International Criminal Court ICC-ASP/11/39

# Assembly of States Parties

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## Report of the Court on complementarity

## I. Introduction

1. This report is submitted to the Assembly pursuant to paragraph 62 of resolution ICC-ASP/10/Res.5, which welcomed the report of the Court on complementarity[1] ("Court's first report") and requested the Court to report on the issue again to the next session of the Assembly.

2. As stressed in the Court's first report, two aspects of the term "complementarity" have to clearly be separated. The first aspect is the question of admissibility as provided for in the Rome Statute[2], this being a judicial issue to be ultimately determined by the judges of the Court. The second aspect of complementarity relates to the complementary roles of the Court and national jurisdictions in contributing toward ending impunity. Within this second aspect, the term "positive complementarity" is sometimes used to refer to the active encouragement of and assistance to national prosecutions where possible.

3. As last year, the Court stresses that any cooperation, assistance or advice that the Court may provide in respect of possible or actual national prosecutions for serious international crimes is given strictly without prejudice to any determination the Court's judges may make in respect of inability or unwillingness to conduct genuine national proceedings. In other words, any form of cooperation from the Court or other actors to a national authority for the strengthening of their judicial/legal capacity would not amount to a safeguard from a Chamber finding a case admissible within the scope of article 17 of the Rome Statute.

4. The Court's first report provided a comprehensive overview of how the Court can, consistent with its core judicial mandate, support positive complementarity. The report reflected that the primary responsibility for the prosecution of Rome Statute crimes, and for the strengthening of national jurisdictions, rests with States. The Court's role in supporting positive complementarity is largely limited to acting as a catalyst and making its expertise in specific areas available to national jurisdictions.

5. In contrast to the first report, which mainly described the activities conducted by the Court, the approach chosen for the present, second report – in consultation with States Parties – is designed to assist activities conducted by other actors on complementarity. The Court has endeavoured to formulate the present report as a tool for integrating some of the Court's experiences and expertise into ongoing complementarity discussions aimed at enhancing international efforts to strengthen national jurisdictions, notably the Greentree and Stockholm exchanges among interested States and organizations following up on the stocktaking discussions held at the Review Conference.

[1] ICC-ASP/10/23.
[2] Article 17 in particular.

6. Concretely, the report contains select, thematically organized technical items and suggestions relating to specific areas where capacity building efforts in national jurisdictions could, in the Court's assessment, be particularly necessary and may benefit from recourse to the Court's practice and expertise. Such considerations may be helpful both in the design of needs assessment criteria as well as in the planning of actual capacity building assistance. They are intended to assist the discussions on technical and operational aspects of strengthening complementarity in the Greentree framework, as well as aimed at contributing to ensuring the desired coordination amongst key actors engaged in complementarity efforts and the sustainability of such initiatives.

7. Furthermore, the present report contains a section on the Office of the Prosecutor's draft Policy Paper on Preliminary Examinations as a potentially relevant document for those devising criteria for country engagement and determining overall need for assistance in addressing Rome Statute crimes. Again, while this information is designed for use by the Office of the Prosecutor in its judicial admissibility assessment, it may nevertheless be of use to other actors for other purposes.

8. The Court stresses that the views contained in the present report are subject to review and provided for information purposes only. The strengthening of national jurisdictions is not part of the Court's core mandate and none of the information in this report should be considered as constituting alone sufficient guidance for capacity building activities. The information provided should always be analyzed and adapted in light of the circumstances of specific national settings. It should also be noted that the report is non-exhaustive in nature, discussing only select aspects of investigating, prosecuting and adjudicating international crimes, and it should be perceived as part of an evolving discussion in the context of the Court's continued reporting to the Assembly on this matter.

9. During the reporting period, the Court continued to enhance coordination and cooperation with the Secretariat of the Assembly in the context of the latter's mandate to facilite the exchange of information between various stakeholders. The Presidency of the Court, which frequently provides advice to States in need of technical assistance for the implementation of the Rome Statute, referred a number of concrete queries in relation to capacity building or training needs to the Secretariat's focal point on complementarity. The Office of the Prosecutor met with the Secretariat and shared information from its missions, including on what matters could require the attention of other complemenarity actors.

10. As has been stressed on multiple occasions, the strengthening of national jurisdictions is crucial for ending impunity and it can furthermore help prevent situations from reaching the Court and international proceedings incurring costs on the States Parties. Mindful of this, the Court uses various opportunities, in the course of its regular activities and within existing resources, to promote awareness of issues related to complementarity, including the role of the Secretariat. In a new development during the reporting period, the Court endorsed, in consultation with the President of the Assembly of States Parties, the Global Forum on Law, Justice and Development3 (GFLJD) as a potential avenue for enhancing awareness of Rome Statute issues among development actors and for making knowledge tools such as the ICC Legal Tools and the Assembly's Complementarity Extranet more widely known.

# II. Considerations for country engagement

11. As the Greentree/Stockholm discussions have progressed, criteria for country engagement and determining the need for capacity building assistance has increasingly become a focal topic under consideration.4

12. In this connection, it may be beneficial for those devising said criteria to consult with the Court on information relating to specific situations, notably those under preliminary examination by the Office or in which investigations and/or prosecutions are ongoing, as well as on potentially relevant documents and policies of the Court, such as the Office of the Prosecutor's draft Policy Paper on Preliminary Examinations, prepared in the

[3] http://www.globalforumljd.org/.
[4] See e.g. para 3, Synthesis Report of the Stockholm meeting, 30-31 May 2012.

context of the Office's admissibility assessment.[5] Selected parts of the draft Policy Paper – which is subject to review and will be finalized/updated in the near future – are reproduced here for ease of reference:

> 56. If there are or have been national investigations or prosecutions, then the question of unwillingness or inability arises and the Office will assess whether such proceedings are vitiated by an unwillingness or inability to genuinely carry out the proceedings. Where it is necessary to assess "unwillingness" and "inability", the Office will analyse the relevant national investigation and prosecution of the conduct alleged.
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> […]
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> 58. For the purpose of assessing inability in a particular case or potential case, the Office will consider whether, due to a total or substantial collapse or unavailability of its national judicial system, the State is unable to collect the necessary evidence and testimony, or otherwise unable to carry out its proceedings.
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> 59. In conducting its evaluation, the Office may consider, inter alia, the absence of conditions of security for witnesses, investigators, prosecutors and judges or lack of adequate protection systems; the existence of laws that serve as a bar to domestic proceedings in the case at hand, such as amnesties, immunities or statutes of limitation; or the lack of adequate means for effective investigations and prosecutions.
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> 60. For the purpose of assessing unwillingness in a particular case, the Office may consider whether there is evidence of intent to shield the person(s) concerned from criminal responsibility for crimes within the Court's jurisdiction.
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> 61. This may be assessed in light of such indicators as, inter alia, the scope of the investigation and in particular whether the focus is on the most responsible of the most serious crimes or marginal perpetrators or minor offences; manifestly insufficient steps in the investigation or prosecution; deviations from established practices and procedures; ignoring evidence or giving it insufficient weight; intimidation of victims, witnesses or judicial personnel; irreconcilability of findings with evidence tendered; lack of resources allocated to the proceedings at hand as compared with overall capacities; and refusal to provide information or cooperate with the Court.
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> 62. Unwillingness can also be found in light of unjustified delays in the proceedings and lack of independence or impartiality.
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> 63. Unjustified delay in the proceedings at hand may be assessed in light of, inter alia, whether the delay in the proceedings can be objectively justified in the circumstances; and whether there is evidence in the circumstances of a lack of intent to bring the person(s) concerned to justice.
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> 64. Independence in the proceedings at hand may be assessed in light of such indicators as, inter alia, the alleged involvement of the apparatus of the State, including those responsible for law and order, in the commission of the alleged crimes; the extent to which appointment and dismissal of investigators, prosecutors and judges affect due process in the case; the application of a regime of immunity and jurisdictional privileges for alleged perpetrators; political interference in the investigation, prosecution and trial; and corruption of investigators, prosecutors and judges.
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> 65. Impartiality in the proceedings at hand may be assessed in light of such indicators as, inter alia, linkages between the suspected perpetrators and competent authorities responsible for investigation, prosecution and/or adjudication of the crimes; public statements, awards, sanctions, promotions or demotions, deployments, dismissals or reprisals in relation to investigative, prosecutorial or judicial personnel concerned.

[5] Available at http://www.icc-cpi.int/Menus/ICC/Structure+of+the+Court/Office+of+the+Prosecutor/Policies+and+Strategies/Draft+Policy+Paper+on+Preliminary+Examinations.htm.

# III. Thematic areas for the attention of other complementarity actors

13. The Greentree consultations indicated that "one of the major outcomes […] has been the resolve to move complementarity from broader policy discussions towards a more concrete plan of action to ensure implementation of initiatives on the ground."

14. In an effort to assist this ongoing process, this section contains selected thematic areas which should be given particular attention in the planning and provision of capacity building assistance.

15. Each thematic area contains a non-exhaustive list of pertinent and concrete essentials which can serve as practical guide to various actors undertaking complementarity initiatives directed towards support to criminal justice sectors and national justice systems as a whole.

16. It is hoped that this exercise may also assist in the design of needs assessment criteria, including in the relation to the skills and competencies that might be required in a given area, in particular when addressing deficiencies.

17. Within some thematic areas, a distinction has been made between ICC situation countries, including situations under preliminary examination, and other countries reflecting specific factors that may have to be taken into account with regard to the former.

18. Ongoing complementarity efforts in the ICC situation countries are important in the long term, to strengthen the ability of these countries to prosecute the Rome Statute crimes themselves. However, bearing in mind the Court's involvement in these countries, it is advisable, for those undertaking complementarity related initiatives, to ensure, whenever possible and appropriate, close consultation with the Court, with due regard to its independent judicial mandate and possible ongoing judicial proceedings. This coordinated approach can also contribute to creating a positive, lasting legacy of all actors of the Rome Statute system in these countries.

19. This approach will also ensure that, whenever the Court's work in these countries would approach its completion, a great deal of work would have been achieved, thus impacting positively on the Court's costs related to its exit strategy.

20. It is also essential to underline that in the situation countries, extensive Court expertise already exists. Additionally, whenever the Court had decided to open a field presence, field based experts remain valuable resources. Thus, the actors undertaking complementarity related projects are invited to make use of this expertise and consult with the Court to ensure the desired coordination and the positive impact envisaged.

## A. Implementing legislation / criminal law and procedure reform

21. The availability of adequate provisions and procedures in national legislation to allow for national investigations and prosecutions of Rome Statute crimes and to ensure cooperation with the Court is an area where additional focus from other complementarity actors is needed.

22. National legislation should *inter alia* contain:

(a) necessary provisions on victim and witness protection, including, wherever possible and practicable, the establishment of a specialized independent body with expertise on protection, be it a witness protection and support agency or a specialized unit

(b) provisions, where the national legal system allows for victims participation and reparation, for reparations in the spirit of the Rome Statute from convicted perpetrators, or from state resources where convicted perpetrators do not have resources

## B. Witness and victims protection and support

23. As noted in the Court's first report, witness and victims protection and support is one of the crucial areas contributing to effective prosecution of Rome Statute crimes and

the conduct of fair trial. The Court has gained a wealth of expertise and has developed a "tool kit" on witness protection.

24. Distilling this experience into concrete and practical suggestions/ideas as to how best establish and/or reinforce national capabilities, in particular when efforts by other actors active in complementarity related initiatives is now of essence. As noted in paragraphs 17-20 above, it is desirable that consultations with the Court occur whenever witness protection related projects are undertaken in situation countries, in particular as the Court's experience in situation countries is relevant and useful to share with actors leading complementarity projects.

25. Areas of interest may include:

(a) the need to conduct assessment of existing witness protection programmes (if any), including the expertise and skills and competencies of staff on protection and psychological support;

(b) assessments of the capacity and expertise to conduct risk assessment for each witness;

(c) skills to facilitate contacts with witnesses of prosecution or defence while minimizing the risks;

(d) skills to facilitate witness reintegration into communities following testimonies or where needed return after having been under protection measures for a long time;

(e) ensure adequate safe locations for the interviewing of witnesses with necessary operational support;

(f) ensure means for witnesses to remain in contact with protection officers and officials for either the prosecution or defence;

(g) assistance to authorities to draft agreements for the international relocation of witnesses and their families, if necessary;

(h) development of a local network of psychosocial and healthcare providers that can be used by the national courts to assist witnesses and participating victims in need;

(i) establishment of a rigorous vetting procedures of protection and support officers to exclude suspected perpetrators and their sympathizers, or those suspected of pursuing a political or criminal agenda;

(j) witness management capacities; and

(k) in relation to situation countries, constant dialogue with the Court to:

(i) share good practices in a variety of fields, including physical protection, management of gender-based crimes witnesses and other vulnerable witnesses and victims, psychological and psycho-social support;

(ii) design tailored training modules;

(iii) connect and direct relevant actors to tap into the expertise of UN agencies i.e. United Nations Office on Drugs and Crime (UNODC) and United Natiosn Development Programme (UNDP) with whom the Court has developed a long standing working relationship;

(iv) share specialized expertise to allow reintegration of individuals who have been in the national protection programmes for some time back into the normal life; and

(v) training and support for individuals leaving the ICC Protection Programme.

26. As regards witness and victims protection and support matters in the courtroom, the following areas may require specific attention:

(a) know how to orient the witnesses and participating victims to the judicial process and the courtroom before they testify;

(b) familiarization protocol in place for those testifying;

(c) staff with skills to conduct psychosocial evaluations of witnesses, provide psychosocial support to vulnerable witnesses during their testimony, advise the court of special needs, and otherwise provide care or refer them for treatment;

(d) know how to train court staff on the respectful treatment of witnesses and participating victims;

(e) linguistic skills to interact with all witnesses, regardless of ethnicity. If not, ensure that trained and trustworthy interpreters are available;

(f) know how to manage and deal with both defence and prosecution witnesses in the same case without compromising the parties and the witnesses; and

(g) courtrooms equipped to screen the witness from public view, distort the witness's face and/or voice, and allow for testimony by video link wherever practicable.

## C. Strengthening legal representation

27. Strengthening the competencies of the counsel and their ability to prosecute or defend international crimes in their own national jurisdictions at the national level is essential to ensuring fair trial.

28. In this area, building on the Court's experience to date, areas of interest for capacity building actors may include, but not be limited to, the following:

(a) assist in the development of a professional Code of Conduct for Counsel drawing on relevant national and international experience, including the ICC Professional Code of Conduct for Counsel;

(b) assist in the development of a legal aid scheme based on internationally recognized standards to facilitate defence adequately funded and commensurate with the case complexity;

(c) provide adequate logistics and office equipment when and if applicable;

(d) Reinforce the capacities of counsel in the following areas:

(i) the language skills to interact with clients, or the use of trained interpreters;

(ii) advocacy skills;

(iii) sufficient capacity and case management skills, in particular how to maintain to manage a complex case, and maintain updated files regarding clients, and ensure that confidential material and information are stored and processed in a safe and secured location;

(iv) special skills to interact with vulnerable witnesses, and to organise and provide training for him/her and the team, in particular, but not exclusively, on how to avoid re-victimisation and secondary victimisation, understanding trauma, developing communication and interview techniques for special-needs groups, etc. and

(v) skills to use information technology available.

(e) Where victims participation is allowed under national law, assist:

(i) in the development of a legal aid scheme for victim representation;

(ii) enhancing the capacity of legal representatives to travel within the jurisdiction to keep clients informed on a continuous basis on the development of the proceedings and respond to their inquiries in a timely and friendly manner using a language and terminology that they can understand;

(iii) the legal representatives for victims to develop:

- solid knowledge of national and international substantive and procedural criminal law, including the rights of victims, and the availability of appropriate legal support in the form of legal research and advice;

- skills in representing vulnerable persons and/or large groups of victims;

- skills to formulate and implement a strategy for engaging with victims based on established principles and good practices. This strategy should be accompanied by a budgetary proposal that will ensure the sustainability of the strategy throughout the proceedings.

## D. Outreach

29. Making judicial proceedings public is a central element of a fair trial and therefore necessary to ensuring the quality of justice. Experience has shown that communities that have a good understanding of justice systems are less vulnerable to misinformation. Consequently, outreach is conceived as an integral part of conducting public and fair proceedings for international crimes and it is advisable that national jurisdictions put in place mechanisms to ensure that communities affected by the commission of Rome Statute crimes understand the role of judiciary and are able to follow proceedings. Regular and tailored communication strategies will increase confidence of these communities and enable the jurisdictions to better understand the concerns and expectations of these communities so that they can respond more effectively and clarify, where necessary, any misconceptions that might exist. It will also contribute to reduce the costs of national proceedings by making, for example, witnesses more willing to cooperate and thus investigations more effective.

30. Greentree consultations have strongly emphasised the transformative effect that outreach can have on affected populations. It also clearly underlined the fact that strategies on outreach should be developed from the outset to ensure that main objectives of the judicial mechanism are not overshadowed by challenges such as misperceptions or allegation of political interference.

31. This is all the more relevant as regards ICC situation countries, bearing in mind the fact that outreach is essential to ensuring that the affected communities build trust in international justice and better understand its complexity, including the relationship of local and international justice mechanisms. Therefore, with the experience built to date, it is essential that the Court be consulted, when possible, in the implementation of outreach projects led by other actors of the international justice system and development agencies. For example, this approach has had positive results in the Kenya situation, where outreach projects have been implemented by local actors with external funding and in close consultation with the Court.

32. Similarly, in situation countries with arrest warrants not enforced for a number of years, and where the Court is implementing an outreach maintenance strategy, its know-how has been already transferred at the national level. Thus, the local networks of civil society organizations, media, local authorities and capacity building actors with whom the Court has been working for several years can continue working effectively.

33. The ICC Strategic Plan for Outreach[6] can serve as blueprint for the development of tailored outreach programme by others. In addition, below, few general guidelines are provided to assist in the development of a solid outreach program which should take into account inter alia:

(a) the size of the country and the size of its population;

(b) levels of literacy among the population, especially those elements most affected by the conflict;

[6] Strategic Plan for Outreach of the International Criminal Court, ICC-ASP/5/12.

(c) the reach of newspapers, radio, television and the internet, especially among those communities most affected by the conflict;

(d) general levels of knowledge about criminal justice concepts, including the rights of suspects and the accused, especially within communities most affected by the conflict;

(e) general levels of trust in the justice system, especially within communities most affected by the conflict;

(f) levels of understanding about the mandate of the international criminal justice mechanism, including its temporal and geographic jurisdiction, when applicable;

(g) levels of support for proceedings involving international crimes, and the degree to which support varies among identity groups involved in the conflict;

(h) the presence of other transitional justice mechanisms in the country, if applicable;

(i) the capacity of local civil society organizations to participate in outreach activities; and

(j) an early start of the outreach activities

34. Efforts should be made to:

(a) assist in establishment, where possible, of offices within the justice sector that already conduct outreach-type activities staffed with staff with interdisciplinary teams with a variety of complementary skills, including communications, education, legal and relevant language skills. These office should be equipped with adequate resources for the production and dissemination of outreach materials;

(b) encourage senior court officials to participate in outreach events; and

(c) cooperate and coordinate with outreach conducted by other local actors

## E. Victims participation and reparation

35. Victim participation and reparation is a new development in the international criminal law as well as an evolving concept. At a national level, it is relevant for a limited number of national jurisdictions. In spite of the limited international experience with victims' participation and reparation issues, there is progress which can be of relevance for these jurisdictions.

36. Therefore, for those national jurisdiction allowing under their national law for victims participation, areas which would require particular assistance and support could entail:

(a) establishment of tailored communication programmes/strategies able to convey very clear and simple messages to victims, in languages they understand with the aim to empower victims and victims communities. Such communication should be systematic, not just once, and at the right times (key moments);

(b) guide and assist victims through the legal proceedings; do not expect that they will access public information, be able to complete any legal documents required for their representation in the proceedings or understand legal jargon;

(c) ensure that victims are assisted by properly trained persons;

(d) ensure, whenever necessary, psycho-social support which should take into account the community as well as the individual;

(e) encourage the establishment of local victim associations;

(f) engage legal professions in representing victims, train them, using whenever appropriate, the Court's yearly Seminar on Counsel model, which can be replicated at the national level, including not only counsel, but also resource persons and other members of teams representing victims in the national proceedings.

37. As regards, reparations issues, again wherever appropriate and allowed under the national law, the following guidelines could be of assistance in reinforcing complementarity projects dealing with this matter:

(a) clear definitions and procedures for judges dealing with reparations, including allowing for consultation and/or participation of victims in legal proceedings relating to reparations, setting standards relating to evidentiary matters, and establishing criteria on who can qualify for reparations, individual and collective;

(b) set up a body responsible for administering judicially-ordered reparations, including a legal framework for such an institution;

(c) ensure training for judges, magistrates and other members of the legal profession on reparations including international best practices and jurisprudence;

(d) develop expertise in enforcement of reparations, including tracing, freezing and seizing of assets, including training of relevant staff, and specific expertise on how to facilitate international cooperation with other states in tracing, freezing and seizing the assets of convicted perpetrators; and

(e) where reparations are implemented, ensure broad outreach programmes explaining in simple terms reparations.

## F. Court management

38. Effective court management processes are crucial to providing fair trials, from archiving and document management to translation, interpretation and judicial support functions. This area is commonly referred to as the engine room of courts and judicial proceedings. The Court has been developing "state of the art" court management support, including the e-Court system whereby all documents in the proceedings are available to all parties electronically and remotely, subject to classification and security parameter. This know-how can be transferred to the national level to assist in reinforcing court management systems related to proceedings involving international crimes.

39. Additionally, as mentioned above, in a number of areas such as victim participation, outreach and legal representation, the assistance of specialised interpreters may be needed. In this regard, the Court has established a programme for training paraprofessional interpreters.

40. Following a rigorous selection process, the interpreters are able to interpret from and into the relevant language which is not taught in interpretation schools. The Court has thus trained interpreters for Acholi (Uganda), Swahili (DRC), Lingala (DRC), Sango (CAR) and most recently Zaghawa (Darfur). These interpreters are always from situation countries.

41. Since a number of situation-related languages do not have adequate terminology for court proceedings, the Court's Interpretation and Translation Section has created, in consultation with experts, and/or validated terms for court proceedings before the Court. It is through this work, for instance, that the Rome Statute was translated into Acholi, generating interest and debate in Uganda about the Acholi language and terminology. The Statute was also translated into Standard Swahili. Reference documents such as the terminology bulletins in official and situation languages present the terminology required for court hearings. For example, the bulletin entitled Phraseology in the Courtroom has expressions in French, English, Arabic, Congolese Swahili, Standard Swahili, Lingala and Sango.

42. The trained experts by the Court as well as the terminology bulletins developed can be availed of by various development actors who should take this unique expertise into account in the implementation of complementarity initiatives.

## G. Training and advice

43. For the purpose of enhancing and supporting national investigations and prosecutions into massive violence, national prosecutors and judges could benefit from expert trainings, to understand the complexities of dealing with such large-scale cases.

44. In Colombia for instance, past trainings, such as those provided to members of the judiciary under the Justice and Peace Law, proved useful to help address the scope and the broader context of the crimes committed. To deal with complex cases, such as those relating to the links between paramilitary groups and politicians, members of the military and national police, members of other branches of public administration, and companies, could benefit from further trainings. The United Nations, Organization of American States, and Andean Commission of Jurists can assist Colombia in further investigating allegations against high-ranked members of the Colombian armed forces, specifically with regard to cases of 'false positives'.

45. Also in Nigeria, the national police could benefit from further expert training in conducting large-scale investigations.

46. In addition to training, also the deployment of special judicial advisors can assist national authorities. In Guinea, for instance, the United Nations Special Representative of the Secretary-General on Sexual Violence in Conflict has proposed such deployment to assist the investigating judges in areas identified as requiring further support, such as work methodology, protection of victims and witnesses, engagement with civil society, and development of a communication strategy.

## H. Supplies and resources

47. National authorities, in particular investigative organs, will need the proper supplies and resources, such as computers, telephones, transportation means, and other appropriate equipment, for conducting criminal investigations and collecting and preserving evidence.

48. The situation in Guinea is an example of where these capacities could be further enhanced.

49. In the DRC, proper communication networks will help to ensure police investigations in remote areas.

## I. Security

50. Creating a secure environment for national authorities, in particular judicial and prosecutorial entities (in addition to that of victims and witnesses[7]) is also an area requiring enhanced support from complementarity actors.

51. In Nigeria, State prosecutors working on criminal cases related to the inter-communal violence could particularly benefit from such support. Also in Guinea, the provision of adequate security to the judges would help national investigations.

## J. Forensic expertise

52. National investigative and prosecutorial efforts may be enhanced by ensuring the proper forensic expertise, which will in turn also assist the Court's activities, in particular those of the Office of the Prosecutor.

53. In Guinea, for instance, the pool of judges in charge of the investigation into the 28 September 2009 events could be supported through forensic and criminal expertise.

54. In the DRC, particular focus on phone intercepts may be useful to assist complementarity efforts.

## K. Centralisation of judicial information

55. Centralisation of judicial information (national central record of case law, casier judiciaire) would assist both national investigations, as well as those of the Office of the Prosecutor of the Court. This would be the case in particular in the situation in the DRC.

[7] See section B above.

## L. Mutual judicial assistance

56. Given the nature of the crimes under the jurisdiction of the Court, which often include bording crossing crimes and affect entire regions, national investigations could benefit from enhanced mutual judicial assistance.

57. The national investigations conducted by the Georgian and Russian authorities respectively in relation to the August 2008 conflict provide an example of a situation for which such assistance may be required. Complementarity actors such as the UN, the EU and the OSCE could provide support in this regard.

# IV. Conclusion

58. The Court recalls that States, as reflected in the preamble to the Rome Statute, have the primary duty to exercise criminal jurisdiction over those responsible for international crimes. Complementing each other, the Court and the national jurisdictions are key actors in the wider system of international criminal justice created by the Rome Statute.

59. Considering the primacy of national jurisdictions under the Rome Statute system, their strengthening remains crucial for the global efforts to end impunity for international crimes. While the capacity building of national judicial systems is not part of the Court's mandate, the Court endeavours to contribute, in a practical way, to the strengthening of the broader Rome Statute system when possible, consistent with its core judicial mandate and, notably, within existing resources.

60. As part of this process, the Court engages in a dialogue with the Secretariat of the Assembly to support the strengthening of the latter's mandate to facilitate the exchange of information between various stakeholders related to complementarity.

61. It is hoped that through the continued engagement of the Court in the ongoing complementarity discussions and initiatives, including its reporting to the Assembly, and close consultations between the actors of the Rome Statute system and the ICC, whenever appropriate, sustained and positive impact on the Rome Statute system as a whole and, on the national jurisdictions as its integral part, is achieved.