



Presidency 2015-2018:
End of Mandate Report by President Silvia Fernández de Gurmendi

9 March 2018

Table of Contents

I. INTRODUCTION.....	2
II. ACTIONS TO ENHANCE EFFICIENCY AND EFFECTIVENESS WITHIN THE JUDICIARY	3
1. THE COLLECTIVE REVIEW OF PROCEEDINGS BY THE JUDGES.....	3
The changes to the lessons learnt process	3
The judges' retreats	4
The Chambers Practice Manual.....	5
Amendments to the legal framework	7
2. REFORMS IMPLEMENTED IN CHAMBERS SUPPORT STRUCTURES.....	7
Creation of the position of Head of Chambers	8
Flexible assignment of staff	8
Working Groups	8
Professional development	9
Exchanges with other institutions	9
Training.....	10
Performance Appraisals.....	10
3. DEVELOPMENT OF ICC CASE LAW DATABASE	10
4. ASSIGNMENT OF JUDGES.....	11
The assignment to divisions	11
The assignment of ad hoc judges to the Appeals Division through a roster	11
III. ACTIONS TO ENHANCE COURT-WIDE COORDINATION AND EFFICIENCY	13
1. ENHANCED COORDINATION WITH THE OFFICE OF THE PROSECUTOR AND THE REGISTRY ...	13
Budget process	14
External relations.....	14
2. THE DEVELOPMENT OF PERFORMANCE INDICATORS	15
IV. EXTERNAL ACTIONS TO ENHANCE SUPPORT	17
1. DIALOGUE WITH THE INTERNATIONAL COMMUNITY.....	17
2. DIALOGUE WITH THE LEGAL COMMUNITY	18
Cooperation and exchange with other international, regional and national courts.....	18
Judicial Seminar and Opening of the Judicial Year.....	19
Engagement with organisations of counsel	19
3. COOPERATION WITH THE TRUST FUND FOR VICTIMS	20
V. CONCLUSION AND RECOMMENDATIONS	22

I. Introduction

1. This report summarizes the initiatives that I promoted on a priority basis as President of the Court during my three-year mandate (2015-2018).

2. In the internal process leading to my election by my fellow judges – to whom I am very grateful – I set a number of priority objectives and actions to be undertaken if elected¹. Upon my election, I announced these priority objectives to the international community, and reiterated them every time I had the opportunity in presentations to the Assembly of State Parties at The Hague and New York as well as other meetings of states, organizations, and legal community². Having reached the end my mandate, I believe it is my duty to report back on the concrete measures that were effectively taken in the fulfilment of such goals.

3. As repeatedly announced in all those presentations, I made it the top priority of my Presidency to enhance the efficiency and effectiveness of the Court, with particular emphasis on expediting and improving its criminal proceedings. While acknowledging the central role of the Presidency in outward-facing attempts to increase understanding of the Court's mandate and promote universal membership, I have constantly stressed that external cooperation is linked to performance. Some delays and difficulties in our proceedings derive from factors beyond the control of the Court. However, I am convinced that enhancing the Court's mandate is necessary to create a virtuous circle leading to more cooperation. Indeed, the Court must constantly strive to enhance the speed and quality of the justice that it delivers in order to enhance its own credibility and foster and maintain external support.

4. Therefore, during my three-year Presidency, I deployed all my efforts and took a number of concrete measures towards that end. I believe that progress was indeed achieved, thanks to the individual and collective efforts of judges, the other principals and staff of the Court. I am particularly grateful to the support and great efforts of the two Vice-Presidents, judges Joyce Aluoch and Kuniko Ozaki, with whom we worked as a team during these three fascinating and challenging years.

5. It is obvious that much more will need to be done in the future. Performance and good governance are a continuing struggle, in particular in an international and multicultural institution like ours, which is, in addition, composed of organs with distinct and independent mandates. The Court constantly needs to find different and better ways to confront its multiple challenges, including in particular the challenge of aligning visions and goals among organs in pursuance of a “One Court principle”. At the same time, it needs to consolidate the good results obtained through reforms already made.

6. I hope this report will assist internal and external observers and, in particular, the newly elected judges, to understand better the efforts made during these years to enhance the Court. I hope it will also contribute to the initiatives of the future leadership in their own efforts to do so. I hope, in particular, that it will help them find an appropriate balance between stability and change. In my view, the Court needs both.

¹ “Presentation of Proposed Priority Objectives and Actions for the Presidency 2015-2018 by Judge Silvia Fernandez de Gurmendi”, 27 February 2015, internal document.

² See e.g. “Remarks to the 25th Diplomatic Briefing”, 26 March 2015, available at www.icc-cpi.int/iccdocs/db/25DB-Pres-Eng.pdf; op-ed “The International Criminal Court. Looking Ahead”, *Diplomatic Magazine*, 5 July 2015, available at www.diplomatmagazine.nl/2015/07/05/the-international-criminal-court-looking-ahead/.

II. Actions to enhance efficiency and effectiveness within the judiciary

7. The Presidency – composed of a President and two Vice-Presidents – and the Judicial Divisions (Appeals, Trial and Pre-Trial, collectively commonly referred to as Chambers) constitute two separate organs of the Court with distinct functions.³ In accordance with the legal framework, the Presidency is responsible for the overall non-judicial administration of the Court and the judges exercise the judicial functions, within chambers and divisions.⁴

8. While Chambers do not have administrative functions of a general kind, they are responsible for the management of their respective cases, which, in turn, have a tremendous impact on the overall management of the Court. The proper administration of the Court is indeed highly dependent on the efficient conduct of the judicial work. Such work includes not only the organisation and conduct of legal proceedings by single judges and individual chambers but also the coordination and effective use of staff assigned to support them as well as other resources and services.

9. Below are described a number of initiatives undertaken during my term to enhance the overall efficiency and effectiveness of the judicial work of the Court, without prejudice to the independence of judges in the exercise of their judicial functions. Such initiatives included the collective review of judicial proceedings, reforms to improve the organization and functioning of legal support structures, the development of an ICC case law database, and some procedures to enhance the transparency and predictability of the assignment of judges to divisions.

1. The collective review of proceedings by the judges

10. I am convinced that for the enhancement of the judicial work of the Court it is essential to strive to develop a more cohesive judicial culture. Without prejudice to the judicial independence of each individual judge and chamber dealing with a particular case, it is vital, in my view, for both expeditiousness and fairness, to increase predictability of the proceedings by a gradual but steady harmonization of practices at the Court. The initiatives described below were developed against this overarching goal.

The changes to the lessons learnt process

11. In October 2012, a Working Group on Lessons Learnt (WGLL) was established at the Judiciary of the Court to take part of a structured dialogue between the Study Group on Governance of the Assembly of State Parties (ASP) and the Court with a view to expediting proceedings and enhancing the efficiency and effectiveness of the Court⁵. In accordance with recommendations from the ASP, the WGLL was to take stock of developments during the first ten years of the institution, revise proceedings and, most importantly, propose concrete amendments to the Rules of Procedure and Evidence to the ASP. States underlined that, in addition to receiving a broad identification of issues to be revised, they also expected to receive “a minimum number of detailed amendment proposals to the Rules”⁶.

12. As a pre-trial judge I was a member of this Group⁷ which produced some useful results, including the identification of nine clusters of issues to be revised⁸ and the proposal of some concrete

³ Article 34 (a) and (b) of the Statute.

⁴ Articles 38 and 39 of the Statute.

⁵ See “Study Group on Governance: Lessons learnt: First report of the Court to the Assembly of States Parties”, 23 October 2012, ICC-ASP/11/31/Add.1, paras 12-19, setting out the “Road Map”, which would include the establishment of a Working Group on Lessons Learnt. This Road Map was endorsed by the ASP in its resolution ICC-ASP/11/Res.8, 21 November 2012, para. 41.

⁶ ICC-ASP/11/31 Add.1, para 6.

⁷ The Working Group was chaired by former Vice-President Judge Monageng and comprised Judges Kuenyehia, Trendafilova, Aluoch and Fernández de Gurmendi.

⁸ “Study Group on Governance: Lessons learnt: First report of the Court to the Assembly of States Parties”, 23 October 2012, ICC-ASP/11/31/Add.1, pp. 4-6.

individual amendments to the Rules of Procedure and Evidence. Three of them were adopted by states, namely rule 132 *bis* on the designation by the Trial Chamber of one or more of its judges to handle the preparation of the trial⁹; rule 100, which transferred from the Plenary to the Presidency of the Court the power to decide on whether to hold proceedings in a State other than the Host State; and rule 68, which expanded the circumstances in which a prior recorded testimony may be admitted.¹⁰ Further amendments proposed by the Court¹¹ were not adopted.

13. By 2014 it was becoming increasingly clear that the shortening and streamlining of pre-trial and trial proceedings could not be achieved by individual amendments to the legal framework, which became, in any event, increasingly difficult to get approved by the ASP. As indicated in a report to the ASP, in order to enhance the system, it was important to conduct an overall revision of all issues common to pre-trial and trial proceedings in order to provide necessary solutions in a coherent package of proposals.¹²

14. Building on this idea, upon my election as President for the period 2015-2018, I endeavoured to modify both the process and output of the lessons learnt exercise, as announced before the election¹³. The *process* for revising proceedings needed to be inclusive and involve more judges, ideally all judges, as the revision of our proceedings could only be successful through the collective efforts of all of them. I indicated that I intended to personally chair the WGLL and that the limited composition of the group would be expanded in order to incorporate more judges to the process. In order to facilitate collective discussions, I proposed to hold a retreat within three months of the election of the new judges in order to integrate them immediately to the work of the Court.¹⁴

15. In relation to the *output* of this process, I sought to replace the piecemeal approach to the legal framework by a holistic revision of whole clusters of issues with a view to diagnosing practical problems and proposing comprehensive remedies. On the basis of this diagnosis we could decide whether amendments to the Rules of Procedure and Evidence or Regulations of the Court were necessary or whether we could harmonize solutions by other means, such as directives or written understandings that consolidated existing best practices. Amendments to the legal framework, in particular to the Rules of Procedure and Evidence, should be exceptional and proposed only when solutions could not solely rely on understandings among judges or amendments to the Regulations of the Court.

The judges' retreats

16. As promised, once elected, a first retreat was organized and held in Nuremberg, Germany, from 18-21 June 2015.¹⁵ This gathering proved to be an extremely useful tool for integrating the newly elected judges to the work of the Court through open discussions. These discussions were unprecedented. All judges accepted that judicial independence was in no way incompatible with exchanging views on matters of law and procedure with colleagues of other chambers and divisions with a view to trying to identify collegially a common response to some challenges.

17. The retreat focused on aspects of the pre-trial and trial proceedings as well as a proposal to improve the structure and methods of work of the legal support staff, which is developed further below.

⁹ This amendment was proposed by Judge Bruno Cotte and myself in 2011. It was adopted by the Assembly of State Parties in 2012, ICC-ASP/11/Res.2, 21 November 2012. *See also* “Report of the Study Group on Governance on rule 132 *bis* of the Rules of Procedure and Evidence”, 1 November 2012, ICC-ASP/11/41, Annex I.

¹⁰ “Working Group on Lessons Learnt: Second Report of the Court to the Assembly of States Parties”, 31 October 2013, ICC-ASP/12/37/Add.1.

¹¹ *See* Annex I of the “Report of the Bureau on Study Group on Governance”, 28 November 2014, ICC-ASP/13/28, containing proposals concerning rules 76 (3), 101 (3) and 144 (2) (b).

¹² “Report of the Working Group of Lessons Learnt to the Study Group on Governance Cluster I: Expediting the Criminal Process Progress Report on Cluster B ‘Pre-Trial and Trial Relationship and Common Issues’”, Annex II of the “Report of the Bureau on Study Group on Governance”, 28 November 2014, ICC-ASP/13/28.

¹³ *Supra* note 1.

¹⁴ *Supra* note 1.

¹⁵ *See* “ICC Judges agree on measures to improve efficiency of criminal process”, 22 June 2015, ICC-CPI-20150622-PR1121, available at www.icc-cpi.int/Pages/item.aspx?name=pr1121.

18. In light of its excellent results, the formula was replicated in a second retreat held in Limburg, Netherlands, on 27-29 October 2016, focusing exclusively on trial issues.¹⁶

19. On 22-24 June 2017, a third and final retreat was held in Krakow, Poland, which focused on Appeals issues and also allowed to discuss some institutional matters of particular importance for the judiciary.¹⁷

20. These three retreats were held on the basis of a program and discussion papers prepared by the Presidency in advance, in consultation with the judges. Retreats were essentially private meetings, opened only to judges, a very limited number of staff members that assisted in producing a final report at the end of each retreat, and interpreters, as retreats were held in both working languages of the Court. They provided an excellent venue for judges to exchange experiences on the most sensitive aspects of all phases of proceedings and other important institutional matters. During the retreats, the judges sought to identify best practices and recommend solutions by way of practice guidelines or, where needed, amendments to the legal framework.

21. The retreats were supplemented by informal meetings at the seat of the Court among judges of a particular division or interested judges in specific issues or clusters of issues. In addition to these informal discussions, some judges were appointed as focal points for particular matters. In sum, all judges as well as some legal officers became involved in various ways in the review of proceedings with the view of expediting, streamlining and improving the quality of the judicial work. The WGLL, while expanded to more judges, as anticipated, became progressively redundant as it was replaced by collective discussions among all. As a result of this collective exercise, common understandings were reached and some amendments proposed, as further developed below.

The Chambers Practice Manual

22. At the end of this three-year collective exercise, all nine clusters identified in 2012 have been revised and judges have reached common understanding with respect to important procedural issues. These include, in particular, provisions on matters that required priority attention pertaining to the pre-trial confirmation process and the transition to trial after confirmation. As further developed below, some amendments to the legal framework were also adopted. However, the bulk of the understandings reached by judges took the form of practice directives contained in a newly created “Chambers Practice Manual”.

23. The idea of a Manual was initially proposed by the Pre-Trial Division and endorsed at the Nuremberg retreat. After Nuremberg it was realized by the pre-trial judges taking into account collective agreements reached at the Nuremberg retreat on some important pre-trial issues.

24. The Manual was intended to be a non-binding and living document reflecting best practices identified by the judges, which would be made available on the Court’s website. The document would be expanded to other issues and phases of the proceedings as further agreements were achieved on further best practices.¹⁸ Accordingly the Pre-Trial Practice Manual that was first made available on 4 September 2015 was expanded twice, on 1 February 2016 and 12 May 2017 respectively, following further discussions among judges. The last edition was prepared after the second retreat of judges held in Limburg, The Netherlands, on trial issues. Already at this second edition, the Pre-Trial Manual became the “Chambers Practice Manual”, as the document expanded beyond pre-trial to cover issues related to various stages of proceedings. It is explicitly declared in the introduction to the Manual that its final goal “is to contribute to the overall effectiveness and efficiency of the proceedings before the Court”.

¹⁶ See “ICC judges hold second retreat to improve efficiency and effectiveness of judicial proceedings”, 31 October 2016, ICC-CPI-20161031-PR1249, available at www.icc-cpi.int/Pages/item.aspx?name=pr1249%20%80%8B.

¹⁷ See “Judges of the ICC visit Auschwitz-Birkenau at the end of their retreat on efficiencies”, 26 June 2017, ICC-CPI-20170626-PR1314, available at www.icc-cpi.int/Pages/item.aspx?name=PR1314.

¹⁸ “Report of the Working Group on Lessons Learnt to the Study Group on Governance. Progress Report on Clusters A, B, C, and E”, Annex II of “Report of the Bureau on the Study Group of Governance”, 16 November 2015, ICC-ASP/14/30, para. 11.

25. Despite its non-binding character, the Chambers Practice Manual enhances the predictability of proceedings in that it reflects in a public document collective agreements attained by judges on how certain phases and issues should be dealt with. The Chambers Practice Manual, as expanded through the various editions, now contains three distinct sections related to A) Issues related to Pre-Trial Proceedings, B) Issues related to Trial Proceedings before commencement and C) Issues related to various stages of proceedings. The latter contains, *inter alia*, a procedure intended to harmonize the different mechanisms designed by various chambers on the application and admission of victims to participate in the proceedings. The Manual also contains, as an annex, a Protocol on the handling of confidential information during investigation and contact between a party and a participant and witnesses of the opposing party or participant.

26. The bulk and the most substantive part of the Manual continues to relate to pre-trial proceedings which were identified as priority topics to address in order to enhance the efficiency of the process. These pre-trial aspects are the ones on which the Court has accumulated more experience and also the ones generating the greatest number of questions as well as multiple and sometimes divergent responses. The collective endorsement of best practices for these parts of the process is a major breakthrough in the path of enhancing the speed and quality of ICC proceedings.

27. The Manual clarifies how the pre-trial chambers intend to handle pre-trial proceedings from the issuance of a warrant of arrest or summons to appear to the confirmation of charges process until the transmission of the record to the Trial Chamber. In so doing, the Manual codifies best practices for every procedural aspect of the pre-trial phase with the view to streamlining and expediting the proceedings and to ensuring that they assist the criminal process as a whole.

28. In this regard, the Manual consolidates some practice innovations that had been introduced in prior decisions of pre-trial chambers, including in particular, innovations with relation to the outline and structure of a decision of confirmation of charges, in order to reduce uncertainties and ensure that they can serve as a basis for the trial.

29. The design of various procedural steps contained in this document reflects recognition for the principle that the centre of gravity of the criminal process should be the trial and that the pre-trial confirmation process should not become a “mini trial” or a trial before the trial. In this regard, for instance, it explicitly indicates that the use of live evidence at the confirmation hearing should be exceptional and should be subject to specific authorization by the Pre-Trial Chamber upon demonstration by the parties that the proposed oral testimony cannot be properly substituted by a written statement or other documentary evidence.

30. In the same vein, it acknowledges that certain matters are better addressed at trial and endorses, *inter alia*, the practice innovation introduced by pre-trial chambers of confirming alternative charges.¹⁹

31. At the same time that the Manual recognizes the need for the pre-trial proceedings to assist the trial without encroaching on matters that are better dealt with at trial, it also emphasizes the importance of ensuring that matters already decided at pre-trial are unnecessarily reopened at trial, as both phases are part of the same overall criminal process. In this regard, it stresses that the confirmation decision constitutes the final, authoritative document setting out the charges, and by doing so the scope of the trial. In addition it also provides for the continuation at trial of procedural “systems” adopted at pre-trial (such as modalities of disclosure of evidence, procedures for redactions, modalities of victims’ applications for participation in the proceedings and procedure for their

¹⁹ Pre-Trial Chamber I, *The Prosecutor v. Laurent Gbagbo*, “Decision on the confirmation of charges against Laurent Gbagbo”, 12 June 2014, ICC-02/11-01/11-656-Red, paras. 227-229. “The Chamber is of the view that when alternative legal characterisations of the same facts proposed by the Prosecutor are satisfactorily established by the evidence, it is appropriate that the charges be confirmed with the various available alternatives, in order for the Trial Chamber to determine whether any of those legal characterisations is established to the applicable standard of proof at trial. Taking stock of past experience at the Court, the Chamber is also of the view that confirming all applicable alternative legal characterisations on the basis of the same facts is a desirable approach as it may reduce further delays at trial, and provides early notice to the defence of the different legal characterisations that may be considered by the trial judges”; *see also* Pre-Trial Chamber I, *The Prosecutor v. Charles Blé Goudé*, “Decision on the confirmation of charges against Charles Blé Goudé, 11 December 2014, ICC-02/11-02/11-186, paras 133, 194; Pre-Trial Chamber II, *The Prosecutor v. Bosco Ntaganda*, “Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Bosco Ntaganda, 9 June 2014, ICC-01/04-02/06-309, para. 100.

admission, regimes for the parties' handling of confidential information and contact with witnesses of the opposing party). It is underlined that "nothing in the procedural system of the Court precludes the continued validity of procedural orders of the Pre-Trial Chamber after the transfer of the case to a Trial Chamber, such procedural orders continue to apply, subject to necessary adjustments by the competent Chamber. It is rightly concluded that this continuation "will simplify proceedings and make them more efficient"²⁰.

Amendments to the legal framework

32. As indicated above, proposals for amendments of the legal framework were kept to a minimum and addressed almost exclusively the Regulations of the Court rather than the Rules of Procedure and Evidence. The following amendments were adopted by the judges during this period.

33. On 10 February 2016, the judges of the Court, acting under article 51 (3) of the Statute, adopted rule 165 of the Rules of Procedure and Evidence drawn up by the judges, as well as regulation 66 *bis* which complements the adopted rule. Rule 165, which addresses certain procedures related to proceedings for offences against the administration of justice pursuant to article 70 of the Rome Statute, was provisionally amended to allow the respective functions of the Pre-Trial and the Trial Chamber, including the confirmation of charges and the trial, to be exercised by one judge instead of a chamber of three judges. The provisionally amended rule 165 further allows for appeal proceedings to be conducted by a panel of three judges instead of the Appeals Chamber. The judges of the Court considered that these amendments would enhance the overall efficiency of proceedings before the Court by enabling the Court to focus its judicial resources on core crimes while preserving the fairness of article 70 proceedings. The creation of regulation 66 *bis* of the Regulations complemented provisional rule 165 by establishing the modalities for the constitution of Chambers and the panel of three judges in article 70 proceedings.

34. Upon a proposal of the Prosecutor and following consideration by the ACLT, in December 2016, the judges adopted a range of amendments to various regulations which aimed to improve efficiency by allowing all parties and participants in proceedings to have increased clarity on a range of procedural and technical matters. These issues concerned page limits, time limits and other procedural matters (Amendments to regulations 20 (2), 24 (5), 33 (1) (d), 34, 36 ,38, and 44 (1)).

35. In July 2017, upon proposals of the Appeals judges and following consideration by the ACLT and collective discussions at the Krakow retreat, the judges adopted another range of amendments to the regulations intended to expedite and streamline the Court's proceedings on appeal. These include amendments to accelerate the procedures applicable in respect of appeals granting or denying interim release (amendment to regulation 64); and other initiatives intended also to streamline and expedite the appeals process in final and interlocutory appeals (amendments to regulations 57, 58, 59, 61, 63, 64, 65).

2. Reforms implemented in Chambers support structures

36. In my programme for election as President²¹, I stated that that in order to achieve more cohesion and improve overall efficiency, an urgent review of the assignment and methods of work of the legal staff of Chambers should be undertaken.. The ideas proposed were the result of consultations with some judges and, in particular, discussions with some legal officers of Chambers, to whom I am very grateful for their ideas and input. Central to making these reforms possible was the creation of the position of Head of Chambers, which is discussed below. This section provides an overview of the main reforms that were implemented in this respect during my term.

²⁰ "Report of the Working Group on Lessons Learnt to the Study Group on Governance. Progress Report on Clusters A, B, C, and E", *supra* note 18, para. 68.

²¹ *Supra* note 1.

Creation of the position of Head of Chambers

37. In order to facilitate the flexible assignment of Chambers staff, and to improve management and coordination in Chambers legal support, notably including the flexible assignment of staff, soon upon my election I proposed to create the position of Head of Chambers, which was endorsed by judges at the Nuremberg retreat held in June 2015. The position was established upon approval of the ASP in November 2015 and filled upon recruitment in 2016. The Head of Chambers acts under the authority of the Presidency and has the following functions: to assign Chambers Legal Support staff flexibly to respond to changing needs; manage common processes and projects (such as the case law database discussed further below); establish and supervise internal working groups on various issues; establish training needs among staff and organize appropriate training; and provide flexible reinforcement to existing senior legal advisory capacity in the Divisions.

38. The results of the past 18 months have shown the advantages of the new position. The Head of Chambers has assisted in improving the overall effectiveness and efficiency of Chambers in a number of areas.

Flexible assignment of staff

39. Before the election I had underlined that the legal support system, conceived during the early days of the Court, appeared inadequate for the current workload of the Court, where most judges sat in several chambers at the same time and did pre-trial and trial work simultaneously.²² In my view, it was important to ensure, *inter alia*, a more flexible assignment of existing resources within and between divisions, depending on actual needs, better coordination in chambers and within chambers and divisions.

40. As part of this policy to optimize the use of Chambers' resources, a policy of flexible staff allocation was implemented whereby staff originally assigned to one Division is simultaneously assigned to cases in other divisions and Chambers or moved between Divisions as needed to meet changing workload demands.

41. The Head of Chambers, in consultation with the Presidency, has been integral in developing this policy. At fortnightly meetings (or as often as is needed) the Head of Chambers discusses staffing needs and upcoming developments with legal advisers, to ensure that no gaps arise between need and availability. This approach has so far made it possible to meet needs deriving from the changing workload satisfactorily, including in situations of unforeseen developments such as new situations brought by the Prosecutor. This policy is also expected to lead to better synergy between judicial operating requirements and the pool of knowledge and expertise in Chambers.

Working Groups

42. Since his arrival, the Head of Chambers has established five internal working groups, on the following topics: disclosure of evidence; redaction and other protection measures; victim participation; detention; and judgement structure and drafting. The working groups are comprised of Chambers legal support staff on a volunteer basis,

43. The common objective of the working groups is to contribute to the identification and development of best practices, harmonization of working methods and streamlining of legal research across divisions, chambers and teams, with a view to improving the efficiency and quality of work conducted by Chambers legal support staff.

44. The working groups have already produced results such as internal reports and reference documents. They are expected to continue bearing fruit in the future and could serve as a template for working groups in other areas, as needs arise.

²² *Supra* note 1.

45. The working groups provide staff members with opportunities to put their skills into more diverse use for the benefit of their organisation, as well as gain new experience through interaction in an interdivisional setting with colleagues with whom they would not usually have contact in their daily work. As such, the working groups can serve as additional motivation for staff.

Professional development

46. It was noted in my 2015 presentation to the judges that there was currently little upward mobility for legal staff working in Chambers.²³ The lack of opportunities for career development in an essentially flat structure was a serious demotivating factor with an adverse impact on the performance of our staff. The review of the current system and the assignment of new roles and responsibilities in accordance with individual interests and competencies could provide new incentives and some compensation for this lack of mobility.

47. Under the management of the Head of Chambers, several initiatives have been put in place to provide such opportunities. These include the Chambers working groups and the database project discussed below. For these and other *ad hoc* projects, calls for expressions of interest have been circulated among Chambers legal support staff, allowing all interested staff to offer their participation in accordance with their personal interests and motivation.

48. There has also been increasing effort to recognise specific roles performed by individual staff members in the context of cases, such as coordinator or team leader, even if these are not reflected in formal job titles. Efforts have been made to identify such roles for staff members to occupy, and support their ability to successfully perform these functions by providing leadership training for people in those roles in 2017.

49. Despite these steps, I have recognized that the problem of insufficient mobility may be solved within the confines of the judiciary only to a very limited extent and it is therefore important to seek to expand the professional horizons of staff elsewhere. For instance, exchanges could be possible with appropriately qualified legal staff in other organs of the Court, especially the Registry. Indeed a policy of supporting staff mobility has been applied during my term, facilitating the loan of legal officers to other organs of the Court and the Secretariat of the Trust Fund for Victims. Part-time absences of staff are also being supported for the purpose of allowing them to engage in other activities of interest, such as teaching at universities.

As further developed below, other possibilities have been explored outside the institution for the exchange of personnel and other forms of cooperation between the Court and relevant international organizations as further developed below. I hope such an exploration will continue in the future in order to encourage the exchange of personnel through *ad hoc* arrangements or long term framework agreements.

Exchanges with other institutions

50. On 15 February 2016, I signed a Memorandum of Understanding between the International Criminal Court and the Inter-American Court of Human Rights²⁴ which provided for the possibility of temporary mobility of personnel between the two institutions, as well as providing for a range of other means of cooperation, including the exchange of knowledge, information and legal materials, as well as the development of training and assistance programmes. As a result, video conference meetings between legal staff of the two courts have been organized since the conclusion of the Memorandum of Understanding, providing an opportunity for presentations and inter-institutional discussion on specific legal questions of mutual interest.

²³ *Supra* note 1.

²⁴ ICC-PRES/17-01-16, available at www.icc-cpi.int/iccdocs/oj/MoU_CR_En.pdf.

51. The Court's cooperation with the European Court of Human Rights (ECHR) also increased during my term, following discussions I held with the ECHR President in March 2016 and January 2017. The ECHR now provides ICC Chambers with a weekly digest of matters before that Court, together with updates on particular matters as they unfold. Focal points have also been set up so that Chambers may seek urgent and focussed advice on particular aspects of the ECHRs developing jurisprudence. There now also exists a distance communication platform between Chambers and ECHR, which will involve web-conferences, with short presentations over the internet on pre-arranged topics of mutual interest.

52. 2017 saw the conclusion of a successful 3-year staff exchange with Interpol at the P-3 legal officer level. As stated above, consideration should be given in the future to a similar arrangement with this and other organisations, as such exchanges enrich the experience of staff concerned and are mutually beneficial for the institutions involved.

Training

53. The Head of Chambers has led consultations with staff members of Chambers and staff welfare officers at the Court on a Staff welfare initiative and other measures intended to foster the well-being of staff, mitigate risks of secondary trauma from exposure to materials and testimony and boost staff productivity.

54. Because of the Court's organisational structure, training and professional development are essential. In order to prioritise this development, early discussions were initiated by the Head of Chambers with each staff member to determine individual training needs. This resulted in an unprecedented level of activity aimed at staff training in Chambers and Presidency. One notable example is in the working groups, which have started preparing essential induction materials. Other opportunities were created for training on leadership, forensic and detention-related matters. After large number of staff indicated an interest in military training (on issues such as communications, organisation and armaments), the Head of Chambers has been working on the organisation of presentations by expert speakers.

Performance Appraisals

55. Important strides have been made with respect to making performance appraisal more comprehensive, systematic and unified in Chambers. Having identified groups previously excluded from the process, the Head of Chambers took steps to increase awareness of all Chambers staff of the performance appraisal system, and to provide training where needed, particularly to those in supervisory positions. The Head of Chambers also provided first-hand supervision of all performance appraisals conducted in one of the three divisions, including the mid-term reviews. This approach is geared to highlighting to staff the importance of the performance appraisal process in improving the Court's working methods. The steps taken already show an encouraging increase in the percentage of staff adhering to the annual performance appraisal cycle applied at the Court.²⁵

3. Development of ICC Case Law Database

56. After the first decade of the Court's activities, with more than 6,000 judicial decisions issued, and multiple situations and cases before the Court, the lack of a unified system of jurisprudence resulted in the duplication of work and risked key jurisprudential developments being overlooked. It became increasingly apparent that a Court-wide database of jurisprudence was essential to alleviate

²⁵ "Third Court's Report on the development of performance indicators for the International Criminal Court", 15 November 2017, available at www.icc-cpi.int/itemsDocuments/171115-Third-Report-performance-indicators-ENG.pdf ("Third Report on Performance Indicators"), p. 34.

the burden borne by judges, their legal staff, parties and participants of the Court's proceedings. While the database will initially be for the Court's use only, it could later be converted into a public tool.

57. The web-based layer of the database is at an advanced stage of development by the Court's Information Management Section, in cooperation with a Chambers Working Group – a team of Chambers legal staff, with one P-3 Legal Officer acting as a focal point, managing the contribution by Chambers under the supervision of the Head of Chambers and overall direction of Judge Chang-Ho Chung, to whom I am extremely grateful.

58. All court records, including all judgments, decisions, warrants and orders (collectively "decisions"), will be stored in the Database and will be searchable. These include both written and oral decisions, both public and confidential, in English and French. All records will be fully text searchable and headnotes will be attached to decisions containing legal findings.

59. The advanced search capabilities provided by the database, once operational, will significantly increase the utility and functionality of the Court's legal research tools, simplifying and expediting litigation, and improving the overall effectiveness, efficiency, and consistency of the Court's activities and jurisprudence.

4. Assignment of Judges

The assignment to divisions

60. In accordance with article 39 of the Rome Statute, as soon as possible after each election of judges and their swearing-in, the Court needs to organize itself into the three divisions of chambers, namely the Appeals, Trial and Pre-Trial Division. While some criteria are provided by this provision, they leave ample room for discretion. The assignment of judges has been challenging and resulted, at times, in unnecessary friction among judges. In 2012 the ASP adopted rule 4 *bis* by which it transferred from the Plenary of Judges to each new Presidency the function of assigning judges to divisions, in consultation with the judges.

61. Accordingly, as soon as the Presidency for 2015-2018 was established, it formalized a consultative process intended to ensure full understanding of wishes and constraints and overall transparency of the process. This included, for the first time, a written form to be filled by each judge on his or her preferred option, to be simultaneously addressed to the Presidency and all judges, followed by individual discussions, where necessary. The method inaugurated in 2015, both respectful and transparent, resulted in an overall distribution of judges accepted by all.

The assignment of ad hoc judges to the Appeals Division through a roster

62. Article 39(4) of the Statute and related Regulations enable the Presidency to temporarily attach a judge from the Trial or Pre-Trial Division to the Appeals Chamber in the event that a member of the Appeals Chamber is disqualified or unavailable for substantial reason.

63. In 2015, the Presidency introduced the practice of selecting *ad hoc* judges to sit in interlocutory appeals by drawing lots from a roster of available judges. The adoption of this policy was intended to ensure equal treatment of judges and to enhance transparency and objectivity of the selection, thus avoiding any misperceptions as to the reasons for the appointment of a judge in a particular appeal.

64. The roster is composed of all pre-trial and trial judges that are available for the interlocutory appeal at hand. The availability of judges for the roster is assessed on the basis of their respective workload and case related conflicts pursuant to article 41 of the Statute. In respect of workload, objective criteria were applied with the following judges being excluded from the roster: judges who are presiding over active trial proceedings as well as single judges dealing with confirmation of

charges proceedings. This practice is explained in every decision of the Presidency by which an *ad hoc* appeal judge is selected. Further, other judges with exceptionally heavy workloads may be excluded from the roster upon their request.

65. In order to foster consistency, a judge drawn by lot will in principle be subsequently designated to sit in other interlocutory appeals which arise in the same case.

66. During the last retreat held in Krakow on 22-24 June 2017, the judges acknowledged the benefits and endorsed this practice. The judges indicated that, in their view, this practice should be continued, including by the future Presidency. It was emphasised that this practice had functioned well, promoted transparency, ensured equality amongst judges and avoided any potential criticism that specific benches could be ‘tailor-made’ for certain appeals.

67. In view of the strong support for the practice of replacement by drawing of lot, it was also agreed that this should be extended to final appeals. In this respect, it was agreed that it would be necessary to take into account the additional criterion of ensuring that judges on the roster had sufficient time remaining in their judicial mandates to complete the final appeal in question. It was also emphasised that ensuring the prior consent of the judge selected would be particularly important in respect of final appeals.

III. ACTIONS TO ENHANCE COURT-WIDE COORDINATION AND EFFICIENCY

1. Enhanced coordination with the Office of the Prosecutor and the Registry

68. Cohesion within the judiciary needs to be complemented by cohesion across the Court in order to ensure that the three organs with non-judicial management functions, namely the Presidency, the Office of the Prosecutor and the Registry, coordinate efforts, align standards and visions, and pursue similar goals. This alignment, essential for the overall efficiency of the Court, has been a constant concern of the ASP, which has insisted that the Court observe the “One-Court principle”.²⁶

69. Such unity, while necessary, is not easy to attain due to both legal and practical constraints as these three organs have distinct and, to varying degrees, independent mandates, which do require, under the law, to be exercised separately.

70. This is particularly the case for the Office of the Prosecutor, which “shall act independently as a separate organ of the Court”²⁷. The Office is headed by the Prosecutor who “shall have full authority over the management and administration of the Office, including the staff, facilities and other resources thereof”.²⁸ Accordingly, the Presidency is “responsible for the proper administration of the Court, with the exception of the Office of the Prosecutor”.²⁹ In discharging its responsibility, the Presidency must “coordinate with and seek the concurrence of the Prosecutor on all matters of mutual concern”.³⁰

71. Another organ, the Registry, is responsible for the non-judicial aspects of the administration and servicing of the Court, “without prejudice to the functions and powers of the Prosecutor in accordance with article 42”.³¹ The Registrar, as the principal administrator of the Court and head of the Registry, exercises his or her functions under the authority of the President.³² However, in the exercise of such authority, the President must be careful not to interfere with the independent powers and functions of others serviced by the Registrar Court-wide, including, in particular, the Office of the Prosecutor.

72. In sum, the overall administration of the Court can only function properly through sufficient consultation and coordination among the organs.

73. During my three years as President I made best efforts to maintain a constant and constructive dialogue with the Prosecutor and the Registrar through direct communication as well as through inter-organ procedures and structures.

74. Most important among these structures is the Coordination Council (CoCo), comprised of the President, the Prosecutor and the Registrar. The CoCo, established by the Regulations of the Court, following the example of other international tribunals, is a key mechanism for fostering strategy and policy alignment and coordinating the administrative activities of the organs of the Court³³.

75. As promised in my 2015 presentation of proposed priority objectives to the judges,³⁴ I made full use of this Council. In addition, as further developed below, I also sought to encourage coordination of senior managers of these three organs at other levels in order to enhance information sharing, avoid duplication and ensure consistency between different sections and units of the Court.

²⁶ See e.g. ICC-ASP/16/Res.6, 14 December 2017, para. 58.

²⁷ Article 42 (1) of the Statute.

²⁸ Article 42 (2) of the Statute.

²⁹ Article, 38 (3) (a) of the Statute.

³⁰ Article 38 (4) of the Statute.

³¹ Article 43 (1) of the Statute.

³² Article 43 (2) of the Statute.

³³ Regulation 3 of the Regulations of the Court.

³⁴ *Supra* note 1.

Budget process

76. The Court’s budget process was identified as a key area in which increased coordination was necessary and indeed requested by the ASP.³⁵ Together with the Prosecutor and the Registrar, we invested considerable effort in enhancing coordination among us with the aim of producing more coherent budget proposals reflecting the Court’s wide strategic priorities rather than an aggregate of individual organs’ requests.

77. A number of concrete measures were agreed upon and implemented to this effect, resulting in a budget process that more clearly reflects a “One Court” approach. In this reform process, the Court has paid close attention to comments and guidance provided by the ASP and its Committee on Budget and Finance (CBF), the Court’s key interlocutors in the budget process.

78. The overall defining feature of the revised process is earlier and greater involvement of the three heads of organs in the development of the budget proposals in order to ensure that they reflect a coherent common vision, to the largest extent possible. This is done by increased monitoring by the CoCo of the budget preparation throughout the process in order to ensure proper follow up and provide guidance as necessary to those involved in the actual drafting. In addition, such drafting is carried out by a Budget Working Group led by the Registrar, thus ensuring a direct connection between the CoCo and the technical process of budget preparation.

79. The final budget submission is also approved by the three heads of organs at the CoCo, who also remain involved at various degrees in the subsequent stages of exchange with the Assembly of States Parties and its subsidiary bodies.

80. As recognized by the ASP, the efforts referred above have indeed improved the budget process and resulted in enhanced internal coherence and clarity of the Court’s budget documents.³⁶

External relations

81. The Office of the Prosecutor, the Registry and the Presidency are all required to liaise with external actors in the exercise of their respective mandates. During my mandate, I have encouraged maximum use of the inter-organ External Relations Working Group to promote information sharing and coordination in order to ensure alignment of goals and more cohesion and quality of external messaging, to the extent appropriate taking into account the separation and independence of organs, particularly the Office of the Prosecutor. In order to empower the working group to address strategic issues and to provide a stronger connection to the CoCo, at my initiative the seniority of the External Relations Working Group was elevated to include, when necessary, the participation of directors and the Chef de Cabinet to the President.

82. The External Relations Working Group became a central venue to coordinate efforts in the organisation of court wide events both in The Hague and other locations, such as regional seminars, roundtables and other gatherings with states, non-governmental organisations and other entities and bodies.

83. It was also key to enhancing the efficiency and effectiveness in the external representation of the Court. Coordination and information sharing is indeed important to optimize the participation of the Court in relevant events, taking into account the heavy workload at the Court and the limited available resources. During my term, coordination was increased with a view to avoiding duplication or excessive presence by jointly agreeing on the most appropriate common representation at external events, including by judges of the Court where appropriate, depending on the subject matter and relevant expertise within the Court.

³⁵ See e.g. ICC-ASP/14/Res.1, 26 November 2015, part J, para. 4.

³⁶ See e.g. ICC-ASP/16/Res.1, 14 December 2017, part L, para. 5, where the Assembly “[welcomes] the Court’s continued efforts to fully implement the ‘One-Court- principle’ when establishing the proposed programme budget, which has resulted in improvements to the budgetary process such as more frequent and more efficient use of the Coordination Council and other inter-organ coordination mechanisms, as well as a more coherent and consistent Court-wide budget proposal and an improved process and format of the budget document, thus ensuring higher consistency of message and policy of expenditures across the Court”.

2. The development of performance indicators

84. The adoption and publication of performance indicators had been advocated by some states and non-governmental organisations³⁷ and was requested in 2014 by the ASP, which asked the Court to “intensify its efforts to develop qualitative and quantitative indicators that would allow [it] to demonstrate better its achievements and needs, as well as allowing States Parties to assess the Court’s performance in a more strategic manner”³⁸.

85. In light of this request, I included the development of performance indicators among the actions I proposed for improving the overall management of the Court in my programme for election as President, in order to gauge and improve the Court’s performance, as well as to better communicate about its work and efforts to expedite its proceedings.³⁹

86. Once elected, I led the development of performance indicators to better measure the performance of the Court in four key areas: (i) judicial proceedings; (ii) leadership and management; (iii) security; and (iv) victims’ access to justice.

87. The development of the Court’s performance indicators during the last three years⁴⁰ is the result of discussions between the Court and civil society, but also within the Court. I underlined that there should be coordination among the organs in order to capture areas of cross-cutting concern, and to ensure adoption of a coherent approach for the Court’s overall performance. In particular, I stressed the importance for the judiciary to be involved in order to agree on suitable indicators for the entire Court.

88. To this effect, a number of meetings took place at the Court in 2015, devoted to developing a general measurement framework and to identifying goals for each of the four key areas. Most importantly to this effect, in 2016, a retreat was held in Glion (Switzerland) in which all judges were invited to participate, together with high level representatives of the other organs of the Court, some state representatives and members of civil society.⁴¹ Thanks to this and other meetings, key performance indicators were developed and preliminary data started being collected as part of concerted Court-wide efforts. From January 2017, the collection of data for the selected indicators was made more systematic.

89. As reflected in the three reports issued by the Court⁴², the exercise is starting to bear fruit, and data being collected has helped the Court in identifying areas for development, and in demonstrating some improvements, for instance in budget implementation, completion of performance appraisals and geographical distribution of staff.⁴³ The data contained in the Court’s third report also shows a drastic reduction in time for certain aspects of the criminal procedure, in particular the time required for the preparation of trial after the confirmation of charges when comparing the Court’s latest cases with earlier, completed cases.⁴⁴

³⁷ In September 2014, a meeting hosted by the Swiss government in Glion, Switzerland, with the participation of state representatives, Court officials, NGO representatives and experts, concluded that it was also important for the Court to develop some benchmarks or indicators for assessing the Court’s performance, including timelines in proceedings. “Retreat on Strengthening the Proceedings at the International Criminal Court. Glion, Switzerland, 3-5 September 2014. Chair’s Summary”, available at www.eda.admin.ch/dam/eda/en/documents/aussenpolitik/voelkerrecht/dfa_aussenpolitik_voelkerrecht_Chair_Summary_%20ICC%20Retreat_en.pdf.

³⁸ ICC-ASP/13/Res.5, 17 December 2014, Annex I, para. 7 (b). In 2015, the Assembly “welcomed the efforts of the Court to develop qualitative and quantitative indicators”, ICC-ASP/14/Res.4, 26 November 2015, para. 59.

³⁹ *Supra* note 1.

⁴⁰ See the three reports issued by the Court on the development of performance indicators: “Report of the Court on the development of performance indicators for the International Criminal Court”, 12 November 2015, available at www.icc-cpi.int/items/documents/court_report-development_of_performance_indicators-eng.pdf; “Second Court’s report on the development of performance indicators for the International Criminal Court”, 11 November 2016, available at www.icc-cpi.int/items/Documents/ICC-Second-Court_report-on-indicators.pdf (“Second Report on Performance Indicators”); Third Report on Performance Indicators, *supra* note 25.

⁴¹ Second Report on Performance Indicators, *supra* note 40, paras. 11-12.

⁴² *Supra* note 40.

⁴³ Third Report on Performance Indicators, *supra* note 25, paras 30-32.

⁴⁴ Third Report on Performance Indicators, *supra* note 25, see in particular pp. 11, 21-23.

90. As indicated in its latest report,⁴⁵ the Court will continue to collect detailed data on the selected indicators, and future reports of the Court will be geared towards illustrating the Court's performance over time. As such, the comparative value of data being collected will increase with each evaluation cycle ahead, and it will become easier to observe trends as more data is accumulated over several years. The Court will also continue to assess on a continuous basis whether the selected indicators need to be further adjusted.

⁴⁵ Third Report on Performance Indicators, *supra* note 25, para. 38.

IV. EXTERNAL ACTIONS TO ENHANCE SUPPORT

1. Dialogue with the international community

91. In my 2015 presentation to the judges, I acknowledged the central role of the President in outward-facing attempts to increase understanding of the Court's mandate, raise awareness of its activities, combat negative perceptions and, most importantly, promote universal membership.⁴⁶ Accordingly, once elected, I deployed my best efforts to increase the engagement of the Court in proactive and constructive dialogue with the global community in order to enhance support and cooperation with its activities.

92. To this effect, I sought to ensure both in The Hague and other locations, regular and sustained contacts with States Parties and non-parties, the United Nations and other intergovernmental and non-governmental organizations, international, regional and national courts and tribunals, bar associations, individual legal practitioners and academia. This was done through regular personal encounters with high level representatives, accompanied by appropriate follow up at the technical level to ensure sustained mutual knowledge of interests, differences and shared values as well as to allow to identify concrete areas for cooperation and support.

93. In order to ensure a constructive and genuine exchange with all stakeholders, I was guided by the following overarching principles :

- i. I wished to demonstrate that the Court indeed listens to concerns and seeks to take into account observations and legitimate criticism, without prejudice to its judicial independence. This was particularly important when the Court and the broader ICC community were faced with notifications of withdrawals by a number of States Parties, and the prospect that others might follow suit.⁴⁷
- ii. I also wished to underline that the Court is open about its own shortcomings, challenges and areas where it needs to invest efforts to improve its operations. A meaningful exchange of views is not possible without preparedness to recognize and tackle problems where they exist. In my very first address to the States Parties, I recognised that the Court itself urgently had to undertake measures to improve its performance in order to sustain external support.⁴⁸ As said on numerous occasions, I was and remain convinced that cooperation is linked to performance and indeed the actions described above in this report were intended to improve such performance.
- iii. I constantly emphasized that the Court was a last resort institution, complementary to and respectful of national jurisdictions. In addition, while underlining its central role in a global system of interconnected global system of justice, I also emphasized that the Court was in no way "competing" with others but indeed welcoming all genuine initiatives intended to enhance accountability at the national, regional or international level, including internationalized tribunals or hybrid mechanisms.
- iv. I also constantly stressed the importance of vocal support for the Court and practical cooperation with its activities as well as the crucial need for maintaining and enhancing membership in the Rome Statute. The Court has a global aspiration but not yet universal participation, something that limits its jurisdictional reach and its effectiveness, and ultimately risks undermining its legitimacy. Global justice cannot be or perceived to be selective justice.

⁴⁶ *Supra* note 1.

⁴⁷ See e.g. "Presentation of the Court's annual report to the Assembly of States Parties", 16 November 2016, available at asp.icc-cpi.int/iccdocs/asp_docs/ASP15/ASP15-Opening-Statement-PICC-ENG.pdf.

⁴⁸ Judge Silvia Fernández de Gurmendi, President of the International Criminal Court, "Remarks to the 25th Diplomatic Briefing", 26 March 2015, available at www.icc-cpi.int/iccdocs/db/25DB-Pres-Eng.pdf.

v. Finally, I regularly emphasized that the *expectation* of accountability for the gravest crimes of international concern is now firmly established in the international agenda and it is indeed one the biggest achievements of the past three decades. I observed, however, that impunity continues to flourish in practice and that we can only expect international justice to have a deterrent effect if we foster a *pattern* of accountability, as opposed to scattered justice efforts.

94. The numerous external initiatives undertaken in 2015- 2018 to improve understanding for the Court's work and promote cooperation and universality have already been detailed in regular reports presented to the annual sessions of the ASP⁴⁹ and the General Assembly of the United Nations⁵⁰ and do not need to be repeated here.

95. Therefore, I focus below in the less publicised efforts that I undertook during this period to highlight and reinforce, through external engagement with the legal community, the judicial nature of the Court's activities. I also describe below efforts made to enhance the Court's cooperation with the Trust Fund for Victims and its integration in the Court's external activities to promote awareness and support of the victim-oriented nature of the ICC's justice system. This is particularly important at a time when reparations proceedings occupy an increasingly large portion of the Court's docket.

2. Dialogue with the legal community

96. While the Presidency of the Court had over the years regularly engaged with governments and organisations, activities aimed at strengthening links with the judicial profession and the legal community had been more sporadic. My three-year mandate coincided with an unprecedented growth in the judicial workload at the Court. The nature of this work demonstrates that the Court has evolved into a fully-fledged judicial institution, which has matured and is multiplying its judicial output. Therefore, as further developed below, I strove to reflect this important development through a more systematic effort to engage with the legal community, including, in particular, judges and counsel for victims and the defence.

Cooperation and exchange with other international, regional and national courts

97. Throughout the period, I endeavoured to exchange experiences on a regular basis with chief justices and other judges of national, regional and international jurisdictions, including national judges acting within national units specifically created to deal with international crimes.

98. As said, in numerous public interventions during my mandate I stressed the complementary nature of the ICC as well as the fact that justice is interconnected in today's globalised world. I promoted the notion that in order to achieve our shared justice goals, mutual understanding and cooperation should be increased among national, regional and international courts as well as other internationalized and hybrid mechanisms.

99. As discussed earlier in this report, I took concrete measures during my term that led to increased cooperation of the Court with the Inter-American Court of Human Rights and the European Court of Human Rights⁵¹, and I participated in annual events of both courts⁵². I also held frequent

⁴⁹ "Report on the activities of the International Criminal Court", 13 November 2015, ICC-ASP/14/29; "Report on the activities of the International Criminal Court", 9 November 2016, ICC-ASP/15/16; "Report on the Activities of the International Criminal Court", 2 November 2017, ICC-ASP/16/9.

⁵⁰ "Report of the International Criminal Court", 28 August 2015, A/70/350; "Report of the International Criminal Court", 19 August 2016, A/71/342; "Report of the International Criminal Court", 17 August 2017, A/72/349.

⁵¹ See *supra* paras 50-51.

⁵² See "International Criminal Court and Inter-American Court of Human Rights sign Memorandum of Understanding on cooperation", 16 February 2016, ICC-CPI-20160216-PR1191, available at www.icc-cpi.int/Pages/item.aspx?name=pr1191; "ICC President addresses opening of European Court of Human Rights' judicial year", 30 January 2017, ICC-CPI-20170130-PR1270, available at www.icc-cpi.int/Pages/item.aspx?name=pr1270.

meetings with presidents and judges of other international courts and tribunals based in The Hague to exchange views on issues of mutual concern.

100. The Court hosted numerous visits by judges of national, regional and international courts and tribunals, sometimes involving roundtables between ICC judges and their visiting colleagues. Together with several other judges of the Court, I participated in many of these encounters held at the Court or elsewhere in order to exchange experiences and explore ways to enhance the efficiency of judicial proceedings related to international or transnational crimes.⁵³

Judicial Seminar and Opening of the Judicial Year

101. In order to highlight the judicial nature of the Court, its independence and impartiality, as well as its connections with judges of the world, I presented a proposal to organise a judicial seminar, combined with a formal ceremony for the opening of the judicial year, following the tradition of many other jurisdictions, both national and regional. This proposal was endorsed by the judges and the two events were organised for the first time in the history of the Court on 18 January 2018.⁵⁴

102. Invitations were sent to the Chief Justice or equivalent of all States Parties to the Rome Statute, considering that members of the judicial profession can play a key role in raising awareness in their respective jurisdictions about the Court, as well as promote measures at the national level aimed at fuller cooperation and implementation of the principle of complementarity. Presidents of relevant international and regional courts were also invited.

103. The topic of the seminar was intentionally made very broad under the title “Complementarity and Cooperation of Courts in an Interconnected Global Justice System” in order not to restrict dialogue at this first event of its kind, from which future conversations could be built on more specific topics.

104. The one-day seminar, financially supported by the European Commission, gathered more than fifty senior judges together, including ICC judges, as well as senior judges from twenty-four national jurisdictions (including nine chief justices) and seven regional or international courts. As planned, the working sessions held on complementarity and cooperation provided an opportunity for collegial discussions on a broad range of relevant issues; a summary of the proceedings was subsequently made public in order to inform further events that may follow⁵⁵.

105. Upon the conclusion of the judicial seminar, a formal ceremony for the opening of the Court’s judicial year 2018 was held, with the President of Trinidad and Tobago and former ICC judge, H.E. Anthony Carmona as the distinguished guest speaker.

Engagement with organisations of counsel

106. Throughout my term I invested time and efforts into engagement with organisations of counsel for the defence and victims, and lent my support to various initiatives aimed at promoting awareness and recognition of the indispensable role that counsel play in ensuring the fairness of proceedings before the Court. This was done in particular through engagement with international and regional associations of counsel as well as bar associations at the national level.⁵⁶ I also strove to engage

⁵³ A highly productive seminar on ways to enhance the efficiency of international criminal justice was hosted by l’Ecole Nationale de la Magistrature, the French National School for the Judiciary, on 17 October 2017, with presidents of several international criminal tribunals in attendance.

⁵⁴ For information about the two events, see “Judicial seminar: Complementarity and Cooperation of Courts in an Interconnected Global Justice System”, 18 January 2018, available at www.icc-cpi.int/news/Pages/event.aspx?event=180118-seminar-netherlands; “Opening of the Judicial Year 2018”, 18 January 2018, available at www.icc-cpi.int/news/Pages/event.aspx?event=180118-event-netherlands.

⁵⁵ Available at www.icc-cpi.int/news/seminarsDocuments/180118-seminar-netherlands-summary_ENG.pdf.

⁵⁶ See e.g. “ICC President highlights role of legal profession at events in Barcelona”, 20 February 2017, ICC-CPI-20170220-PR1276, available at www.icc-cpi.int/Pages/item.aspx?name=pr1276; “ICC President concludes official visit to Valencia, Spain”, 3 February 2017, ICC-CPI-20170203-PR1272, available at www.icc-cpi.int/Pages/item.aspx?name=pr1272; “ICCBA event with National and International Bars on future collaboration”, 29 March 2017, available at www.iccba-abcp.org/single-post/2017/03/29/ICCBA-event-with-National-and-International-Bars-on-future-collaboration; “Cérémonie d’ouverture du 25ème anniversaire de la FBE”, 7 June 2017, available at

regularly with the Court’s Office of the Public Counsel for the Defence (OPCD) and Office of the Public Counsel for the Victims (OPCV).

107. In a major institutional development, the International Criminal Court Bar Association (ICCBA), gathering both counsel for victims and the defence, was established during my term and recognised by the ASP in November 2016.⁵⁷

108. While the establishment of the ICCBA took place independently of the Court, I fully supported in a number of ways the establishment of the Association. I engaged in an exchange of views with the stakeholders at different stages of the process and made public my firm support for the initiative from the beginning⁵⁸, as I considered it beneficial for the overall ICC system that the interests of counsel are effectively represented. An organization of counsel also provides the Court with an institutional interlocutor on relevant matters, such as efforts aimed at enhancing the efficiency of the criminal procedure, or questions concerning the legal aid system. Following the establishment of the ICCBA, I have continued to exchange views with the Association’s leadership on issues of mutual interest.⁵⁹

3. Cooperation with the Trust Fund for Victims

109. During my term as President, there was a dramatic growth in the Court’s judicial activity on reparations to victims, which put to test the restorative features of the Rome Statute. The Trust Fund for Victims (TFV) is not an organ of the Court but it is an important and integral part of the ICC system, as it became increasingly clear in recent years. Indeed, following convictions, the reparations proceedings that were conducted by several chambers of the Court greatly increased the involvement of TFV in the judicial work and highlighted its crucial role for the design and implementation of reparations schemes.

110. As President, I made extensive efforts to accompany and facilitate these developments by increasing internal and external understanding for the mandate of the Trust Fund for Victims (TFV) and awareness of its huge importance for the success of the overall justice system of the Court. To this effect I undertook a number of initiatives to enhance its visibility and profile and to strengthen the internal links and cooperation between the Court and the Fund.

111. To this effect, I used all opportunities to engage in dialogue with the leadership of the Trust Fund for Victims, in the context of the meetings of the TFV’s Board of Directors as well as frequent contacts between my office and the TFV’s Secretariat. In parallel, in order to highlight the inextricable links between the TFV and the Court, through the Court’s External Relations Working Group I encouraged a policy of including the TFV more systematically in Court’s events with external stakeholders.

112. I also made consistent use of various platforms such as high-level meetings or conferences to speak about the Trust Fund’s important role as well as to help its fundraising so that it can successfully fulfil both its assistance mandate as well as its mandate related to reparations orders issued by chambers in the context of judicial proceedings. In this regard I constantly drew attention to the fact that the financial pressure on the Fund increases as it is called upon to contribute to court-ordered reparations in situations where the convicted persons are indigent.

113. In order to gain first-hand knowledge of the Trust Fund’s activities, as well as to help gain visibility for its work, in February 2017, I made a joint visit with the Chair of the TFV’s Board of Directors to the Trust Fund’s assistance projects in Northern Uganda. There we met with

www.fbe.org/ceremonie-douverture-du-25eme-anniversaire-de-la-fbe/, “ABA Luncheon with ICC President”, available at www.international-criminal-justice-today.org/events/luncheon-with-icc-president.

⁵⁷ ICC-ASP/15/Res.5, 24 November 2016, para. 62.

⁵⁸ See e.g. “#ICC President reaffirms support for initiative to create an independent ICC Bar Association”, 23 November 2015, available at twitter.com/IntlCrimCourt/status/668768315976892416; “Presentation of the Court’s annual report to the UN General Assembly by Judge Silvia Fernández de Gurmendi, President of the International Criminal Court”, 31 October 2016, www.icc-cpi.int/Pages/item.aspx?name=161031-pres-UNGA-st.

⁵⁹ See e.g. “ICCBA Delegation Meets with ICC President”, 5 February 2018, available at www.iccba-abcp.org/single-post/2018/02/05/ICCBA-Delegation-Meets-with-ICC-President.

representatives of TFV's implementing partners as well as those benefiting from the assistance provided, and engaged in outreach to victim communities.⁶⁰

114. More recently, in September 2017, I invited a member of the Board of Directors to accompany me in a joint visit to His Holiness, Pope Francis, in order to project together the comprehensive nature of the Court's justice, which combines both retributive and restorative elements.⁶¹

⁶⁰ "ICC President and Trust Fund for Victims conclude joint visit to Uganda", 2 March 2017, ICC-CPI-20170302-PR1280, available at www.icc-cpi.int/Pages/item.aspx?name=PR1280.

⁶¹ "ICC President meets with His Holiness Pope Francis at the Vatican", 18 September 2017, ICC-CPI-20170918-PR1333, available at www.icc-cpi.int/Pages/item.aspx?name=pr1333.

V. CONCLUSION AND RECOMMENDATIONS

115. I have provided above an overview of the actions I undertook as President of the Court to address the priority objectives I had identified and announced at the beginning of my three-year term. I considered it a matter of accountability to report on these efforts, both toward my fellow judges who elected me President, as well as toward the Court's stakeholders and the international community.

116. Obviously, this document is by no means a full account of all that happened during the past three years. Indeed I have only summarised main efforts to promote judicial and inter-organ cohesion and coordination as a means to enhance efficiency and effectiveness as well as some actions to promote external understanding and support for the Court – priority goals that I had outlined to my fellow judges in 2015 when running for election as President.

117. While I have focused this report on explaining first and foremost what I did and why, it is clear that the Court's institutional development is a collective effort of many, notably the judges, the Prosecutor, the Registrar, counsel and the staff of the Court – but also others, including States, regional and international organisations and civil society. This is also one of the main reasons why I have repeatedly emphasised alignment of vision and cohesion and coordination of action as being key to the enhancement of the Court's performance.

118. I think some important progress was made to enhance the speed and quality of judicial proceedings, as well as increase coordination between the organs, which was sometimes challenging in the past and yet crucial to improving the Court's performance. While carefully safeguarding the independent mandates of each organ, fostering close coordination on administrative as well as strategic institutional issues is essential for the proper management of the Court. Sufficient unity of voice and alignment of vision within the institution is also essential in order to promote broader acceptance and support of the Court in the global community. Further progress in both areas require continued, persistent and proactive efforts by the future leadership of the Court. I hope that some of the mechanisms and initiatives put in place will contribute to future efforts.

119. In the short term, I hope, in particular that efforts will continue in relation to the following ongoing initiatives undertaken during my term,

i. Harmonization of proceedings on victims' participation and reparation. It is fundamental, in my view, to continue to revise proceedings through collective discussions among judges in order to identify best practices and harmonize proceedings where possible, not only in order to expedite the proceedings but also to increase their predictability and ultimately their fairness. There is now an expectation from internal and external observers that the Chambers Practice Manual will continue to expand to cover other important areas of the process, including in particular matters related to the legal representation of victims, their scope of participation and principles of reparations. In light of the increased experience gained by the Court in various recent proceedings, it is to be hoped that judges will address these topics as a matter of priority.

ii. Selection of *ad hoc* judges for Appeals. As indicated in this report, judges have recognised the benefits of selecting *ad hoc* judges from a roster for interlocutory appeals in order to promote transparency and equality amongst judges and have expressed support for applying the same system with respect to final appeals. To that effect, the necessary criteria need to be developed including taking account of the additional criterion of ensuring that judges on the roster have sufficient time remaining in their judicial mandates to complete the final appeal in question.

iii. ICC Case Law Database. As described above, there has been great progress in the development of the ICC Case Law Database. I hope the current efforts will continue unabated so that the database can be launched and become fully functional very soon, hopefully by the end of this year. The advanced search capabilities provided by the database, once operational, will significantly increase the utility and functionality of the Court's legal research tools, simplifying and expediting litigation, and improving the overall effectiveness, efficiency, and consistency of the Court's activities and jurisprudence.

iv. Performance Indicators. During my three-year term, a system of performance indicators was put in place and data started to be collected. As indicated in the Court’s last report, collection of detailed data on the selected indicators must continue so that future reports of the Court can increasingly illustrate the Court’s performance over time. The Court will also need to continue to assess on a continuous basis whether the selected indicators need to be further adjusted.

v. Whistleblower protection and measures to protect integrity. During my Presidency, extensive inter-organ consultation took place with a view to strengthening the current “ICC Whistleblowing and Whistleblower Protection Policy”, in particular to ensure its consistency with the Operational Mandate of the Independent Oversight Mechanism (“IOM”), as set out by the ASP, as well as to facilitate the procedure for potential whistleblowers. I hope work on this will continue with a view to promulgating an updated policy once the States Parties finalize their consideration of the IOM’s proposed revision to rule 26 of the Rules of Procedure and Evidence. I also hope that the future leadership of the Court will review, on the basis of a mapping exercise of existing norms and codes that the Court recently concluded, whether any enhancement or amendments are required in the safeguards that the Court has in place to ensure that officials and staff members of the Court uphold the highest standards of integrity and professionalism in the exercise of their functions.

vi. Gender Parity. Efforts to increase gender parity must continue. Great efforts have been done Court-wide to achieve gender parity among staff and these efforts are bearing fruit. Recent figures are indeed encouraging to the extent they demonstrate increase in gender parity of professional posts⁶², although more remains to be done to ensure parity at higher levels of seniority.

As President of the Court I have encouraged all such efforts and highlighted the importance of gender parity and female leadership in many public statements in all relevant occasions and have also invested efforts to engage with a range of gender-based initiatives intended to promote gender parity in justice efforts⁶³. It is clear that much more needs to be done to ensure and maintain gender parity at the Court, both in senior staff positions as well as in judicial and other elected positions. An inter-organ Committee was established in 2017 in order to explore the appointment of a Focal Point for Women at the Court and propose recommendations in this regard. I hope efforts will continue in this regard and that the Focal Point will be appointed on a priority basis.

While I am honoured to have served in the first all-female Presidency of the Court, the fact is that the representation of female judges is at its lowest since the establishment of the Court. Since 2015, the number of female judges at the Court has been six, which is the minimum foreseen by the voting procedures applied by the ASP. More awareness-raising is needed, particularly among States, to promote the nomination of highly qualified female candidates in future elections.

⁶² Third Report on Performance Indicators, *supra* note 25, para. 34.

⁶³ Such as the Women in International Law Network (WIIL), as well as the GQUAL Campaign for gender parity in international representation, hosted by the Center for Justice and International Law (CEJIL).