

SECRETARIAT OF THE ASSEMBLY OF STATES PARTIES TO THE ROME STATUTE

Summary of the panel discussion on Performance Indicators for the International Criminal Court, held at the eighth meeting of the fifteenth session of the Assembly of States Parties, in The Hague on 22 November 2016

1. At its fourteenth session, the Assembly of States Parties reaffirmed that efficiency and effectiveness of Court proceedings is a priority in strengthening the Rome Statute system, and decided to include a specific item on this topic on the agenda of the following session.¹ In fulfilment of this mandate, a panel discussion on performance indicators for the International Criminal Court was held during the fifteenth session of the Assembly.

2. Ambassador María Teresa de Jesús Infante Caffi (Chile) and Ambassador Hiroshi Inomata (Japan), co-chairs of the Study Group on Governance, chaired the panel discussion and delivered opening and closing remarks. The panel was comprised of Judge Silvia Fernández de Gurmendi, President of the International Criminal Court (ICC), Mr. Nicolas Guillou, Chef de Cabinet at the Special Tribunal for Lebanon (STL), Mr. Jim Goldston, Executive Director of Open Society Justice Initiative and Ambassador Eduardo Rodríguez Veltzé (Bolivia), The Hague Working Group of the Bureau facilitator on strategic planning. An interactive segment with representatives of States Parties and civil society followed the panellists' interventions.

3. President Fernández introduced the Court's Second Report on Performance Indicators for the International Criminal Court² (Second Report), which constituted a serious attempt to provide for the first time a quantitative and qualitative picture of judicial activities of the ICC through performance indicators. The President recalled that the Second Report was based on the same four key goals identified in the 2015 Report on the Development of Performance Indicators for the ICC³:

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

4. The Second Report contained measurable criteria for each goal and some initial data as a sample of potential future measurements to be undertaken. The Court intended to continue to collect and assemble relevant data on the selected criteria with a view to presenting to the Assembly a more complete set at the next session. President stated that from the outset the Court sought to link the indicators project to other managerial tools and governing documents already in place at the Court, including the ICC's Strategic Plan 2013-2017. The President noted that the efforts to ensure a more inclusive process intended to obtain inputs from all organs at the highest levels and civil society. The work had been guided by a number of principles and methodological considerations, including the uniqueness of each case, limitation of the choice of indicators to those primarily under the control of the Court itself, the link between indicators and Court's budget, and the impact of the Court's work on the affected communities.

5. Mr. Guillou noted that the STL had started developing performance indicators but that the process was at a very early stage. He added that the focus of the STL was less ambitious than that of the ICC, and the scope was smaller due to the non-permanent nature of the tribunal and lower number of cases. Mr. Guillou pointed out that the STL took

¹ ICC-ASP/14/Res.4, para. 62.

² Available at: <https://www.icc-cpi.int/Pages/item.aspx?name=second-courts-report-of-performance-indicators>.

³ Available at: https://www.icc-cpi.int/itemsDocuments/Court_report-development_of_performance_indicators-ENG.pdf.

inspiration from the World Bank, the European Commission for Efficiency of Justice and national judicial systems, and decided to focus on quantitative data and mainly on three types of indicators: benchmark, hearing and timeline indicators. He stressed that performance indicators needed to promote transparency and accountability in tribunal's operations and that they were tools for overseeing bodies to effectively manage the tribunal's budget.

6. Mr. Goldston noted that upon the Court's request Open Society Justice Initiative provided technical assistance on development of indicators. Mr. Goldston noted that indicators were of vital importance and were directly related to issues widely discussed concerning the Court's performance, including the expeditiousness, victims participation and security. He noted that indicators were means to measure the progress of goals and thus served as a means of diagnosis, dialogue, communication, and opportunity to ground evidence for strategic dialogue with external actors. He further noted that indicators should take into account the institution as a whole and not just success of individual departments as well as that the end product, such as the end of the justice process, might be difficult to measure. Mr. Goldston drew attention to the progress by the Court on indicators in the past year but stressed the role of the management in their successful implementation.

7. Ambassador Eduardo Rodríguez Veltzé, speaking from his experience as Strategic Planning facilitator, noted the difficulty to combine the development of performance indicators with the judicial nature of the Court. In this regard he pointed out that the ICC had some specific features that the Assembly had to understand, as for example the independence of the Court, which was the essence of any performance. Moreover, he stressed that it was not for the judges to develop indicators because their role was to focus on delivering justice but rather for the Registry, academia and civil society to collect and evaluate the available data. Ambassador Rodríguez Veltzé pointed out that the role of the performance indicators, specifically for the Assembly was in regard to its consideration of budget allocations and provision of managerial oversight to the Court.

8. During the interactive segment, delegations welcomed the Second Report and recognized the progress made by the Court. Delegations noted that the indicators were a valuable tool to evaluate the Court's operation, while acknowledging the need for the indicators to be further developed and implemented in order to provide results in the long run, including savings and efficiencies. Some delegations also highlighted the utmost importance and the need to preserve the judicial independence of the Court and the Office of the Prosecutor in the process of evaluation of the Court's performance. States welcomed the inclusiveness of the process, including the coordination among the organs and cooperation with civil society and other stakeholders.

9. Some delegations welcomed the Court's decision to focus on the internal indicators, which were within its control but also noted the significant impact of external factors on the Court's work. They also welcomed that the performance indicators were developed in light of the Court's strategic priorities but cautioned against disregarding minor indicators, which were important in order to ensure that the whole picture was provided. In general, the focus on quantitative indicators was welcome by the delegations in light of the inherent difficulties in the development of qualitative indicators.

10. With respect to the first key goal pertaining to expeditiousness, fairness and transparency of the Court's proceedings, some States recognized the difficulty of the task due to the inherent link of these concepts to the fair trial principle. Some States noted that fairness and expeditiousness were two inherently linked concepts and that the speed of the proceedings was conditioned by the time and procedural possibilities to be afforded to the parties while the obligation to safeguard the fairness rested in the first place with the judges. In this regard, while it was recognized that benchmarking among cases was not possible, some delegations called for data on different cases to be provided side by side in order to allow the comparisons being made, with the accompanying narrative on specific aspects of each case.

11. As regards the second key goal pertaining to effective leadership and management, some delegations welcomed the proposed indicators regarding budget implementation per organ and highlighted that cooperation between the different organs of the Court was essential. Some States also stressed the importance of geographical representation and

gender balance and a point was made noting that the usefulness of the Court's proposal to develop a recruitment system based on indicators that would measure, *inter alia*, geographical representation and gender balance as well as the length of the recruitment procedures.

12. The States noted the importance of the third key goal pertaining to physical and information security to the proper functioning of the Court. As regards physical security, States recognized the efforts in this regard, in particular the enhanced security of the new premises and the importance of security measures adopted in the field operations. Furthermore, it was noted that efficient risks management system that would prevent security incidents was of utmost priority. Concerning the information security, some delegations noted the rapid evolution of IT technologies and the necessity of data gathering and regular updates.

13. Concerning the fourth key goal relating to victims' access to the Court, some States welcomed the broad perspective adopted by the Court that focused both on victims' formal participation in the proceedings and on the Court's impact on victims and affected communities. It was noted that measuring the Court's impact was inherently difficult but should be explored further and the value of civil society assistance in this regard was recognized by some States.

14. Human Rights Watch, speaking on behalf of Avocats sans frontières, International Federation for Human Rights, No Peace without Justice, Open Society Justice Initiative and Redress, welcomed the Court's Second Report and highlighted the inclusion of indicators that were relevant for evaluation of the Court's impact on affected communities. It also called upon the Court to reflect on how to include the views and concerns of affected communities directly into the assessment of its performance.

15. In response President Fernández noted the significant impact of external factors (e.g. unavailability of evidence or witnesses) on Court's work and stressed the importance of narratives in order to provide explanations on the data provided. The President noted the long term nature of the project and informed States that in the next phase the focus would move to data collection.
