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**Report of the Bureau on Salary and all allowances for judges,
whose terms have been extended in accordance with
article 36, paragraph 10****Note by the Secretariat**

Pursuant to paragraph 34 of resolution ICC-ASP/11/Res.8 of 21 November 2012, the Bureau of the Assembly of States Parties hereby submits for consideration by the Assembly the report on the salaries and all allowances for judges, whose terms have been extended in accordance with article 36(10). The present report reflects the outcome of the informal consultations held by The Hague Working Group of the Bureau with the Court.

I. Introduction

1. The informal budget consultations within The Hague Working Group had in its agenda the issue of salary and all allowances for judges, whose terms have been extended in accordance with article 36, paragraph 10.
2. The Chair, Ambassador Werner Druml (Austria), explained that this agenda item derived from the omnibus resolution by the Assembly. The eleventh session of the Assembly, in paragraph 34 “requested the Bureau in consultation with the Court and relevant bodies to continue to consider the proper arrangement of salary and all allowances for judges, whose terms have been extended in accordance with article 36(10), and to report thereon to the Assembly at its twelfth session”. A similar request had been made by the Assembly at its tenth session. The Committee on Budget and Finance has addressed this issue at its twentieth session.¹
3. The budget facilitation seemed to be the only proper forum for the Bureau, under the Hague Working Group, to address this issue, which has now been pending for two years. To move forward, the facilitator had agreed with the Court that it would make a presentation on the matter, and that there would be the opportunity to have a discussion on this issue.

II. Discussion

4. The Presidency of the Court explained that the issue had its origins in the exceptional circumstances relating to the Lubanga trial, which, being the first trial of the Court, lasted much longer than was expected. Consequently, the mandates of the three judges assigned to the case required extension beyond their original terms. The question raised by some at the time was whether the extended judges should be paid 100 per cent of the salary earned by a regular judge, even if they were sitting in one case only.

¹ ICC-ASP/12/5/Rev.1, paras. 35 and 36.

5. The Presidency pointed out that the Rome Statute provides in article 36(10) of the Rome Statute that a judge who is engaged in the hearing of a trial or appeal process cannot be replaced once it has commenced, with the exception of a judge of Pre-Trial Chamber. The Assembly² has established the applicable salary and pension schemes, which make no distinction between the salaries or other allowances of regular and extended judges. It is to be noted, however, that the Court does not pay any pension contribution to judges serving longer than nine years, which brings actually some financial benefits in comparison with a new judge. Overall, the salary of judges has remained at the same level for the past 10 years.

6. Furthermore, the Presidency explained the situation regarding the extended judges as at the end of October 2013; six judges have had their mandates extended to date (three of whom departed on 31 August 2012 with the conclusion of the Lubanga trial). However, since the last election of six new judges in 2011, only three of these have since begun to work on a full-time basis with the Court.³ This underlines the Presidency's efforts on the one hand to ensure the availability of a sufficient number of judges to meet the requirements of current casework, while on the other hand attempting to limit as far as possible any increase beyond the total of 18 judges normally provided for in the Statute. In practice so far there have never been more than 19 judges serving at the Court at any given time, thus limiting the impact that extensions have had on the budget. Finally, the Presidency underlined the need to maintain the flexibility of being able to extend judges' mandates where the situation so required, as it would not be effective use of resources to decline to assign a judge who still had one to two years of his or her mandate left to a new case, by only considering the risk that this might lead to an extension.

III. Conclusion

7. The Chair concluded that the Working Group had held a useful discussion and that he would raise the issue with the Bureau for identifying the best way forward on presenting the issue to the Assembly as requested in the omnibus resolution.

² In its report ICC-ASP/3/25 and subsequent decisions.

³ The annex includes a list of extended judges as at 25 October 2013.

Annex

Background note by the Court on extended judges

Since the establishment of the Court, the following judges have had their terms extended in accordance with article 36, paragraph 10, of the Rome Statute:*

The Prosecutor v. Thomas Lubanga Dyilo

Judge Blattmann	Extended from 11 March 2009 to 31 August 2012 (total: 41.6 months)
Judge Odio-Benito	Extended from 11 March 2012 to 31 August 2012 (total: 5.6 months)
Judge Fulford	Extended from 11 March 2012 to 31 August 2012 (total: 5.6 months)

The Prosecutor v. Jean-Pierre Bemba Gombo

Judge Steiner	Extended from 11 March 2012 (19.5 months to date)
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The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui

Judge Diarra	Extended from 11 March 2012 (19.5 months to date)
Judge Cotte	Extended from 11 March 2012 (19.5 months to date)

* As at 25 October 2013.