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Report of the Bureau on Study Group on Governance

Note by the Secretariat

Pursuant to paragraph 40 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 Study Group on Governance. The present report reflects the outcome of the informal consultations held by the Study Group with the Court.

I. Introduction

1. The Study Group on Governance (the “Study Group”) was established via a resolution of the Assembly of the States Parties (the “Assembly”) in December 2010¹ “to conduct a structured dialogue between States Parties and the Court with a view to strengthening the institutional framework of the Rome Statute system and enhancing the efficiency and effectiveness of the Court while fully preserving its judicial independence [...]”; and “to facilitate this dialogue with a view to identifying issues where further action is required, in consultation with the Court, and formulating recommendations to the Assembly through the Bureau”.

2. The Study Group, in 2011, dealt with the relationship between the Court and the Assembly, strengthening the institutional framework within the Court and increasing the efficiency of the criminal process. Following requests of the Assembly in its tenth and eleventh sessions the dialogue between the organs of the Court and States Parties was continued throughout 2012 and 2013.²

3. The eleventh Assembly took note of the report of the Bureau on the Study Group on Governance³ and the recommendations contained therein. The Bureau was requested to extend, for a period of one year, the mandate of the Study Group, already extended in the previous year⁴, in order to continue to facilitate the dialogue. Furthermore, the Assembly endorsed the proposed Roadmap aimed at expediting the criminal process of the Court, and the recommendations to improve the transparency, predictability and efficient conduct of the entire budget process.⁵

4. On 12 February 2013, the Bureau appointed Ambassador Håkan Emsgård (Sweden) as Chair of the Study Group. In addition, focal points for two clusters were appointed:

(a) Cluster I: Increasing the efficiency of the criminal process. Co-focal points: Mr. Cary Scott-Kemmis (Australia) and Mr. Thomas Henquet (Netherlands). On 13 August 2013, following the departure of Mr. Cary Scott-Kemmis, the Bureau appointed Mr. Shehzad Charania (United Kingdom) as a new co-focal point; and

(b) Cluster II: Enhancing the transparency and predictability of the budgetary process. Focal point: Mr. Klaus Keller (Germany).

5. The Study Group held fifteen meetings between January and 27 September 2013, as well as several informal meetings by the focal points with the States Parties and the organs of the Court.

6. This report on the Study Group describes the activities of the Study Group in the past year and contains a number of recommendations regarding the continuation of its work and issues which have been identified as requiring further action or where further study is recommended.

II. Evaluation of the Study Group and the way ahead.

7. States Parties as well as the Court (its organs) continued to confirm the importance they attach to this ongoing dialogue. It remains clear that the work under Cluster I needs to be an ongoing process, as the Study Group has proved its usefulness as the initial forum for States Parties to consider amendment proposals for expediting the criminal process. As regards Cluster II, it is agreed that the work under Cluster II should be discontinued. It is also recommended that an additional focal point be appointed, whose role would be to consider and report on a discreet issue falling under the mandate of the Study Group but not subject of facilitation under the HWG.

8. It is deemed appropriate to extend further the mandate of the Study Group, with the understanding that possible new issues can be taken up in 2014, if necessary.

¹ ICC-ASP/9/Res.2.

² ICC-ASP/10/Res.5, paras. 35 to 38 on Governance, ICC-ASP/11/Res.8, paras.38 to 45 on Governance.

³ ICC-ASP/11/31.

⁴ ICC-ASP/10/Res.5

⁵ ICC-ASP/11/Res.8

III. Cluster I

9. Building on the work of the Study Group during the course of 2012, there was an agreement that the primary focus of review should be the Rules of Procedure and Evidence (“the Rules”) of the Court in accordance with the priority areas set in the Court’s first lessons learned report in 2012⁶, and that the review should be undertaken in the spirit of collaboration between the Court and States.

10. The Assembly in 2012 agreed upon a Roadmap which recognises that, given the current legal framework, there is a need to facilitate a structured dialogue between key stakeholders on proposed amendments to the Rules.⁷ Without prejudice to article 51 of the Statute, participants were encouraged to engage via the Roadmap, so as to avoid a disparate and unstructured approach to any proposals on amending the Rules. The Assembly agreed that any process of review should not be driven only by budgetary considerations; instead the driving factor would be to ensure that proceedings were being conducted fairly and expeditiously. It was understood, furthermore, that this process was long-term in outlook and that the Roadmap itself should be amended, if necessary, for use in future years.⁸

11. Under the agreed Roadmap there are a number of key milestones. First, the Court, will transmit through its Working Group on Lessons Learnt (“WGLL”) recommendations on proposals to amend the Rules to the Study Group by the end of March 2013. Second, by the end of May the Study Group will finalise views or other recommendations and transmit these to the WGLL. Third, in August the WGLL will report back to the Study Group. Fourth, the Study Group must transmit to the Working Group on Amendments, at latest sixty days before the twelfth Assembly, final recommendations on proposals to amend the Rules.

12. The meetings of the Study Group devoted to Cluster I took place in the presence of representatives of the Court and other interested stakeholders. On 27 March, in accordance with the Roadmap, the Study Group received the first version of a written report from the WGLL containing an update on the progress of the review of the nine clusters, indicating that the WGLL was focusing on three clusters – namely “Pre-Trial”, “Pre-Trial and Trial relationship and common issues” and “the seat of the Court”. The Court’s review of the clusters was aimed at identifying ways to expedite and improve processes, either through changes to practice or to the Rules or Regulations of the Court, and any outcome of ongoing WGLL discussions would be promptly communicated to States. The Study Group indicated it would welcome receipt in 2013 of the additional anticipated outcomes of ongoing WGLL discussions, even if receipt was outside of the specific timeframes in the Roadmap.

13. On 16 August, the Study Group received the second annual report of the WGLL, outlining the work of the WGLL on the current year and for the future, as well as the development of working practises, including the consultation with the ACLT at an earlier stage than described in the Roadmap, thus paving the way for a smoother and more efficient consultation process. The Court expressed its openness to the amendment of the Roadmap in this regard.

14. The Study Group expressed its appreciation for the report and noted the various efforts of the Court to increase the efficiency of the criminal proceedings. The SGG recognized that the Court, through the WGLL, has expeditiously continued to analyze and identify key issues on lessons learnt, and propose concrete amendments to the Rules, on the basis of priority areas outlined in the first report on lessons learnt. The WGLL has furthermore developed efficient working practices and outlined an ambitious agenda for further work. The Study Group expressed its appreciation for the timely updates provided by the Court both in writing and through presentations. The Study Group also expressed interest in receiving information on the experience of the Court regarding adopted amendment proposals at an appropriate moment. The Study Group expressed particular appreciation for the personal commitment and active involvement of Vice-President Judge Monageng, the chair of the WGLL.

⁶ Nine clusters and twenty four sub-clusters which were to be the subject of further in-depth consideration; ICC-ASP/11/31/Add.1.

⁷ ICC-ASP/11/31, annex I.

⁸ ICC-ASP/11/31.

15. In its future work, the Study Group expressed an interest to take note, where appropriate, of the relevant work by external stakeholders directed at improving the efficiency of the Court.

i. Proposal to amend rule 100

16. In accordance with the Roadmap, the 27 March 2013 report of the WGLL also contained a concrete recommendation to amend rule 100, identified under Cluster ‘G’ (‘Seat of the Court’) in the Court’s August 2012 report. Rule 100 establishes the decision-making procedure, as envisaged by article 3(3) of the Statute, for designating an alternate seat for (Pre-Trial, Trial or Appeal) proceedings of the Court. The amendment provides for a more expeditious process for designating an alternate seat. Under the Roadmap, the Study Group was to consider the WGLL recommendations and transmit views or other recommendations to the WGLL by the end of May 2013. As a result of the earlier involvement of the ACLT in the preparation of the recommendations, as well as the subsequent exchanges between the Study Group and the Court in April and May 2013, the process was expedited.

17. In April and May 2013, the Study Group held several meetings and exchanges with the Court on the original recommendation to amend rule 100, whereby the Study Group expressed its views in detail. On the basis of these meetings and exchanges, the Court prepared revised recommendations on 13 May 2013, which contained a revised version of the proposed amendment to rule 100.⁹ The Study Group endorsed the revised proposal on 30 May 2013, and an interim report of the Study Group was circulated on 31 May 2013.¹⁰ The Court was informed of this development in a letter from the Chair of the Study Group, Ambassador Håkan Emsgård.¹¹ On 5 June 2013 the revised proposal on rule 100 was endorsed by the Working Group on Amendments (“WGA”) in New York.¹² Subsequently, on 11 July 2013, the plenary of judges agreed, in accordance with article 51(2)(b) of the Statute, to propose to the 12th session of the Assembly of States Parties the amendment to rule 100.¹³ A letter from president Song addressed to the President of the Assembly was sent on 4 September 2013.¹⁴

ii. Proposal to amend rule 68

18. In accordance with the Roadmap and following the indication of the Study Group that it would welcome receipt in 2013 of the additional anticipated outcomes of ongoing WGLL discussions even if receipt was outside of the specific timeframes in the Roadmap, the WGLL proposed amendment to rule 68 on Prior recorded testimony in its Second annual report, dated 16 August.¹⁵

19. The proposed amendment is intended to reduce the length of ICC proceedings and streamline evidence presentation by increasing the instances in which prior recorded testimony can be introduced instead of hearing the witness in person. The amendment pays due regard to the principles of fairness and the rights of the accused. It was understood that the amended rule 68 did not reduce the scope of the original rule 68(b). It was further noted that the amended rule 68 was without prejudice to article 68(3) of the Rome Statute. Finally, a view was put forward that the term “interests of justice”, which is not defined, should be explored as there were a number of references to the term in the Rules and the Rome Statute.

20. Following exchanges on the proposal, the Study Group provided its views to the WGLL, and a revised proposal was considered, endorsed and forwarded for the consideration of the Working Group on Amendments before the twelfth Assembly.

⁹ ICC-ASP/12/37/Add.1, annex I.A.

¹⁰ The report of the Study Group endorsing the recommendation and containing a summary of the views expressed by the Study Group is included in ICC-ASP/12/37/Add1, annex I.B.

¹¹ ICC-ASP/12/37/Add1, annex I.C.

¹² *Ibid*, annex 1.D provides an exchange of emails between Ambassador Paul Seger and Vice President Monageng, noting these developments.

¹³ *Ibid*, annex I.E includes a letter from Vice-President Monageng informing Ambassador Emsgård of this development, dated 23 July 2013.

¹⁴ *Ibid*, annex I.F.

¹⁵ *Ibid*, annex II.A.

iii. Revised Roadmap

21. The Roadmap endorsed by the eleventh Assembly stipulates that it will be kept under review, to ensure its continued effectiveness. During 2013 it was indicated that the Study Group should begin this review of the roadmap already in light of the first experience and developing working practices.

22. Further to an initial discussion within the Study Group, the co-focal points presented to the Study Group four potential amendments to the Roadmap:

(a) Introduction of flexible time-lines, in order to allow the Study Group to receive proposals from the Court for amendments to the Rules inside and outside of the deadlines defined in the Roadmap;

(b) Acknowledge the existing practice of consultation between the WGLL and the ACLT, where other organs of the Court are represented, prior to submitting amendment proposals to the Study Group;

(c) Recognise the developing working practice of a fluid exchange of views on amendment proposals between the Court and the Study Group, in order to increase the efficiency of the Roadmap; and

(d) Introduce into the Roadmap the possibility for the Study Group to consider, in the first instance, proposals from the Court for amendments to the articles of the Rome Statute of an institutional nature.¹⁶

23. The Study Group held exchanges based on a draft revised Roadmap prepared by the co-focal points. While flexibility with regard to the timelines was supported, the Study Group highlighted the need to reserve sufficient time for discussions on the proposed amendments. Regarding possibility for the Court to present amendments to the Articles of the Rome Statute of an institutional nature, after discussion the proposal was revised along the lines of comments expressed by States Parties.

24. The Study Group discussed the issue of amendments to the Rome Statute, specifically, in relation to the provisions of an exclusively institutional nature; and whether potential amendments to these provisions could be dealt with under the Roadmap. The Study Group decided not to amend the Roadmap in this regard but to keep the matter under review.

25. Following the consultation, the Study Group endorsed the revised Roadmap [annex 1].

IV. Cluster II: Enhancing the transparency and predictability of the budgetary process

26. At its tenth session, the Assembly of States Parties (“the Assembly”) to the Rome Statute “request[ed] the Study Group of Governance (“the Study Group”), in consultation with the Hague Working Group, to engage with the Court and the Committee [on Budget and Finance (“the Committee”)], with a view to enhancing the transparency and predictability of the budget process”. At its eleventh session the Assembly “extend[ed] the mandate for another year (...) and request[ed] the Study Group to report back to its twelfth session”.

27. This report to the consideration of The Hague Working Group contains: (i) the programme of work; (ii) a focused outline of the Study Group’s discussions; and (iii) a set of final recommendations by the Study Group on the budget process.

A. Programme of work

28. Prior to holding informal sessions, the Study Group held informal consultations with the relevant organs of the Court, the Committee as well as NGOs. At the first meeting, the Study Group underlined that the facilitation would largely build upon the progress achieved at the 2012 discussions, with a view also to allowing for a follow-up. At the same time,

¹⁶ Article 122 of the Rome Statute, Part 4: Composition and Administration of the Court.

delegations were invited to present their topics of interest, possibly after consultation with the respective capitals. At the second meeting of the Study Group, delegations were given the opportunity to comment on the choice of topics presented by facilitators as well as to highlight further issues which in their view deserved to be treated.

29. The Study Group has held close contact with the Court throughout the whole process. This enabled the relevant organs of the Court to make their own priorities known as well. Furthermore, this approach allowed for a thorough preparation of well-focused sessions.

30. On the basis of the reactions received thereon, the following issues have been identified: (a) the budget cycle, assumptions and judicial calendar; (b) the relationship between the Assembly and the Committee; (c) the Contingency Fund; (d) lessons learnt from the budget negotiations; (e) new approaches to accounting and budgeting, i.e. the introduction of IPSAS; and (f) the future of the Study Group, Cluster II.

B. Discussion

1. Budget cycle, assumptions and judicial calendar

31. The Court briefed the Study Group on the yearly budgetary cycle. In this regard it was of particular interest to delegates to accommodate their financial contributions with domestic budgetary planning through an enhanced dialogue with the Court and better information tools at hand. The principles of accountability, transparency and predictability were considered key for any future measures as part of the budget facilitation process.

32. With respect to a more deepened grasp of the baselines of budget assumptions, some delegates reiterated the wish to continue to be regularly updated by the Court on the current state of budgetary relevant judicial activities, preferably in the format of a judicial calendar, as noted by the Assembly in resolution ICC-ASP/11/Res. 1. Such update should encompass estimates of the level of foreseen judicial activities, the foreseen number of situations, investigations, cases and situations under preliminary examination, as well as of any residual investigation¹⁷. Such updates could be provided on a recurrent basis (a) at The Hague Working Group or (b) at diplomatic briefings or occasionally at The Hague Working Group.

33. The Study Group welcomed the Court's announcement to compile all relevant information regarding the budgeting process in one booklet with a view of providing a comprehensive textual source of expertise for newly arriving colleagues and those who wish to deepen their knowledge in this field. This document should be furnished by existing sources and updated, if appropriate, and could be integrated as an annex into the Policy and Procedure Manual of the Committee on Budget and Finance. The Study Group considers it favourable to include a budget timeline of the budgetary cycle in this document, including key budgetary milestones and other relevant information with practical implications both for the Court and for States Parties.¹⁸

34. The Study Group highlighted the importance of continuing to inform States Parties as per current practices on the forecast and implementation of the budget, as this is one possible indicator of the budget development and planning for States Parties. Highest levels of accuracy should be devoted to the implementation forecast immediately preceding the Assembly, as this determines the budgetary discussions to a great extent.

35. It was highlighted by some delegates that in years of changing scales of assessments the payable amount can be altered to a considerable degree. Therefore, it is recommended that the Court continue providing in the Contribution Letters reference to upcoming changes to scales of assessments to the extent that the information becomes available to the Court.

2. Relationship between the Assembly and the Committee

¹⁷ ICC-ASP/11/11, para. 21.

¹⁸ Relevant information could include the expected dates for the Court's internal agreement of the assumptions; the submission of the full budget proposal to States Parties; the external audit; budget implementation; forecast implementation; as well as access to the Contingency Fund.

36. Similar to the 2012 discussion within the Study Group, delegations expressed their interest in an enhanced engagement with the Committee. Building thereon, the Study Group organized an informal meeting with the Chair of the Committee as well as seven members before the April session of the Committee. Delegations as well as Committee members stressed the importance of such informal contacts and expressed the view that this initiative could serve as a precedent for further meetings of this kind. It was offered to the Court and the NGOs to be briefed on the essence of the discussion.

37. The Study Group consented that the engagement with the Committee could be enhanced in the following way:

38. More visits of the Chairperson of the Committee and/or individual members of the Committee to The Hague, for example to brief States Parties on a particular subject. In this regard, States Parties welcomed the appointment of focal points within the Committee, mindful of the fact that the Committee is a collegial body.

39. Establishment of a procedure to seize the Committee between sessions with concrete queries by addressing queries to the Executive Secretary of the Committee.

40. Informal briefing sessions at the beginning of the regular biannual Committee-sessions in The Hague, with a view to allowing States Parties to raise particular issues or concerns.

41. These potential areas for an enhanced engagement could be agreed with the Committee, in consultation with the Court where appropriate, and thereupon constitute the object of an operative paragraph inviting the Committee to engage in this specific way with States Parties.

3. Contingency Fund

42. The Study Group agreed that the Contingency Fund remains a very important tool, as it allows the Court to respond with a certain degree of flexibility to unforeseen and unavoidable new tasks requiring the disbursement of expenses. Delegates also took note of the fact that access to the Contingency Fund requires certain conditions to be met, which are laid out in the Financial Regulations and Rules.

43. The Court confirmed that it will actually draw on the Contingency Fund only if the regular programme budget has been fully implemented. As per current practice, it will make every effort to absorb the costs of unforeseen or unavoidable expenses notified for potential use of the Contingency Fund. Furthermore, the information provided to justify access to the Fund, and to enable the Committee to monitor the use of resources on a regular basis, has been significantly enhanced. States Parties identified the 2012 recommendation of the Committee to be informed of the use of resources notified 60 days after the notification becomes effective as an apt tool. In the interest of efficiency and without compromising transparency, the Court has pointed out that it reports to the Committee and States Parties four times a year on the implementation of the regular programme budget and the Contingency Fund notifications. The reports submitted by the Court refer to the implementation as at the end of March, June and December. Furthermore, the Court provides the implementation rate as well as the forecast for both the regular programme budget and the Contingency Fund notifications before the session of the Assembly. In light of the above, the Court prefers to discontinue this 60-day reporting requirement as the information is already regularly available.

4. Budget negotiations

44. The Study Group restated that an enhanced dialogue between the Assembly and the Court aimed at fostering mutual trust and confidence between these stakeholders is of paramount importance to provide for constructive and collaborative budget negotiations. The Study Group also stressed the importance to uplift delegates' knowledge of decisive financial concepts enabling them to acquaint themselves with and participate in key budgetary issues.

45. The Study Group found the thematic approach adopted by the budget facilitator at the Eleventh session of the Assembly of States Parties to be helpful and emphasized that they were not interested in micromanaging the Court.

46. The Study Group welcomed the approach of the Committee to present wherever feasible different savings options and stressed in this regard that such options should be realistic and not undermine the mandate of the Court.

5. New approaches to accounting and budgeting, i.e. the introduction of IPSAS

47. The Study Group was briefed by the Court on the status with respect to the introduction of International Public Sector Accounting Standards (IPSAS), noting that IPSAS constitutes a useful tool to predict upcoming liabilities and that basic knowledge about accrual accounting is key to understanding financial statements. Delegates also heard from the Court that the introduction of the concept of accrual budgeting is not on the agenda. However, the Study Group notes that this concept requires further scrutiny and encourages the Court to continue exploring ways of implementing it.

48. The Court gave a presentation on the concepts of results-based budgeting and zero based budgeting. On a separate occasion, the Court together with the Study Group organised a workshop, in which delegates, the Court, a Committee representative as well as an independent expert discussed possibilities of exploring results-based management techniques in a medium to long-range timescale. Delegates encouraged the Court to give careful consideration to these techniques.

49. The Study Group took note of the view of the Court that the issue of biennial budgets will for the time being not be further pursued also depending on the on-going discussions surrounding the future costs for maintenance and Total Cost of Ownership of the permanent premises of the Court as well as the IPSAS implementation.

6. Outlook on the future of Cluster II

50. While being convinced about the usefulness of the Cluster II of the Study Group, in the framework of the proposed rationalization of the working methods the follow-up to be given to this consultation should also be carefully evaluated. There will be always the need for a forum to discuss budgetary issues of a general or procedural nature outside the budget facilitation; however, the question whether or not the mandate for Cluster II shall be renewed is nonetheless an issue worthy of careful consideration.

51. Possible approaches include, inter alia:

- (a) Renew the mandate of the facilitation in its existing form;
- (b) Completely include procedural issues / general questions to the annual budget facilitation or Strategic Planning Group; or
- (c) Appoint a focal point or rapporteur without a facilitation task to be attached to the budget facilitator or the Study Group on Governance; or
- (d) Discontinue the mandate of the facilitation and deal with budget-related issues at the budget facilitation in order to further streamline and rationalize the working methods of the different groups.

C. Recommendations

52. The Study Group submits for consideration of the Assembly the recommendations contained in the section V below.

V. Recommendations

53. The Study Group through Bureau submits the following recommendations for the consideration of the Assembly:

The Assembly of States Parties,

(a) Extends for another year the mandate of the Study Group, provided in resolution ICC-ASP/9/Res.2 and extended in resolutions ICC-ASP/10/Res.5 and ICC-ASP/11/Res.8, and requests the Study Group to report back to its thirteenth session;

(b) Adopts the proposed amendments by the Court to Rule 100 and Rule 68 pursuant to article 51 (2) of the Statute [annex 2];

(c) Endorses the proposed “Revised Roadmap” which further facilitates, including through more flexible timelines, the efficient and structured dialogue between all stakeholders within the Rome Statute system to consider proposals aimed at expediting the criminal process of the International Criminal Court;

(d) Recalls resolution ICC-ASP/11/20, in which the Assembly notes the value of a judicial calendar and requests to be periodically updated by the Court at meetings of The Hague Working Group on the current state of budgetary evaluation of judicial activities, including estimates of the level of foreseen judicial activities, the foreseen number of situations, investigations, cases and situations under preliminary examination, as well as of any residual investigation.

(e) Stresses the importance of an enhanced engagement with the Committee [on Budget and Finance (“the Committee”)], inter alia, through more frequent visits of the Chairperson and/or individual members of the Committee in The Hague, the establishment of a procedure to seize the Committee between sessions with concrete queries, and the organization of informal briefing sessions at the beginning of the regular biannual Committee-sessions in The Hague, with a view to allowing States Parties to raise particular issues or concerns and welcomes the willingness of the Committee to engage more actively with the Assembly.

(f) Welcomes the progress already achieved in fostering an enhanced dialogue between the Assembly and the Court and urges the Assembly and the Court in close partnership to continue its open and transparent information policy aimed at fostering mutual trust and confidence between the stakeholders and thus to prepare the ground for constructive and collaborative budget negotiations.

(g) Endorses the recommendation of the Committee to update the current Financial Regulations and Rules, with a view to reflecting the subsidiary nature of the Contingency Fund as well as to safeguarding its prudent use.

Annex I

Roadmap on reviewing the criminal procedures of the International Criminal Court

States Parties and the Court have reached the following understanding regarding the roadmap:

A. Vision

1. Establish a consolidated process to engage in a structured dialogue between all stakeholders within the Rome Statute System to consider proposals aimed at expediting the criminal process of the International Criminal Court (“the Court”).

B. Guiding principles

2. The principles guiding any review of the Court’s criminal procedures should be to:
- (a) Preserve the rights granted within the Rome Statute, in particular the right to a fair trial;
 - (b) Respect the independence of the Court;
 - (c) Expedite the criminal process of the Court; and
 - (d) Preserve the delicate balance between the world’s principal legal systems, as enshrined in the Rome Statute.
3. This Roadmap is without prejudice to the statutory and regulatory framework of the Rome Statute, in particular article 51 of the Rome Statute (“Statute”).

C. Objectives

4. The objectives of this Roadmap are to:
- (a) Focus on amendments concerning the Rules of Procedure and Evidence which relate to the areas of importance as identified in the report of the Court ‘Lessons Learnt: First Report to the Assembly of States Parties’¹ (“the report”) ;
 - (b) Provide for a rigorous and thorough review of amendment proposals within a defined timescale; and
 - (c) Acknowledge that the Study Group on Governance is the initial forum to consider recommendations on proposals to amend the Rules of Procedure and Evidence and that, thereafter, any recommendations will be transmitted to the Working Group on Amendments (“WGA”) for consideration; and

D. Process

Proposals to amend the Rules of Procedure and Evidence - annual timeline

5. The Working Group on Lessons Learnt (“WGLL”), established in October 2012 by the Court, will consider recommendations on proposals to amend the Rules of Procedure and Evidence in the areas of importance, in particular those identified in The Report. The WGLL will be open to all judges and will determine its own composition and working methods.
6. Recommendations on proposals to amend the Rules of Procedure and Evidence that receive the support of at least five judges on the WGLL shall be transferred to the Advisory

¹ ICC-ASP/11/31/Add.1.

Committee on Legal Texts¹ (“ACLT”) for consideration. Thereafter, the WGLL shall transmit the proposal to the Study Group for its consideration by the **end of March**.

7. The Study Group should convey any views on the aforementioned recommendations or alternative recommendations on amending the Rules of Procedure and Evidence to the WGLL. The Study Group should strive to reach final views on the aforementioned recommendation(s) by **the end of May**. Should the Study Group decide to endorse any proposals, these proposals should be transmitted to the WGA by the **end of June**.

Proposals to amend the Rules of Procedure and Evidence - submission outside of regular timelines

8. Although concerted efforts shall be made to submit proposals for amendment(s) concerning the Rules of Procedure and Evidence to the Study Group in conformity with the timelines specified under this Roadmap, the Study Group is open to receiving proposals for amendment, which meet the criteria for submission to the Study Group outlined in paragraph 6, outside of these timelines.

9. Upon receipt, the Study Group shall discuss the proposed Rules of Procedure and Evidence amendment(s). The Study Group should convey any views on the aforementioned recommendations or alternative recommendations on amending the Rules of Procedure and Evidence to the WGLL. The Study Group should strive to reach final views on the aforementioned recommendation(s) within **9 weeks** of their receipt. It may, however, in exceptional circumstances, be necessary for the Study Group to reach views earlier than 9 weeks of receipt if it wishes any of the said recommendations to be processed in time for the upcoming session of the Assembly.

10. Should the Study Group decide to endorse any proposals, these proposals should be transmitted to the WGA for consideration at least **50 days prior** to commencement of the upcoming session of the Assembly. It may, however, in exceptional circumstances be necessary to submit proposals less than 50 days prior to the commencement of the upcoming session of the Assembly.

11. The Study Group may consider inviting the Committee on Budget and Finance, possibly on an intersessional basis, to comment, on a timely basis, on the budgetary implications of the implementation of any recommendations to amend the Rules of Procedure and Evidence.

12. During the course of this process the Study Group will regularly update the Chair of the WGA on developments pertaining to the implementation of this Roadmap.

13. States and the Court will keep under review the effectiveness of the Roadmap.

Annex II

Draft resolution: Amendment to Rule 68 and Rule 100 of the Rules of Procedure and Evidence

The Assembly of States Parties,

Recalling the need to conduct a structured dialogue between States Parties and the Court with a view to strengthening the institutional framework of the Rome Statute system and enhancing the efficiency and effectiveness of the Court while fully preserving its judicial independence, and *inviting* the organs of the Court to continue engaging in such a dialogue with States Parties,

Recognizing that enhancing the efficiency and effectiveness of the Court is of common interest both for the Assembly of States Parties and the Court,

Commending, in this regard, the judges of the Court, acting pursuant to article 51, paragraph 2 (b) of the Rome Statute,

Noting the report of the Study Group on Governance to the Bureau of the Assembly of States Parties,¹

1. *Decides* that the following shall replace rule 100 of the Rules of Procedure and Evidence:²

“Rule 100

Place of proceedings

1. In a particular case, where the Court considers that it would be in the interests of justice, it may decide to sit in a State other than the host State, for such period or periods as may be required, to hear the case in whole or in part.

2. The Chamber, at any time after the initiation of an investigation, may proprio motu or at the request of the Prosecutor or the defence, decide to make a recommendation changing the place where the Chamber sits. The judges of the Chamber shall attempt to achieve unanimity in their recommendation, failing which the recommendation shall be made by a majority of the judges. Such a recommendation shall take account of the views of the parties, of the victims and an assessment prepared by the Registry and shall be addressed to the Presidency. It shall be made in writing and specify in which State the Chamber would sit. The assessment prepared by the Registry shall be annexed to the recommendation.

3. The Presidency shall consult the State where the Chamber intends to sit. If that State agrees that the Chamber can sit in that State, then the decision to sit in a State other than the host State shall be taken by the Presidency in consultation with the Chamber. Thereafter, the Chamber or any designated Judge shall sit at the location decided upon.”

2. *Further decides* that the following shall replace rule 68 of the Rules of Procedure and Evidence,³ and *noting* that the rule as amended is without prejudice to article 68(3) of the Rome Statute:

“Rule 68

Prior recorded testimony

1. When the Pre-Trial Chamber has not taken measures under article 56, the Trial Chamber may, in accordance with article 69, paragraphs 2 and 4, and after hearing the parties, allow the introduction of previously recorded audio or video testimony of a witness, or the transcript or other documented evidence of such testimony, provided that this would not be prejudicial to or inconsistent

¹ Report of the Bureau on the Study Group on Governance (ICC-ASP/12/37).

² *Official Records ... First session ... 2002* (ICC-ASP/1/3 and Corr.1), part II.A.

³ *Ibid.*

with the rights of the accused and that the requirements of one or more of the following sub-rules are met.

2. If the witness who gave the previously recorded testimony is not present before the Trial Chamber, the Chamber may allow the introduction of that previously recorded testimony in any one of the following instances:

(a) Both the Prosecutor and the defence had the opportunity to examine the witness during the recording.

(b) The prior recorded testimony goes to proof of a matter other than the acts and conduct of the accused. In such a case:

(i) In determining whether introduction of prior recorded testimony falling under sub-rule (b) may be allowed, the Chamber shall consider, *inter alia*, whether the prior recorded testimony in question:

- relates to issues that are not materially in dispute;
- is of a cumulative or corroborative nature, in that other witnesses will give or have given oral testimony of similar facts;
- relates to background information;
- is such that the interests of justice are best served by its introduction; and
- has sufficient indicia of reliability.

(ii) Prior recorded testimony falling under sub-rule (b) may only be introduced if it is accompanied by a declaration by the testifying person that the contents of the prior recorded testimony are true and correct to the best of that person's knowledge and belief. Accompanying declarations may not contain any new information and must be made reasonably close in time to when the prior recorded testimony is being submitted.

(iii) Accompanying declarations must be witnessed by a person authorised to witness such a declaration by the relevant Chamber or in accordance with the law and procedure of a State. The person witnessing the declaration must verify in writing the date and place of the declaration, and that the person making the declaration:

- is the person identified in the prior recorded testimony;
- assures that he or she is making the declaration voluntarily and without undue influence;
- states that the contents of the prior recorded testimony are, to the best of that person's knowledge and belief, true and correct; and
- was informed that if the contents of the prior recorded testimony are not true then he or she may be subject to proceedings for having given false testimony.

(c) The prior recorded testimony comes from a person who has subsequently died, must be presumed dead, or is, due to obstacles that cannot be overcome with reasonable diligence, unavailable to testify orally. In such a case:

(i) Prior recorded testimony falling under sub-rule (c) may only be introduced if the Chamber is satisfied that the person is unavailable as set out above, that the necessity of measures under article 56 could not be anticipated, and that the prior recorded testimony has sufficient indicia of reliability.

(ii) The fact that the prior recorded testimony goes to proof of acts and conduct of an accused may be a factor against its introduction, or part of it.

(d) The prior recorded testimony comes from a person who has been subjected to interference. In such a case:

(i) Prior recorded testimony falling under sub-rule (d) may only be introduced if the Chamber is satisfied that:

- the person has failed to attend as a witness or, having attended, has failed to give evidence with respect to a material aspect included in his or her prior recorded testimony;

- the failure of the person to attend or to give evidence has been materially influenced by improper interference, including threats, intimidation, or coercion;

- reasonable efforts have been made to secure the attendance of the person as a witness or, if in attendance, to secure from the witness all material facts known to the witness;

- the interests of justice are best served by the prior recorded testimony being introduced; and

- the prior recorded testimony has sufficient indicia of reliability.

(ii) For the purposes of sub-rule (d)(i), an improper interference may relate, *inter alia*, to the physical, psychological, economic or other interests of the person.

(iii) When prior recorded testimony submitted under sub-rule (d)(i) relates to completed proceedings for offences defined in article 70, the Chamber may consider adjudicated facts from these proceedings in its assessment.

(iv) The fact that the prior recorded testimony goes to proof of acts and conduct of an accused may be a factor against its introduction, or part of it.

3. If the witness who gave the previously recorded testimony is present before the Trial Chamber, the Chamber may allow the introduction of that previously recorded testimony if he or she does not object to the submission of the previously recorded testimony and the Prosecutor, the defence and the Chamber have the opportunity to examine the witness during the proceedings.”

ⁱ In accordance with Regulation 4 of the Regulations of the Court the ACLT is comprised of: a judicial representative of each division (Pre-Trial, Trial and Appeal), and one representative from the Office of the Prosecutor, the Registry and Counsel (defence and victims).