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ICC Performance Indicators

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Introduction

- I wish to thank the ICC and the Study Group on Governance for the invitation to address this Assembly and comment on the Court’s progress on performance indicators.

- My organization, the Open Society Justice Initiative, was asked to provide technical assistance for the Court’s preparation of indicators. We did so with all due respect for the Court’s independence. All decisions about what kinds of indicators to use, and how best to use them, have been, as they must be, for the Court.

- In my brief time, I would like to address three issues
 - First, Why spend time developing indicators? What’s the point?
 - Second, What are indicators?, and finally
 - To offer An initial assessment of the Court’s progress on indicators through 2016

I. [[[[WHAT GOOD CAN INDICATORS SERVE?]]]]

- Let me start with a blunt assertion: Indicators are, at first glance, boring. The very word makes the eyes glaze. But in fact, indicators are of vital importance and are directly related to issues widely discussed concerning the Court's performance.
 - For example:
 - Expeditionousness - The Court, some have said, is too slow. Its trial and pre-trial proceedings take too long. The Court has been taking measures to address this concern, including by issuing the Chambers Practice Manual. How will we know if the Court shortens the length of proceedings?
 - Victim participation – The Court has sought to make victim participation meaningful. It has reached out to affected communities and has reinforced its field presence. How can the Court measure improvement in these areas?
 - Security – The Court has striven mightily, and faced significant challenges, to safeguard victims and witnesses. How do we know how successful it is?

Indicators can help us answer these questions.

- But let's step back for a moment and consider: **Why has the Court embarked on the development of performance indicators?**
 - a. At the most basic level, the Court was responding to a formal request of the ASP. As the funders of the Court, States understandably seek

information on the Court's results and progress. The Court must respond, just as other recipients of financial support must account for results and explain how funding has been used.

- b. But indicator development is more than a technical exercise of checking the boxes. In fact, indicators offer three distinct kinds of value.
 - i. First, developing indicators provides an opportunity for **reflection** among all those concerned to ensure the success of the Court and its mission. Court-wide performance indicators can serve as **diagnostic tools** to identify areas of uncertainty or need, and enable conversations about possible improvement. Indicators require decisions about something fundamental - which aspects of the mission of the International Criminal Court are so important that its leaders should invest in measuring and tracking them?
 - ii. Second, indicators offer an opportunity for reasoned, informed, less contentious **interaction** between the Court and external actors about their various roles and responsibilities. Development of indicators offers an opportunity to ground these important discussions in objective evidence, and to generate constructive, strategic dialogue.
 - iii. Finally, indicators **communicate key messages** to the Court's many stakeholders –
 1. to staff within the Court, so that all are better aligned in working towards a common purpose;
 2. and to states, civil society and the broader public about what the Court believes are its priority goals and how it

expects to achieve them. As the Court’s second report on indicators notes, “indicators should not only speak to the Court and States Parties, but also to communities outside the Court.”

II. SO WHAT ARE PERFORMANCE INDICATORS?

- In the most basic sense, indicators are measures that enable assessment of progress toward one or more defined goals. On the path toward a prescribed end, indicators reveal how far we have come.
- So, to take one example:
 - One goal identified by the Court is transparency of proceedings
 - An indicator proposed to measure this is: the “Percentage of ICC decisions that are public vs confidential.”

A. Let’s remember: **indicators are not new** to the world. They have been used by many institutions for years.

- What makes indicators particularly challenging when dealing with judicial bodies is that the “end product” is the quality of the justice process itself. And that can be hard to measure, in part because not everyone agrees on what constitutes things like equality of arms or independence or fairness.
- To complicate matters further, the ICC is not just another court. So indicators must take account of this Court’s unusual characteristics including:
 - its relatively limited caseload
 - the complexity of each of its cases; and

- the fact that, unlike most domestic courts, its responsibilities are vast even though its powers to get anyone to comply with its requests are limited at best.

B. Depending on the context, indicators can correspond to **different units of analysis**.

- At the broadest level, indicators can be used to track performance on which **a range of institutions and policies** are expected to have a material impact.
 - An example might be an indicator that seeks to measure changes in rates of Rome Statute crime victimization in a particular country. This might draw on several data sources, including a national victimization survey, health statistics, and homicide statistics. And it might be used to track performance of not just the ICC, but also of the national police, as well as the judiciary and public health bodies.
- At a second, more micro level, indicators may be used to track progress in implementing a **particular program or policy within an institution**.
 - An example might be the percentage of current police officers who have received a certain kind of training – say, in how best to work with forensic expertise in investigating complex crimes.
- Finally, in between, at a third level, indicators may be used to measure progress toward goals of **individual institutions**, like the ICC.

C. [[[Complexity]]]

Now, **developing indicators is hard work. There are several reasons for that**

- **First, institutions are complex.** They involve processes and structures that overlap and interact; they have different levels of management, can be accountable to more than one constituency, and are often part of broader systems.
 - And The ICC is a particularly complex institution. **It is not only an international organization, but is also a court of law.**
- Indicators developed by the ICC apply to performance across the entire institution. The four areas that the Court has identified for measurement (that is: 1) expeditiousness, fairness and transparency; 2) leadership and management; 3) victims' access to the Court; and 4) security) flow from its Strategic Plan and **cover every aspect of its operations.**
 - So indicator development requires each part of the court to **think systemically** about the institution as a whole, including not just its internal processes, but the court's relationships with external outcomes as well as the various communities it serves. It is not uncommon for different units of an institution to act and think in a compartmentalized manner. Indicator development requires breaking that pattern.

- Yet another reason for complexity is that the Court has been looking into developing not only **quantitative but also qualitative indicators**, as requested by the ASP in 2014. Quantitative indicators can be relatively straightforward. Qualitative ones may demand more imagination and creativity.
- Third, preparing to measure indicators involves generating, gathering and comparing a relevant amount of **data**, which, as the Court's report notes, may be difficult to access or scattered across various reports or databases. Solutions may involve
 - collecting data in parallel to indicator development;
 - sharing data across organs and sections; and
 - harmonizing definitions. All are doable, but none are easy.
- Finally, in light of all of the above, developing indicators is not a one-stop operation. A trial and - error approach is essential. Adopting and implementing performance measures takes **time**. Once the first indicators are generated, they must be applied, tested, reviewed and revised. They require experimentation and repeated practice to improve.

Before closing, let me briefly consider what progress the Court has made on INDICATORS IN 2016

A. [[Progress]]

The headline is clear - We have seen significant advances in the Court's work on indicators since last November. Four aspects of the Court's effort stand out for recognition:

- **First, Leadership.** Unless indicators are prioritized and used by top leadership, the rest of the organization will likely disregard them. The Court's leaders (the presidency, the judges and the heads of organs) have commendably committed themselves and engaged their respective teams to produce tangible results this year and to present concrete indicator proposals to the Assembly. The Court's second report is evidence of the priority that the very top of the institution places on this exercise.
- **Second, Coordination** - It is evident that this report has involved extensive coordination across organs to understand what data already exists and to extract it. Given the breadth and diversity of the Court's operations, this level of coordination is no small feat.
- **Third, Care and Consideration** - The report contains in-depth analysis both of what can be measured and of the limitations on measurement. For example:
 - It highlights some of the challenges involved in trying to measure fairness and suggests that fairness be measured in relation to expeditiousness.
 - The Court suggests that some indicators cannot be measured at the moment, and that others can be measured only with the assistance of external surveys. In fact, the Court possesses an immense amount of data; indicator development offers an opportunity for the Court to learn more from its own records. At the same time, we have seen surveys used effectively in other indicator processes, and we welcome the Court's openness to that possibility.

- **A fourth benchmark of progress in the Court’s indicator work is consultation** – In developing indicators, the Court has consulted with, and listened carefully to, parties and participants to the proceedings, as well as representatives of civil society. This makes sense. The Court is a public institution. These interactions not only provide the Court with valuable information. They enhance its credibility in the eyes of some of its most important constituencies.

B. So in sum, this report constitutes a significant step forward. But what comes next?

- The Court’s report notes more than once that, as more data are generated and collected, there will likely be a need to adjust or update the indicators that have been selected.
- We anticipate as well that in the future the Court may want to move from breaking down data per case, as the report proposes for a number of areas, to **aggregating data** across cases or judicial phases as appropriate. The current presentation is a good start. But our experience suggests that measuring the work of an institution requires looking at caseload and related processes in a more holistic manner.
- Similarly, as it acquires more experience in using and testing indicators, the Court may want to reconsider and perhaps expand the number of indicators it has chosen. Indicators are not meant to track every aspect of Court performance. Rather, they **are proxies** for certain goals defined as **critical for the institution**. Experience suggests that key goals are best measured, not by one single indicator, but rather by baskets of 5-7 indicators.

- Finally, the report cites civil society’s “recommendation ... to give serious consideration to the development of indicators that measure and facilitate improvement in achieving a broader sense of impact in situation countries... as well as in the area of cooperation by external actors.” The report suggests that efforts to assess broader impact and cooperation “may need to be further elaborated once the presently envisaged framework has solidified.”
 - The Justice Initiative endorses the intention to broaden the remit of what is measured over time. For as we know well, the Court does not operate alone. It depends on others – states and civil society – to do many things, from securing custody over suspects to educating and engaging the broader public.
 - We stand ready to assist the Court as and when it embarks on the development of indicators beyond its operations.

To conclude, the current report evidences clear progress. But this is only the start of a long-term process. There will surely be adjustments, additions, and further considerations to come.

What does this mean for States Parties going forward? Two main things will be asked of you. First, patience with a process that requires learning by doing. Second, support for the Court to continue this worthy if challenging initiative.

Indicator development on this scale will take time to get right. But developed appropriately, indicators can help the ICC fulfill its critical mission of ending impunity for the most serious crimes – a goal we all share.