

BRUCE BROOMHALL: Thank you.

I'm Bruce Broomhall from the Open Society Justice Initiative. I will join others in welcoming this process, not just for the transparency it denotes but also for what it signifies with regard to, I take it, the OTP's commitment to preparation before action, to reflection prior to action. I think from the point of the view of the Court's legitimacy and effectiveness that's an excellent way to start, so bravo.

I have two points to make, the first on those who bear the greatest responsibility. The language in the draft policy paper refers to a focus of the Court on those who bear the greatest responsibility such as leaders of the State or organisation allegedly responsible. This is obviously an excellent direction necessary from the point of view of resources, clarity, legitimacy, but in light of too strict a focus having some potential to rob the Court of its power as a stimulus to effective national action, I welcome the open-ended character of the words "such as leaders." I'm thinking in particular there are crimes that cannot always be traced to the highest level of a State or organisation, where even mid-level commanders can play a role out of proportion to their rank in perpetrating/lending momentum to conflicts through egregious crimes. I'm thinking in particular of crimes of sexual violence possibly falling into this area where I think all of us would hope that in the appropriate circumstances, the jurisprudence of the ICC is going to echo the significant advances in defining the crimes that was made in the drafting of the Statute itself.

More than this, I would say that greatest responsible should be interpreted as including, for example, media figures who play a special role in propagating campaigns of persecution that lead to crimes under the Statute. I'm thinking of high-level religious figures, thinking of those central to commercial activity that sustains or stimulates a

conflict. This being the resource conflict issue which has been touched upon at least to some extent recently in the indictments of the Sierra Leone Special Court. These latter, in particular, compose a particular challenge to national authorities even if they are willing to act under the complementarity principle, particularly as you might find an accused in one jurisdiction, the witnesses in a second, and the assets or other evidence in a third. It would seem to me that in addressing these, the Court is going to add to the perception of the justice that it is able to mete out and as well as to its legitimacy in the eyes of many people around the world, not to mention that it's going to enhance the incentive of the Court to act at a stimulus to action by national authorities.

That's my first point. The second is on the role of non-governmental organisations. Obviously, non-governmental organisations play a potentially very important role with respect to the work of the Office of the Prosecutor, I think particularly where States are not inclined to be cooperative or particularly where you do not have a large peacekeeping or intergovernmental presence on the ground, but clearly there are also challenges to be overcome and policies to be set over the coming months. In non-governmental organisations, among the things they can bring, clearly a high degree of local knowledge which the Office of the Prosecutor, given its worldwide mandate, is unlikely ever to attain in the same way as local players will; the languages; the trust of victims organisations; connection to victims organisations often in remote parts of countries that are hard to access; an ability to do fact-finding activities early in the process, as well as analytic ability, ability to analyse the actors in the conflict in a way that outsiders often find simply impossible. Again, additional though. That's the promise of non-governmental organisations. The difficulty can be many of these organisations are not yet members of the CICC community.

They're not necessarily familiar with the Rome Statute or the process. Some of them, of course, are not even lawyers let alone international lawyers. Nonetheless they can have a vital role to play, but that local nature of their activity prior to the present presents challenges in terms of outreach and communication with these organisations.

The last issue which arose in the ICTY experience as to the proper role of NGOs: How do you draw the line between what is properly a function of the Office of the Prosecutor and what is an appropriate function for a non-governmental organisation? Is there a danger of multiple interviewing of witnesses or other confusion of roles leading to accusations of the diminished value of the evidence? To the extent that that's a problem, it needs to be thought through and addressed in practice.

One thing I would just say about this, though, is that it's common ground and reflected in the policy paper that the ICC is not going to be alone in most of the conflicts in which it engages. There is going to be national authorities, we hope, acting in good faith. There are going to be possibly other jurisdictions. There will be regional organisations and possibly hybrid or internationalised processes.

Given that context and given the narrow focus the ICC is committing itself to, I would suggest that when it comes to relationships with non-governmental actors, it would be best to start from the presumption that multiple interventions or interventions for multiple purposes is inevitable or nearly inevitable in most situations. The NGOs will often be thinking of all of the possible fora where justice can be had not only of the ICC and that will raise issues, I think, as well.

So both of these comments are by way of raising questions rather than providing answers, but that's clearly the stage of things that we're at. So I'll welcome the opportunity for future input. Thank you.