



**Cour
Pénale
Internationale**

**International
Criminal
Court**



**LE BUREAU DU
PROCUREUR
THE OFFICE OF
THE PROSECUTOR**

OFFICE OF THE PROSECUTOR

POLICY ON COMPLEMENTARITY AND COOPERATION

April 2024

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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 work we have undertaken so far during my time as ICC Prosecutor, I am pleased to introduce this policy 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 policy, the first of its kind issued by the Office, distils a range of integrated measures and policies that I believe, collectively, can deliver a paradigm shift in our relationship with national authorities and other accountability mechanisms, and, crucially, 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 also 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. And we must bring all partners with us in this process, openly charting the progress we make and publicly recognising the challenges we face through effective reporting and monitoring of this work.

Immediately prior to joining the ICC, I spent three years in Iraq as Special Adviser to the Secretary General of the United Nations 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, building real connections with them based on trust, 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. During the past years as I have travelled and engaged extensively with affected communities globally, 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 an impactful role in its realisation. Accountability cannot be delivered at arm's length.

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, including under universal jurisdiction, 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 can be made effective. They reflect the emergence of a global ecosystem, a network of international justice, that we must consolidate and expand upon. These developments generate a tremendous opportunity to expand the work that international judicial institutions and domestic authorities can do jointly. 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 policy 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 relationships recently developed between my Office, national authorities, international and regional organisations, and civil society, and builds further on the important work done as part of the stock-taking exercise undertaken at the Kampala Review Conference of the Rome Statute in 2010 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 of the International Criminal Court and the Rome Statute system in 2020.

Above all, this new policy and the innovative approach it outlines is founded on the principle of partnership. It reflects the fact that there is no tension, no incompatibility, between strengthening our cooperation with national actors, regional and international organisations, and exercising the necessary vigilance by ensuring we take the required action in fulfilment of our own core investigative mandate. We do not undermine 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 approach 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

Prosecutor, International Criminal Court

A handwritten signature in blue ink, consisting of a stylized initial 'K' followed by a long horizontal stroke, with a shorter horizontal stroke underneath.

April 2024

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I. INTRODUCTION: A TWO TRACK APPROACH

1. The complementary nature of the International Criminal Court (“Court” or “ICC”) and its dependence on State cooperation requires that national criminal jurisdictions and the ICC function together. In highlighting the core elements that motivate the Rome 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 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

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 (‘IER Report’).

³ ICC-OTP, *Informal expert paper: The principle of complementarity in practice*, 2003.

⁴ *Ibid.*, para. 3.

3. However, in practice, partnership and vigilance have often been treated in tension and perceived as in competition, instead of being viewed as mutually reinforcing. The Office, under the strategic vision of the Prosecutor, now seeks to stress 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 simultaneous and concerted efforts to support national authorities in shouldering greater responsibility with respect to the investigation and prosecution core international crimes. This strategy implies a two-track approach, in which the Office will seek to engage in partnership with States to promote cooperation and complementary action wherever possible, while remaining vigilant of its mandate to independently and impartially investigate and prosecute Rome Statute crimes. In this way, it will seek to promote coherence within and across the goals of the Rome Statute. The Office will apply this two-track approach at all stages of its work across all situations and cases whenever possible.



► ICC Prosecutor Karim A.A. Khan KC and H.E. the Minister of Justice for the Democratic Republic of Congo sign a MOU during a visit to the Democratic Republic of the Congo in June 2023.



► Deputy Prosecutor Mame Mandiaye Niang signs the Memorandum of Understanding with the Special Criminal Court in the Central African Republic on 21 November 2023.

4. 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. But equally, the reverse is also true: if States do not step up, the Office will not hesitate to fulfil its mandate. In the final analysis, by deepening its cooperation and complementarity activities, by bringing its work closer to States, and by deepening its understanding of national actors, the Office will position itself to more effectively implement its core investigative and prosecutorial mandate, while fostering efforts to catalyse genuine domestic proceedings wherever possible.

5. To give practical expression to this policy, this document includes a series of examples to illustrate the Office's new approach. As these examples show, whereas in the past the roles of partnership and vigilance may have sometimes been assumed sequentially, the parallel tracks adopted in situations as diverse as Venezuela, Colombia, Guinea, Ukraine, CAR and DRC show that complementarity efforts can be advanced even as the Office takes key procedural steps in execution of its mandate. This practice to date also demonstrates, concretely, that efforts by the Office to engage with national authorities and advance complementarity

will not serve to decelerate or delay potential action in pursuance of its core investigative mandate where necessary.

6. This two track approach is captured in the Office's Strategic Plan 2023-2025, in its goal to establish itself as a global hub for international criminal justice by transforming the Office into a technology-driven, agile, field-centric and victim centred organisation, capable of operating at the speed of relevance. At the same time, the Strategic Plan commits to working 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 including 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

7. 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.

8. Clearly, 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 or lack of activity. In some situations, relevant domestic counterparts may be hostile towards accountability efforts. Nonetheless, mindful of its duties and responsibilities, the Office will always endeavour to act consistently across all situations by seeking out and inviting opportunities for engagement at every turn.

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



► ICC Prosecutor Karim A.A. Khan KC meets with H.E. Mr Nicolás Maduro Moros, President of the Republic of Venezuela, during his visit to the Republic in June 2023.

9. 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 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

10. 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.

11. The Office publishes its policies in the interest of promoting transparency, clarity and predictability in the application of the legal framework. It is hoped

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 *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.

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.

12. This paper was published and circulated for comments from all relevant stakeholders before its finalisation, and relevant feedback has been duly considered in accordance with the practice of the Office to ensure clarity and transparency in the manner it applies the requisite legal criteria and devises its investigative and prosecutorial strategy and policies.



► ICC Prosecutor Karim A.A. Khan KC and the Minister of Foreign Affairs of Colombia, Mr. Álvaro Leyva Durán, sign a plan of action setting collective goals in the collaboration between OTP and Colombia in June 2023.

II. GUIDING PRINCIPLES

13. The provisions of the Court’s regulatory framework that address complementarity and cooperation straddle multiple provisions of the Statute and Rules and their full utilization gives better expression to the relationship of complementarity and cooperation. 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. Many of the areas treated in this policy have traditionally been subsumed under the overall umbrella of complementarity or the phrase ‘positive complementarity’.

14. The preamble of the Statute contains several 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.

15. 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 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.

16. 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

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

admissibility determinations in order to resolve forum allocation questions between the ICC and national criminal jurisdictions. Similarly, Part 9 of the Statute regulates how 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, including in the manner requested by the Court.⁸ This may involve particular modalities that the Court outlines to permit relevant Court personnel from being present at and assisting in the provision of assistance requested.⁹ The Court may also indicate a timeline or particular urgency attached to a request, where the matter is time-sensitive.¹⁰ Such cooperation is vital to enable the Office to carry out its mandate.

17. 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 two different, but possibly inter-connected cases, necessitating consultation, coordination and sequencing to ensure both activities can proceed.¹¹ Moreover, ICC investigations may frequently overlap with domestic lines of inquiry into serious crimes under national law. For example, the Office's efforts to strengthen its financial investigation capacity - to collect information and evidence for article 5 crimes as well as to identify proceeds, property, assets and instrumentalities of crimes for the purpose of eventual forfeiture – will also allow it to strengthen its relationship with national agencies.

18. 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.¹² The provision of such cooperation, which the Court may grant at its discretion, is subject to conditions. This includes the duty 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, since the information may have been transmitted with particular confidentiality requirements or for a

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

⁹ Article 99(1), ICC Statute.

¹⁰ Articles 96(2)(d), 99(1), ICC Statute.

¹¹ 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.

¹² Article 93(10), ICC Statute. The provision is applicable, under the same conditions, to both States Parties and non-Party States.

particular authorised purpose. The provisions of article 68 are also applicable, governing the protection of victims and witnesses.¹³

19. Article 54 of the Statute, which regulates the duties of the Prosecutor, also sets out several considerations that guide this policy. For example, the duty of impartiality and independence that underpins the entire 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 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.

20. 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. Efforts to promote complementary and cooperative action must also be vigilant against any delays or attempts to divert the Office from fulfilling its core mandate. Additionally, these efforts should ensure that States Parties fully cooperate with the Court in its investigation and prosecution of Rome Statute crimes.

21. 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 organisation or arrangement in accordance with its respective competence and/or mandate.¹⁴ 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

¹³ See article 93(10),(b)(ii), ICC Statute. See also rule 194, ICC RPE. Other relevant provisions include articles 54(3)(e)-(f), 72 and 93(8).

¹⁴ Article 54(3)(c), ICC Statute.

necessary to facilitate the cooperation of a State, intergovernmental organisation or person.¹⁵

22. Partnership and vigilance also applies towards the new forms of complementarity activities outlined in this paper, which will remain consistent with the principles of independence, impartiality and objectivity, as well as to the core protection duties of the Office with respect to victims and witnesses. In this context, a central pillar of the renewed approach of the Office to cooperation and complementarity is the recognition that progressive approaches to these activities should be viewed as mutually reinforcing, serving to augment all accountability efforts for serious crimes. Enhanced public reporting on the cooperation and complementarity activities of the Office, compatible with its duties of confidentiality, will seek to engender broader understanding of its work along these two tracks.

23. In reflection of the vision of complementarity enunciated by States Parties during the Kampala Review Conference of the Rome Statute 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 organisations 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”.¹⁶

24. In this context, the Report of the ASP 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.”¹⁷

¹⁵ Article 54(3)(d), ICC Statute.

¹⁶ ASP, Resolution RC/Res.1, 8 June 2010.

¹⁷ *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.”

25. Complementarity 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.



COMPLEMENTARITY AND COOPERATION

ARE CRITICAL FOR THE REALISATION OF
THE FULL POTENTIAL OF THE ROME STATUTE
SYSTEM.

III. COMPLEMENTARITY AND COOPERATION IN PARTNERSHIP

26. 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.

27. This section outlines four key pillars on which the Office's efforts to deepen its engagement with national authorities will be based. Each section is addressed in detail further below.

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.

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, subject to key parameters such as confidentiality and consent of the source, to share evidence and analytical products in support of national proceedings.

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

HARNESSING COOPERATION MECHANISMS

The current moment 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.

28. The sections that follow outline how these core pillars for enhanced cooperation and complementarity will be used as a framework for renewed action by the Office.

A. CREATING A COMMUNITY OF PRACTICE

29. 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, strengthened domestic capacity, as well as enhanced evidence preservation possibilities and relevant legal frameworks, has presented national authorities with perhaps unprecedented opportunities for action.

30. 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 to enhance engagement of affected communities.

31. 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. The Office has recently seen positive, innovative initiatives to structurally mirror its investigations by national authorities in order to facilitate cooperation when required.



► ICC Deputy Prosecutor Nazhat Shameem Khan meets with senior counterparts from the Joint Team on crimes against migrants in Libya.



► *ICC Deputy Prosecutor Mame Mandiaye Niang addresses experts at the Siracusa Institute upon the 25th Anniversary of the Rome Statute.*

32. 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.

33. 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 initiatives, outlined below, that will significantly enhance its ability to harness the capacity of national authorities to take action with respect to core international crimes.

34. 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.

35. Building a community of practice, in this context, draws on notions of common bonds set out in the preamble of the Rome Statute. The practitioners within this community should feel united in a coordinated effort to address “the most serious crimes of concern to the international community as a whole”. Deepening engagement between accountability actors across diverse fields also

serves to enrich the common pool of practice from which international criminal justice draws.

36. The Office expresses this vision conscious that in some circumstances the ICC, as an international court, will be best placed to hear a particular case: whether arising from entrenched patterns of impunity in respect of certain situations or certain crimes; or due to admissibility (as a consequence of the operation of 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). Nonetheless, even where the Office investigates and prosecutes in a particular situation, it envisages its work as informing, and as forming part of, a wider array of actions that can be carried out among a plurality of accountability actors.

Mapping and tracking of domestic accountability efforts

37. As an initial step, the Office, together with other partners already undertaking this work, will seek to 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 and regional 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.

Complementarity and Cooperation Forum

38. 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. Sharing ideas, good practices and expert knowledge is essential in building future bridges for cooperation which will enhance the Rome Statute system and assist the Court in the delivery of its mandate. The Office envisages that this forum could be composed of national practitioners and specialised 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.

39. 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 and greatest impact 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.

40. 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, victims representatives, as well as judicial cooperation specialists. Moreover, while accounting for the differences between legal systems, the forum could serve to enhance harmonisation and cohesion of the work, operational standards and protocols of the Office, including in relation to topics such as investigative interviewing, financial investigations and asset tracing activities, covert operations, forensic activities and other specialised areas. Routine consultations with and possible OTP deployments of specialised 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.

41. As the work of the Complementarity and Cooperation Forum develops, the Office will continue to explore further ways in which regional-level multilateral discussions could be supported amongst operational partners. Developing and encouraging spaces for these regional discussions could support focused discussion amongst relevant counterparts to address information needs in relation to specific situations.

42. While different legal obligations underpin its engagements with States Parties and States not Party to the Rome Statute, the Office values deepening cooperation with all States, in order to give effect to its mandate, increase the impact of the fight against impunity and the vision set out in this Policy. The Statute itself foresees that cooperation between States and the ICC may occur irrespective of whether a State is a party to the Statute.¹⁸ To this end, the Office will ensure that the required legal arrangements and framework are in place with any non-Party State to govern any forms of cooperation foreseen, including

¹⁸ See e.g. article 87(5), article 99(5), rule 44, ICC Rules of Procedure and Evidence.

with respect to confidentiality, information-security, originator consent, witness protection and other applicable conditions, with a view to strengthening the basis for expanding operational engagement with such counterparts.

43. The Forum would be complemented by, but separate from, the enhanced structural dialogue put in place by the Office pursuant to its commitment to deepen its engagement with civil society partners and collectively discuss the ongoing activities of the Office in the implementation of this policy (see subsection (c)(ii)). As referenced below, the enhanced reporting of the Office on its cooperation and complementarity activities within its Annual Report will further strengthen the basis for this dialogue.

44. The activities carried out in the Complementarity and Cooperation Forum would build on and complement the existing work of the Office to leverage a range of fora to enhance its cooperation with national partners, such as the European Network for investigation and prosecution of genocide, crimes against humanity and war crimes ('Genocide Network'). The Genocide Network has been a longstanding and highly valued partner of the OTP, which in turn holds observer status within the Network. A recent output of this partnership is the jointly published practical guidelines for civil society organisations on documenting core international crimes.¹⁹ The Complementarity and Cooperation Forum would seek to build on the ongoing, essential collaboration engendered in the Genocide Network by providing a dedicated and continuous space for engagement with national authorities addressing OTP investigations and activities within a wider, global pool of actors. A priority in this respect will be deepening of dialogue with national authorities from Africa, Asia and Latin America and the Caribbean in order to further strengthen the basis on which the Office can deepen its operational cooperation with these regional groups.

45. It should be underlined that while the Forum would be intended to enhance cooperation and dialogue with all relevant national authorities, the direct sharing of information and evidence with such partners in relation to situations addressed by the Office would remain on a case-by-case basis and subject to the established parameters of confidentiality, witness protection, and consent of information-providers.

¹⁹ ICC-OTP and Eurojust, *Documenting international crimes and human rights violations for accountability purposes: Guidelines for civil society organisations* (2022).

Situation Briefs

46. 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 for the purpose of judicial cooperation Situation Briefs providing an overview of cases being developed in relation to each situation it addresses. The intention is that these briefs can provide concerned States with a synthesis of the types of evidentiary material collected to date, key lines of investigation completed and, where appropriate, indications as to anticipated upcoming priority actions. The Office envisages these briefs could strengthen the basis for dialogue and support the mutual provision of cooperation in relation to a situation. As referenced above, any potential sharing of Situation Briefs will be assessed by the Office on a case-by-case basis and at its discretion, subject to overarching considerations based on information security, witness protection, relevant confidentiality and handling conditions, as well as the need to preserve the integrity of ongoing investigations.

47. In developing and sharing these briefs, the Office will seek to significantly increase awareness among relevant national authorities as to opportunities for the provision of relevant information both by domestic authorities to the Office in support of 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.



► ICC Prosecutor Karim A.A. Khan KC addresses a United for Justice conference in Lviv, Ukraine in March 2023.

Deepening common understanding through secondments

48. To further expand common understanding between the Office and national authorities, steps have been taken to fully utilise the possibilities for secondments to support the Office's work across situations.

49. On 7 March 2022, the Office issued a Note Verbale requesting States Parties to provide such personnel in order to address the resources needs across all situations before the Court. The Office identified specific work profiles and skill sets that it needed. This request was met with a very positive response, with the Office having selected and received the secondment of over 70 personnel in total thus far working across the Office's Unified Teams. The Office reviews all proposed candidates for secondments to ensure that their background and profiles correspond to specific needs of each team. In this regard, on 6 March 2024, the Office issued a further Note Verbale providing an updated set of priority profiles for States wishing to provide seconded national experts, focusing on those with advanced analytical capacity and specialised expertise not addressed through the positions funded by the regular budget of the Office.

50. Additionally, the Office has established a new Trust Fund for financial support for secondees from States Parties that qualify as developing economies and economies in transition, with a view to assisting further deployment of such personnel and enhancing geographical diversity. In this regard, the Office will seek to ensure that the absorption of such secondments is consistent with the principles applicable to members of the Court, considering 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.

51. 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 authorities, the Office will be able to broaden the basis on which opportunities for collaboration can be identified and exploited. Moreover, secondments facilitate knowledge exchange among national professionals in the framework of the Office, thus strengthening the OTP's role as a hub at the centre of collective accountability efforts.

52. The availability of secondees 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 facilitating an exchange of experience and practice on the specificities and challenges

of investigating and prosecuting core international crimes. Such seconded personnel 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 the Office's 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.

53. The secondment of personnel 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

54. A further way that the Office will seek to contribute to a community of practice is through promoting knowledge transfer between practitioners and 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.²⁰

55. 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 allegations from 2009 and the preceding investigation, the deployment under its auspices of forensics teams and experts from six States Parties 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.

²⁰ 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, *Mémoire d'entente entre la République Démocratique du Congo et le Bureau du Procureur de la Cour Pénale Internationale*, 1 June 2023.



► *A forensic expert works in the Situation in Ukraine.*

56. The provision of such support to national and regional accountability efforts is of value to the Office in multiple ways. In many cases it effectively reduces the potential need for the Office to utilize 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.

57. 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.

58. As part of this broader effort, the Office will also promote greater reference by domestic practitioners to the 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.²¹ 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 Lexsis, a related platform that currently offers services in several languages, including Arabic, English, French and Persian.²²

B. TECHNOLOGY AS AN ACCELERANT

59. The Office is presently undertaking a fundamental reform of its technological architecture in order to significantly increase 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. Crucially, it also ensures the Office's ability to leverage industry-leading security standards in the storage and protection of data provided to it by its partners.

²¹ 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.

²² The ICC Legal Tools Database is administered by the Centre for International Law Research and Policy (CILRAP) pursuant to an agreement between the Court and CILRAP.

A new technological framework at the Office of the Prosecutor

60. 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.

61. 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 both digitized and digital-native 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.

62. 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, in accordance with applicable rules of privacy, confidentiality, data-security and ownership.

63. Without prejudice to the Office's independent evaluation and assessment or to the requirements of article 21(3) of the Statute, key evidentiary assets that can be addressed through such tools include:

KEY EVIDENTIARY ASSETS

CALL DATA RECORDS AND INTERCEPTED COMMUNICATIONS

Call data records and intercepted communications collected by national authorities from private sector telecommunications companies

ELECTRONIC DEVICES

Potentially thousands of electronic devices, including laptops, hard drives and personal computers used within the context of a conflict under investigation, containing multiple terabytes of relevant information

VIDEO AND AUDIO FILES

Potentially hundreds of thousands of video and audio files either published on social media channels or obtained through forensic analysis digital hardware collected from relevant actors

INFORMATION RELATED TO MILITARY EQUIPMENT

Information derived from private and governmental manufacture, production, and sale chains of military equipment and from transportation manifests

OPEN-SOURCE INTELLIGENCE

Open-source intelligence in mixed data formats including news and media, grey literature, radio broadcasts, deep web and dark web searches, flight data records, corporate records

FINANCIAL INFORMATION DATA

Voluminous sets of financial information data, covering bank accounts, business interests, assets and financial transactions, received through national authorities from a variety of financial and fiscal entities

GEO-SPATIAL AND SATELLITE IMAGERY

A wide range of geo-spatial and satellite imagery showing movements of relevant actors as well visual confirmation of key acts under investigation

DOCUMENTARY FILES

Millions of documentary files either collected in digital format or digitised by the OTP following collection of hard-copy files



64. To address this, the Office has implemented 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.

65. As part of this work, the OTP has partnered with Microsoft, Accenture Avanade and other technology 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 benefited significantly in this regard from voluntary financial contributions from several States Parties and from the European Commission, which have enabled a critical investment to strengthening its technological capacity.

66. Under this initiative, the following aspects have been implemented, setting a stronger basis for complementarity efforts with:

- A new Evidence Lifecycle Management System

A new customised Evidence Lifecycle Management System has been developed to centralise 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's 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.²³ 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 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.

67. 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.

68. Together, these new tools and resources will also allow the OTP to rapidly create an unprecedented visual context for its investigations. 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, while also allowing the OTP to increase its ability to support domestic accountability processes - thereby lending coherence to the Statute's vision of complementary national and international action.

²³ Such actions do not of course relieve States of their duty to submit translations, as required by the Court's legal framework.

Harnessing advanced technology for complementarity and cooperation

69. In introducing this enhanced 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 becoming an effective hub for cooperation and complementarity efforts across States Parties and non-Party States.

70. The Office anticipates that the increased use of digital technology will increase its ability to interact with and support national accountability efforts in a number of ways including:

- Increased evidence holdings expand 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 rapidly increase the range of material it collects and processes as part of its investigative activities. It is anticipated 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 for two-way collaboration - to allow it to identify and share information relevant to domestic proceedings, in the same way that the Office seeks such information from States for its own investigations.
- 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.

To harness this new capacity, the Office will also adjust and enhance its internal protocols with respect to the processing of incoming requests

from national authorities, allowing it to respond with greater agility in support of ongoing domestic proceedings.

- 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 underway in a limited number of cases.

71. 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

72. At the heart of complementarity is a recognition that justice is best delivered closest to those communities impacted by core international crimes.



► *Office of the Prosecutor Team meet with Darfuri refugees in Chad*



► *The Prosecutor at Rafah Crossing between Egypt and Gaza on 29 October 2023*

73. 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 is rendered locally.

74. 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 complementary 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. Successful national prosecutions of core international crimes foster local capacity, and further integrate domestic actors with the global community of practice. 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 institution. At the same time, the Court can learn from innovative and evolving approaches adopted by domestic authorities.

75. Where investigation and prosecutions are undertaken by the Office, there is still much that can be done by the Office and the Court 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.

76. Included in the goal of bringing justice closer to communities is the conscious effort the Office can make to ensure that its work is enriched by a better understanding of and reference to domestic cultural, religious and indigenous texts and norms - in order to emphasise the shared heritage of the values underpinning the Rome Statute.

Leading investigations from the field

77. 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.

78. In line with this imperative, the OTP is moving to establish field offices and otherwise significantly enhance its field presence 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, Bangladesh and Libya. A field office of the Court was established in Kyiv, Ukraine, in September 2023, following the signing of an agreement in March 2023, while necessary arrangements are also now in place in Bangladesh and Venezuela to support an enhanced presence by the Office on the ground. The Office is also seeking to explore all potential avenues to establish an enhanced field presence in or proximate to a number of other situations including the State of Palestine, in order to strengthen the basis for its investigations.

79. 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.

80. Given its benefits to 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.

81. 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.

Strengthening engagement with civil society organisations

82. Civil society, and in particular local organisations stemming from collective action by victims and 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 safe, secure and common space for open dialogue and exchanges, those most directly impacted by international crimes can significantly amplify the work of accountability processes. In this context, the views, concerns, experiences and insights of victims and civil society organisations will be essential to sound and effective policy implementation by the Office in each situation.

83. 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. They may be the first to document alleged international crimes and human rights violations as they occur in situations, and have extensive experience submitting relevant information to competent jurisdictions at both the national and international level. Reflecting this, the Office is implementing a series of measures aimed at enhancing the mutual benefits that can arise from deeper engagement with 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 on in-depth discussion 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 was held in November 2023. The Office is committed to holding two thematic roundtables this year.
- The development and publication in September 2022, together with European Union Agency for Criminal Justice Cooperation (Eurojust) and the European Network for investigation and prosecution of genocide, crimes against humanity and war crimes (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.²⁴
- 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 across situations. This has included clearer tracking of the frequency and breadth of engagement of the Office with civil society across its activities and situations. The Office is committed, pursuant to this policy, to expanding this work in the coming period.
- 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.

²⁴ ICC-OTP and Eurojust, *Documenting international crimes and human rights violations for accountability purposes: Guidelines for civil society organisations*, 21 September 2022. 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.

84. In addition to these initiatives the Office is committed to establishing a further space through which enhanced structural dialogue can be developed with civil society partners to consider the implementation of this policy. This dialogue will be complemented by the expanded reporting of the Office with respect to its complementarity and cooperation activities in the Annual Report of the Office. The Office will work with its civil society partners to set the parameters for this new space to allow for more in-depth consideration of cross-cutting issues relevant to the implementation of this policy and to the relationship between the Office and civil society, survivors and victims' groups.

85. 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. The Office also encourages dialogue on the technical, logistical, and security challenges that may affect the interactions of civil society organisations with the Office.



► ICC Prosecutor Karim A.A. Khan KC meets with members of Rohingya Women's Groups during his first visit to Bangladesh in March 2022.

Contributing to action at the national level

86. 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.

87. 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.

88. 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 necessary, in line with the framework of complementarity and cooperation set out in the Statute.

89. Through the provision of more direct and tangible support to national authorities, the Office also increases its ability to interface 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.

90. 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.

91. 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 forensic and scientific support to the Office, building on the model developed by the Office in 2022, through which personnel seconded to the Office of the Prosecutor are deployed to the field in relevant situations, along other types of support, in order to provide expertise and assistance 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 9 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 initially prioritising the issuance of a Handbook on Trauma-informed investigations.

Partnering with specialised accountability mechanisms

92. 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 specialised 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.

93. 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 2022.²⁵ 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.²⁶ This cooperation demonstrates 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 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.

94. 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.²⁷ The IIMM has been specifically empowered to “cooperate closely with any of [the Court’s] future investigations pertaining to human rights violations in Myanmar”.²⁸

²⁵ 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.

²⁶ 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.

²⁷ UN HRC Res. 39/2 (2018). See also UNGA resolution A/RES/73/264, 22 December 2018.

²⁸ UN HRC Res. 39/2 (2018), para. 24.

95. Drawing on these experiences, as well as on the broad legal basis provided under the Rome Statute, the OTP envisions deepening its cooperation with such actors by:

- Proactively engaging with specialised courts, hybrid mechanisms and international investigative mechanisms in order to identify opportunities for collaboration and cooperation;
- Providing more expeditious 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 strengthening communities of practice amongst legal entities responsible for the implementation of international criminal law at international, regional and national level, through 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.

ICC *in situ* proceedings

96. 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.

97. In line with this approach, and subject to the decision of the relevant Chamber of the Court, the Office will seek whenever possible and appropriate to hold at least part of the proceedings before the Court in the situation country or, if this is not possible, in the region, to be as close as possible 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, and a heightened awareness of all actors of the context of core international crimes. 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 of religious, cultural and social traditions that may be relevant to the conduct of proceedings.

98. 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. Such proceedings would only be supported by the Office where assessed as safe and secure for affected communities and those participating in proceedings. 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, lodging and internet access. The Office will seek to work with the Registry to explore the use of a more varied and intentional use of both modern and traditional communication tools to deliver actual proceedings, relevant information and vital follow-up debriefings to specifically concerned communities and to the general public.

99. 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.²⁹

D. HARNESSING COOPERATION MECHANISMS

100. 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

²⁹ 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.

operational cooperation: both for the Office's investigations and in support of national proceedings.

101. ICC crimes typically occur within a spectrum of criminality encompassing other serious crimes under national law, including terrorism, transnational organised crime and illicit 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 can 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.

Joint investigations

102. Increasingly, the modern architecture to support the investigation of transnational and organised crime foresees the possibility for two or more investigative, prosecutorial or judicial bodies coordinating in respect of common lines of inquiry or working alongside each other in specific operations. Such joint activities can serve to maximise the potentially overlapping efforts and operational know-how of several actors, while respecting the independence, impartiality and legal regime of each participating entity.

103. 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.

104. Participation in this initiative has had a tangible impact both on the Office's own independent 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 investigations as well as conduct rapid coordination with JIT partner countries.

105. 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 the 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.

106. 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 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.

107. This sets a precedent for enhanced joint efforts in investigations which the Office will seek to expand across other situations in the future. In this context, the Office has urged for the same level of urgency, cooperation and coordinated action wherever international crimes are committed.³⁰ To strengthen its ability to identify all potential opportunities for such collaboration the Office has joined the Network of National Experts on Joint Investigation Teams.³¹

108. Reflecting this, in September 2022 the Office also became 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).

109. 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.

110. The Office is also seeking to build deeper cooperative arrangements with other regional organisations including the African Union, the Economic

³⁰ 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.

³¹ <https://www.eurojust.europa.eu/judicial-cooperation/practitioner-networks/jits-network>.

Community of West African States and the Organisation of American States, as well as in the context of Asia and the Asia-Pacific region.

111. The Office considers an important innovation in this context the adoption, in May 2023, 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, and also attended the signing ceremony in February 2024. 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 will be strengthened.

112. 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 representatives to be present at and assist in the execution of particular investigative measures, where requested.

Coordination with other rule of law and accountability actors

113. 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.

114. 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, Michelle Bachelet and Volker Türk, 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 OHCHR 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 interactions 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. In implementation of this policy, the Office will seek to expand such engagement with United Nations entities, with full respect for respective independent mandates.

115. 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. Within the framework of the Working Arrangement, the Court is putting in place modalities to establish a direct connection that will facilitate access to the relevant available tools and deepen the engagement and communication with relevant national authorities. This will significantly enhance the ability of the Office to engage with relevant national partners. As referenced earlier, Eurojust is also an important partner and bridge-maker towards European prosecution services for the Office, given its role in coordinating the efforts of the different national authorities involved and providing legal and analytical expertise, including to the increasing number of investigations into core international crimes, including those based on universal jurisdiction.

116. The Office is similarly seeking to deepen its engagement with a broad range of international, regional and specialised law enforcement, investigative and prosecutorial bodies around the world.

Transitional justice processes and mechanisms

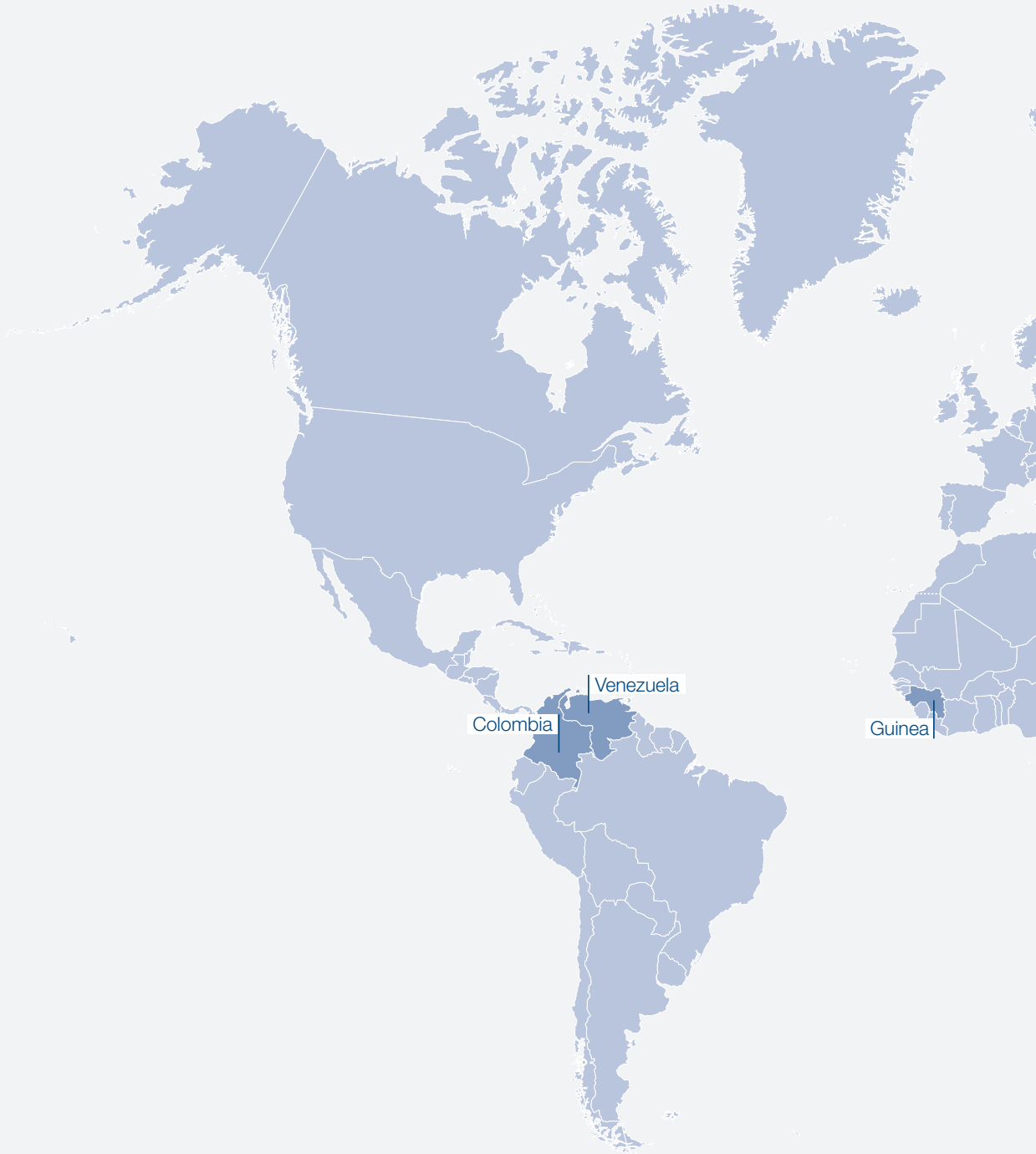
117. To enable more integrated and complex responses to situations, the work of the ICC should also be embedded, as far as possible and in partnership with domestic stakeholders, within the full range of transitional justice processes and mechanisms that may be available at the national level. In this context, the Office recalls that the legal test governing admissibility is framed by reference to whether relevant criminal proceedings have been undertaken - meaning that other, non-criminal proceedings fall outside of the Court's assessment under article 17 of the Statute.³² Nonetheless, this does not prevent the Office (and the Court as a whole) as a matter of policy, to seek ways and means of integrating and coordinating 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.³³

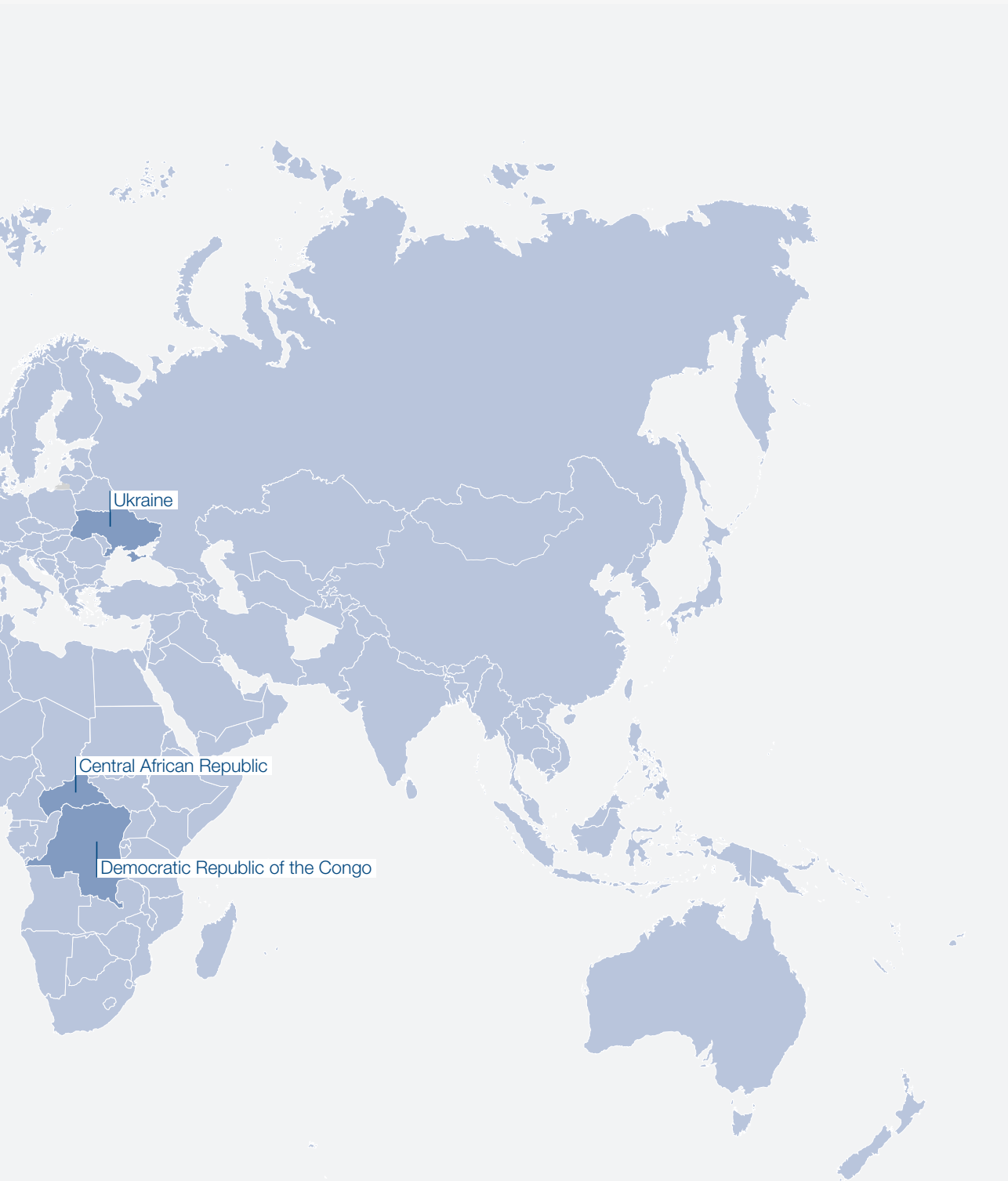
118. Engagement with such mechanisms, such as the Special Jurisdiction for Peace in Colombia, as highlighted further below, will be a priority for the Office. This will encompass the provision of assistance to such mechanisms where appropriate as well as engagement in best practices and lessons learned exchanges.

³² 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. 106, 124-125, 147-155; Situation in the Bolivarian Republic of Venezuela I, Judgment on the appeal of the Bolivarian Republic of Venezuela against Pre-Trial Chamber I's "Decision authorising the resumption of the investigation pursuant to article 18(2) of the Statute", [ICC-02/18-89](#), 1 March 2024 (hereinafter: "Venezuela I Article 18 Appeal"), paras. 110, 245.

³³ 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".

**Complementarity in Practice:
Highlighted Examples of Dynamic Complementarity**





Ukraine

Central African Republic

Democratic Republic of the Congo

IV. COMPLEMENTARITY AND COOPERATION IN PRACTICE

119. 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 based on 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.

120. Given its dynamic and interactive nature, this policy does not seek to set out a list of factors to guide when and where it might be implemented. Focus instead is given to developing practice - in order to illustrate the multiple ways and conditions under which the approaches set out in this policy can be given practical expression. As experience and learning build over time, it is hoped that these and other developments can in turn stimulate fresh thinking on future avenues for practice.

Venezuela

121. 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.



► ICC Prosecutor Karim A.A. Khan KC signs the Memorandum of Understanding on the establishment of in-country office with H.E. Mr Nicolás Maduro Moros, President of the Republic of Venezuela, during his visit in June 2023.

122. 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.³⁴ Following the first MoU, in the context of a third high-level visit by the Prosecutor to Caracas, the Office and the Government of Venezuela concluded a second Memorandum of Understanding setting out the details for establishing an in-country office of the OTP in Venezuela and outlining a series of priority areas in relation to advice and assistance the Office will provide to the Venezuelan authorities. These include 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.³⁵ In December 2023, the Office and Venezuela signed a Work Plan setting out the specific activities for 2024 with a view to implement the priorities listed in the MoU.

³⁴ 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.

³⁵ 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.

123. This two-track approach continued also 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.

124. 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.³⁶

Colombia

125. 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, or “JEP” in Spanish),³⁷ 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.³⁸

³⁶ *Ibid.*

³⁷ The Special Jurisdiction for Peace is the justice component of the Comprehensive System of Truth, Justice, Reparation and Non-Repetition established under the 2016 Final Peace Agreement for Ending the Conflict and Building a Stable and Lasting Peace. Its objective is to address the rights of victims of the armed conflict to justice and truth as well as to meet Colombia’s international obligations to ensure accountability for grave international crimes; see ICC-OTP, *Final Report on the Situation in Colombia*, 30 November 2023, para.13

³⁸ ICC-OTP, *Cooperation Agreement between the Office of the Prosecutor of the International Criminal Court and the Government of Colombia*, 28 October 2021.



► ICC Prosecutor Karim A.A. Khan KC meets with judges of the Special Jurisdiction for Peace.

126. 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.³⁹ 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.

³⁹ 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.

127. 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.⁴⁰ 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.

128. In June 2023, during a high-level mission by the Prosecutor to Bogotá, the Prosecutor and H.E. the Foreign Minister of Colombia signed a further Action Plan articulating a series of clear, common objectives for deeper collaboration.



► ICC Prosecutor Karim A.A. Khan KC meets with H.E. the President of Colombia during his high-level visit to Bogotá in 2023.

⁴⁰ Article 1, *Cooperation Agreement between the Office of the Prosecutor of the International Criminal Court and the Government of Colombia*.

The areas of activity set out in the Action plan include the provision of technical expertise and support by the Office; the exchange of good practices in priority thematic areas; assistance in coordinating action across justice institutions; and work towards the establishment of an OTP in-country office in Bogotá. The Office also continued its direct meetings and exchanges with Colombian 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 it faces with its ambitious workload, as well as to provide support with respect to identified priority areas such as the investigation and prosecution of sexual and gender-based crimes, environmental crimes or crimes committed by third party civilians. The workplan is underpinned by a dynamic relationship based on a two-way dialogue that enables the sharing of best practices and lessons, and allows the Rome Statute system to be enriched by the body of practice emerging from Colombia's experience.⁴¹

129. In immediate follow-up, Special Adviser to the Prosecutor, Professor Lisa Davis, together with OTP expert staff, visited Bogotá to deliver training to members of the JEP and other Colombian judicial institutions with respect to the newly-established OTP policy on gender persecution. The Office also contributed its expertise in two events hosted by the JEP on environmental crimes and the example of the JEP as a model for transitional justice.

Guinea

130. 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 understanding with the President of the Transition in Guinea. The MoU frames the Office's ongoing accompaniment of domestic accountability efforts, while also setting out the government's commitment to ensure the necessary legislative, operational, security and financial commitments to enable the relevant national judicial institutions to fulfil their

⁴¹ 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

mandate.⁴² Such common efforts aim to ensure effective justice for the families of victims through concrete action at the domestic level, in line with the Office's 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 Statue crimes.⁴³



► Deputy Prosecutor Mame Mandiaye Niang; (former) Minister Secretary-General of the Government, Mr Abdourahmane Siké Camara; Secretary-General of the Ministry of Justice, Mrs Irène Marie Hadjimalis in Conakry, Guinea, on 8 September 2022.



► ICC Prosecutor Karim A. A. Khan KC and (former) Minister of Justice Alphonse Charles Wright formally open the Courthouse which holds the trial regarding the 28 September 2009 events in Conakry, Guinea.

⁴² 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.

⁴³ *Ibid.*

Ukraine

131. 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 a particular case, there is nothing preventing multiple jurisdictions cooperating in pursuit of different cases, acting in complementary ways – indeed, the Statute encourages it.⁴⁴ Upon initiating its investigations, the Office moved swiftly to further strengthen 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,⁴⁵ sought to collaborate closely with Eurojust, Europol, and the Genocide Network; and called for coordination and dialogue at the UN Security Council.



► ICC Prosecutor Karim A.A. Khan KC and H.E. Mr Andriy Kostin, Prosecutor General of Ukraine, mark the opening of the ICC field office in Ukraine.

⁴⁴ See above Section II, and below Section V.

⁴⁵ 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.

132. 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 ways of enhancing coordination of action.⁴⁶ 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 a rotational basis under the umbrella of the ICC, supported through cooperation with States Parties willing to second experts.⁴⁷



► ICC Prosecutor Karim A.A. Khan KC meets with individuals impacted by bombardments in Ukraine in April 2022.

⁴⁶ 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.

⁴⁷ 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.

133. 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.

Central African Republic

134. Complementarity and cooperation also apply where trials are underway at the Court and as part of broader situation completion strategies. In the Central African Republic, while trials 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.⁴⁸ 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 93(10) of the Statute. The Office has also engaged in consultations and operational engagement on possible division of labour and case-loads, including with respect to cases against suspects that are yet to appear before the ICC.

135. The Office has also partnered with national authorities and international experts to undertake forensic activities aimed 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 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

⁴⁸ 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.

closer to those impacted by Rome Statute crimes. The forensic operation provided a tangible example of how such principles can be converted into action.⁴⁹

136. 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 action continues where the Office completes its activities.⁵⁰ Indeed, a strategy of completion will often only make sense as part of a strategy based on a revitalised approach to complementarity and cooperation. In this context, two memorandums of understanding were signed with the national authorities and with the CAR Special Court in 2023 to deepen cooperation and complementarity with the view of increasing the impact of the fight against impunity in CAR.



► ICC/OTP partners with national authorities and international experts in the forensic identification and restitution of remains of victims in the Central African Republic

⁴⁹ 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.

⁵⁰ 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.

Democratic Republic of the Congo (DRC)

137. 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. 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 crimes. In June 2023, the Office 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 conducted jointly with the DRC authorities a comprehensive mapping exercise of major incidents and 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 of increasing its support to DRC authorities through the deployment of forensics experts - a mission has been deployed recently in 2024 to map the key potential partners and to develop a plan 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.⁵¹

Summary of learning

138. 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.

⁵¹ 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 République Démocratique du Congo et le Bureau du Procureur de la Cour Pénale Internationale*, 1 June 2023.

139. They also give tangible expression to the vision outlined in this policy. 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 and survivors at its centre.⁵² And while each example is situation-specific, the lessons drawn are not. The Office has sought to distil and apply best practices across the length and breadth of its work, in context-aware fashion. 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.⁵³

140. Clearly, the implementation of such a two-track approach may not be feasible everywhere. As mentioned earlier, 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 or lack of activity. Where this is the case, the Office will not hesitate, and will not delay, the exercise of its statutory responsibilities to investigate and prosecute relevant crimes.

141. Nonetheless, the Office believes that the best and most effective approach is to maintain open and sustained 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 of encouraging, supporting and/or catalysing genuine national proceedings may appear more challenging. The Office has pursued this path in the immediate 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.

⁵² 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

⁵³ 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.

142. This is a vision that embraces 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.⁵⁴ It is a vision that recognises the Office can have an important role in providing direct support to domestic action. Accordingly, complementarity and cooperation remain under constant consideration and review during the entire life cycle of a situation before the Court.

143. Even if the Prosecutor decides not to proceed to open an investigation before the Court, the Office may still provide relevant support and cooperation with domestic investigations and prosecutions of Rome Statute crimes, or any other serious crimes under national law. Indeed, mindful of the necessary limitations on the number of investigations which can be effectively carried out by the Office at any one time, measures of complementarity and cooperation may be particularly appropriate in such situations.

⁵⁴ ICC-OTP, *Policy on Situation Completion*, 15 June 2021, para.29

V. COMPLEMENTARITY AS A LEGAL TEST

144. The last section of this policy examines complementarity through the lens of its judicial function in regulating the Court's competence to hear 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.

145. 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 concurrent 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'."⁵⁵ 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.⁵⁶

146. 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 18, in seizing a Chamber with a request for an arrest warrant/summon to appear, as well as in response to possible changes in circumstance.

⁵⁵ *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.

⁵⁶ *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.

The Office also undertakes this assessment as part of its case selection and prioritisation decision making,⁵⁷ and in the context of situational completion strategies.⁵⁸

147. 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) determine whether there are or have been relevant proceedings at domestic level with respect to the same case or potential cases (action/inaction analysis); and, only if the first step is answered in the positive (b) 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). 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”.⁵⁹

148. 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.



► Deputy Prosecutor Nazhat Shameem Khan addresses the Court in March 2022.

⁵⁷ ICC-OTP, *Policy paper on case selection and prioritization*, 15 September 2016, paras. 29-31.

⁵⁸ ICC-OTP, *Policy on Situation Completion*, 15 June 2021, para.29.

⁵⁹ *Katanga Admissibility Judgment*, para. 78.

FIRST STEP COMPLEMENTARITY ASSESSMENT

Are there relevant domestic proceedings within the meaning of art 17(1)?

149. 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.⁶⁰ 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.

150. As Chambers of the Court have recalled, since article 17 of the Statute applies not only to determinations of admissibility with respect to a concrete case (as per article 19 of the 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.⁶¹

151. 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.⁶²

⁶⁰ *Ruto Admissibility Judgment*, para. 37; *Muthaura Admissibility Judgment*, para. 36.

⁶¹ *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; *Venezuela I Article 18 Appeal*, para. 364.

⁶² 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. 106, 109-110; *Venezuela I Article 18 Appeal*, para. 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.

152. 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.⁶³

153. 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.⁶⁴

154. In order for the Office, and Chambers, to carry out the complementarity assessment, it is essential for the Court to have sufficient information. In this respect, Chambers have emphasised 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”. This material must have a “sufficient degree of specificity and probative value” that establishes “tangible, concrete and progressive investigative steps” seeking to ascertain a person’s criminal responsibility. 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”,⁶⁵ but also extends to “all material capable of proving that an investigation or prosecution is ongoing”.⁶⁶ This includes “directions, orders and decisions issued by authorities in charge [...] as well as internal

⁶³ *Ruto Admissibility Judgment*, para 40; *Muthaura Admissibility Judgment*, para. 39. See also *Philippines Article 18 Appeal*, paras. 109-110.

⁶⁴ ICC-OTP, *Policy paper on case selection and prioritisation*, 15 September 2016, paras.30-31.

⁶⁵ *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.

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.

reports, updates, notifications or submissions contained in the file [related to the domestic proceedings]”.⁶⁷

155. 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 to verify the existence and scope of national proceedings to reach a well informed assessment on the admissibility of relevant cases or potential cases that are under review. In doing so, the Office will also continue its practice of inviting timely responses to ensure that relevant assessment and attendant proceedings can be conducted without undue delay.⁶⁸

156. It should also be recalled that the admissibility assessment is not dependent on whether the national authorities are investigating or prosecuting under the same legal label used at the Court. As the Appeals Chamber has clarified, in assessing whether the domestic case sufficiently mirrors the case before the Court, “there is no requirement in the Statute for a crime to be prosecuted as an international crime domestically”, adding that what is required by the Statute is that the crimes prosecuted at the domestic level cover substantially the same conduct as those that would be heard before the ICC. Nonetheless, the statutory regime and complementary assessment also create strong incentives to promote harmonisation between international and national legal qualifications to avoid impunity gaps. With respect to sexual and gender based crimes, for example, the Appeals Chamber has held that, in assessing whether there is an advancing process of domestic investigations and prosecutions of the facts and circumstances underlying the alleged crimes, the domestic legal qualifications must contain “a sexual or gender component”. In the context of ICC proceedings concerning crimes against humanity, the Appeals Chamber further stated that for the purpose of admissibility, the domestic authorities must investigate the factual allegations underpinning the contextual elements, such as patterns of criminality. Thus, while the Statute does not expressly impose an obligation on States Parties to incorporate crimes into their domestic legislation, “such incorporation may facilitate the fulfilment of their duty to exercise criminal jurisdiction over ‘those responsible for international crimes’.”

⁶⁷ *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.

⁶⁸ IER Report, R.256; see also *Venezuela I Article 18 Appeal*, para.130.

SECOND STEP COMPLEMENTARITY ASSESSMENT

Are relevant domestic proceedings being conducted genuinely within the meaning of art 17(2)-(3)?

157. 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.

158. First, with regard to the chapeau text of article 17(2) which directs the Court's attention to "the principles of due process recognised by international law" as well as references in the provision to whether proceedings were "conducted independently or impartially", the Appeals Chamber has observed that the concept of independence and impartiality is familiar in the area of human rights law and that therefore human rights standards may assist the Court in assessing the contours of certain terms set out in article 17.⁶⁹ For this reason, 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.⁷⁰ 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

⁶⁹ *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 recognised 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.

⁷⁰ 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 recognised 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.

standards.⁷¹ Nor is the ICC being called upon to pronounce on whether the State has complied with its procedural obligations under those standards.⁷²

159. 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.⁷³ Moreover, the Office recalls that evidence relevant to substantiating the first step of the complementary assessment as to the existence of relevant ongoing proceedings may also be relevant to assessing their genuineness under the second step.⁷⁴

160. 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 varying and inconsistent degrees of willingness/unwillingness.⁷⁵ 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.

161. 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

⁷¹ *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”.

⁷² See also ICC-OTP, *Informal expert paper: The principle of complementarity in practice*, 2003.

⁷³ 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.

⁷⁴ *Al-Senussi Admissibility Decision*, para. 210.

⁷⁵ 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.

differently, but whether the facts, in the circumstances, 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.⁷⁶

162. This does not mean that the OTP is bound to 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 a particular decision taken. What matters is whether this was so unreasonable or deficient in the circumstances as to either constitute inaction,⁷⁷ or to otherwise 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.⁷⁸

163. 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.

164. Finally, while the Office will have regard to the practice of relevant human rights courts and treaty 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

⁷⁶ ICC-OTP, *Situation in Iraq/UK – Final Report*, 9 December 2020, paras.10, 347; ICC-OTP, *Final Report on the Situation in Colombia*, 30 November 2023, para.28.

⁷⁷ See above, first step complementarity assessment; *Philippines Article 18 Appeal*, para. 106; *Venezuela I Article 18 Appeal*, paras.281, 367.

⁷⁸ ICC-OTP, *Situation in Iraq/UK - Final Report*, 9 December 2020, para. 348; ICC-OTP, *Final Report on the Situation in Colombia*, 30 November 2023, para.29.

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 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.

165. 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.

IMPLICATIONS FOR THE TWO-TRACK APPROACH

166. This final section examines a number of implications from the Court's case law and the Office's practice for the two track approach set out in this policy.

167. 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 factors 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.⁷⁹

168. 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.⁸⁰ 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

⁷⁹ *Katanga Admissibility Judgment*, para.56; *Venezuela I Article 18(2) Decision*, para. 134. 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".

⁸⁰ *Katanga Admissibility Judgment*, para. 56.

actually be underway.⁸¹ 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.⁸²

169. For this reason, 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 its core investigative and prosecutorial activities. These two tracks can proceed in tandem, in potentially mutually reinforcing ways.

170. 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.⁸³ 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.⁸⁴ 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 a defendant's internationally recognised human rights, such as the

⁸¹ *Ruto Admissibility Judgment*, paras. 41, 83; *Muthaura Admissibility Judgment*, paras. 40, 81; *Philippines Article 18 Appeal*, para. 102.

⁸² *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.

⁸³ See article 93(10),(b)(ii). See also rule 194, ICC RPE.

⁸⁴ *Ibid.*

prohibition against torture and inhumane treatment or the subjecting of persons to arbitrary arrest or detention.

171. 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.⁸⁵

172. Moreover, the Office will continue to ensure that the two track approach adopted pursuant to this policy does not result in tensions or delays, 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.⁸⁶

173. 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 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 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".⁸⁷

174. Finally, an effective complementarity and cooperation policy will also inform and facilitate the Office's overall approach in each situation, including the timely implementation of situation completion strategies.

⁸⁵ *Ruto Admissibility Decision*, paras. 32-35; *Muthaura Admissibility Decision*, paras. 28-31.

⁸⁶ *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.

⁸⁷ ICC-OTP, *Policy paper on case selection and prioritisation*, 15 September 2016, paras. 49-50.

VI. IMPLEMENTATION OF THIS POLICY

175. The Office has already begun to translate this policy into its daily work in support of international criminal justice. As with all of 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, in a context-aware manner. 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.

176. The Office will also seek to work with the other organs of the Court, with the Secretariat of the ASP, including the Hague Working Group facilitations on complementarity and on cooperation, 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.⁸⁸

177. All of the Office's partners have a stake in the implementation of this policy. To promote collective ownership, the Office will expand its reporting on complementarity and cooperation activities undertaken in the implementation of this policy by enhancing relevant sections of its Annual Report. While respecting its confidentiality requirements, the Office will provide an overview of the positive complementarity activities undertaken by the Office in support of domestic accountability processes, outline tangible progress made and challenges faced in implementation of such activities as appropriate, and will further highlight new initiatives developed in support of cooperation and complementarity activities including new steps taken with other institutional partners.

178. As part of this implementation, the Office will also be cognisant of the deeply interconnected nature of this policy and other parts of its policy architecture. As an example, many of the initiatives undertaken in implementation of this policy will have significant overlap and engagement with activities undertaken

⁸⁸ See *International Criminal Court Strategic Plan - 2023-2025*, 13 June 2023, paras.8-10, and Strategic Goals 4 and 5 at paras. 44-51.

in implementation of policies such as the recently established policy on Gender-based Crimes and its policy on Children. The Office is also aiming to finalize a comprehensive review and consolidation of its policies on gravity/prioritization/completion of investigation as part of a renewed policy framework.

179. The Office will ensure that an integrated and holistic approach is taken to its implementation of this policy, identifying areas in which the actions in relation to Cooperation and Complementarity intersect with and support action in other policy priority areas. Assessment of effective integration and coherence of implementation across different strands of Office policy will form part of the reporting activities outlined above.

180. 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 to ensure that its efforts under this policy are compatible with the resources available to it. In this context, the Office has worked with the Registry of the Court in the establishment of the OTP Complementarity Trust Fund to receive funds supporting activities in this policy area not currently supported by the regular Programme Budget of the Office. This Fund is now open to receive contributions.

181. The Office looks forward to harnessing this policy as a reinvigorated basis for collective action with all its partners toward justice for international crimes.



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