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Report of the Bureau on the Study Group on Governance

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I. Introduction

1. The Study Group on Governance (the “Study Group” or “SGG”) was established via a resolution¹ of the Assembly of the States Parties (the “Assembly”) in December 2010 “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”. It was further decided that “the issues to be dealt with by the Study Group include, but are not limited to, matters pertaining to the strengthening of the institutional framework both within the Court and between the Court and the Assembly, as well as other relevant questions related to the operations of the Court”.
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, eleventh, twelfth, thirteenth, fourteenth and fifteenth sessions the dialogue between the organs of the Court and States Parties was continued throughout 2012, 2013, 2014, 2015 2016 and 2017.
3. The fifteenth session of the Assembly took note of the report of the Bureau on the Study Group and the recommendations contained therein and extended the mandate of the Study Group for a further year.²
4. On 16 February 2017, the Bureau appointed Ambassador María Teresa Infante Caffi (Chile) and Ambassador Hiroshi Inomata (Japan) as co-Chairs of the Study Group. The Bureau also appointed Ms. Erica Lucero (Argentina) and Mr. Philip Dixon (United Kingdom) as focal points for Cluster I (Increasing the efficiency of the criminal process), and Mr. Reinhard Hassenpflug (Germany) and Mr. Alfredo Álvarez Cárdenas (Mexico)³ as focal points for Cluster II (Governance).
5. The Study Group held a number of regular meetings between May and October 2017, as well as several informal meetings by the co-Chairs and co-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 recommendations regarding the continuation of its work.

II. Cluster I: Increasing the efficiency of the criminal process

7. The program of work for Cluster I in 2017 was disseminated on March 22, 2017. It was focused on activities related to continuing engagement and dialogue between the Court and States Parties in order to increase the efficiency and effectiveness of the criminal process and assess the implementation of measures to date.
8. The first meeting for Cluster I was held on 28 June 2017, wherein the group received an update from the Presidency of the Court on the work of the judges on expediting the criminal process, including the three retreats held so far.
9. The Presidency Legal Adviser, Mr. Hiram Abtahi, explained that on 12 May 2017, as a result of the judges’ retreat in Limburg in October 2016, the third, updated version of the Chambers Practice Manual was issued, with a new section governing issues related to the preparation phase of trial proceedings before the commencement of trial. The Manual is not intended as a binding document; it rather contains general recommendations and guidelines reflecting best practices, based on the experience and expertise of judges across trials at the Court. It is a living document, which will be updated, integrated and amended as warranted by any relevant development. Mr. Abtahi further explained that in June 2017, the judges of the Court held a third retreat in Krakow, Poland, to discuss ways of improving appeals

¹ ICC-ASP/9/Res.2.

² ICC-ASP/15/Res.5, para. 57.

³ Mr. Alfredo Álvarez Cárdenas (Mexico) was appointed on 22 September 2017 to replace Ms. Lourdes Suinaga (Mexico), who had been appointed on 16 February 2017.

proceedings. Like earlier retreats in 2015 and 2016, the Krakow retreat allowed for a private exchange among judges on key aspects of judicial work, with a view to enhancing the efficiency of the Court's proceedings. The judges also discussed, *inter alia*, issues related to the establishment of a database for the Court and the procedures for the selection of judges for temporary attachment to the Appeals Chambers.

10. On 11 October 2017, the co-focal points held an event at the Argentine Official Residence entitled "Conversation with the ICC President Judge Silvia Fernández de Gurmendi on the efficiency and effectiveness of the criminal process".

11. The co-focal points of Cluster I interviewed President Fernández on a range of matters including: the President's first impressions; her legacy; changes to Rules of Procedure and Evidence (RPE) and Regulations; development of the Chambers Practice Manual; impact of the combined common and civil law hybrid system at the Court on its efficiency; key achievements and lessons learned; and how performance indicators and judges retreats have delivered concrete results.

12. The Conversation also covered how improvements to the functioning of criminal proceedings could be implemented, including changes to the Rules of Procedure and Evidence and the Regulations; and through agreeing common practice. The President explained that although changing the RPE was occasionally necessary, she preferred to focus on amendments to the Regulations of the Court, and to set best practices through jurisprudence and the Chambers Practice Manual. She highlighted the significance of the introduction of annual judges' retreats. During the most recent retreat in Krakow and shortly thereafter, the President outlined that the judges had agreed several amendments to Regulations of a technical nature. These included changes to rationalize the appeals procedure, through introducing uniform terminology; requiring the inclusion of grounds of appeal in notices of appeal; and shortening the procedure in respect of appeals granting or denying interim release.

13. On the issue of victims, the President reiterated that victim participation and access to justice was crucial. The Court continued to work on such issues, notably by simplifying application forms for victims' participation and by increasing outreach. The President was continuing this work, including through close liaison with the Trust Fund for Victims. She noted that the Court was working with 14,000 victims.

14. On achievements, President Fernández explained that while it was essential that each judge pursue efficiency and effectiveness in their judicial tasks, individuals could not change the system on their own. The judges had to work collectively, with vocal support from friends of the Court. Three years of driving for increased efficiency and effectiveness had changed attitudes and borne concrete results. But of course there is still work to be done.

15. A number of other developments relating to the efficiency of the criminal process also took place in 2017.

16. In particular, on 12 May 2017, the third edition of the "Chambers Practice Manual" of judges was issued in both English and French. This update of the Chambers Practice Manual added a new section governing issues related to the preparation phase of trial proceedings before the commencement of trial. The topics to be inserted in this new section are the result of collective discussions held at the Second Judges' retreat that took place in Limburg, the Netherlands, from 28 to 29 October 2016.

Future work

17. The Study Group aims to continue its ongoing dialogue with the Court, with a view to enhancing the efficiency and effectiveness of the Court, and ensuring the best use of the Court's resources; while, at the same time, fully preserving the Court's judicial independence and the quality of its work, as well as safeguarding the rights of the accused and victims.

18. Following the decision of the Bureau on 18 October, the Study Group will discuss the amendments to rule 26 of the Rules of Procedure and Evidence recently proposed by the Head of the Independent Oversight Mechanism. The proposed amendments will then continue to be discussed in the Working Group on Amendments in New York.

III. Cluster II: Governance and budgetary process

19. The mandate of Cluster II for 2017 derives from annex 1, paragraph 9(c) of the omnibus resolution,⁴ which stated that the Assembly “*invites* the Court to continue to share with the Study Group on Governance any update on the development of qualitative and quantitative indicators”.

20. The programme of work for Cluster II was disseminated on 22 March 2017. Consistent with the mandate, the programme of work was focused on the topic of performance indicators and, in particular, on strengthening the dialogue between States Parties and the Court by providing a forum for the Court to share its progress in this area.

21. The first meeting of Cluster II was held on 6 July 2017. The co-focal points briefed the Study Group on their objective for the year, which was to facilitate discussion on the important topic of performance indicators while also being respectful of the Court’s mandate and the independence of its working methods, bearing in mind the challenge that developing performance indicators poses to any judicial institution and in particular to a relatively young and complex institution such as the International Criminal Court. The co-focal points acknowledged the hard work done by the Court in identifying, developing and applying performance indicators and noted that they were aware it remained a work in progress.

22. The main focus of the first meeting was a presentation by the Court on “examples of practical application of performance indicators related to management”. Presentations were delivered by representatives of the Office of the Prosecutor (OTP) and the Registry, outlining each organ’s approach to indicators in general, and citing examples of specific indicators which had been developed. Delegations welcomed the presentations made by the Court, in particular the more detailed explanations made regarding some of the different offices of the Court, and looked forward to having additional explanations in the future. Some delegations highlighted the importance that gender balance and equitable geographic representation be given due consideration by the Court in the development of its performance indicators.

23. The second meeting of Cluster II was held on 17 October 2017. The main focus of this meeting was a briefing by the Court on the upcoming third report on performance indicators. The briefing was given by a representative of the Legal and Enforcement Unit of the Presidency. The Legal Advisor for the Trial Division was also available to answer questions from the perspective of Chambers, as were representatives of the Registry and the OTP. The briefing comprised a short outline of the history of the Court’s performance indicators project, a summary of developments since the previous Court report, and an indication of the structure and contents of the forthcoming third report. States Parties had the opportunity to pose questions about the development of performance indicators and offer comments. States Parties were advised that the third report would be issued by the Court in November.

Future work

24. The Study Group aims to continue its consideration of the topic of performance indicators, bearing in mind that the Court needs time and space to implement its intended approach in order to produce results which can form the basis of meaningful further dialogue. The Study Group will therefore continue to follow developments in this area closely and to receive relevant updates from the Court, and will provide the forum for ongoing dialogue between States Parties and the Court as appropriate.

IV. Recommendations

25. The Study Group through the Bureau submits the recommendations annexed to this report for the consideration of the Assembly.

⁴ ICC-ASP/15/Res.5.

Annex

Recommendations

A. For inclusion in the omnibus resolution:

The Assembly of States Parties,

1. *Welcomes* the continued 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 *invites* the Court to further engage in such a dialogue with States Parties;
2. *Takes note* of the Bureau's report on the Study Group on Governance;¹
3. *Extends* for another year the mandate of the Study Group, established in resolution ICC-ASP/9/Res.2 and extended in resolutions ICC-ASP/10/Res.5, ICC-ASP/11/Res.8, ICC-ASP/12/Res.8, ICC-ASP/13/Res.5, ICC-ASP/14/Res.4, and ICC-ASP/15/Res.5;
4. *Welcomes* the issuance of the third edition of the Chambers Practice Manual; and *encourages* the judges to continue their work on practice issues in 2018, including victims participation;
5. *Calls upon* States Parties to continue considering amendment proposals by the Working Group on Lessons Learnt;
6. *Welcomes* the continued work of the Court on the topic of performance indicators;
7. *Expresses* the Assembly's wish to continue its dialogue with the Court on that topic, bearing in mind that the Court needs to implement its intended approach in order to produce results which can form the basis of further dialogue;
8. *Requests* the Study Group on Governance to follow up and, where appropriate, continue the dialogue on the evolution of indicators;

B. For inclusion in the mandates annexed to the omnibus resolution:

With regard to the Study Group on Governance,

- (a) *invites* the Court to further engage in a structured dialogue with States Parties 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;
- (b) *requests* the Study Group on Governance to consider the amendments to rule 26 of the Rules of Procedure and Evidence proposed by the Head of the IOM, in consultation with the Court, and to convey its recommendations to the Working Group on Amendments to enable the latter to make a recommendation thereon to the seventeenth session of the Assembly;
- (c) *requests* the Study Group to report back to its seventeenth session;
- (d) *invites* the Court to continue to share with the Study Group on Governance any updates on the development of qualitative and quantitative indicators;
- (e) *also invites* the Court to monitor the use of intermediaries through its Working Group on Intermediaries with a view to safeguarding the integrity of the judicial process and the rights of the accused; and
- (f) *requests* the Court to inform States Parties, when appropriate, about important developments pertaining to the use of intermediaries, which might require the Court to amend the Guidelines;

¹ ICC-ASP/16/19.