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**Eighteenth session**

The Hague, 2-7 December 2019

**Report of the Bureau on the Study Group on Governance**

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## I. Introduction

1. The Study Group on Governance (the “Study Group” or “SGG”) was established via a resolution<sup>1</sup> of the Assembly of the States Parties (the “Assembly”) in December 2010 “to conduct a structured dialogue between States Parties and the Court with a view to strengthening the institutional framework of the Rome Statute system and enhancing the efficiency and effectiveness of the Court while fully preserving its judicial independence...”; and “to facilitate this dialogue with a view to identifying issues where further action is required, in consultation with the Court, and formulating recommendations to the Assembly through the Bureau”. It was further decided that “the issues to be dealt with by the Study Group include, but are not limited to, matters pertaining to the strengthening of the institutional framework both within the Court and between the Court and the Assembly, as well as other relevant questions related to the operations of the Court”.

2. In 2011 the Study Group dealt with the relationship between the Court and the Assembly, strengthening the institutional framework within the Court and increasing the efficiency of the criminal process. At the request of the Assembly in its tenth to seventeenth sessions, the dialogue between the organs of the Court and States Parties was continued from 2012 to 2019.

3. The seventeenth session of the Assembly took note of the report of the Bureau on the Study Group<sup>2</sup> and the recommendations contained therein, and extended the mandate of the Study Group for a further year.<sup>3</sup>

4. On 7 February 2019, the Bureau appointed Ambassador María Teresa Infante Caffi (Chile) and Ambassador Hiroshi Inomata (Japan) as Co-Chairs of the Study Group. On 17 May 2019, the Bureau appointed Mr. Reinhard Hassenpflug (Germany), Ms. Edith Ngungu (Kenya) and Ms. Laura Victoria Sanchez (Colombia) as the co-focal points for the Study Group. On 17 September 2019, the Bureau appointed Mr. Jan Christoph Nemitz (Germany) as a co-focal point, to replace Mr. Reinhard Hassenpflug, who had completed his mandate in The Hague. Further, on 4 October 2019, the Bureau appointed Ambassador Hidehisa Horinouchi (Japan) as the Co-Chair of the Study Group, to replace Ambassador Hiroshi Inomata, who had completed his term in The Hague.

5. The Study Group held two regular meetings, on 5 July and on 17 October 2019, as well as informal meetings between the co-Chairs and co-focal points, States Parties, representatives of the organs of the Court, and civil society.

6. This report on the Study Group describes the activities of the Study Group in the past year and contains recommendations regarding the continuation of its work.

## II. Consideration of issues

7. The programme of work for the Study Group focused on two main areas: (a) continuation of the discussion on performance indicators and to the extent possible an update on the development of qualitative and quantitative indicators; and (b) continuation of discussions on victim participation in ICC proceedings.

### A. Performance indicators

8. At its 5 July 2019 meeting, the Co-Chair, Ambassador María Teresa de Jesús Infante Caffi (Chile), recalled that the Study Group on Governance had received the draft Strategic Plans of the Office of the Prosecutor, of the Court, and of Registry, which each referred to performance indicators. The Court had previously prepared three reports on the development of performance indicators, the latest being the “Third report on the development of performance indicators for the International Criminal Court”, dated 15 November 2017 (“Third Court’s report”). The Co-Chair noted that the summary of the panel discussion on Performance Indicators for the International Criminal Court, held during the fifteenth session

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<sup>1</sup> ICC-ASP/9/Res.2.

<sup>2</sup> ICC-ASP/17/30.

<sup>3</sup> ICC-ASP/17/Res.5, para. 90.

of the Assembly of States Parties in 2016, was available on the website of the Assembly.<sup>4</sup> The Co-Chair expressed that all these documents provided valid tools for the SGG continuous work and thanked the Court for its engagement in that regard.

9. The Co-Chair recalled the mandate of the Assembly at its seventeenth session regarding the Study Group.<sup>5</sup> In recent meetings of The Hague Working Group, the representatives of the Court's organs had introduced the respective draft Strategic Plans. She noted that the draft Strategic Plans each included a section on performance indicators, and recalled that States had, in previous years, highlighted the importance of the link between the Strategic Plans and the budget of the Court. She noted that the performance indicators were important to assist with the budgetary process, and that the budget itself reflected the performance indicators.

## 1. Presentation by the representative of the Presidency

10. Mr. Hiram Abtahi, Acting Chef de Cabinet of the Presidency, presented the background to the evolution of the performance indicators. He recalled that at the Glion retreat<sup>6</sup> it had become clear that, in addition to the normative rules, it was important to introduce measurements. The retreat had concluded that there was a need to focus on performance indicators. States Parties subsequently decided to take up the discussion of performance indicators and at the fourteenth session, requested the Court to update the Study Group on Governance on the development of qualitative and quantitative indicators.<sup>7</sup>

11. The four indicators identified by the Court were: the Court's proceedings are expeditious, fair and transparent at every stage; the Court's leadership and management are effective; the Court ensures adequate security for its work, including protection of those at risk from involvement with the Court; and victims have access to the Court. These goals were a combination of qualitative as well as quantitative indicators. Although the Third report had indicated that the Court would continue its work in 2018, this had not been possible due to the change of two-thirds of the leadership of the Court in 2018. It had thus decided to resume work in 2019. The first phase had been led by Presidency, and the Registry would take the lead on certain areas thereafter. The Court would continue to collect relevant data for the four goals and would, on that basis, continue to assess whether the selected indicators needed to be further adjusted.

## 2. Presentation by the representative of the Office of the Prosecutor

12. Mr. Michel de Smedt, Director of the Investigations Division, Office of the Prosecutor recalled that the Office of the Prosecutor (OTP) had introduced its model of performance indicators in its Strategic Plan 2016-2018. That plan had contained 14 indicators, reflecting four areas of performance over which the OTP has sufficient control, namely (1) prosecutorial results, (2) operational excellence, (3) management excellence, and (4) innovation and learning. A review of the 14 original performance indicators was conducted as part of the OTP's new draft Strategic Plan 2019-2021, which narrowed down the number of performance indicators to 11.

13. He explained the three types of indicators,<sup>8</sup> and the three relevant principles applied in using performance indicators.<sup>9</sup> As regards how the performance indicators would be applied, they would be measured every three months, through the use of a performance dashboard, as a practical tool for OTP management to assess what was being done and what needed to be improved, e.g. to assess how the quality standards were being met; to assess performance from the management perspective; and also how the programme budget was

<sup>4</sup> [https://asp.icc-cpi.int/en\\_menus/asp/sessions/documentation/15th-session/Pages/ASP15-Plenary.aspx](https://asp.icc-cpi.int/en_menus/asp/sessions/documentation/15th-session/Pages/ASP15-Plenary.aspx)

<sup>5</sup> ICC-ASP/17/Res.5, annex I, para. 9 c) and d.

<sup>6</sup> Retreat on Strengthening the Proceedings at the International Criminal Court, Glion, Switzerland, 3-5 September 2014.

<sup>7</sup> ICC-ASP/14/Res.4, annex I, para. 8.

<sup>8</sup> 1) Actual performance indicators (strategic indicators and operational indicators); 2) critical success factors, impacting on results (cooperation, security, resources); and 3) workload indicators.

<sup>9</sup> 1) Performance measurement applies to items that you have sufficient control over; 2) Numbers, i.e. indicators are quantified; but not all that counts can be measured and not all that can be measured counts, e.g. evolution of conviction rate, length of investigation, average number of pages per statement); and 3) being selective in identifying performance indicators.

being managed. These were intended to provide an overall assessment of the status of implementation.

14. Further, he described the steps being undertaken to align the performance indicators with the programme budget and the Strategic Plan, e.g. all divisions and sections submitted their budget objectives based on the provisional Court-wide and OTP plans; mapping the link between the ICC and the OTP goals and objectives, to ensure that all were covered; incorporation of updates on performance indicators.

15. As regards future developments, the OTP would conduct research into how to further measure the impact, e.g. how the objectives can be made more tangible; would engage with States Parties to get better insight into how national prosecutorial offices worked with and linked Strategic Plans, objectives, budgets and indicators; and, as regards external reporting, would communicate on an annual basis the result of the implementation of the performance indicators.

16. With respect to coordination with other organs, the organs would share experiences and develop further common indicators, e.g. staff well-being; and upgrade the strategic planning cycle, ensuring that in 2020, the cycles of all plans were aligned.

### **3. Presentation by the representative of the Registry**

17. The representative of the Registry, Mr. Juan Antonio Escudero, indicated that the Court-wide Strategic Plan referred to three categories of goals: judicial and prosecutorial performance goals; cooperation and complementarity goals; and organizational performance goals. He also recalled that sometimes data was limited, as well as that there were differences in each organ of the Court, when applying performance indicators to the work of the Court. In order to measure the indicators, it was necessary to focus on the data and the facts. He noted that, for the first time, there were three Strategic Plans that covered the same period. It was the common aim of the three organs to work together to harmonize the different approaches and successfully measure the implementation of the goals in the respective plans. The Registry would align its goals with the Court-wide goals.

18. The Registry's representative indicated that it was a work in progress and, in the proposed timeline for implementation, some activities related to performance indicators would take place during year 2 of the plan. The Registry placed importance on performance data, and the Strategic Plan referred to two sets of data: Court-level data, which would revive the Court's report on performance indicators, and a set of data for the services that the Registry provided. The data would be grouped according to the three Divisions within the Registry. The Registry would publish an annual performance report containing all the data and the analysis thereof. Further, the performance indicators would be reviewed and revised as necessary, as part of the strategic planning process.

19. The performance indicators and workload indicators included in the previous Court's Third report on performance indicators were organized around four goals identified at the Glion retreat, i.e. (1) the Court's proceedings are expeditious, fair and transparent at every stage; (2) the Court's leadership and management are effective; (3) the Court ensures adequate security for its work, including protection of those at risk from involvement with the Court; and (4) victims have access to the Court.<sup>10</sup>

20. Moving forward, the Registry intended to adapt the goals in accordance with the new Registry Strategic Plan. Much work had been accomplished by 2017 under the leadership of the former President of the Court<sup>11</sup> as reflected in the Third report, and Registry intended to further improve and strengthen this work. In coordination with the current Presidency, the Registry would produce a more concise and reader-friendly report.

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<sup>10</sup> Para. 2.

<sup>11</sup> Judge Silvia Fernández de Gurmendi.

## B. Victims' participation

21. At its 17 October 2019 meeting, the Study Group recalled its previous work relating to victims, including more recently the 2018 seminar on victims' participation and the plenary panel at the seventeenth session entitled "Achievements and challenges regarding victims' participation and legal representation 20 years after the adoption of the Rome Statute",<sup>12</sup> both organized by the 2018 focal points for Cluster I (Increasing the efficiency of the criminal process).

22. The Study Group also recalled the separate mandate of the Assembly on victims,<sup>13</sup> which was also relevant to the work of the Study Group:

*"Recalls the Court's previous commitment to review its Revised Strategy in Relation to Victims once a judicial cycle is finished,<sup>14</sup> and therefore requests the Court to submit an updated strategy, including measurable and time-bound objectives, to the Assembly at its eighteenth session."*

23. Further, the Study Group noted that victims' issues had been included in the respective Strategic Plans of the Court,<sup>15</sup> as well as in the "Matrix over possible areas of strengthening the Court and Rome Statute System", prepared by the Presidency of the Assembly following the Bureau's 13 June 2019 retreat.

24. The Chef de Cabinet of the Presidency of the Court referred to the Court's Revised Strategy in Relation to Victims (2012)<sup>16</sup> and noted that the preparation of that revised plan had required consultations to bring together various interests on victims' participation. In the meantime, Chambers had been taking decisions, e.g. on victims' applications and the processing thereof, which were reflected in the Trial Chambers' Practice Manual. Judges had sought to ensure that proceedings moved forward, the Trust Fund for Victims was working under its separate mandate on victims-related issues and Chambers had issued reparations orders.

25. He noted that the current respective Strategic Plans of the Court, the Office of the Prosecutor and the Registry each made references to victims, e.g. with respect to protection and well-being; participation; and communication and the management of expectations. The Registrar intended to prepare, together with the Victims Participation and Reparations Section, and in consultation with the other organs of the Court, an updated strategy, including measurable and time bound objectives.

### Briefing on the judges' retreat

26. Also at the 17 October meeting, the working group received a briefing from the Chef de Cabinet of the Presidency of the Court on the judges' retreat, held on 3 and 4 October. The purpose of the retreat was to enable the judges to hold a private exchange on topics related to the efficiency and functioning of judicial activities, not including the work of Chambers, which are independent. The judges had considered three issues: a) Trial Chambers' guidelines on the drafting and structure of judgments; b) timelines for key judicial decisions; and c) managing transitions in the judiciary.

27. The Chef de Cabinet of the Court indicated that after technical review, the guidelines on the drafting and structure of judgements and the agreed upon timelines for key judicial decisions will be incorporated into the Chamber Practice Manual.

28. On managing transitions in the Judiciary, the Chef de Cabinet informed the meeting that the Court will map the situation of work of the Judges and issue a report on how the Presidency assigns Judges and why in some instances there has been a need for extension. He indicated that the purpose of the report will be to map the situation but that the Court would provide recommendations where possible.

<sup>12</sup> Ms. Erica Lucero (Argentina) and Mr. Philip Dixon (United Kingdom).

<sup>13</sup> ICC-ASP/15/Res.5, para. 110.

<sup>14</sup> ICC-ASP/13/Res.4, para. 1.

<sup>15</sup> The Strategic Plan of the Court, of the Office of the Prosecutor and of the Registry, dated, respectively, 17 July, 22 July and 17 July 2019.

<sup>16</sup> ICC-ASP/11/38, dated 5 November 2012.

### III. The way forward

29. As regards the way forward for the Study Group, the co-focal points noted that the Matrix, which the Bureau's working groups were considering, contained a section on "Governance, Management and Leadership", which covered a broad range of topics, including management and governance culture; unified governance and leadership; adequate qualitative and quantitative human resources; establishment of an ombudsman/internal grievance procedures. The draft Terms of Reference for the Independent Expert Review also set out the profiles of experts for the three clusters in annex I, and in annex II, the list of legal and technical issues to be covered in each cluster. Both annexes referred to Cluster I, Governance.

30. The focal points noted that the future work of the SGG could therefore relate to governance topics to be covered by independent experts in the future, and it would be necessary to avoid duplication.

### IV. Recommendations

31. The Study Group through the Bureau submits the following recommendations for the consideration of the Assembly:

#### A. For inclusion in the omnibus resolution

*The Assembly of States Parties,*

1. *Welcomes* the continued structured dialogue between States Parties and the Court with a view to strengthening the institutional framework of the Rome Statute system and enhancing the efficiency and effectiveness of the Court while fully preserving its judicial independence;
2. *Takes note* of the Bureau's report on the Study Group on Governance;<sup>17</sup>
3. *Extends* for another year the mandate of the Study Group, established in resolution ICC-ASP/9/Res.2 and extended in resolutions ICC-ASP/10/Res.5, ICC-ASP/11/Res.8, ICC-ASP/12/Res.8, ICC-ASP/13/Res.5, ICC-ASP/14/Res.4, ICC-ASP/15/Res.5, ICC-ASP/16/Res.6 and ICC-ASP/17/Res.5;
4. *Encourages* the Court to continue its work in 2020 on developing common practice, in particular on victim participation;
5. *Calls upon* States Parties to continue considering amendment proposals by the Working Group on Lessons Learnt, as necessary;
6. *Welcomes* the continued work of the Court on the topic of performance indicators as an important tool to fulfill its functions;
7. *Expresses* the Assembly's wish to continue an active dialogue with the Court on that topic, bearing in mind that the Court needs to implement its intended approach in order to produce results which can form the basis of further dialogue;
8. *Takes note* of the "Matrix over possible areas of strengthening the Court and the Rome Statute System", dated 11 October 2019, prepared by the Presidency of the Assembly, as well as the Terms of Reference for the Independent Expert Review, and *notes* that the Study Group may consider some issues indicated under "Governance";

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<sup>17</sup> ICC-ASP/18/27.

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

With regard to the **Study Group on Governance**,

(a) *invites* the Court to further engage in a structured dialogue with States Parties with a view to strengthening the institutional framework of the Rome Statute system and enhancing the efficiency and effectiveness of the Court while fully preserving its judicial independence;

(b) *requests* the Study Group to continue the dialogue with the Court on performance indicators;

(c) *encourages* the Court to continue to share with the Study Group any update on the development of qualitative and quantitative indicators;

(d) *invites* the Court to monitor the use of intermediaries through its Working Group on Intermediaries with a view to safeguarding the integrity of the judicial process and the rights of the accused; and

(e) *requests* the Court to inform States Parties, when appropriate, about important developments pertaining to the use of intermediaries, which might require the Court to amend the Guidelines;

(f) *invites* the Study Group to consider the following issues listed in the Matrix, mindful of work of the Group of Independent Experts, and to report thereon to the nineteenth session of the Assembly:

- (i) 1.4 Election of Registrar;
  - (ii) 1.8. Performance indicators;
  - (iii) 1.13. Procedure for amending Rules of Procedure and Evidence; and
  - (iv) 2.9. Management of transitions in the judiciary.
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