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Le Bureau du Procureur
The Office of the Prosecutor

DRAFT Policy Paper on Sexual and Gender Based Crimes

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Table of contents

- Executive Summary**
- I. Introduction**
- II. General Policy**
- III. The Regulatory Framework**
- (a) *The Statute*
 - (i) *Article 6 - Genocide*
 - (ii) *Article 7 - Crimes against humanity*
 - (iii) *Article 8 - War crimes*
 - (b) *Rules of Procedure and Evidence*
 - (c) *The prosecutorial strategy*
- IV. Preliminary Examinations**
- V. Investigations**
- (a) *Initiation of an investigation*
 - (b) *Preparation*
 - (c) *Investigation practices*
- VI. Prosecutions**
- (a) *Charging*
 - (i) *Crimes charged*
 - (ii) *Mode of liability*
 - (iii) *Mental elements: article 30*
 - (b) *Witness preparation*
 - (c) *Measures to protect safety, and physical and psychological well-being of witnesses*
 - (i) *General obligations during proceedings*
 - (ii) *Disclosure of evidence*
 - (iii) *In-court measures*
 - (d) *Evidence*
 - (e) *Sentencing*
 - (f) *Reparations*
- VII. Cooperation**
- (a) *External relations*
 - (b) *Public information*

VIII. Institutional Development

- (a) Recruitment and institutional arrangements*
- (b) Staff training*

DRAFT Policy Paper on Sexual and Gender Based Crimes

Executive Summary

1. Over the last decades, the international community has taken progressive steps to put an end to impunity for sexual and gender based crimes. The Statute of the International Criminal Court is the first international instrument to expressly include various forms of sexual and gender based crimes as underlying acts of both crimes against humanity and war crimes committed in international and non-international armed conflict. The Rules of Procedure and Evidence and the Elements of Crimes also consolidate important procedural and evidentiary advancements to protect the interests of victims and enhance the effectiveness of the work of the Court. Recognising the challenges and obstacles to effective investigation and prosecution of sexual and gender based crimes, the Office of the Prosecutor has elevated this issue to one of its key strategic goals in its strategic plan 2013 - 2015. The Office commits to integrating a gender perspective and analysis in all its work, to being innovative in the investigation and prosecution of these crimes, to adequately train staff, and to give special attention to how staff interacts with victims and witnesses.
2. The Office will pay particular attention to the commission of sexual and gender based crimes in all stages of its work: preliminary examination, investigations and prosecutions. Within the scope of its mandate, the Office will carefully apply a gender analysis to all crimes within its jurisdiction, examining the differences between women and men and the power dynamics which shape gender roles in a specific context, and how these differences may have played a role in the crimes and their consequences.
3. It will seek to enhance the integration of a gender perspective and expertise in all aspects of its operations: during preliminary examinations, in the development of the case hypotheses and investigation and prosecution strategies, in the analysis of crime patterns and command structures, in the screening, selection, interview and testimony of witnesses, during sentencing and reparation stages, in its submissions on appeal and witness protection, including after the conclusion of the proceedings.
4. The Office will consider sexual and gender crimes among the gravest under the Statute for purposes of its analysis during the preliminary examination phase, prioritisation of its activities during investigation and prosecution phases, and sentencing.
5. In addition to general challenges to investigations by the Office, such as security issues related to investigations in situations of on-going conflict and a lack of cooperation, the investigation of sexual and gender based crimes presents its own specific challenges. The Office will consider specific means to address these challenges, such as prioritisation from the earliest stages and to the extent possible,

on the collection of different types of evidence, including forensic and documentary and insider evidence.

6. Article 68(1) of the Statute obliges the Office to take various measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses, particularly during its investigation and prosecution activities with regard to sexual and gender based crimes and crimes against children. Good practices related to how the Office manages its interaction and relationship with victims and witnesses of such crimes have been incorporated into the Operations Manual.
7. The Office will ensure the inclusion of charges for sexual and gender based crimes, wherever there is sufficient evidence to support such charges. In appropriate cases, the Office will charge acts of sexual and gender based violence as different categories of crimes within the Court's jurisdiction (war crimes, crimes against humanity, genocide), describe, inter alia, the nature, manner of commission, intent and context of each act. The Office will also seek to actively highlight the gender aspects of other crimes within its jurisdiction, including e.g. the recruitment of child soldiers, and enslavement.
8. At trial, the Office will argue for sentences which give due consideration to the sexual and gender dimensions of the crimes charged, including their impact on victims, as an aggravating factor and reflective of the gravity of the crimes committed.
9. The Office supports a gender-inclusive approach to reparations, taking into account the gender-specific impact, harm and suffering of the victims affected by the crimes for which an individual has been convicted. Effective cooperation is crucial in order to ensure that the Office and the Court are able to carry out their mandate. The Office actively engages with States and other relevant stakeholders in order to improve the effectiveness of its actions, including with regard to sexual and gender based crimes. It also includes a gender perspective in its public information activities which seek to maximise awareness and impact of its work.
10. As part of its positive complementarity approach, the Office encourages and supports efforts of States to carry out their primary responsibility of investigating and prosecuting crimes, including sexual and gender based crimes.
11. The Office will continue to enhance its institutional capacity to investigate and prosecute sexual and gender based crimes, more effectively, with the assistance of its Gender and Children Unit (GCU) and the Special Gender Advisor to the Prosecutor.
12. Staff training is an important component towards ensuring effective investigation and prosecution of sexual and gender based crimes. The Office will endeavour to ensure that all members of the joint/trial teams and any other relevant staff members have the necessary competencies to perform their functions effectively in

relation to sexual and gender based crimes.

13. By making this policy commitment and adopting all the specific measures included in this paper, the Office intends to fulfil its duties under the Statute and contribute most effectively to put an end to impunity for sexual and gender based crimes of concern to the international community as a whole.

I. Introduction

1. Over the last decades, the international community has taken many concrete steps in response to increasing calls to recognise sexual and gender based crimes as serious crimes nationally and internationally. The Statutes of the International Criminal Tribunal for the former Yugoslavia (“ICTY”) and the International Criminal Tribunal for Rwanda (“ICTR”) included rape as a crime against humanity.¹ At the Rome Conference, States agreed upon explicit provisions in the Rome Statute (“Statute”) of the International Criminal Court (“ICC” or “Court”), recognising various forms of sexual and gender based crimes² as among the most serious crimes of concern to the international community. It is the first instrument in international law to include an expansive list of sexual and gender based crimes as distinct war crimes relating to both international and non-international armed conflict. It also expands the list of sexual and gender based crimes as crimes against humanity to include not only rape but other forms of sexual violence as well as persecution on the basis of gender. Sexual and gender based crimes committed with an intent to destroy, in whole or in part, a national, ethnical, racial or religious group may also constitute acts of genocide.
2. The Statute and the Rules of Procedure and Evidence (“Rules”) contain various provisions designed to ensure effective investigation and prosecution of sexual and gender based crimes and to protect the interests of victims and witnesses of these crimes, including in relation to the structure of Court organs and the availability of relevant expertise.³ The Elements of Crimes (“Elements”) also consolidate important advancements with respect to the definition of these crimes.⁴
3. Notwithstanding the progress in the integration of sexual and gender based crimes into international criminal law, justice still eludes many victims. There are many

¹ The Charters of the Nuremberg and Tokyo Tribunals established after WWII contained no explicit provisions recognising sexual and gender based crimes as war crimes or crimes against humanity. The ICTR Statute also included rape and enforced prostitution as a form of outrages upon personal dignity in its article 4 applicable to non-international armed conflicts. The ICTY Statute includes no explicit reference to sexual violence as war crimes and acts of rape as a war crime have been mostly prosecuted as a form of outrages upon personal dignity. See, for example, *Prosecutor v. Anto Furundžija*, Trial Judgment, [Case No. IT-95-17/1-T](#), 10 December 1998.

² As discussed below, the Office considers “gender based crimes” as those committed against a person on the basis of gender, whether male or female, as a result of existing gender norms and underlying inequalities.

³ See, for example, article 21(3), 42(9), 54 (1)(b) and 68(1) of the Statute.

⁴ See, for example, the elements of the war crime of rape under articles 8(2)(b)(xxii) and 8(2)(e)(vi), which are drafted in a gender-neutral way and which reflect the understanding that the invasion of the body might be committed not only by 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.

challenges and obstacles to the effective investigation and prosecution of such crimes.⁵

4. Recognising these challenges, and mindful of the purposes of the Statute and the mandate of the Office, as set out in the Statute, the Prosecutor has, on various occasions since her election in December 2011, expressed her commitment to pay particular attention to the investigation and prosecution of sexual and gender based crimes and to enhance access to justice for victims of these crimes, through the ICC.⁶
5. In its Strategic Plan 2012-2015, the Office of the Prosecutor (“Office”) has elevated this issue to one of its key strategic goals.⁷ The Office commits to integrating a gender perspective and analysis in all its work, to being innovative in the investigation and prosecution of these crimes, to adequately train staff, and to give special attention to how staff interacts with victims and witnesses.
6. The Office will be able to prosecute a limited number of those responsible in accordance with its policy. . It is therefore crucial, in an effort to close the impunity gap, that States comply with their responsibility to effectively investigate and prosecute serious international crimes, including sexual and gender based crimes. The Office will support genuine national efforts, where possible.
7. Accountability for and the prevention of sexual and gender based crimes requires unified action, commitment and dedicated efforts by all relevant actors. The Prosecutor, by issuing this Policy, further demonstrates her commitment to this endeavour.
8. This paper sets out the Office policy in relation to sexual and gender based crimes. It is based on the Statute, the Rules, the Regulations of the Court, the Regulations of the Office, the Office Prosecutorial Strategies and other related policy documents. It draws on the experiences and lessons learned during the first decade of the work of the Office, and relevant jurisprudence from the ICC and the international *ad hoc* tribunals.⁸
9. This is an internal policy document of the Office. As such, it does not itself give rise to legal rights and is subject to revision. Bearing in mind the importance that the drafters of the Statute attached to the relevance of gender in the commission of

⁵ See para. 42.

⁶ See, for example, Statement of the Prosecutor-elect of the International Criminal Court, Mrs. Fatou Bensouda, ["Gender Justice and the ICC: Progress and Reflections"](#), 14 February 2012.

⁷ Strategic goal 3 is to “enhance the integration of a gender perspective in all areas of our work and continue to pay particular attention to sexual and gender based crimes and crimes against children.” [Strategic Plan June 2012-2015](#) (ICC-OTP 2013), p. 27.

⁸ The Office also took into account the best practices manual of the *ad hoc* tribunals. See, for example, [Best Practices Manual for the Investigation and Prosecution of Sexual Violence Crimes in Situations of Armed Conflict: Lessons from the International Criminal Tribunal for Rwanda](#), 2008; [ICTY Manual on Developed Practices](#), 2009.

crimes under the Statute, this policy will guide the Office in its work relating to sexual and gender based crimes. Policy papers of the Office are made public in the interest of promoting transparency and clarity, as well as predictability in the application of the legal framework. It is hoped that such clarity may facilitate the harmonisation of efforts of other actors (States, including national judicial authorities, international institutions, conflict managers and mediators, NGOs and advocacy groups) with the legal framework. It would also assist in promoting cooperation, increasing accountability for sexual and gender based crimes and enhancing the preventive impact of the Statute through the work of the Court in relation to these crimes.

10. The Office adopted an inclusive approach in the development of this policy, consulting with staff at the headquarters and with field staff via video conference and working closely with the Special Gender Advisor. The Office also sought and considered input from external experts, representatives of States and civil society.

11. Objectives of the policy are to:

- Affirm the commitment of the Office to pay particular attention to sexual and gender based crimes in line with Statutory provisions;
- Guide the implementation and utilisation of the provisions of the Statute and the Rules so as to ensure the effective investigation and prosecution of sexual and gender based crimes from preliminary examination through to appeal;
- Provide clarity and direction on issues pertaining to sexual and gender based crimes in all aspects of operations;
- Contribute to advancing a culture of “good practice” in relation to the investigation and prosecution of sexual and gender based crimes; and
- Contribute, through its implementation, to the on-going development of international jurisprudence regarding sexual and gender based crimes.

II. General Policy

12. In accordance with the Statute, sexual crimes are those listed under article 7(1)(g), 8(2)(b)(xxii) and 8(2)(e)(vi) and elaborated upon in the Elements in relation to “sexual violence”.⁹ Other crimes such as mutilation and outrages upon personal

⁹ The Elements of Crimes of “sexual violence” under article 7(1)(g), 8(2)(b)(xxii) and 8(2)(e)(vi) include, *inter alia*, that: “The perpetrator committed an act of a sexual nature against one or more persons or caused such person or persons to engage in an act of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person’s or persons’ incapacity to give genuine consent”; and “Such conduct was of a gravity comparable to the other offences”. The Office will continue to present acts of genital mutilation or deliberate injuries to the genitalia as sexual crimes. In *Kenyatta et al.*, the Prosecution argued that acts of forcible circumcision and penile amputation against Luo men constituted “other forms of sexual violence” pursuant to article 7(1)(g). Pre-Trial Chamber II found that the evidence placed

dignity under articles 8(2)(b)(x), 8(2)(b)(xxi), 8(2)(c)(i), 8(2)(c)(ii) may also have a sexual and/or gender element.

13. The term “gender” is defined for the purpose of the Statute as referring to “the two sexes, male and female, within the context of society. The term ‘gender’ does not indicate any meaning different from the above” under article 7(3). The drafters of the Statute decided to refer to gender “within the context of society”, which acknowledges the social construction of gender roles and norms attributed to men and women, which the Office will apply and interpret in accordance with internationally recognised human rights pursuant to article 21(3).
14. The Office will pay particular attention to the commission of sexual and gender based crimes at all stages of its work. The Office considers gender based crimes as those committed against a person on the basis of gender, whether male or female, as a result of existing gender norms, and underlying inequalities.¹⁰
15. Within the scope of its mandate, and in a manner consistent with article 54(1)(a), the Office will apply a gender analysis to all of the crimes within its jurisdiction and consider whether and in what ways, alleged acts of violence, including acts targeted disproportionately against a specific gender, are related to gender norms and inequalities. In the context of its analysis of specific crimes allegedly committed, the Office will examine the differences and inequalities between women and men and the power dynamics which shape gender roles in a specific context. The Office will also give consideration to the expression of inequalities and discrimination, to better understand the multi-faceted nature of sexual and gender based crimes, within the context of a society, and how these dynamics may have played a role in the commission of the crimes and their consequences.¹¹ The approach by the Office will also encompass an understanding of the use of certain types of crimes, including acts of sexual violence, to diminish gender, ethnic, racial and other identities.
16. The Office will strengthen the concrete steps it has taken to enhance the integration of a gender perspective and expertise in all aspects of its operations: during

before it does not establish the sexual nature of these acts and considered them as part of allegations of other inhuman acts (causing severe physical injuries). *Prosecutor v. Kenyatta et al.*, Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute, [ICC-01/09-02/11-382-Red](#), 23 January 2012, paras. 264-266.

¹⁰ For the purpose of this policy, the term “gender based crimes” is deemed to be synonymous with “gender violence” mentioned in the Statute.

¹¹ Gender analysis looks at their roles, the different patterns of involvement, behaviour and activities that women and men have in economic, social and legal systems, constraints they face relative to each other, and available opportunities. The significance of this is that the lives and experiences of women and men, including their experience of the legal system, occur within complex sets of differing social and cultural expectations. See, for example, UN Women, [Gender on the Move: Working on the Migration-Development Nexus from a Gender Perspective](#), 2013; and United Nations Office on Drugs and Crime, [Gender mainstreaming in the work of UNODC](#), June 2013.

preliminary examinations, in the development of the case hypotheses and investigation and prosecution strategies, in the analysis of crime patterns and command structures, in the screening, selection, interview and testimony of witnesses, during sentencing and reparation stages, in its submissions on appeal and witness protection, including after the conclusion of the proceedings. The Office will also increase its efforts to ensure that its staff possesses the skills, knowledge and sensitivity necessary to fulfil their functions and the mandate of the Office in relation to sexual and gender based crimes. In particular, the Office will ensure that its staff possesses the required operational skills in applying a gender analysis to the work of the Office, sound knowledge of the statutory provisions regarding sexual and gender based crimes, and well-developed skills regarding the possible effects of trauma in relation to these crimes.

17. The Office will generally investigate and prosecute those most responsible for the most serious crimes, based on the evidence collected in the course of an investigation.¹² In certain circumstances, the Office will also prosecute middle or even low ranking officers or individuals, whose extent of participation and responsibility for particularly serious or notorious crimes, including sexual and gender based crimes, justifies prosecution in order to give full effect to the Statute and maximise the deterrent impact of its work.
18. In the context of its core activities, the Office will also continue its efforts to encourage, where possible under its mandate, complementary efforts by States and other stakeholders to stop, prevent, and punish sexual and gender based crimes. Steps that the Office may take include promoting ratification of the Statute, encouraging domestic implementation, participating in awareness-raising activities on the Court's jurisdiction, exchanging of lessons learned and best practices to support domestic investigative and prosecutorial strategies, and assisting relevant stakeholders to identify pending impunity gaps.

III. The Regulatory Framework

(a) The Statute

19. The Statute for the first time explicitly recognises rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, and any other form of sexual violence as distinct types of war crimes.¹³ It also expands the list of sexual and gender based crimes constituting crimes against humanity to include not only rape

¹² This is applied as a general rule subject to the facts and circumstances of each case. See [Paper on some policy issues before the Office of the Prosecutor](#) (ICC-OTP 2003); [Report on Prosecutorial Strategy](#) (ICC-OTP 2006); [Prosecutorial Strategy 2009-2012](#) (ICC-OTP 2010).

¹³ As mentioned in the introduction, the ICTY and ICTR Statutes include only rape as a crime against humanity. The ICTR Statute includes rape and enforced prostitution as a form of a war crime of outrages upon person dignity. While the ICTY Statute includes no explicit reference to sexual violence as a war crime, acts of rape have been mostly prosecuted as a form of a war crime of outrages upon personal dignity.

but also other forms of sexual violence as well as persecution on the basis of gender. It is the first international instrument to expressly include various forms of sexual and gender based crimes as underlying acts of crimes against humanity or war crimes committed in international and non-international armed conflict. In addition, the Court may exercise jurisdiction over other sexual and gender based crimes for which girls and women are particularly targeted if they constitute acts of genocide or other acts of crimes against humanity or war crimes. In the case of genocide, these crimes could be an integral part of the pattern of destruction inflicted upon targeted groups. The Office will take steps to ensure a consistent approach in giving full effect to these provisions enunciated within the Statute, the Elements and the Rules.

20. The inclusion of article 21(3) in the Statute is particularly important as it mandates that the application and interpretation of the Statute be consistent with internationally recognised human rights and be without any adverse distinction founded, among others, on gender, or generally “other status”. The Office will take into account the evolution of internationally recognized human rights. This provision requires the Office to positively advocate for the inclusion of gender based crimes and a gender perspective in litigation before the Chambers. It also obliges the Office to:

- ensure it applies and interprets the Statute in line with internationally recognised human rights including those relating to women’s human rights and gender equality;¹⁴
- consider not only acts of violence and discrimination based on sex, but also those related to socially constructed gender roles;¹⁵
- apply an understanding of the intersection of factors such as sex, gender, race, colour, class, age, ethnicity, nationality, disability, other identities and factors which may give rise to multiple forms of discrimination and social inequalities;¹⁶

¹⁴ Reference can be made to relevant human rights instruments such as the [1979 Convention on the Elimination of All Forms of Discrimination against Women](#), the [1993 Vienna Declaration and Programme of Action](#), and the [1995 Beijing Declaration and Platform for Action](#) when interpreting the provisions of the Statute.

¹⁵ See, among others, M. Boot, revised by C.K. Hall, “Article 7 Paragraph 3: Definition of Gender”, and M. McAuliffe deGuzman, “Article 21 Paragraph 3”, in O. Triffterer ed., *Commentary on the Rome Statute of the International Court: Observer’s Notes, Article by Article*, 2nd ed., C.H.Beck/Hart/Nomos, 2008, §§135-136 and §24, respectively; V. Oosterveld, [“The Definition of “Gender” in the Rome Statute of the International Criminal Court: A Step Forward or Back for International Criminal Justice?”](#), *Harvard Human Rights Journal*, vol. 18, pp. 55-84.

¹⁶ See, for example, the efforts of the UN Human Rights Council and the Office of the High Commissioner for Human Rights (OHCHR) to put an end to violence and discrimination on the basis of sexual orientation or gender identity: The Free & Equal Initiative of the OHCHR at

- avoid gender discrimination in all aspects of its work including its investigative and prosecutorial activities; and
- address any adverse distinction on the basis of gender should such distinctions arise as a result of the work of other parties or other organs of the Court.

21. Article 54(1)(b) of the Statute imposes on the Prosecutor the duty to take appropriate measures to effectively investigate and prosecute crimes within its jurisdiction, respecting “the interests and personal circumstances of victims and witnesses, including age, gender as defined in article 7, paragraph 3, and health”, and taking into account “the nature of the crime, in particular where it involves sexual violence, gender violence or violence against children”. In this regard, the Office will take steps to ensure the effective investigation and prosecution of these crimes, by also being sensitive to the interests and circumstances of victims and witnesses and taking a mainstreamed approach to dealing with sexual and gender based crimes. This includes:

- the integration of these issues in all relevant policy documents, including the Strategic Plan and the Operations Manual of the Office;¹⁷
- the provision of training for all members of the joint/trial teams and any other relevant staff members to ensure effective investigation and prosecution of sexual and gender based crimes, including on the collection and analysis of evidence, the relevant legal framework, cultural issues and other considerations related to a situation; and
- Timely involvement of the Executive Committee (ExCom) regarding the approaches taken to sexual and gender based violence within the investigation process and the prosecutorial strategies developed by the joint/trial teams in relation to these crimes.

22. The following are the crimes which fall under the subject-matter jurisdiction of the Court.¹⁸

<https://www.unfe.org/> and statement of 26 September 2013 by High Commissioner for Human Rights Navanethem Pillay and several world leaders to end violence and discrimination against lesbian, gay, bisexual and transgender (LGBT) persons at <https://www.unfe.org/en/actions/ministerial-meeting>.

¹⁷ The Operations Manual is an 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.

¹⁷ The Operations Manual is an 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.

¹⁸ In addition to the crimes mentioned below, the Court may exercise jurisdiction over the crime of aggression one year after the 30th ratification of the relevant amendment to the Rome Statute

(i) *Article 6 – Genocide*

23. In relation to article 6 of the Statute, sexual and gender based crimes committed with an intent to destroy a national, ethnical, racial or religious group, in whole or in part, are acts of genocide if they cause serious bodily or mental harm (article 6(b)), or they constitute the deliberate infliction of conditions of life calculated to physically destroy the group (article 6(c)), or when they are intended to prevent births within the group (article 6(d)).¹⁹
24. In view of the serious bodily or mental harm (and in some instances, potential social stigma) associated with rape and other forms of sexual violence among targeted groups, such acts can cause significant and irreversible harm to individual victims and to their communities. The Office position is that the crimes of rape and sexual violence may be an integral component of the pattern of destruction inflicted upon a particular group of people. The Office will advance this position in specific cases, where supported by the evidence.

(ii) *Article 7 – Crimes against humanity*

25. Article 7(1) (g) and (h) of the Statute sets out explicit sexual and gender based crimes which may constitute crimes against humanity, including rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, other forms of sexual violence of comparable gravity, and persecution on the ground of gender.²⁰ Under article 7, sexual and gender based crimes may be charged as crimes against humanity when they are committed “as part of a widespread or

adopted at the Kampala Review Conference (2010), and no earlier than 2017: see [RC/Res.6](#) (28 June 2010); and articles 15 *bis* and 15 *ter* of the Statute.

¹⁹ In the *Akayesu* judgment, delivered on 2 September 1998 by the Trial Chamber of the International Criminal Tribunal for Rwanda (ICTR), the Chamber emphasised that rape and sexual violence constitute genocide in the same way as any other act as long as they were committed with the specific intent to destroy, in whole or in part, a particular group, targeted as such. *The Prosecutor v. Jean-Paul Akayesu*, Trial Chamber I Judgment, [ICTR 96-4-T](#), 2 September 1998, para. 731.

²⁰ Article 7(2) provides definitions for some of these acts. In its [Resolution 1888 \(2009\)](#), the Security Council reaffirmed that sexual violence, when used or commissioned as a tactic of war in order to deliberately target civilians or as a part of a widespread or systematic attack against civilian populations, can significantly exacerbate situations of armed conflict and may impede the restoration of international peace and security.

systematic attack directed against civilian populations”²¹ and “pursuant to or in furtherance of a State or organisational policy to commit such attack”.²²

26. The crime against humanity of persecution under article 7(1)(h) is an important recognition within the Statute that will help confront the issue of impunity for systematic persecutions on the basis of gender, particularly against women.²³ The crime of enslavement within the Statute explicitly recognises trafficking in persons, in particular of women and children.²⁴ In addition, crimes such as enslavement, deportation or forcible transfer of population, torture and murder may also include a gendered or sexual element. Sexual and gender based crimes explicitly mentioned as set out in the above paragraph, can also constitute a form of torture or other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.²⁵ The Office will be mindful of this in the process of the selection of charges.

²¹ It is not required that each act such as rape within the attack be widespread or systematic, provided that the acts form part of a widespread or systematic attack against civilian populations. R. Dixon, revised by C.K. Hall, “Article 7 Paragraph 1: Chapeau”, in O. Triffterer ed., *Commentary on the Rome Statute of the International Court: Observer’s Notes, Article by Article*, 2nd ed., C.H.Beck/Hart/Nomos, 2008, §24

²² According to the Elements of Crimes, the “policy to commit such attack” requires that the state or organisation “actively promote or encourage such an attack against a civilian population”. Pre-Trial Chamber II has confirmed that non-State actors may qualify as an “organisation” for the purpose of article 7(2)(a). See, for example, *Situation in Kenya*, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya, [ICC-01/09-19](#), 31 March 2010, para. 92; *Prosecutor v. Ruto et al.*, Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute, [ICC-01/09-01/11-373](#), 23 January 2012, paras. 184-185.

²³ There are valuable precedents of law and practice about persecutions on the basis of gender in refugee law from different national systems, which the Office may take into account when interpreting this provision. See, among others, United Nations High Commissioner for Refugees, [Guidelines on International Protection: Gender-Related Persecution within the context of Article 1A\(2\) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees](#); and V. Oosterveld, “[Gender, persecution, and the International Criminal court: refugee law’s relevance to the crime against humanity of gender-based persecution](#)”, *Duke Journal of Comparative & International Law* (Vol 17:49, 2006), pp. 49-89.

²⁴ One of the elements of enslavement as a crime against humanity under article 7(1)(c) is that: “The perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty.” According to footnote 11 attached to this provision, “[i]t 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. It is also understood that the conduct described in this element includes trafficking in persons, in particular women and children.” The same footnotes appear in relation to the elements of sexual slavery as a crime against humanity and a war crime under articles 7(1)(g), 8(b)(xxii), and 8(2)(e)(vi).

²⁵ See, for example, *Prosecutor v. Anto Furundžija*, Appeals Judgment, Case No. IT-95-17/1-A, 21 July 2010, para. 114.

(iii) *Article 8 – War crimes*

27. Sexual and gender based crimes are often committed in the context of and in association with an international or non-international armed conflict. They may fall under the Court's jurisdiction as war crimes under article 8 of the Statute. These include acts of rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, and other forms of sexual violence also constituting a grave breach of the Geneva Conventions or a serious violation of common article 3. Other types of war crimes such as intentionally directing attacks against the civilian population, torture, mutilation, outrages upon personal dignity or the recruitment of child soldiers may also contain gendered and sexual elements. The Office will be vigilant in charging sexual and gender based crimes as war crimes, to the full extent the Office deems possible under article 8.²⁶

(a) *Rules of Procedure and Evidence*

28. The Rules of Procedure and Evidence also include important principles of evidence in cases of sexual violence, consolidate procedural protections for witnesses and victims of these crimes and allow for the use of special measures *inter alia* to facilitate the testimony of victims of sexual violence.²⁷

(b) *The Prosecutorial Strategy*

29. In its previous prosecutorial strategies, the Office committed to enhancing its investigations and prosecutions of sexual and gender based crimes.²⁸ In its

²⁶ In the *Katanga/Ngudjolo* case, Pre-Trial Chamber I accepted that forcible nudity constitutes outrages upon personal dignity and found sufficient evidence that FNI/FRPI members committed these crimes. However, it declined to confirm the charge due to insufficient evidence that the commission of such crimes was intended by Mr. Katanga and Mr. Ngudjolo as part of the common plan to "wipe out" Bogoro village, or that as a result or part of the implementation of the common plan, these facts would occur in the ordinary course of events. *Prosecutor v. Katanga and Ngudjolo*, Decision on the confirmation of charges, [ICC-01/04-01/07-717](#), 30 September 2008, paras. 570-572. In the *Bemba* case, the Prosecution included in the charges the crime of outrages upon personal dignity under article 8(2)(c)(ii) through acts of rape or other forms of sexual violence, in addition to the crime of rape and other form of sexual violence under article 8(2)(vi). Pre-Trial Chamber II declined to confirm the charge of outrages upon personal dignity on the grounds, *inter alia*, that: most of the facts presented by the Prosecution reflect in essence the constitutive elements of force or coercion in the crime of rape; and the count of outrages upon personal dignity is fully subsumed by the count of rape, which is the most appropriate legal characterisation of the conduct presented. *Prosecutor v. Jean-Pierre Bemba Gombo*, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, [ICC-01/05-01/08-424](#), 15 June 2009, paras. 307-313.

²⁷ See, for example, rules 70, 71 and 72 discussed below.

²⁸ [Report on Prosecutorial Strategy](#) (ICC-OTP 2006), p. 7. In its Prosecutorial strategy 2009-2012, the Office also confirmed its commitment to "work with external actors, *inter alia*, with regard to sexual and gender crimes to constantly update prosecutorial techniques". [Prosecutorial Strategy: 2009-2012](#) (ICC-OTP 2010), p. 8.

Strategic Plan 2012-2015, the Office has elevated this issue to one of its strategic goals, which is to enhance the integration of a gender perspective in all areas of our work and continue to pay particular attention to sexual and gender based crimes and crimes against children.²⁹ The Office in its strategy commits to integrating a gender perspective in all areas of its work, to being innovative in the investigation and prosecution of these crimes, to adequately training staff, and to giving special attention to the manner in which staff interact with victims, in particular, seeking to ensure the prevention of possible secondary or re-traumatisation.

IV. Preliminary Examinations

30. The Office conducts a preliminary examination of all situations that are not manifestly outside of the jurisdiction of the Court on the basis of information available, in order to determine whether there is a reasonable basis to initiate an investigation. The Prosecutor shall reach such a determination after having considered the factors set out in article 53(1)(a)-(c) of the Statute: jurisdiction (temporal, material, and either territorial or personal jurisdiction); admissibility (complementarity and gravity); and the interests of justice.³⁰
31. During the process of the preliminary examination of a situation, the Office analyses information on crimes potentially falling within its jurisdiction.³¹ In so doing, the Office will also examine the general context within which the alleged sexual and gender based crimes have occurred and assess the existence of local institutions, international organisations, NGOs and other entities available as potential sources of information and/or of support for victims.
32. Where crimes within the jurisdiction of the Court, including sexual and gender based crimes, have been identified, the Office will examine the existence of genuine and relevant national proceedings and if there are such proceedings, whether those relate to potential cases being examined by the Office. In this context, the Office will consider the factors relevant for the assessment of the admissibility of potential cases.³² This determination is case specific. It requires an examination of whether the national proceedings encompass the investigation and/or prosecution of the same persons for the same conduct as that which forms

²⁹ [Strategic plan June 2012-2015](#) (ICC-OTP 2013), p. 27.

³⁰ The Office policy and practice in the conduct of preliminary examinations are described in detail in its [Policy Paper on Preliminary Examinations](#) (ICC-OTP 2013). Rule 48 of the Rules requires the Prosecutor to consider the factors set out in article 53(1)(a)-(c) of the Statute in determining whether there is a reasonable basis to proceed with an investigation under article 15(3).

³¹ In accordance with article 15 of the Statute, the Office may receive information on such crimes and may seek additional information from States, organs of the United Nations, intergovernmental and non-governmental organisations and other reliable sources.

³² [Policy Paper on Preliminary Examinations](#) (ICC-OTP 2013).

the basis of the preliminary examination.³³ The crimes in the national system need not be identical to the crimes in the Statute. It is sufficient that relevant domestic legislation incorporates the conduct proscribed under the Statute.

33. Inactivity at the national level may result from numerous factors, including: the absence of an adequate legislative framework or judicial capacity; the existence of legal impediments that could serve as a barrier to domestic proceedings, such as amnesties, immunities or statutes of limitation; manifestly insufficient steps in the investigation and prosecution of sexual and gender based crimes; the deliberate focus of proceedings on low-level perpetrators despite evidence against those who may bear more responsibility; lack of expertise in the investigation and prosecution of these crimes; or other more general issues related to the lack of political will, including official attitudes of trivialisation and minimisation or denial of these crimes.
34. If there are investigations or prosecutions that relate to potential cases being examined by the Office, an assessment will be made into whether such national proceedings are vitiated by an unwillingness or inability to genuinely carry out the proceedings.
35. The complementarity assessment is made on the basis of the underlying facts as they exist at the time of the determination and is subject to on-going revision based on change in circumstances.
36. Although crimes falling within the Court's jurisdiction are by and of themselves serious, article 17(1)(d) of the Statute requires the Court, as part of the admissibility

³³ *Prosecutor v. Ruto et al.*, Judgment on the appeal of the Republic of Kenya against the decision of Pre-Trial Chamber II of 30 May 2011 entitled "Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute", [ICC-01/09-01/11-307](#), 30 August 2011, paras. 1, 47; *Prosecutor v. Kenyatta et al.*, Judgment on the appeal of the Republic of Kenya against the decision of Pre-Trial Chamber II of 30 May 2011 entitled "Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute", [ICC-01/09-02/11-274](#), 30 August 2011, paras. 1, 46. See also *Prosecutor v. Thomas Lubanga Dyilo*, Decision concerning Pre-Trial Chamber I's Decision of 10 February 2006 and the Incorporation of Documents into the Record of the Case against Mr Thomas Lubanga Dyilo, [ICC-01/04-01/06-8-Corr](#), 24 February 2006, para. 31: "it is a *conditio sine qua non* for a case arising from the investigation of a situation to be inadmissible that national proceedings encompass both the person and the conduct which is the subject of the case before the Court"; *Prosecutor v. Saif Al-Islam Gaddafi and Abdullah Al-Senussi*, Decision on the admissibility of the case against Abdullah Al-Senussi, [ICC-01/11-01/11-466-Red](#), 11 October 2013, para. 66: "for the Chamber to be satisfied that the domestic investigation covers the same 'case' as that before the Court, it must be demonstrated that: a) the person subject to the domestic proceedings is the same person against whom the proceedings before the Court are being conducted; and b) the conduct that is subject to the national investigation is substantially the same conduct that is alleged in the proceedings before the Court. [...] the determination of what is 'substantially the same conduct as alleged in the proceedings before the Court' will vary according to the concrete facts and circumstance of the case and, therefore, requires a case-by-case analysis."

determination, to assess whether a case is of sufficient gravity to justify further action by the Court. Factors relevant in assessing the gravity of the crimes include their scale, nature, manner of commission and impact.³⁴ The nature of the crimes refers to the specific elements of each offence such as killings, rapes and other crimes involving sexual and gender violence.

37. The Office considers acts of sexual and gender based violence to be among the gravest crimes, in accordance with the Rome Statute. In assessing the gravity of alleged sexual gender based crimes, the Office will take into account the multi-faceted character and the resulting suffering, harm and impact of such acts.
38. The Office will seek to encourage, where feasible, genuine national investigations and prosecutions by the State(s) concerned in relation to sexual and gender based crimes.³⁵
39. The Office will seek to react promptly to upsurges of violence, including the sexual and gender based crimes, by reinforcing early interaction with States, and international and non-governmental organisations in order to verify information on alleged crimes, to encourage genuine national proceedings and to prevent the reoccurrence of crimes. The Office may also issue preventive statements in order to deter the escalation of violence and the further commission of crimes to put perpetrators on notice and to promote national proceedings.³⁶

V. Investigations

40. In accordance with the duties and powers of the Prosecutor set out in article 54 of the Statute, the Prosecutor will investigate both incriminating and exonerating circumstances relating to sexual and gender based crimes in a fair and impartial manner, to establish the truth.

³⁴ Regulation 29(2), Regulations of the Office. See, in concurrence with the Prosecution's submissions, *Prosecutor v. Bahar Idriss Abu Garda*, Decision on the Confirmation of Charges, [ICC-02/05-02/09-243-Red](#), 8 February 2010, para. 31; *Situation in the Republic of Kenya*, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya, [ICC-01/09-19-Corr](#), 31 March 2010, para. 188; *Situation in the Republic of Côte d'Ivoire*, Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Republic of Côte d'Ivoire, [ICC-02/11-14](#), 3 October 2011, para. 204.

³⁵ In its Interim Report on the Situation in Colombia, for example, the Office highlighted among the five pending areas that will form the focus on the on-going preliminary examination, the need for the Colombian authorities to prioritise the investigation and prosecution of crimes of sexual violence. See, [Situation in Colombia – Interim Report](#) (OTP, November 2012).

³⁶ See, for example, [ICC Prosecutor confirms situation in Guinea under examination](#) (14 October 2009); [ICC Deputy Prosecutor: We are keeping an eye on events in Guinea](#) (19 November 2010); [Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on the occasion of the 28 September 2013 elections in Guinea](#) (27 September 2013).

41. The Office will, with due diligence, undertake investigations into sexual and gender based crimes concurrently with its investigations into other crimes. This will ensure efficient utilisation of resources and provide an opportunity for a thorough investigation of sexual and gender based crimes. This will also ensure sufficient time for the collection and analysis of evidence, strategic planning and on-going decision-making, including identification and selection of witnesses.
42. In addition to general challenges such as conducting investigations in situations of on-going conflict and a lack of cooperation, the investigation of sexual and gender based crimes presents its own specific challenges. These include: under or non-reporting of sexual violence due to cultural, religious or societal factors; limited domestic investigations and the associated lack of readily available evidence; stigma for victims of sexual and gender based crimes; lack of forensic or other documentary evidence, due, *inter alia*, to the passage of time; and inadequate or limited support services at the national level.
43. The Office will consider specific means to address these challenges, such as prioritisation from the earliest stages and to the full extent possible, the collection of different types of evidence, including forensic (e.g. clinical examinations, forensic epidemiology and autopsies), technology and documentary (video footages, formal and informal notices to perpetrators and reports of experts etc.) and insider evidence. Analysis techniques such as database design, statistics and GIS (Geographic Information Systems) will also assist in identifying the relevant patterns of crime and organisational structures.
44. Bearing in mind the specific challenges faced in obtaining evidence in respect of sexual and gender based crimes, the Office will apply lessons learned and best practices standards to ensure the effectiveness of investigations into such crimes.³⁷
45. In the strategic plan 2012-2015, the Office adopts a new approach with more in-depth, open-ended investigations while maintaining focus so that more evidence from more diversified sources may be collected.³⁸ Where necessary, a strategy of gradually building cases up from mid- and high level perpetrators, and even from low level notorious perpetrators, to the most responsible will be followed.³⁹ This is intended to assist in addressing the challenge of establishing individual criminal responsibility for those at the highest levels for the commission of sexual and gender based crimes.

³⁷ See particularly *Prosecuting Mass Atrocities - Lessons from the International Tribunals: A Compendium of Lessons Learned and Suggested Practices from the Offices of the Prosecutors* (2013), suggested practices 11-12, 118-124, 196, 212, 264-267. The Compendium is accessible to members of the International Association of Prosecutors only.

³⁸ [Strategic Plan June 2012-2015](#) (ICC-OTP 2013), p. 6.

³⁹ *Ibid.*

(a) *Initiation of an investigation*

46. All staff from different Divisions involved in the investigation shall be responsible for integrating a gender perspective within the investigations and for ensuring that sexual and gender based crimes are thoroughly addressed at each stage of the investigative process. Teams will be proactive in making recommendations to ExCom. ExCom will monitor and ensure proper implementation of this practice.
47. In the course of developing its case hypothesis, the Office will carefully consider the report produced during the preliminary examination stage, as well as in-depth additional research and analysis, and any investigations, in so far as they also relate to sexual and gender based crimes.⁴⁰ The initial case hypothesis and investigation plan will be regularly reviewed and may be amended on the basis of the additional analysis of evidence collected.

(b) *Preparation*

48. In order to build networks which are crucial for the effective investigation of sexual and gender based crimes, the Office will consider the information obtained during the preliminary examination stage relating to local communities and the existence of civil society organisations. The establishment of contacts and networks within the community will be prioritised to the extent possible to support its operational activities and to create a referral base in support of victims and witnesses.⁴¹
49. The Office identifies individuals who may be selected as intermediaries in order to support the conduct of effective investigations. Such intermediaries who are likely to engage with victims and witnesses of sexual and gender based crimes will be specifically briefed to ensure that they have an understanding of the possible effects of trauma in relation to the crime as well as the investigative process. The Office will continuously monitor and evaluate the performance of intermediaries. The selection, tasking and supervision of intermediaries are regulated in detail in the Operations Manual.
50. Staff will receive briefings on relevant cultural issues, traditional and religious practices and other considerations relevant to the investigation. In the course of preparations for missions, relevant staff is required to familiarise themselves with local traditions, customs and cultural issues, including the status of women and

⁴⁰ Regulation 34(2) of the Regulations of the Office provides: "In each provisional case hypothesis, the joint team shall aim to select incidents reflective of the most serious crimes and the main types of victimisation - including sexual and gender violence and violence against children - and which are the most representative of the scale and impact of the crimes."

⁴¹ See World Health Organisation (WHO), [Ethical and safety recommendations for researching, documenting and monitoring sexual violence emergencies](#), 2007 (hereafter "WHO Ethical and safety recommendations"), recommending, *inter alia*: "Basic care and support for survivors/victims must be available locally before commencing any activity that may involve individuals disclosing information about their experiences of sexual violence", at p. 9.

men within this context and other factors that may impact on the investigation mission and the interview process.

51. The interview team will undertake specific preparations in relation to the interview process. This may include familiarisation with euphemisms and other verbal and non-verbal communication which may be used by witnesses to refer to acts of sexual violence within the specific context of the investigation. Interpreters will also receive briefings and glossaries in order to familiarise themselves with the appropriate and accurate terms to describe acts of sexual violence and parts of the body.
52. The interview team will verify, and be sensitive to, the witness' preference regarding the gender of interpreters and interviewers. When dealing with sexual and gender based crime witnesses, the interview team will also give consideration to the convenience of using audio- or video-recording of the interview,⁴² and will pay special attention to any circumstances indicating unique investigative opportunities.⁴³ or

(c) Investigation practices

53. The Office has adopted an integrated approach to gender issues and the investigation of sexual and gender based crimes. This ensures that alongside the investigation of explicit acts of sexual and gender based crimes, the gender dimensions of other crimes will be adequately considered.
54. As required by article 68(1) of the Statute, the Office takes various measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses, particularly during its investigation and prosecution activities with regard to sexual and gender based crimes.
55. Potential victim-witnesses of sexual and gender based crime shall be subject to preliminary psycho-social and security assessments and screenings. The psycho-social assessment is mandatory for all witnesses of sexual and gender based crimes. ⁴⁴ It will be conducted by a psycho-social expert who will consider the welfare of the witnesses and their ability to undergo an interview process and

⁴² Rule 112(4) of the Rules.

⁴³ According to article 56 of the Statute, where the Prosecutor considers an investigation to present a unique opportunity to take testimony or statement from a witness or to examine, collect or test evidence, which may not be available subsequently for the purposes of a trial, s/he may request the Pre-Trial Chamber to take certain measures to collect or preserve evidence.

⁴⁴ Regulation 36(3) of the Regulations of the Office provides: "The physical and psychological well-being of persons who are questioned by the Office and are considered vulnerable (in particular children, persons with disabilities and victims of gender and sexual crimes) shall be assessed by a psychology, psycho-social or other expert during a face-to-face interview prior to questioning. This assessment shall determine whether the person's condition at that particular time allows him or her to be questioned without risk of re-traumatisation."

testify without undue personal or psychological harm. The expert may be present during the interview itself, in order to monitor the interview, advise the interviewer and provide support to the witness as required.

56. The screening will focus on assessing the individual's personal circumstances, willingness to assist the investigation, evidentiary value, and establishing a relationship of trust and respect.
57. The screening of witnesses of sexual and gender based crimes will generally be conducted during a face-to-face meeting. Remote screening of such witnesses will only be conducted if the Office is satisfied that appropriate support is available to the witness.
58. The security assessment will be conducted with a focus on specific risks and the available protection measures. Victims will be considered as witnesses for the investigation subject to positive assessments regarding their psycho-social condition, investigative needs and security.
59. In the development and implementation of investigative strategies, the Office will bear in mind that victims and witnesses of sexual and gender based crimes may also be witnesses to other crimes, and vice versa, and plan accordingly. This will be reflected in the specific investigative strategies developed by the teams within the context of each criminal investigation.
60. The provision relating to persecution on the basis of gender, an innovation in the Statute will be utilised to the fullest extent possible. The investigation will take into consideration various indicia, including discriminatory policies, violent acts selectively targeting a particular gender, gender-adverse propaganda, relevant utterances issued by the direct perpetrators, elements of individual suspect background and prior conduct indicative of relevant intent and adverse gender biases in the response of suspected groups or authorities.
61. Good practices related to the management, interaction and relationship with victims and witnesses of sexual and gender based crimes have been incorporated into the Operations Manual. Specific questionnaires and guidelines have been developed to support sound practices in this area.
62. The Office is mindful that victims of sexual and gender based crimes may face the additional risks of discrimination, social stigma, exclusion from their community or physical harm if their status is exposed. In order to minimise their exposure and possible re-traumatisation, the Office will, in addition to evidence of victims, enhance its efforts to collect other types of evidence. This will include insider testimony, the testimony of relevant experts, medical and pharmaceutical records, empirical research and reports and other credible data produced by States, organs of the United Nations, intergovernmental and non-governmental organisations and other reliable sources.

63. The Office will improve its practices with regard to source evaluation, exercising due diligence and considering the existence of adverse gender biases that may affect different sources of information, possible under-reporting or misrepresenting the truth about sexual and gender based crimes. Evidence will be subject to impartial evaluation regarding its credibility.
64. In the selection of witnesses, all teams will take into account considerations relating to security, the social and psychological risks which may be associated with providing evidence of sexual and gender based crimes, as well as the healing effect that the provision of such evidence may afford certain witnesses and victims.⁴⁵ The Office recognises that many witnesses of sexual and gender based crimes want to testify in support of judicial proceedings and as a component of their own recovery process. In its selection of witnesses, the Office will give careful consideration to whether taking evidence from a specific witness will be of benefit or harm to the individual.
65. Experience has highlighted the importance of managing the expectations of victims and witnesses. The Office will take particular care in this regard. Added effort will be put into maintaining reasonable contact with witnesses and keeping them informed. Clear explanations will be provided to witnesses about the mandate of the Office and in particular, the role of Registry's Victims and Witnesses Unit (VWU) on matters related to assistance, including medical and psycho-social assistance, support and protection and the role of the Office in these areas. The Office will liaise with the VWU on all such matters.

VI. Prosecutions

(a) Charging

(i) Crimes charged

66. Building on the preliminary examination and the substantive and detailed investigations and collection of evidence, the Office will ensure the inclusion of charges for sexual and gender based crimes, wherever there is sufficient evidence to support such charges.
67. In principle, the Office will bring charges for sexual and gender based crimes explicitly as crimes in themselves, as well as charge these acts as forms of other violence within the competence of the Court, where the material elements are met, e.g. rape as torture. In such instances, the Office will seek to bring cumulative charges in order to fairly reflect the severity and multi-faceted character of sexual

⁴⁵ See [WHO Ethical and safety recommendations](#), recommending, *inter alia*: "The benefits to respondents or communities of documenting sexual violence must be greater than the risks to respondents and communities", at pp. 9-11.

violence and to enunciate the range of sexual and gender crimes supported by the evidence in each case.

68. Where supported by the evidence, the Office will also charge acts of sexual and gender based violence as different categories of crimes within the Court's jurisdiction (war crimes, crimes against humanity, genocide), in order to properly describe, *inter alia*, the nature, manner of commission, intent and context of each act.⁴⁶
69. The Office will also seek to actively highlight the gender-related aspects of other crimes within its jurisdiction, e.g. domestic labour and "household" duties within the crime of enslavement as well as highlighting other gender-related aspects of sexual crimes e.g. domestic labour in the context of sexual slavery.

(ii) *Mode of liability*

70. The Office will consider the full range of modes of liability available under article 25 or article 28 of the Statute for charging in cases of sexual and gender based crimes, and will make a decision based on the existing evidence. The Office will charge different modes of liability in the alternative, where appropriate.
71. Pursuant to article 28 of the Statute, cases may be brought against individuals who may be responsible for the commission of rape and other sexual and gender based crimes committed by those under their effective command and control (or effective authority and control), on the basis of either (military) command responsibility⁴⁷ or superior responsibility. The Office will, as appropriate, increasingly explore the potential of bringing charges on the basis of article 28 in light of the possible impact on the behaviour of commanders and non-military superiors. In that context, it will not limit itself to ensuring accountability of military commanders or non-military superiors where they intended the specific conduct or consequence of sexual and gender based crimes but also where they knew or should have known that such crimes would occur in the ordinary course of events.

(iii) *Mental element*

⁴⁶ For example, in the *Katanga/Ngudjolo* case, the Office charged the accused with sexual slavery and rape both as a crime against humanity and a war crimes under articles 7(1)(g) and 8(2)(b)(xxii). The same approach has been taken in various other cases, including *Harun/Kushayb*, *Bemba*, *Mbarushimana*, *Hussein*, *Mudacumura* and *Ntaganda* where the Office considered that there was sufficient evidence establishing contextual elements of both types of crimes.

⁴⁷ For example, *Prosecutor v. Jean-Pierre Bemba Gombo*, Public Redacted Version Of the Amended Document containing the charges filed on 30 March 2009, [ICC-01/05-01/08-395-Anx3](#), 30 March 2009. This is the first case before the ICC in which a military commander is being prosecuted on the basis of command responsibility for alleged crimes including rape, committed by forces under his effective command and control.

72. Pursuant to article 30 of the Statute, the Prosecution must establish that the person under investigation or accused committed the crime with intent and knowledge unless the Elements specify a mental element for any particular conduct, consequence or circumstances listed therein.⁴⁸ Establishing intent and knowledge of the person under investigation or the accused in relation to the crimes is one of the major challenges for the Office. This is because the investigation and prosecution is generally focussed on senior leaders or commanders who are not direct perpetrators and who are often located far from the scenes of the crimes at relevant times. This is particularly the case with sexual and gender based crimes which are often under-reported or considered as incidental occurrence in conflict situations. However, the situations and cases before the Court have shown that rape and other sexual and gender based crimes are often widespread and used systematically as a tool of war or repression.
73. Sexual and gender based crimes may be committed by organised structures as a result of direct, explicit orders or they may be a foreseeable result of broader instructions given by commanders and superiors, for example to carry out a specific military operation with inducement in the form of a promise of “women” as rewards for an attack.⁴⁹ These crimes may also be caused by a combination of other relevant factors at all levels of an organisation such as lack of military discipline and a culture of tolerance. The Office will take into account this diversity of scenarios when considering the different modes of liability and mental elements under articles 25, 28 and 30 applicable to the case at hand. The Office will seek to present various types of evidence, such as witness testimony, communications and

⁴⁸ See paragraph 2 of the General Introduction to the Elements of Crimes. According to article 30(2) of the Statute, “For the purposes of this article, a person has intent where: (a) In relation to conduct, that person means to engage in the conduct; (b) In relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events.” Article 30(3) provides that “‘knowledge’ means awareness that a circumstance exists or a consequence will occur in the ordinary course of events. ‘Know’ and ‘knowingly’ shall be construed accordingly.” Depending on the mode of liability, it may be necessary to establish specific mental elements (e.g. article 25(3)(c) requiring the “purpose of facilitating the commission of such a crime” for aiding, abetting or otherwise assisting).

⁴⁹ See, for example, *Prosecutor v. Stanislav Galic*, Trial Chamber I Judgment and Opinion, [IT-98-29-T](#), 5 December 2003, paras. 3, 738, 742-743, 746-747, 749, 751; *Prosecutor v. Stanislav Galic*, Appeal Judgement, [IT-98-29-A](#), 30 November 2006, paras. 175, 177-178; *The Prosecutor v. Jean-Paul Akayesu*, Trial Chamber I Judgement, [ICTR-96-4-T](#), 2 September 1998, paras. 1, 483, 681-682; *Prosecutor v. Kupreskic et al.*, Appeal Judgement, [IT-95-16-A](#), 23 October 2001, para. 365; *Proceedings of Brigadefuhrer Meyer (Abbaye Ardenne Case)*, Canadian Military Court, 10-28 December 1945, IV Law Reports 97, 108: “There is no evidence that anyone heard any particular words uttered by the accused which would constitute an order, but it is not essential that such evidence be adduced. The giving of the order may be proved circumstantially...and if you find the only reasonable inference is that an order that the prisoners be killed was given by the accused at the time and place alleged, and that the prisoners were killed as a result of that order, you may properly find the accused guilty.”

reporting mechanisms and contemporaneous public reports on the crimes⁵⁰ in order to establish the intent and knowledge of the accused.

74. The Office considers that sexual and gender based crimes do not necessarily require a specific intent to cause the conduct, and that awareness that these crimes will be a consequence in the ordinary course of events, will be sufficient to satisfy the mental element, in the appropriate cases.⁵¹

(b) Witness Preparation

75. The Office will consistently seek approval from Chambers to prepare witnesses for the purpose of promoting efficient and accurate testimony.⁵² Bearing in mind, in certain cases, the additional stigma, social and other consequences of sexual and gender based crimes, the Office considers witness preparation, particularly in such cases, to be highly desirable in supporting the psychological well-being of witnesses, diminishing the intimidation of the court-room environment and facilitating the complete provision of evidence pertaining to sexual and gender based crimes.⁵³

(c) Measures to protect the safety, and physical and psychological well-being of witnesses

(i) General obligations during proceedings

76. Article 68 of the Statute is the central article with regard to the protection of victims and witnesses throughout the proceedings and is binding on all organs of the Court.⁵⁴ The Office will fulfil its duty in ensuring that all appropriate measures

⁵⁰ For example, in the *Charles Taylor* case, the Trial Chamber of the Special Court for Sierra Leone relied heavily on contemporary documentary evidence regarding the coverage of the crimes committed in Sierra Leone by international organisations, NGOs or media on the crimes to find beyond reasonable doubt that the former President of Liberia was aware of the crimes committed in Sierra Leone by the RUF/AFRC forces against civilians, including rape. *Prosecutor v. Taylor*, Trial Chamber II Judgment, Case No. [SCSL-03-01-T](#), 18 May 2012, paras. 6815-6886.

⁵¹ See, for example, the Prosecution's closing argument in the trial of *Katanga et al.* *Prosecutor v. Katanga and Ngudjolo*, [ICC-01/04-01/07-T-336-ENG](#), p. 58, ln. 19- p. 61, ln. 10.

⁵² Departing from the practice in earlier cases, Trial Chamber V in the two Kenya cases decided to permit witness preparation, recognising that proper witness preparation not only helps ensure that the witness gives relevant, accurate and structured testimony but also enhances the protection and well-being of witnesses, including by helping to reduce their stress and anxiety about testifying. *Prosecutor v. Ruto et al.*, Decision on witness preparation, [ICC-01/09-01/11-524](#), 2 January 2013, paras. 4, 37, 51; *Prosecutor v. Kenyatta et al.*, Decision on witness preparation, [ICC-01/09-02/11-588](#), 2 January 2013, paras. 4, 41, 52. Witness preparation has been widely practiced by the *ad hoc* international criminal tribunals to facilitate the presentation of testimonial evidence.

⁵³ *Prosecutor v. Ruto et al.*, Decision on witness preparation, [ICC-01/09-01/11-524](#), 2 January 2013, para. 37.

⁵⁴ According to article 68(1) of the Statute, "[t]he Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. In so doing, the Court shall have regard to all relevant factors, including age, gender

are taken during the investigation and prosecution of sexual and gender based crimes.

77. The VWU of the Registry is the unit primarily responsible 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 Office also has statutory obligations with regard to protection. The Office and the VWU have accordingly concluded a joint protocol on witness protection, which sets out responsibilities.⁵⁵ In accordance with the protocol, the Office will cooperate with the VWU on matters of protection and support, including by sharing any relevant information and providing any assistance in the implementation of protective measures and support where necessary and appropriate.⁵⁶ The Office is mindful of the need for timely intervention and will facilitate the provision of the required assistance where necessary to maintain the physical and psychological welfare of witnesses, particularly victims of sexual and gender based crimes. The Office will also work with States and other relevant actors in order to give full effect to this provision.

(ii) Disclosure of evidence

78. The Office will exercise due diligence in ensuring that it meets its statutory requirements in relation to the disclosure of evidence, in a timely and professional manner. If the disclosure of identity would expose victims and witnesses, including those of sexual and gender based crimes, to the risk of physical and psychological harm, which may not be addressed by other protective measures, the Office may request authorisation for redactions to their identities pursuant to rule 81(4) of the Rules or use summaries of witness statements prior to trial, in accordance with articles 61(5) and 68(5) of the Statute. Prior to an interview, the Office will fully inform witnesses of its disclosure obligations in relation to witness statements, taking into account the particular vulnerability of the witness and any additional concerns witnesses of sexual and gender based crimes may have regarding security, personal and/or family or social repercussions.

as defined in article 7, paragraph 3, and health, and the nature of the crime, in particular, but not limited to, where the crime involves sexual or gender violence or violence against children. The Prosecutor shall take such measures particularly during the investigation and prosecution of such crimes. These measures shall not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.”

⁵⁵ In accordance with article 43(6) of the Statute, the Registrar has set up a Victims and Witnesses Unit within the Registry, with a mandate to provide, in consultation with the Office, protective measures and security arrangements, 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. A Prosecution-Registry Joint Protocol on the Mandate, Standards and Procedure for Protection was concluded in March 2011.

⁵⁶ The Office has established the Protection Strategies Unit and the Operations Support Unit that deal with protection and support of witnesses and other persons at risk on account of their interactions with the Office.

(iii) *In-court measures*

79. Article 68(2) of the Statute provides that as an exception to the principle of public hearings, the Chambers may conduct any part of the proceedings *in camera* or allow the presentation of evidence by electronic or other special measures to protect victims and witnesses. In particular, such special measures are mandatory in the case of a victim of sexual violence or a child who is a victim or a witness, unless otherwise ordered by the Court, having regard to all the circumstances, particularly the views of the victim or witness.
80. Where deemed necessary to protect a victim or witness of sexual and gender based crimes, the practice of the Office is to request a Chamber to order measures pursuant to rule 87 including: redacting the name of a person and any identifying information from the public records of the Chamber; prohibiting the parties and the participants to the proceedings from disclosing the name and any identifying information of a person to a third party; presenting evidence by electronic or other special means, including by image or voice alteration, video-conferencing and close-circuit television, or the exclusive use of sound media; using pseudonyms; or conducting proceedings, or parts thereof, in closed session.⁵⁷
81. In the case of witnesses who may face an increased risk of psychological harm and/or psychological or physical difficulties which may affect their well-being and ability to testify, the Office will request the Chamber to take special measures with a view to minimising re-traumatisation and facilitating their testimony.⁵⁸ Such special measures may include the use of screens to prevent direct visual contact between the witness and the accused; the provision of evidence via video-link; the presence of an accompanying support person or in-court assistant, such as a VWU support assistant, a psychologist or outside expert during the testimony.

⁵⁷ For example, in the *Bemba* case, the Office sought authorisation for victims of sexual violence to be accompanied by persons of their choice during their testimony at trial, *inter alia*, to minimise possible trauma and any additional fear associated with participating in the proceedings. See *Prosecutor v. Jean-Pierre Bemba Gombo*, Corrigendum to “Prosecution’s Request for Protective and Special Measures for Prosecution Witnesses at Trial”, [ICC-01/05-01/08-800-Corr-Red4](#), 6 July 2010, paras. 19-20.

⁵⁸ Rule 88(1), first sentence, of the Rules provides: “Upon the motion of the Prosecutor or the defence, or upon the request of a witness or a victim or his or her legal representative, if any, or on its own motion, and after having consulted with the Victims and Witnesses Unit, as appropriate, a Chamber may, taking into account the views of the victim or witness, order special measures such as, but not limited to, measures to facilitate the testimony of a traumatized victim or witness, a child, an elderly person or a victim of sexual violence, pursuant to article 68, paragraphs 1 and 2.”

82. The Office will pay particular attention to the manner of questioning of a witness or victim, especially with regard to sexual and gender based crimes and will take all possible steps to prevent any harassment, intimidation or re-traumatisation.⁵⁹

(d) Evidence

83. The evidence necessary for charging sexual and gender based crimes, and the burden on the prosecution to prove its case, are no more substantial or onerous than they are for other crimes. The Office will ensure that this is reflected in its investigation and prosecution strategies, including in its litigation before Chambers.

84. There are important rules of evidence designed to protect the witnesses/victims of sexual and gender based crimes, particularly with regard to the issue of corroboration, consent and past behaviour.

85. Rule 63(4) of the Rules provides that corroboration is not required in order to prove any crime within the Court's jurisdiction, in particular, crimes of sexual violence. Within the limits of its mandate, the Office will contribute to the consistent application of this rule, while ensuring sufficient evidence to prove the charges.

86. According to rule 70 which outlines the principles of evidence in cases of sexual violence, consent cannot be inferred by reason of any words or conduct of a victim of the alleged sexual violence where the environment undermined the victim's ability to give voluntary and genuine consent or where the victim was incapable of giving genuine consent. Consent cannot be inferred by reason of silence or lack of resistance.

87. According to rule 70(d), credibility, character or predisposition to sexual availability of a victim or witness cannot be inferred by reason of the sexual nature of the prior or subsequent conduct of a victim or witness. Rule 71 further provides that in light of the definition and nature of the crimes within the jurisdiction of the Court, and subject to article 69(4), evidence of the prior or subsequent sexual conduct of a victim or witness is generally inadmissible. These provisions provide an important disqualification of any attempt to undermine or discredit a victim or witness of sexual violence, based on her or his perceived or actual sexual conduct.

88. Rule 72 requires notification to the Court in the event of an intention to adduce evidence of consent by the victim. The Chamber is required to decide on the relevance and admissibility of the evidence, after hearing the views of parties, the witness and the victim or his or her legal representative *in camera*. In accordance

⁵⁹ Rule 88(5) of the Rules provides: "Taking into consideration that violations of the privacy of a witness or victim may create risk to his or her security, a Chamber shall be vigilant in controlling the manner of questioning a witness or victim so as to avoid any harassment or intimidation, paying particular attention to attacks on victims of crimes of sexual violence."

with rules 70-71, the Office will, when required, object to admission of such evidence. The Office will take a proactive and rigorous approach to the application of this rule.

89. The Office will consult with experts and, where appropriate, propose their testimony on different aspects, such as socio-political, psychological and medical aspects, of sexual and gender based crimes.⁶⁰ Such experts may also be useful in identifying patterns of sexual and gender based crimes, the nature of injuries and their consistency with victim testimony, and the personal and social consequences of the crime.⁶¹

(e) *Sentencing*

90. The Office will argue for sentences which give due consideration to the sexual and gender dimensions of the crimes charged, including their impact on victims as an aggravating factor and reflective of the gravity of the crimes committed. In the determination of an appropriate sentence, the Court is required to take into account factors such as the gravity of the crime and the individual circumstances of the convicted person.⁶² Several factors, including the extent of the damage caused, in particular the harm caused to the victims and their families, the nature of the unlawful behaviour and the means employed to execute the crime, must also be considered by the Court.⁶³ Bearing this in mind, the Office will adduce evidence to argue for the imposition of appropriate sentences for sexual and gender based crimes and the related harm caused to victims. The Office will, where appropriate, adduce evidence of the impact of the sexual and gender based

⁶⁰ The Office will take into account precedents of expert testimony of this kind in other international tribunals and national jurisdictions. Note, for example, the expert report by Ms. Binaifer Nowrojee at the ICTR, Case No. ICTR-98-41-T, *The Prosecutor v. Bagosora et al.*, exhibit No. P 291, "Sexual violence crimes during the Rwandan genocide", June 2004. ICTR Trial Chamber I admitted Ms. Nowrejee as an expert in relation to her investigations of sexual crimes in Rwanda based on her interviews and field investigations and found her evidence relevant to the pattern of sexual violence in 1994, including whether it was widespread, public, organised and the level of brutality compared to other armed conflicts. See *The Prosecutor v. Bagosora et al.*, Trial Chamber I Judgement and Sentence, Case No. [ICTR-98-41-T](#), 18 December 2008, para. 1728.

⁶¹ For example, the Office called Prof. André Tabo and Dr. Adeyinka Akinsulure-Smith as expert witnesses on the relevant pattern of sexual violence during the 2002-2003 conflict in the Central African Republic and its impact on the victims.

⁶² Article 78(1) of the Statute provides: "In determining the sentence, the Court shall, in accordance with the Rules of Procedure and Evidence, take into account such factors as the gravity of the crime and the individual circumstances of the convicted person."

⁶³ According to rule 145(1)(c) of the Rules, in its determination of the sentence, the Court shall: "In addition to the factors mentioned in article 78, paragraph 1, give consideration, *inter alia*, to the extent of the damage caused, in particular the harm caused to the victims and their families, the nature of the unlawful behaviour and the means employed to execute the crime; the degree of participation of the convicted person; the degree of intent; the circumstances of manner, time and location; and the age, education, social and economic condition of the convicted person."

violence on the victims, their families and the community as a whole, by way of victim or expert testimony and written statements.

91. The commission of a crime with a motive involving discrimination, including on the grounds of gender, or where the victim is particularly vulnerable, in itself constitutes aggravating circumstances.⁶⁴
92. Even where the accused is not charged with sexual and gender based crimes as such, the Office considers that any sexual or gender dimensions involved in the crimes charged should be treated as an aggravating factor or as part of the gravity factor for the purpose of sentencing.

(f) *Reparations*

93. Reparations decisions will be determined by each Trial Chamber with due consideration of the specific facts of the case, the context and circumstances within which the crimes occurred, the interests of victims, and the harm and suffering experienced.⁶⁵ The Office may be involved during the reparation stage.⁶⁶ The Office supports a gender-inclusive approach to reparations, taking into account the gender-specific impact, harm and suffering of the victims affected by the crimes for which an individual has been convicted. Where possible, the Office will also support the carrying out of a gender analysis by an appropriate body in order to determine the most effective and appropriate forms of reparation with regard to a particular community.

VII. Cooperation

94. Cooperation is one of the two fundamental components of the Rome Statute system, together with complementarity. Effective cooperation is crucial in order to ensure that the Office and the Court are able to carry out their mandate. The Office accordingly actively engages with States and other relevant stakeholders in order to improve the effectiveness of its actions with respect to sexual and gender based crimes. The Office also includes a gender perspective in its public information activities which seek to maximise awareness and impact of its work.

⁶⁴ The aggravating circumstances set out under rule 145(2)(b) of the Rules include: "Commission of the crime where the victim is particularly defenceless" (rule 145(2)(b)(iii)) and "Commission of the crime for any motive involving discrimination on any of the grounds referred to in article 21, paragraph 3", which includes gender (rule 145(2)(b)(v)).

⁶⁵ *Prosecutor v. Thomas Lubanga Dyilo*, Decision establishing the principles and procedures to be applied to reparations, [ICC-01/04-01/06-2904](#), 7 August 2012.

⁶⁶ Article 75(3): Before making an order under this article, the Court may invite and shall take account of representations from or on behalf of the convicted person, victims, other interested persons or interested States. In the *Lubanga* case, the Chamber invited the Office to file submissions on the principles and procedure to be applied to reparations. *Prosecutor v. Thomas Lubanga Dyilo*, Scheduling order concerning timetable for sentencing and reparations, [ICC-01/04-01/06-2844](#), para. 8.

(a) *External relations*

95. As part of its external relations strategy, the Office will enhance its efforts to identify, support and engage with initiatives undertaken to respond to the scourge of sexual and gender based crimes, including the facilitation of contacts between various entities in this field. Through missions, public statements, sharing of information, and participation in conferences and trainings, amongst others, the Office contributes to and highlights the need for accountability for sexual and gender based crimes.
96. The Office encourages various initiatives and actions notably by States Parties to address sexual and gender based crimes. These include: efforts towards universal ratification of the Statute and the adoption of domestic legislation which incorporates the conduct proscribed under the Statute; support for domestic investigations and prosecutions for these crimes;⁶⁷ enhancement of cooperation for the execution of ICC arrest warrants; and strengthening political support to end impunity and to prevent the recurrence of such crimes.⁶⁸ These contributions are important to establish and reinforce the normative framework of the Statute for the accountability of sexual and gender based crimes.
97. The establishment of the United Nations Special Representative of the Secretary-General for Sexual Violence in Conflict was also a significant development in the fight against impunity for sexual and gender based crimes as it strengthens the UN efforts in this area.⁶⁹ The Office of the Prosecutor liaises with the office of the

⁶⁷ [Security Council Resolution 1820 \(2008\)](#) also calls upon Member States to comply with their obligations for prosecuting persons responsible for rape and other forms of sexual violence constituting a war crime, a crime against humanity or a constitutive act with respect to genocide, and stresses the importance of ending impunity for such acts as part of a comprehensive approach to seeking sustainable peace, justice, truth and national reconciliations. The Security Council, in its [Resolution 2106 \(2013\)](#), encouraged Member States to include the full range of crimes of sexual violence in national penal legislation to enable prosecutions for such acts and recognised that effective investigation and documentation of sexual violence in armed conflict is instrumental both in bringing perpetrators to justice and ensuring access to justice for survivors.

⁶⁸ For example, the United Kingdom launched an initiative on preventing sexual violence in conflict, aimed, *inter alia*, at strengthening international efforts and coordination and supporting states to build their national capacity to prosecute acts of sexual violence committed during conflict. The African Solidarity Initiative, a programme launched by the African Union (AU) in 2012 to mobilise support for post conflict reconstruction, has also initiated consultations with the objective of formulating an AU led strategic framework for the prevention and response to sexual violence in Africa. See [the Concept Note on High Level Consultation on Preventing and Responding to Sexual Violence in Conflict, Post-Conflict Countries and Beyond](#), 9-11 October 2013.

⁶⁹ In February 2010, the UN Secretary General announced the appointment of Ms. Margot Wallström as his first Special Representative on Sexual Violence in Conflict. She was replaced by Ms. Zainba Hawa Bangura in June 2012. See the UN press releases announcing their appointments: ["Secretary-General appoints Margot Wallström of Sweden as Special](#)

Special Representative, and other relevant UN entities, including the Special Representative of the Secretary-General for Children in Armed Conflict, the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) and the Office of the High Commissioner for Human Rights.

98. The Office also recognises the crucial role that civil society plays in preventing and addressing sexual and gender based crimes. International and local NGOs are often first- responders to incidents of sexual and gender-based violence, undertake documentation of such crimes and provide significant medical, psychosocial and material support to victims. The Office will seek to support and strengthen the cooperation with these organisations. The Office will also continue to actively work towards building a network with these organisations in order to enlist their assistance and support in efforts to reach out more to the victims.
99. Civil society organisations also play a crucial role in: transforming public attitudes towards gender equality and addressing gender based crimes; campaigning for and supporting the adoption of domestic rape and sexual violence legislation in line with the Statute; advocating for the ratification of the Statute and an adherence to international laws and human rights standards; and supporting an international norm of accountability for crimes, including sexual and gender based crimes.
100. The ICC is complementary to national efforts. Accordingly, consistent with its positive complementarity policy, the Office seeks to combine its own efforts to prosecute those most responsible with national proceedings for other perpetrators. It may, for example, engage with and support national authorities in their national proceedings, including in relation to sexual and gender based crimes, provided that it does not compromise any future admissibility proceedings and subject to the existence of a credible local system of protection for court staff or witnesses and other security-related caveats.
101. As part of its positive complementarity approach, the Office encourages and supports States to carry out their primary responsibility of investigating and prosecuting crimes, including sexual and gender based crimes.

(b) Public Information

102. In support of the policy to integrate a gender perspective in all aspects of its work, its public information activities will include creating and seizing opportunities to highlight the impact of sexual and gender based crimes and increase awareness and contribute to the prevention of future crimes. The Office will utilise various platforms such as public events, media/social media campaigns, media programmes on high level missions, or documentary projects

[Representative on Sexual Violence in Conflict](#), 2 February 2010; [“Secretary-General appoints Zainab Hawa Bangura of Sierra Leone Special Representative on Sexual Violence in Conflict”](#), 22 June 2012.

for this purpose. The Prosecutor, and relevant staff members, particularly the Gender and Children Unit, will be actively engaged in these activities.

VIII. Institutional development

(a) Recruitment and institutional arrangements

103. The Office will enhance its institutional capacity to investigate and prosecute sexual and gender based crimes more effectively. The Office established the Gender and Children Unit (GCU) as one of the ways to ensure that proper focus is put on the investigation and prosecution of these crimes.⁷⁰ This Unit comprises of staff with legal and psycho-social expertise⁷¹ and supports all Divisions and teams in dealing with victims and witnesses, particularly those of sexual and gender based crimes. The GCU provides advice to the Prosecutor, the Executive Committee and staff in all areas related to sexual and gender based crimes and crimes against children at all stages of the operations. The Unit is responsible for liaising with the Victims Participation and Reparations Section (VPRS) in the Registry and also acts as the focal point with the VWU on support issues relating to victims and witnesses.
104. In addition, in accordance with article 42(9) of the Statute, the Prosecutor has appointed advisers with legal and other expertise on specific issues, including sexual and gender violence, to further develop the capacity of the Office and expand the expertise available to advise its work. To date, two Special Gender Advisors have been appointed.⁷²
105. Article 44(2) of the Statute requires that in the employment of staff within the Office, the Prosecutor shall ensure the highest standards of efficiency, competency and integrity and have regard to considerations of the representation of the principal legal systems of the world, equitable geographical representation and a fair representation of women and men.
106. The Office will recruit persons with required expertise and experience in the field of sexual and gender based crimes as required.

⁷⁰ The GCU was established in 2003 shortly after the taking of office by the first Prosecutor.

⁷¹ Regulation 12 of the Regulations of the Office.

⁷² Prof. Catherine MacKinnon served as the Special Gender Advisor between November 2008 – June 2012. In August 2012, Ms. Brigid Inder was appointed as new Special Gender Advisor. See the press releases announcing their appointments: [“ICC Prosecutor appoints Prof. Catharine A. MacKinnon as Special Adviser on Gender Crimes”](#), 26 November 2008; [“ICC Prosecutor Fatou Bensouda Appoints Brigid Inder, Executive Director of the Women’s Initiatives for Gender Justice, as Special Gender Advisor”](#), 21 August 2012.

107. In February 2010, the Office adopted the Operations Manual which sets out its operations in detail and incorporates good practices related to victims and witnesses of sexual and gender based crimes.

108. The Staff Welfare Office of the Registry provides support for ICC staff to prevent and manage stress and trauma. The Office will request that the Staff Welfare Office provide such support more regularly for its staff, particularly in relation to their work involving sexual and gender based crimes. Managers will be expected to regularly engage with staff in this regard through support and supervision and encourage staff to seek the assistance of the Staff Welfare Office.

(b) Staff training

109. Staff training is an important component towards ensuring effective investigation and prosecution of sexual and gender based crimes. As foreseen in the Court-wide revised strategy towards victims, training will be adjusted in accordance with new strategies and experiences.⁷³

110. The Office will endeavour to ensure that all members of the joint/trial teams as well as any other relevant staff members have the necessary competencies and support to perform their functions effectively in relation to sexual and gender based crimes. In addition, the Office will provide on-going technical and advanced training on methodologies in collection and analysis of evidence of such crimes, the relevant legal framework, cultural issues and other traditional and religious practices related to the situation and specific communities where the investigation is being conducted.⁷⁴ Training will also be provided on how to properly conduct court examinations of vulnerable witnesses as well as insiders/overview witnesses to elicit relevant information regarding these crimes. The demonstration of awareness, knowledge and good practices regarding the gender and cultural context of the investigations by all members of the investigation team, will be supported and monitored by the joint/trial team leadership.

111. The Office will constantly monitor its practices with regard to the investigation and prosecution of sexual and gender based crimes as part of its lessons learned processes. Good practices and other relevant developments will be incorporated into the Operations Manual on an on-going basis.

⁷³ Report of the Court on the Revised strategy in relation to victims: Past, present and future, [ICC-ASP/11/40](#), 5 November 2012, para. 58. See also para. 8: "In general, the Court has recognised that it must do more to make its personnel increasingly gender sensitive. The different organs and units dealing with particularly vulnerable groups, e.g. women victims, children and survivors of Sexual and Gender Based Violence (SGBV), are developing policies on gender and guidelines for relevant personnel."

⁷⁴ [WHO Ethical and safety recommendations](#), recommending, *inter alia*: "All members of the data collection team must be carefully selected and receive relevant and sufficient specialized training and ongoing support", at p. 9.