

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 2. Decision-Making Process and Internal Legal Framework 3. Content of Internal Legal framework 4. Working Culture at the Court				<p>In relation to Recommendation No. 6, there needs to be a clarification of the units that the Office of the Prosecutor should delegate to Registry most urgently.</p> <p>In relation to paragraph 53, what are the impacts, positive and negative, of having a high number of individuals being at the Court for a significant length of time?</p> <p>In relation to Recommendation No. 10, what are the measures to improve it? Would there be any administrative sanctions for delaying it?</p> <p>In relation to Recommendation No. 11, how would an extended Coordination Committee (CoCo+) be different from the current COCO, if no clear delegation of competencies is made to the Registry for implementation of administrative rules?</p> <p>In relation to Recommendations No. 12 and 13, at the current status and in light of several issues before ILOAT, how can the proposal be reconciled? In view of the current cases, how can this be prevented from happening again?</p> <p>In relation to Recommendations No. 14 to 16, what measures would have to be contemplated in the proposed working culture in order to avoid all cases of sexual harassment?</p>
	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

In relation to Recommendations No. 31 to 37, the findings of the Experts that chambers legal officers are not geographical diverse (e.g. mostly from Western Europe) are very serious. What would be an immediate action to be suggested to Registry to immediately remediate this matter?

In relation to the same findings, the matter of judges involved in recruitment of legal officers results in lack of transparency in this international organization. This would result in competition processes becoming a mere justification for a fait accompli. Could this situation be supervised and enforced by the IOM?

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

3. OTP Management and Leadership Structures (1) Prosecutor and Deputy Prosecutor - *Roles of Prosecutor and Deputy Prosecutor, Issue of two Deputy Prosecutors*

3. (2) Executive Committee (ExCom)

In relation to Recommendation 60, the Independent Experts welcomed the recent establishment of core integrated teams at Phase 2 of Preliminary Examinations (PEs). They also suggested the ideal integration of these teams, depending of the situation and its complexity, with a minimum of one member of each Investigations Division, Prosecutions Division and JCCD, headed by a Senior Trial Lawyer, and supported by core staff from relevant Divisions and Sections. This is a major step that should be taken with the current PEs, but what about future PEs? How does this collide with a prioritisation of cases and a future revision of the Policy on Preliminary Examinations, in light of current and future budgetary constraints?

In relation to paragraphs No. 177 to 180 (Recs 71 a 75), if the small number of staff available to PES is reported as one of the reasons for the extensive duration of PEs, this is a matter that impacts greatly the interaction between the Court, State Parties and the OTP, since there is no deadline to conclude PEs. Wouldn't be this a paramount reason to not only revise the Policy paper on Preliminary Examinations, but also to prioritize in terms of budgetary constraints and give a clear assessment on whether a PE should be open or not, or whether an investigation should be requested or not?

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	

D. Registry Governance	
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1. Election of the Registrar and Deputy Registrar R76, R77, R78	
2. Various Sections of the Registry	
3. Field offices	

II. HUMAN RESOURCES	
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A. General; B. Working Environment and Culture, Staff Engagement, Staff Welfare; C. Bullying and Harassment;	
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D. Management of Human Resources	
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E. Adequacy of Human Resources - Recruitment; F. Short-Term Appointments, Local Recruitment	
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G. Performance Appraisal	
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H. Staff Training and Development	
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I. Multilingualism	
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J. Flexibility, Scalability and Mobility in Staffing	
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1. Internal Mobility 2. External Mobility 3. Secondments	
4. Tenure	

III. ETHICS AND PREVENTION OF CONFLICTS OF INTEREST	
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A. Ethics Framework	
Court staff and/or officials, Individuals affiliated with the Court	

B. Prevention of Conflict of Interest	

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

V. BUDGET PROCESS	
A. Court Budget Process, B. Committee on Budget and Finance (CBF) C. Enhancing Trialogue D. Assembly of States Parties E. Miscellaneous	

VI. PERFORMANCE INDICATORS AND STRATEGIC PLANNING	
A. Efficiency B. Effectiveness	

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	

D. Relations with Civil Society and Media Organisations	

E. Communications Strategy F. Outreach Strategy	

G. External Political Measures against the Court	

OSM: C

VIII. ELECTION OF THE PRESIDENCY	

IX. WORKING METHODS

A. Induction and Continuing Professional Development

1. Induction Programme 2. Timing 3. Contents 4. Continuing Professional Development	
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B. Full-Time Service of New Judges

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C. Code of Judicial Ethics

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D. Judicial Collegiality

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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	
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B. Trial Stage

<p>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</p>	
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C. Interlocutory Appeals	

D. Management of Transitions in the Judiciary	
<p>1. Continuing in Office on Expiry of Term 2. Designation of an Alternate Judge 3. Appointment of a Substitute Judge</p>	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	

OSM: OTP	XII. OTP SITUATIONS AND CASES: PROSECUTORIAL STRATEGIES OF SELECTION, PRIORITISATION, HIBERNATION AND CLOSURE	
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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 Prioritisation</p>		<p>In relation to Recommendations No. 226 to 229: Footnote 447 remits to Section VII.F. Outreach Strategy. The Independent Experts recommended this outreach must be planned even at early PE stage, so that when it is opened, public is adequately informed. But it seems to be a contradiction here, because outreach is only allowed when a situation is already authorized by the Pre Trial Chamber. If the Public Information and Outreach Section (PIOS) should be in contact with OTP and the</p>

	<p>concerned State Party to publicize it, this would happen outside the current legal framework. How is this recommendation reconcilable at the Preliminary Examination stage?</p>
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B. Selection and Prioritisation of Cases and Perpetrators	
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<p>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</p> <p>2. The Process of Case Selection and Prioritisation</p>	<p>In relation to Recommendations No. 243 to 248, the Independent Experts Report mentions the "Basic Size" document, produced in 2016, as a valuable document for the analysis. This document was produced by OTP in the context of a discussion at Cluster II - Budgetary process- of the Study Group on Governance, in 2016, and Mexico co-chaired this Cluster II at that time. The document was produced in close coordination with OTP high ranking officers, in the context of the discussions for the feasibility of establishing or not a "budgetary envelope" for the Court. Would this "Basic Size" document be considered a valuable document that could be rescued and used for purposes of the current recommendations? If yes, how could this document be used, in order for not being considered a document imposing budgetary restraints on the Court, nor imposing financial obligations on States Parties of impossible compliance?</p>
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C. Situation Prioritisation, Hibernation and Closure	
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XIII. PRELIMINARY EXAMINATIONS	
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A. Concerns Related to Preliminary Examinations Section (PES)	
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B. Length of PE Activities, Time Limits	
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	<p>In relation to Recommendations No. 254 to 261, we envisage as an important element the inclusion of the PE Strategy Plan in the current regulatory framework of the ICC and, in particular, in the OTP regulatory framework? How could it be envisaged that reporting to ASP on compliance with PE strategy plan would impact the work of the OTP, without facing the</p>
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	argument of intervention on judicial and investigative independence? How could be envisaged that this PE strategy plan would impact future decisions and jurisprudence of the Court?
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C. Complementarity and Positive Complementarity	
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<p>1. Complementarity Assessments for Admissibility (Article 17) 2. Positive Complementarity</p>	<p>In relation to Recommendations No. 262 to 265, the assessment clearly states that positive complementarity has been carried out at PE stage and that it has clearly delayed closing of PEs. We are talking about 12 years in some cases. This undeniably has resulted in negative budgetary impacts, which has been long argued by some SP. The Independent Experts Report mentions that positive complementarity should be considered in the strategy for the situations at all stages of proceedings, but at the same time, the recommendations are mainly at the investigation procedure stage. How could this reconcile the past practices by OTP that have been carried on during the past and that have always been denied, with a possible budgetary impact? Wouldn't the proposal in the Independent Experts Report may have a budgetary effect, unless the current ICC legal framework is amended?</p>
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D. Transparency of Preliminary Examinations	
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	<p>In relation to Recommendation No. 266, the activities on positive complementarity mentioned in the findings of the Independent Expert Review seem not to be clearly made transparent and accepted by the OTP, neither reported annually or their budgetary impact disclosed, and this was included in said assessment findings. Wouldn't recommendation R266 to OTP of continuing with its current level of transparency on Preliminary Examinations, be contradictory with the findings expressed in the section, corresponding to positive complementarity activities?</p>
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XIV. INVESTIGATIONS	
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A. Investigative Strategy	
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B. Investigative Technique and Tools	
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<p>1. Cooperation for Evidence Collection</p>	
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2. Cooperation Requests - JCCD
International Cooperation Section

3. Developing Technical Expertise
within the ID (1) Financial
Investigations (2) Tracking and Arrests
of Fugitives (3) Remote Investigations

C. ID Field Presence in Situation Countries

D. Evidence Assessment and Analysis

XV. OTP INTERNAL QUALITY CONTROL MECHANISMS

A. Evidence Reviews: Internal and Peer Review

B. Trial Monitoring

C. Lessons Learnt

OSM: R

XVI. DEFENCE AND LEGAL AID

A. Institutional Representation

B. Legal Aid

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

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

C. The TFV and its Secretariat: Governance and Functioning

1. Delivery of Mandate
 2. Governance, Oversight and Management R357

EG

XIX. OVERSIGHT BODIES

A. ASP - Court Relations

B. Internal and External Oversight Mechanisms

C. Secretariat of the ASP

XX. IMPROVEMENT OF THE SYSTEM OF NOMINATION OF JUDGES

XXI. DEVELOPMENT OF THE RULES OF PROCEDURE AND EVIDENCE

RI

RESOLUTION ICC-ASP/18/Res.7

OP 18	(a) Strengthening, cooperation (b) Non-cooperation, (c) Complementarity, and the relationship between national jurisdictions and the Court, (d) Equitable geographical representation and gender balance
Appendix II, para 5	The election of the Prosecutor, implementation of arrest warrants and reviewing Assembly working methods

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