

INDEPENDENT EXPERT REVIEW: CATEGORIZATION OF RECOMMENDATIONS AND REMAINING ISSUES
Prepared by the Review Mechanism

Sections	Cluster (Sub)-Section	Assembly	Assembly & Court	Court	Comments	
CWM	I. GOVERNANCE					
	A. Unified Governance					
	1. Structure of the Court: (1) ICC/Court Governance, (2) ICC/IO Governance		R1, R3		R2, R4, R5, R6, R7	
	2. Decision-Making Process and Internal Legal Framework		R10		R8, R9, R11	
	3. Content of Internal Legal framework		R13		R12	
	4. Working Culture at the Court		R15		R14, R16, R17, R18, R19, R20	
	B. Chambers Governance (Working Environment and Culture, Structure, Management and Organisation)					
	1. Working Environment and Culture, 2. Chambers Structure and Organisation (1) Static and Dynamic Case Teams Led by référendaires (2) Specialised Pre-trial Team (3) Transferability of Case Teams (4) Role of Presiding Judges (5) Legal Staff Support to Judges, 3. Managment in Chambers (1) Head of Chmabers Staff (2) Legal Advisers to Divisions (3) Quality of Legal Support Staff and Professional Development (4) Administrative Assistants		R33		R21, R22, R23, R24, R25, R26, R27, R28, R29, R30, R31, R32, R34, R35, R36, R37	
	C. OTP Governance					
	1. The OTP Structure, 2. The OTP Regulatory Framework (1) Current OTP Regulatory Framework (2) Areas Not Addressed Under the Current Framework				R38, R39, R40, R41, R42, R43, R44, R45	
3. OTP Management and Leadership Structures (1) Prosecutor and Deputy Prosecutor - <i>Roles of Prosecutor and Deputy Prosecutor, Issue of two Deputy Prosecutors</i>				R46, R47, R48		
3. (2) Executive Committee (ExCom)				R49, R50, R51, R52		
3. (3) Immediate Office of the Prosecutor (IOP) - <i>Chef de Cabinet, Public Information Unit (PIU)</i>				R53, R54, R55, R56		
3. (4) Integrated Teams				R57, R58, R59, R60, R61, R62, R63		
4. OTP Staffing (1) Staff Qualifications				R64, R65, R66, R67, R68, R69, R70		
4. (2) Quantity of Staff				R71, R72, R73, R74, R75		
D. Registry Governance						
1. Election of the Registrar and Deputy Registrar	R76, R77, R78					
2. Various Sections of the Registry				R79		
3. Field offices				R80, R81, R82, R83, R84, R85, R86		

II. HUMAN RESOURCES		
A. General; B. Working Environment and Culture, Staff Engagement, Staff Welfare; C. Bullying and Harassment;		
	R87, R88	
D. Management of Human Resources		
	R89, R90,	
E. Adequacy of Human Resources - Recruitment; F. Short-Term Appointments, Local Recruitment		
R95, R96	R91, R92, R93, R94	
G. Performance Appraisal		
	R97, R98	
H. Staff Training and Development		
R99		
I. Multilingualism		
	R100	
J. Flexibility, Scalability and Mobility in Staffing		
1. Internal Mobility 2. External Mobility 3. Secondments 4. Tenure	R101, R102, R103	
	R104, R105	
III. ETHICS AND PREVENTION OF CONFLICTS OF INTEREST		
A. Ethics Framework		
Court staff and/or officials, Individuals affiliated with the Court	R108 (Assembly & Court & IOM), R109	R106, R107 (Court & IOM)
B. Prevention of Conflict of Interest		
	R110, R111, R112, R113, R114	
IV. INTERNAL GRIEVANCE PROCEDURES		
A. General; B. Accountability of Judges		
1. Disciplinary Mechanisms and Complaints 2. Disciplinary Standards 3. A Readjusted Disciplinary Arrangement 4. Judicial Council of the Court	R124, R125 (ASP & IOM) R126, R127	R115, R116, R117, R118, R119, R120, R121, R122, R123, R128 (Court & IOM), R129, R130, R131
V. BUDGET PROCESS		
A. Court Budget Process, B. Committee on Budget and Finance (CBF) C. Enhancing Trialogue D. Assembly of States Parties E. Miscellaneous		
R135, R136, R139, R140, R141, R143 R137, R138	R132, R133, R134, R142	
VI. PERFORMANCE INDICATORS AND STRATEGIC PLANNING		
A. Efficiency B. Effectiveness		
	R144, R145, R146, R147, R148	
VII. EXTERNAL RELATIONS		
A. Relations with the United Nations B. Role of the Court's New York Liason Office to the UN (NYLO) Relations with UN Agencies and Other International and Regional Organisations		
	R149, R150, R151, R152	
D. Relations with Civil Society and Media Organisations		
R161, R162	R153, R154, R155, R156, R157, R158, R159, R160	
E. Communications Strategy F. Outreach Strategy		
	R163, R164, R165, R166, R167, R168	

G. External Political Measures against the Court		
R169	R170	

OSM: C

VIII. ELECTION OF THE PRESIDENCY		
R173	R171, R172	

IX. WORKING METHODS		
---------------------	--	--

A. Induction and Continuing Professional Development		
--	--	--

1. Induction Programme 2. Timing 3. Contents 4. Continuing Professional Development	R174, R175, R176, R177	
---	------------------------	--

B. Full-Time Service of New Judges		
------------------------------------	--	--

	R178, R179, R180	
--	------------------	--

C. Code of Judicial Ethics		
----------------------------	--	--

	R181, R182, R183, R184	
--	------------------------	--

D. Judicial Collegiality		
--------------------------	--	--

	R185, R186, R187, R188	
--	------------------------	--

X. EFFICIENCY OF THE JUDICIAL PROCESS AND FAIR TRIAL RIGHTS		
---	--	--

A. Pre-Trial Stage		
--------------------	--	--

1. Disclosure of Evidence 2. Confirmation of Charges 3. Length of Pre-Trial Stage 4. Chambers Practice Manual and Judicial Case Management	R189, R190, R191, R192, R193, R194, R195, R196, R197, R198	
--	--	--

B. Trial Stage		
----------------	--	--

1. Transfer of the Case to Trial Division 2. No Case to Answer 3. Amicus Curiae 4. Evidence Admitted vs Submitted 5. Witness Preparation/Proofing 6. Prior Recorded Testimony and Live Testimony by Means of Audio or Video-Link Technology 7. Management of the Trial 8. Court Activities <i>in situ</i> and Site Visits 9. Brief Absence of a Judge 10. Technology in the Judicial Process (1) Case Law Database (2) Other Digital Resources and Legal Tools (3) Effect on the Defence and Legal Representatives of Victims	R203, R206, R207	R199, R200, R201, R202, R204, R205, R208, R209, R210, R211, R212
---	------------------	--

C. Interlocutory Appeals		
--------------------------	--	--

	R213	
--	------	--

D. Management of Transitions in the Judiciary		
---	--	--

1. Continuing in Office on Expiry of Term 2. Designation of an Alternate Judge 3. Appointment of a Substitute Judge	R214, R215	
---	------------	--

XI. DEVELOPMENT OF PROCESSES AND PROCEDURES TO PROMOTE COHERENT AND ACCESSIBLE JURISPRUDENCE AND DECISION-MAKING		
--	--	--

A. Standard of Review in Appeals B. Departure from Established Practice and Jurisprudence C. developing a Deliberation Culture D. Judgment Structure and Drafting E. Conflicts Between Different Legal Systems and Best Practices		
---	--	--

	R218	R216, R217, R219, R220, R221, R222, R223, R224, R225	
OSM: OTP	XII. OTP SITUATIONS AND CASES: PROSECUTORIAL STRATEGIES OF SELECTION, PRIORITISATION, HIBERNATION AND CLOSURE		
	A. Initial Situation and Case Selection: Preliminary Examinations		
	1. Situation Selection During Phase 1.2. Situation Selection during PRs (Phases 2-4) (1) Narrower Standards for Admissibility (2) Feasibility Considerations in Situation Selection and Prioritisation	R226, R227, R228, R229	
	B. Selection and Prioritisation of Cases and Perpetrators		
	1. The Criteria for Case Selection and Prioritisation (1) The Policy in relation to Selecting and Charging Suspects (2) Defining a Case: Charging Practices (3) Case Prioritisation: Feasibility Issues 2. The Process of Case Selection and Prioritisation	R230, R231, R232, R233, R234, R235, R236, R237, R238, R239 R240, R241, R242	
	C. Situation Prioritisation, Hibernation and Closure		
		R243, R244, R245, R246, R247, R248, R249, R250	
	XIII. PRELIMINARY EXAMINATIONS		
	A. Concerns Related to Preliminary Examinations Section (PES)		
		R251, R252, R253	
	B. Length of PE Activities, Time Limits		
		R254, R255, R256, R257, R258, R259, R260, R261	
C. Complementarity and Positive Complementarity			
1. Complementarity Assessments for Admissibility (Article 17) 2. Positive Complementarity	R262, R263, R264, R265		
D. Transparency of Preliminary Examinations			
	R266, R267		
XIV. INVESTIGATIONS			
A. Investigative Strategy			
	R268, R269, R270, R271		
B. Investigative Technique and Tools			
1. Cooperation for Evidence Collection	R272, R274, R275	R273, R276, R277, R278	
2. Cooperation Requests - JCCD International Cooperation Section		R279, R280, R281, R282	
3. Developing Technical Expertise within the ID (1) Financial Investigations (2) Tracking and Arrests of Fugitives (3) Remote Investigations	R284 R289, R290	R283, R285, R286, R287, R288, R291, R292	
C. ID Field Presence in Situation Countries			
	R293, R294, R295, R296, R297, R298		

D. Evidence Assessment and Analysis		
R299, R300, R301, R302, R303, R304		

XV. OTP INTERNAL QUALITY CONTROL MECHANISMS		
A. Evidence Reviews: Internal and Peer Review		
R305, R306, R307, R308, R309, R310		

B. Trial Monitoring		
R311, R312		

C. Lessons Learnt		
R313, R314, R315, R316, R317, R318, R319		

OSM: R

XVI. DEFENCE AND LEGAL AID		
A. Institutional Representation		
R320, R321, R322, R323, R324, R325, R326, R327		

B. Legal Aid		
R332	R328, R331	R329, R330, R333, R334, R335

XVII. VICTIM PARTICIPATION		
A. Outline of the System B. The System in Operation C. Recognition of Victims as Participants D. Concerns about the System as a Whole E. Legal Representation of Victims F. Tracing Victims in the Reparations Phase		
R336, R337, R338, R339, R340, R341		

XVIII. VICTIMS: REPARATIONS AND ASSISTANCE		
A. Current Framework for Victims Participation in the Rome Statute System, and its Functioning B. Judicial Matters Related to Reparations		
B. 1. General (Judicial) Principles on Reparations 2. Specialised Reparations Chamber 3. Non-Stay of Reparation Proceedings 4. Individual Requests for Reparations 5. Registry-Led Victim Application Process 6. New Potential Beneficiary Requests and Information 7. Reparations Experts 8. Mutually Agreed Protocols 9. Chambers Oversight Role in Implementation	R344, R352	R342, R343, R345, R346, R347, R348, R349, R350, R351, R353

C. The TFV and its Secretariat: Governance and Functioning		
1. Delivery of Mandate 2. Governance, Oversight and Management	R357	R358 (Court & TFV), R359, R360
		R354 (TFV), R355 (TFV), R356 (TFV)

EG

XIX. OVERSIGHT BODIES		
A. ASP - Court Relations		
	R361, R362,	R363 (Assembly & Court & civil society)

B. Internal and External Oversight Mechanisms		
R364, R366, R368	R367	R365

C. Secretariat of the ASP		
R369, R370		

XX. IMPROVEMENT OF THE SYSTEM OF NOMINATION OF JUDGES		
---	--	--

R371, R372, R373, R374, R375, R376, R377, R378, R379, R380	
---	--

XXI. DEVELOPMENT OF THE RULES OF PROCEDURE AND EVIDENCE		
R381, R384	R382	R383

RI	RESOLUTION ICC-ASP/18/Res.7
----	-----------------------------

<p>OP 18</p> <p>(a) Strengthening, cooperation (b) Non-cooperation, (c) Complementarity, and the relationship between national jurisdictions and the Court, (d) Equitable geographical representation and gender balance</p> <p>Appendix II, para 5</p> <p>The election of the Prosecutor, implementation of arrest warrants and reviewing Assembly working methods</p>	<p>(c) Complementarity, and the relationship between national jurisdictions and the Court: Last year, the complementarity co-focal points solicited input on several possible streams of concurrent work for 2021 and noted support by some states parties for an Assembly “position statement or resolution on the principle of complementarity, drafted on the basis of a broader stocktaking exercise. This exercise could draw together the discussions held already [in 2020] with an opportunity for States Parties, the Court, and other stakeholders to engage in dialogue on relevant aspects and recommendations of the IER Report, where appropriate. As some have pointed out, consultations and coordination with whatever mechanism takes forward the IER Report will be needed to demarcate clear parameters for such an exercise.” The IER recommendations relevant to complementarity and positive complementarity touch on areas that go to the heart of prosecutorial independence, including the conduct of preliminary examinations and completion strategies. Recommendations directed to the Office of the Prosecutor should be dealt with by that organ, rather than addressed by the complementarity facilitation. While it will be important to create fora for dialogue on these issues with states parties and civil society, policy decisions are for the court, consistent with respect for judicial and prosecutorial independence, as well as policy expertise.</p> <p>Beyond the IER’s specific recommendations, Human Rights Watch is concerned that without sufficient safeguards, a stocktaking exercise and Assembly position statement or resolution on the principle of complementarity could result in inappropriate pressure on court actors. States parties identified “strengthen[ing] the ongoing dialogue on the implementation and application of the principle of complementarity, providing further clarity and predictability, while respecting prosecutorial and judicial independence,” as a potential area of focus during the discussions that led to the launch of the review process. Judicial and prosecutorial decision-making on complementarity, however, defines certain aspects of the exercise of the court’s jurisdiction, and as a result, it will inevitably attract scrutiny. It is precisely for that reason that states parties should scrupulously avoid actions that, individually or collectively within the Assembly, exert pressure that gives rise to the appearance of interference with that independence.</p>
---	---

KEY	
CWM	Court-wide Matters
OSM: C	Organ Specific Matters: Chambers
OSM: OTP	Organ Specific Matters: Office of the Prosecutor
OSM: R	Organ Specific Matters: Registry
EG	External Governance
RI	Remaining Issues