, whether the recommendations come from previous performance audits or from previous financial audits, in order to have a single dashboard on recommendations still pending or implemented.

V. Conclusion

245. After a prolonged period of organizational restructuring, which has had severe negative effects on staff and which has led to low staff morale, HR management should seek stabilization of the environment for the various categories of workforce.

246. Most of External auditor's recommendations are based on that principle – that is why he did not attempt to propose any new structural reforms for the time being.

247. In this respect, the External auditor's recommendations aim at:

- (a) improving gender balance;
- (b) avoiding the adoption of HR operational rules specific to any organ of the Court, by supporting HR section's leading role in this domain;
- (c) encouraging all types of measures to ensure staff professional development and mobility;
- (d) putting in place adequate procedures and rules to prevent conflicts of interest and to resolve potential internal litigations;
- (e) developing a more comprehensive yearly information on HR Management.

VI. Acknowledgements

248. The External auditor wishes to express deep appreciation to the Directors and staff members of the ICC for their reception and the accuracy of the information that they provided.

End of audit observations.

Annex

List of interviews

Office of the President

- Hiram Abtahi, Legal Adviser and Unit Head
- Matthias Hellman, External Relations Adviser

Chambers

- Kimberley Prost, Judge, Chamber

Office of the Prosecutor

- James Stewart, Deputy Prosecutor
- Marco Blasi,
- Minako Sugisaki,

Secretariat of the Assembly of States Parties

- Renan Villacis, Director

Secretariat of the Budget and Finance Committee and the Audit Committee

- Fakhri Dajani, Executive Secretary

Trust Fund

- Pieter de Baan, Executive Director of the Trust Fund for Victims

Independent Control Mechanism

- Judit Jankovic, Interim Head of the Independent Oversight Mechanism

Internal Audit

- Florence Bole, Director

Registry

- Ivan Alippi, Director, Division of Management Services
- Marc Dubuisson, Director, Division of Judicial Services
- Juan Escudero, Head of the Office of the Registrar
- Petar Djuric, Special Assistant in the Office of the Registrar
- Thomas Henquet, Head of the Legal Office of the Registrar
- Yuki Daijo, Deputy Head of the Legal Office of the Registrar
- Susanne Seegers, Head of the Human Resources Section
- Étienne Gouws, Head of the Operations Unit of the Human Resources Section
- Merle Kroll, Physician, Head of the OHU Unit
- Lassi Kuusinen, Head of the Security Section
- Tom Cashmore, Head of the Authorization Compliance Unit

Selections Review Panel

- Xavier Agirre, Chairman

Staff Union

- Ruth Frölich, President
- Géraldine Danhoui, 2nd Vice-President