

Recommendations for which the Court’s view on categorization differs from that contained in the Review Mechanism’s zero draft

Recommendation	Draft Categorisation by RM	Categorisation Proposal by Court	Explanation
<p><b>R77.</b> The Experts recommend making use of the possibility of instating a Deputy Registrar, to enable the Registrar to focus on administration of the ICC/IO (Layer 3). The role would coincide with the Chief of Judicial Services (D-2) position, which would make the decision practically cost-neutral. The Deputy Registrar should be elected in the same manner recommended for the Registrar, and if possible, simultaneously. The ASP could consider having candidates apply jointly, as a pair, for the positions of Registrar and Deputy Registrar, and electing them as such, to promote gender and geographic diversity. A similar approach should be considered by the ASP for the joint election of the Prosecutor and Deputy Prosecutor.</p>	<p>Assembly</p>	<p>Assembly &amp; Court</p>	<p>See para. 180 of the Overall Response of the ICC (OR): in accordance article 43 of the Statute<sup>1</sup> and rule 12 of the RPE,<sup>2</sup> the decision to elect a Deputy Registrar falls within the powers of the Court. That said, the Court recognises that the decision as to whether a Deputy Registrar should form part of the Court’s senior management structure is one that is of legitimate interest to the ASP as well. Furthermore, ASP involvement would also be required for approving the reinstatement of Deputy Registrar position in the Court’s budget, from which it was removed, on the Court’s suggestion, during the <i>ReVision</i> exercise. In sum, the Court suggests that recommendation R77 is most appropriately addressed in dialogue between the Court and the Assembly.</p>
<p><b>R82.</b> To enhance the impact of the Court’s presence in the field and maximise use of resources: i) regional field offices, acting as hubs for several countries in a region, should be considered;</p>	<p>Assembly &amp; Court</p>	<p>Court</p>	<p>See paragraphs 185-188 of OR. The Court intends to take forward this recommendation in the development of its Framework for The Registry’s Field Engagement. In this regard, the initiative for the consideration and</p>

<sup>1</sup> Article 43 (4) provides as follows: “The judges shall elect the Registrar by an absolute majority by secret ballot, taking into account any recommendation by the Assembly of States Parties. If the need arises and upon the recommendation of the Registrar, the judges shall elect, in the same manner, a Deputy Registrar.”

<sup>2</sup> Rule 12 (4) provides as follows: “If the need for a Deputy Registrar arises, the Registrar may make a recommendation to the President to that effect. The President shall convene a plenary session to decide on the matter. If the Court, meeting in plenary session, decides by an absolute majority that a Deputy Registrar is to be elected, the Registrar shall submit a list of candidates to the Court.”

<p>ii) the OTP should make increased use of field offices, through enhanced coordination and communication with the Heads of field offices;</p> <p>iii) field offices should also be further made use of to strengthen cooperation with local civil society in the field.</p>			<p>implementation for the recommendation should be taken by the Court, mindful that any decision leading to potential budgetary implication ought to be considered by the Assembly in the context of its existing mechanisms.</p>
<p><b>R142.</b> Increased transparency on the organisational structure and organigram should be introduced, with the number of full-time equivalent posts by Section and Office indicated.</p>	Assembly	Court	<p>See paragraph 287 of the OR. The Court is responsible for the preparation of Organisational Charts and Organigrams and will undertake the work to update them in response to this recommendation.</p>
<p><b>R158.</b> Consideration should be given to hosting regional workshops for CSO and local media representatives on the Court's legal framework, evidentiary standards, and collection of information.</p>	Assembly & Court	Court	<p>See paragraphs 315 and 316 of the OR. The Court will take forward this recommendation as part of its Outreach activities and mission planning.</p>
<p><b>R162.</b> A scholarship/grant for journalists from situation countries could be considered, to enable them to report from The Hague for limited periods of time.</p>	Assembly	Court	<p>See paragraph 319 of the OR. The Court will deal with this recommendation as part of the development of its Communication strategy (see also R163, which has been categorised as being a Court responsibility). For such a scholarship fund to be effective and meaningful, support from States and other potential donors will be crucial.</p>
<p><b>R328.</b> Renewed efforts, taking into account past assessments and consultations already carried out, should take place to finalise the</p>	Assembly	Assembly & Court	<p>See paragraphs 631 and 632 of the OR. The Court stands ready to work on a full reform of the Legal Aid</p>

<p>reform of the legal aid policy. It should be accessible, effective, sustainable, and credible, including ensuring equality of arms with the Prosecution and adequate facilities to Defence teams to prepare and conduct an effective defence. A full reform of the Policy is recommended, rather than only updating numbers. Otherwise, the topic will return to the ASP agenda in the coming years. The reform should be carried out and finalised with the help of a working group composed of individuals with specific experience working with defence and victims and legal aid policies before international courts, nominated by the Registrar, OPCD, OPCV and ICCBA. The working group should not begin its work within confined limits (e.g. budgetary limitations).</p>			<p>Policy on the basis of guidance provided by the ASP.</p>
<p><b>R331.</b> Additional resources are needed in the Registry to strengthen and complement the sole Financial Investigator position, as well as the Registry's capacity to support States Parties in implementing cooperation requests in this field. For this, the Experts recommend that the Court makes use of seconded personnel with specific expertise. The Experts note that strengthened Registry capacity in this area would contribute to lowering legal aid costs.</p>	<p>Assembly &amp; Court</p>	<p>Court</p>	<p>See paragraph 634 of the OR. The Court intends to explore ways of enhancing capacity by way of secondments and other initiatives.</p>
<p><b>R332.</b> States Parties to the Rome Statute have a role to play in</p>	<p>Assembly</p>	<p>Court</p>	<p>See paragraph 634 of the OR. It is the Court that makes formal requests for</p>

ensuring that declarations of indigence by prosecuted persons are secured pending the result of the trial.			assistance from States Parties to determine the assets of individuals and consequently any assessment of their indigence.
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Recommendations for which the Court’s view on categorization does not differ from that in the RM’s zero draft, but the Court wishes to provide comments on the way forward

Recommendation	Draft Categorisation by RM	Comment on the way forward
<b>R150.</b> The role of the NYLO needs to be reviewed. Depending on the range of activities that are finally assigned to it, the NYLO should be sufficiently resourced and adequately staffed to be able realistically to carry out these various tasks.	Assembly & Court	The Court has the lead on this and has undertaken to review the role of the NYLO in the light of this recommendation. (See paragraph 304 of the OR.) ASP will be consulted during the process, particularly as concerns the issue of support for the New York Working Group.
<b>R173.</b> The Statute should be amended to remove the provision requiring the President to serve the entire term of office in the Appeals Division and only in that Division.	Assembly	As indicated in para. 345 of the OR, the Court welcomes States Parties’ further reflection on this recommendation and hopes that the Assembly considers it in close dialogue with the Judiciary (through the Court’s Presidency) to make sure that all aspects of the matter are properly considered.
<b>R214.</b> The Rome Statute should be amended to provide for the assignment of a substitute Judge to enable a trial to continue following the substitute Judge certifying that they have familiarised themselves with the record of the proceedings.  <b>R215.</b> When the workload of the Court develops to the point where it	Assembly	As indicated in the paras. 385-386 of the OR, the Court urges the Assembly to address recommendations R214-R215 as a matter of priority due to the operational risks posed by the current system in place. Here the need for close consultation between the Assembly and the Court is even more pronounced than in the case of R173, due to the complexity and technical nature of the issue at hand. Accordingly, the Court strongly urges that the Judiciary, through the Court’s Presidency, is consulted during the Assembly’s consideration of these recommendations, in particular with respect to the drafting of any amendments to the legal framework, so as to ensure that any solutions adopted are practically oriented to the fullest degree possible.

<p>no longer allows for a substitute Judge to be assigned from the 18 regularly elected, the ASP should consider applying Article 36(2) and electing one or more Judges for such purpose.</p>		
<p><b>R247.</b> The following elements should be incorporated into the forthcoming OTP policy paper on completion:</p> <ul style="list-style-type: none"> <li>(i) Coordination between the OTP, Registry, and TFV in devising and implementing completion strategies;</li> <li>(ii) Strategies to address the avoidance of impunity and support for local justice processes. The ASP should consider establishing a working group to assist and support the Court in addressing impunity gaps and facilitating partnerships to develop domestic justice processes and maintenance of the rule of law;</li> <li>(iii) Strategies to facilitate evidence- and information- sharing with domestic courts and authorities;</li> <li>(iv) Consider developing a joint Outreach strategy for completion of situations by the OTP, in line with the Court-wide Outreach strategy.</li> </ul>	<p>Assembly &amp; Court</p>	<p>The OTP draft Policy on Situation Completion seeks to illustrate the considerations leading to the decision—in the exercise of prosecutorial discretion—that sufficient prosecutions have been brought in a situation to satisfy the Office’s mandate under the Rome Statute. In line with the prosecutorial independence, the lead and responsibility in developing this policy is with the OTP only. Nevertheless, the Office is of the view that external consultations on its policies and working methods are helpful to the ends of transparency and predictability. Wider external consultation is also important in ensuring that the Office ultimately adopts a policy that is comprehensive and thoroughly considered. The Office has therefore invited comments from States Parties and civil society on the draft Policy by 21 April. All input received will be carefully considered in the internal review and revision process.</p> <p>In line with the above, as regards the categorization of this recommendation, the element of “lead” that could fall on the Assembly relates to the point (ii), whereas the other aspects of the recommendation fall under the lead by the Court.</p>