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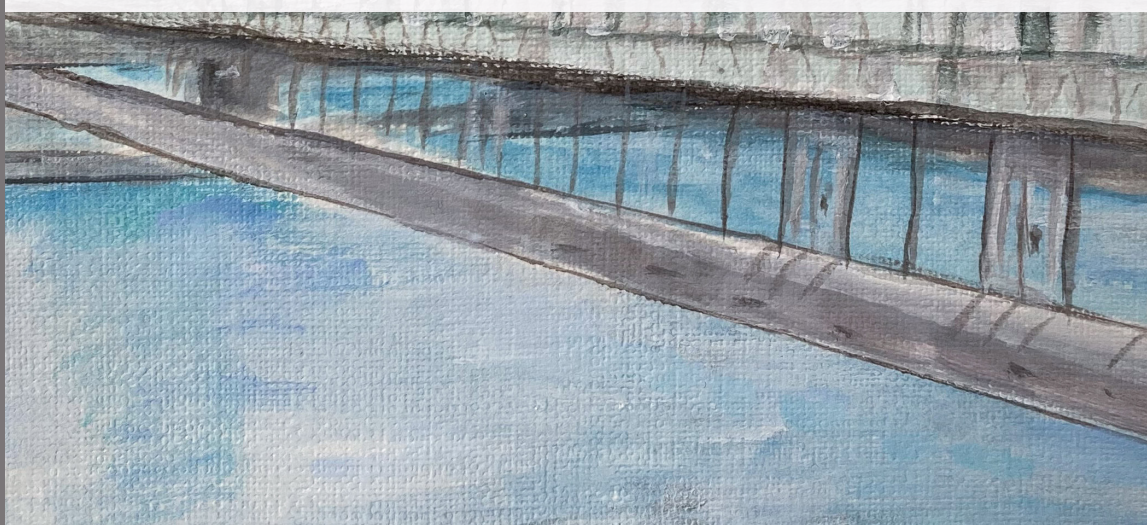
The Past, Present and Future of the International Criminal Court

Alexander Heinze and Viviane E. Dittrich (editors)



E-Offprint:

Benjamin Gumpert and Yulia Nuzban, "Length of Proceedings at the International Criminal Court: Context, Latest Developments and Proposed Steps to Address the Issue", in Alexander Heinze and Viviane E. Dittrich (editors), *The Past, Present and Future of the International Criminal Court*, Torkel Opsahl Academic EPublisher, Brussels, 2021 (ISBNs: 978-82-8348-173-0 (print) and 978-82-8348-174-7 (e-book)). This publication was first published on 17 December 2021.

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Front cover: *An artistic rendering of the permanent premises of the International Criminal Court in The Hague, by Katrin Heinze, 2021.*

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Length of Proceedings at the International Criminal Court: Context, Latest Developments and Proposed Steps to Address the Issue

Benjamin Gumpert and Yulia Nuzban*

17.1. Introduction

Why do proceedings at the International Criminal Court ('ICC') take so long? The reasons are many. The subject matter of ICC investigations and the resulting trials is complex, with alleged crimes often taking place years ago in countries far distant from The Hague. The crimes under ICC jurisdiction will necessarily be part of a broader conflict or attack upon a civilian population. There will often be political sensitivities affecting the co-operation at the national level that is necessary to carry out such investigations.

Once ICC investigators and prosecutors believe they have built a case, it is subject to judicial scrutiny at the arrest warrant stage, and then again at the confirmation stage. Following a suspect's arrest and the appointment of their legal advisers, sufficient time has to be allowed for them to become familiar with a case, which is likely to be extremely voluminous and complex. Most legal arguments are made in writing, with considerable elapse of time between the submissions of parties and participants and the eventual ruling. Such rulings are either appealable as of right, or subject to

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applications for leave to interlocutory appeal.[1] Documents generated by or to be used in the proceedings are likely to have to be translated into languages that can be understood by the accused, Prosecution, Defence and Chambers. At trial, witnesses and victims often have to be brought thousands of miles to testify at the seat of the ICC in The Hague. Proceedings all have to be interpreted, usually between three, sometimes more, languages.[2]

This chapter will explore these and other variables that affect the duration of proceedings at the ICC and will give an overview of the latest internal developments aimed at tackling the problem. Finally, it will suggest additional practical steps to address the issue. But first, it will look into international human rights standards for the completion of criminal proceedings within a reasonable time. In particular, it will examine the four criteria developed in the jurisprudence of the European Court of Human Rights ('ECtHR') for assessing if the length of domestic criminal proceedings is reasonable, and consider their relevance to the ICC proceedings.

While an interesting topic, the length of preliminary examination of situations and reparation proceedings falls outside the scope of this review. Instead, it is limited to criminal proceedings proper, which are understood to cover the period from the initiation of an investigation, either *proprio motu* or following a judicial authorization under Articles 15(4) and 53(1) of the Rome Statute, to the conclusion of trial, sentencing or appeal under Articles 74, 76, 81 and 84.

17.2. Criteria for Determining if the Length of Proceedings Is Reasonable

This section looks into international human rights standards for the completion of criminal proceedings within a reasonable time in light of the fundamental significance of the rights of the accused persons to the criminal process at the ICC.

International human rights law requires that criminal proceedings be conducted in a fair and expeditious manner. This requirement is enshrined in Articles 9(3) and 14(3)(c) of the International Covenant on Civil and Po-

1 Rome Statute of the International Criminal Court, 17 July 1998, Articles 18(4) (admissibility), 19(6) (jurisdiction and admissibility), 56(3)(b) (unique investigative opportunity), 81 (verdict and sentence), 82 (interlocutory decisions) ('Rome Statute') (http://www.legal-tools.org/doc/7b9af9/).

2 Articles 50(1)-(3), 67(1)(a), 67(1)(f) of the Rome Statute.

litical Rights ('ICCPR'). Pursuant to Article 9(3) of the ICCPR, "Anyone arrested or detained on a criminal charge shall be [...] entitled to trial within a reasonable time or to release".[3] Article 14(3)(c) of the ICCPR reads, "In the determination of any criminal charge against him, everyone shall be entitled to […] be tried without undue delay".[4] Likewise, Article 6(1) of the European Convention on Human Rights ('ECHR') requires that, "In the determination of [...] any criminal charge against him, everyone is entitled to a [...] hearing within a reasonable time".[5] The right to a trial within a reasonable time is also guaranteed in near identical form in other human rights treaties.

The ICC is not party to any international human rights instruments. As an independent international organization outside domestic jurisdictions and external judicial oversight,[6] its activities are regulated by its own unique legal instruments, first and foremost the Rome Statute. Articles 64(2) and 67(1)(c) of the Statute require that trials be conducted in a "fair and expeditious manner" and "without undue delay". Given that Article 21(3) specifically requires that the Statute's provisions be interpreted in light of "internationally recognized human rights", which would encompass the ICCPR and the ECHR, these provisions must be understood as requiring trials at the ICC to take place within a reasonable time.

Perhaps the most instructive jurisprudence in this respect emanates from the ECtHR, which has dealt with the issue of delay, in both civil and criminal proceedings, extensively. The ECtHR has held that the right to a trial within a reasonable time applies to the entirety of the proceedings, including any appeal.[7] The starting point for determining a 'reasonable time'

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3 International Covenant on Civil and Political Rights, 16 December 1966, Article 9(3) (http://www.legal-tools.org/doc/2838f3/).

4 *Ibid.*, Article 14(3)(c).

5 European Convention on Human Rights, 4 November 1950, Article 6(1) (http://www.legal-tools.org/doc/8267cb/).

6 Article 4(1) of the Rome Statute. The Assembly of States Parties ('ASP') is the ICC's management oversight and legislative body. It adopted the text of the Rome Statute, the Elements of Crimes and the Rules of Procedure and Evidence and can make amendments to these instruments under Articles 9, 51, 121–122.

7 ECtHR, *Delcourt v. Belgium*, Judgment, 17 January 1970, Application no. 2689/65, paras. 25–26 (http://www.legal-tools.org/doc/5e02c9/); ECtHR, *König v. Germany*, Judgment, 28 June 1978, Application no. 6232/73, para. 98 (http://www.legal-tools.org/doc/ac4fc0/); ECtHR, *V. v. the United Kingdom*, Judgment, 16 December 1999, Application no. 24888/94, para. 109 (http://www.legal-tools.org/doc/e2c46e/).

in the context of criminal proceedings may be prior to the case coming before the trial court, for example from the time of arrest, from the time a person is charged, or even from the institution of the preliminary investigation prior to arrest and charge.[8] The reasonableness of the length of proceedings must be assessed in each case taken as a whole according to its particular circumstances, with due regard to a more general principle of a proper administration of justice.[9]

The ECtHR uses four criteria to determine whether the length of criminal proceedings is reasonable: the complexity of the case, the applicant's conduct, the conduct of the administrative and judicial authorities, and the interests of the applicant at stake.[10] Each of these four criteria is discussed below.

Assessments of complexity are based on factors including the number of charges, the number of people involved in the proceedings (such as defendants and witnesses), any international dimensions to the case and the scale of crimes (possibly involving multiple actors and complex transactions).[11] Most cases before the ICC have all of these features.

At the same time, the ECtHR acknowledges that an accused person's conduct, where it results in an extension of the time needed to bring criminal proceedings to a conclusion, will be taken into account when determining whether that time has been reasonable.[12] Accused persons, however,

8 ECtHR, *Neumeister v. Austria*, Judgment, 27 June 1968, Application no. 1936/63, para. 18 (http://www.legal-tools.org/doc/50dc13/); ECtHR, *Deweer v. Belgium*, Judgment, 27 February 1980, Application no. 6903/75, para. 42 (http://www.legal-tools.org/doc/8abc83/); ECtHR, *Ringeisen v. Austria*, Judgment (Merits), 16 July 1971, Application no. 2614/65, para. 110 (http://www.legal-tools.org/doc/ff864c/).

9 ECtHR, *Boddaert v. Belgium*, Judgment, 12 October 1992, Application no. 12919/87, paras. 36, 39 (http://www.legal-tools.org/doc/kr87rq/).

10 ECtHR, *Neumeister v. Austria*, para. 21, see above note 8; ECtHR, *König v. Germany*, para. 99, see above note 7.

11 ECtHR, *Neumeister v. Austria*, para. 20, see above note 8; ECtHR, *C.P. et autres c. France*, Arrêt, 1 August 2000, Application no. 36009/97, para. 30 (http://www.legal-tools.org/doc/jyeasr/).

12 ECtHR, *Eckle v. Germany*, Judgment, 15 July 1982, Application no. 8130/78, para. 82 (http://www.legal-tools.org/doc/c79fe4/); ECtHR, *I.A. v. France*, Judgment, 23 September 1998, Application no. 28213/95, para. 121 (http://www.legal-tools.org/doc/d6f3c2/); ECtHR, *Vayiç v. Turkey*, Judgment, 20 June 2006, Application no. 18078/02, para. 44 (http://www.legal-tools.org/doc/e3caf2/).

cannot be criticized for merely exercising their rights.[13] Their conduct will only excuse undue delay in the case of manifest bad faith on their part.[14]

The conduct of the authorities is an important factor. The ECtHR requires that domestic judicial systems are designed to meet their obligations in respect of criminal proceedings taking place within a reasonable time. An institutional lack of capacity cannot excuse excessively lengthy proceedings.[15] ECtHR case law requires that domestic courts must be "administering justice without delays which might jeopardize its effectiveness and credibility".[16]

Where accused persons are being held in custody for the duration of the proceedings, the ECtHR has identified the interest they have in those proceedings taking place within a reasonable time as belonging to a distinct category of priority cases. In such cases, even when they are complex, the ECtHR is less willing to accept any excessive length of proceedings, and the court dealing with the case must show "particular diligence" in administering justice as quickly as possible.[17] Furthermore, while the prosecution of crimes long after they take place on the basis of progressively assembled or freshly discovered evidence is not a matter which itself raises an issue concerning the right to a trial within a reasonable time, it may bring with it a need for heightened diligence in ensuring that there is no delay in the

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13 ECtHR, *Sopp c. Allemagne*, Arrêt, 8 October 2009, Application no. 47757/06, para. 35 (http://www.legal-tools.org/doc/pc12ql/).

14 For instance, an accused person who had lodged two time-consuming appeals could not be held responsible thereby for excessively lengthy proceedings. The ECtHR found the culpable delay was principally attributable to the inactivity of the first two judges assigned to the case over a period of four years. See ECtHR, *Malet c. France*, Arrêt, 11 February 2010, Application no. 24997/07, paras. 31–32 (http://www.legal-tools.org/doc/f19vvs/). See also, ECtHR, *Liga Portugesa de Futebol Profissional c. Portugal*, Arrêt, 17 May 2016, Application no. 4687/11, paras. 94–95 (http://www.legal-tools.org/doc/s26ye6/).

15 ECtHR, *Abdoella v. the Netherlands*, Judgment, 25 November 1992, Application no. 12728/87, para. 24 (http://www.legal-tools.org/doc/a3lwia/); ECtHR, *Dobbertin v. France*, Judgment, 25 February 1993, Application no. 13089/87, para. 44 (http://www.legal-tools.org/doc/qmdgmd/).

16 ECtHR, *H. v. France*, Judgment, 24 October 1989, Application no. 10073/82, para. 58 (http://www.legal-tools.org/doc/te939y/); ECtHR, *Katte Klitsche de la Grange v. Italy*, Judgment, 27 October 1994, Application no. 12539/86, para. 61 (http://www.legal-tools.org/doc/hiqgp4/); ECtHR, *Scordino v. Italy (No. 1)*, Judgment, 29 March 2006, Application no. 36813/97, para. 224 (http://www.legal-tools.org/doc/d2ef46/).

17 ECtHR, *Şineğu et autres c. Turquie*, Arrêt, 13 October 2009, Application nos. 4020/07, 4021/07, 9961/07 and 11113/07, para. 33 (http://www.legal-tools.org/doc/5zhazx/).

conduct of the ensuing proceedings.[18] While there is no presumption that it should be the case, the accused person is typically held in custody for the duration of the ICC proceedings.[19] Equally, the large majority of trials take place long after the commission of the crimes alleged by the Prosecution.[20] All such trials would be defined by the ECtHR as priority cases with a special need for heightened diligence in the speedy conduct of proceedings.

The findings in *Grujović v. Serbia*[21] demonstrate the ECtHR approach to such priority cases. The case was complex. There were three co-accused, the allegations were of aggravated murder and forgery committed in the context of organized crime. The accused was arrested in a foreign State and was convicted of a firearms offence in that country before being transferred to face trial domestically. At the time the case was decided by the ECtHR, criminal proceedings had lasted for eight years and were ongoing, with the accused in custody for all this time. Despite the complexity of the case, the ECtHR found that the reasonable time guarantee had been breached because the domestic authorities had failed to organize the trial efficiently.

In contrast with the ECtHR's settled jurisprudence, there is little ICC jurisprudence on the right to a trial within a reasonable time. In March 2019, Jean-Pierre Bemba made an application for compensation following his acquittal on appeal, alleging that there had been a grave and manifest miscarriage of justice. One of the grounds on which this claim was made was that "[a] decade, to conclude a single accused case, with one form of liability, and events spanning a five-month period, is not reasonable".[22] The Chamber stated that it was "receptive" to Bemba's submissions, but in the same paragraph declared that "a finding of a grave and manifest miscarriage of justice cannot be entered on these grounds alone." The Chamber

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18 ECtHR, *O'Neill and Lauchlan v. United Kingdom*, Judgment, 28 June 2016, Application no. 41516/10, 75702/13, para. 87 (http://www.legal-tools.org/doc/4adv9h/).

19 Articles 55(1)(d), 58, 81(3)(c)(i) of the Rome Statute. To date, the exceptions are the accused in the cases of *Ruto and Sang* at trial, and the cases of *Muthaura*, *Kenyatta* and *Ali; Kosgey, Ruto and Sang; Abu Garda;* and *Banda and Jerbo* at pre-trial.

20 For an overview of time elapse in individual cases, compare the charged period and the first appearance following arrest or summons in Table 1.

21 ECtHR, *Grujović v. Serbia*, Judgment, 21 July 2015, Application no. 25318/12 (http://www.legal-tools.org/doc/vxg14x/).

22 ICC, *Prosecutor v. Bemba*, Pre-Trial Chamber II, Second Public Redacted Version of "Mr. Bemba's claim for compensation and damages", 19 March 2019, ICC-01/05-01/08-3673-Red2, paras. 76–78 (http://www.legal-tools.org/doc/4e04c8/).

found that the provisions of the Rome Statute made no allowance for such a finding and suggested that the law needed to be changed:

> it seems unquestionable that the Bemba case provides a case in point as to the seriousness of the consequences entailed by the absence of statutory limits as to the duration either of the proceedings or, even more critically, of custodial detention. The Chamber finds it urgent for the States Parties to embark on a review of the Statute so as to consider addressing those limitations; until then, it will be the Court's own responsibility to be mindful of the expeditiousness of the proceedings as a fundamental tenet of the right to a fair trial and to streamline its own proceedings accordingly.[23]

It took the Chamber who uttered this injunction fully 14 months to respond to and rule on Bemba's application.

The jurisprudence of other international criminal tribunals could further shed light on the possible interpretation of this right at the ICC. For instance, the Trial Chamber of the International Criminal Tribunal for the former Yugoslavia ('ICTY') decided in the *Šešelj* case – which occupied thirteen years between arrest and first instance judgment – that no violation of the right to be tried without undue delay had taken place "when one takes into account the complexity of the case, the number of witnesses heard and exhibits tendered before the Chamber, the conduct of the parties and the serious nature of the charges".[24] These considerations broadly follow the ECtHR test discussed above.[25]

17.3. Overview of the Length of the ICC Proceedings

The events giving rise to the charges against Jean-Pierre Bemba occurred in the Central African Republic in 2002–2003. He made his first appearance before the Pre-Trial Chamber in July 2008. His trial began in November 2010 and lasted four years. Two more years passed before the Trial Chamber found him guilty in March 2016. Another two years passed be-

[23] ICC, *Prosecutor v. Bemba*, Pre-Trial Chamber II, Decision on Mr Bemba's claim for compensation and damages, 18 May 2020, ICC-01/05-01/08-3694, paras. 65–69 (http://www.legal-tools.org/doc/50clpw/).

[24] ICTY, *Prosecutor v. Šešelj*, Trial Chamber, Decision on Motion by Accused to Discontinue Proceedings, 29 September 2011, IT-03-67-T, para. 3 (http://www.legal-tools.org/doc/61hng5/).

[25] It must be open to question, however, whether the result would have been the same before the ECtHR.

fore the Appeals Chamber finally acquitted him in June 2018. Other cases at the ICC have taken nearly as long.[26] Thomas Lubanga Dyilo made his first appearance in March 2006. He was convicted six years later in March 2012, and his appeal was determined in December 2014. Germain Katanga made his first appearance in October 2007. Proceedings in his case concluded six and a half years later, in March 2014.

The shortest ICC proceedings to date lasted about a year, because the accused in the *Al Mahdi* case pleaded guilty. He made his first appearance in September 2015, and his verdict and sentence were handed down in September 2016.

The two most significant manifestations of delay are obvious. First, long periods of interstitial time elapse between the various steps in the proceedings, such as first appearance, confirmation of charges decision, start of trial, trial judgment and appeal judgment. Second, courtroom proceedings take place on a small proportion of the days available.

Using the *Bemba* case as an example of interstitial delay, 192 days elapsed between Jean-Pierre Bemba's first appearance on 4 July 2008 and the confirmation of charges hearing, which began on 12 January 2009. Once charges were eventually confirmed on 15 June 2009, a further 525 days passed before the start of the trial on 22 November 2010. But it is worth concentrating on a third period, the 659 days between *Bemba's* conviction on 21 March 2016 and the hearing of his appeal on 9 January 2018. During this period of nearly two years, there were around one hundred interlocutory filings by the parties and rulings by the Appeals Chamber. Bemba had filed his appeal brief in September 2016 and the Prosecution responded in November 2016, but it was not until November 2017 that the Appeals Chamber scheduled the appeal hearing.[27]

The trial proceedings in the *Bemba* case also offer a good illustration of the lack of intensity, with which such proceedings unfold at the ICC. From opening to closing submissions by the parties and participants, the trial spanned just under four years. During that time, the Court only sat on 330 days. That is about a third of the working days available. More recent

[26] See Table 1 for an overview of individual cases at the ICC.

[27] ICC, *Prosecutor v. Bemba*, Appeals Chamber, Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against Trial Chamber III's "Judgment pursuant to Article 74 of the Statute", 8 June 2018, ICC-01/05-01/08-3636-Red, paras. 14–28 ('ICC, *Prosecutor v. Bemba*, ICC-01/05-01/08-3636-Red') (http://www.legal-tools.org/doc/40d35b/).

trials have declined even from this performance. The *Ntaganda* trial managed an equivalent proportion of just over a quarter.

The below table gives an overview of the duration of criminal proceedings in individual cases from the first appearance of a suspect before the ICC, either following their arrest or voluntary appearance, to the eventual conclusion of criminal proceedings on appeal, if applicable (see Table 1).

Case	Charged period	First appearance following arrest or summons	Conclusion of proceedings	Elapse of time
Lubanga ('DRC')	2002–2003	20 March 2006	1 December 2014	More than 8.5 years
Katanga ('DRC')	2003	22 October 2007	7 March 2014	Almost 6.5 years
Ngudjolo ('DRC')	2003	11 February 2008	27 February 2015	More than 7 years
Bemba ('CAR-I')	2002–2003	4 July 2008	8 June 2018	More than 10 years
Al Mahdi ('MLI')	2012	30 September 2015	27 September 2016	About 1 year
Ruto and Sang ('KEN')	2007–2008	8 March 2011	5 April 2016	More than 5 years
Kosgey ('KEN')	2007–2008	8 March 2011	23 January 2012	Almost 1 year
Kenyatta ('KEN')	2007–2008	8 March 2011	13 March 2015	About 4 years
Muthaura ('KEN')	2007–2008	8 March 2011	11 March 2013	About 2 years
Ali ('KEN')	2007–2008	8 March 2011	23 January 2012	Almost 1 year
Abu Garda ('DAR')	2007	18 May 2009	23 April 2010	Almost 1 year
Mbarushimana ('DRC')	2009	28 January 2011	30 May 2012	More than 2,5 years
Bemba *et al.*	2011–	27 November 2013	27 November	About 6

('CAR-I')	2013	5 December 2013 20 March 2014	2019	years
Ntaganda ('DRC')	2002–2003	26 March 2013	30 March 2021	More than 8 years
Gbagbo and Blé Goudé ('CIV')	2010–2011	5 December 2011 27 March 2014	31 March 2021	More than 9,5 and 7 years
Ongwen ('UGA')	2002–2005	26 January 2015	Ongoing	More than 6 years
Al Hassan ('MLI')	2012–2013	4 April 2018	Ongoing	More than 3 years
Yekatom and Ngaïssona ('CAR-II')	2013–2014	23 November 2018 12 December 2018	Ongoing	More than 2,5 years
Abd-Al-Rahman ('DAR')	2003–2004	15 June 2020	Ongoing	More than 1 year
Gicheru ('KEN')	2013	6 November 2020	Ongoing	Less than 1 year
Said ('CAR-II')	2013	28–29 January 2021	Ongoing	Less than 1 year

Table 1: Overall length of proceedings per case, excluding suspects at large and deceased suspects, as of 15 July 2021.

Protracted proceedings are not unique to the ICC. One of the most striking examples of lengthy international criminal proceedings must be the *Nyiramasuhuko et al.* case before the International Criminal Tribunal for Rwanda ('ICTR'). The case concerned mass atrocities in the Butare prefecture in Rwanda in 1994, with six accused, all arrested between 1995 and 1998. The trial began in June 2001. All six were convicted ten years later, in June 2011. Their appeals were not resolved until December 2015, by which time one of them had been in detention, awaiting the final resolution of proceedings, for 20 years.[28]

The problem of lengthy criminal proceedings plagues domestic judicial systems, too. Indeed, a significant number of applications before the

[28] ICTR, *Prosecutor v. Nyiramasuhuko et al. (Butare)*, Appeals Chamber, Judgment, 14 December 2015, ICTR-98-42-A (http://www.legal-tools.org/doc/93cee1/).

ECtHR concern an alleged violation of the right to a fair trial within a reasonable time under Article 6 of the ECHR. The extent of the problem in certain countries has prompted the ECtHR to resort to the so-called pilot judgment procedure.[29]

17.4. Factors that Affect the Length of the ICC Proceedings

To evaluate the time needed to complete a case at the ICC, it is important to view the matter in its proper context. This section focuses on factors affecting the length of criminal proceedings in individual cases at the ICC, covering the period from the initial appearance of a suspect before a Pre-Trial Chamber to the rendering of a trial judgment and sentencing decision by a Trial Chamber or final appeal by the Appeals Chamber.

In sum, the principal factors affecting the length of the ICC proceedings are the timing, nature, scope and geographic location of crimes; judicial oversight of prosecutorial activities; participation of victims; rights of the accused; transcription, translation and interpretation; disclosure of evidence; witness and staff protection; international co-operation; and background of ICC staff. The impact of these factors on the overall length of proceedings will depend on the individual features of each case.

17.4.1. Timing, Nature, Scope and Geographic Location of Crimes

Cases before the ICC can be described as 'cold cases' on a global scale. The timing, nature and scope of crimes will often result in copious potential suspects and witnesses, multiple charges and voluminous and complex evidence.

The investigation of international crimes faces a number of practical and legal obstacles since these cases are far more complex than most ordinary criminal cases, and frequently raise novel legal questions. The crimes, often committed years prior to proceedings, are likely to have been protracted over a long period of time, occurred over large geographic areas, and involved a large number of victims and extensive perpetrator networks. Linguistic and cultural differences between the investigators and potential

[29] Many cases coming before the ECtHR result from a common dysfunction at the national level. The pilot judgment procedure identifies structural problems underlying repetitive cases and gives governments clear indications of the type of remedial measures needed to resolve them. See, for example, ECtHR, *Rutkowski and others v. Poland*, Judgment, 7 July 2015, Applications nos. 72287/10, 13927/11 and 46187/11, paras. 4, 9, 188, 203–229 (http://www.legal-tools.org/doc/ob7k3g/).

witnesses add another layer of complexity, while witnesses may be difficult to locate and reluctant to provide testimony.

Meanwhile, the lengthy elapse of time between the issuance of an arrest warrant and its execution can have a significant knock-on effect. The *Ongwen* case is a good example. The arrest warrants for Dominic Ongwen and four other Ugandan suspects were issued in July 2005.[30] Significant investigation ceased in 2007, and it seemed for many years that no suspects in the Uganda situation would be brought to justice. Ongwen was eventually arrested in January 2015.[31] In the intervening years, a significant quantity of evidence had become available – mostly in the shape of defectors from the Lord's Resistance Army, of which *Ongwen* had been a part – which provided grounds to believe that his wrongdoing had been of a more diverse nature, and over a more prolonged period of time, than had been capable of proof back in 2005. To ensure that his trial encompassed more than events taking place in one place on a single day, which had been the basis for his original arrest warrant, the Prosecution were granted a period of a year between his arrest and confirmation hearing to conduct further investigations.[32]

17.4.2. Judicial Oversight of Prosecutorial Activities

Long before a matter comes before trial judges, prosecutorial operations are subject to judicial oversight during three pre-trial sub-stages. First, in the absence of a referral by the UN Security Council or a State Party, when the ICC Prosecutor takes a decision to investigate a situation on the basis of his or her own decision, using so-called *proprio motu* powers, the Rome Statute requires judicial authorization pursuant to its Article 15. Second, once investigations have resulted in a significant body of evidence against a particular suspect, that evidence must be scrutinised by a Pre-Trial Chamber to obtain a warrant of arrest or summons to appear under Article 58. Third, following a suspect's arrest or voluntary appearance, the Pre-

[30] ICC, *Prosecutor v. Ongwen*, Pre-Trial Chamber II, Warrant of Arrest for Dominic Ongwen, 8 July 2005, ICC-02/04-01/05-57 (http://www.legal-tools.org/doc/7a2f0f/).

[31] ICC, *Prosecutor v. Ongwen*, Pre-Trial Chamber II, Decision on the confirmation of charges against Dominic Ongwen, 23 March 2016, ICC-02/04-01/15-422-Red, para. 5 (http://www.legal-tools.org/doc/74fc6e/).

[32] ICC, *Prosecutor v. Ongwen*, Pre-Trial Chamber II, Public redacted version of "Prosecution's Application for Postponement of the Confirmation Hearing", 12 February 2015, ICC-02/04-01/15-196-Red2, paras. 25–33, 41–42 ('ICC, *Prosecutor v. Ongwen*, ICC-02/04-01/15-196-Red2') (http://www.legal-tools.org/doc/55cfd8/).

Trial Chamber will assess the sufficiency of the Prosecution's evidence in the course of confirmation proceedings under Article 61.

This level of judicial oversight of prosecutorial activities, particularly at the first and third pre-trial sub-stages mentioned above, was not a feature at the ICTY and ICTR. It was introduced in the Rome Statute as a result of political compromise between its drafters to prevent abuse of prosecutorial powers, and as a balance between legal traditions.[33] As a consequence, it has built additional time into the proceedings while judicial deliberation and the drafting of decisions take place,[34] although it is fair to say that much of the delay can be attributed to the adversarial nature of the confirmation hearing and the resulting need for disclosure. The below table illustrates the time elapse in individual cases between the time of a suspect's first appearance and confirmation or dismissal of charges, just before the start of trial (see Table 2).

[33] ICC, *Situation in the Republic of Kenya*, Pre-Trial Chamber II, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya, 31 March 2010, ICC-01/09-19-Corr, paras. 17–18 (http://www.legal-tools.org/doc/f0caaf/). See also Volker Nerlich, "The Confirmation of Charges Procedure at the International Criminal Court: Advance or Failure?", in *Journal of International Criminal Justice*, 2012, vol. 10, no. 5, pp. 1339–1356.

[34] It is also fair to say that, in the cases of *Abu Garda*, *Mbarushimana*, *Kosgey* and *Ali*, the confirmation procedure resulted in prosecutions being halted before trial proceedings began, on the grounds of insufficiency of evidence. ICC, *Prosecutor v. Abu Garda*, Pre-Trial Chamber I, Decision on the Confirmation of Charges, 8 February 2010, ICC-02/05-02/09-243-Red (http://www.legal-tools.org/doc/cb3614/); ICC, *Prosecutor v. Mbarushimana*, Pre-Trial Chamber I, Decision on the confirmation of charges, 16 December 2011, ICC-01/04-01/10-465-Red (http://www.legal-tools.org/doc/63028f/); ICC, *Prosecutor v. Kosgey, Ruto and Sang*, Pre-Trial Chamber II, Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute, 4 February 2012, ICC-01/09-01/11-373, para. 293 (http://www.legal-tools.org/doc/96c3c2/); ICC, *Prosecutor v. Muthaura, Kenyatta and Ali*, Pre-Trial Chamber II, Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute, 29 January 2012, ICC-01/09-02/11-382-Red, para. 430 (http://www.legal-tools.org/doc/4972c0/).

Case	First appearance following arrest or summons	Confirmation or dismissal of charges	Time elapse
Democratic Republic of the Congo ('DRC') State referral: April 2004 Investigation opening: June 2004 Time elapse: About 2 months			
Lubanga	20 March 2006	29 January 2007	315 days
Katanga	22 October 2007	26 September 2008	340 days
Ngudjolo	11 February 2008	26 September 2008	228 days
Ntaganda	26 March 2013	9 June 2014	440 days
Mbarushimana	28 January 2011	16 December 2011	322 days
Uganda ('UGA') State referral: July 2004 Investigation opening: July 2004 Time elapse: About 1 month			
Ongwen	26 January 2015	23 March 2016	422 days
Darfur, Sudan ('DAR') UNSC referral: March 2005 Investigation opening: June 2005 Time elapse: About 3 months			
Abu Garda	18 May 2009	8 February 2010	266 days
Banda and Jerbo	17 June 2010	7 March 2011	263 days
Abd-Al-Rahman	15 June 2020	9 July 2021	389 days
Central African Republic I ('CAR-I') State referral: December 2004 Investigation opening: May 2007 Time elapse: About 29 months			
Bemba	4 July 2008	12 January 2009	192 days
Bemba *et al.*	27 November 2013 5 December 2013 20 March 2014	11 November 2014	349 days 341 days 236 days

Côte d'Ivoire ('CIV') *Proprio motu* request: 23 June 2011 Investigation authorization: 3 October 2011 Time elapse: About 3,5 months			
Gbagbo	5 December 2011	12 June 2014	920 days
Blé Goudé	27 March 2014	11 December 2014	259 days
Kenya ('KEN') *Proprio motu* request: 26 November 2009 Investigation authorization: 31 March 2010 Time elapse: About 4 months			
Kenyatta and Muthaura	8 March 2011	23 January 2012	321 days
Ali	8 March 2011	23 January 2012	321 days
Ruto and Sang	8 March 2011	23 January 2012	321 days
Kosgey	8 March 2011	23 January 2012	321 days
Gicheru	6 November 2020	15 July 2021	251 days
Central African Republic II ('CAR-II') State referral: May 2014 Investigation opening: September 2014 Time elapse: About 4 months			
Yekatom and Ngaïssona	23 November 2018 12 December 2018	11 December 2019	383 days 364 days
Said	28–29 January 2021	Ongoing	Ongoing
Mali ('MLI') State referral: July 2012 Investigation opening: January 2013 Time elapse: About 6 months			
Al Mahdi	30 September 2015	24 March 2016	176 days
Al Hassan	4 April 2018	30 September 2019	544 days

Table 2: Time elapse from suspect's initial appearance to confirmation of charges decision as of 15 July 2021.

17.4.3. Participation of Victims

Victim participation is one of the hallmarks of the ICC proceedings. Victims are afforded considerable rights of participation during various procedural stages.[35] This contrasts with the arrangements at the ICTY and ICTR, but inspired a similar design for the Special Tribunal for Lebanon ('STL'), the Extraordinary Chambers in the Courts of Cambodia ('ECCC') and the Kosovo Specialist Chambers.[36]

Inevitably, the nature of international crimes often translates into a large number of participating victims at the ICC. Some of the largest numbers come from the more recent situations and cases, at least in part due to the extent of victimisation under investigation. In the *Ongwen* case, where the accused was charged with 70 counts of crimes against humanity and war crimes, the number of participating victims was 2,026 at the pre-trial stage and 4,107 at trial.[37] In the *Afghanistan* situation, the count of victim representations for the purpose of the confined proceedings pertaining to the request for an authorization to investigate[38] reached 699 on behalf of millions of individuals, while in the *Georgia* situation, it was 6,335.[39] The

[35] Articles 14(3), 19(3), 68, 75, 82(4) of the Rome Statute; Rules 85–99 of the Rules of Procedure and Evidence.

[36] Article 68(3) of the Rome Statute; Statute of the Special Tribunal for Lebanon, UN Doc. S/RES/1757 (2007), 30 May 2007, Article 17 (http://www.legal-tools.org/doc/da0bbb/); ECCC, Internal Rules (Rev. 9), 16 January 2015, Rule 23 (http://www.legal-tools.org/doc/b8838e/); Kosovo, Law on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015, Article 22 (http://www.legal-tools.org/doc/8b71c3/). See also Kinga Tibori-Szabó and Megan Hirst, "Introduction: Victim Participation in International Criminal Justice", in Kinga Tibori-Szabó and Megan Hirst (eds.), *Victim Participation in International Criminal Justice: Practitioners' Guide*, Asser Press, The Hague, 2017, pp. 2–5; Robert Cryer, Darryl Robinson and Sergey Vasiliev, "Victims in the International Criminal Process", in Robert Cryer, Håkan Friman, Darryl Robinson and Elizabeth Wilmshurst (eds.), *An Introduction to International Criminal Law and Procedure*, Cambridge University Press, 2019, pp. 446–447.

[37] ICC, *Prosecutor v. Ongwen*, Pre-Trial Chamber II, Decision on the confirmation of charges against Dominic Ongwen, 23 March 2016, ICC-02/04-01/15-422-Red, para. 7 (http://www.legal-tools.org/doc/74fc6e/).

[38] This is the broadest form of participation, which differs from participation in court proceedings or obtaining reparations. It is limited to the submission of victim's views, concerns and expectations in relation to the anticipated investigation. Victim participation in the case is linked to the charges subsequently brought by the prosecution and confirmed by the judges, hence the numbers may drop. See Article 14(3) of the Rome Statute.

[39] ICC, *Situation in Afghanistan*, Pre-Trial Chamber II, Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Islamic Republic of Afghanistan, 12 April 2019, ICC-02/17-33, para. 27 (http://www.legal-tools.org/doc/2fb1f4/); ICC, *Situation in Georgia*, Pre-Trial Chamber I, Decision on the Prosecutor's

consequence of this significant victim participation is felt throughout the proceedings. Legal representatives of victims may be permitted to make oral and written submissions, question witnesses of the calling parties, and call their own witnesses. Important as it is, this does nothing to make the proceedings shorter.

17.4.4. Rights of the Accused

The Rome Statute includes a robust and extensive system of protections of the accused's procedural rights, which are outlined in its Article 67. In addition, Article 21(3) of the Rome Statute requires that its provisions be read in light of internationally recognised human rights standards, further strengthening the statutory protections.

To fully realize the rights thus guaranteed, and in order to ensure that their advocates are able properly to investigate their own case and to test the prosecution case, accused persons often request postponements or extensions of time limits in the proceedings. In the *Ruto and Sang* and *Ongwen* case, for instance, defence lawyers requested several postponements to prepare for the confirmation hearing and trial.[40] Judges thus have to strike a careful balance between the requirement that a trial take place within a reasonable time under Articles 64(2) and 67(1)(c) of the Rome Statute, and the accused's right to have adequate time and resources to prepare for trial under Article 67(1)(b).

17.4.5. Transcription, Translation and Interpretation

Translation of documents, and transcription and interpretation of the spoken word represent a significant share of the ICC's non-judicial work. In

request for authorization of an investigation, 27 January 2016, ICC-01/15-12, para. 2 (http://www.legal-tools.org/doc/a3d07e/).

40 ICC, *Prosecutor v. Ruto and Sang*, Pre-Trial Chamber II, Decision on the "Urgent Defence Application for Postponement of the Confirmation Hearing and Extension of Time to Disclose and List of Evidence", 12 August 2011, ICC-01/09-01/11-260 (http://www.legal-tools.org/doc/1d5a28/); ICC, *Prosecutor v. Ruto and Sang*, Trial Chamber V(A), Decision on prosecution requests to add witnesses and evidence and defence requests to reschedule the trial start date, 3 June 2013, ICC-01/09-01/11-762 (http://www.legal-tools.org/doc/7caa5b/); ICC, *Prosecutor v. Ongwen*, Trial Chamber IX, Confidential Redacted Version of 'Defence Request for a Deadline Extension', 18 April 2018, ICC-02/04-01/15-1232-Conf (http://www.legal-tools.org/doc/4bfc95/); ICC, *Prosecutor v. Ongwen*, Trial Chamber IX, Defence Urgent Request for Delay in Opening of LRV and CLRV Cases, Pursuant to Articles 67(1)(b) and 67(1)(e) of the Rome Statute, 24 April 2018, ICC-02/04-01/15-1239 (http://www.legal-tools.org/doc/6182aa/).

order to ensure that trials are fair and transparent, the important case documents – like the document containing the charges, evidence relied on in support of the charges, and principal judicial decisions – are translated into a "language which the accused fully understands and speaks".[41] Even when the accused understands one of the ICC's two working languages, English or French, the evidence against them may require translation from a less common language, like Georgian, Acholi, or Kalenjin. Judges, parties and participants must take this into account during all procedural stages, especially in preparation for the confirmation hearing and trial.[42]

At the investigation stage, where many witness statements must be taken in the form of sound-recorded interviews[43] conducted by means of question and answer, every word must be transcribed, before the work of translation can begin. In the *Banda and Jerbo* case, translation of witness statements into Zaghawa, which is not a written language, presented considerable difficulties for both parties in the preparation for trial, affecting the "overall ability for the accused to be able to advance a meaningful defence".[44]

Once the average ICC case begins, there will be tens of thousands of pages of documents and courtroom proceedings themselves will last for hundreds of hours, meaning that the time needed for translation, transcription and interpretation work is significant. In the *Ntaganda* trial, the Defence requested and were granted additional time for filing their closing submissions, among other reasons due to delays in receiving the translation of the Prosecution's 361-pages closing brief.[45]

As artificial intelligence and machine translation improve, this work will increasingly be done by machines, with minimal human oversight. Full automation of transcription and translation could save time and costs and revolutionize international criminal investigations and judicial proceedings.

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41 Article 67(1)(a) of the Rome Statute; Rule 76(3) of the Rules of Procedure and Evidence.

42 ICC, *Prosecutor v. Ongwen*, ICC-02/04-01/15-196-Red2, paras. 34–40, see above note 32.

43 Article 55 of the Rome Statute; Rule 112 of the Rules of Procedure and Evidence.

44 ICC, *Prosecutor v. Banda and Jerbo*, Trial Chamber IV, Decision on the defence request for a temporary stay of proceedings, 26 October 2012, ICC-02/05-03/09-410, paras. 130–135 ('ICC, *Prosecutor v. Banda and Jerbo*, ICC-02/05-03/09-410') (http://www.legal-tools.org/doc/414cc4/).

45 ICC, *Prosecutor v. Ntaganda*, Trial Chamber VI, Decision on the Defence request for an extension of time to file its closing brief, 29 May 2018, ICC-01/04-02/06-2291 (http://www.legal-tools.org/doc/715f99/).

At the moment, given the need to render the meaning as accurately as possible, it is largely done by a slower and more costly human effort.[46]

17.4.6. Disclosure of Evidence

A significant source of delay between the first appearance of an accused and the commencement of their trial is the time taken to effect disclosure of documentary materials in the possession of the Prosecution to the defence team under Article 67(2) of the Rome Statute and Rules 76 and 77 of the Rules of Procedure and Evidence. Typically, judges require this process to be completed three months before the commencement of trial.

In many cases, particularly those where the suspect has not been arrested until years after the warrant was issued, the Prosecution has thousands of documents in its possession. Each of these documents has to be carefully reviewed for potential relevance and then often redacted to obscure sensitive information. This process can take many months. In the *Ntaganda* case, the volume of disclosure immediately before the three-month deadline was so great that the Trial Chamber felt compelled to grant a three-month delay to the start of the trial at the Defence's request.[47]

There is a concern, and indeed a substantiated concern in some cases, that disclosure to the suspect and his legal team may lead to the unauthorized dissemination of sensitive details, which may affect the security of witnesses and be an inappropriate intrusion into the privacy rights of third parties.[48] This can, at times, lead to a parsimonious disclosure policy, with material being held back from the Defence until the last moment before the deadline fixed by the judges. Litigation, sometimes itself causing delay to

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46 For time estimates regarding Acholi and English, see ICC, *Prosecutor v. Ongwen*, ICC-02/04-01/15-196-Red2, paras. 36, 38, 40, see above note 32. It was estimated that "the transcription of an hour of an English/Acholi article 55(2) interview will take five days". For time estimates regarding Zaghawa, see ICC, *Prosecutor v. Banda and Jerbo*, ICC-02/05-03/09-410, para. 130, see above note 44. It was estimated that translating 3700 pages "will take approximately 30 months if three translators were to work on the material on a full-time basis".

47 ICC, *Prosecutor v. Ntaganda*, Trial Chamber VI, Urgent request on behalf of Mr Ntaganda seeking to postpone the presentation of the Prosecution's Case until 2 November 2015 at the earliest, 2 April 2015, ICC-01/04-02/06-541-Red (http://www.legal-tools.org/doc/08f3cb/); ICC, *Prosecutor v. Ntaganda*, Trial Chamber VI, Status Conference, 3 July 2015, ICC-01/04-02/06-T-22-Red-ENG, p. 5 (http://www.legal-tools.org/doc/1ffcbd/).

48 ICC, *Prosecutor v. Ongwen*, Pre-Trial Chamber II, Order concerning a request by the Prosecutor under regulation 101(2) of the Regulations of the Court, 8 June 2015, ICC-02/04-01/15-242, para. 2 (http://www.legal-tools.org/doc/7ef38b/).

the trial proceedings, concerning alleged failures of disclosure by the Prosecution is common.

The independent experts, who conducted a review of the ICC at the behest of the Assembly of States Parties and reported in September 2020, expressed this view: "[D]isclosure […] is probably the most significant factor in causing international criminal trials to last so long".[49] As noted above, disclosure delays have indeed caused delays between arrest and trial. But it played a negligible or non-existent role in the years-long duration of the trial and appeal proceedings, which can be seen at Table 1 above.

17.4.7. Witness and Staff Protection

Investigation and prosecution of international crimes often involve security risks to both staff and witnesses, coupled with a limited capacity to mitigate them. Situation countries often remain dangerous environments years after the events under investigation. Factors like ongoing armed conflict, a political environment hostile to investigators and witnesses seen to represent one or other side of the proceedings, or cultural resistance to investigations and proceedings seen as intrusive may further increase the risk of harm.[50] In the *Al Hassan* case, difficulties resulting from a challenging security situation in Mali prompted the postponement of the confirmation of charges hearing from September 2018 to July 2019.[51]

To date, witnesses and victims in all ICC cases have required some form of protective measures. During an investigation, protective measures may be extensive, depending on the threat and risk of harm.[52] At trial, identities of protected witnesses will be disclosed to the accused in accordance

[49] Independent Expert Review of the International Criminal Court and the Rome Statute System, Final Report, 30 September 2020, paras. 476–482 (http://www.legal-tools.org/doc/cv19d5/).

[50] See, for example, ICC, *Prosecutor v. Banda and Jerbo*, ICC-02/05-03/09-410, paras. 3–4, 7, see above note 44.

[51] ICC, *Prosecutor v. Al Hassan*, Pre-Trial Chamber I, Decision Instructing Parties to File Observations on a Possible Postponement of the Confirmation of Charges Hearing, 2 July 2018, ICC-01/12-01/18-64-tENG (http://www.legal-tools.org/doc/19a0ab/); ICC, *Prosecutor v. Al Hassan*, Pre-Trial Chamber I, Decision Postponing the Date of the Confirmation Hearing, 18 October 2018, ICC-01/12-01/18-94-Red-tENG (http://www.legal-tools.org/doc/fcda1c/); ICC, *Prosecutor v. Al Hassan*, Pre-Trial Chamber I, Décision fixant une nouvelle date pour le dépôt du document contenant les charges et pour le début de l'audience de confirmation des charges, 18 April 2019, ICC-01/12-01/18-313, paras. 16, 20 (http://www.legal-tools.org/doc/b90422/).

[52] Article 68 of the Rome Statute; Rules 81–82 of the Rules of Procedure and Evidence.

with the principle of a fair trial, but their identities are likely to remain protected from the public. In practice, this creates additional workload for the Prosecution, Defence, Registry and Chambers, and requires additional time.

17.4.8. International Co-operation

Investigations into international crimes require extensive co-operation with national and international authorities. As an international organization without its own enforcement component, the ICC heavily relies on international co-operation. Part 9 of the Rome Statute regulates international co-operation and judicial assistance. It places an obligation on States Parties to "cooperate fully" with the ICC in its investigations and prosecutions, including in the arrest and surrender of persons, identification and whereabouts of persons, taking of evidence, service and provision of documents, examination of sites, execution of searches and seizures, victim and witness protection and identification, tracking and freezing of assets.[53] When appropriate, the ICC co-operates with international or regional organizations and NGOs.[54]

Like international judicial co-operation in criminal matters between States, such co-operation takes time, "the timing of which is in the hands of external partners".[55] Timely and full co-operation has not always been forthcoming.[56]

Co-operation failures may mean that victims and their families have to wait for years or even decades while suspects remain at large because the ICC legal framework does not allow for trials *in absentia*. For example, the failure of States to execute the outstanding arrest warrants in the Libya situation means that the *Gaddafi*, *Al-Tuhamy* and *Al-Werfalli* cases "will

53 Articles 86–102 of the Rome Statute. States Parties must also provide assistance in relation to release of persons and enforcement of sentences. See Articles 103–111 of the Rome Statute.

54 Articles 15(2), 54(3)(c)-(d), 73, 87(1)(b), 87(6), 93(9)(b) of the Rome Statute.

55 ICC, *Prosecutor v. Ongwen*, ICC-02/04-01/15-196-Red2, paras. 43–46, see above note 32; ICC, *Prosecutor v. Ongwen*, Trial Chamber IX, Decision on Defence Request for Deadline Extension and Cooperation from Uganda, 4 May 2018, ICC-02/04-01/15-1254, para. 6 (http://www.legal-tools.org/doc/cqxbym/).

56 See, for example, ICC, *Prosecutor v. Banda and Jerbo*, Trial Chamber IV, Decision on the defence request for a temporary stay of proceedings, 26 October 2012, ICC-02/05-03/09-410, paras. 3–7, 21, 136–143 (http://www.legal-tools.org/doc/414cc4/).

remain at an impasse until this essential step is achieved".[57] Article 61(2) of the Rome Statute does allow for the confirmation of charges proceedings to take place in the absence of the suspect, but the Prosecution to date has not attempted to take advantage of it.

17.4.9. Background of ICC Staff

As of 15 July 2020, there were 123 States Parties to the Rome Statute. ICC staff and elected officials come from all regions of the world, bringing with them their diverse cultures and legal traditions.

Given that the Rome Statute and the Rules do not regulate a significant number of procedural and substantive issues, these lacunae are left for practitioners and judges to interpret. What is allowed in one system can be unheard of or prohibited in another. Examples include the practice of witness preparation or proofing before testimony, evidence admissibility, and plea bargaining.[58] If one were to compare the three active trials running in 2018, witness preparation was allowed in the *Ntaganda* case, but forbidden in the *Ongwen*, [59] and *Gbagbo and Blé Goudé* cases. Indeed, a number of majority rulings in the *Gbagbo and Blé Goudé* case, with strong dissenting opinions, appear to result from the well-rehearsed differences between the common law and civil law systems.[60] Such disagreements cost time to at-

[57] ICC, Office of the Prosecutor, "Eighteenth report of the Prosecutor of the International Criminal Court to the United Nations Security Council pursuant to UNSCR 1970 (2011)", 6 November 2019, para. 34 (http://www.legal-tools.org/doc/2tnxm3/).

[58] John Jackson, Yassin Brunger, "Witness Preparation in the ICC: An Opportunity for Principled Pragmatism", in *Journal of International Criminal Justice*, 2015, vol. 13, no. 3, pp. 601–624; Mark Klamberg, *Evidence in International Criminal Trials: Confronting Legal Gaps and the Reconstruction of Disputed Events*, Martinus Nijhoff Publishers, Leiden, 2013, pp. 335–421; "International Criminal Procedure and Sentencing", in Cryer, Friman, Robinson and Wilmshurst (eds.), 2019, pp. 435–436 see above note 36.

[59] ICC, *Prosecutor v. Ntaganda*, Trial Chamber VI, Decision on witness preparation, 16 June 2015, ICC-01/04-02/06-652 (http://www.legal-tools.org/doc/ad21ce/); ICC, *Prosecutor v. Ongwen*, Trial Chamber IX, Decision on Protocols to be Adopted at Trial, 22 July 2016, ICC-02/04-01/15-504, paras. 4–17 (http://www.legal-tools.org/doc/311696/).

[60] ICC, *Prosecutor v. Gbagbo and Blé Goudé*, Trial Chamber I, Decision on witness preparation and familiarisation, 2 December 2015, ICC-02/11-01/15-355 (http://www.legal-tools.org/doc/aa620a/); ICC, *Prosecutor v. Gbagbo and Blé Goudé*, Partially dissenting opinion of Judge Henderson to Decision on witness preparation and familiarisation, 3 December 2015, ICC-02/11-01/15-355-Anx1 (http://www.legal-tools.org/doc/a1555d/).

tempt to arrive at a common position, and more time to write majority decisions and dissenting opinions where compromise cannot be achieved.[61]

To complicate things further, significant differences may exist within similar legal systems. For example, while lawyers trained in the United States and Canada will consider the pre-testimony preparation of witnesses vital to the interests of justice, those from other common law systems like the United Kingdom or Australia may see some aspects of the practice as impermissible.[62]

Aside from their professional and cultural backgrounds, the mandatory rotation of the ICC judges may have an impact on their cohesion and collegiality. Six new judges are elected every three years, with the six longest in service simultaneously stepping down after a nine-year term. The judges have to leave office just as they become fully familiar and comfortable with their powers and duties at the ICC, taking with them their accumulated institutional knowledge.

17.5. The Latest Developments Relating to the Length of the ICC Proceedings

The ICC is composed of four independent organs with distinct management and mandates, all nested within the same organization.[63] This structural model could contribute to procedural redundancies and delays. To improve the ICC's performance and coherent decision-making, its three principals with administration functions – the President, the Prosecutor, and the Reg-

[61] See, for example, ICC, *Prosecutor v. Gbagbo and Blé Goudé*, Reasons for oral decision of 15 January 2019 on the Requête de la Défense de Laurent Gbagbo afin qu'un jugement d'acquittement portant sur toutes les charges soit prononcé en faveur de Laurent Gbagbo et que sa mise en liberté immédiate soit ordonnée, and on the Blé Goudé Defence no case to answer motion, 16 July 2019, ICC-02/11-01/15-1263 (http://www.legal-tools.org/doc/440017/).

[62] ICC, *Prosecutor v. Ruto and Sang*, Trial Chamber V, Decision on witness preparation, Partly Dissenting Opinion of Judge Eboe-Osuji, 2 January 2013, ICC-01/09-01/11-524, paras. 20–36 (http://www.legal-tools.org/doc/82c717/); ICC, *Prosecutor v. Lubanga*, Trial Chamber I, Decision Regarding the Practices Used to Prepare and Familiarise Witnesses for Giving Testimony at Trial, 30 November 2007, ICC-01/04-01/06-1049, paras. 29, 39–40 (http://www.legal-tools.org/doc/ac1329/).

[63] The four organs of the ICC are the Presidency, the Chambers (consisting of Appeals Division, Trial Division and Pre-Trial Division), the Registry and the Office of the Prosecutor, see Article 34 of the Rome Statute.

istrar – consult on issues of common interest, for example management, budget and external relations.[64]

In the end, trial judges are the guardians of fair and expeditious proceedings at the ICC, pursuant to Articles 64(2) and 64(3)(a) of the Rome Statute. While not explicit, this requirement equally applies to pre-trial and appeals judges.[65] Recognizing their joint responsibility in this regard, the ICC judges have taken various steps in 2014–2019 to make things happen more quickly and efficiently, while still having regard to the preservation of the fairness and integrity of the proceedings.

The length of ICC proceedings has been on the radar of its stakeholders for a while. In the past decade, the Assembly of States Parties, Presidency, Chambers, Registry and Office of the Prosecutor have all made efforts to make the ICC proceedings more efficient. This section looks at the results of their efforts.

17.5.1. Study and Working Groups

In 2010, the Assembly of States Parties established the Study Group on Governance to expedite the proceedings, and enhance the ICC's efficiency and effectiveness.[66] In 2012, the ICC created the Working Group on Lessons Learnt to take stock of existing practices and consider measures for improvement.[67] They have, together, successfully galvanized other efforts to tackle the issue. Such efforts include proposing amendments to the Rules of Procedure and Evidence, in particular Rules 132*bis* and 68, later adopted by the Assembly of States Parties.[68]

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64 ICC, "Presidency 2015–2018: End of Mandate Report by President Silvia Fernández de Gurmendi", 9 March 2018, p. 2 ('ICC, Presidency Report, 2018').

65 In relation to the confirmation of charges proceedings, see Article 61(1), 61(3) and 61(4) of the Rome Statute.

66 ICC ASP, Establishment of a study group on governance, 10 December 2010, ICC-ASP/9/Res.2 (http://www.legal-tools.org/doc/a399fa/).

67 ICC, "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 (http://www.legal-tools.org/doc/v1idey/).

68 Silvia Fernández de Gurmendi, "Enhancing the Court's Efficiency", in *Journal of International Criminal Justice*, 2018, vol. 16, pp. 346–348. See ICC ASP, Amendment of the Rules of Procedure and Evidence, 21 November 2012, ICC-ASP/11/Res.2 (http://www.legal-tools.org/doc/d09f58/); ICC, Amendment of the Rules of Procedure and Evidence, 27 November 2013, ICC-ASP/12/Res.7 (http://www.legal-tools.org/doc/c50839/).

More than this, the judges have established several internal working groups to improve judicial practices on evidence disclosure, redactions and other protective measures, victim participation, detention and judgment structure and drafting. Their common objective is to contribute to the development of best practices, harmonisation of working methods, and streamlining of legal research, with a view to ultimately improving the efficiency and quality of judicial work.[69]

17.5.2. Reports on the Development of Performance Indicators

In 2014, the Assembly of States Parties invited the ICC to "intensify its efforts to enhance the efficiency and effectiveness of proceedings including by adopting further changes of practice". It requested the development of qualitative and quantitative performance indicators.[70]

In response, in November 2015, the ICC published its first report on performance indicators.[71] Two more reports followed in 2016 and 2017.[72] The reports state as their first goal that ICC proceedings are "expeditious, fair and transparent at every stage".[73]

The 2015 report identified ten non-exhaustive factors as likely to affect the length of proceedings.[74] It suggested that these factors could be used to provide benchmark estimates for the likely duration of cases and that the degree of variance from such benchmarks would be the eventual performance indicator. The 2015 report identified three other areas of con-

69 ICC, Presidency Report, 2018, paras. 42, 43, see above note 64.

70 ICC ASP, Strengthening the International Criminal Court and the Assembly of States Parties, Annex I, 17 December 2014, ICC-ASP/13/Res.5, paras. 7(a)-(b) (http://www.legal-tools.org/doc/3e8cf6/).

71 ICC, "Report of the Court on the development of performance indicators for the International Criminal Court", 12 November 2015.

72 ICC, "Second Court's report on the development of performance indicators for the International Criminal Court", 11 November 2016; ICC, "Third Court's report on the development of performance indicators for the International Criminal Court", 15 November 2017 ('Third Court's report').

73 For comparison, the EU Justice Scoreboard 2018 for civil, commercial and administrative cases treats efficiency, quality and independence as the main parameters of an effective justice system. European Commission, "The 2018 EU Justice Scoreboard", Publications Office of the European Union, 2018, p. 9.

74 They are the number of accused, their position in society, the number of charges, the number of witnesses, the complexity of facts and law, the novelty of legal or evidential issues, the geographical scope of the case, the scale of victim communities, expected levels of cooperation and security considerations for witnesses and victims.

cern: the interstitial periods between different stages of the proceedings, judicial reaction time in providing decisions on filings, and the fullest possible use of the courtrooms.[75]

17.5.3. ICC Presidency 2015–2018

Former ICC President Silvia Fernández de Gurmendi recognised that proper administration is dependent on the efficient conduct of the judicial work. During her mandate, the President made it her top priority to enhance the ICC's efficiency and effectiveness, "with particular emphasis on expediting and improving its criminal proceedings".[76]

In 2015–2018, the President promoted several initiatives aimed at making the proceedings more efficient, for example judicial retreats, collective revision of existing practices, amendments to the legal framework, reforms in legal support structure, working groups, assignment of judges, enhanced co-operation with internal and external actors, development of performance indicators, and the ICC Case Law Database.[77]

17.5.4. Chambers Practice Manual

Cognizant of procedural and substantive issues that have arisen at various procedural stages, and in order to contribute to the overall effectiveness and efficiency of ICC proceedings, the judges adopted the Chambers Practice Manual.[78] It initially started as the Pre-Trial Practice Manual, which was adopted in September 2015. The Manual was expanded in February 2016, May 2017 and November 2019 to cover other stages of proceedings, beyond pre-trial. Its 2019 revision includes guidelines for the timing of key judicial decisions at pre-trial, trial and appeal stages, whose stated aim is to make proceedings more efficient and expeditious.

With respect to pre-trial proceedings, the Manual consolidates best judicial practices on issuance of an arrest warrant or summons to appear, first appearance, pre-confirmation proceedings, evidence disclosure, charges, confirmation hearing and decision. With respect to trial, it addresses the first status conference, trial preparation matters, directions on the conduct

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75 ICC, "Report of the Court on the development of performance indicators for the International Criminal Court", 2015, paras. 15–25, see above note 71.

76 ICC, Presidency Report, 2018, pp. 2–3, see above note 64.

77 *Ibid.*, pp. 3–21.

78 ICC, "Chambers Practice Manual", 12 May 2017, p. 5 (http://www.legal-tools.org/doc/dh0zyq/).

of proceedings, and review of detention prior to the commencement of trial. It also includes best practices related to various procedural stages, like admission of victims to participate in proceedings, redaction of information, handling of confidential information and contacts with opposing party's witnesses. What the Manual does not tackle is the interstitial delays which have been highlighted above.

Certain practices endorsed in the Manual have been successfully tested both before and after its first adoption in 2015, in particular during confirmation proceedings in *Gbagbo* (June 2014), *Ntaganda* (June 2014), *Blé Goudé* (December 2014), *Al Mahdi* (March 2016), *Ongwen* (March 2016), *Al Hassan* (September 2019), *Yekatom and Ngaïssona* (December 2019), and *Abd-Al-Rahman* (May 2021).

17.5.5. Amendments to the Regulations of the Court

Newer changes to the legal framework aimed at streamlining the proceedings have been achieved through amendments to the Regulations of the Court. This is a relatively straightforward process, giving control to the ICC judges within the existing legal framework of the Rome Statute and the Rules of Procedure and Evidence. Taking advantage of this flexible tool, the judges have made four of the six amendments to the Regulations of the Court in 2016–2018.[79] The stated purpose of these amendments is to enhance the overall efficiency of proceedings. They address the composition of benches in Article 70 cases per Regulation 66*bis*; issues concerning page limits, time limits and other procedural matters per Regulations 20(2), 24(5), 33(1)(d), 34, 36, 38 and 44(1); appeals granting or denying interim release per Regulation 64; and final and interlocutory appeals per Regulations 57, 58, 59, 61, 63, 64 and 65.[80]

17.5.6. Strategic Plan 2019–2021

Strategic Plan 2019–2021 of the Office of the Prosecutor and to a lesser extent, the Court and the Registry, all discuss measures to be taken for improving the speed of ICC proceedings.

Strategic Plan 2019–2021 of the Office of the Prosecutor declares that its goal number two is to increase the speed, efficiency and effective-

[79] The Regulations of the Court were adopted by the judges on 26 May 2004, and subsequently amended on 14 November 2007, 2 November 2011, 10 February 2016, 6 December 2016, 12 July 2017 and 12 November 2018 (http://www.legal-tools.org/doc/n0k4lz/).

[80] ICC, Presidency Report, 2018, paras. 32–35, see above note 64.

ness of preliminary examinations, investigations, and prosecutions. To that end, the Office undertakes to implement the following steps: optimise preliminary examinations; further prioritise amongst investigations and prosecutions; develop a clear completion strategy for situations under investigation; develop narrower cases, where appropriate; prepare and advocate for more expeditious court proceedings; conduct further reviews of its working processes; and optimise co-operation with partners.[81]

17.6. Proposed Steps to Address the Issue

Arguably, the ICC's design does not allow for speedier proceedings without the implementation of fundamental reforms to its institutional design and procedural regime, involving changes to the Rome Statute and the Rules of Procedure and Evidence.

One such reform, radical but frequently mooted, could be the elimination of contested confirmation proceedings, which tend to prolong the overall duration of proceedings, and a return to the model of indictment proceedings at the ICTY and ICTR.[82] In the words of the former ICC President, "pre-trial proceedings [at the ICC] have been lengthy and cumbersome and not always helpful to the overall criminal process".[83] The *Bemba* case illustrates the good sense of such a reform. In 2018, the Appeals Chamber determined that charges, which the Pre-Trial Chamber had confirmed were compliant with the requirements of the Rome Statute nine years earlier, were in fact seriously defective.[84] It appears that, in that case at least, the confirmation procedure did not guarantee the protection to the accused which its proponents argued for at the time of the Rome Statute's adoption in 1998.[85]

But less radical measures may also bring fruitful results. Perhaps the logical starting point would be to commission an external audit of the ICC's workflow as a single institution. This would enable a comprehensive

81 ICC-OTP, "Strategic Plan 2019–2021", 17 July 2019, p. 15–22 (http://www.legal-tools.org/doc/7ncqt3/).

82 See, for example, Guenael Mettraux *et al.*, *Expert Initiative on Promoting Effectiveness at the International Criminal Court*, University of Amsterdam, 2014 (http://www.legal-tools.org/doc/3dae90/).

83 Gurmendi, 2018, p. 346, see above note 68.

84 ICC, *Prosecutor v. Bemba*, ICC-01/05-01/08-3636-Red, paras. 4, 74–116, 196–197, see above note 27.

85 The appeal was allowed, despite lack of prejudice to the convicted person. Overall, there have been fewer issues in terms of certainly of the charges than at the ICTY and ICTR.

review, rather than a piecemeal approach taken so far. Such an enterprise would be costly and lengthy. The Independent Expert Review of the ICC and the Rome Statute System has already examined many relevant issues in its Final Report in September 2020.[86] In the meantime, the ICC could look at the more obvious efficiency measures, both great and small, some of which have been tested in domestic jurisdictions. Such measures could include: streamlining judicial proceedings, eliminating inefficiencies and redundancies, and ensuring speedier judicial decision-making.

17.6.1. Streamlining Judicial Proceedings

One of the most straightforward changes would be for Trial Chambers to arrive at verdicts and pass sentence in a single judgment at the conclusion of the trial. This became the settled practice of the ICTY and ICTR.[87] In ICC proceedings to date, a period of months has passed between the announcement of a verdict and a subsequent sentencing hearing. Sentence itself has been passed some weeks later. While the two decisions are the subject of separate articles in the Rome Statute – Article 74 for the verdict and Article 76 for the sentence – there is no statutory requirement that they be delivered on separate occasions. It would be open to the judges to require the parties and participants to ensure that the evidence they called at trial was sufficient to cover any matters which might arise if guilty verdicts were reached and sentence had to be considered by the Trial Chamber. Likewise, closing submissions could include all matters relevant to the possible sentence,[88] or a separate hearing relevant to potential sentencing matters alone could be held, in accordance with Article 76(2).

The making and deciding of interlocutory motions is another area where a streamlined procedure might be envisaged. In the more recent cases, less controversial applications and decisions have been made by email and without the setting of formal periods of time for responses and re-

[86] Independent Expert Review of the International Criminal Court and the Rome Statute System, see above note 49.

[87] "International Criminal Procedure and Sentencing", in Cryer, Friman, Robinson and Wilmshurst (eds.), 2019, pp. 475–476 see above note 36.

[88] The combined process at the ICTY and ICTR led to rudimentary submissions on sentence, typically little more than a line in the defence closing brief, and the first real discussion took place on appeal.

plies.[89] Transparency has been ensured by a periodic publication of all such emails. But a more radical and potentially fruitful step would be to explore the possibility of determining interlocutory issues at oral hearings.

A noteworthy example of how such hearings might save time and effort comes from the preparations for the *Bemba* appeal. On 19 September 2016, the Defence made an application to rely upon additional evidence at the hearing of the appeal. In the following five months, the Prosecution submitted six filings on this issue alone. The Defence themselves made a further four filings, and the legal representative of the victims one. The Appeals Chamber issued three interlocutory rulings, none of which resolved the issue at hand.[90] All of the issues raised by the parties and participants could have been heard and determined at a single oral hearing scheduled by the Appeals Chamber shortly after the matter was first raised.

Within trial proceedings, more hands-on management by presiding judges could significantly shorten the giving of evidence. Judges could query the relevance of certain lines of questioning at an early stage and rule out those which are not relevant to central issues in the case. Trial Chambers could refuse to hear witnesses unlikely to cast light on the allegations made by the Prosecution, or at least require that their statements be submitted in writing under Rule 68 of the Rules of Procedure and Evidence. Trial Chambers might also take a rather stricter view of what constitutes 'expertise' for the purpose of giving evidence, and clamp down upon testimony from persons who may have a great familiarity with a particular situation, but no identifiable objective expert knowledge relevant to the case.

Even if the party-driven model of litigation is to be followed, this should not prevent Trial Chambers from requiring that all experts on a particular topic, whoever may be calling them to give evidence, exchange their reports in advance, identify areas of disagreement, and then all testify solely on those disputed areas, in each other's presence, in a trial session devoted to that topic alone. Trial Chambers might, however, make even greater savings of time and other resources by requiring the parties to specify in advance of the trial what matters of expertise they wish to raise, and then nominating non-partisan court-appointed experts to report and be

89 See, for example, ICC, *Prosecutor v. Ongwen*, Trial Chamber IX, Registry's Report Filing in the Record of the Case Decisions issued by way of email from June 2019 to January 2020, 4 February 2020, ICC-02/04-01/15-1714 (http://www.legal-tools.org/doc/zhu4zj/).

90 ICC, *Prosecutor v. Bemba*, ICC-01/05-01/08-3636-Red, paras. 15–2, see above note 27.

questioned by the parties. No additional expert evidence would be permitted on these topics, without a demonstration that it was necessary.

17.6.2. Eliminating Inefficiencies and Redundancies

The single greatest apparent inefficiency in the ICC proceedings is the practice of holding trial hearings intermittently.[91] In the *Lubanga* trial, the presentation of evidence began on 28 January 2009 and ended on 20 May 2011, a period of 842 days.[92] Allowing for weekends and public holidays, there were about 580 days, on which hearings could have taken place, of which only 204 days (about a third) were used. The *Katanga* trial was more efficient; the equivalent figures are 490 and 265 days (over half). The figures from the more recent *Bemba* and *Ntaganda* cases (about a third and just over a quarter, respectively) indicate that the proportion of potential sitting days did not increase.[93]

On most days in 2018, all three courtrooms in the new ICC building have been empty, despite the fact that three cases were in trial for most of that year.[94] Courts are not factories, of course. Judges and lawyers have other out-of-court commitments that must be fulfilled. Furthermore, the intensity and duration of proceedings is likely to be such that some periods for analysis, reflection and preparation will be necessary. But the *Katanga* case illustrates that a long and intense case can be held with the ICC using a majority of the sitting days available to it to hear evidence. Efforts must be made to emulate that performance.

As with all metrics, there is great advantage to be gained from transparency. The 2016 and 2017 reports on the performance indicators appear to have retreated from the idea of benchmarking and performance indicators based on such benchmarks. Nor are the ideas of measuring the speed of judicial decision-making or the efficiency of courtroom use taken any further. These reports do include detailed statistical data on cases for each

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91 However, one cannot disregard the financial limitations that the ICC had experienced in the past, making it difficult for the Registry to enable simultaneous proceedings in all three courtrooms.

92 ICC, *Prosecutor v. Lubanga*, Trial Chamber I, Judgment pursuant to Article 74 of the Statute, 14 March 2012, ICC-01/04-01/06-2842, para. 11 (http://www.legal-tools.org/doc/677866/).

93 Incomplete (*Ruto and Sang*, ICC-01/09-01/11), guilty plea (*Al Mahdi*, ICC-01/12-01/15), and Article 70 (*Bemba et al*, ICC-01/05-01/13) cases are not considered for the purpose of this comparison.

94 *Ongwen*, *Gbagbo and Blé Goudé* and *Ntaganda*.

of the seven identified phases,[95] but not in a way which enables useful conclusions to be drawn. For example, the number of days on which trial proceedings took place is contrasted not with the number of days on which courtrooms were available, but with the number of days on which sittings were scheduled to be heard. Although the 2017 report spoke of "next year's progress report", none appeared in 2018 or the following years. There has to be some question whether the development of "qualitative and quantitative performance indicators" required by the Assembly of States Parties has been achieved in respect of the stated goal that ICC proceedings are expeditious.

While the 2017 report on the performance indicators sets out data in highly concentrated tabular form for five of the most recent ICC trials,[96] the number of available sitting days is not measured. This data would have enabled the reader to evaluate if the use of courtroom time was efficient. In domestic systems, rather more detailed figures are collected.[97] In any given court centre in the UK, for example, the resident judge and court manager will know the average cost of every minute of court time, and the number of available minutes which are being gainfully used in each of the courtrooms. Where the performance dips significantly beyond what is deemed to be a reasonable level, explanations will be sought from the court officials and judges concerned.

Disclosure of evidence is another area requiring careful attention. Current system of evidence disclosure is time-consuming and labour-intensive, requiring page-by-page review, manual redactions and highly-technical electronic disclosure. However, there would be significant problems with a move to a simpler open book system, whereby, as a rule, all material in the Prosecution's hands is made available to the defence legal team for inspection as soon as they are appointed. The reasons for not doing it are practical. The Prosecution gathers, as a necessary part of its investigations, a significant quantity of data concerning individuals who may

[95] The 2016 and 2017 reports identified seven key phases relevant to measuring expeditiousness and fairness, which generate most workload for the judges, parties and participants: confirmation, trial preparation, trial, trial deliberations, sentencing, reparations and final appeals against conviction and sentencing.

[96] *Ongwen*, *Ntaganda*, *Gbagbo and Blé Goudé*, *Al Mahdi* and *Bemba et al.* See ICC, Third Court's report, 2017, Annex I, see above note 72.

[97] European Commission, "The 2018 EU Justice Scoreboard", Publications Office of the European Union, 2018, pp. 10–22.

turn out to have no relevance to the issues in a particular case. It is, and must remain, the Prosecution's task to protect the privacy of such persons and thus withhold information if no disclosure duties arise. Nonetheless, there is scope for a less painstaking approach, for example the adoption of bulk disclosure facilitated by software akin to the electronic disclosure suites used at the ICTY and ICTR. This bulk disclosure might be feasible with large collections of material received from governments or NGOs, or gathered from open sources.

17.6.3. Ensuring Speedier Judicial Decision-Making

As noted above, the monitoring of the time taken for judicial decision-making was proposed in the ICC's 2015 report on the development of performance indicators, but appears to have been dropped in 2016 and 2017 reports. The idea is not new.[98] The Rome Statute and the Rules stipulate time limits for the Prosecution, Defence, legal representatives of victims, Registry, and States to take certain procedural steps. In addition, ICC judges frequently exercise their powers to set additional deadlines, and alter the statutory or regulatory deadlines for parties and participants.

As a first step, monthly data could be assembled and shared, initially only among the judges themselves, on a judge-by-judge basis, for each decision rendered, either individually or as part of a panel, so as to inform judges concerning areas where time may be saved and to enable appropriate targets to be considered.

Thereafter, whether as a matter of practice or by means of binding regulations[99] – thus without any need for an amendment to the Rome Statute or the Rules of Procedure and Evidence – clear deadlines could be set for judicial decisions, in particular decisions on opening an investigation under Article 15, decisions on applications for a warrant of arrest or summons to appear under Article 58, conviction or acquittal decisions under Article 74, sentencing decisions under Article 76, decisions concerning reparations orders under Article 75, and final appeal decisions under Article

[98] See, for example, Mettraux *et al.*, 2014, paras. 96, 103 and 104, see above note 82; European Commission for the Efficiency of Justice (CEPEJ), Francoise Calvez and Nicolas Regis (eds.), *Length of court proceedings in the member states of the Council of Europe based on the case law of the European Court of Human Rights*, 3rd. ed., 2018, appendix 3b.

[99] Article 52 of the Rome Statute: "The judges shall, in accordance with this Statute and the Rules of Procedure and Evidence, adopt, by an absolute majority, the Regulations of the Court necessary for its routine functioning".

81, but also for more routine decisions on interlocutory filings. Standard times could be established for the interstitial periods between the various stages of the proceedings. Such regulations could, of course, allow for a departure from the set deadlines if good reasons to do so are demonstrated.

In November 2019, the ICC judges updated the Chambers Practice Manual to include timeframes for the rendering of key decisions at pre-trial, trial and appeal level. This is, without a doubt, an important step towards speedier judicial decision-making. But it remains to be seen if these timeframes are respected, considering that the document has no binding power on the judges.

17.7. Conclusions

The ICC is an important and ambitious project. In simple terms, it is an agreement that large-scale brutalities that have routinely been tolerated in the past should now be the subject of investigation and prosecution, even if domestic proceedings for such crimes are not viable. The ICC continues to be a beacon of hope for those most affected by armed conflicts and power struggles. Victims and their communities, having faced the turmoil of mass violence, turn to the ICC with expectations of quick and positive results.

But it is paramount that stakeholders understand the ICC's inherent limitations, including the length of time it might take for a case to complete the full procedural cycle. The principal factors affecting the length of the ICC proceedings are the timing, nature, scope and geographic location of crimes; judicial oversight of prosecutorial activities; participation of victims; rights of the accused; transcription, translation and interpretation; disclosure of evidence; witness and staff protection; international co-operation; and background of ICC staff.

In recent years, the Assembly of States Parties, Presidency, Chambers, Registry and Office of the Prosecutor have all made efforts to make the ICC proceedings more efficient. To further improve the length of the ICC proceedings, it would be desirable to consider and implement mechanisms to ensure the making of timely judicial decisions, shorter breaks between procedural stages, more efficient use of available sitting days during trial, and more streamlined procedures for the reception of legal submissions and evidence. Finally, it is imperative for the administration of the ICC to resuscitate the efforts made back in 2015 to develop a set of objective markers that will assist in conducting trials within reasonable time in

consultation with the judges, the Prosecution, legal representatives of the victims and the Defence.

Nuremberg Academy Series No. 5 (2021):

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ISBNs: 978-82-8348-173-0 (print) and 978-82-8348-174-7 (e-book).

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