

Comments on allocation, priorities and deadlines of the IER recommendations submitted by the Co-Chairs and Co-Focal Points of the Study Group on Governance

General Remarks

A major part of the recommendations of the Independent Experts refer to governance issues. It would however be inadvisable to conclude that these recommendations should therefore generally be allocated to the SGG. Firstly, one single working group will not be able to effectively manage the assessment of almost a third of all recommendations. Secondly, some recommendations (i.e. relating to recruitment, contractual arrangements, or the internal justice system) might be better suited for other facilitations.

The Co-Chairs and Co-Focal Points of the Study Group on Governance (SGG) consider it to be most sensible for the SGG to tackle with priority those recommendations that directly relate to the mandated topics of the SGG and subsequently those related to the Three-Layered Governance Model. Further down the road, the SGG will also have to address recommendations that as a consequence of their implementation require an amendment to the Rules of Procedure and Evidence (i.e. **R202-203, R206, R344**)

Current Mandate of the SGG as confirmed

- The following recommendations directly relate to the core mandate of the SGG as confirmed by the ASP in ICC-ASP/19/Res.6 and should therefore be allocated to the SGG.
 1. Procedure for amending the Rules of Procedure and Evidence: **R381-384**
 2. Performance indicators: **R144-148**
 3. Management of transitions in the judiciary: **R214-215**
 4. Election of the Registrar: **R76-78**

Three-Layered Governance Model

- The SGG is the right platform for the ASP and the Court to jointly assess recommendations directly related to the Three-Layered Governance Model (**R1-5**) and the Court to consult/update the ASP on its own assessment (R6-11).
- The recommendations to implement the Three-Layered Governance Model (R1-11) raise fundamental questions and build the foundation for a number of subsequent recommendations (i.e. R89, **R369-370**). They should therefore be assessed as a matter of priority.
- However, with the new ICC President having just assumed his position and the incoming Prosecutor taking up his position mid-June 2021, it seems unlikely that the Court will be ready to engage with States Parties on this issue before ASP20.
- The Assessment of recommendations related to the Three-Layered Governance Model should therefore begin in early 2022 with the deadline being ASP21.

Internal Justice System

- There are a number of dispersed recommendations related to the internal justice system. Some of these recommendations could be allocated to the SGG, but also to other facilitations like the IOM Review. It would be worthwhile to consider whether these recommendations should be assessed together within the context of the suggested internal justice system as depicted on p. 336 figure 2 of the IER report. (i.e. R3 with a connection to R112-113)

R Nr.	Categorisation	Allocation within ASP	Priority (yes/no)	Deadline	Comments
1	both	SGG	yes	ASP21	3-layered governance model
2	both	SGG	yes	ASP21	3-layered governance model
3	both	SGG, IOM?	yes	ASP21	3-layered governance model
4	both	SGG	yes	ASP21	3-layered governance model
5	both	SGG	yes	ASP21	3-layered governance model
76	ASP	SGG	yes	ASP20	Election of the Registrar
77	both	SGG	yes	ASP20	Election of the Registrar
78	ASP	SGG	yes	ASP20	Election of the Registrar
144	both	SGG	no	?	Performance indicators
145	both	SGG, BMO?	no	?	potential overlap with BMO, Budget Facilitation
146	both	SGG	yes	ASP20	Performance indicators
148	both	SGG	yes	ASP20	Performance indicators
202	both	SGG, WGA	no		Court to take initial step, requires amendment of RPE
203	both	SGG, WGA	no		Court to take initial step, requires amendment of RPE
206	both	SGG	yes	ASP20	connected to R381-384, requires amendment of RPE
214	both	SGG, WGA	yes	ASP20	Management of transitions in the judiciary
215	both	SGG	no		Management of transitions in the judiciary
344	both	SGG, WGA	no		Court to take initial step, requires amendment of RPE
369	both	SGG	yes	ASP21	connected to 3-layered governance model
370	both	SGG	yes	ASP21	connected to R369
381	both	SGG, WGA	yes	ASP20	Procedure for amending RPE
382	ASP	SGG	no		Procedure for amending RPE
383	both	SGG	no		Procedure for amending RPE
384	ASP	SGG, WGA	no		Procedure for amending RPE