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**Eighth session**

The Hague  
18-26 November 2009

**Report of the Presidency on the  
revised staffing structure of Chambers\***

**I. Executive summary**

1. The International Criminal Court ("the Court") hereby submits its report on the revised staffing structure for the legal support staff of the judicial Divisions, in conformity with the request of the Committee on Budget and Finance ("the Committee"). Such a staffing structure must satisfy the need for continuity that is inherent in a judicial institution and must at the same time be flexible enough to address changing workload scenarios. This has led to the following revised staffing structure:

2. The core legal support staff of the Chambers/Divisions are the P-3 Legal Officers attached to the judges. However, should a Chamber be in need of additional P-3 Legal Officers, P-3 colleagues from other Chambers may temporarily join and assist the Chamber team in the greatest need. All other legal support staff, namely the P-5/P-4 (Senior) Legal Adviser, P-2/P-1 Associate/Assistant Legal Officer and GS-OL Research Assistant, are assigned to the Divisions, thus ensuring continuity and flexibility. Staffing issues that cannot be resolved within a Division itself would first be handled through consultation between the Presidents of the Divisions concerned, in an effort to see if the deficiency could be made good through inter-divisional assistance. Additional posts will be requested only if a significant increase in workload cannot be handled by existing staff. The Court will constantly review the efficiency and practicability of the revised staffing structure, but will await the conclusion of at least one or two full cycles of proceedings before reconsidering any changes to it. In case of any changes to the staffing structure, the Court will submit a new report and inform the Committee accordingly.

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\* Previously issued as ICC-ASP/8/CBF.2/5.

## II. Introduction

3. This report on the staffing structure for Chambers staff is submitted to the Committee pursuant to paragraph 73 of the report of the Committee on the work of its eighth session,<sup>1</sup> paragraph 72 of the report of the Committee on the work of its eleventh session<sup>2</sup> and paragraphs 53 to 57 of the report of the Committee on the work of its tenth session.<sup>3</sup> The revised staffing structure as set out in the present report supersedes the staffing structure submitted by the Presidency to the Committee in 2004.<sup>4</sup>

4. The current allocation of staff in Chambers reflects a considered effort to maximize resources and increase efficiencies as the Court gains more experience in the application of the Rome Statute and from new developments in the roles and responsibilities of Chambers. The revised staffing structure has been implemented in accordance with the Rome Statute and follows the vision of the Strategic Plan of the International Criminal Court.<sup>5</sup> The 18 elected judges are supported by a staffing structure that currently consists of 24 Professional level posts and 11 General Service level posts. More specifically, the current staffing structure is as follows: one P-5 Senior Legal Adviser assigned to the Pre-Trial Division, two P-4 Legal Advisers (one assigned to the Trial Division and one to the Appeals Division) and sixteen P-3 Legal Officers. In addition, there are three GS-OL Research Assistants (one assigned per Division), and eight GS-OL Administrative Assistants, who provide direct support to the judges. Further, there are two additional P-3 Legal Officers and three P-2 Associate Legal Officers funded by general temporary assistance (GTA). A request has been made in the proposed budget for 2010 for these to be converted to established posts.

## III. Division workload and staffing functions

5. Under the Rome Statute, Chambers is divided into three Divisions: Pre-Trial, Trial and Appeals. The Presidency assigns situations and cases to the Pre-Trial and Trial Chambers, while the Appeals Chamber considers appeals from decisions taken at the pre-trial and trial levels. The Chambers are faced with a wide range of issues on which there are few existing guides (e.g. new procedural framework, victims' participation, and reparations). As a result, extensive research and analysis in relation to the interpretation of case law and of the Rome Statute are necessary. In order to understand the Chambers' needs in terms of staffing requirements, reference must be made first to the statutory functions of the different Chambers and their past experience in exercising those functions. A short overview is provided below.

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<sup>1</sup> *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Sixth session, New York, 30 November to 14 December 2007* (International Criminal Court publication, ICC-ASP/6/20), vol. II.B.1.

<sup>2</sup> *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Seventh session, The Hague, 14-22 November 2008* (International Criminal Court publication, ICC-ASP/7/20), vol. II.B.2.

<sup>3</sup> *Ibid.*, vol. II.B.1.

<sup>4</sup> *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Third session, The Hague, 6-10 September 2004* (International Criminal Court publication, ICC-ASP/3/25), part II.A.8(b), para. 53.

<sup>5</sup> ICC-ASP/5/6, Strategic Plan of the International Criminal Court.

## The Pre-Trial Division

6. The Pre-Trial Division is comprised of a minimum of six judges,<sup>6</sup> currently organized into two Pre-Trial Chambers. There are two general categories of proceedings before a Pre-Trial Chamber, those relating to a situation and those at case level; this distinction is unique to the Court. Currently, each Chamber is responsible for two situations and the corresponding cases.<sup>7</sup>

7. Proceedings relating to situations include those regarding the participation of victims during the investigation stage and applications to preserve evidence.<sup>8</sup> They also include proceedings arising under articles 15, 18 and 53 of the Rome Statute, which have not yet been presented to the Pre-Trial Chambers. Investigations by the Prosecutor in all four situations are still ongoing.

8. At the case level, the Pre-Trial Chamber first issues either a warrant of arrest or a summons to appear. Thirteen warrants of arrest and one summons to appear have been issued since the Court commenced operations, with an average issuing time of two to three months per warrant/summons to appear. The Pre-Trial Chamber also handles all proceedings relating to the confirmation of the charges, which have on average<sup>9</sup> lasted eight to twelve months.<sup>10</sup>

## Trial Division

9. The Trial Division is comprised of a minimum of six judges,<sup>11</sup> currently organized into two Trial Chambers. The Trial Chambers ensure that fair and expeditious trials are conducted, with full respect for the rights of the accused and due regard for the protection of victims and witnesses. Upon the conclusion of a trial, the Chamber trying the case has to prepare a reasoned judgment, convicting or acquitting the accused. A conviction comprises two elements: the sentence and a reparations order. The latter is a unique feature of the Court, unprecedented in international criminal justice. Under article 75 of the Rome Statute, the Court may make an order directly against a convicted person, specifying appropriate reparations to, or in respect of, victims, including restitution, compensation and rehabilitation.

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<sup>6</sup> Article 39, para. 1, of the Rome Statute.

<sup>7</sup> Pre-Trial Chamber I has been assigned the situation in the Democratic Republic of the Congo and the related case of *The Prosecutor v. Bosco Ntaganda*, and the situation in the Sudan/Darfur and the related cases of *The Prosecutor v. Ahmad Muhammad Harun and Ali Muhammad Ali-Abd-Al-Rahman*, the case of *The Prosecutor v. Omar Hassan Ahmad Al Bashir* and the case of *The Prosecutor v. Bahr Idriss Abu Garda*. Pre-Trial Chamber II has been assigned the situation in Uganda and the related case of *The Prosecutor v. Joseph Kony et al.*, and the situation in the Central African Republic and the related case of *The Prosecutor v. Jean-Pierre Bemba Gombo*.

<sup>8</sup> In 2008, proceedings relating to situations resulted in the issuance of 65 decisions (amounting to 1,004 pages). This workload is expected to remain stable, although it is dependent on the number of situations that are referred to the Court.

<sup>9</sup> These average lengths can vary considerably, depending on the complexity of the case, the number of counts, the number of persons prosecuted at the same time, and whether leave to appeal has been lodged/granted.

<sup>10</sup> In 2008, 342 decisions were issued by the Pre-Trial Chambers at the case level (over 4,800 pages). It is anticipated that this is a good indicator of the future workload with regard to case proceedings. The cumulative output of Pre-Trial Chambers in 2008 thus encompassed more than 400 decisions issued, amounting to 6,000 pages. This represented almost twice the amount of judicial activity by comparison with 2007.

<sup>11</sup> Article 39, paragraph 1, of the Rome Statute.

10. The very first trial before the Court commenced in January 2009. Trial Chamber I has been assigned the trial of Thomas Lubanga Dyilo and is presently hearing evidence. The trial of Germain Katanga and Mathieu Ngujolo Chui is scheduled to commence before Trial Chamber II in September 2009.<sup>12</sup>

### **Appeals Division**

11. The Appeals Division is comprised of five judges;<sup>13</sup> the Appeals Chamber is composed of all judges of the Appeals Division<sup>14</sup> and is responsible for hearing appeals brought by the participants against decisions of the Pre-Trial and Trial Chambers. These appeals fall into two general categories: final appeals against Trial Chamber decisions of acquittal or conviction or against sentence, as well as orders for reparations and appeals against other decisions. The latter category of so-called interlocutory appeals may arise in the pre-investigation phase, the investigation phase and after the surrender or appearance of the suspected person.<sup>15</sup> Further, a revision of a final judgment of conviction or sentence may be sought. As the first trial is still ongoing, no final appeal or application for revision has yet been made.

### **Functions of the staff**

12. **P-5/P-4 (Senior) Legal Adviser.** The P-5 Senior Legal Adviser and P-4 Legal Advisers, who have specific knowledge of the functions of the Chambers, provide high quality legal advice to all Chambers in the Division and assist in the coordination of the judicial and administrative work of those Chambers under the supervision of the Presidents of the Division and the Presiding Judges. They liaise with the parties and participants in each case, in consultation with the Presiding/Single Judge, and, if necessary, function as the interlocutors for the Registry. Due to their involvement in the work of all Chambers in the Division they are in a unique position to assist the judges in the effective use of available resources and assessment of the needs of each Chamber. In addition, they perform coordinating and administrative functions relating to the Division under the supervision of the Presidents of the Division. They also serve as a first point of contact on staffing and administrative matters. One Senior Legal Adviser or Legal Adviser is currently assigned to each Division.

13. **P-3 Legal Officers.** The main duties of the Legal Officers relate to the day-to-day activities of the Chamber to which they have been assigned. Their responsibilities include drafting of memoranda, orders and decisions, assisting judges in the preparation of hearings, legal research and, as tasked, guiding assigned P-2/P-1 Associate/Assistant Legal Officers. The Legal Officers have comprehensive knowledge of the proceedings in question, and advise on complex and often innovative legal issues. They also assist the judges in their duties relevant to plenary sessions (e.g. amendments to the Regulations of the Court) and to the working groups or other committees on which judges sit. Each P-3 Legal Officer is currently assigned to an individual judge.

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<sup>12</sup> In 2008, the parties and participants made 1,750 filings in Trial Chamber I. There were nearly 300 filings between January and March 2009. Thus far in 2009, the Chamber has issued 108 written decisions and orders and 28 oral decisions. Currently, the case file for Trial Chamber II runs to over 23,000 pages, with which the Chamber needs to familiarize itself. In the last two months of 2008 alone, there were 139 filings by the participants.

<sup>13</sup> Article 39, paragraph 1, of the Rome Statute.

<sup>14</sup> Article 39, paragraph 2 (b) (i), of the Rome Statute.

<sup>15</sup> There were 22 interlocutory appeals in 2008.

14. **P-2/P-1 Associate/Assistant Legal Officer; GS-OL Research Assistants.** These staff members are required to carry out research or in-depth research projects with a view to assisting Chambers in drafting memoranda, orders and decisions. In addition, Associate/Assistant Legal Officers or Research Assistants may assist the judges with non-judicial tasks, such as the preparation of meetings or the drafting of reports. The P-2/P-1 Associate/Assistant Legal Officers and GS-OL Research Assistants are currently assigned to the Division.

#### **IV. Objective of the revised staffing structure: efficient use of legal support staff**

15. The first goal of the Court under the Strategic Plan is to “conduct fair, effective and expeditious public proceedings in accordance with the Rome Statute and with high legal standards, ensuring full exercise of the rights of all participants”.<sup>16</sup> The revised staffing structure establishes a framework that allows for supporting those goals in the most efficient manner and takes account of the unique features specific to the Court. In establishing this staffing framework, it is crucial that two requirements are satisfied: that of continuity and flexibility.

16. Continuity is an important feature for the work of any court of law, as it is for the International Criminal Court. Detailed knowledge of the case law and of the relevant procedural law applicable to the various stages of the proceedings is of utmost importance for the proper functioning of the Court, as this will ensure coherence, consistency and predictability in the Court’s proceedings and decisions. Staff members are an important source of institutional memory in this regard.

17. Flexibility in staffing is required by the jurisdictional framework of the Court, as well as by factors extraneous to the work and workload of Chambers. For several reasons, it is difficult to predict the workload of Chambers. The jurisdiction of the Court is potentially very broad and could cover several situations at the same time, from which an unknown number of cases may emanate. In general, the activities of Chambers are largely driven by the participants, their workload depending to a great extent on the number of participants (such as the Prosecutor, accused person(s), victims, States, amici curiae) and the nature and number of submissions filed (applications for the issuance of warrants of arrest, requests for redactions, applications for victims’ participation, applications for leave to appeal etc.). Lastly, the Court also depends to a great extent upon the cooperation of States, in particular when a person is to be arrested and surrendered to the Court.

#### **V. The revised staffing structure**

18. The revised Chambers’ staffing structure reflects workload trends over recent years, and takes account of the projected workload in the forthcoming years. It balances the need to develop institutional knowledge and continuity within the Chambers with that of flexibility, with a view to providing the most efficient and effective assistance to the judges.

19. The experience of the Court over the past several years, combined with information from similar institutions, has enabled the Court to set forth a revised staffing structure that will best serve the needs of the Court for the foreseeable future. The Court accordingly presents a revised staffing structure which takes account of both its current workload and the possibility of significant changes in workload. Any structure needs to be flexible, in order to accommodate both a potential rapid increase and a potential gradual decrease of cases in the long run.

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<sup>16</sup> ICC-ASP/5/6, Strategic Plan of the International Criminal Court, section IV.

20. As explained above, within Chambers, only the Pre-Trial Division has experienced a full cycle workload (from the issuance of a warrant to the confirmation of a case for trial). One Trial Chamber is in the midst of its first trial, another Trial Chamber is preparing the second trial scheduled for September 2009. The Appeals Chamber, although it has already been involved in a number of interlocutory appeals from the Pre-Trial and Trial Chambers, has yet to experience an application for revision of conviction or sentence. Hence, as with the Trial Division, potential staffing needs can only be estimated on the basis of experience to date and on that of similar institutions.

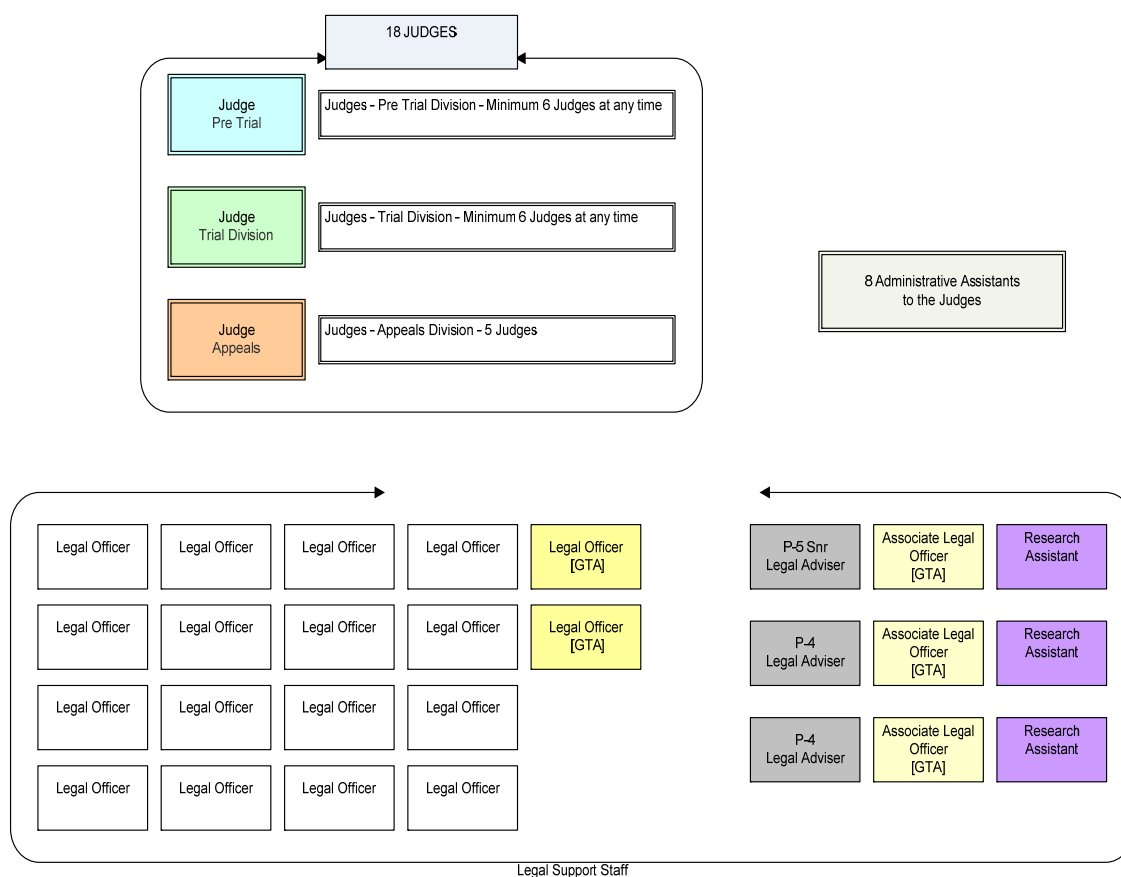
21. The Committee has requested the Court to consider the feasibility of pooling Legal Officers between Chambers and the Registry. This option has been carefully considered, but does not support the structure of the Court as specified in article 34 of the Rome Statute. Further, such action would undermine the maintenance of institutional memory, may conflict with the confidential nature of proceedings, and is not feasible, given the workload and variety of functions of the two organs and the expertise required by their respective staff members.

22. However, in line with the need for flexibility as stated above, the pooling of posts within Chambers is indeed a means of achieving this objective, permitting posts to be flexibly deployed within and amongst the three Divisions in accordance with workload requirements.

23. The Court has revised its Chambers' staffing structure based on the following considerations:

- One **P-3 Legal Officer** is attached to each of the 18 judges. As a general rule, each legal officer remains attached to his or her own Division, exercising the functions as set out in paragraph 13 above. The attachment of P-3 Legal Officers to individual judges assures continuity in the latter's immediate working environment, enabling them to work most efficiently with persons upon whom they can rely and with whom they can build a relationship of trust. The P-3 Legal Officers have specific knowledge of the Chamber/Division in which the judge they are attached to is working. This approach has shown its worth to the Court over the past seven years and is also applied in other international courts. At the same time, should a Chamber be in need of additional P-3 Legal Officers, P-3 colleagues from other Chambers may temporarily join and assist the Chamber team in the greatest need. This addresses the need for flexibility, while providing staff with an opportunity to expand their knowledge and develop their legal skills across a wider range of Chambers.
- All other legal support staff, namely the **P-5/P-4 (Senior) Legal Adviser, P-2/P-1 Associate/Assistant Legal Officer and GS-OL Research Assistant**, are assigned to the Division. Reference is made to the functions of such legal support staff in paragraphs 12 and 14 above. Attachment to the Division ensures continuity (as in the case of the (Senior) Legal Advisers) and flexibility in staffing management (as in the case of Associate/Assistant Legal Officers and Research Assistants) and strengthens the capability within Chambers to respond to resource-related needs in an efficient manner. This approach has shown its worth to the Court over the past seven years.

24. The revised staffing structure is set out in the organization chart below.



25. In case of a significant increase in workload (e.g. several trials ongoing, proven need for a specialist in a specific area of the law, etc.), consideration may be given to the possible need for additional legal support staff assigned to a Division or Chamber.

26. It should be emphasized that this structure allows for a considerable degree of flexibility within the Divisions to move staff as required according to variations in workload. The Court is moving to improve the situation by streamlining procedures for redeploying staff within Chambers. Clearly defined lines of communication are intended to increase this flexibility. This will enable the Presidents of Divisions, in accordance with regulation 14 of the Regulations of the Court, to better monitor workloads and more efficiently oversee and assign Division staff resources. Staffing issues that cannot be resolved within the Division itself would first be handled through consultation between the Presidents of the Divisions concerned, in an effort to see if the deficiency could be made good through inter-divisional assistance. Only when there was no available option within Chambers as a whole, would additional assistance be sought.

27. Flexibility is achieved by tasking legal support staff to provide support to handle uneven workloads, while still allowing for staff who have gained in-depth knowledge of a certain situation or case to continue to work on that case through all phases of the proceedings. This structure facilitates the expeditiousness of judicial proceedings and allows staff to deepen and broaden their knowledge beyond the scope of a single case before one Chamber. Finally, working methods will be adapted in accordance with the demands of the workload: a Chamber may assign work to a team of legal support staff to assist all judges of the Chamber with respect to the assigned task. This working method can also be applied to divisional work or to tasks of judges relevant to plenary sessions or to the presentation of the Court to the broader public.

28. Any additional assistance (P-5/P-4/P-3/P-2/P-1/GS-OL) will be requested only if and when the workload cannot be handled with the existing staff. Such additional posts will be requested through the budget process. In such cases, the requirement will be met initially by general temporary assistance funding. Only if, after a period of time, the increased workload appeared to be a more permanent one, would there be a request to establish a new post within the Court's budget. If, for some future reason, the Court's workload were to decrease, this would likewise be reflected in a reduction of posts in the budget.

29. The Court will constantly review the efficiency and practicability of the revised staffing structure, but will await the conclusion of at least one or two full cycles of proceedings (decision on an appeal against a Trial Chamber's decision of acquittal or conviction or against sentence) before reconsidering any changes to it. In case of any changes to the staffing structure, the Court will submit a new report and inform the Committee accordingly.

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