

INDEPENDENT EXPERT REVIEW: COMPREHENSIVE ACTION PLAN

NOTE: The views expressed herein are presented on behalf of the Criminal Justice Section and its International Criminal Court Project (a joint project of the Criminal Justice Section and Center for Human Rights). They have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the position of the Association.

Court Organ(s) / ASP Mandate(s)	Recommendations/Cluster of Recommendations	Prioritized Recommendation(s)	Timeline (half-yearly)	Comments/ Implementation Status
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COURT ORGANS				
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<p>Presidency</p>		<p>Induction program (R 174-76)</p> <p>Strengthening Code of Judicial Ethics (R 181-82)</p>		<p>Induction Program: An induction program can be used to address many areas of recommendation relevant to the judiciary, such as ethics, working culture, collegiality, and more substantive areas novel to judicial service at the ICC, such as management of complex trials. As noted by the IER, the Presidency might consider working with and utilizing the expertise of external entities, such as civil society, bar associations, and academics to assist in designing or conducting certain programs.</p> <p>In terms of priority, both induction programs and the Code of Judicial Ethics can be vehicles for addressing other recommendations and their assessment as soon as possible would be valuable given recent judicial elections.</p>

Judicial Divisions

Office of the Prosecutor

Updating the Chambers Practice Manual and considering whether certain procedures should be binding or included in regulations (R 194-95) (noting specific recommendations on presentation of evidence (R 192-93), timelines, consistent procedures for reparations (R 342-43), etc.)

Noting recent changes made to the Chambers Practice Manual, those changes did not address all areas raised by the IER, and the Court's overall response noted differentiation between the Court's binding regulations and the Chambers Practice Manual. Nonetheless, a thorough and careful review of the Manual, including considering whether making certain provisions binding would be beneficial, is one way to address many other specific recommendations made by the IER. As the Court's response indicated, this recommendation should be consistently revisited by the Court as needed to incorporate recommendations where substantive assessment will take longer (ex. consistent procedures for reparations).

Registry

Strengthening Court-wide professional development (R99, noting related specific recommendations 86, 88, 100)

Legal aid policy (with independent offices and ASP Working Group on Legal Aid) (R 238)

Institutional representation of defense (with Office of Public Defense) (R 322-24, 326)

Formalizing institutional relationship of support staff for external counsel and victims representatives, extending protection of policies and disciplinary proceedings (R 333-35)

Professional development: The Court agreed in its response with the need to strengthen its training and development program, but noted funding has limited implementation. Budgetary investment will therefore be necessary from the ASP. Investments in professional development might be used to address other issues noted within the IER, including specific capacities (ex. investigation tactics), ethics, and working culture, and the Court should look to external experts and partners to support professional development needs identified by the Court.

Institutional representation of defense: The Court noted that it will carefully consider the IER recommendations but also noted that challenges might arise in enabling greater communications for defense through the Court, and in transferring certain responsibilities to an office as recommended by the IER (ex. whether efficiency would be lessened as certain Registry responsibilities also pertain to legal aid for victims). Working with all stakeholders, the assessment of these recommendations might take some time and therefore should commence sooner rather than later.

Consideration of institutional relationship with and well-being protections of support staff: The Court indicated it is taking steps towards interim protection for support staff but will also consider this as part of the legal aid policy review as directed by the ASP. As noted below on working culture at the Court, the equal protection of staff impacts the substantive work of the Court and its legitimacy.

<p>The Court (as a whole)</p>		<p>Working culture at the Court (R 14, 87)</p> <p>Gender equality (mainstreaming, recruitment and promotion of high-level personnel (R 15-16, 88))</p> <p>Internal grievance procedures (R 115-19, 131)</p> <p>Ethics frameworks (R 112-13)</p> <p>Communications/ outreach strategy (R 163, 164)</p>		<p>Recognizing recent expressions from Court principals regarding addressing the Court's working culture, gender equality, and the appointment of a Focal Point for Gender Equality, the IER and other stakeholders have noted serious allegations of bullying and harassment, as well as the insufficiency of grievance and disciplinary procedures that may require significant changes in structure or function. The Court's working culture is essential to the Court's functioning and effectiveness overall, as well as its legitimacy.</p> <p>Communications and outreach are likewise crucial to the Court's success, both in individual investigations and situations, but also for ensuring transparency and building trust and political support for the institution and its work. The Court's response recognized the need for a stronger communications and outreach strategy, but noted that different organs may have different needs and roles. The Court also raised complications in extending outreach to the PE phase (funding, limitations of Registry's role in its regulations, potential politicization), and also noted that increased activity would likely require further budgetary investment. These issues therefore might require significant discussion.</p>
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COURT INDEPENDENT OFFICES				
<p>Independent Oversight Mechanism</p>				<p>Key stakeholder in assessment of strengthening and reforming internal grievance procedures</p>
<p>Office of Internal Audit</p> <p>Office of Public Counsel for Victims</p>				

Office of Public Counsel for the Defence				Noting OPCD's response expressed support for recommendations on elevating a defense office within the Registry, for extending workplace protections to staff, and for further study as to which responsibilities can effectively be transferred.
Secretariat of the Trust Fund for Victims		Comprehensive fundraising strategy, including exploration of private donors and innovative sources (R 356)		

ASP MANDATES/MANDATES HOLDERS/FACILITATIONS				
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Arrears				
Budget				
Budget: Budget Management Oversight				
Budget: Premises				
Complementarity				
Cooperation				
Geographical representation and gender balance in the recruitment of staff of the Court (GRGB)				
Legal Aid		Full reform of legal aid policy (R 238) (together with Registry and relevant stakeholders with direct experience)		As noted by the IER and understanding progress continues, a full revision of a legal aid policy has been long overdue and should be prioritized.
Non-cooperation				
Omnibus resolution				
Plan of action for achieving universality and full implementation of the Rome Statute				
Review of the procedure for the nomination and election of judges				

Review of the work and operational mandate of the Independent Oversight Mechanism			
Scheduling of ASP Sessions			
Strategic Planning (The Hague Working Group)			
Study Group on Governance			
Working Group on Amendments			

<p>Review Mechanism</p> <p>See ICC-ASP/19/Res.7, para 4 (b)(ii), which states: "As regards recommendations directed to the Assembly or both the Court and the Assembly, an allocation to the relevant and appropriate Assembly Mandate or to the Review Mechanism, acting as a focal point for States Parties, where no relevant mandate exists".</p>	<p>Procedure for amending rules of procedure and evidence (R 381-84)</p>	<p>Assessing recommendations to allow for a procedure that allows the RPE to adapt is essential to pursuing other recommendations on efficiency, fairness and court procedures (ex. the lack of provision for judicial absence as discussed in IER report and Court responses). This recommendation requires study both by the Assembly, its relevant mandate holders and the Court. Because the IER notes addressing the effectiveness and timeliness of the current process would require significant changes to the adoption procedure, a broader focal point may be appropriate.</p>
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