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### Report of the Bureau on complementarity

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## I. Background and mandates

1. On 21 February 2022, the Bureau appointed Australia and Uganda as *ad country* focal points for the topic of complementarity (also considered an “Assembly Mandate”). As such, Australia and Uganda were focal points in both The Hague Working Group and the New York Working Group in the lead-up to the twenty-first session of the Assembly.

### *General mandates*

2. At the twentieth session of the Assembly (“ASP20”), States Parties resolved to continue and strengthen, within the appropriate fora, effective domestic implementation of the Rome Statute to enhance the capacity of national jurisdictions to prosecute the perpetrators of the most serious crimes of international concern in accordance with recognized fair trial standards, pursuant to the principle of complementarity.<sup>1</sup>

3. The subsidiary bodies of the Assembly and the organs of the Court were essentially given the following general mandates in relation to the issue of complementarity.

4. The Bureau was requested to “remain seized of this issue and to continue the dialogue with the Court and other stakeholders on complementarity, including on complementarity-related capacity-building activities by the international community to assist national jurisdictions, on possible situation-specific completion strategies of the Court and the role of partnerships with national authorities and other actors in this regard, and also including to assist on issues such as witness and victims protection and sexual and gender-based crimes”.<sup>2</sup>

5. The Secretariat of the Assembly of States Parties (“the Secretariat”) was mandated to, within existing resources, continue to develop its efforts in facilitating the exchange of information between the Court, States Parties and other stakeholders, including international organizations and civil society, aimed at strengthening domestic jurisdictions, and to invite States to submit information on their capacity needs for the consideration of States and other actors in a position to provide assistance, and to report on the practical steps taken in this regard to the twenty-first session of the Assembly.<sup>3</sup>

6. The Court, while recalling its limited role in strengthening national jurisdictions, was encouraged to continue its efforts in the field of complementarity, including through exchange of information between the Court and other relevant actors.<sup>4</sup>

7. States, international and regional organizations, and civil society were encouraged to submit to the Secretariat information on their complementarity-related activities.<sup>5</sup>

8. Annex I to this report records contributions on complementarity-related activities of the President of the Assembly of States Parties, the Secretariat, the Court, and the international community more broadly. The subsequent parts of this report reflect the work of the focal points on the topic of complementarity.

### *Review of the International Criminal Court and the Rome Statute system*

9. In the context of the wider State Party-driven review process commenced in 2019, the Review Resolution passed by the Assembly in 2021 at its twentieth session took note “of the fact that some issues identified by the Group of Independent Experts are already under active consideration by the Court or in the Bureau working groups, facilitations and other forums, (...) with the participation of and input from other stakeholders, *emphasizing* that such work should continue and should be coordinated with the larger review process with a view to avoid duplication and benefit from synergies.”<sup>6</sup> Relatedly, the Assembly also indicated work should continue on the priority topic of “Complementarity, and the relationship between national jurisdictions and the Court” and that progress should be reported to the Assembly in advance of its twenty-first session.<sup>7</sup>

<sup>1</sup> ICC-ASP/20/Res.5, para 133.

<sup>2</sup> ICC-ASP/20/Res.5, para. 138 and annex I, para. 14(a).

<sup>3</sup> ICC-ASP/20/Res.5, para. 139 and annex I, para. 14(c).

<sup>4</sup> ICC-ASP/20/Res.5, para. 141.

<sup>5</sup> ICC-ASP/20/Res.5, para. 140.

<sup>6</sup> ICC-ASP/20/Res.3.

<sup>7</sup> ICC-ASP/20/Res.3, para. 11(b) (referencing ICC-ASP/18/Res.7, paras. 18 and 19).

10. Further background on this priority review topic, including its intersection with the mandate and work of the Independent Expert Review (IER), is set out in the “Report of the Bureau on complementarity”, welcomed by the Assembly at its twentieth session.<sup>8</sup> The Assembly also noted the recommendations made in that report on future consultations on the topic of complementarity (see paragraph 15 below).<sup>9</sup>

11. Paragraph 9 of Review Resolution ICC-ASP/20/Res.3 required Assembly Mandates designated as responsible for “assessing and taking possible further action on relevant [IER] recommendations” to submit to the Bureau the outcome of its consideration and proposals for next steps by 15 November 2022.

12. In the Review Mechanism’s “Comprehensive Action Plan” (CAP),<sup>10</sup> the complementarity focal points were assigned as the “platform for assessment” of IER recommendations 226 – 267, with the Office of the Prosecutor (OTP) formally “allocated” all recommendations except for 247(ii) and 262 – 265 (which listed both the OTP and complementarity focal points).

### *Sexual and gender-based crimes*

13. At its twentieth session, the Assembly recognised “the importance of achieving accountability for all Rome Statute crimes while recalling that there is no hierarchy between them” and encouraged the Bureau “to engage with interested States Parties and other relevant actors to identify ways to support Court efforts in this regard with respect to sexual and gender-based crimes that amount to Rome Statute crimes, with a view to reporting thereon to the twenty-first session of the Assembly”.<sup>11</sup>

14. On 21 February 2022, the Bureau assigned this mandate to Australia and Uganda as *ad country* focal points for the topic of complementarity on the basis that their general mandate also extended to assisting “on issues such as ... sexual and gender-based crimes”, as it had in 2021.

## **II. Organisation of work**

15. As noted in their “Report of the Bureau on complementarity”<sup>12</sup> submitted ahead of the Assembly’s twentieth session, the focal points (Australia and Uganda) suggested that there appeared to be broadly four streams of work:

“(1) Continuing dialogue with the Prosecutor and OTP on the forthcoming (policy) papers on complementarity and completion, and any revisions to its existing policy papers, including on preliminary examinations, as appropriate. This dialogue would need to respect judicial and prosecutorial independence and discretion.

(2) Subject to any general decisions on the implementation of the IER recommendations, initiating a broader “stocktaking” exercise in respect of the principle of complementarity, to build on the work of the IER.

(3) Reflecting further on the division of labour between the Court and ASP, with a particular focus on developing the structural role of the ASP as a forum for dialogue and cooperation on complementarity issues between the Court and States Parties, non-States Parties, civil society and other organisations, with due regard for any operational confidentiality and the distinct mandates and separation of powers under the Rome Statute.

(4) Additional streams of work as necessary to take forward discussions on complementarity and the recommendations of the IER Report both in the complementarity facilitation and in other forums as decided by the ASP.”

<sup>8</sup> ICC-ASP/20/Res.5, para. 138, citing the *Report of the Bureau on complementarity*, ICC-ASP/20/22.

<sup>9</sup> ICC-ASP/20/Res.5, para. 138, citing the *Report of the Bureau on complementarity*, ICC-ASP/20/22.

<sup>10</sup> See at: [https://asp.icc-cpi.int/iccdocs/asp\\_docs/ASP20/RM-Comprehensive\\_Action\\_Plan-ENG.pdf](https://asp.icc-cpi.int/iccdocs/asp_docs/ASP20/RM-Comprehensive_Action_Plan-ENG.pdf).

<sup>11</sup> ICC-ASP/20/Res.5, para. 61 and annex I, para 14(b).

<sup>12</sup> ICC-ASP/20/22, para 16.

16. The focal points organized their work focusing on meetings aimed at assessing the IER recommendations allocated to this facilitation. These included a first joint meeting on complementarity and cooperation together with the co-facilitators for cooperation, focusing on the division of labour between the ASP and the Court (linked to consideration of recommendation 247(ii)), which had been deferred from 2021 due to scheduling issues, and a second meeting where the focal points facilitated discussions with the OTP and other stakeholders specifically on the assessment of recommendations 226 – 267.

17. The focal points also focused some of their meetings on streams of work that were not directly related to the IER recommendations. This included an informal meeting on assessing and enhancing complementarity-related efforts in relation to Sexual and Gender-based crimes (SGBC) – together with Women’s Initiatives for Gender Justice (WIGJ).

### III. Summary of meetings and informal consultations

18. As set out above, in 2022, the focal points held three meetings and informal consultations on the issue of complementarity with relevant stakeholders, including States, all organs of the Court, and representatives of civil society and international organizations. All informal consultations within The Hague Working Group were also open to Observer States, non-States Parties and civil society organizations. A summary of these meetings is set out below.

***First meeting: The division of labour between the Court and ASP on complementarity and cooperation (joint meeting on complementarity and cooperation)***

19. The focal points together with the cooperation facilitators facilitated a first meeting on 29 March 2022 to discuss the division of labour between the ASP and the Court.

20. Ambassador Neuhaus (Australia) indicated that the aim of the discussion was to get a sense of whether recommendation 247(ii) was to be assessed positively or not and whether changes would be needed in the existing mandates in order to strengthen the facilitations’ role as envisaged by the IER report.

21. Ambassador Blaak (Uganda) noted that the IER Report made a number of observations and a recommendation on the issue of the ‘division of labour between the Court and ASP on complementarity and cooperation’. One of those recommendations – 247(ii) – indicated that: *“The ASP should consider establishing a working group to assist and support the Court in addressing impunity gaps and facilitating partnerships to develop domestic justice processes and maintenance of the rule of law”*.

22. Ambassador Neuhaus recalled that the facilitation on complementarity in mid-2020 organised informal consultations with the Court and relevant stakeholders to discuss the priority review topic *“Complementarity and the relationship between national jurisdictions and the Court”*, where the suggestion was made for a more structured forum inside the Assembly, such as an *“ASP Task Force on Complementarity”* to consult or co-ordinate collectively on the systemic dimensions of complementarity, galvanize support for capacity building strategies or facilitate communications between the Court and non-States Parties in a sustainable manner. Ambassador Blaak added that recommendation 247(ii) was quite similar to the idea proposed at the 2020 meeting.

23. The focal points indicated that the reason for coordinating with the co-facilitators on cooperation was that recommendation 247(ii) goes beyond the scope of complementarity and intersects with a number of cooperation issues, namely: information and evidence sharing between national jurisdictions and the Court; facilitating judicial requests from States Parties to the Court; and, facilitating partnerships for cooperation more generally between states and the Court.

24. Ambassador Gueye (Senegal) and Ambassador Vassy (France), co-facilitators for cooperation, noted with regard to recommendation 247(ii) that the creation of new structures such as a new working group must be viewed with caution and that when devising new approaches it should be done while bearing in mind the importance of making better use of

the already existing tools. The co-facilitators invited States Parties to use existing tools accessible to all States Parties such as the secure digital platform on cooperation, financial investigations and the freezing of assets. These tools serve to strengthen the capacity of States to cooperate with the Court and, at the same time, to strengthen their own national capacities to investigate and prosecute within the framework of their national justice system.

25. Ms. Gaile Ramoutar (Legal Officer at the Secretariat) briefed the States Parties on the complementarity platform noting that at the Review Conference in 2010 by resolution RC-Res.1 the Assembly mandated the Secretariat “*within existing resources, to facilitate the exchange of information between the Court, States Parties and other stakeholders, including international organizations and civil society, aimed at strengthening domestic jurisdictions*”. She recalled that the Secretariat, in consultation with the focal points, circulates on an annual basis a *note verbale* inviting States Parties to indicate areas in which they require technical assistance. The Secretariat focal point acts as a liaison between requesting States and donor States or organizations. Ms. Ramoutar noted that to date, there had been a limited number of responses submitted to the Secretariat and encouraged States Parties to approach the Secretariat regarding their available assistance or needs.

26. Mr. Mamadou-Racine Ly (Adviser, OTP) indicated that the process of transition was ongoing and that the Prosecutor was re-examining the Office’s policies and practices with careful consideration of the IER recommendations, including in particular recommendation 247. He also emphasized the Office’s regional approach as a new safety net by enhancing of readiness of national jurisdictions through positive complementarity, with particular attention to the Sahel region as well as to the coordination efforts of domestic prosecution services within the EU genocide network. He also noted the Office’s efforts by building mutual legal assistance relations.

27. The facilitators determined that no active support was expressed towards the creation of a new mechanism and that the conclusion was therefore that the use of existing platforms should be promoted and encouraged.

28. A more comprehensive record of this meeting is available at the complementarity resources page of the ASP website.<sup>13</sup>

***Second meeting: “update from the Office of the Prosecutor (OTP) on their assessment of the complementarity-related recommendations (226 – 267)”***

29. The focal points facilitated a second meeting on 30 June 2022 to receive an update from the OTP on their assessment of the complementarity-related recommendations (226 – 267). The OTP was formally allocated all recommendations except for 247(ii) and 262 – 265, which allocated both the OTP and the complementarity facilitation for assessment.

30. Ambassador Blaak provided an update on the “*Dakar Seminar on complementarity and cooperation*” held on 23-25 May 2022. Discussions emphasised the importance of collective efforts in promoting and strengthening cooperation as well as ensuring the effective implementation of the principle of complementarity, with a particular focus on States from the Economic Community of West African States (ECOWAS). At the conference, Ambassador Blaak promoted the work of the facilitation and the complementarity platform. The Conference concluded with the signing of the Dakar Declaration.<sup>14</sup>

31. Mr. Mamadou-Racine Ly, (Adviser, OTP), provided an oral update from the OTP on their assessment of the complementarity-related recommendations. These recommendations relate to three priority areas: selection and prioritization of cases and perpetrators; situation prioritisation, hibernation and closure; and preliminary examinations.

32. With regard to the initial situation and case selection – preliminary examinations (R226-229), Mr. Ly indicated that the Prosecutor was committed and already engaged in identifying how to better implement the strategies suggested by the experts for improving

<sup>13</sup> See at: <https://asp.icc-cpi.int/complementarity/Resources>

<sup>14</sup> See at: <https://www.icc-cpi.int/sites/default/files/2022-06/20220525-declaration.pdf>

OTP's position in terms of the criteria for opening preliminary examinations, applying a higher threshold for gravity at the initial filter stage and not taking feasibility into account.

33. With regard to selection and prioritisation of cases and perpetrators (R230-242), Mr. Ly noted that the Prosecutor will always only decide to prosecute a case if there is a reasonable prospect of conviction at the end of the trial.

34. In relation to situation prioritisation, hibernation and closure (R243-250), Mr. Ly indicated that the Prosecutor agreed on the IER report finding that the prioritisation of situations is necessary. The new policy on situation completion adopted on 15 June 2021, introduced the concept of completion of the investigation phase and completion of the prosecution phase.

35. Concerning the preliminary examinations section (R251-253), Mr. Ly noted that the united team within the Pillars, as part of the new structure of the OTP, takes into consideration most of the concerns raised by the experts as it achieved the main objective to ensure an embedded staff organisation.

36. Regarding the length of preliminary examinations activities (R 254-261), Mr. Ly indicated that the Prosecutor fully recognised the risks identified by the experts' findings noting that the OTP would be considering options and suggestions on how a reasonable duration of preliminary examinations could be part of the general plan at the opening of each preliminary examination.

37. With regards to complementarity and positive complementarity (R262-265), Mr. Ly noted that following the discussions during the Complementarity facilitation meeting of 1 October 2021 the Prosecutor would launch a new policy paper on complementarity. This paper was initially planned to be launched at an upcoming regional event that was postponed to later in the year. Mr. Ly indicated that the OTP was finalising the paper for later distribution for comments and consultation. Mr. Ly noted that the paper outlined four key pillars on which these efforts will be based: creating a community for cooperation and complementarity; technology as an accelerant for complementarity; bringing justice closer to communities; and, harnessing cooperation mechanisms at the regional and international level. Mr. Ly suggested providing a short paper describing the policy paper for States to be able to start discussions already after the summer break.

38. Concerning the issue of transparency of preliminary examinations (R266-267), Mr. Ly indicated that the OTP would continue to look for ways to best strike a balance between the need for communication and updates, with the duties of confidentiality and due discretion that guide its work.

39. Ambassador Neuhaus commended the OTP and the Court more broadly for the very positive spirit in which they engage. He concluded the meeting by inviting States to provide any comments in the coming months regarding these recommendations to be able to discuss them ahead of the ASP.

***Third meeting: "Assessing and enhancing complementarity-related efforts in relation to Sexual and Gender-based crimes (SGBC)."***

40. On 7 October 2022, the focal points in collaboration with Women's Initiatives for Gender Justice (WIGJ) facilitated a panel discussion aimed at assessing and enhancing complementarity-related efforts in relation to SGBC.

41. At the meeting Professor Kim Thuy Seelinger (Research Associate Professor, JD, New York University School of Law) reflected on the meaning of complementarity beyond the existing definition in the Rome Statute, which encompasses a rich diversity of national systems with different levels of experience in the field. She noted that while developing the technical aspects of complementarity was important, a relationship of trust remained fundamental.

42. Professor Thuy Seelinger noted that while the ICC needs and deserves support, it has limitations. She highlighted the important role of national courts in accountability for SGBC. Professor Thuy Seelinger noted that many challenges endemic to SGBC remain in both the national and international jurisdictions. Some challenges have unique aspects in national systems, such as insufficiencies in the legal framework, for example procedural misalignments, different definitions of offences and retroactivity issues, among others, even

in countries where the Rome Statute has been domesticated. She highlighted a particular challenge where temporal gaps exist between the national statutory framework and the Rome Statute jurisdiction. She noted that these issues represent a significant challenge particularly for SGBC and that complementarity plays an important role in this regard.

43. Professor Thuy Seelinger noted that for this purpose, an online practice database is being developed that would allow national actors to match the facts of their case, determine the time-line, and bring up all the relevant jurisprudence up until that point in time. This would enable practitioners to be more secure when bringing charges, as well as in deliberation. She indicated that the database would be ready by next year. She also noted the work carried out by a UN team of experts that had released model legislation related to SGBC. She concluded noting that national systems with their proximity to local populations might play an important role – with the support of civil society – in liaising with communities.

44. Ms. Dianne Luping (Head of the Gender and Children Unit – GCU – OTP) noted that her unit, the GCU, was established in 2003 and was charged with assisting OTP in legal, investigative and strategic issues related to SGBC and crimes against and affecting children. She noted that the work of the GCU is seen as a key priority for the OTP, in particular because these types of crimes are often insufficiently investigated or prosecuted and the severe impact upon vulnerable persons who need to be engaged in an appropriate manner.

45. Ms. Luping noted that the Rome Statute itself was an achievement as it was the first clear international articulation of a wide range of explicit SGBC. Additionally, the rules of procedure and evidence regarding cases related to SGBC are relatively progressive. There is great emphasis on protecting the dignity and privacy of individuals and their testimony, ensuring respectful methods of questioning with a trauma informed approach. There are often agreements in advance between the OTP and the Defence teams to avoid re-traumatisation of survivors. She referred to landmark decisions such as *Prosecutor v Ntaganda*, where Mr. Ntaganda was convicted for the rape and sexual slavery of members of the same armed group (those below age 15).

46. Ms. Luping stated that Complementarity is important for the OTP, noting that the Court cannot address SGBV crimes alone. She highlighted the existing good cooperation with Uganda, which had benefited from the experience of the Court. She noted that the OTP can also profit from the support from States Parties to the Court, for example, her office has benefited from seconded staff. She indicated that the OTP is also benefiting from the recently established Trust Fund, from not only the witness management perspective but also specifically in support of the work on SGBC, with training and building capacity within the Office. She referred to examples of support in training from France (head of the anti-terrorism unit of magistrates) and Germany (head of the international crimes section of the Federal Prosecutors).

47. In response to a question concerning the effectiveness of complementarity given the different SGBC definitions under international and national law, Ms. Luping indicated that while different practices exist they could complement each other. She highlighted the example of Uganda where they relied on the Rome Statute. She also noted the examples of France and Germany with their domestic experience regarding Syria and other cases, which has been useful for the Court. Professor Thuy Seelinger added that when there are different definitions of rape across national jurisdictions, law reform may be important, as the definitions sometimes do not fully match with the Rome Statute. Going forward, she added, it is important to look at the characterisation of the acts, where the exact provision may not exist in the national legislation.

48. Ambassador Blaak briefed the facilitation on a second monitoring visit to Uganda organised by the Trust Fund for Victims (TFV), the Irish embassies in The Hague and Kampala from 13 to 17 September 2022 with 48 members of delegations and a total of 14 countries represented. She noted that a previous monitoring visit took place in 2018. Ambassador Blaak indicated that the objective of the monitoring visit was to provide delegates with the opportunity to witness first-hand the work of the TFV in northern Uganda, focusing on the lasting impact of the conflict and the individuals and communities affected by the many atrocities committed. Participating delegates also gained insight into the ongoing TFV's reparation implementation programmes in the Democratic Republic of the Congo, as they listened to the experience of three beneficiaries who received reparation awards in the Lubanga and the Katanga cases

49. Ms. Franziska Eckelmans (Acting Executive Director of the TFV) stated that the TFV could only be active if there is State cooperation, to work together with governments. She highlighted the TFV's numbers from last year with respect to two of their projects in Uganda that supported 1,033 victims of SGBV with physical and physiological rehabilitation as well as providing socio-economic measures. She noted that in the Central African Republic the TFV had reached 4,845 SGBV victims within two years, in particular victims of rape following the acquittal in the Bemba case. She also indicated that the TFV trained 94 social workers to provide psychological services, and put in place 20 collective psychotherapists. She noted that the TFV also provided support to 378 women with serious medical issues, and treated 378 victims of rape and HIV.

50. A more comprehensive record of this meeting is available at the complementarity resources page of the ASP website.<sup>15</sup>

#### ***Other activities***

51. Finally, at ASP20 in 2021, Australia as focal point on complementarity at the time co-sponsored four relevant side-events, held virtually. These four events served to highlight the importance of the principle of complementarity in practice.

52. The first side event was hosted by Africa Legal Aid (AFLA) and titled 'Gender Sensitive Judging in International Criminal Courts'. The event highlighted the importance of a gender-sensitive lens in adjudication, which provides a safe space for women and promotes awareness of gender biases. The discussions highlighted that such gender-sensitive adjudication can ensure a more inclusive and impartial international criminal justice system.

53. The second side event was a pre-book launch for the book titled '*Critical Analysis of Gender in International Criminal Law*'. The event was organised by the co-editors of the book Indira Rosenthal, Susana SáCouto and Valerie Oosterveld and by the International Gender Champions The Hague together with Women's Initiatives for Gender Justice (WIGJ). The event discussed misconceptions concerning gender in the prosecution of sexual violence and other gender-based crimes in international criminal law. Ambassador Neuhaus provided closing remarks.

54. The third side event organised by the International Center for Transitional Justice (ICTJ), in partnership with Australia, France, Germany, and The Netherlands, focussed on accountability in Syria. The event, titled '*Specialized Units for Investigating and Prosecuting International Crimes and Crimes of the Past: Efforts for Addressing Impunity for Crimes in Syria*', discussed the preliminary findings of the report '*Gearing up the Fight against Impunity: Dedicated Investigative and Prosecutorial Capacities*' authored by ICTJ and the Foundation for Human Rights. Ambassador Neuhaus provided opening remarks.

55. The fourth side-event titled '*Trust Fund for Victims: Implementation of Reparation Awards in the DRC and Mali*', organised by the Trust Fund for Victims (TFV), provided an explanation of the implementation of reparations in the Katanga, Lubanga, and Ntaganda cases from the Democratic Republic of the Congo (DRC), and the Al Mahdi case from Mali.

56. Separately, on 23-25 May 2022, the '*Dakar Seminar on complementarity and cooperation*' was held, organized with the support of the Senegalese Government and the support of the French embassy and EU delegation in Dakar. Discussions emphasized the importance of collective efforts in promoting and strengthening cooperation as well as ensuring the effective implementation of the principle of complementarity, with a particular focus on States from the Economic Community of West African States (ECOWAS). The conference was attended by, among others, Ministers of Justice and representatives of the Judiciary of 15 ECOWAS Member States, the Republic of Chad and the Central African Republic, who shared best practices and experiences in cooperation and complementarity related matters. At the conference, the focal points for complementarity (Ambassador Blaak) and the facilitators for cooperation promoted the work of their facilitations and their respective platforms. The Conference concluded with the signing of the Dakar Declaration.<sup>16</sup>

<sup>15</sup> See at: <https://asp.icc-cpi.int/complementarity/Resources>

<sup>16</sup> See at: <https://www.icc-cpi.int/sites/default/files/2022-06/20220525-declaration.pdf>

## IV. General findings

57. The Rome Statute creates a system of criminal justice designed to ensure that there is no impunity for the most serious crimes of concern to the international community as a whole due to the unwillingness or inability of States themselves to investigate and prosecute the perpetrators of these crimes. This system is based on the principle of complementarity as enshrined in the Statute, which means that the Court will intervene only when States are unwilling or unable to genuinely carry out the investigation or prosecution of these crimes.

58. It is generally understood by States Parties, the Court and other stakeholders that international cooperation, in particular through rule of law development programmes aimed at enabling domestic jurisdictions to address war crimes, crimes against humanity and genocide, may contribute to the fight against impunity for such crimes. Such cooperation has been described as “positive complementarity” or complementarity activities. National ownership is essential and a requirement to engage in, and ensure the success of, such activities.

59. Financial contributions to development programmes and to civil society can play an important role in promoting complementarity. A number of countries have allocated development cooperation resources to promote the strengthening of national judicial capacity to address Rome Statute crimes.

60. In light of consultations held this year, the co-focal points are of the view that it is important to continue discussions on the principle of complementarity, including on the relationship between national jurisdictions and the Court; the interpretation and application of the principle of complementarity, and positive complementarity; and the IER recommendations related to the principle of complementarity.

61. In the context of the review process, the focal points are grateful that States Parties and the Court engaged in a structured dialogue on complementarity and related IER recommendations (R226 – 267). It is recalled that the Office of the Prosecutor (OTP) was formally “allocated” all complementarity-related recommendations except for 247(ii) and 262 – 265 (which listed both the OTP and complementarity focal points). The focal points note that all recommendations allocated to the complementarity facilitation as the “platform for discussion” have been assessed positively – as reflected in the Matrix to be adopted at the twenty-first session of the Assembly of States Parties. The focal points look forward to discussions on the implementation of the positively assessed recommendations, while noting the need to continue to respect judicial and prosecutorial independence and discretion.

62. The focal points welcome the announcement of the OTP that it will launch a policy paper on complementarity, as this would assist in more effectively engaging States Parties on the topic, particularly with a view to building a shared understanding of key concepts, terms, and practices.

63. It was determined during informal consultations on R247(ii) that no active support existed towards the creation of a new mechanism relating to the division of labour between the Court and ASP on complementarity and cooperation and that therefore the use of existing platforms should be promoted and encouraged.

64. Finally, on the issue of SGBC that amount to Rome Statute crimes, the focal points are of the view that the consultations held this year have revealed that there would be value in ongoing consultations in 2023 to engage interested States Parties and other relevant actors to identify ways to support Court efforts in this regard.

## V. Conclusion and recommendations

65. The above, as well as contributions on complementarity from other stakeholders set out in Annex I, highlights the importance of continued efforts, within the appropriate fora, in strengthening national capacity for investigating and prosecuting Rome Statute crimes, bearing in mind the limited contributions that can be made by the Assembly and its Secretariat, as well as the Court itself in that regard. Ensuring that national judicial systems are able to deal with the most serious crimes of concern to the international community is

vital for making the Rome Statute system work, ending impunity for these crimes and preventing their reoccurrence.

66. In the review process, it appears that the streams of work – outlined in paragraph 15 above – remain broadly relevant for guiding discussions on complementarity in 2023 (noting that States Parties did not indicate a need to “stocktake” or cover complementarity-related issues not already identified in the review process at this time). It is noted that all complementarity-related recommendations (R262 – 267) have been discussed within the context of the complementarity facilitation. In this context, it will be important to move to the implementation of the positively assessed recommendations in 2023. As noted above, it would be greatly valued if the policy paper from the OTP on their approach to complementarity, positive complementarity, and relevant IER recommendations is published as soon as feasible. This will assist in informing States Parties about the implementation of the complementarity-related IER recommendations.

67. There is also support for the Bureau to continue to engage interested States Parties and other relevant actors to identify ways to support Court efforts with respect to SGBC that amount to Rome Statute crimes.

68. In that context it is recommended that the Assembly adopt the draft provisions on complementarity contained in annex II to this report.

## Annex I

### Contributions from complementarity stakeholders

#### I. The President of the Assembly of States Parties

*The following information and views in this Part I were provided by the Secretariat of the Assembly of States Parties on behalf of the President of the Assembly, Ms. Silvia Fernández de Gurmendi*

1. The Assembly of States Parties is the custodian of the Rome Statute system. While the Assembly itself has a very limited role in strengthening the capacity of domestic jurisdictions to investigate and prosecute serious international crimes, it is a key forum for matters of international criminal justice. Combating impunity at both the national and the international levels for the most serious crimes of concern to the international community as a whole is the core objective of the Statute.

2. The President of the Assembly, Ms. Silvia Fernández de Gurmendi, has consistently highlighted the importance of the principle of complementarity in various international fora, including in her participation in the Conference on the International Criminal Court and national justice in the fight against impunity for Rome Statute crimes and other serious or related crimes held in Dakar, Senegal, on 23 May 2022, and the 12th Consultative Assembly of Parliamentarians on the International Criminal Court and the Rule of Law (CAP-ICC) held in Buenos Aires, Argentina on 4-5 November. On 16 June 2022, the Vice-President of the Assembly, Ambassador Bob Rae participated on behalf of the President at the technical working meeting aiming at strengthen cooperation with the International Criminal Court, organised by the Organisation of America States (OAS).

3. In the context of the twentieth Anniversary of the entry into force of the Rome Statute and the establishment of the International Criminal Court, the President continuously underscored the importance of the principle of complementarity when speaking of the global reach of the Court during her interventions at the “International Criminal Court at 20: Reflections on the Past, Present and Future” conference hosted by the Court in The Hague on 1 July 2022 and the “International Criminal Court at 20: Reflections on the Past and vision for the future” event hosted by the Permanent Missions of Argentina, Canada, Liechtenstein, the Republic of Korea, Romania and Sierra Leone to the United Nations in New York on 11 July 2022.

4. In the bilateral context, the President met and exchanged views with the Secretary-General of the United Nations and other officials of the United Nations, Ministers of Foreign Affairs, Heads of Missions, representatives of civil society organizations, bar associations, academic institutions and media, similarly highlighting that the Court is complementary to national jurisdictions in strict adherence to the principles and values enshrined in the Rome Statute.

5. The President has continued to promote and raise awareness of the principle of complementarity. A full appreciation of the complementary nature of the jurisdiction of the Court could lead to greater acceptance of the Court and an increase in the number of States Parties, leading to universality.

#### II. The Secretariat of the Assembly of States Parties

*The following information and views in this Part II were provided by the Secretariat of the Assembly of States Parties.*

6. The Secretariat has continued to carry out its outreach, information-sharing and facilitating function. Consistent with past practice and when appropriate, the Secretariat has coordinated with the co-focal points in carrying out these activities via the “Complementarity Platform for technical assistance”, which aims at facilitating links between States Parties requesting technical assistance and actors in a position to assist national jurisdictions in their

efforts to strengthen capacity to investigate or prosecute Rome Statute crimes. This Platform is designed for States Parties to indicate their technical legal assistance needs. Once the Secretariat receives a request, it coordinates with possible capacity building providers.

7. Following consultations with States Parties and representatives from the Court and civil society, on 19 April 2022, the Secretariat conveyed a note verbale to States Parties<sup>1</sup> aimed at facilitating links between States Parties requesting technical assistance with actors that may be able to assist national jurisdictions in their efforts to investigate or prosecute Rome Statute crimes. The Secretariat invited States Parties to indicate their technical legal assistance needs by completing the Complementarity Platform. Once the Secretariat received a request, it would coordinate with the requesting State, such as sharing information with actors that may be able to assist. Informal consultations on technical assistance took place between one State Party and the Secretariat in July 2022. The Secretariat also received two official requests for technical assistance from two States Parties on 30 September 2022 and on 31 October respectively. The Secretariat started consultations with the Court and other potential stakeholders to facilitate technical assistance to these countries.

8. The Secretariat encourages States Parties to view the Platform as an important step in the State-driven process of complementarity, and where relevant, to assess their capacity-building needs at the national level, and to respond to the questionnaire contained in the Platform. The objectives of the facilitation and the Platform can only be achieved through the active participation by a greater number of States. The Secretariat encourages interested States to complete the Platform and submit via email to: [ASPcomplementarity@icc-cpi.int](mailto:ASPcomplementarity@icc-cpi.int).<sup>2</sup>

9. Given that this function has been established within existing resources, there are limits to what can be achieved. The Secretariat will continue to facilitate the exchange of information between relevant States and stakeholders through liaising directly with them and via its complementarity platform.

### III. The Court

*The following information and views in this Part III were provided by the Court.*

10. The Court does not involve itself directly in building domestic capacity for the investigation and prosecution of the most serious international crimes. From a judicial point of view, complementarity has a specific meaning relating to the admissibility of cases before the Court pursuant to article 17 of the Statute. This remains exclusively a judicial issue. Initiatives by State Parties to strengthen national jurisdictions to enable them to genuinely investigate and prosecute the most serious crimes of concern to the international community as a whole should respect the judicial and prosecutorial independence of the Court in relation to the admissibility of specific cases before it.

11. Nevertheless, the Court and its different organs seek to contribute, where appropriate, to processes and activities which may serve to enhance the effectiveness of national jurisdictions to genuinely investigate and prosecute serious crimes, in line with the goals of complementarity set out in the preamble of the Statute. The Office of the Prosecutor, in particular, attaches significant value to enhancing partnerships with situation countries, third states, and other stakeholders as appropriate, to advance cooperation and complementarity efforts to support national processes where possible. Some of these efforts arise out of its work in identifying whether the potential cases or case hypotheses it is considering for investigation would be admissible, since such inquiries can sometimes trigger activity at the national level by domestic prosecuting bodies. These efforts can contribute to decreasing the overall financial and capacity burden placed on the Court in the long term, as the strengthening of national capacities can have an impact on the case load of the Court, and contribute to overall completion strategies for particular situations.

12. The Court has extensive investigative and prosecutorial experience and expertise from various aspects of judicial proceedings gathered throughout its activities in the

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<sup>1</sup> ICC-ASP/21/SP/06.

<sup>2</sup> For further information on the Complementarity Platform see: <https://asp.icc-cpi.int/complementarity/Platform>

situations under investigation and preliminary examination. It has continued to exchange best practices and lessons learned, as well as to provide its inputs where requested on the requirements of the Rome Statute, with its interlocutors, as well as amongst relevant networks of practitioners. On occasions, on a cost-neutral basis, and on invitation, the Court has also allowed staff with specific expertise to participate in training activities, which focus on addressing the Rome Statute crimes at a national or international level. Furthermore, within the framework of the Rome Statute, in particular article 93, paragraph 10, the Court, in particular the Office of the Prosecutor, has, upon request, shared information with and assisted national jurisdictions in their related investigations. Such exchange of information has been further facilitated, and delivered tangible fruits, by novel initiatives of the Office to become a member or participate in Joint (Investigative) Teams, specifically that for the situation in Ukraine as well as that regarding crimes against migrants in the Libya situation. Vice versa as reiterated by the States Parties in the omnibus resolution, the Court has been called on to benefit from the experiences and lessons learned by States and other international criminal law institutions that have themselves investigated and prosecuted Rome Statute crimes. The Court's annual judicial seminar has provided valuable opportunities for an exchange of views and experiences between the judges of the Court and judges from national jurisdictions.

#### IV. Broader efforts of the international community

*The following information and views in this Part IV were provided by individual civil society organisations and other stakeholders as identified.*

13. This year, **Africa Legal Aid's (AFLA)** Gender Mentoring Training Programme for ICC Judges has focused on gender diversity. Meetings have been held on Non-Binary and Intersex People under the Rome Statute. The third meeting, *Gender Diversity and the Rome Statute System* will be held to coincide with ASP 21. AFLA has adapted its blueprint aimed at empowering victims to additional countries and has recently launched its programme on a victim-centred and gender-sensitive approach to justice in Southern Africa. AFLA continues to engage stakeholders to seek accountability for victims of human rights crimes committed in The Gambia during the Jammeh era.

14. Within the **American Bar Association**, the Atrocity Crimes Initiative's projects worked to strengthen both international and domestic legal frameworks on accountability, including U.S. legal capacity to hold perpetrators of atrocity crimes accountable when subject to U.S. jurisdiction. In a Sept. 2022 written statement, the ABA urged Congress to consider legislation to close gaps in the domestic legal framework on war crimes, enact a crimes against humanity statute, and ensure statutes of limitations do not bar domestic prosecutions for atrocity crimes. The International Criminal Law Practice Project also advanced forthcoming publications addressing challenges faced by practitioners working at varied levels and perspectives.

15. The **Australian Centre for International Justice (ACIJ)** and partners submitted a formal request to the Australian Federal Police to investigate a retired Sri Lankan General regarding allegations of torture, war crimes and crimes against humanity committed under his command in the final phase of the Sri Lankan civil war in 2009. ACIJ engaged in related public advocacy to highlight institutional reforms necessary to allow Australia to effectively investigate international crimes. ACIJ continued to monitor Australia's response to allegations of war crimes by Australian forces in Afghanistan between 2005 and 2016 and to advocate for improved outreach to affected communities.

16. The **Coalition for the International Criminal Court (CICC)** supported activities promoting understanding and the realization of the principle of complementarity. In 2022, the Coalition supported efforts by Coalition members in Ukraine calling on the President to sign the law harmonizing domestic law with international criminal and humanitarian law and calling for the prompt ratification of the Rome Statute. The Guinea national Coalition for the ICC welcoming the opening of the trial related to the Conakry stadium events of 28

September 2009<sup>3</sup>. Coalition members have been involved in promoting complementarity in several countries, including the Central African Republic, Colombia, Mexico and Venezuela.

17. The **Comisión Mexicana de Defensa y Promoción de los Derechos Humanos** together with the International Federation for Human Rights, launched in January a communication<sup>4</sup> to the OTP, as they consider that crimes within the ICC's jurisdiction were committed in Mexico between 2006 and 2018. The communication documents patterns of torture and sexual torture committed by the Mexican Federal Forces, as well as Mexico's lack of will and capacity to prosecute them. It is based on the study of 197 cases that refer to 642 victims of torture and sexual torture and identifies 58 military commanders who are allegedly responsible.

18. **Defiende Venezuela, Un Mundo Sin Mordaza and the Crimes Against Humanity Observatory**, have denounced 81 events constituting crimes against humanity of torture, persecution based on political grounds and other inhumane acts, before the ICC on the investigation about the Situation of Venezuela I. In this regard, the principle of complementarity was reported, detailing the internal procedure that the cases should have followed and evidenced the absolute inactivity of the State in terms of genuine investigations and prosecutions. Additionally, former officials of Venezuelan State were interviewed, and a communication was sent on the organizational structure of the forces involved in crimes.

19. The **EU Genocide Network** organized three ad hoc meetings between civil society organisations and national authorities on the war in Ukraine, and two plenary meetings. The Spring meeting addressed the notion and use of structural investigations in core international crimes cases and lessons learned from the trial in Germany (Koblenz) on Syrian regime crimes. The autumn meeting was devoted to the implementation of a core international crimes evidence database at Eurojust on the basis of the Agency's extended mandate, and presented the first verdict obtained in the EU (Sweden) for crimes committed in Iran in the 1980s. In July and September, respectively, the Network Secretariat, Eurojust and ICC-OTP shared guidance on the identification of victims and witnesses of core international crimes with national authorities, and published guidelines for civil society organisations on documenting international crimes and human rights violations for accountability purposes. Between October and December, the Network and the European Judicial Training Network organised executive workshops on practical aspects of investigations and prosecutions for national authorities involved in the joint investigation team in Ukraine.

20. **Human Rights Watch (HRW)** welcomed the start of a trial in Guinea on the 2009 stadium massacre and called for credible proceedings. The ICC prosecutor's office played a key role in spurring this trial forward and should continue its monitoring. HRW called on Ukraine to align its national legislation with the Rome Statute and international law and urged other governments to bolster Ukraine's judicial capacity to address serious crimes. HRW continued to monitor proceedings at the Special Criminal Court in the Central African Republic and Colombia's Special Jurisdiction for Peace, and national consultations on transitional justice, which include accountability, in the Democratic Republic of Congo and Gambia.

21. The **International Center for Transitional Justice (ICTJ)** promotes complementarity by offering timely analysis, creating spaces to advance global discussions, and supporting domestic jurisdictions. This year, we continued our work in support of Colombia's Special Jurisdiction for Peace, preparing victims and perpetrators for acknowledgement of responsibility hearings and increasing judicial capacity on the use of restorative justice tools. In CAR, *ICTJ provided technical support to the national accountability institutions, including on the drafting of a cooperation agreement between the truth commission and Special Criminal Court*; and, together with the Bar Association in The Gambia, supported the Ministry of Justice to design a prosecutorial strategy. ICTJ trained judges in Ukraine on transitional justice and prosecutorial strategies; and civil society and journalists in Venezuela on what to expect from the OTP's investigation. In Uganda, ICTJ finalized the Judicial Benchbook on International Criminal Law before the ICD; and in Syria promoted efforts to advance war crimes investigations and universal jurisdiction. At the

<sup>3</sup> <https://www.coalitionfortheicc.org/news/20220928/guinea-towards-organization-trial-massacres-28-september-2009>

<sup>4</sup> [https://www.cmdpdh.org/publicaciones-pdf/Comunicacio%CC%81nCPI\\_Tortura.pdf](https://www.cmdpdh.org/publicaciones-pdf/Comunicacio%CC%81nCPI_Tortura.pdf)

international level, ICTJ convened experts for a high-level conference on victim participation in criminal proceedings.

22. The **International Federation for Human Rights (FIDH)**, together with its member organisations, continued its activities to enhance complementarity between the ICC and national jurisdictions and to call for meaningful and victim-centered justice. For example, FIDH: closely followed the long-awaited opening of the domestic trial on Guinea's 2009 massacre; reacted to the ICC preliminary examination on Colombia's closing; conducted an international advocacy mission on the state of justice in Côte d'Ivoire regarding serious human rights violations; and analysed the complementarity between national, hybrid and international accountability actors for international crimes committed in the Central African Republic.

23. **Justice Rapid Response (JRR)** continued to work closely with accountability actors at the national level providing them with highly specialized expertise from the JRR Roster to strengthen their capacity to investigate and prosecute international crimes. Case-based mentoring, with a strong emphasis on maintaining local ownership, enabled States to benefit from tailored capacity-building support in a variety of areas, including international crimes' investigations and prosecutions, SGBV, digital forensics, financial investigations, witness protection, child rights expertise, victim participation and crime analysis. Among situations countries of the ICC, JRR has supported the Specialised Department for International Crimes Office of the Prosecutor General of Ukraine and has received requests for collaboration from other law enforcement agencies in the country. JRR also supports civil society organisations documenting international crimes and/or litigating cases before national courts, including in ICC preliminary examination and situation countries, such as Ukraine and Venezuela.

24. During 2022, the **Open Society Justice Initiative (OSJI)** has been supporting documentation efforts and national litigation in relation to the conflicts in Syria, Ukraine, and Yemen, among other countries. For example, the Justice Initiative has collaborated with national war crime units and pursued cases for prosecution of crimes committed in Syria under extra-territorial jurisdiction principles in several European states. The Justice Initiative and other programs of the Open Society Foundations have provided significant support to accountability efforts for grave crimes committed in Ukraine, including collaboration with national prosecutor's offices, the drafting of a model indictment for the crime of aggression, and submissions seeking sanctions.

25. **Partners in Justice International (PJI)** is a women-founded, women-directed organisation led by career practitioners who partner with national justice actors to bring justice to survivors of CRSV and other core international crimes, wherever they live. At their request, we walk shoulder to shoulder with national prosecutors, victim lawyers, and investigators who are working to investigate and prosecute CRSV and other international crimes in their own national courts, transferring skills to them. PJI is currently providing technical support to CSOs in South Korea who are preparing case dossiers in relation to crimes against humanity committed in North Korea; in Kosovo, PJI has provided years of support to the local war crimes prosecutors, war crimes police, and victim lawyers, enabling them to go from 0 cases involving CRSV to 64 such cases; PJI is providing technical expert guidance to the International Accountability Platform for Belarus and to Belarusian civil society documenters; and in Kenya, PJI has been accompanying Kenyan national prosecutors and investigators in preparation of the first crimes against humanity case to be prosecuted in the Kenyan national courts – filed in October 2022.

26. The **Platform for Peace and Humanity** furthered its objective to combat impunity for war crimes and crimes against humanity through working on the report on admissibility of cases before the ICC, concerning alleged international crimes committed in the context of military occupation of the Autonomous Republic of Crimea and armed hostilities taking place in Ukrainian Oblasts of Donetsk and Luhansk. The said report provides mapping and analysis of hundreds of reported instances of international crimes and assesses their factual background against the admissibility criteria set forth in Article 17 of the Rome Statute, including the principle of complementarity enshrined therein.

27. At the request of, and together with the Ukrainian Legal Advisory Group (ULAG), between May and August 2022, **Women’s Initiatives for Gender Justice (WIGJ)** conducted an interactive online training series on integrating international norms and practices related to accountability for conflict-related sexual violence for Ukrainian practitioners working to address it. Topics covered in the training included: understanding pre-existing patterns of discrimination and violence; methodologies to safely interact with survivors; understanding different criminal justice mechanism jurisdictions; what makes acts of sexual violence international crimes; and the need for context-based investigations. The training sessions were attended by representatives of civil society, legal practitioners from the Office of the Prosecutor and other national authorities, academia and other individual experts.

## Annex II

### Draft language for inclusion in the omnibus resolution

[Note: elements from the ASP20 omnibus resolution relating to sexual and gender-based crimes have been included here given the Bureau's decision to continue to assign this mandate to the complementarity co-focal points]

#### Preamble

*Reaffirming* its commitment to the Rome Statute of the International Criminal Court and its determination that the most serious crimes of concern to the international community as a whole must not go unpunished, and *underlining* the importance of the willingness and ability of States to genuinely investigate and prosecute such crimes,

*Welcoming* the efforts and achievements of the Court in bringing those most responsible for the crimes under the Rome Statute to justice and thus to contribute to the prevention of such crimes and *noting* the jurisprudence of the Court on the issue of complementarity,

*Welcoming also* in this regard relevant contributions from the Court relating to sexual and gender-based crimes, such as the Office of the Prosecutor's Policy Paper on Sexual and Gender-Based Crimes,<sup>5</sup> as well as contributions from States Parties and other relevant actors, including initiatives for advancing the knowledge and understanding of such crimes, and convinced that these initiatives should be an integral part of strategic dialogues and actions to strengthen the Court and national courts in the fight against impunity, while fully respecting their judicial independence,

*Recalling* that the application of articles 17, 18 and 19 of the Rome Statute concerning the admissibility of cases before the Court is a judicial matter to be determined by the judges of the Court,

*Recalling further* that greater consideration should be given to how the Court will complete its activities in a situation country and that possible completion strategies could provide guidance on how a situation country can be assisted in carrying on national proceedings when the Court completes its activities in a given situation,

#### Activities of the Court

1. *Encourages* the Court to take note of the best practices of relevant international and national organizations, tribunals, and mechanisms related to sexual and gender-based crimes, including practices related to investigation, prosecution and training, in solving challenges related to crimes under the Rome Statute, including sexual and gender-based crimes, while reiterating its respect for the independence of the Court;
2. *Recognizes* the importance of achieving accountability for all Rome Statute crimes while recalling that there is no hierarchy between them, *encourages* the Bureau to engage with interested States Parties and other relevant actors to identify ways to support Court efforts in this regard with respect to sexual and gender-based crimes that amount to Rome Statute crimes, with a view to reporting thereon to the twenty-~~first~~ **second** session of the Assembly;

#### Complementarity

1. *Recalls* the primary responsibility of States to investigate and prosecute the most serious crimes of international concern and that, to this end, appropriate measures need to be adopted at the national level, and international cooperation and judicial assistance need to be

<sup>5</sup> <https://www.icc-cpi.int/iccdocs/otp/OTP-Policy-Paper-on-Sexual-and-Gender-Based-Crimes--June-2014.pdf>.

strengthened, in order to ensure that national legal systems are willing and able genuinely to carry out investigations and prosecutions of such crimes;

2. *Resolves* to continue and strengthen, within the appropriate fora, effective domestic implementation of the Rome Statute, to enhance the capacity of national jurisdictions to prosecute the perpetrators of the most serious crimes of international concern in accordance with internationally recognized fair trial standards, pursuant to the principle of complementarity;

3. *Welcomes* the international community's engagement in strengthening the capacity of domestic jurisdictions and inter-State cooperation to enable States to genuinely prosecute Rome Statute crimes;

4. *Also welcomes* efforts by the United Nations, international and regional organizations, States and civil society in mainstreaming capacity-building activities aimed at strengthening national jurisdictions with regard to investigating and prosecuting Rome Statute crimes into existing and new technical assistance programmes and instruments, and *strongly encourages* additional efforts in this regard by other international and regional organizations, States and civil society;

5. *Welcomes*, in this regard, the adoption of the 2030 Agenda for Sustainable Development<sup>6</sup> and *acknowledges* the important work being undertaken with regard to promoting the rule of law at the national and international levels and ensuring equal access to justice for all;

6. *Stresses* that the proper functioning of the principle of complementarity entails that States incorporate the crimes set out in articles 6, 7 and 8 of the Rome Statute as punishable offences under their national laws, to establish jurisdiction for these crimes and to ensure effective enforcement of those laws, and *urges* States to do so;

7. *Welcomes* the report of the Bureau on complementarity and the recommendations made on future consultations set out therein,<sup>7</sup> and *requests* the Bureau to remain seized of this issue and to continue the dialogue with the Court and other stakeholders on complementarity, including on complementarity-related capacity-building activities by the international community to assist national jurisdictions, on possible situation-specific completion strategies of the Court and the role of partnerships with national authorities and other actors in this regard; and also including to assist on issues such as witness and victims protection and sexual and gender-based crimes;

8. *Also welcomes* the information by the Secretariat of the Assembly of States Parties on the progress in giving effect to its mandate to facilitate the exchange of information between the Court, States Parties and other stakeholders, including international organizations and civil society, aimed at strengthening domestic jurisdictions; *welcomes further* the work that has already been undertaken by the Secretariat and the President of the Assembly, and *requests* the Secretariat to, within existing resources, continue to develop its efforts in facilitating the exchange of information between the Court, States Parties and other stakeholders, including international organizations and civil society, aimed at strengthening domestic jurisdictions, and to invite States to submit information on their capacity needs for the consideration of States and other actors in a position to provide assistance, and to report on the practical steps taken in this regard to the twenty-~~first~~ **second** session of the Assembly;

9. *Encourages* States, international and regional organizations and civil society to submit to the Secretariat information on their complementarity-related activities and *further welcomes* the efforts made by the international community and national authorities, including national capacity-building activities to investigate and prosecute sexual and gender-based crimes that may amount to Rome Statute crimes, in particular the continued efforts on the strategic actions to ensure access to justice and to enhance empowerment of victims at national level, recalling the recommendations presented by the International Development Law Organization<sup>8</sup> during the fourteenth session of the Assembly;

<sup>6</sup> United Nations General Assembly resolution 70/1.

<sup>7</sup> ICC-ASP/21/19.

<sup>8</sup> International Development Law Organization paper entitled "Complementarity for sexual and gender-based atrocity crimes", November 2015.

10. *Encourages* the Court to continue its efforts in the field of complementarity, including through exchange of information between the Court and other relevant actors, while recalling the Court's limited role in strengthening national jurisdictions and *also encourages* continued inter-State cooperation, including on engaging international, regional and national actors in the justice sector, as well as civil society, in exchange of information and practices on strategic and sustainable efforts to strengthen national capacity to investigate and prosecute Rome Statute crimes and the strengthening of access to justice for victims of such crimes, including through international development assistance;

11. *Notes* the ongoing review by the Prosecutor of various policies of the Office relevant to the principle of complementarity, particularly in light of recommendations set out in the Report of the Independent Expert Review, and as a matter of priority *encourages* the Prosecutor to continue engaging with the Assembly and other stakeholders as these policies are reviewed and, if necessary, revised bearing in mind the timelines set out in the Comprehensive Action Plan, while reiterating its full respect for judicial and prosecutorial independence as provided for in the Rome Statute.

12. ***Notes* the 'Dakar Seminar on complementarity and cooperation', held on 23-25 May 2022, which emphasised the importance of collective efforts to ensure the effective implementation of the principle of complementarity, with a particular focus on States from the Economic Community of West African States (ECOWAS) and also welcomes the signing of the Dakar Declaration.<sup>9</sup>**

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<sup>9</sup> See at: <https://www.icc-cpi.int/sites/default/files/2022-06/20220525-declaration.pdf>

## Annex III

### Draft language for inclusion in the annex on mandates of the omnibus resolution

With regard to **complementarity**,

(a) *requests* the Bureau to remain seized of this issue and to continue the dialogue with the Court and other stakeholders on complementarity, including on complementarity-related capacity-building activities by the international community to assist national jurisdictions, on possible situation-specific completion strategies of the Court and the role of partnerships with national authorities and other actors in this regard; and also including to assist on issues such as witness and victims protection and sexual and gender-based crimes;

(b) *encourages* the Bureau to engage with interested States Parties and other relevant actors to identify ways to support Court efforts in this regard with respect to sexual and gender-based crimes that amount to Rome Statute crimes, with a view to reporting thereon to the ~~twenty-first~~ **twenty-second** session of the Assembly;

(c) *requests* the Secretariat to, within existing resources, continue to develop its efforts in facilitating the exchange of information between the Court, States Parties and other stakeholders, including international organizations and civil society, aimed at strengthening domestic jurisdictions, and to invite States to submit information on their capacity needs for the consideration of States and other actors in a position to provide assistance, and to report on the practical steps taken in this regard to the ~~twenty-first~~ **twenty-second** session of the Assembly;

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