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Preface from the Prosecutor: A Renewed Partnership for Accountability

During my swearing-in ceremony in June 2021, I undertook to find novel and imaginative ways to partner with national authorities, civil society and all actors to bring new life to our collective efforts in realising the goals of the Rome Statute.

Based on the efforts we have undertaken so far in my first two years of practice as ICC Prosecutor, I am pleased to introduce this paper as a strategic consolidation of this vision, outlining how through the mutually reinforcing principles of cooperation and complementarity we can strengthen and expand the common ground between all actors and reduce the accountability gap that persists with respect to international crimes.

This paper distils a range of integrated measures and policies that I believe, collectively, can effectuate a paradigm shift in the relationship between my Office, national authorities and other accountability mechanisms, and those we ultimately seek to serve - the victims and survivors of atrocities globally.

Rather than viewing itself as the apex of the international criminal justice movement, my Office must embed itself as a hub at the centre of our collective accountability efforts. To realise this objective, we cannot limit our aspirations to simply being an effective investigative and prosecutorial body. We must establish ourselves as a strong and effective partner for national authorities, providing prompt and impactful assistance in addressing serious crimes falling within the scope of the Rome Statute cooperation regime, and demonstrating our relevance and value from multiple vantage points.

Immediately prior to joining the ICC, I spent three years in Iraq as Special Advisor to the Secretary General and Head of the United Nations Investigative Team to promote accountability for crimes committed by Da'esh/ISIL in Iraq (UNITAD), working day-by-day with those directly affected by the most unimaginable atrocities and striving to build productive relationships with national and local authorities. The central focus of this work was in providing meaningful assistance to domestic proceedings globally. Speaking with impacted communities, survivors and religious authorities, and working closely with national counterparts also confirmed my view that to build a meaningful basis for justice we must found our efforts on our relationships with those on the ground.

That experience has strongly impacted my view of how the Office of the Prosecutor can effectively build partnerships to deliver on its mandate. Over the last two years as I have travelled and engaged extensively with affected communities, my conviction has been reinforced that we must bring our work closer to communities, by making all actors feel that they have a stake in the process of justice and can play a meaningful role in its realisation. Accountability cannot be delivered at arm's length and cannot be achieved without meaningful partnerships.

A renewed approach to complementarity is also responsive to the reality of a changed landscape in the field of core international crimes, with domestic authorities increasingly seeking to assert jurisdiction over international crimes in national settings, as well as the

efflorescence of joint efforts of domestic authorities to exchange information and complement evidence collection activities. This progress at the national level has significantly developed our collective thinking on how complementarity and cooperation in the fight against impunity for core international crimes can be made effective. These are positive developments that we can consolidate and expand upon. They should not be viewed as any form of threat to international judicial institutions but a tremendous opportunity to expand the impact of our work. I believe that this can be achieved through a proactive and dynamic approach by all actors involved, with the Office focused simultaneously on delivering on its core investigative mandate while significantly increasing its ability to interface with, and support, efforts of other criminal jurisdictions and accountability actors.

This paper also reflects a fundamental perspective that the core principles of cooperation and complementarity at the heart of the Rome Statute are inextricably linked and mutually dependent. By strengthening our ability to cooperate with national authorities in addressing core international crimes, and by increasing our capacity to provide tangible support to domestic proceedings, we can foster a stronger basis for national actors to uphold their primary responsibilities and thereby reduce the need for the Office to step in. At the same time, by demonstrating our relevance to the work of national prosecutors globally, we are forging closer bounds of cooperation that serve to accelerate our own investigations.

This vision is also reflected in the strong and new forms of relationships recently developed between my Office, national authorities and international and regional organisations, and builds further on the important work done as part of the stock-taking exercise undertaken at the Kampala Review Conference including a thematic focus on the topic of complementarity and the ensuing processes that followed, as well as the Report of the Independent Expert Review.

Above all, this paper and the new approach it outlines is founded on the principle of partnership. It reflects the fact that there is no tension, nothing incompatible, between strengthening our cooperation with national actors, regional and international organisations, and exercising the necessary vigilance in fulfilling our own core investigative mandate. There is no undermining of our core mandate by providing needed, targeted assistance in the frame of a relationship of dynamic complementarity. There is nothing that prejudices our ability to act independently if we deepen our cooperation through a joint investigative team. In fact, the converse is true. It is by enhancing our networks of cooperation with national authorities, civil society actors and affected communities that we will be able to accelerate progress to delivering justice for those impacted by Rome Statute crimes, both at the ICC and in national courts.

This represents a fundamentally renewed offer from my Office to deepen our partnerships with all actors in pursuit of accountability for the most serious of crimes. I look forward to implementing this vision in the coming years, with your assistance.

Karim A.A. Khan KC

I. Introduction: A Two Track Approach

1. The complementary nature of the International Criminal Court and its dependence on State cooperation requires that national criminal jurisdictions and the ICC function together. In highlighting the core elements that motivate the Statute, the preamble recalls “the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes” and the need for “taking measures at the national level and [...] enhancing international cooperation.” It is within this setting that the ICC is established: to be “complementary to national criminal jurisdictions.” Complementarity and cooperation, operating together, express the combined resolve of States Parties to “guarantee lasting respect for and the enforcement of international justice.”¹ It is through cooperation and complementary action on matters of common concern that the pursuit of justice for Rome Statute crimes can be achieved. This concept of partnership is at the centre of the work of the Court.
2. The objective of giving practical expression to this vision has been a constant theme ever since the Statute entered into force in July 2002.² As an expert group succinctly expressed in a consultation paper commissioned by the Office of the Prosecutor (“Office” or “OTP”) in 2003: “the Prosecutor’s objective is not to ‘compete’ with States for jurisdiction, but to help ensure that the most serious international crimes do not go unpunished and thereby to put an end to impunity. The complementarity regime serves as a mechanism to encourage and facilitate the compliance of States with their primary responsibility to investigate and prosecute core crimes.”³ The approach called for engagement with and encouragement of domestic action wherever possible in preference to ICC intervention, while the exercise of the necessary diligence to ensure that the Court’s complementary mandate is given effect in circumstances where it is warranted. The experts called this the two guiding principles of ‘partnership’ and ‘vigilance’.⁴
3. In practice, partnership and vigilance have often been treated in tension, instead of being viewed as mutually reinforcing. The Office, under the strategic vision of the Prosecutor, now seeks to embrace the connection between these two aspects of complementarity, in the firm conviction that this mutually reinforcing relationship is central to the realisation of the full potential of the Rome Statute system. Faithful to the vision first set out in the preamble of the Statute, this new approach is defined by placing emphasis not only on the judicial application of the principle of complementarity under article 17 of the Statute, but also through concerted efforts to support national authorities in shouldering greater responsibility

¹ Preamble, paragraphs 4, 6, 10 and 11, article 1, ICC Statute.

² ICC-OTP, [Paper on some policy issues before the Office of the Prosecutor](#), 2003; ICC-OTP, [Report on Prosecutorial Strategy](#), 2006, p.5; ICC-OTP, [Prosecutorial Strategy 2009-2012](#), paras 16-17; [ICC-OTP, Strategic Plan 2012-2015](#), paras. 66-67; ICC-OTP, [Policy Paper on Preliminary Examinations](#), 2013, paras 100-103; ICC-OTP, [Strategic Plan 2016-2018](#), paras 29, 55-57, 103-106; ICC-OTP, [Strategic Plan 2019-2021](#), paras. 21, 48-56; ICC-OTP, [Strategic Plan 2023-2025](#), paras 32-41, 78-82; ASP, [Bureau report on complementarity](#), “Taking stock of the principle of complementarity: bridging the impunity gap”, [ICC-ASP/8/51](#), 18 March 2010; ASP, [Resolution RC/Res.1](#), 8 June 2010; ASP, [Report of the Independent Expert Review of the International Criminal Court and the Rome Statute System](#), [ICC-ASP/19/16](#), 9 November 2020.

³ ICC-OTP, [Informal expert paper: The principle of complementarity in practice](#), 2003.

⁴ *Ibid.*, para. 3.

with respect to the investigation and prosecution core international crimes. As such, the Office will seek to engage in partnership with States to promote cooperation and complementary action, while remaining vigilant of its mandate to investigate and prosecute Rome Statute crimes. It will apply this two-track approach at all stages of its work across all situations and cases. If this work is effectively implemented, these two tracks can converge as a consequence of genuine proceedings in relevant cases having been undertaken at the national level. If States step up, the Office will step out.

4. This approach is captured in the Office’s Strategic Plan 2023-2025, in the commitment to work closely with situation countries and other States, accountability mechanisms, and other relevant partners to ensure a coordinated and effective effort towards closing the impunity gap for core international crimes. Such joint efforts are intended to take multiple forms ranging assisting national jurisdictions in their domestic proceedings, the sharing of information, knowledge and best practices, the definition of common operational standards on areas of common interest, the secondments of experts, and engagement with local, regional, and international partners. Collectively, these initiatives mark a fundamentally renewed approach to complementarity and cooperation by the Office.⁵
5. The objectives of this policy document are to explain:
 - how the Office intends to implement its two-track approach of working in partnership with other accountability actors, while remaining vigilant in carrying out its mandate;
 - how these two tracks are mutually reinforcing;
 - the ways in which the Office is seeking to equip itself, through the transformations it is implementing, to be a tangible partner for domestic authorities, together with examples from its practice;
 - and how collective efforts, among a plurality of accountability actors, mechanisms and processes, can be advanced to provide redress for the victims and survivors of atrocity crimes.
6. This document and policy are founded on ICC core legal texts (Rome Statute, the Rules of Procedure and Evidence, the Elements of Crimes, the Regulations of the Court, the Regulations of the Office), the Office’s Strategic Plan 2023 – 2025, the Office’s policies and prosecutorial strategy, as well as the jurisprudence of the ICC and other relevant courts and tribunals. It draws on the experience of the Office, its good practices and lessons learned. The policy also takes into consideration the reports, resolutions and declarations of the Assembly of States Parties (“ASP”) on the topics of complementarity and cooperation as well as the recommendations contained in the Report of the Independent Expert Review commission by the ASP.⁶

⁵ ICC-OTP, [Strategic Plan 2023-2025](#), Strategic Goal 2: Enhance efforts by national authorities to fight impunity, paras. 32-41.

⁶ For ASP documentation and resources, including relevant resolutions on complementarity, ASP Bureau reports on complementarity, and the Review Conference declaration, and summaries of meetings held see ASP

7. This policy focuses on the Office’s strategic approach in the implementation of its mandate and is subject to revision. It does not give rise to legal rights.
8. The Office publishes its policies in the interest of promoting transparency, clarity and predictability in the application of the legal framework. It is hoped that publication, dissemination and implementation of this policy will enhance cooperation and collaboration in the efforts of addressing accountability among actors including States, United Nations (“UN”) bodies and experts, transitional justice mechanisms, regional and international institutions, civil society organisations, academics and practitioners. It is hoped that it will also assist in promoting cooperation, increasing accountability, and enhancing the preventive impact of the Statute through the work of the Court.
9. This paper is being circulated in draft form for comments and feedback in accordance with the practice of the Office to ensure clarity and transparency in the manner in which it applies the requisite legal criteria and devises its investigative and prosecutorial strategy and policies. The Office invites feedback and reflection on this draft paper from all stakeholders for the purpose of finalising this policy and for informing its future work.
10. It therefore should not be viewed as final until such comments and feedback have been incorporated.

II. Guiding principles

11. The provisions of the Court’s regulatory framework that address complementarity and cooperation straddle multiple provisions of the Statute and Rules. While an exhaustive catalogue would be beyond the scope of this paper, the following provisions are particularly relevant for framing the considerations that apply to this policy. While a number of the areas treated in this policy have traditionally been subsumed under the overall umbrella of complementarity or the phrase ‘positive complementarity’, full utilization of all the tools available under the Statute gives better expression to this relationship as one encompassing both complementarity and cooperation.
12. The preamble of the Statute contains a number of considerations that are critical to the vision set out in this policy. Whereas the notion of complementarity as an admissibility provision is typically viewed in exclusive terms - given its function in resolving competing assertions of jurisdiction over the same case - the preamble reveals a more collaborative and holistic understanding of the notions of complementarity and cooperation more generally as they operate at the heart of the Rome Statute system.
13. The preamble affirms “the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation”. It recalls in this regard, “the duty of every State to exercise its criminal jurisdiction over those

Complementarity and ASP *Complementarity Resources*. See also ASP, *Report of the Independent Expert Review of the International Criminal Court and the Rome Statute System*, [ICC-ASP/19/16](#), 9 November 2020.

responsible for international crimes” – a duty that pre-dates and arises independent from the Rome Statute, under existing national and international law. It is in the context of this pre-existing system and extant duty that the ICC has been established, to be “complementary to national criminal jurisdictions” – a phrase that is recalled in the first article of the Statute. And it is through the combined and complementary operation of national criminal jurisdictions and the ICC, working in cooperation, that States Parties resolved to “guarantee lasting respect for and the enforcement of international justice”.⁷ The cooperative effort of a plurality of actors working in concert to address atrocity crimes gives expression to the concept of unity in diversity.

14. Provisions related to the operation of complementarity and cooperation suffuse the entire legal framework of the Court. Some of these provisions concern proceedings initiated before the Court. Thus, articles 17, 18 and 19 regulate admissibility determinations in order to resolve forum allocation questions between the ICC and national criminal jurisdictions. Similarly, Part 9 of the Statute regulates the manner by which the Court may seek cooperation from States Parties with its investigations and prosecutions, and the obligations of States Parties to cooperate fully with the Court. States Parties must ensure that procedures are available under their national laws for all the forms of cooperation specified under Part 9 of the Statute, and that requests for assistance can be executed.⁸ Other provisions of the Statute regulate a situation where there is concurrent action by the ICC and national authorities. This includes provisions foreseeing that the ICC and national authorities may be concurrently investigating and/or prosecuting to different, but possibly inter-connected cases, necessitating consultation, coordination and sequencing to ensure both cases can proceed.⁹
15. The Statute also provides a clear framework for the Court to cooperate with and provide assistance to a State conducting an investigation or trial in respect of conduct which constitutes a crime within the jurisdiction of the Court or a serious crime under national law.¹⁰ The provision of such cooperation, which the Court may grant at its discretion, is subject to conditions that seek to ensure that the consent of the originating State is provided in the transmittal of any information obtained pursuant to Part 9 of the Statute, while the provisions of article 68 are also applicable, governing the protection of victims and witnesses.¹¹
16. Article 54 of the Statute, which regulates the duties of the Prosecutor, also sets out a number of considerations that guide this policy. For example, the duty of impartiality and independence that underpins the work of the Office, as well as its truth-seeking role, ensures that the Prosecutor acts, at all times, faithful to the object and purpose of the Statute, including its complementarity and cooperation provisions. This duty of impartiality and independence means that whenever there are genuine national proceedings into relevant cases, the Office will support action at the domestic level in favour of proceedings before the ICC. In cases that have been held to be admissible before the Court, whenever there is a

⁷ Preamble, paragraphs 4, 6, 10 and 11, article 1, ICC Statute.

⁸ See e.g. articles 86, 88, 99(1), ICC Statute.

⁹ See e.g. article 89(4) and article 94, ICC Statute; rule 183, ICC RPE. See also provision relating to possible competing extradition requests for the same person, but for different conduct, as set out in article 90(7), ICC Statute.

¹⁰ Article 93(10). The provision is applicable, under the same conditions, to both States Parties and non-Party States.

¹¹ See article 93(10),(b)(ii). See also rule 194, ICC RPE.

change of circumstances warranting revision of that assessment, the Office will seek it on its own initiative. Where there is an opportunity to assist national authorities conducting relevant and genuine proceedings, the Office will proactively support it.

17. At the same time, article 54(1) demands vigilance. The Office’s duties of impartiality and independence require that it satisfy itself as to the relevance and genuineness of domestic proceedings in the context of an admissibility determination. Equally, the nature of the Prosecutor’s mandate, and the requirements of article 21(3) of the Statute, imply a duty on the Office to exercise necessary caution in responding to requests for cooperation with respect to proceedings it has reason to believe do not respect the principles of due process recognised by international law. Such assistance must also not put at risk any duties of protection that are owed by the Court to victims and witnesses.
18. Moreover, article 54 entrusts the Office with several powers inherent to the exercise of its mandate. Implementation of this policy will rely on heightened usage of the authority of the Prosecutor to seek the cooperation of any State or intergovernmental organization or arrangement in accordance with its respective competence and/or mandate.¹² The Office will also seek to maximise the provisions of the Statute enabling it, in the exercise of its mandate, to enter into such arrangements or agreements, not inconsistent with the Statute that may be necessary to facilitate the cooperation of a State, intergovernmental organization or person.¹³
19. Finally, in reflection of the vision of complementarity enunciated by States Parties in Kampala in 2010, the Office emphasises that its work along the two track approach seeks to respond with renewed impetus to the Review Conference resolution on complementarity which: “*Encourages* the Court, States Parties and other stakeholders, including international organizations and civil society, to further explore ways in which to enhance the capacity of national jurisdictions to investigate and prosecute serious crimes of international concern as set out in the Report of the Bureau on complementarity, including its recommendations”.¹⁴
20. In this context, the Report of the Bureau on complementarity emphasised a number of core elements that have informed this policy, including its recognition that the work of the Office in responding to and cooperating with national authorities “can also contribute to decreasing the overall financial and capacity burden placed on the Court in the long term, as assistance to national authorities can have an impact on the case load of the Court.”¹⁵
21. Complementary and cooperation are critical for the realisation of the full potential of the Rome Statute system. At the same time, their implementation in a responsible manner as proposed in this policy will ensure a proper management of the workload placed on the Court as a permanent institution with potentially universal vocation, but finite resources.

¹² Article 54(3)(c), ICC Statute.

¹³ Article 54(3)(d), ICC Statute.

¹⁴ ASP, [Resolution RC/Res.1](#), 8 June 2010.

¹⁵ *Ibid.*, paras. 42-43. See also paras 44-45 “... there may be scope for the Office of the Prosecutor to engage in certain capacity building activities within existing resources and without compromising its judicial mandate ... The relevant organs of the Court could, within the limits of their respective mandates, also act as a catalyst for assistance, helping to bridge the divide between donors and potential partner countries. In this way, the justice system envisaged by the Rome Statute – involving States Parties and the Court in partnership – can give effect to the principle of complementarity.”

III. Complementarity and Cooperation in Partnership

22. The Office is taking unprecedented steps to reinvigorate and transform the nature of its relationship with national jurisdictions to ensure greater impact. This section includes both aspects related to policy as well as information on knowledge management tools and processes that are being introduced to ensure that the Office has the necessary architecture to drive this new engagement.
23. This section outlines four key pillars on which the Office's efforts to deepen its engagement with national authorities are based.

▪ **Creating a community of practice**

To fully harness the potential of cooperation and complementarity, and to inform where and when the OTP's intervention may best be warranted, the Office must first enhance its understanding of the domestic legal landscapes in which collaboration with national authorities can take place. The Office will do this by establishing new forums, platforms and modalities through which information and ideas can be exchanged with national counterparts and by ensuring it proactively tracks progress and actions being taken at the domestic level with respect to international crimes.

▪ **Bringing justice closer to communities**

By further embedding its work in a local environment, the OTP can build trust with all actors, including national authorities, and increase its ability in identifying new opportunities for synergies and cooperation. To do so, the Office is in the process of significantly enhancing its field presence in a number of situation countries to strengthen its investigative activities and deepen its engagement with national stakeholder and local CSOs. The imperative for the Court to be ever more relevant to those affected by crimes militates in favour of close physical proximity and regular contact with affected communities. The starting point

▪ **Technology as an accelerant**

To establish itself as a hub for cooperation in the field of international criminal justice, the Office must be capable of providing tangible value to national investigators and prosecutors. The Office is overhauling its technological architecture, allowing it to not only to receive, process and preserve larger data sets, but also to effectively categorise and analyse volumes of information using tools including machine learning and advanced cognitive services. This will place the OTP in a unique position to share evidence and analytical products in support of national proceedings.

should be the conduct of activities as close to affected communities as possible.

▪ **Harnessing cooperation mechanisms**

The current moment and operating environment provides an unprecedented opportunity to transform the relationship between the Office of the Prosecutor and international or regional organisations. By engaging and exploring innovative partnerships for action, the Office is opening new avenues for cooperation and sharing of information. The Office is also seeking to deepen strategic discussions and exploring different venues that may lead to more effective distribution of cases between the international, regional and national levels.

24. The sections that follow build on these core pillars for enhanced cooperation and complementarity by providing examples in which renewed approaches have recently been adopted or are under development by the Office. The final sections look at examples of how complementarity has been applied by the Office in the exercise of its core mandate and the Prosecutor's vision of complementarity in practice.

- a. **Creating a community of practice**

25. In recent years, national jurisdictions have served as a crucial catalyst for innovation and progress in the field of international criminal justice. The increased movement of individuals from areas impacted by atrocity crimes to other jurisdictions, combined with technological advances allowing for the easier capture and flow of information relevant to investigations, as well as enhanced evidence preservation possibilities and relevant legal frameworks, has presented national authorities with perhaps unprecedented opportunities for action.
26. This renewed dynamism is reflected in several developments. This includes the expanded use of universal jurisdiction; the move towards addressing terrorism related offences as international crimes to ensure capturing more fully the criminal responsibility of alleged perpetrators, as well as efforts by some national authorities to physically re-locate their proceedings in full or in part to the territories where the alleged crimes occurred in order to enhance engagement of affected communities.
27. Recent global trends in relation to involvement of foreign elements within domestic conflicts, both in terms of fighters and finances, have also created deep linkages between the crime base, investigations and prosecutions undertaken across domestic jurisdictions, third countries and international courts. The increased phenomena of transnational actors and ideologically driven armed groups have further driven the commission of crimes and the availability of its evidence across territories. This in turn has spurred greater efforts in understanding the threat and risk environment. Growth in the notion and use of structural investigations for core international crimes in some national jurisdictions (allowing States to initiate open-ended investigations on a situation, rather than on a specific incident or perpetrator) has further underlined the need for coordination, cooperation and complementarity.
28. In tandem with these important developments amongst national authorities has been the innovation and the drive to create various international investigative mechanisms to collect and preserve evidence in order to potentially support investigative and prosecutorial action at both the domestic and international level, such as the Independent Investigative Mechanism for Myanmar.
29. This renewed dynamism of the international criminal justice landscape presents new and unprecedented opportunities for cooperation and complementarity. Reflecting this, the Office is introducing a number of approaches that will significantly enhance its ability to both benefit from and harness the capacity of national authorities to take action with respect to core international crimes.

30. The overall objective of this process will be to reimagine the Office not as an apex of the international criminal justice architecture, but as a hub at the centre of global efforts undertaken across different criminal jurisdictions.
31. The Office expresses this vision conscious that in some circumstances the ICC, as an international court, may be best placed to hear a particular case: whether due to admissibility (as a consequence of the operation article 17); jurisdictionally (such as in addressing alleged conduct spanning the territory of several States); or procedurally (such as where immunities or special procedural rules might otherwise attach to the official capacity of a person). Therefore, even where the Office investigates and prosecutes a particular case, it envisages its work as forming part of a wider array of action carried out by a community of accountability actors.

Mapping and tracking of domestic accountability efforts

32. As an initial step, the Office, together with other partners already undertaking this work, will seek enhance its capacity to map the full range of ongoing domestic proceedings relating to core international crimes. It is only by understanding the range of action being taken at the national level that the Office will be able to fully exploit the opportunities for common action where they exist, for operational coordination, for the sharing of best practices and lessons learned, for determining case selection and prioritisation, for identifying completion strategies, and ultimately for the full implementation of the promise of complementarity. This mapping and tracking function will encompass all areas in relation to which the Office could potentially provide assistance in accordance with the Rome Statute cooperation framework.

Cooperation and Complementarity Forum

33. In parallel, the Office will work with partners to build on regional precedents to establish a new global Complementarity and Cooperation Forum through which a community of practitioners can be formed. The Office envisages that this could be composed of national practitioners and specialized experts nominated by States Parties and non-Party States, to serve as a platform for the two-way sharing of information between the Office and national authorities with the objective of identifying areas in which the Office and States may be able to provide each other support and assistance on cases under investigation or prosecution. In a confidential setting, participating national authorities and the Office will be able to provide updates on current and anticipated lines of action with respect to core international crimes, and to identify possible priorities for enhanced cooperation and coordination. This approach will facilitate good coordination between the relevant actors and reinforce efficiency in the pursuit of justice, while ensuring an efficient use of time in delivering justice and management of resources in the fight against impunity for core international crimes.
34. This forum will also constitute a place where practitioners can share expertise and jointly discuss and develop common standards for the investigation and prosecution of core international crimes. The Office envisages such exchanges occurring not only between legal practitioners, but also investigators, criminal analysts, forensic specialists, financial

investigators, country specialists, linguists, knowledge base managers, operational and protection strategies experts, as well as judicial cooperation specialists. With all actors working in a coordinated and harmonized manner, following similar operational standards and protocols, the ability to work cohesively and to share information and best practices will be enhanced. Routine consultations with and possible OTP deployments of specialized practitioners in this community, such as investigators of crimes committed against children, financial forensic analysts, sexual crimes analysts, organized crimes and terrorism experts, could form an important component of such partnerships.

35. It is the intention of the Office for the Complementarity and Cooperation Forum to be operational in early 2024.

Situation Briefs

36. The development of this new platform for complementarity and cooperation also requires the expansion of the substantive basis for engagement. Reflecting this, the Office will develop Situation Briefs providing an overview of cases being developed in relation to each situation it addresses. Subject to overarching information security and witness protection considerations, the need to preserve the integrity of ongoing investigations, these Briefs will provide States with an up-to-date synthesis of the types of evidentiary material collected to date, key lines of investigation completed and, where appropriate, indications as to anticipated upcoming procedural actions. The Office envisages these briefs could be shared, on a case-by-case basis and subject to its discretion, with cooperative States in order to strengthen the basis for dialogue and support the mutual provision of cooperation in relation to a situation.
37. In developing and sharing these Briefs, the Office will seek to significantly increase awareness among national authorities as to opportunities for the provision of relevant information both by domestic authorities to the Office in support its own investigations, as well as by the Office in support of domestic proceedings. It will also allow for the different authorities conducting investigations and prosecutions on the same situation to better coordinate their efforts to achieve criminal accountability and to increase the overall impact of different accountability actors.

Deepening common understanding through secondments of national experts

38. To further expand common understanding between the Office and national authorities, steps have been taken to fully utilise the possibilities for the deployment of national experts to the Office to support its work.
39. On 7 March 2022, the Prosecutor issued a Note Verbale requesting States Parties to provide such personnel in order to address the resources needs across all situations before the Court. To date this has been met with a very positive response, with the Office having received or being committed secondment of over 70 personnel at the time of writing. Additionally, the Office has established a new Trust Fund for financial support for personnel deployed by States Parties that qualify as developing economies and economies in transition, with a view

to assisting further deployment of experts and enhance geographical diversity. In this regard, the Office will seek to ensure that the secondment of experts is consistent with the principles applicable to members of the Court, taking into account the need for representation of the principal legal systems of the world, equitable geographic representation and gender balance. A genuinely diverse community of practitioners builds a “resource bulwark” of accountability actors.

40. The possibility to receive secondments represents an opportunity to fundamentally deepen the relationship between the Office and the national authorities to better achieve the goals of the Rome Statute. By increasing the influx and outflow of experience between the OTP and national experts, the Office will be able to broaden the basis on which opportunities for collaboration can be identified and exploited.
41. National experts will also increase the range of skills sets available to OTP teams, deepen knowledge transfer by enabling a two-way exchange of the latest cutting edge operational best practices, as well as an exchange of experience and practice on the specificities and challenges of investigating and prosecuting core international crimes. Such experts act under the instructions of the Prosecutor in the independent and impartial discharge of his mandate and are strictly bound by the requirements of confidentiality. The absorption of such a volume of new, highly qualified personnel into its lifeblood has not been without its challenges, operationally and administratively. Nonetheless, through such operational interaction, the Office has already started to glimpse the emergence of a cross-jurisdictional exchange that holds the promise of enriching both domestic and international accountability efforts. The detachment of secondees to the Office, often from national departments and units charged with the investigations and prosecutions of core international crimes, is already providing fertile ground for the development of a community of practice.

Provision of support and assistance to national authorities

42. A further way that the Office will seek to contribute to a community of practice is through promoting knowledge transfer between practitioners and legal professionals involved in investigating, prosecuting and adjudicating Rome Statute crimes. This may include facilitating the sharing of lessons learned, best practices, and technical expertise on specific issues or areas of practice.¹⁶
43. As reflected in further detail in other sections of this paper, the Office will seek to take a progressive and dynamic approach in identifying and addressing areas in which national authorities believe that the support and assistance of the OTP may be of value. Recent examples of such assistance include the provision of training to members of the judiciary of the Special Jurisdiction for Peace in Colombia on the OTP policy on gender persecution, the provision of guidance and support in Guinea with respect to the ongoing trial addressing

¹⁶ See e.g. article 5, ICC-OTP, *Cooperation Agreement between the Office of the Prosecutor of the International Criminal Court and the Government of Colombia*, 28 October 2021; article 5, *Memorandum of Understanding between the Republic of Guinea and the Office of the Prosecutor of the International Criminal Court*, 28 September 2022; articles 4-5, *Memorandum D'entente entre La République Democratique du Congo et Le Bureau du Procureur de la Cour Pénale Internationale*, 1 June 2023.

allegations from 2009, the deployment of forensics teams of over 45 personnel to Ukraine to assist OTP investigations but also provide support to Ukrainian authorities with respect to crime scene analysis, and the development of a cooperation and complementarity plan with the Government of Venezuela.

44. The provision of such support to national and regional accountability efforts is of value to the Office in multiple ways. It effectively reduces the potential need for the Office to expend resources in full investigations by supporting States to meet their obligations. It deepens the channel for communication and dialogue with national authorities, demonstrating the value of the work of the Office to domestic jurisdictions and the relevance of the Court more broadly to a broader constituency. And it can strengthen the basis for broader cooperation that could be advantageous to the core investigative and prosecutorial mandate of the Office.
45. As it has done in the past, and continues to do under this renewed strategic approach, the Office will seek to engage other international and regional institutions in the provision of appropriate support, while also being clear where it would be of benefit both to the Office and the domestic jurisdiction for the OTP itself to provide more specific forms of assistance.
46. As part of this broader effort, the Office will also promote greater reference to by domestic practitioners to ICC Legal Tools, an initiative initially spearheaded by the OTP and now supported Court-wide. The ICC Legal Tools are the leading information services on international criminal law.¹⁷ The open access Tools comprise the ICC Legal Tools Database (including the ICC Case Law Database), together with legal research and reference tools developed by lawyers with expertise in international criminal law and justice: the ICC Case Matrix, the Elements Digest, and the Means of Proof Digest. The Digests are available in Lexisus, a related platform that offers services in Arabic, English, French and Spanish.¹⁸

b. Technology as an accelerant

47. The Office is presently undertaking a fundamental overhaul of its technological architecture in order to significantly increasing its ability to receive, process and use a wider range of evidentiary material. This renewal of the advanced technological infrastructure of the Office is also essential to achieving its goal of assuming the role of an important, reliable information and evidence partner for national, regional and international entities.

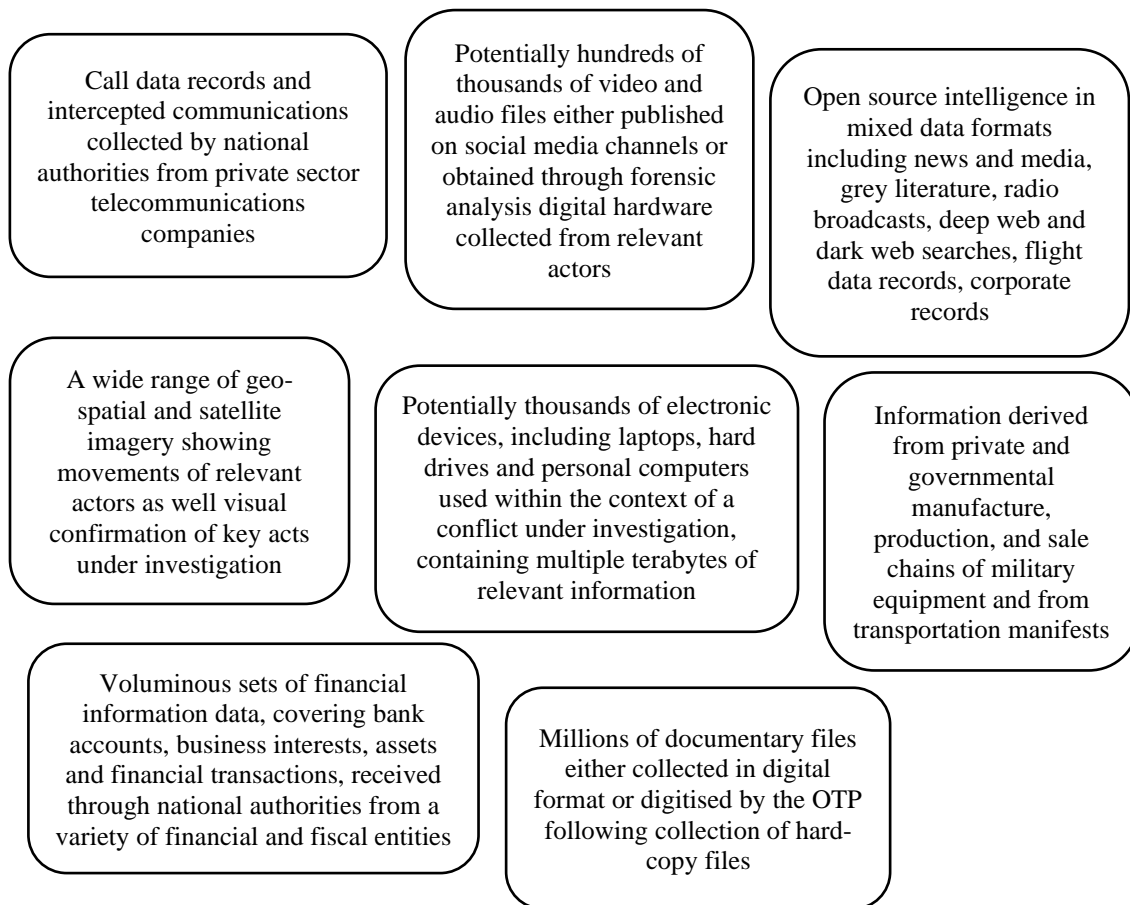
(i) A new technological framework at the Office of the Prosecutor

48. Contemporary conflicts and international crises generate audio, visual and documentary records on a massive scale: a result of the transformative innovations seen in the production and analysis of digital media and user-generated content in the last decade. Through on-site video recordings and their distribution through social media, telecommunications related data and intercepts, as well as battlefield evidence in the form of seized electronic devices, the commission of international crimes now leaves a significant digital footprint.

¹⁷ The ICC Legal Tools Database (including the ICC Case Law Database) won the 2023 Jus Gentium Research Award of the American Society of International Law.

¹⁸ [ICC Legal Tools Database](#).

49. This form of information is critical for modern international crimes investigations, serving as a forensic ally to more traditional investigative activities such as the collection of testimonial evidence from witnesses and survivors. While the latter remains an essential part of any criminal investigation, the collection and analysis of digital data, including video and audio data, can allow investigators to move to objective conclusions more rapidly and broaden the overall evidence base drawn upon in trials, thus significantly strengthening the presentation of cases in the courtroom.
50. Given the unprecedented scope of digital evidence available in situations under investigation, significant investments are being made with respect to the tools and approaches used to collect, store, analyse, disclose and present such information, as well as to enable its potential transmission for use by other criminal jurisdictions.
51. Key evidentiary assets that can be addressed through such tools include:



52. To address this, the Office has been introducing a comprehensive information systems project to enhance the preservation, storage, and analysis of such evidence, both for use in ICC proceedings as well as for potential transmission for use in domestic proceedings.

53. As part of this work, the OTP has partnered with Microsoft, Accenture Avanade and other actors to develop cutting-edge solutions for the analysis of large volumes of digital data composed of heterogeneous file types, much of it photographs, videos, and audio files. The Office has benefitted significantly in this regard from voluntary financial contributions from a number of States Parties and from the European Commission, which have enabled a critical investment to strengthening its technological capacity.
54. Under this initiative, the following aspects have been implemented:
- *A new Evidence Lifecycle Management System*
A new customised Evidence Lifecycle Management System has been developed to centralize knowledge and critical information for the OTP. This tailored system incorporates case management, source management, evidence intake and tracking, chain of custody data, digital forensics, data discovery, review and analysis.
 - *Cloud-based platform*
The OTP current document review and analysis platform has been modernised to a SaaS cloud-based platform, serving as an end-to-end eDiscovery tool. This will significantly assist investigative teams in solving complex data problems during litigation and investigation. Moving to a cloud-based platform will give OTP flexibility with meeting future demands of electronically stored information, while significantly enhancing standards of information security.
 - *Automated transcription and translation*
Drawing on these new platforms, the Office will be able to harness enhanced cognitive tools in analysing information collected. Through the appropriate use of artificial intelligence and machine learning tools, the OTP will be able to mass transcribe and translate text from video and audio files collected pursuant to its investigative activities. This step holds the potential for revolutionising the ability of the Office to draw on such data, reducing the need for investigators and analysts to conduct in-depth review of all such files and instead allowing staff to target searches on videos containing references to specific individuals, locations or other keywords. This technology will also allow the Office to collect and process evidence across regional and local languages, while still allowing investigators and analysts to navigate information in a common language of their choice and reserving translators and interpreters to focus efforts on selected official translations at later stages.
 - *Enhanced facial and object detection*
Drawing further on these enhanced cognitive services, the OTP will significantly strengthen its capacity to detect relevant individuals and objects from video and image files collected. Harnessing technology to initially identify potentially relevant facial images will dramatically reduce the time required to review such material and significantly increase the number of positive hits identified. In doing so, in line with its protection obligations and duty of care, the Office will integrate the need to protect the privacy and safety of innocent third parties and to ensure secure data storage.

55. Due to their use of machine learning, the tools introduced under this project will also continue to learn and improve as information is added and verified. Facial recognition and cross-identifications will become more sophisticated. Machine translation accuracy will continue to improve as OTP language experts regularly interact with and train the system. In turn this will continually strengthen the ability of OTP investigators to search for individual names, locations and images relevant to their investigations.
56. All situations by the Office are to be transitioned to these new systems by the end of October 2023.
57. Together, these new tools and resources will also allow the OTP to rapidly create an unprecedented visual context for investigations it is presently undertaking. The result will be a set of powerful tools to analyse and present evidence of crimes in a manner that significantly contributes to investigative narratives and allows the OTP to increase its ability to support domestic accountability processes.

i. Harnessing advanced technology for complementarity and cooperation

58. In introducing this renewed technological framework, the Office does not seek to only strengthen its own independent investigations and prosecutions. A central goal of these efforts is to allow the Office to leverage this new technology to help identify, analyse and share material relevant to incoming requests for assistance from States. This will serve as a key pillar in the Office's efforts to serve as an effective hub for cooperation and complementarity efforts across States Parties and non-Party States.
59. The Office anticipates that the increased use of advanced technology will increase its ability to interact with and support national accountability efforts in a number of ways including:

- *Increased evidence holdings expands opportunities for cooperation:* The introduction of the new evidence processing platform in the Office, and in particular the addition of cognitive services to enhance its analytical work, will allow the Office to significantly expand the range of material it collects and processes as part of its investigative activities. It is anticipated in particular that the Office will be able to significantly expand its collection of audio and video material, as well as satellite imagery and other visual assets.

Drawing on this enhanced information-basis, the Office will have greater capacity to identify and share information relevant to domestic proceedings.

- *Increased speed of response to requests:* The establishment of the new evidence-processing platform for the Office is anticipated to significantly reduce the time required to search evidence holdings for information relevant to national proceedings. By increasing the indexing capabilities of its software, the Office will be able to search the evidence it holds in new ways, whether with respect to locations, specific individuals or types of documentation. The automatic transcription of audio and

video material in particular will allow the Office, for the first time, to search such assets automatically based on input provided by national authorities.

This in turn will allow for the Office to more rapidly identify relevant information in response to requests from States, or confirm that no relevant information is presently held.

- *Processing of information in support of domestic proceedings:* The Office also anticipates being able to partner with national jurisdictions by providing assistance in the processing of specific evidentiary assets already held by relevant national authorities, drawing on the advanced tools available to the Office to assist in processing such evidence in a manner that can render it of greater value in domestic courts. This work is already being undertaken in a limited number of cases in recent months.

60. To effectively harness these new technological tools towards this goal, the Office will also re-strengthen its dedicated team to support requests for assistance received from national authorities and third States in order to significantly expedite the speed of response to such requests. This will allow the Office to cater to a larger volume of requests and of a wider nature, as well as allow for deeper engagement with domestic partners.

c. Bringing justice closer to communities

61. At the heart of complementarity is a recognition that justice is best delivered closest to those communities impacted by core international crimes.
62. In this context, the primary responsibility of domestic jurisdictions under the Rome Statute is not only an expression of national sovereignty but a reflection of the fact that accountability processes work best when those affected by atrocities can engage, can be empowered to come forward with their accounts and can see that justice rendered locally.
63. The principle of complementarity is also based on considerations of efficiency and effectiveness. Whenever the domestic environment is conducive, there are numerous advantages to proceedings being conducted at the national level: indeed, this rationale underpins the complementarity nature of the Court. Local trials serve to reinforce the pre-existing responsibility of States under international and national law to investigate and prosecute such crimes. They may thus have greater prospect of reinforcing accountability norms for serious crimes and consolidating the domestic rule of law. Such proceedings may also strengthen capacity and help developing domestic investigative, prosecutorial and judicial expertise in handling such trials. Investigations that are proximate to the events may have better access to evidence and witnesses. Trials held domestically may be more accessible to victims and enjoy a greater ownership and acceptance by the affected communities and the population as a whole. This may in turn contribute more effectively to broader societal objectives such as truth-seeking, reconciliation, lustration, institutional reform, and prevention. Localised proceedings may also enjoy significant cost efficiencies compared to proceedings before an international mechanism. At the same time, the Court can learn from innovative and evolving approaches adopted by domestic authorities.

64. Where investigation and prosecutions are undertaken by the Office, there is still much that can be done by the Office and the Court as a whole to help ensure that its work can be brought closer to the communities it serves. Reflecting this, the Office will undertake a renewed effort to deepen its connection with local actors, increase efforts to maintain dialogue with national authorities and to provide them with the necessary support in the investigation and prosecution of Rome Statute crimes. This process of localization of the work of the Office will be centred on a number of key elements.

i. Leading investigations from the field

65. Effective investigations require the building of relationships with and a meaningful understanding of the societies in which alleged crimes are committed. A critical part of strengthening the work of the Office more broadly, and in particular expanding its ability to obtain cooperation from national actors in this effort, must involve the embedding of its work in domestic contexts.

66. In line with this imperative, the OTP is moving to establish field offices in relevant situations. The Office has been working with the other organs of the Court to put in place the necessary arrangements in Ukraine, Venezuela, Sudan (subject to security position permitting), Bangladesh and Libya. The first of these was established in Kyiv, Ukraine in March 2023. This permanent presence is expected to be complimented with mobile investigative teams working across other regions of Ukraine in line with investigative needs, including the installation of a mobile forensics laboratory in-country.

67. Increased field presence of the OTP in situation countries will generate greater efficiencies in identifying and collecting information and evidence in a timely manner. This, including unique aspects of contextual evidence, is expected to further expand and diversify the OTP's evidentiary holdings and enable it to feed into third country prosecutions that may otherwise find such data inaccessible.

68. Given its benefits for the evidence gathering and trial resilience cycle, the Office will continue to request for the necessary budgetary resources to enable such field presence to be operationalised as early as possible. The Office emphasises in this respect that increased field presence is likely to yield cost efficiencies in the long term in terms of the pace, depth and quality of investigations and associated mission travel costs.

69. In the development of staffing for situations, the assumption and starting point will be that staff should be based in field locations as close as possible to the locations of alleged crimes.

ii. Strengthening engagement with civil society organisations

70. Civil society, and in particular local organisations stemming from collective action by survivors, are critical actors in the work of the Office. They are crucial complementarity and cooperation partners. By identifying a common cause and developing a common voice with

respect to accountability processes, those impacted by international crimes can significantly amplify their voices and increase their effectiveness in engaging directly with the Office.

71. Often, civil society organisations can also serve as a crucial bridge between the Office and those who wish to contribute to the justice process, particularly at the outset of an investigation. Reflecting this, the Office is implementing a series of measures aimed at enhancing its ability to benefit from the expertise and energy of civil society, both with respect to the implementation of effective investigations and prosecutions and in the development of the broader policy framework governing the exercise of its independent mandate. To date, these measures have included:
- The introduction of two thematic roundtables per year with civil society organisations, in addition to the annual ICC-CSO roundtable. These sessions serve to focus together and in-depth on specific policy areas to benefit from the input and perspective of CSOs, including notably those from situation countries. The first thematic roundtable addressing the topic of crimes against children was held at the seat of the Court in November 2022, with a second thematic roundtable on gender persecution taking place in May 2023. A third, addressing the use of a trauma-informed approach to investigations, will be held in November 2023.
 - The development and publication in September 2022, together with Eurojust and the EU Genocide Network, of practical guidelines for civil society organisations in relation to the collection and preservation of information concerning international crimes, to support them in engaging with witnesses and survivors in a manner that preserves the integrity of potential testimony that could be relied on in criminal proceedings and reduces the risk of re-traumatisation.¹⁹
 - Drawing on the establishment of an enhanced field-presence of the Office, the introduction of a new programme for engagement with national civil society and local community-based organisations in the work of the Office. This has included clearer tracking of the frequency and breadth of engagement of the Office with civil society across its activities and situations.
 - Further empowerment of the Office’s Unified Teams addressing individual situations and cases to engage effectively and in a more structured manner with civil society organisations.
72. The Office continues to welcome proposals from its civil society partners with respect to ways in which dialogue and engagement can be deepened to accelerate efforts towards more effective implementation of the Rome Statute, and in particular the principles of cooperation and complementarity.

¹⁹ The guidelines received the 2023 overall award of the European Ombudsman for Good Administration, as well as a separate award in the category of Excellence in Citizen-Oriented Delivery; ICC-OTP, [Office of the Prosecutor of the International Criminal Court and Eurojust welcome winning European Ombudsman Award](#), 28 June 2023.

iii. Contributing to action at the national level

73. As outlined above, the Office has established as a central priority the need to increase its ability to provide direct, tangible support to ongoing national proceedings. Through closer engagement with national authorities on the ground, and the use of new technological tools allowing for the collection and analysis of broader ranges of data, the Office has set a target of providing direct support to ongoing proceedings in at least eight States in 2024.
74. Beyond the provision of information and evidence to national authorities pursuant to Part 9 of the Rome Statute, there are wide range of ways in which the Office may contribute to action at the national level. This may include the provision of guidance and assistance in technical fields such as forensic examination, operational security and witness protection; best practices regarding missions to high risk environments; support in the development of legislative/regulatory provisions seeking to increase alignment of domestic legislation with the requirements of the Statute or for the conclusion of supplementary agreements and arrangements to further cooperation and assistance; or other types of assistance that the Office may be in a position to provide to national authorities in support of effective investigation and prosecution of international crimes.
75. Through a targeted approach to such activities, the Office can deliver cost-effective and impactful change in domestic contexts fully aligned with the goals of complementarity and cooperation. The Office believes that such forms of positive or dynamic engagement can form an important part of its activities, ultimately supporting a more effective implementation of its core mandate and the discharge of its caseload. By helping national jurisdictions fulfil their primary responsibility to investigate and prosecute such crimes, the Office can ease the strain placed on the Court as a whole and ultimately help ensure that its work is reserved for those situations where it is absolutely necessary, in line with the vision of complementarity and cooperation set out in the Statute.
76. Through the provision of more direct and tangible support to national authorities, the Office also increases its ability to interface with and build understanding with domestic partners, even in the context of an investigation within a relevant jurisdiction. This in turn has a clear and directly positive benefit to the broader cooperation objectives of the Office. If the Office is able to demonstrate its value in a broader sense to national partners, it will significantly increase its ability to leverage cooperation in support of its independent investigations.
77. In this sense, the provision of support by the Office to national accountability efforts aligned with the Rome Statute can be central to increasing the effectiveness of implementation of its core investigative and prosecutorial mandate.
78. In the coming period, the Office will seek to enhance this area of activity including through:
 - The development and implementation of dynamic complementarity programmes with relevant States Parties, incorporating, as appropriate, training on investigations and prosecutions, provision of direct support in the field of forensics and other technical fields, legislative/regulatory reform, and the hosting of regional or national events to increase dialogue across relevant actors.

- Harnessing of the Forensic Rotational Model, established in 2022, through which national experts seconded to the Office of the Prosecutor are deployed to the field in relevant situations in order to provide support with respect to, *inter alia*, crime scene analysis, digital forensics, and mass grave excavation.
- Increasing the provision of information and evidence relevant to domestic proceedings under Part IX of the Rome Statute, as outlined above.
- Where appropriate, the establishment of an appropriate field presence in relevant States for the purpose of implementing cooperation and complementarity activities.
- The development of implementation and best practice guides in relevant policy areas to support the investigation and prosecution of Rome Statute crimes by national authorities. The Office is planning to issue a Handbook on Trauma-informed investigations in 2024.

iv. Partnering with specialized accountability mechanisms

79. Ensuring a more effective collective implementation of the Rome Statute also requires deepened engagement with judicial entities established to address the specific needs and context of accountability challenges at the national or regional level. As part of its renewed vision for Cooperation and Complementarity, the Office is making efforts to deepen its cooperation with specialized courts and hybrid accountability mechanisms. Such entities will in many cases be better placed to take forward proceedings due to the specific jurisdictional focus of their work, the accessibility of evidence and the fact that they would offer the possibility of taking forward proceedings in a manner that brings justice closer to affected communities, and the potential to target a wider array of perpetrators, at different levels of responsibility.
80. In line with this approach, the OTP has significantly deepened its cooperation with the Special Criminal Court (“SCC”) of the Central African Republic, including responding to incoming requests for assistance from the SCC and exchanging lessons learned and best practices. This close working relationship was reflected in the attendance by Deputy Prosecutor, Mame Mandiaye Niang, on the behalf of the Prosecutor at the opening ceremony of the first trial at the SCC in April 2022.²⁰ The SCC, Central African authorities and the OTP have also carried out joint activities with respect to the collection, storage and preservation of forensic evidence.²¹ This cooperation demonstrate that there is no dichotomy in the character of the relevant accountability mechanisms in terms of whether it is purely national or regional, hybrid or internationalised. Although article 17 of the Statute directs its attention to whether a case is being investigating or prosecuted *by a State*, this does not limit the potential application and operability of the admissibility provisions to other criminal accountability mechanisms capable of satisfying the admissibility requirements set out in the

²⁰ ICC-OTP, [ICC Prosecutor underlines commitment to support the Special Criminal Court of the Central African Republic following address by Deputy Prosecutor, Mr Mame Mandiaye Niang at opening of first trial in Bangui](#), 11 May 2022.

²¹ ICC-OTP, [Office of the Prosecutor of the International Criminal Court partners with national authorities and international experts in the forensic analysis of remains of victims in the Central African Republic](#), 23 June 2022.

Statute. Moreover, as a matter of discretion in matters of case selection and prioritisation, the Office can elect to defer to relevant, genuine proceedings carried out before a competent criminal accountability mechanism.

81. In its investigations in Bangladesh/Myanmar, the Office has been working to deepen its cooperation with the Independent Investigative Mechanism for Myanmar (“IIMM”) established by the United Nations Human Rights Council.²² The IIMM has been specifically empowered to “cooperate closely with any of [the Court’s] future investigations pertaining to human rights violations in Myanmar”.²³
82. Drawing on these experiences, the OTP envisions deepening its cooperation with such actors by:
- Proactively engaging with specialized courts, hybrid mechanisms and international investigative mechanisms in order to identify opportunities for collaboration and cooperation;
 - Providing more expeditious and responses to incoming requests for information and assistance in accordance with statutory requirements, while drawing on the enhanced capabilities outlined above;
 - Identifying opportunities for burden-sharing with different criminal jurisdictions with the imperative of bringing the justice process closer to survivors and witnesses;
 - Developing synergies leading to operational and investigative activities where possible, and promoting coherence of action across entities and in the completion of the investigative phase of the Office’s activities in each situation.
 - Contributing towards building an international community of legal entities ensuring the implementation of international criminal law at international, regional and national level, by mutually supportive efforts to share practices and increase awareness of each other’s work and challenges faced.
 - Strengthening its legal framework for engagement with such entities through an enhanced network of MoUs / Cooperation Agreements.

v. *ICC in situ proceedings*

83. The spirit of complementarity and the imperative of bringing justice closer to communities should also permeate the actions of the Office with respect to its conduct of proceedings before the Court.
84. In line with this approach, and strictly subject to the agreement of the Court, the Office will seek to support in all possible cases the holding of at least part of proceedings before the Court in the situation country or, if this is not possible, in the region, to be as close as possible

²² UN HRC Res. 39/2 (2018). See also UNGA resolution A/RES/73/264, 22 December 2018.

²³ UN HRC Res. 39/2 (2018), para. 24.

to the affected communities. The Office considers this will bring myriad advantages, including facilitating direct participation of victims and witnesses in proceedings that are closer to the locations where the crimes were committed. In addition, holding trials in or closer to situation countries will necessarily involve the engagement of additional local personnel, strengthening the basis for effective communication with affected communities and deepening the understanding of the Court as a whole of religious, cultural and social traditions that may be relevant to the conduct of proceedings.

85. In implementing such an approach, the Office is mindful of the additional witness protection and broader security implications of *in situ* proceedings in some situations. In collaboration with other organs of the Court, a broader mitigation plan for potential risks will be developed to provide a model approach that can be adapted to individual situations. This model will also adopt a technologically appropriate communication strategy to translate OTP's activities into meaningful justice, given that location of such proceedings might remain geographically distant from communities of victims/survivors located in inaccessible locals and or who lack adequate transportation and lodging. The Office will seek to work with the Registry to explore the use of a more varied and intentional use of modern and appropriate communication technologies to deliver actual proceedings, relevant information and vital follow-up debriefings to specifically concerned communities and to the general public.
86. The holding of *in situ* proceedings will be subject to the approval of the Court and the Office is conscious of the operational challenges that will need to be overcome. Nonetheless, in this Office's view, when possible, justice is best delivered closest to those impacted by crimes. The OTP will support all efforts that aim to engage with and empower communities, that allow them to participate more directly in the process of justice locally.²⁴

d. Harnessing cooperation mechanisms

87. The present international and political context has created significant opportunities for deepening cooperation with local, regional and international partners. In this context, the Office has sought to proactively engage with a number of actors to identify opportunities for expanding upon and strengthening operational cooperation: both for the Office's investigations and in support of national proceedings.
88. ICC crimes typically occur within a spectrum of criminality encompassing other serious crimes under national law, including terrorism, transnational organised crime and financial flows. Moreover, the location where ICC crimes occur is often linked to other locations where the crime was planned and/or where the proceeds of the crime are deposited. As such, it is essential that the Office is able to work in partnership with multiple national agencies to progress its lines of inquiry. At the same time, experience has shown that the Office has often been crucially placed to assist domestic authorities in their own inquiries, whether in relation to core international crimes or other serious crimes under national law.

²⁴ See also ICC-OTP, [*ICC Prosecutor underlines commitment to support the Special Criminal Court of the Central African Republic following address by Deputy Prosecutor, Mr Mame Mandiaye Niang at opening of first trial in Bangui*](#), 11 May 2022.

i. Joint investigations

89. This approach is reflected in the Office's participation in a Joint Investigation Team (JIT) on alleged core international crimes under the auspices of Eurojust, for the first time. Addressing the situation in Ukraine, the Office worked to establish this JIT together with national prosecution authorities of seven countries: Lithuania, Poland, Ukraine, Slovakia, Estonia, Latvia and Romania. The United States is also now engaged in the work of this JIT through a Memorandum of Understanding.
90. Participation in this initiative has had a tangible impact both on the Office's own investigations, as well as enabling it to partner with national authorities in the common objective to investigate and prosecute core international crimes. Through its participation in the JIT, the OTP has enhanced its ability to access and collect information relevant to its independent investigations as well as conduct rapid coordination with JIT partner countries.
91. Beyond facilitating the more rapid access to relevant information and evidence, the JIT has also provided an important forum through which the Office can track actions by national authorities with respect to accountability efforts relevant to the Ukraine situation, encouraging effective delineation of responsibilities in line with the principle of complementarity and increased broader coherence of action in accordance with Rome Statute. Moreover, cooperation is not only about sharing information or evidence. Often as critical is the ability of the Office to have trusted partners with whom it can exchange expertise and experience on operational practices, logistics, risk management, support services and network assistance.
92. In that spirit, and building on the deepening of strategic coordination that the JIT will support, the Office will be seeking to identify all opportunities through which it can provide cooperate with concerned national authorities in support of their investigations and prosecutions. Reflecting the independent nature of the Office, such assistance will be carried out on a case-by-case and discretionary basis, in a manner consistent with the Rome Statute.
93. This sets a precedent for enhanced joint efforts in investigations which the Office will seek to expand across other situations in the future.
94. Reflecting this, the Office in September 2022, also become a formal member of the Joint Team aimed at supporting investigations into crimes against migrants and refugees in Libya, joining relevant national authorities from Italy, the Netherlands, the United Kingdom of Great Britain and Northern Ireland, and Spain. This Joint Team is also supported by the European Union Agency for Law Enforcement Cooperation (Europol).
95. These coordination efforts have resulted in tangible results in the form of arrests and extradition to Italy and The Netherlands of key suspects, operations which were supported by the Office. In addition the Office seeks to engage with regional and international accountability actors on the tracing of assets, financial flows and proceeds of crime.

96. The Office is also seeking to build deeper cooperative arrangements with other regional organisations including the African Union, the Economic Community of West African States and the Organisation of American States, as well as in the context of Asia and the Asia-Pacific region.
97. The Office considers an important innovation in this context the recent adoption of the *Ljubljana-The Hague MLA Convention* on international cooperation in the investigations and prosecution of the crime of genocide, crimes against humanity, war crimes and other international crimes. The Office has participated in and given its support to a number of sessions of the MLA initiatives over the years. It sees this instrument as an important means to help close the impunity gap by strengthening the basis for State-to-State mutual legal assistance. It fills a void in the architecture of legal mechanisms designed to promote the investigation and prosecution of core international crimes at the national level. If States are better able to exercise their criminal jurisdiction, victims and affected communities will benefit, and the ICC and the Rome Statute system as a whole will be strengthened.
98. Moving forward, a key area that the Office will focus on through these efforts is the alignment to the greatest extent of evidence collection standards and practices among the different criminal jurisdictions involved, to ensure the ready admissibility across each jurisdiction of physical and testimonial evidence obtained. The Office will also seek to ensure the scope for participation in common investigative activities to enable OTP representative to be present at and assist in the execution of particular investigative measures, where requested.

ii. Coordination with other rule of law and accountability actors

99. The Office is also seeking to build upon and maximise its years of experience working alongside other rule of law and accountability actors in or engaged with situation countries. In multiple settings, across preliminary examinations, investigations and trials, the Office has forged close engagement and coordination with leading international and regional organisations, both intergovernmental and non-governmental, mandated with technical assistance, capacity building, monitoring, reporting, advocacy and/or expert advisory and thematic portfolios.
100. In particular, in giving concrete expression to the renewed vision of complementarity, the Prosecutor has established institutional working relations with successive United Nations High Commissioners for Human Rights, under the umbrella of the Relationship Agreement between the United Nations and the Court, to promote the independent, but mutually reinforcing and complementary mandates of the Prosecutor and the High Commissioner. In the context of its activities in the Situation in Venezuela, for example, the Government of Venezuela has welcomed such coordination and has been working with both the Office of the Prosecutor and the OHCHR to foster conditions to enable the genuine and effective administration of justice. The Office has coordinated its efforts to promote genuine national proceedings with the technical assistance, capacity building, monitoring and reporting mandates, as applicable, of the OHCHR holders in multiple situations before the Court, including with respect to such diverse contexts in varying regions of the world, such as

Bangladesh/Myanmar, Colombia, Democratic Republic of the Congo, and Ukraine, among others. It has engaged in similar interaction with independent investigative mandates of the UN Human Rights Council, as well as its special procedures mandate holders, as relevant. In all such interactions, the Office has sought, in consultation and coordination with partners, to identify synergies and interlinkages between the effective discharge of its own mandate and that of other rule of law actors.

101. The Office is also seeking to deepen its engagement with Europol, benefiting in particular from the Working Arrangement recently signed between Europol and the Court, a first for both institutions. Within the framework of the Working Arrangement, the Court is presently putting in place modalities to establish a direct connection that will allow relevant Organs to use the SIENA network to engage and communicate with relevant national authorities. This will significantly enhance the ability of the Office to engage with relevant national partners. The Office will also nominate a liaison officer to Europol as part of the implementation of this Arrangement.

iii. Transitional justice processes and mechanisms

102. To enhance its impact, the work of the ICC must also be embedded within the full range of transitional justice processes and mechanisms. While the legal test governing admissibility is framed by reference to whether relevant criminal proceedings have been undertaken,²⁵ this does not prevent the Office, in its efforts to foster complementarity and cooperation, to seek means to integrate and coordinate its efforts along pathways that reinforce a comprehensive approach to transitional justice, incorporating the full range of judicial and non-judicial measures to ensure accountability, serve justice, provide remedies to victims, promote healing and reconciliation, establish independent oversight of the security system and restore confidence in the institutions of the State and promote the rule of law.²⁶
103. Engagement with such mechanisms, such as the Special Jurisdiction for Peace in Colombia, as highlighted further below, will be a priority for the Office. This will include encompass the provision of assistance to such mechanisms where appropriate.

²⁵ Article 1, 17, ICC Statute; *Situation in the Republic of Burundi*, Public Redacted Version of “Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Burundi”, ICC-01/17-X-9-US-Exp, 25 October 2017, [ICC-01/17-9-Red](#), 9 November 2017 (hereinafter: “*Burundi* Article 15 Decision”), para. 152; *Situation in the Islamic Republic of Afghanistan*, Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Islamic Republic of Afghanistan, [ICC-02/17-33](#), 12 April 2019 (hereinafter: “*Afghanistan* Article 15 Decision”), para. 79; *Situation in the Republic of the Philippines*, Public Redacted Version of “Authorisation pursuant to article 18(2) of the Statute to resume the investigation”, [ICC-01/21-56-Red](#), 26 January 2023 (hereinafter: “*Philippines* Article 18 Decision”), paras 36-40. See also *Situation in the Republic of the Philippines*, Judgment on the appeal of the Republic of the Philippines against Pre-Trial Chamber I’s “Authorisation pursuant to article 18(2) of the Statute to resume the investigation”, [ICC-01/21-77](#), 18 July 2023 (hereinafter: “*Philippines* Article 18 Appeal”), paras.124-125, 147-155.

²⁶ See ICC-OTP, *Policy Paper on the Interests of Justice*, 2007, at pp.8-9, noting that the Office “fully endorses the complementary role that can be played by domestic prosecutions, truth seeking, reparations programs, institutional reform and traditional justice mechanisms in the pursuit of a broader justice ... The Office will seek to work with those engaged in the variety of justice mechanisms in any given situation, ensuring that all efforts are as complementary as possible in developing a comprehensive approach”.

IV. Complementarity and Cooperation in Practice

104. The Office's approach to complementarity and cooperation under Prosecutor Khan shows how this vision has been given life in practice. It is guided by engagement and constructive dialogue with those most directly affected, including national authorities, victims/survivors, CSOs and other relevant stakeholders. The approach requires faithful adherence to the facts and circumstances of each situation - there are no ready-made solutions or one-size that fits all scenarios. The Office must always be sensitive to the realities on the ground, including the scope for and genuineness of domestic processes as they presently exist. At the same time, the approach also remains prospective, alert to the need for adjustment on the basis of a change of circumstances - thereby embracing a vision of what may yet be achieved at the national level with the will and determination of all concerned.
105. In **VENEZUELA**, the Prosecutor determined that the conditions for opening an investigation into alleged crimes had been met, including an assessment of complementarity based on the facts as they existed at the time. In November 2021, the Prosecutor travelled to Caracas to deliver this announcement in person, to seek cooperation for his investigations and to engage in an open dialogue with the Venezuelan authorities and notably with the President of Venezuela, H.E. Mr Nicolas Maduro. While the Government of Venezuela disagreed with the Office's decision to open an investigation, on 3 November 2021, to its great credit, the Venezuela Government proposed concluding a Memorandum of Understanding ("MoU") with the Office. Under its terms, Venezuela commits, *inter alia*, to adopting all necessary measures to ensure the effective administration of justice, in accordance with international standards, with the support and active engagement of the OTP pursuant to the principle of complementarity.
106. The MoU further envisages the establishment of mechanisms to enhance cooperation between the Court and Venezuela, and to facilitate the effective discharge of the Prosecutor's mandate. By so doing, the MoU sets out a range of areas where the Office and the Government of Venezuela commit to work together.²⁷ This two-track approach continued even during litigation, after the domestic authorities exercised their prerogative to seek deferral under article 18. As the Office has previously stated, meaningful realisation of the vision set out in the Statute can only be achieved by deepening cooperation and by finding common ground wherever possible, even in complex and challenging circumstances. Reflecting that view, the Office has demonstrated its willingness to cooperate with the national authorities in their efforts to seek justice, while also making it clear that it will not hesitate to move forward when the provisions of the Rome Statute are satisfied.
107. More recently, in the context of a high-level visit by the Prosecutor to Caracas, the Office and the Government of Venezuela concluded a further Memorandum of Understanding establishing an in-country office of the OTP in Venezuela. The MoU also outlines a series of priority areas in relation to advice and assistance the Office will provide to the Venezuelan

²⁷ ICC-OTP, [ICC Prosecutor, Mr Karim A.A. Khan QC, opens an investigation into the Situation in Venezuela and concludes Memorandum of Understanding with the Government](#), 5 November 2021; [Memorandum of Understanding between the Bolivarian Republic of Venezuela and the Office of the Prosecutor of the International Criminal Court](#), 3 November 2021.

authorities, including assistance for legislative developments in the field of justice and the sharing of knowledge and best practices with national authorities. The Office will also work with national counterparts to increase knowledge of the Rome Statute and the cooperation modalities of the ICC.²⁸

108. The course the Office has charted in Venezuela seeks to recast the tension that may be apparent between the principles of partnership and vigilance, by seizing on the potential for mutually reinforcing lines of activity. As the Office takes forward these two tracks of activities it will continue to assert its jurisdiction before the ICC until it is of the view that Venezuela can effectively implement its obligations; while at the same time continuing to deepen its collaboration through cooperation with the Venezuelan national authorities in order to strengthen the basis for meaningful domestic action.²⁹
109. In **COLOMBIA**, in October 2021, given the progress in domestic proceedings, particularly in proceedings before the Special Jurisdiction for Peace (*Jurisdicción Especial para la Paz*, “SJP” or “JEP” in Spanish), the Prosecutor announced his determination to close the preliminary examination given that the national authorities could no longer be characterised as being inactive, unwilling or unable to genuinely investigate and prosecute Rome Statute crimes. Nonetheless, to ensure that progress was sustained the Prosecutor and the Government of Colombia signed a cooperation agreement setting out a series of mutual undertakings, while recalling that the admissibility determination would be revisited upon a change in circumstance.³⁰
110. This voluntary agreement was made possible given the Prosecutor’s authority under article 54(3)(c) and (d) of the Statute to seek the cooperation of any State in accordance with its competence and to enter into such agreements, not inconsistent with the Statute, as may be necessary to facilitate the cooperation of a State. Procedurally, the cooperation agreement is linked to the Prosecutor’s authority, under article 15(6) of the Statute, to revisit a prior assessment in the light of new facts - for example, upon a significant change in circumstance.³¹ Given this framework, the Office considered it a priority to support domestic complementarity efforts and cooperation as far as possible and to avoid an outcome requiring the OTP to re-open its preliminary examination and/or to proceed with an investigation due to regression in domestic proceedings. In order to meet this objective, a series of undertakings were concluded that seek to support and advance the conditions necessary to enable relevant genuine proceedings to take place at the national level.

²⁸ ICC-OTP, [ICC Prosecutor Karim A.A. Khan KC concludes official visit to Venezuela, signing MoU on establishment of in-country office](#), 13 June 2023.

²⁹ *Ibid.*

³⁰ ICC-OTP, [Cooperation Agreement between the Office of the Prosecutor of the International Criminal Court and the Government of Colombia](#), 28 October 2021.

³¹ In particular, article 6 of the [Cooperation Agreement](#) identifies factors that the Office might consider in this context as including any measures that might significantly hamper the progress and/or genuineness of relevant proceedings and the enforcement of effective and proportionate penal sanctions of a retributive and restorative nature; initiatives resulting in major obstructions to the mandate and/or proper functioning of relevant jurisdictions; or any suspension or revision of the judicial scheme set forth in the peace agreement in a manner that might delay or obstruct the conduct of genuine national proceedings.

111. The commitments of the Government of Colombia in the Cooperation Agreement include: 1) safeguarding the established constitutional and legislative framework; 2) preserving and supporting existing structures operating to ensure accountability; 3) continuing to properly fund these structures and safeguarding their budgets; 4) protecting their independence and preventing any interference with their functions; 5) ensuring the safety and security of judicial and prosecutorial personnel as well as participants appearing before the different accountability mechanisms; and 6) promoting full cooperation and coordination between the different State entities involved, including between the Attorney General's Office and the JEP.³² This innovative approach has sought to ensure that the Rome Statute goals of complementarity are being met, while enabling both the State and the ICC to assume their respective roles and responsibilities.
112. In June 2023, during a high-level mission by the Prosecutor to Bogotá, the OTP and the Government of Colombia signed a further Action Plan articulating a series of clear, common objectives for deeper collaboration. The areas of activity set out in the Action plan include the provision of technical expertise and support by my Office; the exchange of good practices in priority thematic areas; assistance in coordinating action across justice institutions; and work towards the establishment of a continuous presence by the Office in Colombia. The Office also continued its direct meetings and exchanges with Colombia institutions, including a meeting with the JEP President and the plenary of JEP magistrates, as well as with the Attorney General of Colombia. In this context, the Office signed a joint workplan with the JEP to allow it to assist the JEP in addressing the continued challenges the JEP faces with its ambitious workload, as well as to provide support in the near term with respect to the investigation and prosecution of sexual and gender-based crimes.³³
113. In immediate follow-up, Special Adviser to the Prosecutor, Lisa Davis, together with OTP expert staff, visited Bogota to deliver training to members of the JEP and other Colombian judicial institutions with respect to the newly established OTP policy on gender persecution.
114. A similar approach has been taken with respect to the Situation in **GUINEA**. On 29 September 2022, the Prosecutor determined, on the basis of the start of the long-awaited national trial, that the competent domestic authorities could no longer be determined to be inactive or otherwise unwilling or unable genuinely to proceed. Nonetheless, to prevent regression and ensure continued progress the Prosecutor signed a memorandum of understand with the President of the Transition in Guinea, H.E. Colonel Mamady Doumbouya. The MoU frames the Office's ongoing accompaniment of domestic accountability efforts, while also setting out the government's commitment to ensuring the necessarily legislative, operational, security and financial commitments to enable national judicial institutions to fulfil their mandate.³⁴ Such common efforts aim to ensure effective justice for the families of victims through concrete action at the domestic level, in line with

³² Article 1, [Cooperation Agreement between the Office of the Prosecutor of the International Criminal Court and the Government of Colombia](#).

³³ ICC-OTP, [ICC Prosecutor Karim A.A. Khan KC concludes visit to Colombia, signing Action Plan for renewed cooperation with national authorities in pursuit of accountability](#), 9 June 2023

³⁴ ICC-OTP, [Statement by ICC Prosecutor Karim A.A. Khan KC regarding the opening of the trial related to events of 28 September 2009 in Guinea, signature of Agreement with Transitional Government on complementarity and closure of the Preliminary Examination](#), 29 September 2022.

the Office approach to complementarity, by seeking to jointly create an environment of constructive dialogue and cooperation to enable national authorities to take on greater responsibility with respect to Rome Statute crimes.³⁵

115. The Office's work in **UKRAINE** shows that complementarity and cooperation need not be 'either/or', but can be collaborative and concurrent, working alongside multiple partners. Thus, while article 17 regulates forum allocation determinations where there is a conflict of jurisdiction with respect to particular case, there is nothing preventing multiple jurisdictions cooperating in pursuit of different cases, acting in complementary ways – indeed, the Statute encourages it.³⁶ Upon initiating its investigations, the Office moved swiftly to set up working relations with the Prosecutor-General of Ukraine, while galvanising international support for both the Prosecutor-General and that of the Office. Given the breadth and scale of alleged crimes and the dispersal of victims/survivors across multiple States, the Office took prompt measures to ensure that the multiple initiatives did not dissipate efforts. In line with the notion of complementary action – the Prosecutor stressed the need for close cooperation and coordination across all sectors and actors. As mentioned above, the Office joined the Joint Investigation Team,³⁷ sought to collaborate closely with Eurojust, Europol, and the EU's network of war crimes unit; and called for coordination and dialogue at the UN Security Council.
116. In July 2022, together with the Dutch government, the Office convened a high level accountability summit to promote visibility, to engage across the various accountability initiatives relevant to the situation in Ukraine, and to identify enhance coordination of action.³⁸ In cooperation with the Royal Netherlands Marechaussee, the Office has also been working to develop an innovative modality for the provision of multidisciplinary forensic elements in support of national and international efforts. This involved the deployment of forensic teams on rotational basis under the umbrella of the ICC, supported through cooperation with States Parties willing to second experts.³⁹
117. During 2023, the Office deepened its cooperation and coordination with the Prosecutor-General's Office of Ukraine. And in line with the principle of complementarity, the Office focused its efforts on advancing accountability in areas that it may be uniquely placed to do so – such as in identification of patterns, on command responsibility, and on building cases to support charges directed towards those most responsible – while supporting and strengthening national efforts in the pursuit of accountability.

³⁵ *Ibid.*

³⁶ See above Section II, and below Section V.

³⁷ ICC-OTP, [Statement by ICC Prosecutor, Karim A.A. Khan QC: Office of the Prosecutor joins national authorities in Joint Investigation Team on international crimes committed in Ukraine](#), 25 April 2022; ICC-CPI, [Press conference of the ICC Prosecutor and Eurojust with joint investigation team on alleged core international crimes in Ukraine](#), 27 May 2022.

³⁸ ICC-OTP, [Statement of ICC Prosecutor, Karim A.A. Khan QC upon conclusion of the Ukraine Accountability Conference: "Justice can only be achieved by working together"](#), 14 July 2022.

³⁹ ICC-OTP, [ICC Prosecutor Karim A.A. Khan QC announces deployment of forensics and investigative team to Ukraine, welcomes strong cooperation with the Government of the Netherlands](#), 17 May 2022.

118. Finally, complementarity and cooperation apply also where trials are underway at the Court and as part of broader situation completion strategies. In the **CENTRAL AFRICAN REPUBLIC**, while trial against members of both the Séléka and Anti-Balaka groups progress before the ICC, the Prosecutor has actively supported and promoted the work of the SCC of the Central African Republic and sought to strengthen cooperation in the conduct of investigative and prosecutorial activities.⁴⁰ This support is reflected in the Office's concrete support of the SCC's ongoing investigations, including by enabling the SCC to inspect the OTP's evidentiary holdings and facilitating the transmission of specific items of information and evidence held by the Office to the SCC, in line with the requirements of article 98(10) of the Statute. The Office has also engaged in consultations and operational engagement on possible division of labour and caseloads, including with respect to cases against suspects that are yet to appear before the ICC.
119. The Office has also partnered with the national authorities and international experts to undertake forensics activities aiming at supporting national proceedings. Working in a spirit of collegiality and common purpose, such activities have also deepened the Office's collaboration with the SCC and national authorities and served as important steps in efforts to bring justice to the victims/survivors of the serious crimes that took place in CAR. Through partnership with national judicial, medical and police authorities, the forensic mission not only advanced the Office's independent investigations, but also exploited all opportunities for knowledge-transfer as well as capacity-building, and partnered closely with local communities to return identified remains to families for burial in line with local cultural and religious traditions. The Office's approach in this context has been founded on the principles of partnership, creativity and of bringing its work closer to those impacted by Rome Statute crimes. In this context, the forensic operation provided a tangible example of how such principles can be converted into action.⁴¹
120. Moreover, with the notification by the Prosecutor of the Office's completion strategies with respect to CAR, on conclusion of the investigative phase of the situation, the Office has shown how complementarity is also alive and well where the Office completes its activities.⁴² Indeed, a strategy of completion will often only make sense as part of a strategy based on a revitalised approach to complementarity and cooperation.
121. The Office has sought to apply the lessons learned and best practices arising from its experience in Ukraine and CAR to the situation in the **DEMOCRATIC REPUBLIC OF THE CONGO (DRC)** which is one of the longest open investigations before the Court and where alleged crimes within the scope of the situation continue to be committed. In particular, while assessing the new referral made by the national authorities on 23 May 2023, the Office has been examining ways it can support, within its mandate and means, the delivery of accountability as part of the DRC's national strategy for addressing international

⁴⁰ ICC-OTP, *ICC Prosecutor underlines commitment to support the Special Criminal Court of the Central African Republic following address by Deputy Prosecutor, Mr Mame Mandiaye Niang at opening of first trial in Bangui*, 11 May 2022.

⁴¹ ICC-OTP, *Office of the Prosecutor of the International Criminal Court partners with national authorities and international experts in the forensic analysis of remains of victims in the Central African Republic*, 23 June 2022.

⁴² ICC-OTP, *The Prosecutor of the International Criminal Court, Karim A.A. Khan KC, announces conclusion of the investigation phase in the Situation in the Central African Republic*, 16 December 2022.

crimes. The Office recently concluded a memorandum of understanding with the DRC authorities to accelerate implementation of the DRC national strategy through priority cases and to enhance national accountability institutions' capability to effectively address allegations of international crimes. In line with the principle of complementarity, the Office intends to partner with the DRC authorities to conduct a joint DRC-ICC comprehensive mapping exercise of all possible cases that could be taken forward by either DRC authorities or by the OTP. Where cases are brought before the ICC, the Office has also expressed its readiness to support the possibility of *in situ* proceedings. The Office has further committed to explore ways in increasing its support to DRC authorities through the deployment of forensics experts in support of national efforts to protect and excavate mass grave sites, securing crucial evidence of crimes; as well as by facilitating the sharing of good practices from other States Parties in the field of evidence collection and preservation.⁴³

122. These examples show how complementarity can express itself in multiple ways: in provision of expertise and support to strengthen national capacity; information and evidence sharing with national authorities in support of genuine proceedings; joint investigative operations to reinforce efforts in increasing efforts to deliver justice; the deployment of forensic expertise for common benefit; the sharing of financial intelligence for the purpose of tracing assets and identifying financial flows; and the conduct of strategic consultations on case selection and prioritisation and burden-sharing.
123. These examples also give tangible expression to the vision of the Office. Through continuous dialogue and engagement with national authorities, international and regional organisations and civil society actors, the Office has sought to chart a renewed course for common action. This is an approach that prioritises cross-fertilisation across initiatives, promotes coherence and above all places the rights and experiences of victims/survivors at its centre.⁴⁴ And while each example is situation-specific, the lessons drawn are not. The Office has sought to apply best practices across the length and breadth of its work. At the same time, it seeks to promote consistency and coherence in the support lent to it. Specifically, it has called for the same urgency for action and for cooperation wherever international crimes are committed, to set a model for action that can be used to accelerate accountability efforts in all situations across the world.⁴⁵
124. Clearly, the implementation of such a two-track approach may not be feasible everywhere. In some situations, there may be no ready partner at the national level, whether due to the unwillingness or inability of the State or States concerned. Nonetheless, the Office believes that the best approach is to maintain open channels of communication with all States, whether States Parties or non-Party States, and to reach out and interact wherever possible with relevant stakeholders, even when the prospect for encouraging, supporting and/or catalysing

⁴³ ICC-OTP, [The Prosecutor of the International Criminal Court, Karim A.A. Khan KC, concludes his first visit to the Democratic Republic of the Congo with the signing of a new Memorandum of Understanding, renewing cooperation towards justice in the DRC](#), 6 June 2023; [Memorandum D'entente entre la Republique Démocratique du Congo et le Bureau du Procureur de la Cour Pénale Internationale](#), 1 June 2023.

⁴⁴ ICC-OTP, [Statement of ICC Prosecutor, Karim A.A. Khan QC upon conclusion of the Ukraine Accountability Conference: "Justice can only be achieved by working together"](#), 14 July 2022

⁴⁵ ICC-OTP, [Statement of ICC Prosecutor, Karim A.A. Khan QC upon conclusion of the Ukraine Accountability Conference: "Justice can only be achieved by working together"](#), 14 July 2022.

genuine national proceeding may appear more challenging. The Office has pursued this path in the immediate period past and will continue to seek opportunities to do so in the future – as only through common action can the fight against impunity be made effective.

125. This is a vision that embraces of complementarity and cooperation at every turn, during preliminary examinations, during investigations, as trials progress, and as part of strategies to complete the activities of the Office as part of an overall Situation Strategy.⁴⁶ It is a vision that recognises the Office can have an important role in providing direct support to domestic action. Accordingly, complementarity and cooperation remains under constant consideration and review during the entire life cycle of a situation before the Court.

V. Complementarity as a Legal Test

126. The last section of this policy examines complementarity through the lens of their judicial function in regulating the Court’s competence to hear particular cases or potential cases and in enabling the Court to exercise its functions and powers under the Statute. Relevant to understanding how the Office approaches its policy framework is also how it interprets and applies the law that governs complementarity and cooperation.
127. As is well known, complementarity, in its function under article 17 of the Statute, operates as a principle by which the Court can resolve forum determination questions arising from the current exercise of criminal jurisdiction by States and the ICC over Rome Statute crimes. As the Appeals Chamber has stated, “[a]rticle 17 stipulates the substantive conditions under which a case is inadmissible before the Court. It gives effect to the principle of complementarity (tenth preambular paragraph and article 1 of the Statute), according to which the Court ‘shall be complementary to national jurisdictions’.”⁴⁷ In this context, a fundamental strength of the Rome Statute system, and vital to the Court’s ability to exercise a vigilance function, is the authority of the ICC to interpret and apply the provisions governing the complementarity regime and to make a binding decision on the admissibility of a given case.⁴⁸
128. The Office assesses complementarity at all stages of its activities, in particular, during the preliminary examination before deciding whether to open an investigation pursuant to article 53(1)(b)/rule 48, at the start of an investigation under article 19, in seizing a Chamber with a request for an arrest warrant/summon to appear, as well as in response to possible changes

⁴⁶ ICC-OTP, [Policy on Situation Completion](#), 15 June 2021, para.29

⁴⁷ *Prosecutor v. William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang*, “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 (hereinafter: “*Ruto Admissibility Judgment*”), para. 36; Appeals Chamber, *Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali*, “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 (hereinafter: “*Muthaura Admissibility Judgment*”), para 35.

⁴⁸ *Prosecutor v. Joseph Kony et al*, Decision on the admissibility of the case under Art. 19(1) of the Statute, [ICC-02/04-01/05-377](#), 10 March 2009, para. 45.

in circumstance. The Office also undertakes this assessment as part of its case selection and prioritisation decision making,⁴⁹ and in the context of situational completion strategies.⁵⁰

129. Article 17 has been interpreted at all stages of the proceedings in accordance with the two-step admissibility process, that requires the Court to: (a) first, determine whether there are or have been relevant proceedings at domestic level with respect to the same case or potential cases; and, only if the first step is answered in the positive (action/inaction analysis), and (b) second, whether those domestic proceedings have been or are vitiated by unwillingness or inability on the part of the State to carry them out genuinely (genuineness analysis).⁵¹ As the Appeals Chamber has stated: “in case of inaction, the question of unwillingness or inability does not arise; inaction on the part of a State having jurisdiction (that is, the fact that a State is not investigating or prosecuting, or has not done so) renders a case admissible before the Court”.⁵²
130. Recalling the two-step process for assessing complementarity, the Office has in recent years also been called upon to assess not only whether there are domestic proceedings in relation to a particular set of allegations (article 17(1)), but also considerations of genuineness (articles 17(2) and (3)). This has required the Office to adopt an approach that is sensitive to the facts and circumstances of each situation, while mindful that many issues are yet to be judicially tested before the Chambers of the Court. The Office’s practice and the case law of the Court in this regard has brought out several key considerations.

i. First step complementarity assessment: are there relevant domestic proceedings within the meaning of art 17(1)?

131. In terms of the first step of the complementarity test, the Appeals Chamber has observed that there must be a conflict of jurisdictions (between the Court and a national jurisdiction) concerning the same case.⁵³ As a first step, therefore, the Office will seek to identify whether any national authorities are carrying out relevant investigations and/or prosecutions. The Court may encounter the following scenarios at the domestic level: (i) ongoing investigation or prosecution at the national level; (ii) the relevant cases have been investigated at the national level, but resulted in a decision not to prosecute; or (iii) the relevant cases have been previously tried at the national level and a final decision has been issued.
132. As Chamber of the Court have recalled, since article 17 of the Statute applies not only to determinations of the admissibility with respect to a concrete case (as per article 19 of the

⁴⁹ ICC-OTP, [Policy paper on case selection and prioritization](#), 15 September 2016, paras. 29-31.

⁵⁰ ICC-OTP, [Policy on Situation Completion](#), 15 June 2021, para.29.

⁵¹ *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, “Judgment on the Appeal of Mr. Germain Katanga against the Oral Decision of Trial Chamber II of 12 June 2009 on the Admissibility of the Case”, [ICC-01/04-01/07-1497](#), 25 September 2009 (hereinafter: “*Katanga* Admissibility Judgment”), para. 78. See also [Ruto Admissibility Judgment](#), para. 41; [Muthaura Admissibility Judgment](#), para. 40; *The Prosecutor v. Simone Gbagbo*, Judgment on the appeal of Côte d’Ivoire against the decision of Pre-Trial Chamber I of 11 December 2014 entitled “Decision on Côte d’Ivoire’s challenge to the admissibility of the case against Simone Gbagbo”, [ICC-02/11-01/12-75-Red](#), 27 May 2015 (hereinafter: “*Simone Gbagbo* Admissibility Appeal”), para.27; [Philippines Article 18 Appeal](#), para. 219.

⁵² [Katanga Admissibility Judgment](#), para. 78.

⁵³ [Ruto Admissibility Judgment](#), para. 37; [Muthaura Admissibility Judgment](#), para. 36.

Statute), but also to preliminary admissibility rulings pursuant to article 18 of the Statute. The meaning of the words ‘case is being investigated’ found in article 17(1)(a) of the Statute must be understood and construed taking into account the specific context in which the test is applied.⁵⁴

133. In the context of a preliminary examination, the Prosecutor will examine whether there are any domestic proceedings that correspond to the ‘potential cases’ the Office has identified, namely the category of conduct and persons/groups of persons that the Office has provisionally identified as warranting investigation.⁵⁵
134. Where the Office investigations have progressed to the stage of the Chambers issuing a warrant of arrest or a summons to appear, the Court will examine whether there are any domestic proceedings that correspond to the concrete case the Office has brought before the Court, namely whether the same person is being proceeded against domestically for substantially the same conduct as that alleged in proceedings before the Court.⁵⁶
135. If the national authorities are carrying out, or have carried out, relevant investigations or prosecutions, and these have not been vitiated by an unwillingness or inability to do so genuinely, the Office will not select that case for further investigation and prosecution before the Court. The Office will step out, in favour of domestic proceedings and instead explore whether it might share the information or evidence it has collected, pursuant to article 93(10) of the Statute. The Office will also consider to what extent it should prioritise the investigation and prosecution of other persons that form part of the same group.⁵⁷
136. In order for the Office, and Chambers, to carry out the complementarity assessment, it essential for the Court to have sufficient information.⁵⁸ In this respect, Chambers have emphasized that any material provided by a State in respect of its own proceedings must “signify the taking of steps directed at ascertaining whether those suspects are responsible for that conduct, for instance by interviewing witnesses or suspects, collecting documentary evidence, or carrying out forensic analyses”;⁵⁹ for which it must be established that “tangible,

⁵⁴ [Ruto Admissibility Judgment](#), para. 39-40; [Muthaura Admissibility Judgment](#), para. 38-39; *Situation in the Republic of the Philippines*, Authorisation pursuant to article 18(2) of the Statute to resume the investigation, 28 January 2023, [ICC-01/21-56-Red](#), 27 January 2023 (hereinafter: “*Philippines Article 18(2) Decision*”), para. 12; *Situation in the Bolivarian Republic of Venezuela I*, Decision authorising the resumption of the investigation pursuant to article 18(2) of the Statute, [ICC-02/18-45](#), 27 June 2023, (hereinafter: “*Venezuela I Article 18(2) Decision*”), para.64; [Philippines Article 18 Appeal](#), para.105.

⁵⁵ For case law on notion of ‘potential cases’ see *Situation in the Republic of Kenya*, Corrigendum of the 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 2011, para. 59; *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. 190-191; [Burundi Article 15 Decision](#), para. 143. See similarly [Philippines Article 18 Appeal](#), paras. 109-110. See also *Situation in the Islamic Republic of Afghanistan*, Judgment on the appeal against the decision on the authorisation of an investigation into the situation in the Islamic Republic of Afghanistan, [ICC-02/17-138](#), 5 March 2020, paras. 40-42.

⁵⁶ [Ruto Admissibility Judgment](#), para 40; [Muthaura Admissibility Judgment](#), para. 39. See also [Philippines Article 18 Appeal](#), paras. 109-110.

⁵⁷ ICC-OTP, [Policy paper on case selection and prioritisation](#), 15 September 2016, paras.30-31.

⁵⁸ [Venezuela I Article 18\(2\) Decision](#), para. 66; [Philippines Article 18 Appeal](#), paras. 1, 78-79.

⁵⁹ [Ruto Admissibility Judgment](#), para. 41 (emphasis removed); [Muthaura Admissibility Judgment](#), para. 40.

concrete and progressive investigative steps are being undertaken”.⁶⁰ This material must have a “sufficient degree of specificity and probative value”⁶¹ that establishes “tangible, concrete and progressive investigative steps” seeking to ascertain a person’s criminal responsibility,⁶² such as “by interviewing witnesses or suspects, collecting documentary evidence, or carrying out forensic analyses”.⁶³ Relevant evidence is not confined to “evidence on the merits of the national case that may have been collected as part of the purported investigation to prove the alleged crimes”,⁶⁴ but also extends to “all material capable of proving that an investigation or prosecution is ongoing”.⁶⁵ This includes “directions, orders and decisions issued by authorities in charge [...] as well as internal reports, updates, notifications or submissions contained in the file [related to the domestic proceedings]”.⁶⁶

137. It is for this reason that, when seeking information from States on the existence and/or scope of potentially relevant national proceedings, the Office typically articulates the above standard in its requests to States for additional information. The Office seeks such information in order to verify the existence and scope of national proceedings in order to be able to reach a fully informed opinion on the admissibility or relevant cases or potential cases that are under review.

ii. *Second step complementarity assessment: are relevant domestic proceedings being conducted genuinely within the meaning of art 17(2)-(3)?*

138. The next paragraphs set out a number of overarching considerations which frame the Office’s approach towards assessing genuineness, under the second step of the complementarity assessment, where it has been established that relevant domestic proceedings are underway.

⁶⁰ *The Prosecutor v. Simone Gbagbo*, Decision on Côte d’Ivoire’s challenge to the admissibility of the case against Simone Gbagbo, [ICC-02/11-01/12-47-Red](#), 11 December 2014 (hereinafter: “*Simone Gbagbo* Admissibility Decision”), para. 65. See also [Simone Gbagbo Admissibility Appeal](#), para. 122; [Ruto Admissibility Judgment](#), para. 41, [Muthaura Admissibility Judgment](#), para. 40; *The Prosecutor v. Saif Al-Islam Gaddafi*, Judgment on the appeal of Libya against the decision of Pre-Trial Chamber I of 31 May 2013 entitled “Decision on the admissibility of the case against Saif Al-Islam Gaddafi”, [ICC-01/11-01/11-547-Red](#), 21 May 2014, para. 116.

⁶¹ [Ruto Admissibility Judgment](#), paras. 2, 62-63; ICC-01/09-02/11-274 [Muthaura Admissibility Judgment](#), paras. 2, 61-62; [Simone Gbagbo Admissibility Appeal](#), para. 29; [Philippines Article 18\(2\) Decision](#), para. 13; [Venezuela I Article 18\(2\) Decision](#), para. 66; [Philippines Article 18 Appeal](#), para. 72.

⁶² [Simone Gbagbo Admissibility Appeal](#), para. 128; [Burundi Article 15 Decision](#), paras. 148, 162; [Afghanistan Article 15 Decision](#), para. 72; *The Prosecutor v. Saif Al-Islam Gaddafi*, Decision on the admissibility of the case against Saif Al-Islam Gaddafi, [ICC-01/11-01/11-344-Red](#), 31 May 2013, para. 73. See also [Philippines Article 18 Appeal](#), paras. 2, 106, 110.

⁶³ [Ruto Admissibility Judgment](#), paras. 1, 41; [Muthaura Admissibility Judgment](#), paras. 1, 40; [Burundi Article 15 Decision](#), para. 148; [Philippines Article 18 Appeal](#), para. 102.

⁶⁴ [Simone Gbagbo Admissibility Decision](#), para. 29; *The Prosecutor v. Saif Al-Islam Gaddafi and Abdullah Al-Senussi*, Decision requesting further submissions on issues related to the admissibility of the case against Saif Al-Islam Gaddafi, [ICC-01/11-01/11-239](#), 7 December 2012 (hereinafter: “*Gaddafi* Further Submissions Decision”), para. 10-11.

⁶⁵ [Simone Gbagbo Admissibility Decision](#), para. 29; [Gaddafi Further Submissions Decision](#), paras. 10-11; [Philippines Article 18\(2\) Decision](#), para.15; [Venezuela I Article 18\(2\) Decision](#), para.88.

⁶⁶ [Simone Gbagbo Admissibility Decision](#), para. 29; [Gaddafi Further Submissions Decision](#), paras. 10-11; [Philippines Article 18\(2\) Decision](#), para.15; [Venezuela I Article 18\(2\) Decision](#), para.88.

139. First, the Appeals Chamber has observed that the case law of human rights bodies may assist in defining the contours of certain terms set out in article 17, since the chapeau of article 17(2) calls upon the Court to determine unwillingness “having regard to the principles of due process recognized by international law”.⁶⁷ As such, the Office has adopted a practice of examining relevant human rights jurisprudence to the extent it may assist in the interpretation of relevant terms in article 17(2), adjusted to context.⁶⁸ However, as the Appeals Chamber has emphasised, in doing so the ICC is not acting as a human rights court nor directly applying human rights standards.⁶⁹ Nor is the ICC being called upon to pronounce on whether the State has complied with its procedural obligations under those standards.⁷⁰
140. Second, as to the scope of the assessment undertaken under article 17(2), the Office understands the term ‘proceedings’ to embrace both the investigative and judicial phases, given the reference in article 17(1) to both ‘investigation’ and ‘prosecution’. In this context, the Office recalls that the Court’s assessment must be made in the light of the ‘particular case’ before it and considering the ‘circumstances’ of that case, and accordingly cannot be carried out in the abstract.⁷¹ Moreover, the Office recalls that evidence relevant to substantiate the first step of the complementary assessment as to the existence of relevant ongoing proceedings may also be relevant to assess their genuineness under the second step.⁷²
141. Third, the Office observes that while article 17 directs the Court’s analysis to the unwillingness or inability of the ‘State’, different national institutions may demonstrate

⁶⁷ *The Prosecutor v. Saif Al-Islam Gaddafi and Abdullah Al-Senussi*, Judgment on the appeal of Mr Abdullah Al-Senussi against the decision of Pre-Trial Chamber I of 11 October 2013 entitled “Decision on the admissibility of the case against Abdullah Al-Senussi”, [ICC-01/11-01/11-565](#), 24 July 2014, (hereinafter: “*Al-Senussi* Admissibility Judgment”, paras. 220, 229. The Appeals Chamber has also repeatedly held that the Statute as a whole is underpinned by the requirement in article 21 (3) that the application and interpretation of law under the Statute “must be consistent with internationally recognized human rights”; see e.g. *The Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the Appeal of Mr. Thomas Lubanga Dyilo against the Decision on the Defence Challenge to the Jurisdiction of the Court pursuant to article 19 (2) (a) of the Statute of 3 October 2006, [ICC-01/04-01/06-772](#), 14 December 2006, paras. 36 – 39.

⁶⁸ This approach is consistent with rule 51, which provides that in assessing the matters in article 17(2), the Court may consider “in the context of the circumstances of the case”, inter alia, information on how a State’s “courts meet internationally recognized norms and standards for the independent and impartial prosecution of similar conduct”. This approach is further consistent with article 21(3) which applies to all provisions of the Statute.

⁶⁹ *Al-Senussi Admissibility Judgment*, paras. 190 and 219: “in the context of admissibility proceedings, the Court is not primarily called upon to decide whether in domestic proceedings certain requirements of human rights law or domestic law are being violated” and that “the Court was not established to be an international court of human rights, sitting in judgment over domestic legal systems to ensure that they are compliant with international standards of human rights”.

⁷⁰ See also ICC-OTP, *Informal expert paper: The principle of complementarity in practice*, 2003.

⁷¹ The chapeau of article 17(2) calls for the assessment to be made in the context of “a particular case”. Although only subparagraphs (b) and (c) of article 17(2) use the phrase “in the circumstances”, this requirement would appear to be necessary also for the factual assessment under subparagraph (a). See also *The 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 (hereinafter: “*Al-Senussi* Admissibility Decision”), para. 202.

⁷² *Al-Senussi Admissibility Decision*, para. 210.

varying and inconsistent degrees of willingness/unwillingness.⁷³ As such, when analysing the response of a given domestic body in a specific case, the Office will need to also consider the activities of any other component or components of the national system that have a bearing on the proceedings at hand.

142. Fourth, as to the nature of the genuineness assessment itself, when assessing unwillingness under article 17(2), the Office considers that the relevant test is not whether the Prosecutor, or a Chamber of this Court, would have come to a different conclusion than the competent national jurisdiction, or proceeded differently, but whether the facts, on their face, demonstrate an intent to shield persons from criminal responsibility. And since the ‘proceedings’ referred to in article 17 occur in the context of the domestic legal framework and domestic investigative and prosecutorial practice of the State in question, the assessment must be made against this domestic backdrop, rather than an abstract assessment of how the ICC Prosecutor might have proceeded under the Rome Statute.⁷⁴
143. This does not mean that the ICC must accept at face value propositions made by domestic authorities. Based on the information provided by the State, the Office has to conduct its own examination in order to assess whether the application by national authorities of the relevant legal tests under national law resulted in outcomes that appear manifestly inconsistent with the material available. As such, for the purpose of article 17 it is irrelevant whether the Office disagrees with a particular approach adopted by the national authorities or particular decision taken. What matters is whether this was so unreasonable or deficient in the circumstances as to constitute unwillingness by the domestic authorities to carry out relevant investigations or prosecutions genuinely, in the sense of showing an intent to shield perpetrators from criminal justice.⁷⁵
144. The Office has adopted this approach given the necessity of ensuring that its assessment can withstand judicial scrutiny, whether in the context of proceedings under article 18 or article 19 of the Statute. To satisfy this requirement, mere disagreement or conflicting opinion is not enough: irrespective of the burden of proof the Office will need to be able to substantiate its position before Chambers of the Court as to why it should be permitted to proceed in a particular instance, based on considerations set out in article 17 of the Statute.
145. Finally while the Office will have regard to the practice of human rights bodies to the extent it may assist in the interpretation of relevant terms in article 17(2), the Office considers that its role under article 17 of the Statute is not to pronounce on whether a State has complied with its duties to provide an effective remedy and fulfilled a procedural obligation to give effect to fundamental human rights enshrined in particular human rights instruments to which it may be bound. Instead, the Office’s role is to determine whether there is evidence to establish that the State concerned was unwilling or unable genuinely to investigate or prosecute. Nonetheless, for the same reason, the Office’s findings pursuant to article 17 are

⁷³ See also Inter-American Court of Human Rights, [Moiwana Community v. Suriname](#), Judgment, 15 June 2005, paras. 86(27) and 162; [García Prieto et al. v. El Salvador](#), Judgment, 20 November 2007, paras. 112-116; [Gudiel Álvarez et al. \(Diario Militar\) v. Guatemala](#), Judgment, 20 November 2012, paras. 248-252.

⁷⁴ ICC-OTP, [Situation in Iraq/UK - Final Report](#), 9 December 2020, paras.10, 347.

⁷⁵ ICC-OTP, [Situation in Iraq/UK - Final Report](#), 9 December 2020, para. 348.

also without prejudice to a State’s duty to provide an effective remedy to the victims or to fulfil a particular procedural obligation under national or international law more generally.

146. The Office emphasises that the Court jurisprudence on the assessment of genuineness step of the complementarity assessment under article 17(2)-(3) continues to evolve, in response to proceedings initiated under article 18 and 19 of the Statute. As such, its interpretation and application of the law will be continuously updated in response to the decisions of the judges.

iii. Implications for the two-track approach

147. This final section examines a number of implications from the Court’s case law and the Office practice for the two-track approach set out in this policy.
148. The complementarity assessment with respect to admissibility is not static, it must necessarily remain dynamic, attuned to the changing landscape at the national level and the possibility that the factor underpinning an admissibility assessment may change over time. As such, while the Office must reach its determination based on the facts as they exist at the time, this is subject to reconsideration and revisiting upon a change of circumstances.⁷⁶
149. Guiding this approach is the holding of the Appeals Chamber that for the purposes of article 17, the Court must consider the relevant facts as they exist.⁷⁷ As the Court has held, a State’s preparedness or willingness to investigate or prosecute, alone, is not sufficient in and of itself to establish that it is actually carrying out a relevant investigation or prosecution: such proceedings must actually be underway.⁷⁸ Nor can the Court defer its competence to hear a specific case on the basis of overall judicial reform processes or indications of possible future investigative activities.⁷⁹
150. It is for this reason that the Office has adopted the position in its interaction with States and in litigation before the Court that it should be permitted to proceed with its investigations and prosecutions in such circumstances without this prejudicing a later revisiting of the admissibility assessment in the light of new facts or a change of circumstances. At the same time, the Office will seek to continue cooperating with and supporting a State that wishes to undertake relevant and genuine proceedings, while it pursues in tandem the execution of its

⁷⁶ [Katanga Admissibility Judgment](#), para.56. See also ICC-OTP, [ICC Prosecutor, Mr Karim A.A. Khan QC, opens an investigation into the Situation in Venezuela and concludes Memorandum of Understanding with the Government](#), 5 November 2021, “The investigation – now opened – is not a one-way road. It is only the start of a process ... The principle of complementarity is the foundation of the Rome Statute system and it remains an important principle during the investigation stage”.

⁷⁷ [Katanga Admissibility Judgment](#), para. 56.

⁷⁸ [Ruto Admissibility Judgment](#), paras. 41, 83; [Muthaura Admissibility Judgment](#), paras. 40, 81; [Philippines Article 18 Appeal](#), para. 102.

⁷⁹ *The Prosecutor v. William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang*, 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-01/09-01/11-101](#), 30 May 2011 (hereinafter: “Ruto Admissibility Decision”), paras. 64-65; *The Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali*, 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-01/09-02/11-96](#), 30 May 2011 (hereinafter: “Muthaura Admissibility Decision”), paras. 60-61; see also [Burundi Article 15 Decision](#), para. 162.

own mandate. These two tracks can proceed in tandem, in potentially mutually reinforcing ways.

151. The Office’s policy also has several implications for its assistance to States conducting their own investigations. As a general rule and at its discretion, the Office will continue to give positive consideration whenever there is a prospect to share evidence with a domestic authority that may be in a position to initiate and/or progress relevant and genuine proceedings against particular suspects. In line with the requirements of article 93(10), before granting such a request, the Office will ensure that it has obtained the originator’s consent for the transmission of any material that it may have obtained through a request for assistance to another State.⁸⁰ The Office will also ensure that it complies with its obligations under article 68 of the Statute, in view of its duties of protection towards victims and witnesses.⁸¹ In this context, the Office will exercise particular care when requested to share any information related to particularly vulnerable victims or witnesses, including victims/survivors of sexual violence and violence against children. In addition, bearing in mind article 21(3) of the Statute, the Office will also seek to ensure that any assistance provided will be used in proceedings that respect the principles of due process recognised by international law, and will not lead to a violation of internationally recognised human rights, such as the prohibition against torture and inhumane treatment or the subjecting of persons to arbitrary arrest or detention.
152. In terms of the relationship between the Rome Statute’s complementarity provisions and its cooperation regime, in this context, Chambers of the Court have held that a State’s complementarity challenge cannot be made dependent on the Office first transmitting to that State the information and evidence the Office has gathered in order to place the State in a position to be able to challenge admissibility.⁸²
153. Moreover, the Office will continue to ensure that the two-track approach adopted pursuant to this policy does not result in tensions, but remains mutually reinforcing. In this context, Chambers have, in endorsing cooperative efforts by the OTP and States to promote the complementarity principle where feasible and to maintain a meaningful dialogue, called for vigilance that this does not risk validating national proceedings or tainting any possible future admissibility proceedings.⁸³
154. Finally, in terms of case selection, the Office recalls that the fact that the admissibility test under article 17 is necessarily case-specific, does not mean that the Prosecutor’s cannot exercise greater latitude and sound judgment when deciding which cases to bring forward for investigation and prosecution. Because the Prosecutor enjoys broad discretion in matters of case selection and prioritization, the Office can consider a wider set of factors when

⁸⁰ See article 93(10),(b)(ii). See also rule 194, ICC RPE.

⁸¹ *Ibid.*

⁸² [Ruto Admissibility Decision](#), paras. 32-35; [Muthaura Admissibility Decision](#), paras. 28-31.

⁸³ *Situation in the Bolivarian Republic of Venezuela I*, Public Redacted Version of ‘Decision on the “Request for judicial control submitted to the Pre-Trial Chamber I of the International Criminal Court by the Bolivarian Republic of Venezuela pursuant to Articles 15 and 21.3 of the Statute and Rule 46.2 of the Rules of the regulations of the Court”’, [ICC-02/18-9-Red](#), 2 March 2022, para 19. See also ICC-OTP, [Informal expert paper: The principle of complementarity in practice](#), 2003.

determining whether to prioritize a particular case, including “whether a person, or members of the same group, have already been subject to investigation or prosecution either by the Office or by a State for another serious crime”.⁸⁴

VI. Implementation of this Policy

155. As with all its policy documents, the Office will monitor its practices to ensure that it conducts effective preliminary examinations, investigations and prosecutions, in accordance with this policy. The Office will utilise its standardised institutionalised lessons-learned process to identify, document and implement best practices. This will promote learning and the preservation of institutional knowledge gained from experience. This policy and other relevant internal rules and procedures, will be regularly reviewed in order to incorporate best practices and other relevant developments, including jurisprudence.
156. The Office will also seek to work with the other organs of the Court, with the Secretariat of the ASP and with the Trust Fund for Victims in areas related to their competence and mandate, in particular as part of overall Court-wide efforts and in support of the mutually reinforcing lines of action. In this respect, the Office recalls that its own strategic objectives form part of the broader Court-wide Strategic Plan of the ICC 2023-2025, which contains two specific goals related to cooperation and complementarity.⁸⁵
157. The Office will also seek to strengthen the resource basis from which activities outlined in this policy paper can be supported, particularly those involving the provision of assistance and support to efforts by national and regional accountability actors. In this context, the Office is working with the Registry to establish a basis for the receipt of extrabudgetary funds in order to accelerate action under this policy.
158. Finally, the Office will ensure that it monitors, evaluates and learns from the implementation of this policy.

⁸⁴ ICC-OTP, [Policy paper on case selection and prioritisation](#), 15 September 2016, paras. 49-50.

⁸⁵ See [International Criminal Court Strategic Plan - 2023-2025](#), 13 June 2023, paras.8-10, and Strategic Goals 4 and 5 at paras. 44-51.