

2015 Report of the Advisory Committee on Legal Texts
Issued Pursuant to Rule 16 of the Rules of Procedure of the ACLT

1. This report summarises the activities of the ACLT in 2015.

B. Composition of the ACLT

2. The ACLT, as of 1 January 2015, was comprised of:

- **Judge Joyce Aluoch**, a judge in the Trial Division (Chairperson);
- **Judge Akua Kuenyehia**, a judge in the Appeals Division;
- **Judge Silvia Fernández de Gurmendi**, a judge in the Pre-Trial Division;
- **Fabricio Guariglia**, representative from the Office of the Prosecutor;
- **Thomas Henquet**, representative from the Registry;
- **Thomas Viles**, representative of counsel included in the list of counsel.

3. On 25 March 2015, the membership then became:

- **Judge Joyce Aluoch**, a judge in the Trial Division (Chairperson);
- **Judge Christine Van den Wyngaert**, a judge in the Appeals Division;
- **Judge Marc Perrin de Brichambaut**, a judge in the Pre-Trial Division;
- **Fabricio Guariglia**, representative from the Office of the Prosecutor;
- **Thomas Henquet**, representative from the Registry;
- **Thomas Viles**, representative of counsel included in the list of counsel.

4. As of 8 October 2015, the membership then became:

- **Judge Chile Eboe-Osuji**, a judge in the Trial Division (Chairperson);
- **Judge Christine Van den Wyngaert**, a judge in the Appeals Division;
- **Judge Marc Perrin de Brichambaut**, a judge in the Pre-Trial Division;
- **Fabricio Guariglia**, representative from the Office of the Prosecutor;
- **Thomas Henquet**, representative from the Registry;
- **Yaré Fall**, representative of counsel included in the list of counsel.

C. ACLT Meetings and Activities

5. The ACLT held meetings on 26 March, 10 September and 18 November 2015.

At these meetings, the ACLT discussed the way forward for the committee and certain suggestions proposed by the Office of the Prosecutor on possible



amendments to the Regulations of the Court. The ACLT also discussed one formal amendment proposal to amend Rule 165 of the Rules of Procedure and Evidence. Because neither representative of counsel from the list of counsel during this period was based in The Hague, they did not attend the meetings in person but rather participated by way of telephone conference call.

6. The ACLT carried out its work on the Rule 165 amendment proposal both by way of exchanges of views in the meeting referred to above and through written correspondence and proposed redrafts of the provision.
7. The amended Rule 165 was recommended by the ACLT in a report finalised on 29 September 2015. Rule 165 was provisionally amended by a plenary of the judges on 10 February 2016 on the following terms:

Current rule 165	Amended rule 165 (amendments in highlight)
Rule 165 Investigation, prosecution and trial 1. The Prosecutor may initiate and conduct investigations with respect to the offences defined in article 70 on his or her own initiative, on the basis of information communicated by a Chamber or any reliable source.	Rule 165 Investigation, prosecution, trial and appeal 1. The Prosecutor may initiate and conduct investigations with respect to the offences defined in article 70 on his or her own initiative, on the basis of information communicated by a Chamber or any reliable source.
2. Articles 53 and 59, and any rules thereunder, shall not apply.	2. Articles 39(2)(b), 53, 57(2), 59, 76(2) and 82(1)(d), and any rules thereunder, shall not apply. A Chamber composed of one judge from the Pre-Trial Division shall exercise the functions and powers of the Pre-Trial Chamber from the moment of receipt of an application under article 58. A Chamber composed of one judge shall exercise the functions and powers of the Trial Chamber, and a panel of three judges shall decide appeals. The procedures for constitution of Chambers and the panel of three judges shall be established in the Regulations.

<p>3. For purposes of article 61, the Pre-Trial Chamber may make any of the determinations set forth in that article on the basis of written submissions, without a hearing, unless the interests of justice otherwise require.</p>	<p>3. For purposes of article 61, the Pre-Trial Chamber, as constituted under sub-rule 2, may make any of the determinations set forth in that article on the basis of written submissions, without a hearing, unless the interests of justice otherwise require.</p>
<p>4. A Trial Chamber may, as appropriate and taking into account the rights of the defence, direct that there be joinder of charges under article 70 with charges under articles 5 to 8.</p>	<p>4. The Trial Chamber seized of the case from which the article 70 proceedings originate may, as appropriate and taking into account the rights of the defence, direct that there be joinder of charges under article 70 with charges in the originating case. Where the Trial Chamber directs joinder of charges, the Trial Chamber seized of the originating case shall also be seized of the article 70 charge(s). Unless there is such a joinder, a case concerning charges under article 70 must be tried by a Trial Chamber composed of one judge.</p>

8. This provisional amendment also included a new Regulation 66 *bis*, which provides as follows:

<p>Regulation 66 bis</p> <p>Constitution of Chambers and the panel of three judges</p> <p>1. The President of the Pre-Trial Division, at the request of the Pre-Trial Chamber seized of the relevant situation, shall constitute, in accordance with rule 165(2), a Chamber composed of one judge from the Pre-Trial Division to exercise the functions and powers of the Pre-Trial Chamber from the moment of receipt of an application under article 58 with respect to offences defined in article 70.</p> <p>2. The Presidency shall constitute, in accordance with rule 165(2), a Chamber composed of one judge to exercise the functions and powers of the Trial Chamber, and a panel of three judges to decide appeals with respect to offences defined in article 70. This provision shall not apply in the event of a joinder of charges pursuant to rule 165(4).</p>
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9. Apart from the foregoing, the ACLT neither received nor considered further amendment proposals in 2015.