



## Assembly of States Parties

Distr.: General  
3 December 2010

Original: English

### Ninth session

New York, 6-10 December 2010

## Report of the Court on measures to increase clarity on the responsibilities of the different organs<sup>\*</sup>

### I. Introduction

1. In March 2006, the then-President, Prosecutor and then-Registrar carried out an assessment of the major risks facing the International Criminal Court (“the Court”). They concluded that the three major potential risks the Court should avoid or contain were: (1) a lack of effectiveness or quality in the Court’s operations; (2) divisions inside the Court; and (3) the loss of external support for the Court.

2. In 2008, the Court, with the assistance of an external consultant, carried out an updated comprehensive enterprise risk management (“ERM”) exercise. The first phase of this exercise resulted in the identification of 39 potential risks covering the breadth of the Court’s activities. Of these risks, 22 were deemed to be of sufficient likelihood and impact to merit action by the Court. Among the 22 risks were the related risks of “diverging or conflicting objectives / non-alignment of priorities” and “lack of clarity on responsibilities between different organs.”

3. The Court reported on the ERM exercise and its planned next steps to the Committee on Budget and Finance [“the Committee”] at its thirteenth session in August 2009. The Committee “requested that the Presidency of the Court submit a report ... on the measures that the Court is taking to increase clarity on the responsibilities of the different organs and a common understanding throughout the Court of such responsibilities.”<sup>1</sup>

4. The risk of divisions within the Court should not be confused with the normal performance by the organs of the Court of their different mandates which derive from the Court’s governance framework. The nature of the risks and the measures the Court has taken and is taking to address them are shaped by and take place within the context of the corporate governance framework. The present report describes the relevant aspects of this framework and the measures that the Court has taken, is taking and plans to take to address the risks highlighted by the Committee.

<sup>\*</sup> Previously issued as ICC-ASP/9/CBF.1/12.

<sup>1</sup> *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Eighth session, The Hague, 18-26 November 2009* (ICC-ASP/8/20), vol. II, part B.2, , para. 26.

## II. Corporate governance framework of the Court

5. The corporate governance framework of the Court is established by the Rome Statute and subsidiary texts and has been further developed through the Court's practices.

6. The Rome Statute establishes the basic elements of the Court's governance framework. As set out in article 34 of the Rome Statute, the Court is composed of the following organs:

- (a) The Presidency;
- (b) An Appeals Division, a Trial Division and a Pre-Trial Division;
- (c) The Office of the Prosecutor ["OTP"];
- (d) The Registry.

7. The Statute and subsidiary texts define the specific mandates of each organ and the relationships between them. The Presidency is responsible for the proper administration of the Court, with the exception of the OTP. Acting within the Presidency's overall responsibility and subject to the authority of the President over the Registrar, the Registry carries out the non-judicial aspects of the administration and servicing of the Court, without prejudice to the functions and powers of the Prosecutor. The OTP acts independently as a separate organ of the Court, and the Prosecutor has full authority over the management and administration thereof. The Presidency and Prosecutor coordinate on matters of mutual concern. The judges of the three Divisions (including the members of the Presidency) are responsible for the conduct of judicial proceedings before the Court, and any dispute concerning the judicial functions of the Court shall be settled by the decision of the Court.

8. More detailed specific functions are ascribed throughout the Statute and subsidiary texts to each of the organs. To the extent that the Statute and subsidiary texts do not describe these functions exhaustively, the Court has filled these gaps through its practices of the last years and will continue to do so as necessary.

9. This basic framework has three significant consequences for the governance of the Court.

10. First, there is a clear separation of functions and of authority between the OTP and the other organs. The Presidency is required to coordinate with and seek the concurrence of the Prosecutor on matters of mutual concern, but neither the Presidency nor the Registry has any authority over the management or administration of the OTP or vice versa. However, the separation between the organs was deliberately established by the States Parties as a fundamental aspect of the Rome Statute system. This independence is central to the integrity of investigations and of judicial proceedings. Any dispute in relation to judicial functions shall be resolved by the relevant judges. Administrative issues arising between the OTP and the other organs must be solved through coordination with full respect for this independence.

11. Second, the Registry is, in its entirety, hierarchically subordinate to the Presidency. This arrangement provided for in the Statute ensures a sound, efficient and well-directed administration by placing the Registry under the control of the Presidency. The Presidency is responsible for ensuring that the activities of the Registry are directed towards the overall objectives of the Court and that they are carried out in full compliance with the relevant rules and regulations as well as decisions of the Assembly of States Parties to the Rome Statute ("the Assembly"). How this is done and the precise delimitation of responsibilities between the

Presidency and Registry is left to the discretion of the Court, subject to the management oversight of the Assembly as specified in article 112, paragraph 2(b), of the Rome Statute. The likelihood and impact of the risk of divisions between the Presidency and the Registry, as well as the measures which can be taken to address them, are therefore similar to those faced by any hierarchically-structured organization.

12. Third, the administration of the Court must take into account the institution's particular judicial nature. The competence of the Registry, the Office of the Prosecutor or Presidency for administrative matters may overlap with the competence of a Chamber in so far as an issue concerns the judicial functions of the Court. While the organs may take action within their respective competences, they must also comply with the Court's judicial decisions. As the members of the Presidency are also judges, care must be taken to ensure that they are able to exercise their responsibility for overseeing all of the Registry's activities, even those related to Court proceedings, without prejudging specific issues which may be brought before them in their judicial capacity.

13. The governance framework left open the possibility of different arrangements for the servicing of the various organs. The OTP could have established an entirely separate administrative structure from the rest of the Court. Indeed, commentators have indicated that this arrangement would not only be possible but that it would be desirable in order to best protect prosecutorial and judicial independence.<sup>2</sup>

14. In practice, the Court, in consultation with the Assembly and the Committee, has adopted an alternative model of administration. Administrative services for all organs, including the OTP, are centralized in the Registry. The OTP maintains its own limited administrative capacity in order to determine the OTP's needs and to provide the Prosecutor with strategic advice on administrative matters and where necessary to safeguard prosecutorial and judicial independence. The result has been avoidance of duplication of resources. However, the effectiveness and efficiency of this arrangement depends on: (1) the alignment between OTP and Registry of standards, objectives, priorities and resources; (2) a common understanding of the roles and responsibilities of each organ in relation to the request and provision of services; and (3) the existence of mechanisms providing certainty that this alignment and this understanding will be maintained in the future.

### III. Assessing and managing the risks

15. Since its earliest days of operations, the Court has sought the best ways to maximize internal coordination and clarity of responsibilities between the organs while respecting their statutory independences. The President, Prosecutor and Registrar took the lead in identifying the relevant risks through conducting the 2006 risk assessment and commissioning the 2008 enterprise risk management exercise. Even before these exercises, the organs of the Court, starting at the top with the President, Prosecutor and Registrar, regularly coordinated or established clarity on roles and responsibilities in relation to specific issues that arose. While this ad hoc coordination or clarification has continued, in the context of the 2008 exercise the Court reassessed the effectiveness of existing measures and identified measures to further manage effectively the relevant risks. The following sections detail the most significant measures taken to date and other measures remaining to be taken.

<sup>2</sup> M. Bergsmo and F. Harhoff, 'The Office of the Prosecutor' in O. Triffterer (ed.) *Commentary on the Rome Statute of the International Criminal Court* (2008), 971 at 974.

## **A. Measures taken prior to the 2008 risk assessment**

### **1. A system of Court-wide administrative issuances**

16. In 2003, the Court established a common, unified system for the setting of Court rules, policies and procedures. This system is at the core of the Court's operational administration on a day-to-day basis. Presidential Directive ICC/PRES/D/G/2003/1, promulgated by the President with the agreement of the Prosecutor, creates three sets of administrative issuances.

17. Presidential Directives, issued by the President on behalf of the Presidency and in consultation with the Prosecutor, are required for the promulgation of procedures for the implementation of regulations, resolutions and decisions adopted by the Assembly. They may also be promulgated in connection with any other significant policy decision, including matters concerning the proper administration of the Court. Presidential Directives are binding on the entire Court. The Prosecutor may choose to opt out of a Presidential Directive if he or she determines it would infringe the independent management or administration of the OTP. In such a case, the Prosecutor and President must consult with a view to finding a common solution.

18. Administrative Instructions are promulgated, with the consent of the President and the Prosecutor, by the Registrar or by other officials to whom the Registrar has delegated specific authority. They are used to prescribe procedures for the implementation of Presidential Directives, including procedures for the implementation of the Financial Regulations and Rules and the Staff Regulations and Rules, or to regulate the administration of practical and organizational matters of general concern, including setting forth office practices and procedures.

19. Presidential Directives and Administrative Instructions are the only means by which the Court may establish rules, policies or procedures intended to be of general application. A third set of Administrative Issuances, Information Circulars are used for isolated announcements of one-time or temporary interest. These circulars are issued by the President, the Prosecutor or the Registrar or by other officials to whom specific authority has been delegated by one of them.

20. To date, 81 Administrative Issuances have been promulgated, including six Presidential Directives and 30 Administrative Instructions. In addition to the first Presidential Directive setting out the framework for Administrative Issuances, Presidential Directives have been issued to promulgate the Staff Regulations, to set out guidelines for the establishment of Trust Funds, to set out the Information Security Policy of the Court, and to establish the Audit Committee and to revise its structure and functioning. The Court has used Administrative Instructions to establish rules, policies or procedures in relation to, *inter alia*, the establishment and operation of the Procurement Review Committee, the delegation of authority under the Financial Regulations and Rules, sexual and other forms of harassment, accountability of staff members for Court property, information protection and information security, disciplinary procedures and various rights and obligations of staff members.

## 2. Coordination Council

21. The Regulations of the Court, adopted by the judges in 2004 and accepted by the Assembly,<sup>3</sup> created the Coordination Council. Comprising the President on behalf of the Presidency, Prosecutor and Registrar, the Coordination Council is mandated to “discuss and coordinate on, where necessary, the administrative activities of the organs of the Court.”<sup>4</sup> It is the primary forum for coordination between the organs of the Court at the highest level. The Coordination Council does not alter the statutory relationship between the organs. It is not a decision-making but a coordinating body. While every effort is made to achieve unanimity of all participants in the Coordination Council, agreements reached between the President and the Prosecutor are binding on the Registrar by virtue of the President’s authority over the Registrar. The agreements of the Coordination Council are to be respected and proposed deviations from agreements are to be brought to the Coordination Council first before the President or Prosecutor decides to deviate from an agreement. Under the Coordination Council’s umbrella, coordination takes place throughout the Court at all levels.

22. The Coordination Council has contributed significantly to the sound governance of the Court through its coordination on administrative issues covering the range of the Court’s activities. Its recurring functions include monitoring administrative developments such as the implementation of the Court’s budget and of its recruitment plans, setting the annual priorities for the budget, approving the final budget for submission to the Assembly, preparing a Court-wide approach to meetings of the Assembly and the Committee and developing and overseeing the implementation of the Court’s strategic plan. Other issues which frequently have been discussed by the Coordination Council include interim and permanent premises and the Court’s governance framework. Before the establishment of an Audit Committee with external members, the Coordination Council performed this role.

## 3. Strategic Planning

23. In 2006, the Coordination Council adopted the first Strategic Plan of the Court. The Strategic Plan was revised in 2008. Developed as a common, overarching plan for the whole Court, the Strategic Plan has been useful in providing a common framework, including common goals and objectives, for the non-judicial activities of all of the organs of the Court. The Strategic Plan is implemented through the annual budget, with budgetary objectives being derived from the Strategic Plan, and through the development of thematic strategies on issues cutting across multiple sections, divisions or organs. In 2005, as the work on the Strategic Plan itself was ongoing, the first thematic strategy, an Integrated Strategy on External Relations, Public Information and Outreach, was adopted. The Court adopted a more detailed Strategy on Outreach in 2006 and a Strategy on Victims Issues in 2009. The risk assessment conducted in 2008 was carried out under the umbrella of and linked to the Strategic Planning process. In 2010, the Court recruited a Strategic Planning Coordinator to coordinate the development of different strategies, the updating of the Strategic Plan and to assist in related activities, in particular the refining of the alignment of the Strategic Planning cycle with the other cycles of the Court (e.g. budget, risk management, audit, staff performance appraisal and external reporting).

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<sup>3</sup> Regulations of the Court, ICC-BD/01-01-04.

<sup>4</sup> Regulations of the Court (as amended on 14 June and 14 November 2007), ICC-BD/01-02-07, Regulation 3.2

#### **4. Inter-organ coordination mechanisms**

24. As noted above, the Statute establishes a relationship of coordination between the OTP and the other organs on matters of mutual concern. In order to achieve this coordination, the Court has established a range of inter-organ working groups.

25. Under the aegis of the Coordination Council, standing inter-organ working groups exist to oversee the implementation of the Strategic Plan, budget preparation and implementation, audit matters and external communications. A standing inter-organ working group exists to develop human resources-related administrative issuances, and ad hoc inter-organ groups are normally established in the development of other inter-organ rules, policies or procedures. Other standing inter-organ working groups with fixed compositions include:

(a) Security Coordination Committee: Court-wide coordination on all security issues;

(b) Joint Threat Assessment Group: to evaluate and provide security risk assessments and security and safety risk mitigation recommendations in relation to ICC personnel deployments and areas of operations;

(c) Information Security Management Forum: to advise the Prosecutor and Registrar on information security management;

(d) Information Technology Systems Board: to advise the Prosecutor and the Registrar on the process of defining the strategy for technology and information systems;

(e) Permanent Premises Committee: to advise the Registrar on decisions related to the permanent premises.

26. In 2007, the Court carried out an assessment of its internal decision-making and coordinating arrangements. This assessment concluded that such coordination mechanisms were a crucial element in the sound, efficient management of the Court.

#### **5. Clarifying roles and responsibilities of the Presidency and Registry**

27. Whereas the Statute establishes a clear hierarchy between the Presidency and the Registry, it is not very detailed on the proper distribution of decision-making between them. In the early years of the Court, it was possible and even desirable that virtually all issues, even the most minor ones, could be discussed at length and consensus achieved between the Presidency, the Registrar and senior Registry managers. While beneficial for the early development of the Court, this approach is less conducive to the administration of a more mature organization. As the size, scope and urgency of activity of and the complexity of the Court grew, it became increasingly important that the roles and responsibilities of the organs were clarified to allow for speedy decision-making, while maintaining adequate assurance and control.

28. In 2005, the Presidency and the Registrar established a set of written principles governing relations between the Presidency and the Registry. These principles were further developed in 2008 in two memoranda from the Presidency to the Registrar. These principles and subsequent memoranda elaborate a vision of Presidency-Registry relations in which, ideally:

*(a) the Presidency:*

- (i) provides strategic guidance to the Registry,
- (ii) monitors activities of the Registry which may have a more strategic or significant impact,
- (iii) intervenes only where the specific intervention of the Presidency is needed, and
- (iv) represents the Court externally; whereas

*(b) the Registry:*

- (i) proactively seeks the guidance of the Presidency on strategic or otherwise significant issues,
- (ii) provides the Presidency with the means to monitor Registry performance,
- (iii) gives the Presidency concrete and realistic recommendations for solutions to all problems, and
- (iv) carries out external relations activities as delegated by the Presidency (in addition to any such activities necessary for the performance of the Registry's other functions in accordance with the Statute and subsidiary texts).

29. In carrying out all of these functions, the Presidency and the Registry coordinate closely with and seek the concurrence of the OTP on any matters of mutual concern.

30. This vision encompasses all areas of the Registry's activities and adds clarity to the distinction between the Court's administrative and judicial functions. To the extent that the Registry's activities relate to the judicial functions of the Court, the Presidency's strategic role enables it to maintain oversight of the administration of the Registry as a whole, while Chambers may deal with specific issues. For example, a decision on the relocation of a particular witness would fall within the competence of the relevant judicial Chamber, whereas the maintenance of the witness relocation system as a whole would fall under the Presidency's competence.

31. Realizing this vision requires the development and implementation of appropriate management and reporting mechanisms and tools to ensure that the Presidency has adequate assurance and control. The first standardized reporting formats, covering human resources recruitment and budget implementation were adopted by the Coordination Council in 2007.

## **B. Measures taken subsequent to the 2008 risk assessment**

### **1. Corporate Governance Statement**

32. During the 2008 risk assessment, the Court concluded that the above-mentioned measures remain essential to managing inter-organ relations, but that significant additional clarity on the roles and responsibilities of the organs could be achieved through the elaboration of a formal "corporate governance statement." This general statement would provide concise clarification of the roles and responsibilities of the different organs at a general level, which could be applied in resolving any specific issues which arise. It would also form a basis for establishing further clarity in areas of recurring coordination. Following extensive

deliberations between the organs, the ICC Corporate Governance Statement was adopted by the President and Prosecutor on 25 February 2010. On 15 March 2010, agreement was reached on *Roles and Responsibilities of the Organs in Relation to External Communications*. These documents, annexed to this report, mark a major development in addressing the risk of lack of clarity on the roles and responsibilities of the organs.

## **2. Expansion of the Audit Committee**

33. In August 2009, the President, in consultation with the Prosecutor, promulgated a Presidential Directive adjusting the composition of the Court's Audit Committee. As a result, the Audit Committee now comprises a majority of independent, external members and is chaired by one of these members. The Committee provides a forum for independent expert advice to the President, Prosecutor and Registrar on the administration and governance of the Court.

## **3. Business process re-engineering**

34. In 2009, the Court began an exercise to review and re-engineer various business processes, many of which were of an inter-organ nature.<sup>5</sup> While the overall aim of this exercise is to seek improvements to the efficiency of processes, it necessarily involves at looking at the roles and responsibilities of the organs in different processes. As the re-engineering exercise examines different processes, it may identify instances in which the roles and responsibilities of organs can be better clarified or adapted.

## **C. Planned measures to be taken**

### **1. Institution of a management control system**

35. The development of appropriate reporting mechanisms and tools are critical to enabling the Presidency to maintain a broad overview of and give strategic guidance to the Registrar, as well as to assist the Assembly and the Committee to carry out their functions. At the moment, monitoring of and reporting on the activities of the Registry is uneven and often ad hoc. A proper, integrated management control system covering all areas of the Registry, including the provision of services to the OTP and other clients, would provide the Presidency with the information and the opportunities for input necessary to provide oversight and guidance to the Registry without becoming involved in specific issues of administration which could be more efficiently dealt with at lower levels. Such a system would better bring together the Court's strategic planning, risk management budget and reporting cycles. Improving the quality of performance indicators in particular would assist the Presidency (and the Committee and the Assembly) in maintaining a global overview of the administration of the Court. The Registrar, in consultation with the Presidency, has begun development of this system. It is anticipated that the system will be developed by mid-2010 and implemented fully by the end of 2010.

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<sup>5</sup> See Third Status Report on the Court's progress regarding efficiency measures.



## **2. Further developing a common understanding of services**

36. Section 6 of the Corporate Governance Statement annexed hereto sets out the foundational principles for the regulation of requests and provision of services between the OTP and the Registry. Based on these principles, more specific arrangements need to be developed to establish a common understanding of the details of different services in particular areas. This understanding should encompass agreements as to the quantity and quality of services, as well as procedures for the implementation and monitoring of service requests and delivery. The Court is considering the merits of particular mechanisms for regulating services such as, for example, Service Level Agreements.

## **3. Developing further clarity on and understanding of the roles and responsibilities of the organs in relation to areas of potentially overlapping mandates**

37. The Corporate Governance Statement contained in the annex hereto provides clarity on the roles and responsibilities of the organs at a general level. However, more remains to be done to apply the general principles therein to specific areas of the Court's activities and to increase understanding of these principles within and outside of the Court. This is in particular the case where different organs may have similar, but independent mandates. Priority areas identified by the Court as in need of further clarity include the protection of victims and witnesses. Such clarity will include defining the extent to which items may be of mutual concern and not falling solely within the mandate of one organ, as well as agreeing on processes and procedures for consultation when items are of mutual concern.

38. The Statute establishes a Victims and Witnesses Unit within the Registry mandated to provide, in consultation with the Office of the Prosecutor, protective measures and security arrangements, counseling and other appropriate assistance for witnesses, victims who appear before the Court, and others who are at risk on account of testimony given by such witnesses. At the same time, the other organs, including the OTP, have statutory responsibilities to take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. There is a potential for overlapping or conflicting measures. In a judgment of 25 November 2008, the Appeals Chamber clarified one specific aspect of the witness protection responsibilities. This judgment was limited to that issue and did not further clarify the roles and responsibilities of the organs regarding witness protection. A priority for the Court is to further clarify the mandates.

## **IV. Conclusion**

39. The risks of divisions between the organs and a lack of clarity in the roles and responsibilities of the organs are to a considerable extent inherent in the Statute and should be welcomed insofar as they safeguard judicial and prosecutorial independence. While respecting these independences fully, the Court has sought to minimize any divisions and to maximize clarity. Considerable progress has been made. However, these risks can and will be further better managed through (1) institution of a management control system, (2) a common understanding of services and (3) more clarity on roles and responsibilities of the organs in specific areas.

## Annex I

### Corporate Governance Statement of the International Criminal Court<sup>6</sup>

1. Divisions among the organs, whether real or perceived, are among the most significant risks facing the Court, internally and externally, and must be managed accordingly while fully respecting the independent mandate of different organs.

(a) Representatives of the organs should work together in a spirit of openness and cooperation with an aim to finding common solutions to common problems.

(b) Representatives of the organs should refrain from discussing matters of internal management with external stakeholders.

2. The Presidency is responsible for the proper administration of the Court, with the exception of the Office of the Prosecutor.

3. The Office of the Prosecutor (“OTP”) acts independently as a separate organ of the Court. The Prosecutor has full authority over the management and administration of the OTP, including the staff, facilities and other resources thereof. Neither the Presidency nor the Registry may infringe on the Prosecutor’s independent management or administration of the OTP.

4. The Registry is responsible for the non-judicial aspects of the administration and servicing of the Court, without prejudice to the functions and powers of the Prosecutor in accordance with article 42 of the Rome Statute. The Registry is headed by the Registrar who is the principal administrative officer of the Court. The Registrar exercises his or her functions under the authority of the President of the Court.

(a) All activities of the Registry fall under the ultimate authority of the President and within the overall responsibility of the Presidency.

(b) The role of the Presidency vis-à-vis the Registry is primarily to oversee the work of the Registry at a general level and to provide guidance on major issues.

(i) The Registrar should ensure the sound management of the Registry and the day-to-day (non-judicial) administration of the Court without necessitating involvement of the Presidency.

(ii) The Registrar shall create and maintain adequate mechanisms ensuring that the Presidency is sufficiently informed to fulfill its oversight responsibilities with respect to all areas of the Registry’s competence, that information from the Presidency is transmitted as necessary within the Registry and that the activities of the Registry are fully consistent with the guidance of the Presidency.

(a) Should the Presidency nevertheless deem it necessary to become involved in a specific issue of administration, the Registrar will ensure the implementation of any instruction of the President or Presidency.

5. In discharging their responsibilities for the proper administration of the Court, the Presidency and Prosecutor shall coordinate with and seek concurrence on all matters of mutual concern while respecting their independent mandates. As the responsibilities of the Registry fall fully within the Presidency’s overall

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<sup>6</sup> The judicial functions of the Chambers fall outside the scope of this document.

administrative responsibilities, the same obligation to coordinate and seek concurrence runs to the Registrar and to subordinate officials and staff of the Registry.

(a) The Presidency or Registrar and the Prosecutor shall seek maximum consensus on matters of mutual concern, consistent with the Rome Statute. In seeking consensus, the independence between the OTP and the other organs shall be respected. In areas of recurring coordination, the scope of matters of mutual concern and the processes for consultation should be defined between the relevant organs.

(b) The Registrar (or subordinate staff) and the Prosecutor (or subordinate staff) shall coordinate with and seek concurrence on matters of mutual concern to the Registry and the Office of the Prosecutor, in particular on anything which may potentially affect or could be considered to potentially affect the provision of services to the OTP. Before raising an issue of OTP-Registry coordination with the Presidency, the Prosecutor should, unless exceptional circumstances exist, first consult the Registrar.

(c) As the obligation is to seek consensus and not necessarily to obtain consensus, the lack of consensus shall not infringe the organs' abilities to act independently. The Prosecutor may take any measure he deems necessary for the management and administration of the OTP. The Presidency or Registry may take any measures they deem necessary for the proper administration of the Court, including the promulgation by the Presidency of Presidential Directives of Court-wide applicability. The Prosecutor may suspend the application of any such measures with regard to the Office of the Prosecutor.

6. Whereas the Prosecutor is independent in the management and administration of the OTP, the Prosecutor relies where appropriate on the Registry for services. This arrangement requires close consultation and coordination.

(a) The proper delivery of services will be ensured through a common understanding of the services to be provided, including:

- (i) Yearly identification of services required during the budget cycle, including volume and quality level;
- (ii) Agreement on the processes for request and provision of services;
- (iii) Monthly forecast of the actual requirements for the coming 3 months during the running year;
- (iv) Establishment of strategic indicators enabling Presidency oversight of the Registry;
- (v) Review of the service delivery three times per year.

(b) Proposals to change services or which may potentially affect the provision of services will be discussed in advance between the Registry and the OTP in order to ensure proper coordination.

(c) If required services cannot be delivered, then consultation will take place to resolve the matter.

(d) In case no agreement can be reached between the Registry and the OTP in relation to one of the previous points, then, as a last resort, the matter may be discussed between the President and Prosecutor, or may be brought before Chambers where applicable.

## Annex II

### **Roles and Responsibilities of the Organs in Relation to External Communications**

#### **A. Introduction**

1. The purpose of this paper is to provide clarity on the roles and responsibilities of the organs in relation to external communications, specifically external relations and public information (outreach being dealt with separately in the Court's "Outreach Strategy"). This paper supplements the broader Corporate Governance Statement, adopted by the President and Prosecutor on 25 February 2010 and should be read in light of that statement.

#### **B. Definitions**

2. As previously defined by the Court in its Integrated Strategy for External Relations, Public Information and Outreach:

(a) *External relations* is a dialogue between the Court and States Parties, Non-States Parties, international organizations, NGOs and other key partners that have direct roles in the activities and the enabling environment of the ICC. This process aims towards building and maintaining support and cooperation facilitating the Court to fulfill its statutory mandate.

(b) *Public information* is a process of delivering accurate and timely information about the principles, objectives and activities of the Court to the public at large and target audiences, through different channels of communication, including media, presentations, and the website.

#### **C. The roles and responsibilities of the organs in external communications**

3. The ultimate responsibility for the external relations of the Court rests with the Presidency and the Prosecutor. They coordinate and seek consensus on matters of mutual concern. The Presidency and the Prosecutor agreed in the context of the One Court principle and related Integrated strategy for external relations, public information and outreach, that the President will act as "the external face of the Court". The Presidency will coordinate with and seek the concurrence of the Prosecutor on all matters of mutual concern, including messages pertaining to issues related to the remit of the Prosecutor. The Presidency and Prosecutor shall define strategic court wide messages.

4. In case of disagreements at strategic level, they will consult on how best to present such disagreements externally.

5. Under the authority of the Presidency or the Prosecutor, each organ, in consultation with the other organs as described below in Section IV, has specific roles and responsibilities in external communications, consistent with the governance framework of the Court as set out in the Statute and the elaborated in the Corporate Governance Statement.

6. Within this general framework, the roles of the organs can be summarized as follows:

## 1. Presidency and Chambers

### (a) *External Relations*

(a) The President represents the Court, at the highest level as described above.

(b) The President may delegate representational functions to the Vice-Presidents, other judges, the Registrar or Presidency staff. In consultation with the President, the Registrar may further delegate such responsibilities to the Deputy Registrar or Registry staff. In the event of any delegation, the President will communicate his or her expectations and any necessary guidance and will remain ultimately responsible for ensuring accountability for performance. When the Prosecutor assesses that he/she cannot be represented by the delegated representatives, he/she will so inform the President and the delegated representatives will speak only on behalf of the Presidency/Registry.

(c) The Presidency's responsibility includes providing strategic guidance to and overseeing the external relations activities inherent in the Registry's other functions.

### (b) *Public Information*

(a) The Presidency provides guidance to the Registry on questions of strategy and oversees the public information activities of the Registry.

(b) The Presidency and the judges can contribute significantly to advancing the public information objectives of the Court and should be incorporated in public information plans.

## 2. Office of the Prosecutor

(a) As provided in the Statute, the Prosecutor is entirely independent and conducts OTP-specific external relations and communications as he or she sees fit.

(b) The OTP coordinates with the Presidency/Registry on matters of mutual concern.

## 3. Registry

### *External Relations:*

(a) The Registry's external relations activities comprise those activities inherent in the performance of the Registry's other functions and those tasks delegated to the Registry by the Presidency. The Registry maintains its neutrality at all times.

(b) The Registrar is accountable to the Presidency for the performance of all of the Registry's external relations activities.

(c) On matters of mutual concern, the Registry coordinates with and seeks the concurrence of the OTP.

(d) Public Information:

(e) The Registry is responsible, under the overall guidance of the Presidency, for the development and implementation of the public information strategies, plans and activities of the Court. The Registry will consult with the OTP on public information as appropriate, at all times safeguarding the neutral role of the Registry.

(f) The Registry shall provide services to the OTP in accordance with a common understanding to be agreed between the Registry and the OTP on the quantity and nature of services as well as procedures for the implementation and monitoring of service requests and delivery.

#### **D. Defining matters of mutual concern and the processes of coordination**

7. It is not possible prospectively to define in an exhaustive manner the nature and extent of appropriate coordination on any particular issue of external relations or public information. This should be determined on a case-by-case basis by relevant substantive officers, acting within the scope of their authority. The following guidelines may prove useful:

##### **1. Defining matters of mutual concern**

###### *(a) Examples of matters of mutual concern*

(a) Development and implementation of Court-wide external communications strategies to achieve the Court's Strategic Objectives, in particular those related to external communications;

(b) External agreements binding the Court as a whole;

(c) Annual reports of the Court to the Assembly of States Parties ("ASP") and the United Nations;

(d) Preparation of and participation in meetings involving the different organs of the Court (e.g. meetings of the ASP, the Committee on Budget and Finance, Diplomatic Briefings and NGO roundtables); and

(e) Preparation of and participation in Hague Working Group discussions on specific issues of mutual concern (e.g. cooperation, complementarity, strategic planning, victims, budget).

###### *(b) Areas of particular concern to either the Presidency/Registry or the OTP:*

8. Issues of particular concern to either the Presidency/Registry or the OTP should be dealt with normally by the organ concerned. In relation to some recurring issues, the following general guidelines can be followed:

(a) Internal administration: The Presidency and Registry should not comment on issues of purely internal administration of the OTP and vice versa.

(b) Preliminary examination issues/investigative or prosecutorial strategy questions: The Presidency/Registry should take particular care to refrain from expressing opinions on prosecutorial strategy or policy or prognosticating on decisions which have been made or are to be made by the OTP. The Presidency/Registry may explain general procedures and may recount the situations which the Prosecutor has indicated are under analysis.

(c) Forthcoming judicial decisions: Care must be taken to avoid being seen to make promises as to the content or timing of judicial decisions which have not been handed down (including issues of enforcement of sentences and in situ proceedings).

(d) Hague Working Group: Preparation of and participation in discussions of the Hague Working Group on topics of concern only to either the Presidency/Registry or OTP (e.g. legal aid for defence, family visits, Prosecutorial Strategy) should be handled by the organ(s) concerned.

## 2. Processes for inter-organ coordination

9. In a “one Court” approach, overall Court-wide Strategic Goals and Objectives have been set by the President, Prosecutor and Registrar in the Court’s Strategic Plan (see in particular Strategic Goal 2 and Strategic Objectives 4-7, 14 and 15). On other strategic issues of mutual concern, the Presidency/Registry and Prosecutor may agree on general strategies and broad messages which would provide guidance to officials and staff of the Presidency, Registry and OTP. The Presidency, Prosecutor and Registrar should monitor implementation of any such strategies by their staff, with the Presidency also overseeing the Registry.

10. The Presidency/Registry and the OTP will respectively determine their internal organization and identify which staff members are responsible for particular external communications issues, including coordination on matters of common concern.<sup>7</sup> These decisions should be communicated to the other organs and should be respected. In coordinating with the other organ(s), staff of the Presidency/Registry and the OTP should seek maximum consensus on external communications matters of mutual concern without unnecessarily restricting the ability of the organs of the Court to react effectively and efficiently to opportunities and challenges.

11. In the event consensus cannot be reached between the Presidency/Registry and the OTP within a reasonable timeframe as determined by the specific context, the Presidency/Registry and OTP may pursue independent action. In such case it should be clarified to external stakeholders that Presidency/Registry and OTP only represents themselves. The escalation of issues to superiors should follow the hierarchy within the Presidency/Registry.

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<sup>7</sup> For example, the Presidency and the Registrar have designated the Special Adviser to the Registrar on External Relations and Cooperation as the main interlocutor of the Presidency/Registry with the Hague Working Group of the ASP and the Committee on Budget and Finance while the Jurisdiction, Cooperation and Complementarity Division represents the OTP. The Presidency and Registry have vested responsibility for the coordination and preparation of Court-wide reports to the ASP, CBF and United Nations, including coordination with the OTP, with the Special Adviser to the Registrar on External Relations and Cooperation while the Prosecutor has vested responsibility to JCCD for the preparation of OTP contribution to such reports including coordination with the other organs.