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Court



Judge Silvia Fernández de Gurmendi
President of the International Criminal Court

**Presentation of the Court's Second Report on Performance Indicators for the
International Criminal Court**

Segment on "Enhancing the efficiency and effectiveness of the criminal process" –
Performance indicators for the International Criminal Court

Check against delivery

22 November 2016, 16:30h-18:00h

The Hague, The Netherlands

Distinguished facilitators and co-panellists,
Excellencies,
Ladies and Gentlemen,

It is an honour to be here today to present the Court's second report to the Assembly of States Parties on Performance Indicators for the International Criminal Court. I am also glad to see my distinguished co-panellists today.¹

I. Introduction

This Second Report on the development of performance indicators for the ICC is a follow-up to the first preliminary report submitted to the 14th Assembly in 2015 following the request formulated in 2014 where the Court "[...] intensify its efforts to develop qualitative and quantitative indicators that would allow the Court to demonstrate better its achievements and needs, as well as allowing States Parties to assess the Court's performance in a more strategic manner".

It also responds to the Assembly's request in 2015 to be updated on the Court's progress in 2016.

Let me recall that from the outset, the Court has sought to link the indicators project to other managerial tools and governing documents already in place at the Court. In particular, it is important to note that the four key goals identified in our 2015 report as being determinative of the Court's performance are based on the ICC's Strategic Plan 2013-2017. In this Second Report, these key goals are essentially kept unchanged. These goals are:

- (a) The Court's proceedings are expeditious, fair and transparent at every stage;
- (b) The ICC's leadership and management are effective;
- (c) The ICC ensures adequate security for its work, including protection of those at risk from involvement with the Court; and
- (d) Victims have access to the Court.

¹ Nicolas Guillou, Chef de Cabinet, STL; James Goldston, Executive Director, Open Society Justice Initiative; Ambassador Eduardo Rodríguez Veltzé, HWG Facilitator on Strategic Planning.

Our 2015 report already identified some criteria that could be used to measure how these goals were achieved. Throughout 2016, the Court has developed measurable criteria for each goal in more detail, and we have provided some initial data as a sample of potential future measurements to be undertaken. You will find this data in the four annexes of the report.

Let me underline at this point that the data contained in the annexes before you are only a sample of information, intended to illustrate how some of the selected criteria could be measured in practice. The attached data does not provide a full picture of the performance of the Court and it was not intended to do so. The intention was indeed to assist in a more concrete discussion of this complex matter by providing some concrete and practical illustrations of how performance indicators could look like in the future.

II. Work undertaken in 2016

In 2016, as described in the Report, we deployed all efforts to ensure an inclusive process intended to obtain inputs from all organs at the highest levels, including the principals and judges of the Court, relevant sections of the Court's organs, both Offices of Public Counsel, representatives of victims and the defence, the Trust Fund for Victims and civil society.

Among the initiatives that were undertaken in this regard, I would like to highlight a particularly useful two-day retreat on indicators organised by the Swiss Government, which took place in Glion, Switzerland April 2016, and for which I am grateful. This event allowed, *inter alia*, for an in-depth discussion among all senior managers of the Court, including sixteen judges of the Court, the Registrar and Deputy Prosecutor and a number of officials of relevant sections of the Court's organs.

III. Underlying principles

Our work on performance indicators has been guided by a number of principles and methodological considerations that transpired during research and consultations and which are explained in the report. Among them, I would like to highlight the following:

1. National methodologies and practices

The methodologies on performance indicators used in many national judicial bodies appear to be difficult to apply to any international criminal tribunal and are particularly difficult at the ICC, which by virtue of its global mandate deals with a limited number of cases per situation and the situations may be profoundly different from one another. Common national practice of assessing average performance levels across a large number of cases is therefore of limited value at the ICC, at least at its current stage of development.

Equally, external factors such as local security conditions add to the unique features of each case. For this and other reasons, performance indicators pertaining to judicial proceedings in each case cannot automatically be used for a comparison with other cases or for the purpose of generating averages and/or benchmarks across cases.

Having said that, the Court remains open to any impulses and suggestions from national experiences that could prove transferable to our international and global context. I note in this regard that Ambassador Veltzé will be speaking about his own national experience in Bolivia.

2. Scope of indicators

The Court limited the choice of indicators for now to those primarily under the control of the Court itself. However, many operations and activities rely heavily on external factors such as technical and judicial cooperation, arrests and other support. Eventually, these factors may also have to be taken into the Court's consideration since they may have a major impact on the speed and conduct of proceedings.

3. Indicators and the Court's budget

Finally, the Court's performance needs to be evaluated within the constraints of its annual budget. This is so not only for the amount or pace of investigations and cases but also the amount and nature of relevant outreach and fieldwork the Court can do within the allocated resources.

IV. Measurable criteria

Let me now come to the heart of the Second Report that is the measurable criteria relevant to assess the achievement of each of the four identified goals.

Some of the selected factors or criteria appear to relate rather to workload indicators measuring the Court's performance in quantitative rather than qualitative terms. However, we believe that the choice of indicators itself and the manner in which they are grouped may indeed contribute to produce a qualitative assessment of performance as well. This is of course without prejudice of reassessing and adjusting this choice in light of gained experience.

1. FIRST GOAL: The Court's proceedings are expeditious, fair and transparent at every stage

The Second Report takes into account that the duration of cases is widely seen as an indicator of the Court's overall efficiency. In light of this, in terms of methodology the report splits the life of a case at the ICC into a number of distinguishable phases with a number of indicators in each phase.

During the Court's work in 2016, finding meaningful indicators for the first goal and each phase of the proceedings turned out to be a major challenge. The choice of indicators was a subject of discussion amongst the judges including the risk to provide a partial or distorted picture. Discussions will continue and some indicators may need to be adjusted once we have fuller data. Let me highlight three of the major points of contention:

First, it turned out that it is very difficult to measure the fairness of proceedings. In addition, as the concepts of expeditiousness and fairness are closely linked and affecting each other, neither of them should be measured in isolation. For that reason, the Second Report contains a set of common indicators that seek to measure relevant aspects of both concepts taken together.

Second, some of the quantitative factors (such as the number of filings in a certain procedural phase or the number of months spent in a particular phase) often do not have a meaning in and of themselves. A narrative needs to accompany the figure in order to explain how certain values need to be read in relation to each other. In short, some of the numbers alone may not be sufficient, and may need to be *explained* - for each individual case.

Third, the question of which cases to include in the report was also controversial. Performance Indicators are a new and forward-looking exercise, and for the early cases data may not be readily available or may not be reliable. For these reasons, the

attachments to the Second Report only refer to on-going or most recent cases before the Trial Chambers, namely

- *Ongwen*;
- *AlMahdi*;
- *Gbagbo/Ble Goude*;
- *Bosco Ntaganda* and
- *Bemba et al.* (the first contempt case before the ICC).

For the first cases at the Court, namely Lubanga, Katanga and Bemba, data will be collected to measure criteria relevant to on-going proceedings in relation to them, namely reparations and appeals proceedings.

2. SECOND GOAL: “The ICC’s leadership and management are effective”

As regards the second key goal, *effective ICC leadership and management*, as you know the Court is already reporting to the Assembly in different settings on many relevant aspects. This includes, among others, financial management, human resources, risk management, strategic planning and general aspects of governance. However, the Court also identified some areas of a Court-wide significance that merit being also part of its performance indicator exercise. These are in particular:

- budget implementation
- procurement
- staff performance and
- recruitment, gender and geographical balance.

Relevant data may, over time, assist in providing comparative data for future indicator measurement cycles.

3. THIRD GOAL: “The ICC ensures adequate security for its work, including protection of those at risk from involvement with the Court”

As regards the Court’s third key goal regarding security, the report picks up on the Court’s obligations to protect not only its own staff but also to ensure the security of victims, witnesses and others who may be at risk because of their involvement with the ICC. The report distinguishes on two levels:

- first between physical and information security; and

- second between HQ security and security in the field.

Here again I need to underline that the determination of relevant criteria to measure the performance of the Court in this area is work in progress. Indicators so far do not yet paint the full picture of the ICC's security framework. Further work will be necessary.

4. FOURTH GOAL: Victims have access to the Court

Victims' access to the Court has to be assessed on two different levels:

- first, it refers to effective formal participation in a case by victims affected by the crimes prosecuted.
- Second, access should be understood also in a broader context, and encompass access of affected communities to relevant information regarding ICC proceedings and activities.

During discussions with representatives of civil society, it was underlined that performance indicators should also reflect the Court's impact on victims and affected communities.

In this regard, it is important to note that in particular the effect of Court activities on affected populations and its general impact are inherently difficult to measure and may exceed the capacity of the Court to do so within existing resources. Continued dialogue with civil society and other stakeholders operating on the ground will be necessary to assist in evaluating the Court's performance in this area.

V. Next Steps

Let me conclude by underlining that the second report on indicators constitutes a serious attempt to provide for the first time a quantitative and qualitative picture of judicial activities of the ICC through performance indicators. It is also very much a first attempt to do something like this at the international level.

As I said before, the choice of indicators was not easy and may need to be adjusted in light of further discussions and consultations.

Some scepticism persists as to whether performance indicators can indeed be applied to an international criminal court of a global nature like ours, or whether the ICC is ripe for the exercise due to the still low number and high diversity of its cases.

Maybe these are questions that cannot be answered in the abstract and may require that we come back to them after we have had the chance to test the current approach, including by collecting all the relevant data for the criteria that have been selected so far.

The Court intends to continue to collect and assemble relevant data on the selected criteria with a view to presenting to you a more complete set at your next session.

A fuller collection of data will also assist in further discussions at the Court and with you on the choice of relevant indicators and, more generally, on the usefulness of the entire exercise on performance indicators for the ICC.

I look forward to the comments by my co-panellists as well as our ensuing discussion.

I thank you for your attention.

[end]