

Resolution ICC-ASP/22/Res.1

Adopted at the 9th plenary meeting, on 13 December 2023, by consensus

ICC-ASP/22/Res.1

Resolution on amendments to the Rules of Procedure and Evidence of the International Criminal Court

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 to engage 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,

Recalling operative paragraphs 1 and 2 of resolution ICC-ASP/9/Res.2 and article 51 of the Rome Statute,

Further recalling paragraph 9 of annex I to resolution ICC-ASP/20/Res.5,

Taking note with appreciation of the consultations undertaken within the Study Group on Governance and the Working Group on Amendments,

Noting the report of the Working Group on Amendments¹ and the report of the Bureau on the Study Group on Governance,²

1. *Decides* that the following rule 69 *bis* be inserted after rule 69 of the Rules of Procedure and Evidence:

“Rule 69 *bis*

Judicial notice of adjudicated facts in final judgments

1. At the request of a party or *proprio motu*, a Trial Chamber, after hearing the parties and the participants, may decide to take judicial notice of adjudicated facts or of the authenticity of documentary evidence from other proceedings of the Court relating to matters at issue in the current proceedings to the extent that they do not relate to the acts, conduct or mental state of the accused as charged and provided that such notice would not be prejudicial to or inconsistent with the rights of the accused.

2. Judicial notice in accordance with sub-rule 1 may be taken only where a fact or the authenticity of documentary evidence has been finally determined by the Appeals Chamber or by a Trial Chamber where there has been no appeal or the finding has not been challenged on appeal.

3. When taking notice of adjudicated facts, a Trial Chamber shall consider whether the fact is, *inter alia*:

- (a) relevant to an issue in the proceedings;
- (b) distinct, concrete, and identifiable;
- (c) identified with adequate precision by the requesting party;
- (d) taken as formulated by the requesting party and not differing in any substantial way from the formulation of the original judgment;
- (e) not be unclear or misleading in the context in which it is placed in the requesting party's motion;
- (f) does not contain characterisations of an essentially legal nature; and
- (g) not based on an agreement between the parties to the other proceedings.

¹ ICC-ASP/22/29.

² ICC-ASP/22/7.

4. Where the Trial Chamber has decided to take judicial notice in accordance with sub-rule 1, a party may challenge the fact or authenticity of the documentary evidence by referring to existing contradicting evidence or by introducing evidence to the contrary. In such case, the Trial Chamber may authorise the submission of evidence supporting the adjudicated fact or the authenticity of the documentary evidence.

5. Where the Trial Chamber has decided to take judicial notice in accordance with sub-rule 1, the Trial Chamber shall assess such judicially noticed adjudicated fact or documentary evidence to determine what conclusions, if any, can be drawn when considering it together with all the evidence before it.”

2. *Further decides* that the following rule 140 *ter* be inserted after rule 140 *bis* of the Rules of Procedure and Evidence:

“Rule 140 *ter*

Continuation of trial proceedings in the permanent absence of a judge

1. If a judge assigned to a Trial Chamber, for reasons enumerated in rule 38, sub-rule 1, is unable to complete any trial which has already commenced the hearing of evidence, and no alternate judge has been assigned, the remaining judges of the Trial Chamber will report to the Presidency as to the need for a replacement judge and may order either a rehearing or the continuation of the hearing from that point. The continuation of the hearing can only be ordered with the consent of all the accused, except as provided for in sub-rule 2 below.

2. If, in the circumstances mentioned in sub-rule 1, an accused does not consent, the remaining judges of the Trial Chamber may nonetheless decide whether or not to continue the hearing before that Trial Chamber with a replacement judge if, taking all the circumstances into account, they determine unanimously that doing so would serve the interests of justice.

3. This decision is subject to appeal pursuant to article 82, paragraph 1 (d). If the decision to continue the hearing with a replacement judge does not result in an appeal, or the Appeals Chamber confirms the decision, the Presidency shall assign to the existing bench a replacement judge, who, however, can join the bench only after he or she has certified that he or she has familiarized himself or herself with the record of the proceedings. Such certification process shall be considered to satisfy the requirement of presence at all stages of the trial in article 74, paragraph 1. Only one replacement under this rule may be made.

4. Apart from the procedures established in this rule, the trial shall otherwise be suspended until this certification is filed. Once the certification in sub-rule 3 has occurred, the replacement judge shall participate fully in all aspects of the trial, including deliberations in accordance with rule 142.

5. If, in a trial where the Presidency has assigned an alternate judge in accordance with article 74, paragraph 1 and rule 39, a judge is unable to continue sitting, the trial shall continue with the alternate judge replacing the judge who is unable to continue sitting.”
