

INDEPENDENT EXPERT REVIEW: CATEGORIZATION OF RECOMMENDATIONS AND REMAINING ISSUES

Prepared by the Review Mechanism

Sections	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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1. Structure of the Court: (1) ICC/Court Governance, (2) ICC/IO Governance		X			<p>How these recommendations are treated will have an impact on a number of other recommendations in the IER report. These recommendations cover, among other things, the allocation of responsibilities and functions including in respect of the ASP. It is therefore important that the ASP as well as the Court should be involved in considering them.</p> <p>Our comments for recommendations 1-7 apply also to these recommendations.</p> <p>The UK recognises the importance of improving the working culture of the Court. The primary responsibility for implementing these recommendations is likely to be for the Court. We recognise a specific role for the ASP in respect of recommendation 15. In terms of consideration of these recommendations the ASP has a role pursuant to its oversight function.</p>
2. Decision-Making Process and Internal Legal Framework		X			
3. Content of Internal Legal framework		X			
4. Working Culture at the Court			X (Court likely to be leading on recs 16-20)		

B. Chambers Governance (Working Environment and Culture, Structure, Management and Organisation)					
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<p>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. 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>X - especially recommendations 27, 30 and 33. ASP involvement in consideration of recs across this section but likely Court lead in implementing the recs other than the three specified (21, 22, 23, 24, 25, 26, 28, 29, 31, 32, 34, 35, 36, 37).</p>	<p>States should be involved in consideration of these proposals. The primary responsibility for implementing recs in this sub topic would likely be for the Court. However there are aspects that involve the ASP. For instance, recommendation 27 includes a proposal relating to the reclassification of positions. This reflects the role that States Parties play in approving the budget and in approving reclassifications.</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</p>	<p>38, 39, 40, 41, 42, 43, 44, 45</p>	<p>Implementation would likely be primarily a matter for the Court. ASP to be kept informed/updated.</p>
<p>3. OTP Management and Leadership Structures (1) Prosecutor and Deputy Prosecutor - <i>Roles of Prosecutor and Deputy Prosecutor, Issue of two Deputy Prosecutors</i></p>	<p>48 (see comment) 46, 47</p>	<p>Implementation of recommendations 46 and 47 would likely be primarily a matter for the court. ASP to be kept informed/updated. The process for electing Deputy Prosecutors is set out at article 42 of the Statute - the list or lists of candidates are to be provided by the Prosecutor to be elected by States.</p>
<p>3. (2) Executive Committee (ExCom)</p>	<p>49, 50, 51, 52,</p>	<p>Implementation likely primarily a matter for the Court.</p>

3. (3) Immediate Office of the Prosecutor (IOP) - <i>Chef de Cabinet, Public Information Unit (PIU)</i>	53, 54, 55, 56	Implementation likely primarily a matter for the Court.
3. (4) Integrated Teams	57, 58, 59, 60, 61, 62, 63	Implementation likely primarily a matter for the Court/OTP.
4. OTP Staffing (1) Staff Qualifications	64, 65, 66, 67, 68, 69, 70	Implementation likely primarily a matter for the Court.
4. (2) Quantity of Staff	71, 72, 73, 74, 75	Implementation likely primarily a matter for the Court.

D. Registry Governance

1. Election of the Registrar and Deputy Registrar	R76, R77, R78	Recommendations in this section are primarily a matter to be considered by the ASP. That said, the input and views of the Registrar and judges (given that they choose the Registrar) would be helpful. Likewise, seeking the views of the Court Presidency would be sensible given the Presidency/Registrar relationship under the Statute. We agree the decision is ultimately one for States. Primarily for the Registrar to take this forward this evaluation. Given the underlying subject matter touches on issues where the cooperation from States is of central importance it may be useful for States to participate in the consideration of the conclusions of the evaluation.
2. Various Sections of the Registry	79 (see comment)	
3. Field offices	84, but note comment regarding other recommendations herein	80, 81, 82, 83, 85, 86 - implementation for the Registry but may be useful for States to be involved in discussion Implementation of these recommendations would be primarily a matter for the Registry. However, may be useful for States to be involved in the discussion. Recommendation 84 relates to tenure policy and may, depending on how recommendation 105 is taken forward, form part of broader discussions on tenure policy in which States will have a role.

II. HUMAN RESOURCES

A. General; B. Working Environment and Culture, Staff Engagement, Staff Welfare; C. Bullying and Harassment;		
	87, 88	
D. Management of Human Resources		
	89, 90	
E. Adequacy of Human Resources - Recruitment; F. Short-Term Appointments, Local Recruitment		
	92, 95	91, 93, 94, 96 Sensible to involve the ASP in discussion on recommendation 92. See also ASP role in approving reclassifications.
G. Performance Appraisal		
	97, 98	
H. Staff Training and Development		
	99	
I. Multilingualism		
	100	Interested in view of the Court and other States on the categorisation of this recommendation.
J. Flexibility, Scalability and Mobility in Staffing		
1. Internal Mobility 2. External Mobility 3. Secondments 4. Tenure	103 101, 102 105 104	
III. ETHICS AND PREVENTION OF CONFLICTS OF INTEREST		
A. Ethics Framework		
Court staff and/or officials, Individuals affiliated with the Court	X	The ASP should play a key role in recommendations 108 and 109 given the detailed considerations that the ASP have given these matters in recent years. Any decision on 109 would likely be primarily for the ASP.

B. Prevention of Conflict of Interest	
110, 112, 113, 114	111

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 X
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V. BUDGET PROCESS

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

135, 136, 137, 139, 140, 141, 143	132, 133, 142 (see comments on these three). 134, 138	Implementation of recommendations 132 and 133 would likely be primarily for the Court - ASP part of budgetary process and so best part of preceding consideration/discussion. Recommendations 135, 136 and 137 are primarily for consideration by the ASP and CBF. Recommendation 139 is for consideration by the ASP alone. Recommendations 140, 141 and 143 are primarily for the ASP with Court views/input. Recommendation 142 would be for the Court to implement.
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VI. PERFORMANCE INDICATORS AND STRATEGIC PLANNING

A. Efficiency B. Effectiveness

X	Recommendation 148 touches on ASP oversight function. Recommendations 144-147 would be primarily for court with oversight of ASP.
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VII. EXTERNAL RELATIONS

A. Relations with the United Nations B. Role of the Court's New York Liaison Office to the UN (NYLO) Relations with UN Agencies and Other International and

X	These recommendations would be primarily for Court to implement but ASP has an interest given role of NYLO
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D. Relations with Civil Society and Media Organisations

153, 154, 155, 156, 157, 158, 159, 160, 161, 162	ASP to be kept informed/updated.
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E. Communications Strategy F. Outreach Strategy

163, 164, 165, 166, 167, 168	ASP to be kept informed/updated.
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G. External Political Measures against the Court
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169, 170	
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OSM: C	VIII. ELECTION OF THE PRESIDENCY
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173	171, 172 (both judiciary)	
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IX. WORKING METHODS

A. Induction and Continuing Professional Development
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1. Induction Programme 2. Timing 3. Contents 4. Continuing Professional Development	174, 175, 176, 177	
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B. Full-Time Service of New Judges

X	
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C. Code of Judicial Ethics

181, 182, 183, 184	
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D. Judicial Collegiality	
185, 186, 187, 188	

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	189-198 Primarily for the Court to implement. Possible ASP role i.e. if RPE amendments are proposed under current procedure.

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	206, 207 199-205, 208, 209, 210, 211, 212, Any implementation of 199-205 and 208-212 would be primarily for the court.

C. Interlocutory Appeals	
213	

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	
	216, 217, 219, 218 220, 221, 222, 223, 224, 225

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	X	Categorisation reflects policy issues. Independence of Prosecutor to be respected.
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	X	Categorisation reflects policy issues. Independence of Prosecutor to be respected.

2. The Process of Case Selection and Prioritisation	X	
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C. Situation Prioritisation, Hibernation and Closure		
X		Categorisation reflects policy issues. Independence of Prosecutor to be respected.

XIII. PRELIMINARY EXAMINATIONS		
A. Concerns Related to Preliminary Examinations Section (PES)		
X		

B. Length of PE Activities, Time Limits		
X		Categorisation reflects policy issues. Independence of Prosecutor to be respected.

C. Complementarity and Positive Complementarity		
1. Complementarity Assessments for Admissibility (Article 17) 2. Positive Complementarity	X	Categorisation reflects policy issues. Independence of Prosecutor to be respected.

D. Transparency of Preliminary Examinations		
X		Categorisation reflects policy issues. Independence of Prosecutor to be respected.

XIV. INVESTIGATIONS		
A. Investigative Strategy		
X		

B. Investigative Technique and Tools		
1. Cooperation for Evidence Collection	X	ASP role as described in recommendations 272 and 273

2. Cooperation Requests - JCCD International Cooperation Section		279-282	
3. Developing Technical Expertise within the ID (1) Financial Investigations (2) Tracking and Arrests of Fugitives (3) Remote Investigations	284, 289 primarily for ASP but Court also imp part of conversation	283, 286, 287, 288, 289, 291, 292	Rec 285 refers to links to national law enforcement so worthwhile States being involved in respect of that recommendation. Rec 290 has budgetary implication. Recs 284 and 289 identify ASP but given issues Court input would be valuable.

C. ID Field Presence in Situation Countries	
	293, 294, 295, 296, 297, 298

D. Evidence Assessment and Analysis	
X	Implementation is primarily for court. Recs 303 and 304 have potential cost implications to bear in mind re ASP role.

XV. OTP INTERNAL QUALITY CONTROL MECHANISMS	
A. Evidence Reviews: Internal and Peer Review	
	305, 306, 307, 308, 309, 310

B. Trial Monitoring	
	311, 12

C. Lessons Learnt	
	313, 314, 315, 316, 317, 318, 319
	Implementation is primarily for court

OSM: R	XVI. DEFENCE AND LEGAL AID	
	A. Institutional Representation	
	X	ASP to be kept updated/informed.

B. Legal Aid		
	X	Need for ASP involvement cf references to ASP/States in recs 328 and 332.

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		
	X	Some issues herein are primarily for the Court cf recommendation 340. More broadly, these are important systemic issues so good to collaborate.

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	X	Some recommendations refer expressly to role for the ASP i.e. recs 344 and 352. Others are primarily for the Court i.e. recs 346, 350 and 351.

C. The TFV and its Secretariat: Governance and Functioning		
1. Delivery of Mandate 2. Governance, Oversight and Management	R357 X	Recommendation 354 is a major proposal where discussion with States Parties will be key. Some of the other recommendations are more granular and for the TFV to take forward i.e. rec 355.

EG	XIX. OVERSIGHT BODIES	
	A. ASP - Court Relations	
	X	
	B. Internal and External Oversight Mechanisms	
	X	ASP lead on rec 368.
	C. Secretariat of the ASP	
	X	ASP primarily responsible but worth seeking input from others.
	XX. IMPROVEMENT OF THE SYSTEM OF NOMINATION OF JUDGES	
	X	
	XXI. DEVELOPMENT OF THE RULES OF PROCEDURE AND EVIDENCE	
X		

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

Appendix II, para 5

the Prosecutor,
implementatio
n of arrest
warrants and
reviewing
Assembly
working

KEY	
CWM	Court-wide Matters
OSM: C	Organ Specific Matters: Chambers
OSM: OTP	Organ Specific Matters: Office of the
OSM: R	Organ Specific Matters:
EG	External Governance
RI	remaining issues