

Comments on the “proposal for a categorization of the Independent Experts’ recommendations” sent by the Review Mechanism on 12 March 2021

This first draft for the categorization of the Independent Experts’ recommendations is a useful starting point to work on the mandate given to the Review Mechanism through the ICC-ASP/19/Res.7. Nevertheless, there are some things could be adjusted, taking into account the criteria first used to catalogue the suggestions made by the experts:

- Several recommendations, specific to some of the organs of the Court, are still classified as “court-wide matters”. That is the case the OTP Governance’s category, sorted that way because it stands under the wider “Governance” set. It is assumed that these issues need to be addressed both by the Court and the Assembly, but several of them must be under the sole responsibility of the OTP.
- Due to these specific cases, as long as this characterization was made “according to the entity responsible (the Assembly, the Court or both) for addressing the issue concerned”, it seems necessary to divide the recommendations into smaller categories. Some of the chapters proposed by the experts include diverse suggestions, some of which seem to be of exclusive responsibility of the Court and others in which some actions of the ASP are required.
- According to this first draft, there seems to be no recommendations regarding the Trust Fund for Victims, even though the Experts assigned it several responsibilities through their document. It would be useful to open another category for that particular organ.
- It does not seem convenient to classify the recommendations that require participation of the Assembly of States Parties as “External” Governance, as the ASP is part of the ICC just like the rest of the listed organs. Maybe the use of the ASP tag or other adjectives such as “comprehensive” would give a more precise idea of the role of the countries’ representatives and their responsibilities over the proposed reforms.

Of course, classifying the recommendations according to the responsible for addressing each of the issues is a first step. There are further categories that may be useful to keep the categorization going in the future:

- Which recommendations are already being addressed by the Court’s organs and which ones are just being considered by them?
- How long would it take to implement the changes suggested by the experts (short-term, mid-term and long-term recommendations)?
- Which of the recommendations require for its implementation a structural change (i.e., an amendment of the Rome Statute) and which ones don’t?
- Which of these reforms require to assign more resources to the Court and which ones don’t?

- Which of the recommendations need to be urgently addressed and which ones could wait a little bit longer?
- Which of the recommendations are indispensable to enhance the Court's work and its capability to fulfill its mandate, which ones are optional and which ones are definitively not really useful to it?

This last categorization would require an active participation of both the Working Groups and the Organs, so maybe useful to open a communication channel after these first approaches to the task ahead.