Convenor’s Summary

Purpose, Objectives and Format of the Retreat

In 2014, the Assembly of States Parties to the Rome Statute (ASP) requested the International Criminal Court (ICC) to “[…] intensify its efforts to develop qualitative and quantitative indicators that would allow the Court to demonstrate better its achievements and needs, as well as allowing States Parties to assess the Court’s performance in a more strategic manner […].” It reaffirmed its interest in the following year. To assist the Court in that complex exercise, the Federal Department of Foreign Affairs of Switzerland (FDFA), in cooperation with the ICC and the Open Society Justice Initiative (OSJI), convened a retreat on indicators in Glion, Switzerland, on 6-8 April 2016.

The objectives for the retreat were to…

- … enable Court leadership and judges, along with representatives of States Parties and civil society, to develop a shared understanding of the value and purpose of Court-wide indicators;
- … refine the scope and definition of specific categories of indicators as identified in the 2015 report of the Court to the ASP on the development of performance indicators;
- …. discuss next steps in indicator development, including the roles of Court officials, States Parties and civil society.

During the first part of the retreat, the discussion took place among high-level representatives of the ICC, with the support of experts from the OSJI. For the second part, State Party and NGO representatives joined. The retreat was held in an informal and interactive setting, and under the Chatham House Rule. The agenda and the list of participants are attached. The discussion was based on the 2015 report of the Court.

This Convenor's Summary is the sole responsibility of the FDFA and does not intend to represent the agreed views of all the participants.

Outcomes

- **Benefits of performance indicators:** The Glion retreat led to greater understanding of the main benefits of court-wide performance indicators:
  - Externally, they serve as a tool to better explain how the Court is performing and developing over time. Enhancing the accountability of the institution vis-à-vis its stakeholders, performance indicators can foster trust, show the Court's successes, challenges and needs. They contribute to a constructive relationship, in particular between the Court and the ASP, by directing the attention on factors adequately reflecting the performance of the institution.
  - Internally, they provide an incentive and a reference framework for the efficient management and functioning of the institution. They encourage self-reflection and simplify the diagnosis.
Limits of performance indicators: What is required is a modest approach aimed at a limited number of readily measurable indicators adequately reflecting the overall operational performance of the Court. Performance indicators cannot measure every aspect of the Court’s work.

Scope of the assessment: As a starting point, performance indicators should measure aspects which can be influenced by the Court itself. Identified already in the 2015 report of the Court, the following key goals are relevant for the development of indicators:
- The Court’s proceedings are expeditious, fair and transparent at every stage;
- The ICC’s leadership and management are effective;
- The ICC ensures adequate security for its work, including protection of those at risk from involvement with the Court; and
- Victims have adequate access to the Court.

Complexity of indicator selection: In some areas the development of indicators comes more naturally (e.g. expeditiousness could be measured by the time for different phases of the judicial process). Other areas require greater efforts to identify relevant proxy values (e.g. fairness). Expeditiousness and fairness are also examples of potentially conflicting goals, reflecting the complexity of the exercise.

Existing resources: The organs of the Court are already measuring many different aspects of the Court’s work. The establishment of performance indicators would imply systematically sharing, linking and presenting data in a way to exploit its potential. Indicators developed for the organ-level4 may provide inspiration for the development of court-wide indicators.

Leadership and inclusiveness: As it knows its working practices best and in light of its prosecutorial and judicial independence, performance indicators should be developed by the Court. The result should be consulted with relevant stakeholders, in particular victims, defence, State Party and NGO representatives.

Process of development: Developing performance indicators is an incremental process in which the Glion retreat was one step in a longer process. While greater conceptual clarity has been achieved, work remains to be done to define the specific performance indicators.

Testing and review: Once established, performance indicators need to be applied, tested and reviewed if necessary.

The Way Forward
The way forward is set out in the relevant ASP resolutions and the 2015 report of the Court. In the coming months, the ICC intends to further develop its performance indicators based on the work carried out so far as well as the discussions with stakeholders at the Glion retreat and beyond. It will share with the Study Group on Governance any update and report on progress to the 15th session of the ASP due to take place in November in The Hague. The Court’s aim is to develop over time a comprehensive set of performance indicators. Initial data is planned to be made available in 2017.

Annexes:
- Agenda
- List of participants

1 ICC-ASP/13/Res.5, Annex I, para. 7(b), 17 December 2014.
2 ICC-ASP/14/Res.4, para. 59 and Annex I, para. 8(b), 26 November 2015.
4 See Office of the Prosecutor, Strategic plan 2016-2018, paras. 103 ff.
International Criminal Court Retreat on Indicators
Glion, Switzerland, 6 – 8 April 2016

AGENDA

All plenary sessions take place in “La Grande Salle” on the first floor of Hotel Victoria Glion. For the locations of the working group sessions, please refer to the agenda below. Time changes may be announced according to the progress of the discussions.

Wednesday, 6 April 2016

Afternoon/early evening

Arrival of ICC representatives and experts

18.00-19.00 Cocktail

19.00 Dinner and welcome

Welcoming remarks

- Ambassador Jürg Lindenmann, Deputy Director, Directorate of International Law, Federal Department of Foreign Affairs
- Judge Silvia Fernández de Gurmendi, President, International Criminal Court
- James A. Goldston, Executive Director, Open Society Justice Initiative (OSJI)
Thursday, 7 April 2016

From 07.00  Individual breakfast at the hotel

08.30-10.00  PLENARY – Framing the discussion

Goal of the session is to discuss what performance indicators are, to review steps undertaken so far and to plan for the next day and a half.

- Introductory remarks by Silvia Fernández
- Moderator: James A. Goldston

10.00-11.30  WORKING GROUPS

Goal of the session is to discuss performance as it relates to the activities of different organs, including their respective contributions to the court-wide indicators framework.

Each group consists of the representatives of the respective organ(s). Experts will attend the common session with OTP and Registry.

- **Judiciary** (convene in „La Grande Salle“, first floor of hotel).
  Moderator: Silvia Fernández
- **OTP and Registry** (convene in "Le Salon Télé", first floor of hotel).
  Moderator: James A. Goldston

11.30-11.45  Coffee break

11.45-12.00  PLENARY – Introduction to criterion a) of the Court report to the ASP

- “The Court’s proceedings are expeditious, fair and transparent at every stage”

- Moderator: James A. Goldston

12.00-13.15  WORKING GROUPS

Goal of the session is to identify the aspects of expeditiousness, fairness and transparency that are important to measure.

Each group consists of representatives of all three organs, and has one moderator, one rapporteur and one or two experts of OSJI.

- **Working Group A, on the notion of “expeditiousness”**
  (convene in „La Grande Salle“, first floor of hotel).
  Moderator: Philippe Kirsch; rapporteur: Kimberly Prost
- **Working Group B, on the notion of “fairness”** (convene in "Le Salon Télé", first floor of hotel).
  Moderator: Håkan Friman; rapporteur: Philipp Ambach
- **Working Group C, on the notion of “transparency”** (convene in "La Grange", building adjacent to hotel).
  Moderator: Jürg Lindenmann; rapporteur: Osvaldo Zavala Giler

13.15-14.30 Lunch break

**PLENARY**

14.30-15.00 I. Reporting of previous session

Presentation by rapporteurs reporting on the respective session on criterion a) followed by a brief discussion (immediate reactions)

- Moderator: James A. Goldston

15.00-15.15 II. Introduction of criteria b) to d) of the Court report to the ASP

- “The ICC’s leadership and management are effective”
- “The ICC ensures adequate security for its work, including protection of those at risk from involvement with the Court”
- “Victims have adequate access to the Court”

- Moderator: James A. Goldston

15.15-16.30 WORKING GROUPS

Goal of the session is to identify the aspects that are important to measure under each of the criteria.

Each group consists of representatives of all three organs, and has one moderator, one rapporteur and one or two experts from OSJI.

- **Working Group A, on the notion of “effective leadership and management”** (convene in „La Grande Salle“, first floor of hotel).
  Moderator: Philippe Kirsch; rapporteur: Kimberly Prost
- **Working Group B, on the notion of “the Court’s security and protection framework”** (convene in "Le Salon Télé", first floor of hotel).
  Moderator: Håkan Friman; rapporteur: Philipp Ambach
- **Working Group C, on the notion of “victims’ access to the Court”** (convene in "La Grange", building adjacent to hotel).
  Moderator: Jürg Lindenmann; rapporteur: Osvaldo Zavala Giler

16.30-16.45 Coffee break
PLENARY – reporting of previous sessions and general discussion

Goal of session is to report on and discuss results of group sessions, to take stock of today's work and to identify the most important points to communicate the following morning.

Presentation by rapporteurs reporting on their respective session on criteria b) –d), followed by general discussion on all criteria (including criterion a))

- Moderator: James A. Goldston
- Announcement regarding next day’s schedule: Jürg Lindenmann

Early evening  Arrival of State Party and NGO representatives

18.30-19.30  Cocktail

19.30  Dinner
Friday, 8 April 2016

From 07.00 Individual breakfast at the hotel

PLENARY
08.30-10.00 I. Results of part I of the retreat

Goal of the session is to provide a brief outline of the work on day 1 of the retreat and to review the uses of indicators and the roles of external actors in their development.

- Opening remarks and moderation by Jürg Lindenmann
- Report and reflections on the first day of the retreat by Silvia Fernández
- Observations by James A. Goldston
- Immediate reactions from States Parties and NGOs

10.00-10.15 II. Dialogue on indicators from the ICC and from the stakeholders' perspective

Introduction to working group exercise by James A. Goldston

10.15-10.30 Coffee break

10.30-12.00 WORKING GROUPS

Goal of session is for each of the Working Groups to discuss the issues identified in the Plenary session.

Each group consists of representatives of all groups of participants to the retreat, and has one moderator, one rapporteur and one or two experts from OSJI.

- Working Group A (convene in „La Grande Salle“, first floor of hotel).
  Moderator: Shehzad Charania; rapporteur: Miia Aro Sanchez
- Working Group B (convene in "Le Salon Télé", first floor of hotel).
  Moderator: Håkan Friman; rapporteur: Jörn Eiermann
- Working Group C (convene in "La Grange", building adjacent to hotel).
  Moderator: Jürg Lindenmann; rapporteur: Richard Dicker

12.00-13.00 Lunch
13.00-14.00 PLENARY – Dialogue on indicators from the ICC and from the stakeholders’ perspective

Presentation by rapporteurs of their respective group sessions, followed by general discussion

- Moderator: James A. Goldston

14.00-14.30 Coffee break

14.30-15.00 PLENARY – Concluding session: the way forward

- Jürg Lindenmann
- James A. Goldston
- Silvia Fernández
International Criminal Court Retreat on Performance Indicators
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LIST OF PARTICIPANTS

HE Ms. Joyce Aluoch
First Vice-President of the ICC / Judge, Trial Division, ICC

Mr. Philipp Ambach
Special Assistant to the President, ICC

HE Mr. Urs Breiter
Ambassador, Embassy of Switzerland in the Netherlands

Ms. Aida Camara
Head of Translation Support and Terminology Unit, Registry, ICC

Mr. Peter Chapman
Program Officer, Legal Empowerment, Open Society Justice Initiative

Mr. Shehzad Charania
Legal Adviser, Embassy of the United Kingdom, The Hague

HE Mr. Jonghyun Choe
Ambassador, Embassy of the Republic of Korea in the Netherlands

HE Mr. Chang-ho Chung
Judge, Pre-Trial Division, ICC

Mr. Michel De Smedt
Head of Investigations, Office of the Prosecutor, ICC

Mr. Richard Dicker
Director, International Justice Program, Human Rights Watch

Mr. David Donat Cattin
Secretary-General, Parliamentarians for Global Action

Mr. Marc Dubuisson
Director of Division of Judicial Services and Acting Director of Division of External Operations, Registry, ICC

HE Mr. Chile Eboe-Osuji
Judge, Trial Division, ICC

Mr. Jörn Oliver Eiermann
Senior Adviser (political, legal), Permanent Mission of Liechtenstein to the United Nations, New York
Ms. Kathryn Fahnestock  
*Consultant, Open Society Justice Initiative*

HE Ms. Silvia Fernández de Gurmendi  
*President of the ICC / Judge, Appeals Division, ICC*

HE Mr. Robert Fremr  
*Judge, Trial Division, ICC*

Mr. Håkan Friman  
*Senior Judge / Head of Division, Solna District Court, Sweden*

Mr. Masayoshi Furuya  
*First Secretary / Legal Advisor, Embassy of Japan, The Hague*

Mr. James Goldston  
*Executive Director, Open Society Justice Initiative*

HE Mr. Herman von Hebel  
*Registrar, International Criminal Court*

HE Mr. Geoffrey Henderson  
*President of the Trial Division / Judge, Trial Division, ICC*

Mr. Thomas Henquet  
*Chief of the Legal Office, Registry, ICC*

HE Ms. Olga Herrera-Carbuccia  
*Judge, Trial Division, ICC*

HE Ms. María Teresa Infante Caffi  
*Ambassador, Embassy of Chile in the Netherlands / Co-Chair, Study Group on Governance*

HE Mr. Roman Kirn  
*Ambassador, Embassy of Slovenia in the Netherlands*

HE Mr. Philippe Kirsch  
*Former President of the ICC*

Mr. Matthias Lanz  
*Deputy Head of Section, Directorate of International Law, Federal Department of Foreign Affairs of Switzerland*

HE Mr. Jürg Lindenmann  
*Ambassador / Deputy Director, Directorate of International Law, Federal Department of Foreign Affairs of Switzerland*

Ms. Marisa Macpherson  
*Deputy Head of Mission, Embassy of New Zealand in the Netherlands / Focal-Point Cluster I, Study Group on Governance,*

HE Mr. Antoine Kesia-Mbe Mindua  
*Judge, Pre-Trial Division, ICC*

HE Ms. Sanji Mmasenono Monageng  
*Judge, Appeals Division, ICC*

HE Mr. Howard Andrew Clive Morrison  
*Judge, Appeals Division, ICC*
HE Ms. Kuniko Ozaki
Second Vice-President of the ICC / Judge, Trial Division, ICC

Mr. William R. Pace
Convenor, Coalition for the International Criminal Court

HE Mr. Raul Cano Pangalangan
Judge, Pre-Trial Division, ICC

Ms. Mariana Pena
Legal Officer, Open Society Justice Initiative

HE Mr. Marc Perrin De Brichambaut
Judge, Pre-Trial Division, ICC

Ms. Kimberly Prost
Chef de Cabinet of the Presidency, ICC

Ms. Miia Aro Sanchez
International Cooperation Adviser, Office of the Prosecutor, ICC

HE Mr. Bertram Schmitt
Judge, Trial Division, ICC

Mr. Alpha Sesay
Advocacy Officer, Open Society Justice Initiative

Mr. James Kirkpatrick Stewart
Deputy Prosecutor, ICC

Mr. Nikolas Stürchler
Head of Section, Directorate of International Law, Federal Department of Foreign Affairs

HE Mr. Cuno Tarfusser
President of the Pre-Trial Division / Judge, Pre-Trial Division, ICC

HE Ms. Christine Van Den Wyngaert
President of the Appeals Division / Judge, Appeals Division, ICC

HE Mr. Herman Von Hebel
Registrar, ICC

Mr. Osvaldo Zavala Giler
Special Assistant to the Registrar, Registry, ICC

Support provided by

Ms. Diane Fontannaz
Head, Conference & Event Service, Federal Department of Foreign Affairs of Switzerland

Mr. Andreas Palazzi
Deputy Head, Conference & Event Service, Federal Department of Foreign Affairs of Switzerland