

INDEPENDENT EXPERT REVIEW: CATEGORIZATION OF RECOMMENDATIONS AND REMAINING ISSUES

Cluster (sub)-section	Assembly	Assembly & Court	Court	Comments
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CWM	I. GOVERNANCE			
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A. Unified Governance				
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<p>1. Structure of the Court: (1) ICC/Court governance, (2) ICC/IO governance</p> <p>2. Decision-making process and Internal legal framework</p> <p>3. Content of internal legal framework</p> <p>4. Working culture at the Court</p>	<p>R1, R2, R3, R4, R5</p> <p>R13</p> <p>R15</p>	<p>R6, R7</p> <p>R8, R9, R10, R11</p> <p>R12</p> <p>R14, R16, R17, R18, R19, R20</p>	<p>The Review Mechanism (RM) considers recommendations R1-R5 as fundamental and interlinked. The way they are being dealt with will affect other recommendations. R6 and R7 are directly addressed to Court organs therefore categorized as Court but are interlinked with the previous recommendations.</p> <p>With exception of R15 the recommendations on this issue are addressed to the Court. Taking into account the interest States Parties have for this topic and its importance for the reputation of the Court, the RM advises that the Court will engage with States Parties in addressing these recommendations. The RM also points to the role of the Staff Union Council.</p>
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B. Chambers Governance (Working environment and culture, structure, management and organization)				
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<p>1. Working environment and culture, 2. Chambers structure and organization (1) Static and dynamic case teams led by référendaires (2) Specialized pre-trial team (3) Transferability of case teams (4) Role of presiding judges (5) Legal staff support to judges, 3. Management in Chambers (1) Head of Chambers staff (2) Legal Advisers to Divisions (3) Quality of legal support staff and professional development (4) Administrative Assistants</p>	<p>R27, R30, R33</p>	<p>R21, R22, R23, R24, R25, R26, R28, R29, R31, R32, R34, R35, R36, R37</p>	<p>On R27, R30 and R33, the Court has the initiative but on recommendation of the CBF, the Assembly has to approve.</p>
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C. OTP Governance

<p>1. The OTP structure, 2. The OTP regulatory framework (1) Current OTP regulatory framework (2) Areas not addressed under the current framework 3. OTP management and leadership structures (1) Prosecutor and Deputy Prosecutor - <i>Roles of Prosecutor and Deputy Prosecutor, Issue of two Deputy Prosecutors</i> 3. (2) Executive Committee (ExCom) 3. (3) Immediate Office of the Prosecutor (IOP) - <i>Chef de Cabinet, Public Information Unit (PIU)</i> 3. (4) Integrated Teams 4. OTP staffing (1) Staff qualifications 4. (2) Quantity of staff</p>	<p>R48</p> <p>R55</p>	<p>R38, R39, R40, R41, R42, R43, R44, R45</p> <p>R46, R47</p> <p>R49, R50, R51, R52</p> <p>R53, R54, R56</p> <p>R57, R58, R59, R60, R61, R62, R63</p> <p>R64, R65, R66, R67, R68, R69, R70</p> <p>R71, R72, R73, R74, R75</p>	<p>On R48 there is a link with art. 42 of the Statute.</p> <p>On R55 the Court has the initiative but on recommendation of the CBF, the Assembly has to approve.</p>
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D. Registry Governance

1. Election of the Registrar and Deputy Registrar	R76, R78	R77	<p>On R77: In accordance with art. 43 of the Statute and rule 12 of the RPE, the decision to elect a Deputy Registrar lies with the Court. The decision as to whether a Deputy Registrar should form part of the Court's senior management structure is one that is of a legitimate interest of the ASP. Therefore, the RM suggests that R77 is best addressed jointly by the Court and the Assembly. R76 and R78 fall within the responsibility of the Assembly, nevertheless the RM would advise to engage with Court in the run up to a decision.</p>
2. Various sections of the Registry			<p>R79</p>
3. Field offices		R82	<p>R80, R81, R83, R84, R85, R86</p> <p>Because of the political, managerial and financial impact the expansion of the number of field offices may have, the RM thinks that this issue (R82) is best dealt with jointly by Court and the Assembly, whereas the initiative lies with the Court. The RM reads the tenure in R84 as only applicable to that posting similar to diplomatic postings, and not as related to the overall concept of tenure in R105.</p>

II. HUMAN RESOURCES

A. General; B. Working environment and culture, staff engagement, staff welfare; C. Bullying and harassment;

	<p>R87, R88</p> <p>Addressing R87 and R88 lies with the Court, but taking into account the importance attached to the issues by States Parties and the damaging effect these can have for the reputation of the Court, the RM advises that the Court regularly updates and engages with States Parties on these issues.</p>
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D. Management of Human Resources

	R89, R90		The RM notes that R89 and R90 are addressed to the Court, but are also interlinked with the recommendations on the governance structure of the Court. It seems logical to address them first before discussing these two recommendations.
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E. Adequacy of Human Resources - Recruitment; F. Short-term appointments, local recruitment			
	R92, R95, R96	R91, R93, R94	On R92 the Court has the initiative but on the recommendation of the CBF, the Assembly has to approve.

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	R101, R103	R102	R101 linked to R92 may require transfer of funds between Major Programmes that requires ASP approval. R103 may require update of guidelines on selection of gratis personnel that was adopted by the ASP.
4. Tenure	R105	R104	Since R105 contains major decision on tenure policy that will affect many aspects of the Court. The RM thinks it is important that both Assembly and Court are jointly responsible for this Recommendation.

III. ETHICS AND PREVENTION OF CONFLICTS OF INTEREST			
A. Ethics framework			
Court staff and/or officials, Individuals affiliated with the Court	R108, R109	R106, R107	On R107, the Office of Internal Audit (OIA) should be engaged in addressing this recommendation. On R108 IOM should be engaged as well.

B. Prevention of conflict of interest		
R110, R112, R113, R114	R111	Regarding R111, the initiative lies with the Court but it has to consult with ASP before any change of policy.

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, R128	R117, R118, R120, R122, R126, R127, R131
		R115, R116, R119, R121, R123, R129, R130
		On R120 the RM points out the linkage with R13. On both recommendations RM thinks Court should take the lead. R125 and R128 require IOM involvement.

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, R137, R139, R140, R141, R143	R134, R138, R142	R132, R133,
		R134 amending financial regulations lies with Assembly, other elements of this recommendations require Court involvement. R142 applies to the Court as well as to Independent Offices that fall under the ASP's responsibility.

VI. PERFORMANCE INDICATORS AND STRATEGIC PLANNING		
A. Efficiency B. Effectiveness		
R144, R145, R146, 148	R147	On R147 the Court will take the initiative but strong coordination with the ASP (SGG) recommended.

VII. EXTERNAL RELATIONS		
A. Relations with the United Nations B. Role of the Court's New York Liaison Office to the UN (NYLO) C. Relations with UN agencies and other international and regional organizations		
R150	R149, R151, R152	On R150 (NYLO) Court has the lead but ASP should be involved particularly as it concerns the issue of support for the New York Working Group.

D. Relations with civil society and media organizations		
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R161, R162	R153, R154, R155, R156, R157, R158, R159, R160	On R158 the Court may take forward this recommendation as part of its outreach activities and mission planning but consultation with the Assembly is advised. On R162 (Journalists Scholarships/grants), the initiative lies with Court but since logistical and financial support of States Parties is crucial, the RM thinks R 162 is best addressed jointly.
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E. Communications Strategy F. Outreach Strategy

R163, R164, R165, R166, R167, R168	These recommendations fall in Courts responsibility but keeping States Parties updated is advised by the RM.
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G. External political measures against the Court

R169	R170	
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OSM: C

VIII. ELECTION OF THE PRESIDENCY

R173	R171, R172	R173 is clearly an ASP responsibility but the RM advises that the Court be involved in the run-up to any decision on amendment.
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IX. WORKING METHODS

A. Induction and continuing professional development

1. Induction programme 2. Timing 3. Contents 4. Continuing professional development	R174, R175, R176, R177	
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B. Full-time service of new judges

R178, R179, R180	RM notes that R180 requires the cooperation of States Parties. Initiative lies with the Court.
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C. Code of judicial ethics

R181, R182, R183, R184	
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D. Judicial collegiality

R185, R186, R187, R188	
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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	The RM notes that implementation of R190 could eventually lead to the necessity to amend the relevant instruments (the Statute and/or RPE).
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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	R202, R203, R206, R207	R199, R200, R201, R204, R205, R208, R209, R210, R211, R212	R202 would require amending the RPE by the ASP. R203 - the Court to take the initial step as per article 51(2) of the Rome Statute and regulation 4 of the Regulations of the Court; R207 is expressly about budgetary provision.
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C. Interlocutory Appeals

	R213	
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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	R214, R215 amendment could be done without the Court, but action on R214-R215 requires the Court's involvement.
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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	R218 consists of two parts, the first part for the Court and the second part for the ASP.
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OSM: OTP **XII. OTP SITUATIONS AND CASES: PROSECUTORIAL STRATEGIES OF SELECTION, PRIORITIZATION, HIBERNATION AND CLOSURE**

A. Initial situation and case selection: Preliminary Examinations

<p>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 prioritization</p>	<p>R226, R227, R228, R229</p>	<p>Under XII, the recommendations are directed to the Court (OTP) to take action. On policy considerations, out of interest of States Parties, engagement with the Assembly through relevant mandates/facilitations where appropriate is advised, respecting the independence of the Court (OTP) in the process.</p>
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B. Selection and prioritization of cases and perpetrators

<p>1. The criteria for case selection and prioritization (1) The policy in relation to selecting and charging suspects (2) Defining a case: charging practices (3) Case prioritization: feasibility issues 2. The process of case selection and prioritization</p>	<p>R230, R231, R232, R233, R234, R235, R236, R237, R238, R239 R240, R241, R242</p>	
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C. Situation prioritization, hibernation and closure

<p>R247</p>	<p>R243, R244, R245, R246, R248, R249, R250</p>	<p>R247 has multiple elements that may require actions from Court and ASP</p>
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XIII. PRELIMINARY EXAMINATIONS

A. Concerns related to Preliminary Examinations Section (PES)

<p>R251, R252, R253</p>	
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B. Length of PE activities, Time limits

<p>R254, R255, R256, R257, R258, R259, R260, R261</p>	<p>R254 - R261 are directed to the Court (OTP), but engagement with States Parties as appropriate is advised by the RM, having taken into account the importance attached to the issues by States Parties.</p>
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C. Complementarity and positive complementarity

<p>1. Complementarity assessments for admissibility (article 17) 2. Positive complementarity</p>	<p>R262, R263, R264, R265</p>	<p>In Assembly resolution ICC-ASP/18/Res.7 (op 18), the ASP requested the Bureau (of the Assembly), through its working groups and facilitations, as a matter of priority to address the topic of “complementarity and the relationship between national jurisdictions and the Court”. Paragraph 5 of appendix 2 to the resolution drew the attention of independent experts to the intention of the Assembly to address this issue. The RM being mindful of the above has decided to categorize R262-R265 under the Assembly and Court, with the Court (OTP) to take the lead, having further taken into account the specific nature of the concrete and actionable recommendations, the entity referred to by the independent experts, and considering the importance of respect for the principle of prosecutorial independence. This categorization, however, is without prejudice to the categorization of “Complementarity, and the relationship between national</p>
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D. Transparency of Preliminary Examinations		
	R266, R267	

XIV. INVESTIGATIONS		
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A. Investigative strategy		
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	<p>R268, R269, R270, R271</p>	<p>R268 - R271 directed to the Court (OTP), but engagement with States Parties as appropriate is advised by the RM.</p>
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B. Investigative technique and tools		
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<p>1. Cooperation for evidence collection</p>	<p>R273, R274, R275</p>	<p>R272, R276, R277, R278</p>	<p>R272 is primarily for the Court, noting the role of individual States Parties in entering MOUs with the OTP.</p>
<p>2. Cooperation requests - JCCD International Cooperation Section</p>		<p>R279, R280, R281, R282</p>	

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	R284 is directed to the Assembly and is linked to R289 which is categorized under Assembly and Court.
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C. ID Field presence in situation countries				
			R293, R294, R295, R296, R297, R298	Implementation of R298 may benefit from engagement with the Assembly, as appropriate. The RM also sees a linkage with R82.

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	The recommendations for institutional representation are directed to the Court, however engagement with the Assembly and the ICCBA is advised.

B. Legal Aid				
R332	R331, R328		R329, R330, R333, R334, R335	R328 - The ASP to take the lead, but the action of the Registrar is needed for implementation.

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. Specialized 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	For the purposes of XVIII, the TFV is treated to be part of the Court at this stage of categorization.
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C. The TFV and its Secretariat: Governance and functioning

1. Delivery of mandate 2. Governance, oversight and management	R354, R357	R355, R356, R358, R359, R360	On R354 the RM notes that the ASP will be the decision-maker. R355 and R356 for the Court (TFV)
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XIX. OVERSIGHT BODIES

A. ASP - Court Relations

	R361, R363	R362	In R363 the reference to civil society as another entity by the Independent Experts is well noted.
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B. Internal and external oversight mechanisms

	R366, R368	R364, R367	R365
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C. Secretariat of the ASP

	R369, R370		R369-R370 have three components and involve structural changes which would necessitate involvement by the Assembly and the Court.
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XX. IMPROVEMENT OF THE SYSTEM OF NOMINATION OF JUDGES

	R371, R372, R373, R374, R375, R376, R377, R378, R379, R380		
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XXI. DEVELOPMENT OF THE RULES OF PROCEDURE AND EVIDENCE

R382, R384	R381, R383	The RM considers R381-R384 as interlinked and should be treated as such. However, R382 and R384 have been categorized under the Assembly based on the action to be taken.
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RRI	Resolution ICC-ASP/18/Res.7
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<p>OP 18</p> <p>Appendix II, para 5</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>The election of the Prosecutor, implementation of arrest warrants and reviewing Assembly working methods</p>	<p>Reference is made to ASP resolution ICC-ASP/18/Res.7 (op 18) and the expressed intention of the Assembly to address the listed issues. See R262-R265 above on categorization of these specific recommendations under the Assembly and the Court.</p>
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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
RRI	Remaining Review Issues