



Cour
Pénale
Internationale

International
Criminal
Court

Le Bureau du Procureur
The Office of the Prosecutor

Policy on Children

NOVEMBER 2016





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November 2016

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Executive Summary

Millions of children, women and men have been, and continue to be, victims of unimaginable atrocities that deeply shock the conscience of humanity. Recognising this, States at the Rome Conference committed to establishing the International Criminal Court “for the sake of present and future generations”. Various provisions of the Rome Statute, Rules of Procedure and Evidence and Elements of Crimes highlight the importance of the effective investigation and prosecution of crimes against or affecting children, as well as the protection of children’s rights and interests. These include enumerations both of crimes directed specifically against children, such as the war crimes of enlistment, conscription and use of children under the age of 15 years to participate actively in hostilities, and also of crimes that disproportionately affect children, such as the war crime of attacks on buildings dedicated to education and healthcare.

Mindful of the purposes of the Statute, the Office of the Prosecutor elevated this issue to one of six strategic goals in its Strategic Plan 2012–2015, committing to “pay particular attention to sexual and gender-based crimes and crimes against children”. This commitment was reaffirmed in the Strategic Plan 2016–2018. The Policy on Children aligns with the Strategic Plan and will contribute to achieving the strategic goals.

The Office considers “children” to be persons who have not yet attained the age of eighteen. In general, crimes against or affecting children will be regarded as particularly grave, given the commitment made to children in the Statute, and the fact that children enjoy special recognition and protection under international law.

The Office recognises that most crimes under the Statute affect children in various ways, and that at times they are specifically targeted. The Office will make full use of the regulatory framework to address the various ways that such crimes affect children. Wherever the evidence permits, it will seek to include charges for crimes directed specifically against children, as well as crimes that acutely or disproportionately affect children. It will bear in mind that children may be impacted differently by crimes based on their sex, gender, or other status or identities. The Office will, in order to capture the full extent of the harm suffered, seek to highlight the multi-faceted impact of the crimes on children, at all stages of

its work.

The Office engages with children in various contexts and circumstances, notably children who are witnesses and those whose parents or caregivers have agreed to testify before the Court. In these interactions, the Office will consider the best interests, rights and well-being of children who are directly impacted by its activities. The Office will strive to ensure that its activities do no harm to the children with whom it interacts.

The Office will adopt a child-sensitive approach in all aspects of its work involving children. This approach appreciates the child as an individual person and recognises that, in a given context, a child may be vulnerable, capable, or both. This approach is based on respect for children's rights and is guided by the general principles of the 1989 Convention on the Rights of the Child: non-discrimination; the best interests of the child; the right to life, survival and development; and the right to express one's views and have them considered.

The Office recognises the various rights of children under international law and will bear in mind that many children endure challenges in exercising their rights due to their age and status in society.

The Office will, within the context of its mandate, take into account the best interests of a child as a primary consideration. A best interests inquiry involves a two-step process. First, the Office will assess the best interests of the child, having considered the child's specific situation, the views of the child and of other relevant persons, and the child rights at issue. Second, the Office will examine whether there are any other factors, including legal or operational issues, that require a careful balancing of the various interests. The Office will resolve potential conflicts on a case-by-case basis, in an effort to find a suitable compromise. It will also bear in mind the evolving capacities of the child.

During a preliminary examination of a situation, the Office examines the general context within which the alleged crimes against or affecting children have occurred, and assesses the existence of local institutions and expertise, international organisations, non-governmental organisations and other entities as potential sources of information and/or support. The Office will ensure that an

assessment of the impact of the alleged crimes on children is incorporated into its analysis of the gravity of potential cases.

Investigations of international crimes present various challenges. These include seeking the cooperation of individuals to engage with the Office and protecting their safety, physical and psychological well-being, dignity and privacy. When investigations involve children, there are added complexities with regard to these issues. The Office will explore specific means to address them, always having in mind the best interests of the child.

The Office recognises that children are capable of giving credible evidence. In its deliberations on whether to interview or take evidence from a child, careful consideration will be given to his or her age, development, level of maturity, capabilities and vulnerabilities, and the availability of other evidence.

In its submissions on sentencing, the Office will request a sentence which adequately reflects the seriousness of the crimes against children, including the immediate and long-term harms caused to them, their families and communities.

The Office supports a child-sensitive approach to reparations, taking into account the differentiated effects and the harms caused to boys and girls by the crimes for which an individual was convicted, which may include the right of some child victims to reintegration into their communities.

The Office will continue its efforts to enhance cooperation and support for its activities, in particular in relation to children, and to promote a child-sensitive approach with respect to international criminal justice. A concerted effort will be made to ensure meaningful cooperation with States, international organisations and relevant entities in order to obtain support for the Office's work regarding children, particularly in countries in which it carries out its activities.

In accordance with the principle of positive complementarity, and in an effort to close the impunity gap, the Office will continue to encourage and support national efforts to hold persons accountable for crimes against or affecting children.

In its public information activities, the Office will draw attention to the rights and

best interests of children in the context of international crimes, as appropriate. It will take steps to disseminate to children information about its work, including this Policy, in a format that children can understand.

The Office will seek to ensure that it has the necessary institutional capacity to conduct preliminary examinations, investigations and prosecutions of crimes against or affecting children more effectively, and that its interaction with children respects their rights and best interests.

The Office will monitor the implementation of this Policy.

This Policy is available at the persistent URL: <http://www.legal-tools.org/doc/c2652b/>

I. Introduction

1. Millions of children, women and men have been, and continue to be, victims¹ of unimaginable atrocities that deeply shock the conscience of humanity. Recognising this, States at the Rome Conference committed to establishing the International Criminal Court (“ICC” or “Court”) “for the sake of present and future generations”.² Various provisions of the Rome Statute (“Statute”), Rules of Procedure and Evidence (“Rules”) and Elements of Crimes (“Elements”) highlight the importance of the effective investigation and prosecution of crimes against or affecting children, as well as the protection of children’s rights and interests.
2. Commitment to addressing crimes against or affecting children can be found in various provisions of the Statute, including in its enumerations of child-specific crimes, such as enlistment, conscription and use of children under the age of fifteen years to participate actively in hostilities (“child recruitment or use”), forcible transfer of children, and child trafficking,³ and also of crimes that disproportionately affect children, such as attacks on buildings dedicated to education.⁴ Children are also particularly vulnerable to sexual and gender-based crimes, which are proscribed by the Statute, a fact made explicit in the Elements.⁵

¹ The Office of the Prosecutor (“Office”) recognises that many victims of crimes within the jurisdiction of the Court are also survivors. The use of the term “victims” alone is consistent with the Rome Statute.

² Preamble of the Statute, para. 9. See United Nations Children’s Fund (UNICEF), [Children and emergencies in 2014 Facts & Figures](#), which estimates that 230 million children live in countries and areas affected by armed conflicts.

³ Articles 8(2)(b)(xxvi) and 8(2)(e)(vii), 6(e), 7(1)(c) and 7(2)(c) of the Statute.

⁴ Articles 8(2)(b)(ix) and 8(2)(e)(iv) of the Statute proscribe as war crimes, in international and non-international armed conflicts, “[i]ntentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives”.

⁵ In the Elements, specific reference is made to “trafficking in persons, in particular women and children” in the context of sexual slavery as a crime against humanity and a war crime in either international or non-international armed conflict under articles 7(1)(g), 8(2)(b)(xxii), 8(2)(e)(vi) of the Statute.

3. The Statute recognises children as persons with individual rights, as members of families and as constituents of multi-generational communities.⁶ This recognition corresponds with international understandings, set forth in the 1989 Convention on the Rights of the Child⁷ (“CRC”) and many other international instruments, that children are vulnerable and are entitled to special care and protection,⁸ and that their interests, rights and personal circumstances should be given due consideration.⁹
4. The commitment to children in the Statute is likewise apparent in the requisite qualifications for judges and advisers,¹⁰ in the mandate for victim and witness protection,¹¹ and in the establishment of a minimum age of

⁶ For example, article 84(1) provides for a possibility that in the case of the death of the convicted person, his or her children may apply for a revision of the final judgment of conviction or sentence; and articles 6(d) and 7(1)(g) criminalise forced prevention of birth or forced pregnancy. Also affected in a multi-generational manner are children born during conflict or other contexts within the jurisdiction of the Court, in particular those children born to girls associated with armed groups. See [Principles and Guidelines on Children Associated with Armed Forces or Armed Groups](#) (“Paris Principles”), February 2007, Principle 3.2.

⁷ The [Convention on the Rights of the Child](#) (“CRC”) was unanimously adopted by the United Nations (UN) General Assembly in 1989. The CRC enjoys near-universal ratification, with only one country not having ratified, and many of its provisions are deemed to reflect customary international law.

⁸ See, for example, article 25 of the [Universal Declaration of Human Rights](#), adopted by the UN General Assembly in 1948; principle 2 of the [Declaration of the Rights of the Child](#), adopted by the UN General Assembly in 1959; article 10(3) of the 1966 [International Covenant on Economic, Social and Cultural Rights](#); article 24 of the 1966 [International Covenant on Civil and Political Rights](#); articles 14, 17, 23, 24, 38, 50, 51, 68, 76, 82, 89, 94 and 132 of the 1949 [Geneva Convention \(IV\) relative to the Protection of Civilian Persons in Time of War](#) (“Geneva Convention IV”), universally ratified; articles 8, 70(1), 77 and 78 of the 1977 [Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts](#) (“API”); articles 4(3) and 6(4) of the 1977 [Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts](#) (“APII”); and article 3(2) of the CRC.

⁹ See, for example, article 3(1) of the CRC.

¹⁰ Article 36(8)(b) of the Statute stipulates the obligation of States Parties to take into account the need to include judges with legal expertise on specific issues, including violence against children; and article 42(9) requires the Prosecutor to appoint advisers with legal expertise on specific issues, such as violence against children.

¹¹ Article 54(1)(b) of the Statute requires that the Prosecutor, in conducting investigations and prosecutions, respects the interests and personal circumstances of victims and witnesses, including age, and the nature of the crime, in particular where it involves sexual violence, gender violence or violence against children. Additionally, article 68(1) imposes an obligation on the Court as a whole, and also

eighteen years for ICC prosecution.¹² The Rules consolidate procedural protections for child witnesses and victims.¹³

5. Mindful of the purposes of the Statute, as early as in 2003, the Office of the Prosecutor (“Office”), established a Gender and Children Unit (“GCU”) comprised of staff with legal and psycho-social expertise. The GCU supports all Office teams in their work with victims and witnesses, and provides advice to the Office at all stages of operations on various matters relating to children.
6. In addition, the Office committed, in its initial strategy documents, to enhancing its investigation and prosecution of crimes against or affecting children.¹⁴ The very first ICC trial resulted in a conviction for the war crimes of child recruitment or use.¹⁵
7. In its Strategic Plan 2012-2015, the Office elevated this issue to one of six strategic goals, committing to “pay particular attention to sexual and gender-based crimes and crimes against children”.¹⁶ This commitment was reaffirmed in the Strategic Plan 2016-2018, in which one of the goals is to “continue to integrate a gender perspective in all areas of the Office’s work and to pay particular attention to sexual and gender-based crimes and crimes against and affecting children, in accordance with Office policies.”¹⁷

specifically on the Prosecutor, to take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses, while having regard to all relevant factors, including age and the nature of the crime, in particular where the crime involves sexual or gender violence or violence against children.

¹² Article 26 of the Statute provides that the Court shall have no jurisdiction over any person who was under the age of eighteen at the time of the alleged commission of a crime.

¹³ See, for example, rules 17(3), 19(f), 66(2), 86, 88(1), 89(3) and 112(4) of the Rules.

¹⁴ [Report on Prosecutorial Strategy](#) (ICC-OTP 2006), p. 7; [Prosecutorial Strategy: 2009-2012](#) (ICC-OTP 2010), pp. 8, 14, 16-18.

¹⁵ *Prosecutor v. Lubanga*, “Judgment pursuant to Article 74 of the Statute”, [ICC-01/04-01/06-2842](#), 14 March 2012 (“*Lubanga* Conviction Judgment”).

¹⁶ [Strategic Plan, June 2012-2015](#) (ICC-OTP 2013), p. 27.

¹⁷ [Strategic Plan 2016-2018](#) (ICC-OTP 2015), p. 19.

8. This Policy aligns with the Strategic Plan and will contribute to achieving the strategic goals. It focuses on crimes against or affecting children that occur in armed conflict and in other contexts within the jurisdiction of the Court.
9. The objectives of this Policy are to:
 - Affirm the commitment of the Office to pay particular attention to crimes against or affecting children;
 - Provide clarity and direction to staff in the interpretation and application of the Statute and the Rules, at all stages of the Office's work, in order to effectively address crimes against or affecting children;
 - Ensure that staff interact with children sensitively and with due respect for their best interests and rights under international law;¹⁸
 - Foster and advance a culture of good practices in relation to the protection of rights of children, both within the Office and more broadly; and
 - Contribute, through the implementation of this Policy, to the ongoing development of international jurisprudence regarding crimes against or affecting children.
10. The Office publishes its policies in the interests of promoting transparency, clarity and predictability in the application of the legal framework. Publication, dissemination and implementation of this Policy may enhance cooperation and collaboration amongst actors (for example, States, including national law enforcement and judicial authorities, international institutions, conflict managers and mediators, non-governmental organisations and advocacy groups) regarding issues relating to children. This Policy promotes respect for children's rights, and seeks to strengthen both accountability for, and the prevention of, crimes against or affecting children.

¹⁸ Chapter 2, Section 3 of the [Code of Conduct for the Office of the Prosecutor](#).

11. This Policy is based on the Statute, Rules, Regulations of the Court and Regulations of the Office, and it aligns with other policy documents. Where appropriate, it is also based on applicable treaties, particularly the CRC, and the principles and rules of international law.¹⁹ It also draws on the experience of the Office, its existing good practices and lessons learned, as well as relevant jurisprudence, including that of the ICC and other courts and tribunals.
12. This Policy focuses on strategic approaches of the Office and is subject to revision. It does not detail guidelines, procedures or standards for operations, which are regulated by the Operations Manual of the Office.²⁰ This Policy does not itself give rise to legal rights.
13. Working closely with its Special Adviser on Children in and affected by Armed Conflict,²¹ the Office adopted an inclusive approach in developing this Policy, consulting with staff, including those in the field. The Office also considered it vital that this Policy be informed by the voices of children and young persons, especially those who had experienced conflict or judicial processes. Engagements with children and youth, facilitated with the

¹⁹ See article 21(1)(b) of the Statute. In addition to the instruments cited in footnote 8, applicable treaties include, but are not limited to: the 1990 [African Charter on the Rights and Welfare of the Child](#) (“ACRWC”); the 1996 [European Convention on the Exercise of Children’s Rights](#) (“ECECR”); the 1999 [Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour](#) (“ILO Convention No. 182”); the 2000 [Optional Protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict](#) (“CRC-OPAC”) and [on the sale of children, child prostitution and child pornography](#) (“CRC-OPSC”); the 1948 [Convention on the Prevention and Punishment of the Crime of Genocide](#); the 1951 [Convention relating to the Status of Refugees](#); the 1956 [Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery](#) (“Anti-Slavery Convention”); the 1965 [International Convention on the Elimination of All Forms of Racial Discrimination](#); the 1979 [Convention on the Elimination of All Forms of Discrimination against Women](#); the 1984 [Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#); the 2006 [International Convention for the Protection of All Persons from Enforced Disappearance](#); and the 2006 [Convention on the Rights of Persons with Disabilities](#).

²⁰ The Operations Manual is a confidential internal practice manual which addresses all aspects of Office operations. It is regularly updated to ensure continuous improvement, incorporating lessons learned, new strategies, and opportunities to strengthen the practices of the Office.

²¹ See paragraph 120 of this Policy.

assistance of partners, provided the opportunity to listen to their views, concerns and experiences, thereby enhancing the understanding of the impact of conflict and of the work of the Office on children.²²

14. In addition, two expert round-table consultations were held: at the Dean Rusk International Law Center, University of Georgia School of Law in the United States, and at Leiden University Law School in the Netherlands. The Office also sought and considered the input of other external experts, representatives of States, international organisations and civil society.²³

II. General Policy

15. The Office pays particular attention both to the commission of crimes against or affecting children, and to its own interaction with children.
16. The Office considers “children” to be persons who have not yet attained the age of eighteen.²⁴ This is consistent with the CRC, which defines “child” as every human being below the age of eighteen. It is also supported by article

²² Consultations with children and youth were carried out by, or organised with the assistance of, the Roméo Dallaire Child Soldiers Initiative, the KidsRights Foundation and The KidsRights Youngsters, Education Above All (EAA)/Protect Education in Insecurity and Conflict (PEIC), and Search for Common Ground, in the Democratic Republic of the Congo, Somalia, Colombia, Sierra Leone, Qatar, the Netherlands and Canada.

²³ On 22 June 2016, the Office published the draft Policy for external comment. On 11 July 2016, with the support of the European Commission, a one-day consultation on the draft was held at the seat of the Court. Representatives of relevant organisations and experts, including from national authorities attended.

²⁴ Human rights law also supports this position. For example, article 1 of the CRC states that: “For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.” See also article 2 of ACRWC, article 1(1) of the ECECR, and article 2 of the ILO Convention No. 182, all of which define a “child” as a person below the age of eighteen years for the purpose of the respective treaty. See also Inter-American Court of Human Rights, Advisory Opinion on Juridical Condition and Human Rights of the Child, [OC-17/2002](#), 28 August 2002, paras. 38-42, which notes the absence of an express definition in the American Convention on Human Rights and states that “taking into account international norms and the criterion upheld by the Court in other cases, ‘child’ refers to any person who has not yet turned 18 years of age”.

26 of the Statute, which provides that the Court shall have no jurisdiction over any person who was under the age of eighteen at the time of the alleged commission of a crime. Further, the Elements require that, in relation to the crime of forcible transfer of children as an act of genocide, the victim be “under the age of 18 years”. However, the Office will consider young persons whose ages are unknown to be “children” for the sole purpose of its engagement with them, unless there is a reasonable basis to believe otherwise.²⁵

17. The Office recognises that most crimes under the Statute affect children in various ways, and that at times they are specifically targeted. Mindful of this, the Office will, in order to capture the full extent of the harm suffered, seek to highlight the multi-faceted impact on children, at all stages of its work. Children may be victims; they may be involved in the commission of crimes; they may witness the commission of crimes against others, including members of their own families; or they may be unable to receive an education or medical care due to the destruction of schools or hospitals.
18. The Office recognises that children may be impacted differently by crimes based on their sex, gender, or other status or identities.²⁶
19. Crimes directed specifically against children include: the war crimes of child recruitment and use, the forcible transfer of children as an act of genocide, and trafficking of children as a form of the crime against humanity of enslavement or sexual slavery.²⁷ Other crimes affecting children include: killings, mutilation, torture, pillaging, and sexual and gender-based crimes,²⁸ perpetrated either against children themselves or their families and

²⁵ This was the approach taken at the Special Court for Sierra Leone (SCSL). See War Crimes Studies Center, University of California, Berkeley, [Child Witnesses at the Special Court for Sierra Leone](#), March 2006, p. 12.

²⁶ See [Policy Paper on Sexual and Gender-Based Crimes](#) (ICC-OTP 2014), para. 102.

²⁷ All crimes listed in this paragraph are discussed in detail in Part III.

²⁸ Gender-based crimes are committed against boys or girls because of their sex and/or socially constructed gender roles, and are not always manifested as a form of sexual violence. See [Policy Paper on Sexual and Gender-Based Crimes](#) (ICC-OTP 2014), para. 16.

communities, and attacks against buildings dedicated to education and health care.

20. The Office engages with children in various contexts and circumstances, notably children who are witnesses and those whose parents or caregivers have agreed to testify before the Court. In these interactions, the Office will consider the best interests, rights and well-being of children who are directly impacted by its activities.
21. Further, the Office recognises that adult witnesses who were victimised as children may also require special attention, and will consider appropriate measures.
22. In light of the foregoing, the Office will adopt a child-sensitive approach in all aspects of its work involving children. This approach appreciates the child as an individual person and recognises that, in a given context, a child may be vulnerable, capable, or both. The child-sensitive approach requires staff to take into account these vulnerabilities and capabilities.²⁹ This approach is based on respect for children's rights and is guided by the general principles of the 1989 Convention on the Rights of the Child: non-discrimination; the best interests of the child; the right to life, survival and development; and the right to express one's views and have them considered.³⁰
23. In exercising its mandate under the regulatory framework, the Office will apply such a child-sensitive approach, including in the conduct of preliminary examinations and investigations, the selection of charges and

²⁹ [UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime](#) ("UN Guidelines"), para. 9(d), according to which: "'Child-sensitive' denotes an approach that balances the child's right to protection and that takes into account the child's individual needs and views."

³⁰ See UN Committee on the Rights of the Child ("UN Committee"), General Comment No. 5, General measures of implementation of the Convention on the Rights of the Child, UN Doc. [CRC/GC/2003/5](#), 27 November 2003, para. 12. These general principles are also reflected in, although not identical to, the UN Guidelines, which, in paragraph 8, characterise the guiding principles as: dignity, non-discrimination, the best interests of the child and the right to participation. The child-sensitive approach further corresponds, as appropriate, with principles sometimes described as "child-friendly justice". See, for example, Council of Europe, [Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice](#) ("CoE Guidelines"), 2010.

evidence, witness preparation and protection, submissions in court, cooperation and external relations activities, and institutional development measures.

24. The Office recognises the various rights of children under international law, including the rights to non-discrimination; to life, survival and development, as well as an adequate standard of living; to identity, nationality, family or home life, and privacy; to expression, conscience, education, religion, culture and language; to mental and physical health, with special protection for children with disabilities. Children also enjoy the rights to be free from torture, or other cruel, inhuman or degrading treatment or punishment; to be free from violence, abuse, and trafficking or other exploitation; and to recovery and social reintegration.³¹ The Office will bear in mind that many children endure challenges in exercising their rights due to their age and status in society.
25. Children, by the very fact of their youth, are frequently more vulnerable than other persons; at certain ages and in certain circumstances, they are dependent on others. Notwithstanding any vulnerability and dependence, children possess and are continuously developing their own capacities – capacities to act, to choose and to participate in activities and decisions that affect them. The Office will remain mindful, in all aspects of its work, of the evolving capacities of the child.³²
26. Under article 12 of the CRC, a child, who is capable of forming his or her own views, has “the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child”.³³ In line with this guiding principle, the Office

³¹ See articles 2, 6-11, 13, 14, 16, 19, 23-25, 27-30, 32, 34-37 and 39 of the CRC; articles 3, 5, 6-16, 18, 19, 21, 27 and 29 of the ACRWC; and article 1 of the CRC-OPSC.

³² See article 5 of the CRC; UN Committee, General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1) (“General Comment No. 14”), UN Doc. [CRC/C/GC/14](#), 29 May 2013, para. 44.

³³ Article 12(1) of the CRC. The UN Committee clarifies that: “The child, however, has the right not to exercise this right. Expressing views is a choice for the child, not an obligation. States parties have to ensure that the child receives all necessary information and advice to make a decision in favour of her

will consult and engage with children in a manner consistent with its mandate, as appropriate. The views of the child are important in the decision-making process and will be considered as a significant factor in the settlement of the issue concerned.³⁴ Where they cannot be accommodated, the reasons will be explained to the child and parents or caregivers. All communication with children and their parents and caregivers will be in a manner and language that is clear and that all are able to understand.

27. The Office understands that children are not a homogenous group. They will not always have the same interests or concerns. The vulnerability, capacity and resilience of each child will be different. The Office will therefore increasingly seek opportunities for effective and appropriate engagement and consultation with children and organisations working with children in order to better address these dynamics.
28. Consistent with its commitment to apply a child-sensitive approach, the Office will, within the context of its mandate, take into account the best interests of a child as a primary consideration.³⁵ This involves an ongoing assessment of what would best protect a child's physical, psychological and emotional safety, security and well-being, and applies to decisions that affect children, as individuals or in general.³⁶

or his best interests." See UN Committee, General Comment No. 12 (2009): The right of the child to be heard, UN Doc. [CRC/C/GC/12](#), 20 July 2009, para. 16. See also Organisation for Economic Co-operation and Development (OECD), [Doing Better for Children, Chapter 2: Comparative Child Well-being across the OECD](#), 1 September 2009, p. 25, which explains that: "The rights perspective also seeks the input of children in the process of deciding what their well-being might be and how it might be best measured." With reference to girls, the principle of participation is also set forth in the [Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation](#) ("Nairobi Declaration"), 21 March 2007, Principle 1(D).

³⁴ UN Committee, General Comment No. 12, para. 44.

³⁵ Article 3(1) of the CRC requires that the best interests of a child "shall be a primary consideration". As explained above in para. 22, the best interests principle has been referred to as one of the four general principles of the CRC by authorities including the UN Committee.

³⁶ UN Committee, General Comment No. 14, para. 84, for example, states that: "[i]n the best interests assessment, one has to consider that the capacities of the child will evolve."

29. A best interests inquiry will involve a two-step process. First, the Office will assess the best interests of the child, having considered the child's specific situation,³⁷ the views of the child and of other relevant persons, and the child rights at issue.³⁸ Second, it will examine whether there are any other factors that require a balancing of the various interests.
30. In making an assessment about the child's specific situation, in the first step of the best interests inquiry, the Office will consider:
- (i) the individual profile of the child concerned, taking into account relevant factors, such as age, level of maturity, experience, education, ability or disability, health conditions, membership in a minority group, sex, and gender, as well as whether the child has been displaced, separated, trafficked, detained, abducted or sexually exploited, or is a parent or head of household; and
 - (ii) the child's social and cultural context, for example, the presence or absence of parents or caregivers, residence in a familial or non-familial setting, the quality of the relationships between the child and his or her family or caregivers, and the environment in relation to safety.³⁹
31. In addition to the input of children, the Office will seek the views of parents or caregivers, and also experts, if necessary, and will give consideration to internationally recognised child rights, as applicable.⁴⁰ The impact of its decisions on the present well-being of the child, as well as possible future consequences, will also be factored in at this stage of the assessment.

³⁷ UN Committee, General Comment No. 14, para. 48.

³⁸ See paragraph 24 of this Policy.

³⁹ These two subparagraphs derive from UN Committee, General Comment No. 14, para. 48. See also UN Committee, General Comment No. 6: Treatment of Unaccompanied and Separated Children outside Their Country of Origin, UN Doc. [CRC/GC/2005/6](#), 1 September 2005, para. 20 ("A determination of what is in the best interests of the child requires a clear and comprehensive assessment of the child's identity, including her or his nationality, upbringing, ethnic, cultural and linguistic background, particular vulnerabilities and protection needs."). See also [Update of the EU guidelines on children and armed conflict](#), 16 June 2008, para. 18.

⁴⁰ With regard to situations in which a child does not appear to have a parent or other caregiver, see paragraph 67.

32. Once a best interests assessment is made as a first step, the Office will then consider whether there are other factors, including legal or operational issues, which may require a balancing of various interests. The Office will resolve potential conflicts on a case-by-case basis, carefully balancing the interests of all parties, in an effort to find a suitable compromise. If harmonisation is not possible, the Office will analyse and weigh the rights and interests of all those concerned. Substantial weight will be placed on the child's best interests.⁴¹ In circumstances where the ultimate conclusion is that other considerations outweigh the initial best interests assessment,⁴² the Office will strive to implement appropriate measures to mitigate any negative impact that such a decision may have on the child.
33. Consistent with its commitment to follow a child-sensitive approach, the Office will strive to ensure that its activities do no harm to the children with whom it interacts, particularly victims and witnesses.⁴³
34. There will be increased efforts to ensure that staff members possess the necessary skills, knowledge and sensitivity to fulfil their functions and the mandate of the Office in relation to children. In particular, the Office will continue to train staff in the application of a child-sensitive approach to its work.

⁴¹ See General Comment No. 14, para. 39.

⁴² Office of the UN High Commissioner for Refugees (UNHCR) Guidelines on Determining the Best Interests of the Child ("UNHCR Guidelines"), May 2008, p. 76, for example, states: "The interests of a child can sometimes conflict with the interests of other persons or groups in society. The general principle contained in the CRC provides that the best interests of the child shall be a primary consideration. The Convention does not, however, exclude balancing other considerations, which, if they are rights-based, may in certain rare circumstances override the best interests considerations."

⁴³ On the "do no harm" principle, see, for example, [UNICEF's Humanitarian Principles](#), which explains that "humanitarian organizations must strive to 'do no harm' or to minimize the harm they may be inadvertently doing." See also UNICEF, [Core Commitments for Children in Humanitarian Action](#), May 2010, para. 1.9; UN Office of the High Commissioner for Human Rights, [Manual on Human Rights Monitoring](#), Chapter 2, Basic Principles of Human Rights Monitoring, 2011, p. 4.

III. The Regulatory Framework

35. The consideration of crimes against or affecting children, and the treatment of children in the context of the work of the Office, occur within a prescribed regulatory framework: firstly, the Statute, the Elements of Crimes, and the Rules of Procedure and Evidence shall apply; and secondly, where appropriate, applicable treaties and the principles and rules of international law, including the established principles of the international law of armed conflict, shall apply.⁴⁴ The application and interpretation of law must be consistent with internationally recognised human rights, and be without any adverse distinction with regard to attributes including age and birth.⁴⁵
36. The Statute, the Rules and the Elements contain various provisions which highlight the importance both of the effective investigation and prosecution of crimes against and affecting children, and of the protection of children's rights and interests. In addition, the Office accords particular consideration to pertinent provisions of the Convention on the Rights of the Child and relevant jurisprudence.⁴⁶ Reference also may be made to a range of other international criminal law, humanitarian law and international human rights law sources.⁴⁷
37. Accordingly, the Office will:
- Ensure that it continues to apply and interpret the Statute in line with internationally recognised human rights and other applicable sources of law described in article 21, including those relating to children;

⁴⁴ Article 21(1) of the Statute.

⁴⁵ Article 21(3) of the Statute.

⁴⁶ In addition to the CRC, of particular relevance are two of its Optional Protocols, CRC-OPAC and CRC-OPSC, as well as numerous General Comments and other writings by the UN Committee.

⁴⁷ In addition to the instruments cited in footnotes 8 and 19, the Office may consult: the work of the UN International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda (ICTR), the SCSL, and the Extraordinary Chambers in the Courts of Cambodia (ECCC). Also to be consulted, where appropriate, is the work of regional human rights systems such as those in Africa, the Americas and Europe; international human rights treaty bodies; and UN bodies operating within the aegis of that organisation's children and armed conflict and child protection portfolios.

- Fully utilise the provisions in the regulatory framework to effectively address crimes against or affecting children at all stages of its work;
 - Take steps to understand the significance of attributes like age and birth, and the degree to which they may give rise to multiple forms of discrimination and social inequalities, either alone or as they intersect with other factors, like race, ability or disability; religion or belief; political or other opinion; national, ethnic or social origin; gender, sex, sexual orientation; or other status or identity; and
 - Seek to address any adverse distinction against children on the basis of age, birth or other status, which may arise as a result of the work of the Court.
38. Almost all crimes within the jurisdiction of the Court affect children. Certain provisions in the Statute make explicit reference to children. There are also crimes directed specifically against children or those that disproportionately affect them, some of which are set out below.⁴⁸
- (a) Conscription, enlistment and use of children under the age of fifteen years to participate actively in hostilities*
39. The Statute is the first international criminal law instrument to criminalise the recruitment or use of children in international or non-international armed

⁴⁸ Many of these crimes overlap with the “six grave violations” against children in armed conflict, identified by the UN: killing and maiming of children; recruitment or use of children as soldiers; sexual violence against children; attacks against schools or hospitals; denial of humanitarian access for children; and abduction of children. See Office of the Special Representative of the Secretary-General for Children and Armed Conflict, [Working Paper No. 1, The Six Grave Violations Against Children during Armed Conflict: The Legal Foundation](#), October 2009 (Updated November 2013).

conflicts.⁴⁹ It recognises the reality that children are present, both in armed forces of some states and in non-state armed groups.⁵⁰

40. The Statute prescribes a certain age – fifteen years – below which children shall not be recruited. This is an element of the war crimes of child recruitment and use that fall within the jurisdiction of the Court.⁵¹
41. “Enlistment” means “to enrol on the list of a military body”, while “conscriptio[n]” means “to enlist compulsorily”, for example, by means of abduction.⁵² The element of compulsion necessary for the crime of conscription can be established by demonstrating that the child joined the armed force or group due to, *inter alia*, a legal obligation, brute force, threat of force or psychological pressure amounting to coercion.⁵³
42. In relation to what constitutes “using ... to participate actively in hostilities”, each activity must be considered on a case-by-case basis, and it is necessary to analyse the link between the activity for which the child is used and the combat in which the armed force or group of the perpetrator is engaged.⁵⁴

⁴⁹ With slight variations in wording, these crimes are enumerated in article 8(2)(b)(xxvi), relating to international armed conflicts, and article 8(2)(e)(vii), relating to armed conflicts of a non-international character. See *Prosecutor v. Thomas Lubanga Dyilo*, “Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction” (“*Lubanga Appeals Judgment on Conviction*”), [ICC-01/04-01/06-3121-Red](#), 1 December 2014, para. 276.

⁵⁰ See, for example, “Impact of Armed Conflict on Children”, the study prepared by Graça Machel, the expert appointed by the Secretary-General of the UN, UN Doc. [A/51/306](#), 26 August 1996.

⁵¹ See article 8(2)(b)(xxvi) and article 8(2)(e)(vii) of the Statute. Recruitment or use of children under the age of fifteen years is also prohibited under international humanitarian and human rights law treaties, including article 77(2) of the API, article 4(3)(c) of the APII and article 38(2)-(3) of the CRC. It has been recognised as a crime under customary international law entailing individual criminal responsibility. See *Prosecutor v. Norman*, “Decision on Preliminary Motion Based on Lack of Jurisdiction (Child Recruitment)”, [SCSL-04-14-AR72\(E\)](#), 31 May 2004, para. 51. More recent treaties extend the ban on recruitment and use of children up to age eighteen. See article 22 of the ACRWC; article 1-3 of the ILO Convention No. 182; and article 1, 2, and 4 of the CRC-OPAC.

⁵² *Lubanga Conviction Judgment*, para. 608. The SCSL found abduction to be a particularly egregious form of conscription. *Prosecutor v. Brima et al.* (AFRC case), “Judgement”, [SCSL-04-16-T](#), 20 June 2007, para. 1276.

⁵³ *Lubanga Appeals Judgment on Conviction*, para. 278.

⁵⁴ *Lubanga Appeals Judgment on Conviction*, paras. 5 and 335. The Appeals Chamber made particular

43. Children in armed forces and groups may perform an array of tasks, including those of combatant, sexual slave, cook, porter, spy or scout. The experiences endured may differ on account of a child's sex or gender. The Office recognises that some activities, such as domestic chores, may not be deemed to constitute "us[e] ... to participate actively in hostilities" within the meaning of the Statute.⁵⁵ In such cases, the Office will consider charging and prosecuting such acts pursuant to other provisions of the Statute, for instance, the prohibitions against enslavement, where applicable.

(b) Forcible transfer of children and prevention of birth

44. Article 6(e) of the Statute proscribes the forcible transfer of children from one national, ethnic, racial or religious group to another, which may be committed not only by physical force, but also by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, or by taking advantage of a coercive environment.⁵⁶

reference to commentaries by the International Committee of the Red Cross (ICRC) and preparatory works of the Statute. See Y. Sandoz et al., *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (ICRC, 1987), page 901, para. 3187, and 1998 [Report of the Preparatory Committee on the Establishment of an International Criminal Court: Addendum](#), p. 21, footnote 12. It also clarified that the phrase "participate actively in hostilities" under the Statute should be distinguished from the concept of active/direct participation in the context of the principle of distinction between combatants and civilians, as set out, in particular, in Common Article 3 of the Geneva Conventions. See paras. 323-328.

⁵⁵ The Appeals Chamber indicated that the concept of "use to participate actively in hostilities" within the meaning of the Statute could include active participation in military activities linked to combat such as scouting, spying, sabotage and the use of children as decoys, couriers or at military checkpoints, as well as in a direct support function such as acting as bearers to take supplies to the front line, or activities at the front line itself. *Lubanga Appeals Judgment on Conviction*, para. 334.

⁵⁶ See footnote 5 in the Elements in relation to Element 1 of the crime of genocide by forcibly transferring children.

45. Article 6(d) of the Statute proscribes the imposition of measures aimed at the prevention of births, which may be committed not only by physical actions, but also by threats or other mental trauma.⁵⁷
46. If either act is committed with intent to destroy a national, ethnic, racial or religious group, in whole or in part, it may constitute genocide.

(c) Trafficking of children as a form of enslavement

47. Article 7 of the Statute defines certain acts as crimes against humanity when “committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack”.
48. An explicit reference to children is included in article 7(2)(c), which defines enslavement as a crime against humanity under article 7(1)(c) as: “the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children”.⁵⁸ As recognised in the Elements, article 7(1)(c) may also cover instances in which children are subjected to forced labour or reduced to a servile status.⁵⁹

⁵⁷ See ICTR, *Prosecutor v. Jean-Paul Akayesu*, “Judgement”, [ICTR-96-4-T](#), 2 September 1998, paras. 508-09, which states that: “measures intended to prevent births within the group may be physical, but can also be mental”, and adds that “[w]ith respect to forcibly transferring children of the group to another group, the Chamber is of the opinion that, as in the case of measures intended to prevent births, the objective is not only to sanction a direct act of forcible physical transfer, but also to sanction acts of threats or trauma which would lead to the forcible transfer of children from one group to another”.

⁵⁸ This definition is repeated in the Elements, which state, in footnote 11 to this provision: “It is also understood that the conduct described in this element includes trafficking in persons, in particular women and children.” This footnote cites the 1956 Anti-Slavery Convention. Article 1(d) of that treaty calls for the abolition, *inter alia*, of “[a]ny institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour.” Other treaties that may prove useful in the interpretation of this aspect of article 7 of the Statute include the 2000 [Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime](#) and the 2000 CRC-OPSC.

⁵⁹ One of the elements relating to article 7(1)(c) under the Elements is: “The perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing,

(d) Attacks against buildings dedicated to education and health care

49. Among the war crimes that may have a disproportionate effect on children are attacks on buildings dedicated to education and health care, as enumerated in article 8(2)(b)(ix) and article 8(2)(e)(iv) of the Statute, when committed in the context of an armed conflict. Such attacks contribute to the multi-layered effect on the lives of children, and deprive them of the basic right to life, survival and development.⁶⁰

(e) Torture and related crimes

50. Under article 7(1)(f) as well as article 8(2)(a)(ii) and 8(2)(c)(i) of the Statute, torture may constitute a crime against humanity or a war crime in either international or non-international armed conflict.⁶¹ The Statute also proscribes other related crimes, for example, other inhumane acts as a crime against humanity (article 7(1)(k)),⁶² and inhuman treatment (article 8(2)(a)(ii)),⁶³ cruel treatment (article 8(2)(c)(i))⁶⁴ and wilfully causing great

selling, lending, or bartering such a person or persons, or by imposing on them a similar deprivation of liberty.” Footnote 11 to this element clarifies in relevant part: “It is understood that such deprivation of liberty may, in some circumstances, include exacting forced labour or otherwise reducing a person to a servile status as defined in the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956.”

⁶⁰ Such attacks are clearly prohibited under international humanitarian law. See articles 27 and 56 of the [Regulations Respecting the Laws and Customs of War on Land, annexed to The Hague Convention of 18 October 1907 Respecting the Laws and Customs of War on Land \(Convention No. IV\)](#) (“The Hague Regulations”). See also Office of the Special Representative of the Secretary-General for Children and Armed Conflict, [Guidance Note on Attacks against schools and hospitals](#), 2014.

⁶¹ Article 7(2)(e) states: “‘Torture’ means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions.” The Elements of the war crime of torture under article 8(2)(a)(ii) and 8(2)(c)(i) additionally requires the pain or suffering to have been inflicted “for such purposes as: obtaining information or a confession, punishment, intimidation or coercion or for any reason based on discrimination of any kind”. See also article 37(a) of the CRC.

⁶² See the Elements in relation to the crime against humanity of other inhumane acts, which requires infliction of “great suffering, or serious injury to body or to mental or physical health”.

⁶³ See the Elements in relation to the war crime of inhuman treatment, which requires infliction of

suffering (article 8(2)(a)(iii))⁶⁵ as war crimes. The Office recognises that, owing to their physical and emotional development and their specific needs, treatment, potentially amounting to torture and related crimes, may cause greater pain and suffering to children than to adults. It will bear this in mind when considering whether such treatment against children may amount to a crime under the Statute.⁶⁶

(f) *Persecution*

51. Article 7(1)(h) of the Statute also criminalises “[p]ersecution against any identifiable group or collectivity” on several specified grounds as well as “other grounds that are universally recognized as impermissible under international law”. The Office considers that, in light of article 21(3), acts targeting children on the basis of age or birth may be charged as persecution on “other grounds”. It recognises that children may also be persecuted on intersecting grounds, such as ethnicity, religion and gender.

(g) *Sexual and gender-based crimes*

52. Under articles 7(1)(g) as well as 8(2)(b)(xxii) and 8(2)(e)(vi) of the Statute, rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation and other forms of sexual violence may constitute crimes against humanity or war crimes in either international or non-international armed conflict.⁶⁷ In the Elements, in relation to sexual slavery, specific reference is

“severe physical or mental pain or suffering”.

⁶⁴ See the Elements in relation to the war crime of cruel treatment, which requires infliction of “severe physical or mental pain or suffering”.

⁶⁵ See the Elements in relation to the war crime of wilfully causing great suffering, which requires infliction of “great suffering, or serious injury to body or to mental or physical health”.

⁶⁶ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, UN Doc. [A/HRC/28/68](#), 5 March 2015, para. 33.

⁶⁷ Another type of sexual and gender-based crimes that the Office may prosecute is forced marriage as an “other inhumane act”, a crime against humanity under article 7(1)(k). See *Prosecutor v. Dominic Ongwen*, “Decision on the confirmation of charges against Dominic Ongwen”, [ICC-02/04-01/15-422-Red](#), 23 March 2016, paras. 87-95; SCSL, *Prosecutor v. Sesay, Kallon and Gbao*, Appeal Judgment, [SCSL-04-15-A](#), 26 October 2009, para. 735; ECCC, “Closing Order” (Indictment) in Case 002, [D427](#), 15 September 2010, paras. 1442-1443.

made to “trafficking in persons, in particular women and children”. The Office pays particular attention to the gender-specific impact on, harm caused to, and suffering of children affected by these crimes.⁶⁸

IV. Preliminary Examinations

53. In accordance with the Statute and its Policy on Preliminary Examinations,⁶⁹ the Office conducts a preliminary examination of all situations that fall within the jurisdiction of the Court in order to determine whether there is a reasonable basis to open an investigation.⁷⁰ A preliminary examination of a situation may be initiated at the discretion of the Prosecutor based on: (i) information on crimes within the jurisdiction of the Court provided by reliable sources, including children or their representatives; (ii) a referral from a State Party or the United Nations Security Council; or (iii) a declaration accepting the exercise of jurisdiction by the Court, lodged by a State which is not a Party to the Statute.⁷¹ The Office pays particular attention to information received on crimes against or affecting children.
54. During a preliminary examination of a situation, the Office analyses information on crimes potentially falling within its jurisdiction. In so doing, the Office also examines the general context within which the alleged crimes against or affecting children have occurred, and assesses the existence of local institutions and expertise, international organisations, non-governmental organisations and other entities as potential sources of information and/or support for victims. The Office may seek the assistance of such entities if an investigation is opened at a later stage.
55. Article 53(1)(a)-(c) of the Statute requires that the Office consider three factors when determining whether to open an investigation into a situation:

⁶⁸ The approach of the Office to issues relating to these crimes is detailed in the [Policy Paper on Sexual and Gender-Based Crimes](#) (ICC-OTP 2014).

⁶⁹ [Policy Paper on Preliminary Examinations](#) (ICC-OTP 2013).

⁷⁰ Article 53(1) of the Statute.

⁷¹ Articles 12-15 of the Statute and regulation 25 of the [Regulations of the Office](#).

jurisdiction (temporal,⁷² subject matter⁷³ and either territorial or personal jurisdiction⁷⁴); admissibility (complementarity and gravity); and the interests of justice.⁷⁵

56. In accordance with the principle of complementarity, States maintain the primary responsibility for investigating and prosecuting the crimes under the jurisdiction of the Court.⁷⁶ The Office may proceed with a case only if a State is inactive or otherwise unable or unwilling to carry out genuine investigations or prosecutions of such crimes.
57. In determining the gravity of potential cases, the Office assesses the scale, nature and manner of the commission of the crimes as well as their impact on victims and communities.⁷⁷ In general, the Office will regard crimes against or affecting children as particularly grave, given the commitment made to children in the Statute, and the fact that children enjoy special recognition and protection under international law.
58. The experience of suffering or witnessing serious crimes is horrific, and the impact on children is especially devastating.⁷⁸ Such experiences impede their

⁷² According to article 11(1) and (2) of the Statute, alleged crimes must have been committed after the entry into force of the Statute on 1 July 2002 or, in the event that a State becomes a Party to the Statute after 1 July 2002, after the entry into force of the Statute for that State unless that State has made a declaration under article 12(3).

⁷³ Under article 5 of the Statute, alleged crimes must constitute genocide, crimes against humanity or war crimes, as defined in the Statute. The Court may exercise jurisdiction over the crime of aggression one year after the thirtieth ratification of the relevant amendment to the Statute adopted at the Kampala Review Conference (2010), and a further vote of the Assembly of States Parties (ASP), after 1 January 2017: See ASP [Resolution RC/Res.6](#) (28 June 2010) and articles 15 *bis* and 15 *ter* of the Statute.

⁷⁴ According to article 12 of the Statute, except where the situation has been referred by the UN Security Council, the Court may only exercise jurisdiction with respect to crimes committed on the territory of a State Party or a State that has accepted the jurisdiction of the Court, or by a national of such States.

⁷⁵ [Policy Paper on Preliminary Examinations](#), paras. 34-71.

⁷⁶ Preamble to the Statute, para. 6.

⁷⁷ Regulation 29(2) of the [Regulations of the Office](#).

⁷⁸ This devastation thwarts what the Inter-American Court of Human Rights has called a child's "life plan". According to the Court, "the concept of 'life plan' is akin to the concept of personal fulfillment, which in turn is based on the options that an individual may have for leading his life and achieving the goal that he sets for himself." See the Inter-American Court of Human Rights, *Case of Loayza Tamayo vs.*

development and ability to reach their true potential, as, for example, in the case of killings, mutilation, child recruitment or use, torture, enslavement, forcible transfer, attacks against buildings dedicated to education and health care, pillaging and sexual and gender-based crimes affecting children. There is also serious harm caused to children's families and communities, extending to future generations. The effect of the loss of parents, caregivers or other family members on children is also extremely severe. The Office will ensure that an assessment of the impact of the alleged crimes on children is incorporated into its analysis of the gravity of potential cases.⁷⁹

59. The Office must consider whether, taking into account all the circumstances, including the gravity of the crime and the interests of victims, there are substantial reasons to believe an investigation would not serve the interests of justice.⁸⁰ In light of the mandate of the Office and the object and purpose of the Statute, there is a strong presumption that investigations and prosecutions of crimes against or affecting children are in the interests of justice.⁸¹
60. The Office will seek to encourage, where feasible, genuine national proceedings in relation to potential cases involving crimes against or affecting children that fall within the jurisdiction of the Court.
61. The Office will seek to react promptly to upsurges of violence, which may give rise to crimes against and affecting children. It will engage with States and international and non-governmental organisations at an early stage in order to verify information on alleged crimes, to encourage genuine national proceedings and to prevent the recurrence of crimes.

Peru, [Judgment on reparations and costs](#), November 27, 1998, Series C, N° 42, para. 148.

⁷⁹ [Policy Paper on Preliminary Examinations](#), para. 65.

⁸⁰ Article 53(1)(c) of the Statute. If the Prosecutor determines that there is no reasonable basis to proceed with an investigation solely on these grounds, she will inform the Pre-Trial Chamber.

⁸¹ [Policy Paper on Preliminary Examinations](#), para. 71.

V. Investigations

62. From the initial stage of an investigation, the Office will carefully consider crimes against or affecting children, and will proactively include specific lines of inquiry to determine whether such crimes were committed in the situations under investigation.⁸²
63. The first direct interaction of the Office with children will generally occur at the investigation stage. Within their functions and responsibilities, staff involved in the investigation will apply a child-sensitive approach,⁸³ and will ensure that particular consideration is given to crimes against or affecting children throughout the investigation.
64. Investigations of international crimes present various challenges. These include seeking the cooperation of individuals to engage with the Office and protecting their safety, physical and psychological well-being, dignity and privacy. When investigations involve children, there are added complexities with regard to these issues. The determination or assessment of age, when this is essential to prove a crime, presents its own unique challenges. The Office will explore specific means to address these issues, always having in mind the best interests of the child.
65. Networks are crucial for effective investigations. They also assist in addressing the challenges faced when investigations involve children. The establishment of contacts and networks within the community will be prioritised, to the extent possible, to support the operational activities of the Office. In doing so, the Office will consider the information obtained during the preliminary examination stage relating to local communities and the existence of civil society organisations. It will also assess the capacity, expertise and availability of local entities as potential sources of support for children, bearing in mind that the nature of support services needed and the availability of or access thereto may differ significantly between boys and girls, and between young children and adolescents. In the absence of local

⁸² Regulation 34 of the [Regulations of the Office](#).

⁸³ This approach is set forth in Part II.

support, the Office will assess the need for the Court to provide the necessary assistance.⁸⁴

66. The Office will seek and consider the views of children and their parents or caregivers on matters affecting them, as appropriate, in the course of its investigations.⁸⁵ These views will be given due weight, taking into account the age, maturity and other attributes, as well as the personal circumstances of the child concerned. The Office will take reasonable steps to ensure that all relevant information is given to children and their parents or caregivers in a manner and language that is clear and that all are able to understand, so as to enable them to make an informed decision.⁸⁶ Such information will include, for example, an explanation of the entire process, the available support and possible risks, such as the scope and impact of disclosure.
67. If the Office seeks to engage with a child who does not appear to have a parent or caregiver, it will consider appropriate options to safeguard the interests of the child.
68. The Office recognises that children are capable of giving credible evidence. In its deliberations on whether to interview or take evidence from a child, careful consideration will be given to his or her age, development, level of maturity, capabilities and vulnerabilities. In making a decision, the Office will consider the availability of alternate forms of evidence, including adult witnesses, physical and documentary items, and scientific or other expert evidence.
69. If scientific or other expert evidence involving the examination of a child is necessary, the Office will explain the procedure, its importance and any potential risks to the child and his or her parents or caregivers in a manner and language that is clear and that all are able to understand. It will give due regard to the views of the child in accordance with his or her age and

⁸⁴ The Office will consult with the VWS, as necessary.

⁸⁵ Examples of such matters include location, scheduling and duration of screenings and interviews, or the profile of interpreters and interviewers.

⁸⁶ See [Guidance Note of the Secretary-General – UN Approach to Justice for Children](#), September 2008, p. 3.

maturity, and if a decision is made to proceed with the collection of the evidence, the Office will seek the voluntary and informed consent of the child's parents or caregivers.

70. During any such examination, including where it is necessary to assess a child's age,⁸⁷ the Office will ensure that any procedures taken will follow the least intrusive methods, which uphold the dignity and physical integrity of the child, and are gender-sensitive and culturally appropriate.

(a) Initial contact and interviews with children

71. Consistent with its commitment to follow a child-sensitive approach, the Office will undertake its initial contact with children with particular care and planning. There will also be careful preparation for the screening⁸⁸ and interviewing of child victims and witnesses. The situation-specific briefing will include guidance on how to work sensitively with children in the particular region or community.⁸⁹ The implications that these factors may have on field operations will be considered. The Office will, where possible, consult with organisations and individuals with relevant expertise.
72. Whenever possible and appropriate, the initial contact with a child may be facilitated through persons who have already established a relationship of trust with that child, including persons with similar experience.
73. Intermediaries will be used after careful consideration and only if determined to be strictly necessary. Their role will be limited to specific,

⁸⁷ For example, articles 8(2)(b)(xxvi) and 8(2)(e)(vii) of the Statute refer to children under fifteen, while the Elements state that article 6(e) of the Statute applies to anyone under eighteen. It is not always possible to obtain an accurate or authentic record of a child's age, particularly in countries where births are not registered or records and other documentation are not reliably kept or are destroyed. The age assessment will be conducted by a combination of methods, including collection of school and medical records; statements from family members, community leaders and teachers; photographic or video images; and medical methods, as appropriate.

⁸⁸ "Screening" is a preliminary assessment of whether the individual might possess relevant information and would be willing to cooperate with the Office.

⁸⁹ War Crimes Studies Center, University of California, Berkeley, [Child Witnesses at the Special Court for Sierra Leone](#), March 2006, p. 20.

clearly defined tasks, and their performance continuously monitored and evaluated, in line with established practices and the Court-wide Guidelines Governing the Relations between the Court and Intermediaries.⁹⁰ If the Office decides to engage the services of intermediaries to approach potential child witnesses, it will endeavour to select people who have experience working with those potential child witnesses.

74. When interacting with a child for the purpose of conducting investigative activities, and in particular before proceeding with an interview, the Office will dedicate time and effort towards establishing a relationship of trust and respect, to the extent possible, without exposing the child to undue risks or disproportionately affecting his or her life. The Office will reassure the child, particularly one believed to have been involved in crimes while a child, that he or she will not be prosecuted by the Office.⁹¹ In general, the Office will not share any incriminatory information with any domestic authorities.⁹²
75. The Office will seek to avoid exposing children to risks, including of re-traumatisation, and causing undue disruptions to their lives as a result of their cooperation with the Office. A means of addressing this will be to limit the number of interviews with them.
76. Interviews of children will be video- and audio-recorded,⁹³ unless exceptional circumstances require otherwise. Consideration may be given to introducing the recording as evidence at a later stage.⁹⁴ The team will also consider whether the circumstances indicate a “unique investigative opportunity” to take testimony or a statement from a witness.⁹⁵
77. The Office recognises the importance of considering diversity, local knowledge and relevant experience when working with children. All

⁹⁰ [Guidelines Governing the Relations between the Court and Intermediaries for the Organs and Units of the Court and Counsel working with intermediaries](#), March 2014.

⁹¹ Article 26 of the Statute.

⁹² See requirements of article 93(10) and rule 194.

⁹³ Rule 112(4) of the Rules.

⁹⁴ Rule 68 of the Rules.

⁹⁵ Article 56 of the Statute.

interviews with children will be conducted by staff members with expertise in interviewing and interacting with children, seeking the support of external experts if and when required. In order to build trust and minimise feelings of anxiety and intimidation, the Office will seek to maintain continuity and to limit the number of staff interacting with a child.

(b) Psycho-social assessment

78. All potential child witnesses will undergo psycho-social assessments, after the necessary permissions are obtained. The purpose of this assessment is to determine whether the child is capable of being interviewed without undue negative physical or psychological impact. Other witnesses, such as those who were victimised as children, may also undergo such assessments.
79. Psycho-social assessments shall be conducted by trained and certified psychologists and/or psychotherapists with the relevant experience.
80. The decision to proceed with an interview will be informed by the best interests of the child, the views of the child and his or her parents or caregivers, as well as the psycho-social and security assessments, and the relevance of the evidence. The expert may be present, if required, during the interview itself in order to advise and support the child and the interview team. An accompanying person may also provide support to the witness, as requested. Child witnesses will be informed of the possibility of having such a person with them.

(c) Protection measures

81. Article 68(1) of the Statute is central to the protection of victims and witnesses throughout the proceedings, and is binding on all organs of the Court.
82. Based on psycho-social and security risk assessment, appropriate measures will be requested, or taken, to protect the safety, physical and psychological well-being, dignity and privacy of the children concerned, and other persons

at risk on account of their interactions with the Office.⁹⁶ The Office will collaborate with the Victims and Witnesses Section (“VWS”) of the Registry, as appropriate. Possible measures and any consequences to the child concerned and his or her parents or caregivers will be explained in a manner and language that is clear and that all are able to understand. Mindful of the disruptions which may be caused to the lives of children, referral to the VWS for relocation or resettlement,⁹⁷ within the ICC Protection Program, will be considered as a measure of last resort, where no other measures would mitigate an identified risk.

VI. Prosecutions

83. The Office policy is to investigate and prosecute those most responsible for crimes that fall under the Court’s jurisdiction.⁹⁸ In certain circumstances, the Office will investigate and prosecute a limited number of mid- and high-level perpetrators in order to ultimately have a reasonable prospect of conviction for the most responsible.⁹⁹ The Office will also consider prosecuting lower-level perpetrators, including persons believed responsible for crimes against or affecting children, where their conduct was particularly grave and acquired extensive notoriety.¹⁰⁰ In accordance with article 26 of the Statute, the Office shall not prosecute anyone who was, at the time of the alleged commission of a crime, “under the age of 18”.¹⁰¹

(a) Selection of charges

84. The Office will make full use of the regulatory framework to address the various ways that children are affected by crimes within the jurisdiction of

⁹⁶ Articles 54(1)(b) and 68(1) of the Statute.

⁹⁷ Relocation is a measure by which the VWS moves a person to a safe location outside the country of residence, while resettlement refers to a move to another location within the same country.

⁹⁸ [Policy Paper on Preliminary Examinations](#), para. 103.

⁹⁹ [Strategic Plan 2016-2018](#), paras. 35-36. See also [Strategic Plan, June 2012-2015](#), para. 22.

¹⁰⁰ *Ibid.*

¹⁰¹ Article 26 of the Statute.

the Court.¹⁰² It is committed to strengthening the accountability for such crimes, thereby contributing to their prevention, and also to the development of jurisprudence in this regard.

85. The Office recognises that children are particularly vulnerable to being conscripted or enlisted into armed forces or groups or used to participate actively in hostilities. The Statute confers upon the Court jurisdiction over these crimes, whenever the child is under the age of fifteen years. Wherever the evidence permits, the Office will seek to include such charges,¹⁰³ as well as charges for other crimes directed specifically against children, for example, by forcibly transferring children of one group to another as an act of genocide¹⁰⁴ and trafficking in children as a form of enslavement or sexual slavery.¹⁰⁵
86. In addition, children may be acutely or disproportionately affected by other crimes within the jurisdiction of the Court, including killings, mutilation, torture, enslavement, forcible transfer, attacks against buildings dedicated to health care and education, pillaging, destruction of property, and sexual and gender-based crimes. Some of those crimes may be committed against children by members of the very armed forces or groups into which they are recruited.¹⁰⁶
87. Education is critical for the development of children and the community as a whole. Crimes such as attacks on educational facilities, child recruitment or use, or rape resulting in pregnancy deprive children of the opportunity to gain an education.¹⁰⁷

¹⁰² This regulatory framework is detailed in Part III.

¹⁰³ Articles 8(2)(b)(xxvi) and 8(2)(e)(vii) of the Statute.

¹⁰⁴ Article 6(e) of the Statute.

¹⁰⁵ Articles 7(1)(c), 7(1)(g), 8(2)(b)(xxii) and 8(2)(e)(vi).

¹⁰⁶ See, for example: *Prosecutor v. Joseph Kony*, "Warrant of arrest for Joseph Kony issued on 8 July 2005 as amended on 27 September 2005", [ICC-02/04-01/05-53](#), 27 September 2005, para. 5; *Lubanga Conviction Judgment*, para. 16; 32; 890-896; *Prosecutor v. Bosco Ntaganda*, "Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Bosco Ntaganda", [ICC-01/04-02/06-309](#), 9 June 2014, paras. 81-82; *Prosecutor v. Charles Ghankay Taylor*, "Judgement", [SCSL-03-01-T-1283](#), 18 May 2012, paras. 871-1207.

¹⁰⁷ See, for example, Paris Principles, Principle 6.26, which provides: "Education provides opportunities

88. In order to capture the totality of the violence perpetrated against children, and to highlight the unique experiences of children, the Office will consider appropriate charges wherever the evidence permits.

(b) Interactions with children

89. In the process of selecting witnesses to testify, the Office will bear in mind the attributes a child may possess, including his or her vulnerabilities, capabilities and resilience, as well as the relevance of the evidence the child can provide. It will take into account considerations relating to any psycho-social and security assessments, as well as any possible healing effect which may be associated with providing evidence. The Office recognises that certain child witnesses may want to testify in support of judicial proceedings, and may regard testimony as a component of their own recovery process. The Office will give careful consideration to whether taking evidence will be of benefit or harm to a child. Engagement with children will be conducted by staff members with expertise relating to vulnerable witnesses, including children.
90. The Office commits to maintaining contact with child witnesses in order to keep them informed of developments in the case, and also to listen to their views and any concerns. Appropriate measures will be taken to facilitate their contact with the Office.

(i) Pre-testimony

91. The Office considers that witness familiarisation ¹⁰⁸ is essential to

to learn and, when effective, gives children the skills and competence to meet their needs, protect themselves and build hope for the future.”

¹⁰⁸ Witness familiarisation falls under the mandate of the VWS of the Registry, which is responsible, in consultation with the Office, for the provision of protective measures, counselling, and other appropriate assistance for witnesses, victims who appear before the Court, and others who are at risk on account of testimony given by such witnesses. The process involves, *inter alia*, the VWS allowing the witness to review his or her prior written statements, recordings and/or transcripts of interview; facilitating a courtesy meeting between relevant counsel and the witness; and showing the witness the

safeguarding the well-being of witnesses. In the case of vulnerable persons, including child witnesses, the familiarisation process is intended to prepare them for testimony and reduce anxiety and the risk for re-traumatisation, which can enhance a person's confidence to discuss sensitive information in court. The Office will support the VWS and will participate in this process, as appropriate.

92. The Office will seek approval from Chambers to conduct witness preparation before a witness testifies at trial, particularly when the witness is a child.¹⁰⁹ Witness preparation is conducted by the party calling the witness for the purposes both of assisting the witness who will be giving evidence, and of assessing and clarifying the evidence of that witness, in an effort to facilitate the focused, efficient and effective questioning of the witness during the proceedings.¹¹⁰

(ii) *In-court measures*

93. The Office will devote particular attention to the questioning of child victims and witnesses, and will take steps to prevent harassment or intimidation in court.¹¹¹
94. The Office recognises that the experience of testifying in court may be stressful or re-traumatising for some children. Accordingly, to ensure the well-being of such children, and to give them the opportunity to testify in a less intimidating setting, the Office will, whenever it deems it necessary, request the Chamber to order special measures for their testimony. These measures may include holding parts of the proceedings *in camera* and allowing the child to be accompanied by a support person, such as a psychologist, family member or other trusted person; adapting the

courtroom and explaining the proceedings.

¹⁰⁹ This process will be carefully conducted in accordance with any protocols that may be issued by the Chamber, as well as the Office's internal guidelines, in order to ensure that the fairness and integrity of the proceedings are not compromised in any manner.

¹¹⁰ *Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, Witness Preparation Protocol, [ICC-01/09-01/11-524-Anx](#), 7 February 2013, para. 1.

¹¹¹ Rule 88(5) of the Rules.

courtroom to the needs of the child; providing in-court assistance, including monitoring of the witness in-court by the VWS psychologist; adapting the manner of questioning to the needs of the person and his or her capacity to appear before the Court.¹¹² In doing so, the Office will collaborate with the VWS.¹¹³

95. In addition, best practice guidelines indicate that direct contact, confrontation or interaction between a child victim or witness and the alleged perpetrator should be avoided, unless the child requests otherwise.¹¹⁴ Accordingly, the Office will consider whether there is a need to request that the Trial Chamber allows the child witness to testify via video link or from behind a screen, or that the accused be absent from the courtroom for the duration of the child's testimony. The Office may also request that video or audio recordings of interviews with children be introduced pursuant to rule 68.¹¹⁵

(iii) Post-testimony follow-up and communication

96. The Office maintains contact with children post-testimony in order to keep them informed of the developments in the case, including sentence and reparations orders, and to listen to their views and concerns.
97. The Office will take into account the post-testimony assessments conducted by the VWS when analysing the overall impact of testimony on child witnesses. The Office will be responsive to issues of safety or physical and psychological well-being that are related to its interaction with such witnesses.

¹¹² Rules 87 and 88 of the Rules and regulation 94 *bis* of the [Regulations of the Registry](#).

¹¹³ Article 43(6) and article 68(4) of the Statute.

¹¹⁴ See, for example, CoE Guidelines, p. 31, para. 68; United Nations Office on Drugs and Crime, [Justice in Matters involving Child Victims and Witnesses of Crime: Model Law and Related Commentary](#), 2009, p. 54-57.

¹¹⁵ Articles 68(2) and 69(2) of the Statute, and rule 68 of the Rules.

(c) Evidence

98. Some children may find a solemn undertaking difficult to understand, even when they are fully capable of understanding the questions put to them and answering truthfully. Where appropriate, the Office will request that the Chamber allow a child witness to testify without a solemn undertaking, provided that the Chamber is satisfied that the child is able to describe matters of which he or she has knowledge and understands the meaning of the duty to speak the truth.¹¹⁶
99. Where the Office considers that the testimony of a witness may raise issues with respect to self-incrimination, it will request a closed hearing to advise the Chamber of this concern before the testimony is given.¹¹⁷ The Office may also apply to have the relevant portions of such testimony heard in closed session.¹¹⁸ The Office will, as appropriate, also oppose any incoming request to the Court from national authorities to obtain a copy of such testimony.¹¹⁹
100. The Office will consider consulting with experts and adducing expert testimony on aspects related to children. Such testimony could include, for example: the manner in which children may recall traumatic events; the prevalence of crimes against or affecting children; the multi-generational and multi-layered impact of such crimes on children; and the physical, psychological and socio-economic impact that international crimes may have on them.

(d) Sentencing

101. In its submissions on sentencing, the Office will pay close attention to crimes against or affecting children, and will request a sentence which adequately reflects the seriousness of the crimes against this vulnerable group.¹²⁰

¹¹⁶ Rule 66(2) of the Rules.

¹¹⁷ Rule 74(8) of the Rules.

¹¹⁸ Rule 87(3)(e) of the Rules.

¹¹⁹ See requirements of article 93(10) of the Statute and rule 194 of the Rules.

¹²⁰ The Statute provides for a range of sentences which can be imposed by a Trial Chamber after a person is convicted. Pursuant to article 77(1) of the Statute, a Trial Chamber may order that the person

102. When determining an appropriate sentence to recommend, factors such as the gravity of the crime and the individual circumstances of the convicted person need to be considered.¹²¹ The Office generally takes the position that crimes against or affecting children should be seen as particularly grave for the purpose of sentencing, given the specific rights and protection that children enjoy under international law.¹²²
103. The Office will adduce evidence in support of its submissions for appropriate sentences for crimes against or affecting children, taking into account the immediate and long-term harms caused to children, their families and communities. Where appropriate, the Office will adduce evidence on the impact of such crimes, for example, by way of victim or expert testimony and written statements.¹²³
104. The Office will take into consideration the particular gravity of crimes against or affecting children in its decisions regarding appeal.

(e) *Reparations*

105. Following a conviction, the Trial Chamber may order the convicted person to

be imprisoned for up to 30 years or may impose a sentence of life imprisonment, when justified by the extreme gravity of the crime and the individual circumstances of the convicted person. Additional sentences may include a fine or forfeiture of property under article 77(2).

¹²¹ Article 78(1) of the Statute. Rule 145(1) and (2) also list several factors to be considered in the determination of the sentence, including aggravating and mitigating circumstances. See also *Prosecutor v. Thomas Lubanga Dyilo*, “Decision on Sentence pursuant to Article 76 of the Statute”, [ICC-01/04-01/06-2901](#), 10 July 2012, para. 23, 25-26, 36; *Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the appeals of the Prosecutor and Mr Thomas Lubanga Dyilo against the “Decision on Sentence pursuant to Article 76 of the Statute”, [ICC-01/04-01/06-3122](#), 1 December 2014, para. 32-34.

¹²² In the *Katanga* sentencing judgment, the fact that thirteen children, including eleven under the age of six years, were among the victims of murder added to the gravity of the crime. See *Prosecutor v. Germain Katanga*, “Decision on Sentence pursuant to article 76 of the Statute”, [ICC-01/04-01/07-3484-tENG-Corr](#), 23 May 2014, para. 47.

¹²³ See, for example, the testimony of Dr Daryn Reincherter, an expert on the “longitudinal and intergenerational impact of mass sexual violence”, at the sentencing hearing in the case of *Prosecutor v. Jean-Pierre Bemba Gombo*, [ICC-01/05-01/08-T-368-ENG](#), 16 May 2016, pp. 70-116.

provide reparations to the victims of the crimes for which the person was convicted.¹²⁴ The Statute does not confer any role on the Prosecutor during this stage of proceedings. However, the Chamber may invite observations from the Office.¹²⁵

106. The Office supports a child-sensitive approach to reparations, taking into account the differentiated effects and the harms caused to boys and girls by the crimes for which an individual was convicted, as well as their right to reintegration into their communities.¹²⁶ The Office also supports consultation with the victims, including children, in order to determine the most effective, appropriate and gender-sensitive forms of reparation within a particular community. This approach is intended to promote reparations that are transformative in nature and that contribute to the best interests of children.
107. The Office will, in framing any submissions, bear in mind that individual reparations awards, including non-monetary awards such as apologies, may enhance a child's sense of justice.¹²⁷ At the same time, collective reparations, such as commemorations or the (re)construction of schools or health care facilities, may promote community reconciliation and provide the greatest benefit to groups of victims.¹²⁸

¹²⁴ *Prosecutor v. Thomas Lubanga Dyilo*, "Judgment on the appeals against the 'Decision establishing the principles and procedures to be applied to reparations' of 7 August 2012 with AMENDED order for reparations (Annex A) and public annexes 1 and 2", [ICC-01/04-01/06-3129](#), 3 March 2015, para. 211. See also rule 85(a) of the Rules and regulation 46 of the [Regulations of the Trust Fund for Victims](#).

¹²⁵ *Prosecutor v. Thomas Lubanga Dyilo*, "Scheduling order concerning timetable for sentencing and reparations", [ICC-01/04-01/06-2844](#), 14 March 2012, para. 8; and *Prosecutor v. Germain Katanga*, "Order instructing the parties and participants to file observations in respect of the reparations proceedings", [ICC-01/04-01/07-3532-tENG](#), 1 April 2015, paras. 10, 12 and 15. In the *Lubanga* case, the Prosecution has also been invited to provide observations to the Trust Fund of Victims' draft implementation plan on reparations. See *Prosecutor v. Thomas Lubanga Dyilo*, "Order fixing the schedule for the submission of observations on the draft implementation plan submitted by the Trust Fund for Victims", [ICC-01/04-01/06-3179-tENG](#), 12 November 2015, paras. 5-6 referring to Amended order for reparations, [ICC-01/04-01/06-3129-AnxA](#), 3 March 2015, para. 77.

¹²⁶ See Paris Principles, Principles 3.0-3.3, 4.0-4.3; see also Nairobi Declaration.

¹²⁷ See, for example, *Prosecutor v. Thomas Lubanga Dyilo*, "Prosecution's Submissions on the principles and procedures to be applied in reparations", [ICC-01/04-01/06-2867](#), 18 April 2012, paras. 9-13.

¹²⁸ *Ibid.*, paras. 14-15.

VII. Cooperation and External Relations

108. Together with complementarity, cooperation is a fundamental component of the Rome Statute system. Effective cooperation is crucial to the Office and the Court in carrying out their mandate.
109. The Office will continue its efforts to enhance cooperation and support for its activities, in particular in relation to children, and to promote a child-sensitive approach with respect to international criminal justice. It will actively engage with States, international and local organisations and other stakeholders in order to improve the effectiveness of actions with respect to crimes against or affecting children. A concerted effort will be made to ensure meaningful cooperation with States, international organisations and relevant entities in order to obtain support for the Office's work regarding children, particularly in countries in which it carries out its activities. Steps taken will include the development of networks.
110. The work of the Office may serve as a reference for national jurisdictions and other actors addressing crimes against or affecting children committed in all contexts, in particular during an armed conflict. The Office will also draw from the experiences of national authorities that have developed best practices in this regard.
111. Often prior to the Court's engagement in a situation, early responders, such as United Nations bodies, peacekeeping and humanitarian personnel, non-governmental organisations and the media, deploy into areas where international crimes, including those against or affecting children, have been committed. Many undertake collection of material and documentation, or provide immediate support and assistance to children.
112. While respecting each other's mandates and independence, the Office will seek to support the work of and strengthen cooperation with relevant actors. It recognises the sensitivities that might be linked to the work and mandate of the Court and different actors. The Office will therefore continue to consult on how best to facilitate and enhance cooperation.

113. The Office also recognises the roles that civil society, including international and local non-governmental organisations and academia, plays in supporting its work. These roles include: drawing attention to crimes affecting children; promoting accountability for crimes against or affecting children; campaigning for children's rights; and highlighting situations in which human rights, including children's human rights, are violated on a massive scale.
114. Within the framework of its broader external relations strategy, the Office will also work to strengthen its ties with child protection actors and other entities working in the area of children. In particular, it will promote respect for children's rights, and seek support for its work in relation to children. In accordance with the principle of positive complementarity, and in an effort to close the impunity gap, the Office will continue to encourage and support national efforts to hold persons accountable for crimes against or affecting children. It will promote the integration of mechanisms that recognise the rights, vulnerabilities, capabilities and attributes of children, particularly in judicial processes.
115. The Office will, in its public information activities, foster a broad and proactive approach to raising awareness of the experiences of children affected by international crimes. It will apply a child-sensitive approach to its public information activities, which seek to increase awareness, as well as the impact of its work. Special attention will be given to initiating and utilising public information opportunities, including Office and Court events, in order to draw attention to the rights and best interests of children in the context of international crimes. The Office will seize opportunities to maximise media coverage by, for example, discussing aspects of this Policy in interviews.
116. It is important that children understand and be given the opportunity to express their views on the work of the Office and the Court. The Registry is responsible for and leads the planning and implementation of outreach activities, in coordination with other organs of the Court. The Office will support the Registry and external partners in such activities, including when they concern children. It will take steps to disseminate to children

information about its work, including this Policy, in a format that children can understand.

VIII. Institutional Development

117. The Office will seek to ensure that it has the necessary institutional capacity to conduct preliminary examinations, investigations and prosecutions of crimes against or affecting children more effectively, and that its interaction with children respects their rights and best interests. To this end, the Office will also explore partnerships with external entities.
118. Staff members, including those in the field who are likely to come into contact with children in the course of their work, undertake specific training in dealing sensitively and appropriately with children's needs. Training, to foster cultural sensitivity, increase sensitisation to the effects of trauma and enhance techniques to interview children and examine them in court, is included.
119. The Office recognises the need to maintain strong in-house expertise related to working with boys and girls, and will continue to provide appropriate training for staff, as well as to recruit persons with qualifications and experience in this field.
120. The Prosecutor has appointed Special Advisers – recognised experts with legal and other expertise in particular fields – to advise the Office on policies, procedures and legal submissions. In December 2012, the Prosecutor appointed a Special Adviser on Children in and affected by Armed Conflict to assist the Office in strengthening its capacity to respond effectively to crimes against or affecting children and applying a child-sensitive approach to all aspects of its work.¹²⁹
121. Coordination will be enhanced both within the Office and with other organs,

¹²⁹ See the press release on the appointment: "[ICC Prosecutor Fatou Bensouda appoints Patricia Sellers, Leila Sadat and Diane Marie Amann as Special Advisers](#)", 12 December 2012.

with respect to issues involving children. In particular, the Office will coordinate with the Registry in order to ensure that a child's well-being is at the centre of the Court's interaction with children. It will work closely with the VWS, in particular with respect to the protection of and support for children who are at risk on account of their interaction with the Office.

122. Within the Registry, the Staff Welfare Office provides advice, support and assistance to ICC staff and their families. Among other things, it helps staff to manage stress and secondary traumatisation they may suffer as a result of their work. Managers will be expected to engage with staff regularly in this regard through support and supervision, and encourage staff to seek the assistance of the Staff Welfare Office.

IX. Implementation of this Policy

123. The Office will monitor its practices to ensure that it conducts effective preliminary examinations, investigations and prosecutions of all crimes against or affecting children, and that it interacts with children sensitively, in accordance with this Policy, and with due respect for the rights of children under international law. The Office will utilise its standardised and institutionalised lessons-learned process to identify, document and implement best practices with regard to its work in relation to children.
124. This Policy, the Operations Manual and other internal rules and procedures will be regularly reviewed to incorporate best practices and other relevant developments, including jurisprudence.
125. The Office will monitor the implementation of this Policy.

