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Le Bureau du Procureur

The Office of the Prosecutor



DRAFT Policy on Children

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Executive Summary

1. Millions of children, women and men have been, and continue to be, the victims¹ of unimaginable atrocities that deeply shock the conscience of humanity. Recognising this, States at the Rome Conference committed to establish the International Criminal Court (the “ICC” or “Court”) “for the sake of present and future generations.”² Various provisions of the Rome Statute (“the Statute”), the Rules of Procedure and Evidence (“the Rules”) and the Elements of Crimes (“the 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. Evidence of the Statute’s commitment in this regard, can be found in its enumerations of various child-specific crimes, such as enlistment, conscription and use of children under the age of 15 years to participate actively in hostilities, forcible transfer of children and child trafficking,³ and also of crimes that acutely affect children, such as attacks on buildings dedicated to education.⁴
2. Mindful of the purposes of the Statute and its mandate, the Office of the Prosecutor (“the Office”) elevated this issue to one of six strategic goals in its Strategic Plan 2012–2015, and has been reaffirmed in the Strategic Plan 2016–2018. The Policy on Children aligns with the Strategic Plan, and will contribute to the achievement of the strategic goals.
3. The Office considers “children” to be persons who have not yet reached their eighteenth birthday. In general, crimes against or affecting children will be regarded as particularly grave, given that children enjoy special recognition and protection under international law.

¹ The Office recognises that many victims of crimes within the jurisdiction of the Court are also survivors. It uses “victims,” alone, as that is the term contained in the Statute.

² Preamble of the Statute, para. 9. See also 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 7(1)(c) and 7(2)(c), 6(e), 8(2)(b)(xxvi) and 8(2)(e)(vii) of the Statute.

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

4. The Office will make full use of the regulatory framework to address the various ways that children are affected in the context of crimes within the jurisdiction of the Court. Wherever the evidence permits, it will seek to include charges for crimes directed specifically against children, such as the war crimes of child recruitment or use, genocide by forcibly transferring children of one group to another, and trafficking in children as a crime against humanity, either as a form of enslavement or sexual slavery. In addition, in order to capture the totality of violence against children, the Office will consider including charges for other crimes that acutely or disproportionately affect children.
5. Within the mandate of its regulatory framework, the Office will apply a child-sensitive approach to all aspects of its work. This approach appreciates the child as an individual person, and recognises that in a given context a child may be both vulnerable and capable. The child-sensitive approach takes into account these vulnerabilities and capabilities, in a manner consistent with the principles of the 1989 Convention on the Rights of the Child: non-discrimination; best interests of the child; the right to life, survival and development; and the right to express one's views and have them considered.
6. Under article 12 of the CRC, children who are capable of forming their own views have the right to express those views on all matters that affect them, and such views must be given due weight in accordance with the age and maturity of each child. In line with this guiding principle, the Office will consult and engage with children, in a manner consistent with our mandate, as appropriate. The Office recognises that the views of children are not necessarily dispositive, yet they are important in the decision-making process.
7. 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. 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 which affect children, as individuals, as specific groups, or in general.
8. A best interests assessment will generally involve a two-step process: Firstly, the

Office will make an assessment of the best interests of the child, having considered the child's specific situation, the views of the child, and other relevant persons, and the child rights at issue. Secondly, it will examine whether there are any other factors, which may require a balancing of the various interests. This second step will establish whether or not, other competing concerns, either alone or cumulatively, outweigh the best interests of the child. The Office will, in this process, place substantial weight on the child's best interests. Where the ultimate determination is that other considerations outweigh the best interests of a child, the Office will strive to implement appropriate measures to mitigate any negative impact that such a decision may have on the child.

9. 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 is an added complexity. The Office will be mindful of this and consider specific means to address the challenges presented when dealing with children, including determining their age when this is essential to prove a crime.
10. The Office will generally avoid engagement with very young children, and pay particular attention to the collection of other types of evidence, including physical, documentary and scientific or expert evidence.
11. Consistent with its commitment to follow a child-sensitive approach, the Office will ensure that its engagement with children, at all stages of its work, is undertaken with particular care and planning.
12. In general, the Office will seek to limit the number of interviews with children in order to, *inter alia*, reduce their exposure, and avoid undue disruptions to their lives. All potential child witnesses will undergo psycho-social assessments, after the necessary permissions are obtained. The decision to proceed with an interview will be informed by 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. Adult witnesses who were victimised as children at the relevant time may also undergo such psycho-social assessments.

13. 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, autonomy, and resilience, as well as the relevance of the evidence the child can provide. It will take into account considerations relating to any psychosocial and security assessments, as well as any possible healing effect which may be associated with providing evidence.
14. Where appropriate, the Office will proffer experts' testimony on aspects related to children; for example, on the socio-political and psychological impact of atrocities on children, on the manner in which children may recall traumatic events, or on the prevalence of crimes against or affecting children.
15. 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.
16. The Office supports a child-sensitive approach to reparations, taking into account the impact on children, as well as the harm caused to, and suffering of, children affected by the crimes for which an individual has been convicted.
17. The Office will continue with 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. While respecting each other's mandates and independence, the Office will seek to support and strengthen cooperation with early responders who undertake documentation of such crimes, and provide support and protection to children.
18. The Office will also work within the framework of its broader external relations strategy to strengthen its ties with actors working in the area of 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 apply a child-sensitive approach to its public information activities, including drawing attention to the rights and welfare of children in the context of international crimes.
19. The Office will seek to ensure that it has the necessary institutional capacity to investigate and prosecute 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.

20. The Office will monitor the implementation of this policy.

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I. Introduction

1. Millions of children, women and men have been, and continue to be, the victims⁵ of unimaginable atrocities that deeply shock the conscience of humanity. Recognising this, States at the Rome Conference committed to establish the International Criminal Court (the “ICC” or “Court”) “for the sake of present and future generations.”⁶ Various provisions of the Rome Statute (“the Statute”), the Rules of Procedure and Evidence (“the Rules”) and the Elements of Crimes (“the 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. Evidence of the Statute’s commitment to addressing to crimes against or affecting children, can be found in its enumerations of child-specific crimes, such as enlistment, conscription and use of children under the age of 15 years to participate actively in hostilities (“child recruitment or use”), forcible transfer of children and child trafficking,⁷ and also of crimes that acutely affect children, such as attacks on buildings dedicated to education.⁸ Children also may be particularly vulnerable to sexual and gender-based crimes which are proscribed by the Statute, a fact made explicit in the Elements.⁹
3. The Statute recognises children as persons with individual rights, as members of families, and as constituents of multi-generational communities.¹⁰ This recognition

⁵ The Office of the Prosecutor (“Office”) recognises that many victims of crimes within the jurisdiction of the Court are also survivors. It uses “victims,” alone, as that is the term contained in the Statute.

⁶ Preamble of the Statute, para. 9. See also 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.

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

⁸ Articles 8(2)(b)(ix) and 8(2)(e)(iv) of the Statute proscribes 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”.

⁹ In the Elements in relation to sexual slavery as a crime against humanity and a war crime in either international or non-international armed conflict under articles 7(1)(g)-2, 8(2)(b)(xxii)-2, 8(2)(e)(vi)-2 of the Statute, specific reference is made to “trafficking in persons, in particular women and children”.

¹⁰ For example, article 84(1) provides for a possibility that in case of death of the convicted person, his or

corresponds with international understandings that children are vulnerable and deserve special care and protection,¹¹ and that their interests and personal circumstances should be given due consideration.¹²

4. The Statute's commitment to children is likewise apparent in the requisite qualifications for judges and advisers,¹³ in the mandate for victim and witness protection,¹⁴ and in the establishment of a minimum age of 18 years for ICC prosecution.¹⁵ The Rules consolidate procedural protections for child witnesses and victims.¹⁶
5. Mindful of the purposes of the Statute and its mandate, the Office committed, in its initial prosecutorial strategy documents, to enhancing its investigation and

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 pregnancy or forced prevention of birth.

¹¹ Article 25 of the [Universal Declaration of Human Rights](#), adopted by the United Nations (UN) General Assembly in 1948; principle 2 of the [Declaration of the Rights of the Child](#), adopted by the UN General Assembly in 1959; articles 23–24, 38, 50, 76 and 89 of the 1949 [Geneva Convention \(IV\) relative to the Protection of Civilian Persons in Time of War](#) ("Geneva Convention IV"); articles 70(1) and 77 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"); article 4(3) 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 [Convention on the Rights of the Child \("CRC"\)](#), unanimously adopted by UN General Assembly in 1989.

¹² Article 3(1) of the CRC.

¹³ 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.

¹⁴ Article 54(1)(b) of the Statute requires that the Prosecutor in conducting her 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. Meanwhile, article 68(1) imposes an obligation on the Court, as a whole but 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.

¹⁵ 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.

¹⁶ See, for example, rules 17(3), 19, 66(2), 88(1), 89(3) and 112(4) of the Rules.

prosecution of crimes against or affecting children.¹⁷ The very first ICC trial resulted in a conviction for the war crimes of child recruitment or use.¹⁸

6. 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.”¹⁹ 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.”²⁰
7. This Policy aligns with the Strategic Plan, and will contribute to the achievement of 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.
8. 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 interacts with children sensitively and with due respect for their rights under international law;
 - Foster and advance a culture of good practice in relation to the protection of rights of children; and

¹⁷ [Report on Prosecutorial Strategy](#) (ICC-OTP 2006), p. 7; [Prosecutorial Strategy: 2009-2012](#) (ICC-OTP 2010), pp. 8, 14, 16-18.

¹⁸ *Prosecutor v. Lubanga*, Judgment pursuant to Article 74 of the Statute, [ICC-01/04-01/06-2842](#), 14 March 2012 (“*Lubanga* Conviction Judgment”).

¹⁹ [Strategic Plan, June 2012-2015](#) (ICC-OTP 2013), p. 27.

²⁰ [Strategic Plan 2016-2018](#), p. 19 (omitting parenthetical reference to acronym).

- Contribute, through the implementation of this policy, to the ongoing development of international jurisprudence regarding crimes against or affecting children.
9. The Office publishes its policies in the interests of promoting transparency, clarity, and predictability in the application of the legal framework. Publication and dissemination of this policy may facilitate the harmonisation of efforts, with regard to children's issues, of other actors (States, including national law enforcement and judicial authorities, international institutions, conflict managers and mediators, non-governmental organisations, and advocacy groups). It may also enhance cooperation, promote children's rights, and increase accountability for, and prevention of, crimes against or affecting children.
 10. This policy is based on the Statute, the Rules, the Regulations of the Court and the Regulations of the Office, and it aligns with other related policy documents. Where appropriate, it is further based upon applicable treaties and the principles and rules of international law.²¹ It also draws on the experience of the Office, its existing good practices and lessons learned, as well as relevant jurisprudence of the ICC and the international criminal tribunals.
 11. This policy focuses on strategic approaches of the Office and is subject to revision. It does not detail guidelines and standards for operations, which are regulated by the Operations Manual of the Office.²² This policy does not itself give rise to legal rights.
 12. Working closely with its Special Adviser on Children in and affected by Armed Conflict,²³ the Office adopted an inclusive approach in developing this policy,

²¹ In addition to the CRC and the Geneva Conventions and Additional Protocols, applicable treaties include: 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"); and 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").

²² The Operations Manual is a confidential internal practice manual which addresses all aspects of OTP operations. It is regularly updated to ensure continuous improvement, incorporating lessons learned, new strategies, and opportunities to strengthen the practices of the Office.

²³ See paragraph 108 of this policy.

consulting with staff, including those in the field. The Office considered it vital that this policy is informed by the voices of children, and engaged with children and young persons, especially those who had experienced conflict or judicial processes.²⁴ These engagements provided the opportunity to listen to their views, concerns and experiences, thereby enhancing the understanding of the impact of conflict, as well as the work of the Office, on children.

13. Two expert roundtable 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.

II. General Policy

14. The Office pays particular attention both to the commission of crimes against or affecting children, and to its own interaction with children.
15. The Office considers “children” to be persons who have not yet reached their eighteenth birthday.²⁵ This is consistent with the CRC, which defines “child” as every human being below the age of eighteen, and is also supported by article 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.

²⁴ Consultations with children and youth were organised with the assistance of the Child Soldiers Initiative, KidsRights, Education Above All (EAA)/ Protect Education in Insecurity and Conflict (PEIC), and Search for Common Ground.

²⁵ In addition to the Statute and Elements provisions discussed in the text, human rights law supports this position. An example appears in article 1 of the CRC, which states: “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 18 years for the purpose of the respective treaty. See also Inter-American Court of Human Rights, Juridical Condition and Human Rights of the Child ([Advisory Opinion OC-17/02](#) of August 28, 2002, Series A No. 17), para. 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”.

Further, the Elements require that, in relation to the crime of forcible transfer of children as a form of genocide, the victim be “under the age of 18 years”. Articles 8(2)(b)(xxvi) and 8(2)(e)(vii) of the Statute prescribe a certain age – under fifteen years – as an element of the war crimes of child recruitment and use that fall within the jurisdiction of the Court. However, the Office will consider individuals who state that they are under the age of eighteen as “children” for the sole purpose of its engagement with them, unless there is a reasonable basis to believe otherwise.²⁶

16. The Office will adopt a child-sensitive approach. This approach appreciates the child as an individual person, and recognises that in a given context a child may be both vulnerable and capable. The child-sensitive approach takes into account these vulnerabilities, as well as capabilities,²⁷ in a manner consistent with the principles of the 1989 Convention on the Rights of the Child: non-discrimination; best interests of the child; the right to life, survival and development; and the right to express one’s views and have them considered.²⁸
17. The Office recognises the various rights of children under international law, including: the rights to non-discrimination; life, survival and development, as well as an adequate standard of living; identity, nationality, family or home life, and privacy; expression, conscience, education, religion, culture, and language; mental and physical health, with special protection for disabled children; protection from violence, abuse, and trafficking or other exploitation; and recovery and social reintegration.²⁹ The Office will also be mindful that many children endure challenges in enforcing their rights due to their age and status in society.

²⁶ 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.

²⁷ [UN Guidelines on Justice Matters involving Child Victims and Witnesses of Crime](#) (“UN Guidelines”), para. 9, 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.”

²⁸ 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 principles are also reflected in, although not identical to, the UN Guidelines, which chronicles its guiding principles in paragraph 8 as: dignity, non-discrimination, best interests of the child, and right to participation.

²⁹ See articles 2, 6-11, 13-16, 19, 23-25, 27, 28-32, 35-37, 39 of the CRC; articles 3, 5, 6, 9, 11, 12, 13, 14, 16, 19, 27, 29 of the ACRWC; and article 1 of the CRC-OPSC.

18. The Office will, at all stages of its work, seek to highlight the harm caused by crimes directed exclusively against children, such as the war crimes of recruitment and use, the forcible transfer of children as a form of genocide, and trafficking of children as a form of the crime against humanity of enslavement or sexual slavery.³⁰ In addition, the Office will also seek to highlight the harm caused to children by other crimes perpetrated against them, as well as their families or communities; for example, killings, mutilation, torture, forced transfer, attacks against buildings dedicated to religion, education and healthcare, pillaging, and sexual and gender-based crimes.
19. The Office recognises that 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. Yet even vulnerable or dependent children possess and are developing their own capacities – capacities to act, to choose and to participate in activities and decisions that affect them.
20. Within the mandate of its regulatory framework, the Office will apply a child-sensitive approach to all aspects of its work, including the conduct of preliminary examinations and investigations, the selection of charges and evidence, witness preparation and protection, in its submissions in court, in its cooperation and external relations activities, and in institutional development measures.
21. Under article 12 of the CRC, children who are capable of forming their own views have the right to express those views on all matters that affect them, and such views must be given due weight in accordance with the age and maturity of each child.³¹ In line with this guiding principle, the Office will consult and engage with children, in a manner consistent with our mandate, as appropriate. The Office recognises that

³⁰ All crimes listed in this paragraph are discussed in detail in Part III.

³¹ Article 12(1) of the CRC. For detailed discussion on this right, 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. See also Organisation for Economic Co-Operation and Development (OECD), [Doing Better for Children, Chapter 2: Comparative Child Well-being across the OECD](#), September 2009, p. 25, which explains that: “The child rights perspective ... places a strong rights-based emphasis on children as human beings who experience well-being in the here-and-now. 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.”

the views of children are not necessarily dispositive, yet they are important in the decision-making process.

22. The Office understands that children are not a homogenous group. They will not always have the same interests or concerns. The vulnerability or 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.
23. 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.³² 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 which affect children, as individuals, as specific groups, or in general.³³
24. A best interests assessment, will generally involve a two-step process: Firstly, the Office will make an assessment of the best interests of the child, carefully considering the child's specific situation³⁴, the views of the child and other relevant persons, as well as the child rights at issue³⁵. Secondly, the Office will examine whether there are any other factors, which may require a balancing of the various interests. This second step will establish whether or not, other competing concerns, either alone or cumulatively, outweigh the best interests of the child.
25. In making a determination about the child's specific situation, in the first step of the best interests assessment, the Office will consider:

³² Article 3(1) of the CRC requires that the best interests of a child "shall be a primary consideration". As explained in n. 23, the best interests principle has been referred to as one of the four main principles of the CRC by authorities including the UN Committee.

³³ See the use of the term "best interests" in Chapter 1 of the United Nations High Commissioner for Refugees (UNHCR), [UNHCR Guidelines on Determining the Best Interests of the Child](#) ("UNHCR Guidelines"), May 2008.

³⁴ 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. 48.

³⁵ See para. 17 of this policy.

- (i) individual characteristics of the child concerned, such as age, level of maturity, experience, education, and ability or disability, membership in a minority group, and in particular, gender;
- (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;³⁶ and
- (iii) particular vulnerabilities of certain children, for example, children who have been displaced, separated, trafficked, detained, or abducted, who have HIV/AIDS, who have been sexually exploited or who themselves are parents or heads of households.³⁷

26. In addition to the input of children, the Office will, in the first step, also seek the views of experts, parents or caregivers, and will give consideration to internationally recognised child rights as applicable. 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.

27. Once a best interests determination is made, the Office will then consider whether there are other factors, including legal or operational issues, which require that competing interests be balanced. In such cases, substantial weight will be placed on the child's best interests.³⁸ Where the ultimate determination is that other

³⁶ 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.").

³⁷ [Update of the EU guidelines on children and armed conflict](#), 16 June 2008, para. 18.

³⁸ See General Comment No. 14, para. 39, which states that: "The best interests of the child – once assessed and determined – might conflict with other interests or rights (e.g. of other children, the public, parents, etc.). Potential conflicts between the best interests of a child, considered individually, and those of a group of children or children in general have to be resolved on a case-by-case basis, carefully balancing the interests of all parties and finding a suitable compromise. The same must be done if the rights of other persons are in conflict with the child's best interests. If harmonization is not possible, authorities and decision-makers will have to analyse and weigh the rights of all those concerned, bearing in mind that the right of the child to have his or her best interests taken as a primary consideration means that the child's interests have high priority and not just one of several considerations. Therefore, a larger

considerations outweigh the best interests of a child, the Office will strive to implement appropriate measures to mitigate any negative impact that such a decision may have on the child.

28. The Office will consider the interests and well-being of children who are witnesses and also other children who interact with the Office, for example, those whose parents have agreed to testify before the Court.
29. The Office recognises that witnesses who are adults, and who were victimised as children, may also require special attention, and will consider appropriate measures.
30. Consistent with its commitment to follow a child-sensitive approach, the Office will strive to ensure that its activities do not cause harm to victims and witnesses. Accordingly, there will be increased efforts to ensure that staff possesses the necessary skills, knowledge, and sensitivity to fulfil their functions, and the mandate of the Office in relation to children. In particular, it will continue to train staff in the application of a child-sensitive approach to its work.

III. The Regulatory Framework

31. 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.³⁹ 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.⁴⁰

weight must be attached to what serves the child best.”

³⁹ Article 21(1) of the Statute.

⁴⁰ Article 21(3) of the Statute.

32. 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.⁴¹ Reference also may be made to a range of other international criminal law, humanitarian law, and international human rights law sources.⁴²

33. 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;
- Fully utilise the provisions in the legal framework to effectively address crimes against or affecting children at all stages of the work of the Office;
- 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, 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.

⁴¹ 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.

⁴² Textual and jurisprudential sources the Office may consult thus include: the 1949 Geneva Convention IV and API and APII of 1977; the 1948 [Convention on the Prevention and Punishment of the Crime of Genocide](#); and the 1999 ILO Convention No. 182; the work of other international criminal tribunals, such as the International Criminal Tribunals for the former Yugoslavia and for Rwanda, the Special Court for Sierra Leone, and the Extraordinary Chambers in the Courts of Cambodia; and human rights treaties including the ACRWC, the 1979 [Convention on the Elimination of All Forms of Discrimination against Women](#), and the 2006 [Convention on the Rights of Persons with Disabilities](#). Also to be consulted, where appropriate, is the work of UN agencies operating within the aegis of that organisation's children and armed conflict agenda.

34. Certain crimes in the Statute make explicit reference to children, or disproportionately affect them, as set out below.

(a) *Conscription, enlistment, and use of children under the age of fifteen years to participate actively in hostilities*

35. The Statute is the first international criminal law instrument to criminalise the recruitment or use of children in an international or non-international armed conflict.⁴³

36. “Enlistment” means “to enrol on the list of a military body”, while “conscription” means “to enlist compulsorily”.⁴⁴ 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.⁴⁵

37. 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 establish 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.⁴⁶

⁴³ 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. Recruitment and/or use of children under the age of fifteen years old 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. 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, 4 of the CRC-OPAC.

⁴⁴ *Lubanga Conviction Judgment*, para. 608.

⁴⁵ *Lubanga Appeals Judgment on Conviction*, paras. 267, 278.

⁴⁶ *Lubanga Appeals Judgment on Conviction*, para. 335. The Appeals Chamber made particular reference to commentaries by the International Committee of the Red Cross 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](#), n.12 on p. 21.

(b) *Forcible transfer of children and prevention of birth*

38. 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.⁴⁷
39. Article 6(d) proscribes the imposition of measures aimed at prevention of births, which may be committed not only by physical actions, but also by threats or other mental trauma.⁴⁸
40. 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*

41. 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”.
42. An explicit reference to children is included within the definition of enslavement as a crime against humanity under article 7(1)(c): “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”.⁴⁹

⁴⁷ See footnote 5 in the Elements in relation to the Element 1 of the crime of genocide by forcibly transferring children.

⁴⁸ See *Prosecutor v. Jean-Paul Akayesu*, Judgment, [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”.

⁴⁹ 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 [Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery](#). Article 1(d) of that treaty calls

(d) *Attacks against buildings dedicated to education*

43. Among the war crimes that may have a disproportionate effect on children are attacks on schools, enumerated in article 8(2)(b)(ix) of the Statute when committed in international armed conflict, and in article 8(2)(e)(iv) when committed in non-international armed conflict. Such attacks are a particularly salient manifestation of the deprivation of the right to education, which many children suffer during armed conflict and other contexts within the jurisdiction of the Court.⁵⁰

(e) *Persecution*

44. 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”.

(f) *Sexual and gender-based crimes*⁵¹

45. 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. In the Elements in relation to sexual slavery, specific reference is made to “trafficking in persons, in particular women and children”.

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.

⁵⁰ See Global Coalition to Protect Education from Attack, [Guidelines for Protecting Schools and Universities from Military Use During Armed Conflict, December 2014](#), and [Commentary on the “Guidelines for Protecting Schools and Universities from Military Use During Armed Conflict”](#).

⁵¹ 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).

IV. Preliminary Examinations

46. In accordance with the Statute and its Policy on Preliminary Examinations,⁵² the Office conducts a preliminary examination of all situations that are not manifestly outside the jurisdiction of the Court, in order to determine whether there is a reasonable basis to open an investigation.⁵³ A preliminary examination of a situation may be initiated at the discretion of the Prosecutor: (i) taking into account any information on crimes within the jurisdiction of the Court provided by reliable sources, including children; (ii) based on a referral from a State Party or the United Nations Security Council; or (iii) based on a declaration accepting the exercise of jurisdiction by the Court, lodged by a State which is not a Party to the Statute.⁵⁴ The Office pays particular attention to information received on crimes against or affecting children.
47. 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: jurisdiction (temporal,⁵⁵ subject-matter,⁵⁶ and either territorial or personal jurisdiction⁵⁷); admissibility (complementarity and gravity), and the interests of justice.⁵⁸
48. In accordance with the principle of complementarity, States maintain the primary responsibility for investigating and prosecuting the crimes under the jurisdiction of

⁵² [Policy Paper on Preliminary Examinations](#) (ICC-OTP 2013).

⁵³ Article 53(1) of the Statute.

⁵⁴ Articles 12-15 of the Statute and regulation 25 of the [Regulations of the Office](#).

⁵⁵ 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).

⁵⁶ 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 30th 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), and no earlier than 2017: See ASP [Resolution RC/Res.6](#) (28 June 2010) and articles 15 *bis* and 15 *ter* of the Statute.

⁵⁷ 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.

⁵⁸ [Policy Paper on Preliminary Examinations](#), paras. 34-71.

the Court.⁵⁹ 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.

49. In determining the gravity of potential cases, the Office assesses the scale, nature and the manner of commission of the crimes as well as their impact on victims and communities.⁶⁰

50. In general, crimes against or affecting children will be regarded as particularly grave, given that children enjoy special recognition and protection under international law. The experience of any person who has suffered serious crimes is horrific, and the impact on children is especially devastating. It impedes their development and ability to reach their true potential, as, for example, in the case of killings, mutilation, child recruitment or use, torture, enslavement, forced transfer, attacks against buildings dedicated to religion, education and healthcare, pillaging and sexual and gender-based crimes affecting children. Such crimes also cause serious harm to children's families and communities, extending to future generations.⁶¹ The effect of the loss of a parent 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 potential cases.⁶²

51. 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.⁶³ 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 will be in the interests of justice.⁶⁴

52. The Office will seek to encourage, where feasible, genuine national proceedings in

⁵⁹ Preamble of the Statute, para. 6.

⁶⁰ Regulation 29(2) of the [Regulations of the Office](#).

⁶¹ [Policy Paper on Preliminary Examinations](#), para. 82.

⁶² *Ibid.*

⁶³ 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.

⁶⁴ [Policy Paper on Preliminary Examinations](#), para. 71.

relation to potential cases involving crimes against or affecting children that fall within the jurisdiction of the Court.

53. 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.

V. Investigations

54. The first direct interaction with children will generally occur at the investigation stage. When relevant, within their functions and responsibilities, staff from the various Divisions involved in the investigation will apply a child-sensitive approach, and will ensure that crimes against or affecting children are thoroughly addressed at each stage of the investigative process.

55. 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.⁶⁵ When investigations involve children, there is an added complexity. The Office will be mindful of this and consider specific means to address the challenges presented when dealing with children, including determining their age when this is essential to prove a crime.⁶⁶

56. The Office will consider the views of children and their parents or caregivers on matters affecting them, as appropriate, in the course of its investigations.⁶⁷ These

⁶⁵ 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. The options for determining a person's age include: school and medical records; statements from family members, community leaders and teachers; photographic or video images; or a physical examination.

⁶⁶ Described more fully in the paragraphs that follow.

⁶⁷ Examples of such matters include location, scheduling and duration of screenings and interviews, or

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. In addition, the Office will carefully explain to the child and to his or her parent or caregiver the entire process, including available support and possible risks, such as the scope and impact of disclosure.

57. The Office will generally avoid engagement with very young children. It will pay particular attention to the collection of other types of evidence, including physical, documentary and scientific or other expert evidence, and witness statements.
58. From the early stage of developing the case hypothesis, 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 all situations under investigation.⁶⁸
59. The Office recognises the importance of considering diversity, local knowledge and relevant experience when working with children. As such, in the composition of each investigative team, the Office will strive to include staff with expertise in interviewing and interacting with children. All interviews with children will be conducted by staff members with such expertise, calling for 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.
60. 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 screening 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.⁶⁹ 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.

the profile of interpreters and interviewers.

⁶⁸ Regulation 34 of the [Regulations of the Office](#).

⁶⁹ War Crimes Studies Center University of California, Berkeley, [Child Witnesses at the Special Court for Sierra Leone](#), March 2006, p. 20.

61. Where the Office engages the services of intermediaries to approach potential child witnesses, it will endeavour to select people who have experience working with children. The Office continuously monitors and evaluates the performance of intermediaries, in line with the Court-wide Guidelines Governing the Relations between the Court and Intermediaries.⁷⁰
62. 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.
63. 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, in particular anyone believed to have been involved in crimes while a child, that he or she will not be prosecuted by the Office.⁷¹
64. In general, the Office will seek to limit the number of interviews with children in order to, *inter alia*, reduce their exposure, and avoid undue disruptions to their lives. Very young children will generally not be considered for interviews, unless they appear to be important sources of relevant evidence.
65. Interviews of children will be video and audio recorded,⁷² unless exceptional circumstances require otherwise. Consideration may be given to introducing the recording as evidence at a later stage.⁷³ Where children are concerned, the team will also consider whether the circumstances indicate a “unique investigative opportunity” to take testimony or a statement from a witness.⁷⁴
66. If scientific or other expert evidence involving a child is necessary, the Office will

⁷⁰ [Guidelines Governing the Relations between the Court and Intermediaries for the Organs and Units of the Court and Counsel working with intermediaries](#), March 2014.

⁷¹ Article 26 of the Statute.

⁷² Rule 112(4) of the Rules.

⁷³ Rule 68 of the Rules.

⁷⁴ Article 56 of the Statute.

clearly explain the procedure, its importance, and any potential risks to the child and his or her parents or caregivers. It will give due regard to the views of the child in accordance with his or her age and maturity, and if it decides to proceed with the collection of the evidence, seek the voluntary and informed consent of the child's parents or caregivers.

(a) Psycho-social assessment

67. The psycho-social assessments shall be conducted by trained and certified psychologists and/or psychotherapists with the relevant experience.
68. All potential child witnesses will undergo psycho-social assessments, after the necessary permissions are obtained. Other witnesses who were victimised as children at the relevant time may also undergo such assessments. A determination will be made as to whether the individual is capable of making a decision to participate, and to be interviewed, without undue negative physical or psychological impact.
69. The decision to proceed with an interview will be informed by 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 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.
70. Following a psycho-social assessment a witness interview may commence. Child witnesses will be informed of the possibility of having an accompanying person with them.

(b) Protection measures

71. 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.
72. 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 witnesses and victims, of their parents or caregivers, and of

other persons at risk on account of their interactions with the Office.⁷⁵ The Office will collaborate with the Victims and Witnesses Section (“VWS”) of the Registry, when appropriate. The Office will explain possible measures and any consequences to the child concerned and his or her parents or caregivers.

VI. Prosecutions

73. The Office policy is to investigate and prosecute those most responsible for crimes that fall under the Court’s jurisdiction.⁷⁶ 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.⁷⁷ 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.⁷⁸ 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”.⁷⁹

(a) Selection of charges

74. The Office will make full use of the regulatory framework to address the various ways that children are affected in the context of crimes within the jurisdiction of the Court. It is committed to strengthening accountability for these crimes, and to the development of jurisprudence in this regard.

75. 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 15 years. Wherever the evidence permits, the Office will seek to include such charges,⁸⁰ as well as charges for other crimes directed

⁷⁵ Articles 54(1)(b) and 68(1) of the Statute.

⁷⁶ [Policy Paper on Preliminary Examinations](#), para. 103.

⁷⁷ [Strategic Plan 2016-2018](#), para. 34. See also Strategic Plan ([June 2012-2015](#)), para. 22.

⁷⁸ *Ibid.*

⁷⁹ Article 26 of the Statute.

⁸⁰ Articles 8(2)(b)(xxvi) and 8(2)(e)(vii) of the Statute.

specifically against children, for example, genocide by forcibly transferring children of one group to another, and trafficking in children as a form of enslavement or sexual slavery.⁸¹

76. 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, religion and education, pillaging, destruction of property and sexual and gender-based crimes. Some of those crimes are committed against children by members of the very armed groups into which they are recruited.⁸²
77. 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 rapes resulting in pregnancies deprive children of the opportunity to gain an education.
78. In order to capture the totality of violence against children and to highlight the unique experiences of children, the Office will consider including charges for such crimes wherever the evidence permits.

(b) Interactions with children

79. 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, autonomy, 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

⁸¹ Article 6(e) of the Statute.

⁸² 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, para. 81-82; *Prosecutor v. Charles Ghankay Taylor*, Judgment, [SCSL-03-01-T-1283](#), 18 May 2012, paras. 871-1207.

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.

80. The Office commits to maintaining contact with child witnesses in order to keep them informed of developments in the case.

(i) *Pre-testimony*

81. The Office considers that witness familiarisation⁸³ is essential to 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, 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.

82. The Office will seek approval from Chambers to conduct witness preparation, prior to the witness' testimony at trial, particularly when the witness is a child.⁸⁴ 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.⁸⁵

⁸³ Witness familiarisation falls under the mandate of the Victims and Witness Section (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 witnesses to review their prior written statements, recordings and/or transcripts of interview, facilitating a courtesy meeting between relevant counsel and the witness, and showing the courtroom and explaining the proceedings.

⁸⁴ 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.

⁸⁵ *Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, Witness Preparation Protocol, [ICC-01/09-01/11-524-Anx](#), 7 February 2013, para. 1.

(ii) *In-court measures*

83. The Office will pay particular attention to the questioning of child victims and witnesses, and take steps to prevent harassment or intimidation in Court.⁸⁶

84. The Office recognises that the experience of testifying in court may be stressful 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 to the needs of vulnerable witness; providing in-court assistance, including monitoring of a witness in-court by the VWS psychologist; adapting the manner of questioning to the needs of a person and his or her capacity to appear before the Court.⁸⁷ In doing so, the Office collaborates with the VWS.⁸⁸

85. 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.⁸⁹ Accordingly, the 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, may be considered. The Office may also request that video/audio recordings of interviews with children be introduced pursuant to rule 68.⁹⁰

(iii) *Post-testimony follow-up and communication*

86. The Office maintains contact with children post-testimony, in order to keep them

⁸⁶ Rule 88(5) of the Rules.

⁸⁷ Rules 87 and 88 of the Rules and regulation 94*bis* of the Regulations of the Registry.

⁸⁸ Article 43(6), article 68(4) of the Statute.

⁸⁹ See, for example, Council of Europe, [Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice](#) ("CoE Guidelines"), 2010, para. 68; United Nations Office on Drugs and Crime, [Justice in Matters involving Child Victims and Witnesses of Crime: Model Law and Related Commentary](#) ("UNODC Commentary"), 2009, p. 54-57.

⁹⁰ Articles 68(2) and 69(2) of the Statute, and rule 68 of the Rules.

informed of the developments in the case, including sentence and reparations orders.

87. 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 relating to safety and physical and psychological well-being that are related to their interaction with the Office.

(c) Evidence

88. Some children may find a solemn undertaking intimidating or 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 child witnesses to testify without a solemn undertaking, provided that the Chamber is satisfied that the child knows and understands what it means to tell the truth.⁹¹

89. 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.⁹² The Office may request that the Chamber provide the child witness with an assurance that his or her evidence will be kept confidential and will not be disclosed to the public or any State authority.⁹³

90. The Office will consider consulting with experts and, where appropriate, will proffer experts' testimony on aspects related to children; for example, on the socio-political and psychological impact of atrocities on children, on the manner in which children may recall traumatic events, or on the prevalence of crimes against or affecting children.

(d) Sentencing

91. In its submissions on sentencing, the Office will pay close attention to crimes against

⁹¹ Rule 66(2) of the Rules.

⁹² Rule 74(8) of the Rules.

⁹³ Rule 74(2) and 74(3)(c) of the Rules.

or affecting children, and will request a sentence which adequately reflects the seriousness of the crimes against this vulnerable group.⁹⁴

92. 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.⁹⁵ 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.⁹⁶
93. The Office will adduce evidence in support of its submissions for appropriate sentences for crimes against or affecting children, taking into account the immediate as well as 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.

(e) Reparations

94. Following a conviction, the Trial Chamber may order the convicted person to provide reparations to the victims of the crimes for which the person was convicted.⁹⁷ The Statute does not confer any role on the Prosecutor during this stage

⁹⁴ 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 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). 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. 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.

⁹⁵ 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.

⁹⁶ In the *Katanga* sentencing judgment, the fact that 13 children, including 11 under the age of six years, were among the victims of murder added to the gravity of the crime. See *Prosecutor v. Germain Katanga*, Corrigendum of Translation of Decision on Sentence pursuant to article 76 of the Statute, [ICC-01/04-01/07-3484-tENG-Corr](#), 08 October 2015, Trial Chamber II, para. 47.

⁹⁷ *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

of proceedings. However, the Chamber may invite observations from the Office.⁹⁸

95. The Office supports a child-sensitive approach to reparations, taking into account the impact on children, as well as the harm caused to, and suffering of, children affected by the crimes for which an individual has been convicted. It also supports consultation with the victims, including children, in order to determine the most effective and appropriate 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.
96. The Office will, in framing any submissions, bear in mind that individual reparations awards, including non-monetary awards such as commemorations or apologies, may enhance a child's sense of justice.⁹⁹ At the same time, collective reparations, such as the (re)construction of schools or health care facilities, may promote community reconciliation and provide the greatest benefit to groups of victims.¹⁰⁰

VII. Cooperation and External Relations

97. Together with complementarity, cooperation is one of the two fundamental components of the Rome Statute system. Effective cooperation is crucial to the Office and the Court in carrying out their mandate.

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](#).

⁹⁸ *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 and 12. 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, , para. 6 referring to Amended order for reparations, [ICC-01/04-01/06-3129-AnxA](#), 3 March 2015, para. 77.

⁹⁹ 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.

¹⁰⁰ *Ibid.*, paras. 14-15.

98. The Office will continue with 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 and other relevant 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 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 developing local networks.
99. Often prior to the Court's engagement in a situation, early responders, such as UN agencies, peacekeeping operations, non-governmental organisations and media, deploy into areas where crimes within the jurisdiction of the Court, including against children, have been committed. Many undertake documentation of such crimes, and provide support and protection to children.
100. While respecting each other's mandates and independence, the Office will seek to support and strengthen cooperation with such entities. In this regard, it recognises the sensitivities that might be linked to the work and mandate of the Court and different agencies. The Office is committed to look into ways, such as development of guidelines or protocols, in order to facilitate cooperation.
101. The Office also recognises the role that civil society actors, including academics and international and local non-governmental organisations, play in supporting its work, such as: campaigning for children's rights; drawing attention to crimes affecting children; promoting accountability for crimes against or affecting children; and highlighting situations in which human rights, including children's human rights, are violated on a massive scale.
102. The Office will also work within the framework of its broader external relations strategy to strengthen its ties with actors working in the area of children. In particular, it will promote respect for children's rights and 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.

103. The Office will foster a broad 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 maximise awareness, as well as the impact of its work. Special attention will be given to initiate and utilise public information opportunities, including Office and Court events, in order to draw attention to the rights and welfare of children in the context of international crimes. It will seize opportunities for media coverage by, for example, discussing aspects of this policy in interviews.
104. It is important that children understand the work of the Office and the Court. The Registry is responsible for, and leads on, 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 targeting children.

VIII. Institutional Development

105. The Office will seek to ensure that it has the necessary institutional capacity to investigate and prosecute 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.
106. 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 the needs of children. The training includes cultural sensitivity, sensitisation to the effects of trauma, and techniques for interviewing children and examining them in court.
107. In 2003, the Office established a Gender and Children Unit (GCU) comprised of staff with legal and psycho-social expertise. The Unit supports all Divisions and teams in their work with victims and witnesses, and provides advice to the Prosecutor, the Executive Committee, and staff at all stages of operations on psycho-social matters, including those related to children. It is also the Office's focal

point with the VWS on support issues relating to victims and witnesses.

108. The Office recognises the need to maintain strong in-house expertise related to children, and will continue to recruit persons with qualifications and experience in this field. The Prosecutor has appointed Special Advisers with legal and other expertise on specific issues. They are recognised experts in their respective fields who advise the Prosecutor 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.¹⁰¹
109. Coordination within the Office, as well as with other organs, with regard to issues involving children, will be enhanced. 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, particularly with respect to the protection of, and support for, children who are at risk on account of their interaction with the Office.
110. 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

111. The Office will monitor its practices to ensure that it conducts the effective investigation and prosecution 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

¹⁰¹ 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.

standardised and institutionalised lessons-learned process to identify, document and implement best practice with regard to its work in relation to children.

112. This policy, the Operations Manual and other internal rules and procedures, will be regularly reviewed to incorporate advancements in child-sensitive best practices, in accordance with the child-rights perspective taken in this policy. Other developments, including in jurisprudence, will also be considered.

113. The Office will monitor the implementation of this policy.

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