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**Report of the Court on  
the Basic Size of the Office of the Prosecutor**

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## Executive summary

### A. Why a Basic Size?

1. The proposed Basic Size model of the Office of the Prosecutor (“OTP” or “Office”) has two fundamental objectives: first, is to ensure that the Office has the requisite resources to fully meet its mandate under the Rome Statute; and, secondly, to offer States Parties a reasonably stable basis for budgetary planning.
2. The Basic Size model seeks to address the request expressed by many States Parties and the Committee on Budget and Finance (CBF) for the OTP to provide more clarity relating to the Office’s growth and the Assembly of States Parties’ (ASP) request “*to consider carefully the financial implications of its Strategic Plan 2016-2018, taking into account the cost implications not only for the Office of the Prosecutor but also the other organs*”.<sup>1</sup>
3. The OTP Basic Size will not only ensure that the Office attains a staffing size which is stable for the foreseeable future, but also one with sufficient depth to absorb new demands without having to continue the present unsustainable practice of repeatedly postponing new investigations which must be pursued in accordance with the Office’s mandate, or constantly stripping ongoing activities of critical resources so as to staff the highest prioritised activities.
4. At this juncture, although the Office’s staffing is still below the required level,<sup>2</sup> the resource increase which arose from the 2012-2015 Strategic Plan, and an Office policy of prioritising quality over quantity have combined to yield concrete positive results. The significant increase in the percentage of charges confirmed following the implementation of the strategic plan is a case in point.<sup>3</sup>
5. The Basic Size model, as proposed, will lead to a situation where the Office will be able to adequately respond – with a reasonable degree of prioritisation – to demands for its intervention without undermining quality and efficiency. The Office will not be in a position to immediately respond to all demands for its intervention. This would lead to a financially unpredictable and untenable situation. While recognising that a demand-driven approach is the only approach consistent with the purpose of the ICC as outlined in the Rome Statute<sup>4</sup>: “*to put an end to impunity for the gravest crimes of international concern*”, the OTP assesses that presenting a “full” demand-driven approach would not be realistic, in particular, as this would require the Office to respond to all demands made to it simultaneously in a manner that would vastly outstrip existing budgetary assumptions (i.e. significant increases resulting in multiple cases in multiple situations). Instead, the Office has chosen a demand-based approach, where prioritisation of activities will still be required, resulting in a pace below the level of full demand.

### B. How is the Basic Size Determined?

6. **Two key questions** had to be answered for determining the Basic Size: (i) what is the expected demand for the OTP’s intervention in the coming years, and (ii) what level of resources are required to meet these demands with the required quality and efficiency?
7. **How to determine expected demand?** Past experience of actual workload, that is, how many preliminary examinations, investigations and prosecutions the OTP actually undertook, was used as a basis, and adjusted to take into account the new changes in the Office Strategic Plan for 2012-2015, to reasonably project the yearly number of activities

<sup>1</sup> ICC-ASP/13/Res.1.

<sup>2</sup> For instance, to cope with the unexpected surrenders of Bosco Ntaganda, Charles Blé Goudé and Dominic Ongwen, the Office has deprived ongoing investigations of essential resources, halted bringing hibernated investigations to a trial-ready state, and postponed new activities (such as new investigations in Côte d’Ivoire, Mali, Libya or Darfur). This vividly demonstrates that, even with the current staffing level and the new prosecutorial strategy, the Office is in fact still insufficiently resourced to adequately discharge its mandate under the Rome Statute and to meet the most pressing demands for the exercise of its jurisdiction.

<sup>3</sup> See also para 6 in the body of the Basic Size document (pp. 10-11).

<sup>4</sup> See also the discussion on this demand-driven approach during the 10<sup>th</sup> ASP session.

that the OTP is expected to be called upon to undertake in the coming years. Based on extrapolation of these adjusted averages per activity per year and applying those averages to future planning, the Office arrived at the following level of ongoing or new yearly activities:

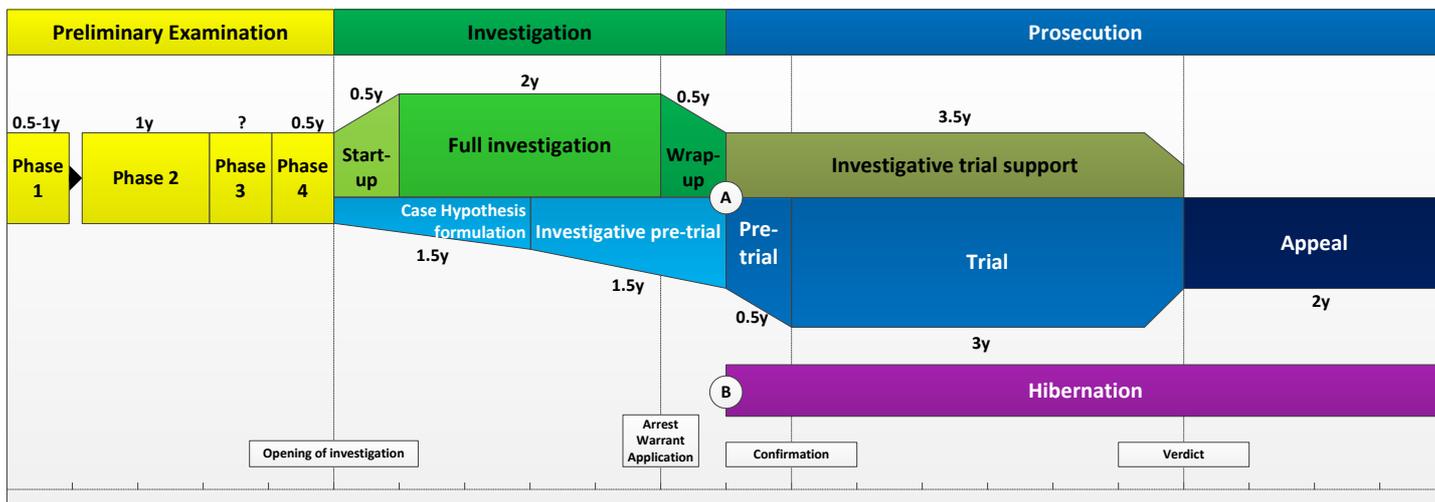
Activity	Yearly activities
Preliminary examination	9
New situation	1
Active investigations <sup>5</sup>	6
Hibernated investigations	9
Pre-trial	5
Trial phase	5
Final appeal	2 <sup>6</sup>

Barring drastic shifts in the demand for the OTP’s intervention<sup>7</sup>, the Basic Size predicts for the period of 2016-2021 that once the Office reaches its Basic Size, it would be able to absorb its work with the required quality and efficiency without having to over-prioritise activities and constantly overstretch resources, as it does now.

8. The projections will be updated every three years when a new strategic plan is issued. This will be of particular interest for the active investigations where further evaluation will be needed to decipher whether six active investigations will indeed lead to an acceptable level of prioritisation.

9. **What are the resource requirements for carrying out these activities?** The financial impact of the Basic Size of the Office has been identified in the following way:

- (a) Calculating the workload and required resources for the **mandated activities** (1) by using as a basis the required integrated team size and support services as described in the Strategic Plan (June 2012-2015)<sup>8</sup>, and adjusted by the approved budgets 2014-2015, and (2) by determining building up and winding down phases for its mandated activities in order to reduce resource requirements;



<sup>5</sup> 6 active investigations refer to investigations at full capacity and thus not including any start-up or wrap-up phase.

<sup>6</sup> It can already be anticipated that the number of final appeals will increase to 3 beyond 2018. A peak of 3 final appeals will be reached in 2018 and possibly in 2017 already for short periods of time. The average under the current reporting period is 2 however.

<sup>7</sup> Such shifts could be caused by the unseen increase in the occurrence of crimes within the jurisdiction of the ICC, a situation of unusual magnitude requiring the Court’s intervention, or a judicial determination upheld on appeal which could have a bearing on the model’s assumptions.

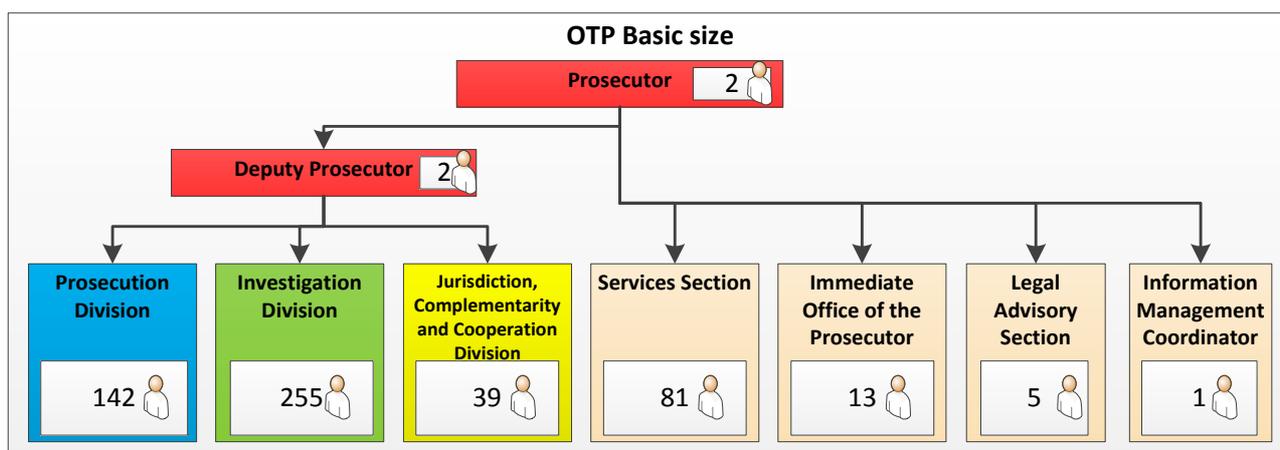
<sup>8</sup> The same basis is used for the 2016-2018 plan.

- (b) Calculating the workload and required resources for the **other activities** of the Office;
- (c) Forecasting the needed investments in training, equipment, and development of networks to help maintain the required operational **quality** level; and
- (d) Considering the impact of past and future **efficiency** gains.

### C. What are the results?

10. The Basic Size model results in a **staffing level of 540 for the OTP**. In comparison to the present headcount of the Office (405), this constitutes an increase of 33.3 percent.

11. The following numbers, broken down by activities in the Basic size report, are envisaged for each of the OTP Divisions and Sections:



12. It is important to note that this total number of staff envisaged by the Basic Size can be fully accommodated in the office space available at the new **Permanent Premises**.

13. The stability of the Basic Size model will also have an impact in terms of staffing, especially in the context of the need to convert GTA posts. The Office foresees that the majority of its positions should not be considered a temporary requirement. In turn, GTA contracts should be reserved to functions that are truly transient in nature. Although the exact number of established posts is still to be determined, the Office will request a limited number of conversions in 2015. A broader proposal for conversions will be submitted in 2017.

14. **The Basic Size of the OTP would require a yearly budget of 60.6 M euros.** In comparison, the OTP's approved budget for 2015 was 42.2<sup>9</sup> M euros, thus representing a 43.6 percent increase over existing resources.

	<i>Present</i>	<i>Basic Size</i>	<i>Difference</i>	
Budget (mio Euro)	42.2 (39.6+2.6)	60.6	+18.4	+43%
Staff (FTE)	405	540	+135	+33%

15. This forecast provides financial predictability to States as well as the needed stability for the Office. The OTP is proposing a yearly phasing in of the required budget over a period of three years to reach the Basic Size. The proposal to achieve the Basic Size within three years is based on the OTP's three-year strategic planning cycle and on the necessity to appropriately respond to the need for its intervention. However, this timeline may need to be revisited in light of the other Organs' in-depth analysis, and of the financial possibilities of the State Parties as well as their findings in relation to the Basic Size.

<sup>9</sup> Including the full year impact (i.e.: 12-month basis) of the Contingency Fund which amounts to 2.6 Mio Euros.

<i>Budget</i>	<i>2015</i>	<i>2016</i>	<i>2017</i>	<i>2018</i>	<i>2019<sup>10</sup></i>	<i>2020</i>	<i>2021</i>
Mio Euro	42.2	46.09	53.1	60.6	60.6	60.6	60.6

16. A **comparison with other international tribunals**, legal institutions or high profile, complex, national investigations and prosecutions shows that the proposed OTP Basic Size is reasonable.

#### **D. How is the Court-wide impact of the OTP Basic Size approached?**

17. The OTP activities necessarily have an impact upon the Registry and the level of services, with their attendant costs. They also affect the judicial and administrative operations of Chambers of the Court. While a high-level analysis of the impact is provided in the annex IV to the OTP Basic Size report, the full costing of this impact will be provided to the CBF, as previously requested, for their 26<sup>th</sup> Session in April 2016.

18. On the basis of the Basic Size report and the initial high-level analysis done by the Registry, it is currently foreseen that the whole of the Court can be accommodated in the new Permanent Premises.

<sup>10</sup> Beyond 2018, the inflationary costs on for instance UN salary scale or Euro-Dollar exchange have not been calculated.

## I. Introduction

1. At its 21<sup>st</sup> session in April 2014, the Committee on Budget and Finance (“CBF” or the “Committee”) requested the Office of the Prosecutor (“OTP” or the “Office”) to provide an update on the implementation of its Strategic Plan (June 2012-2015) and to describe the evolution of such implementation and its impact on the financial support that the OTP foresees it will require in the years to come in order to complete its growth.

Following such request, the OTP prepared a report on the anticipated financial impact of its new strategy<sup>1</sup> and submitted it on 18 August 2014.

At its 23<sup>rd</sup> session in October 2014, in consideration of the potential significance of the OTP Strategic Plan on the operations of the Court as a whole, the Committee requested<sup>2</sup> that the other organs of the Court affected by the OTP Strategic Plan provide an analysis of any impact of the next OTP Strategic Plan on their operations to the Committee by 30 June 2015.

Mindful of the importance of the exercise for the Court as a whole, the Assembly of the States Parties (“ASP”) at its 13<sup>th</sup> session requested the Office to carefully consider the financial implications of its Strategic Plan for 2016-2018, taking into account the cost implications not only for itself but also for the other organs, and the relevant sections of the report of the CBF on the work of its twenty-third session, and finally, to report on the progress of this consideration to the twenty-fourth and twenty-fifth sessions of the CBF as well as to the Assembly.<sup>3</sup> The final outcome of the exercise to determine the financial impact on the Court was requested to be presented at the 26th session of the CBF in April 2016.

In order to allot sufficient time to discuss the new OTP Strategic Plan and the new structure of the Registry after the completion of the ReVision project, at the end of its 24<sup>th</sup> session in April 2015, the CBF called for an extraordinary session to be held on the 14<sup>th</sup> and 15<sup>th</sup> of July, 2015.<sup>4</sup>

During the 24<sup>th</sup> CBF resumed session in July 2015, the OTP presented its new Strategic Plan which covers the period of 2016-2018. The Committee fully appreciated the inherent strategic nature of the document presented, but requested the OTP to provide a projection of the financial impact of the new Strategic Plan based on best available estimates.

Since the end of 2014, building on the success of the Strategic Plan (June 2012-2015), the OTP has worked on a model to determine a sustainable size, in terms of activities to be performed and resource needs to cater for such activities, that would ensure the OTP is sufficiently equipped with the requisite resources to fulfil its mandate under the Rome Statute. The objective assumptions on which the model is based involves a careful assessment of past experience of the Office over the past twelve years and a reasonable intelligible forecasting of what lies ahead flowing from this prior experience. This proposed innovation, termed the OTP “Basic Size” model, offers States Parties a reasonably stable basis for budgetary planning. The complexity of this exercise has necessitated additional time to fully develop the model and assess its financial impact. Therefore, at the time of the 24th resumed session, the Basic Size report had not yet been finalised. However, mindful of the need for the CBF to have financial indicators to conduct their evaluation, the OTP provided the basic estimates in terms of overall resources and head-count needed for the 2016-2018 period, as derived from the provisional Basic Size model report.

The OTP, however, considered that in order to properly appreciate and assess the figures and contextualise them, the CBF needed to be informed about the logic underlying the model. Therefore, an advanced full version of the Basic Size model report was also provided to the CBF.

<sup>1</sup> CBF/23/6.

<sup>2</sup> ICC-ASP/13/20. CBF 23rd, para.52.

<sup>3</sup> ICC-ASP/13/Res.1.

<sup>4</sup> CBF 24<sup>th</sup> resumed session.

2. The OTP Basic Size model report presented by the Office herein is in its finalised form.<sup>5</sup>

3. This is equally the report that will also be used as the basis for the continuing inter-organ discussions and evaluation taking place on the financial impact of the new OTP Strategic Plan on the Court as a whole. A high level provisional estimate of the impact has been provided by the Registry in a separate annex. As mentioned in paragraph four above, the final outcome of the exercise to determine the financial impact on the Court will be ready for submission at the 26<sup>th</sup> session of the CBF in April 2016.

4. The OTP indicated in its strategic plan June 2012 – 2015 that it would not be able to produce high quality preliminary examinations, investigations and prosecutions, and to meet the demand for its intervention without a substantial increase in resources.

That increase in resources, combined with a shift in prosecutorial policy and organizational performance was expected to result in an improvement of the prosecutorial results for the new cases that the Office would develop, as well as for those old cases which could be brought in line with the new strategy. Putting a strong emphasis on success in its pursuit of the truth was seen as essential to ensure the legitimacy of the Office as well as its long term impact. The June 2012-2015 plan explicitly indicated that the Office would aim for an increase in the percentage of charges confirmed and its conviction rate.

5. The States Parties have supported the new strategy and its implementation through an important increase in resources in 2014 and 2015, even though those increases were lower than what the OTP had requested.

6. The comparison of confirmation results between the previous and present strategy provides a first indication that the new strategy has resulted in significant performance increases:

<i>Confirmation Performance</i>	<i>Previous strategy 2003-June 2012</i>		<i>Strategy June 2012-2015<sup>6</sup></i>		<i>Performance increase</i>
	<i>Total</i>	<i>%</i>	<i>Total</i>	<i>%</i>	
<b>Per charges</b>					
Confirmed	50	62.5	206	85.83	+23.33%
Not confirmed	30	37.5	34	14.17	
<b>Total</b>	<b>80</b>	<b>100</b>	<b>240</b>	<b>100</b>	
<b>Per accused</b>					
Confirmed	10	71.43	8	100	+28.57%
Not confirmed	4	28.57	0	0	
<b>Total</b>	<b>14</b>	<b>100</b>	<b>8</b>	<b>100</b>	

The coming years will show if this shift in result continues during the stages of trial and appeal for the new cases that the Office has developed on the basis of its new strategy.

7. The improvement in results is also the consequence of a strategic choice by the OTP to prioritize quality over quantity during the period June 2012 – 2015. Cases moving towards or already in trial have been prioritized with regards to resources.

This prioritization came at a cost given that the OTP has not yet reached a size that allows it to adequately absorb all demands put on it. Necessary investigations have not started or have been delayed: for instance, alleged crimes by the other side of the conflict in Côte d'Ivoire, the investigations in Mali, the new crimes being committed in Libya and in

<sup>5</sup> The Office is currently in the midst of undergoing an internal review to decipher whether minor structural adjustments or rethinking are needed to further improve performance and productivity. It is not expected that this process will yield any major structural change or alter the resource projections of the basic size model. Marginal changes in resource projections may occur as part of this internal structural review.

<sup>6</sup> The inclusion of the charges in the CAR Article 70 case (where each of the five suspects charged with offences against the administration of justice were charged with 42 to 43 counts) increases the sample drastically. If this case were not included, the figures would show: (a) a higher rate of confirmed charges (i.e., 22-0, or 100%); and (b) a reduced number of accused brought forward for confirmation but all of whom having had their charges confirmed for trial.

Darfur, etc. This has created problems for the legitimacy and the potential impact of the Office.

Unforeseeable events like the surrender of *Bosco Ntaganda* and *Dominic Ongwen*, the sudden transfer of *Charles Blé Goudé*, and the need to open new investigations in the Central African Republic have further increased the mismatch between the demand for the OTP's intervention and its resources.

8. In order to achieve a situation where the quantity as well as the quality of work can be sufficiently guaranteed, the Prosecutor decided to develop as part of her new strategic plan 2016-2018 a forecast of the Office's resource requirements so that a better alignment with the expected demands on it could be made.

This commitment aligns itself with the expectation of the States Parties and the CBF that the Office "*properly cost[s] the new [strategic] plan based on the best available knowledge and experience (e.g. results of Activity Based Costing, work load indicators)*".

## II. General approach

9. Determining the future size of the OTP requires answering two questions:

- (a) What is the expected demand for the OTP's intervention in the coming years?
- (b) What level of resources is needed to meet the demand with the required quality and efficiency?

10. A first key question is whether to take a demand- or resource-driven approach. This question finds a clear answer in the Statute. The ICC deals with "the most serious crimes of concern to the international community". It would defeat the purpose of the Rome Statute, *namely to put an end to impunity for the gravest crimes of international concern*, if the ICC could not react to grave situations requiring its intervention due to a lack of resources. The ICC is a court of last resort, which means that all other measures have failed to ensure justice in relation to these most serious crimes. Thus, a demand-driven approach is the only one fully consistent with the Rome Statute. State Parties have also taken this position in the past.

11. Having clearly stated that the approach has to be demand-driven, the next question in the determination of the future demand is whether to take a "full" demand-driven" or an approach where priorities between cases would still have to be set.

A "full" demand-driven approach implies that the Office is able to immediately and fully start every mandated activity (*preliminary examination, investigation, prosecution*) that would meet the criteria set out in its policy papers<sup>8</sup>. The main advantage of such an approach is that it would show an immediate response to all serious crimes of concern to the international community over which the ICC has jurisdiction. The consequence would be a significant and immediate increase of budget in order for the Office to respond to such needs. More cases would be meeting the case selection criteria in existing or new situations than currently being investigated. The downside might be an unstable capacity model that fluctuates with the yearly shifts in immediate demand which would have a significant impact both financially and in terms of resource stability.

An alternative approach using estimates as a basis means that the Office establishes priorities in its mandated activities. This can happen, for instance, by prioritising cases for investigation. The main advantage of such an approach is that it creates more stability for the Office and more predictability for States Parties. The main disadvantage of this approach is that it might still lead to a (temporary) overstretching of the Offices' resources or an insufficient response to the demand. However, if the demand estimate is accurate enough and fluctuations can be adequately managed (through the contingency fund), this alternative would appear to offer the most reasonable approach to manage the increased demands that are being placed on the OTP over time.

<sup>7</sup> ICC-ASP/13/20. CBF 23<sup>rd</sup>. Para 51

<sup>8</sup> Policy on preliminary examinations; policy on case selection and prioritization (being formalized through the drafting of a policy paper).

Accordingly, this alternative approach forms the basis of this report. It determines the basic size of the Office, i.e. the minimal capacity needed to absorb its work with the required quality, and with a reasonable degree of prioritization in the roll-out of its mandated activities.

12. This approach takes into account what is already certain for the coming three years (already commenced preliminary examinations, investigations and prosecutions) and what can be reasonably expected in light of past experience. Given the unpredictability of the occurrence of crimes within the ICC's jurisdiction and the limited existing data (*past experience*), the model will need to be reassessed every three years. If exceptional circumstances occur (e.g. referral of a new and vast situation, such as a Syria-type scenario, or a judicial determination, upheld on appeal, which could have a bearing on the model's assumptions), then an immediate re-assessment would be required.

13. To determine the resources needed for the basic size of the OTP, the following approach has been taken:

- (a) The size of a team for each mandated activity (preliminary examinations, investigations, prosecutions) has been multiplied with the estimated demand in each coming year.

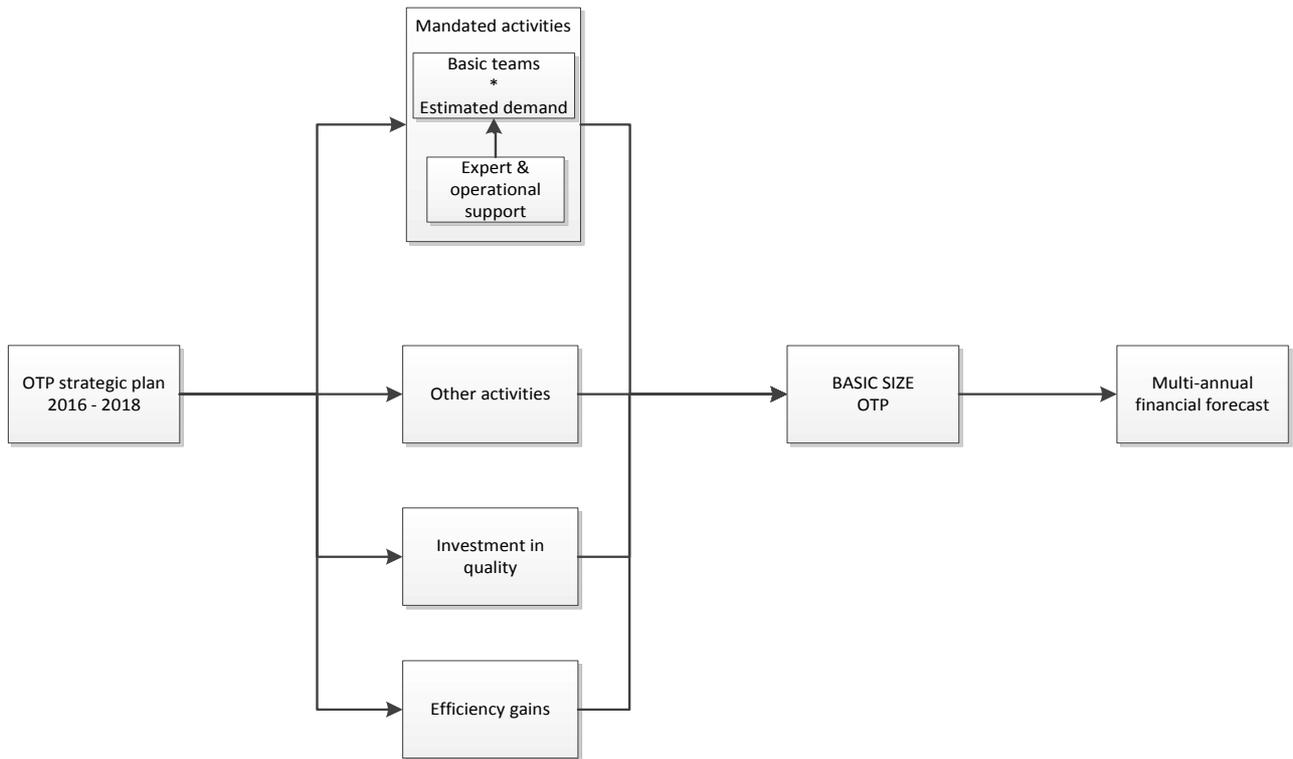
The team size is based on the OTP strategy June 2012-2015 which also forms the basis for the strategy 2016-2018, given the achieved results. The team size has been communicated to the CBF and States and formed the basis for the approved budgets 2014 and 2015. Minor changes have been made to the integrated teams doing the investigations by adding capacity in a limited way but also by scaling up and down of capacity during investigations, pre-trial and trial phases which results in a reduced resource need (see annex 2).

- (b) The support services (e.g. languages, protection, forensics, etc.) have been directly linked to the investigative or prosecutorial activities.
- (c) The evolution of other activities of the Office that are required for it to function efficiently and in full independence (e.g. Immediate Office of the Prosecutor, legal advisory services, etc.) has also been mapped.
- (d) Past and sufficiently certain future efficiency gains that optimise resource usage have been included in the determination of the resource requirements mentioned above.

The OTP strategic plan 2016-2018 includes a process to identify and implement on continuous basis further efficiency gains. Those gains will be reflected in the yearly budget submissions.

- (e) The combination of the above with the necessary investments in training, equipment and networks to maintain the quality of the Office at the required level and to be able to outsource form the basis of the financial planning reflected in the OTP's strategic plan 2016-2018.

14. The other organs of the Court have been consulted and kept abreast of the basic size project throughout its development. Coordination has taken place outlining methodology and concept of activities, timeframes and workload indicators that allow the other organs to assess the impact of the basic size on them.

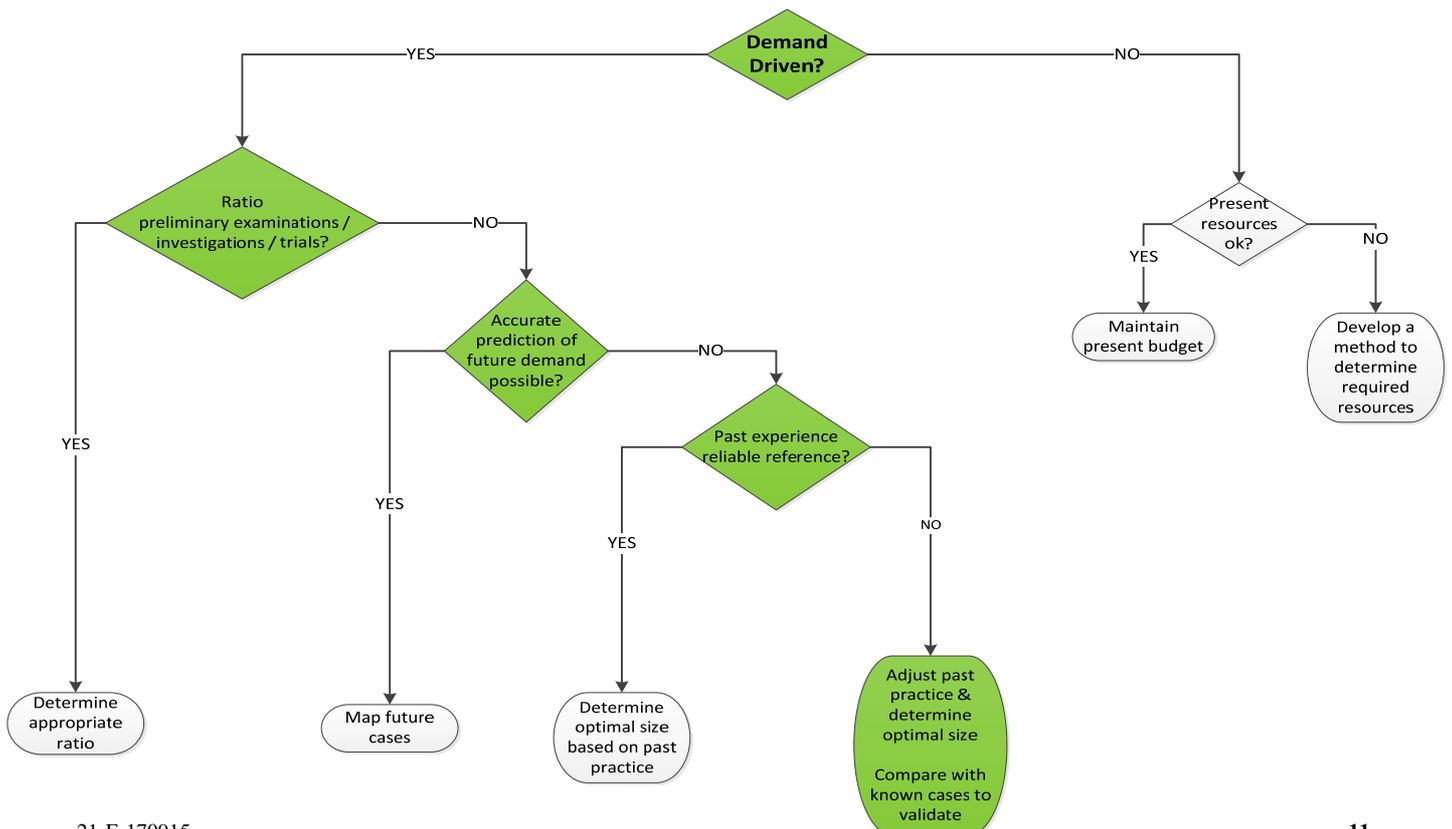


### III. Basic size for mandated activities

#### A. Determining the future demand

##### 1. Methodology

15. The following decision-making tree has been used to determine the appropriate approach to define the estimated demand for mandated activities. The path highlighted in green represents the solution found.



16. A first possible way to determine the estimated demand for the coming years would be to define a ratio between the number of preliminary examinations, investigations, and prosecutions and to extrapolate the number of investigations and prosecutions on the basis of this ratio. However, this method does not work for the following reasons:

- (a) The ratio of investigations per preliminary examination is not an accurate basis to determine the number of investigations needed per year.

The Office started 22 preliminary examinations between 2004 and 2014. It has also opened investigations in 9 situations therefore 41% of the preliminary examinations resulted in decisions to investigate a new situation. The predictive value of the ratio is limited to determining the number of situations to investigate over a ten year period. The opening of an investigation into a situation, however, results in a varying number of investigations and cases to be submitted in judicial proceedings. Some situations have resulted in one investigation, while others have resulted in multiple investigations. This depends on factors such as factual pattern of criminality, the number of parties involved in the commission of serious crimes, the extent and scope of victimization, as well as the exit strategy for each the situation.

- (b) The ratio of trials per investigation does not permit reliable forecasts.

The number of persons indicted after each specific investigation can vary. The timing of when each of them will have to face trial will also vary, depending on their willingness to cooperate with the Court and/or the successful efforts performed by States to arrest the suspects.

17. If an approach based on “ratios” does not work, then another option would be to try to accurately predict the future demand for each mandated activity. Estimation is only partially possible. While the OTP can anticipate its workload based on already known preliminary examinations, investigations and trials, it cannot sufficiently predict where new conflicts or crimes will occur, nor the pace at which outstanding warrants of arrest will be executed. An approach based purely on prediction does not provide for an adequate basis to determine an estimated demand nor provide the level of budgetary predictability requested by States Parties.

18. As such, the only remaining option is to extrapolate based on past experience. However, extrapolation based on the past is only effective if it is based on a consistent strategy. The data for the period 2004-2014 reflects a different strategy. For example, in the past the OTP over-stretched itself over too many mandated activities with insufficient resources. Cases were focused using a limited pool of witnesses and evidence, targeting always only those most responsible; judicial proceedings were triggered early to increase preventative impact while risking that cases would not always be trial-ready by confirmation. The duration of confirmation and trial proceedings has also been impacted by the start-up phase of the Court.

The new strategy addresses these issues. Therefore, for the past experience to be a sound basis to estimate future demand, it has to be re-evaluated to model the present strategy.

19. The reliability of the extrapolation also depends on the stability of the data. The data available to the OTP are still relatively low (*22 preliminary examinations, 9 situations under investigations, 21 investigations, 12 confirmation hearings and 10 trials*). The complexity and the conditions under which they are performed differ for each area of the OTP’s mandated activity. As the Office develops more activities over time, more data will be available to increase the predictive value of its past experience. Given this fact, and also that the OTP is updating its strategic plan every 3 years, it will adjust its extrapolation with the same periodicity.

20. The results of the extrapolation are compared with the ongoing and already known preliminary examinations, investigations and prosecutions to assess whether the model will allow the Office to absorb its work in a reasonable way (with the exclusion of exceptional situations).

## 2. Required output to meet the estimated demand

21. The Office has identified the following yearly required number of simultaneous mandated activities (new or continued activities) based on the extrapolation of past experience, aligned with the present strategy:

<i>Activity</i>	<i>Yearly activities</i>
Preliminary examination	9
New situation	1
Active investigations <sup>9</sup>	6
Hibernated investigations	9
Pre-trial	5
Trial phase	5
Final appeal	2 <sup>10</sup>

22. Annex 1 provides a detailed overview of the estimated demand from 2 perspectives: regrouped per (1) mandated activity and (2) per case.

The extrapolation has produced the following additional assumptions:

- (a) Opening of 2 new preliminary examination as well as closing 2 per year
- (b) 75% of new investigations resulting immediately in trial proceedings
- (c) 1 hibernated investigation de-hibernated every 3 years
- (d) Average duration<sup>11</sup> of:
  - (i) Active investigation: 3 years<sup>12</sup>
  - (ii) Prosecution: 3.5 years
  - (iii) Appeal : 2 years

23. When combining the status of the existing mandated activities with the assumptions, then the following projection emerges:

	2016		2017		2018	
	<i>Sem 1</i>	<i>Sem 2</i>	<i>Sem 1</i>	<i>Sem 2</i>	<i>Sem 1</i>	<i>Sem 2</i>
Preliminary examinations	9	9	9	9	9	9
Active investigations	5	5	5	6	6	6
Hibernated investigations	9	9	9	9	8	9
De-hibernated investigations	0	0	0	0	1	0
Pre-trial	3	3	3	4	5	5
Trial phase	4	5	5	5	6	5
Final Appeals	1	1	2	3	2	3

<sup>9</sup> 6 active investigations refer to investigations at full capacity and thus do not include start –or wrap-up phases.

<sup>10</sup> It can already be anticipated that the number of final appeals will increase to 3 beyond 2018. A peak of 3 final appeals will be reached in 2018 and possibly in 2017 already for short periods of time. The average under the current reporting period is 2 however.

<sup>11</sup> The average duration of a preliminary examination cannot be determined given that it is impossible to predict how long the monitoring of the willingness or ability of a country to genuinely investigate and prosecute takes (see annex II, para 8-13)

<sup>12</sup> It is estimated that investigations will on average take 3 years following the basic size model. However, until basic size is reached, longer durations for investigations are expected because the teams have not yet reached expected capacity. For instance, an investigative team operating at 75% of the basic size, will likely require an additional six months to conclude an investigation.



- (ii) 7 will be new and 5 will be a continuation of 2015 investigations.

7 new investigations for the coming three years will likely be insufficient to meet the demand when one takes into account:

- (i) the assumption of 1 new situation per year which will require in principle at least 2 simultaneous investigations to cover all sides of the conflict. An absolute minimum would see at least 3 new investigations (1 per new situation).
- (ii) the fact that the Office has at least 5 pending investigations in existing situations, while this number will increase in the near future<sup>14</sup>

25. The 7 new investigations will not allow the Office to fully absorb the already known minimal number of investigations described above for which an investigation would be justified or required. An increase of the number of parallel active investigations beyond 6 would offer a better response to the demand. However, different factors have made the Office opt for 6 active investigations for the time being:

- (a) the basis for the projections needs to be further stabilized and will be revisited every three years;
- (b) the Office has placed in its new strategic plan 2016-2018 a stronger focus on strengthening the cooperation between national and international investigative and prosecutorial bodies. Such a combined effort might alleviate the need for the Office's intervention;
- (c) if required, the possibility still exists to exceptionally and temporarily spread resources across more activities which will lengthen the duration of an investigation given that no compromise will be made in relation to the quality of the work done; and
- (d) the need for a manageable and acceptable growth path from a financial perspective.

## **B. Determination of required OTP resources**

### **1. Methodology**

26. The composition of a basic team and the required support services have been defined for each mandated activity in annex 2. The justification is a combination of workload data, where available, and/or a detailed description of the activities performed.

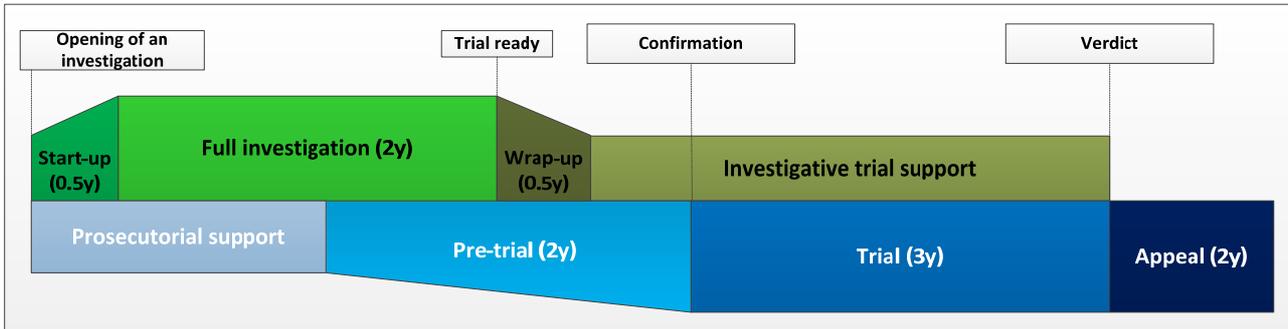
The CBF has mandated the Office to “*properly cost[s] the new [strategic] plan based on the best available knowledge and experience (e.g. results of Activity Based Costing, work load indicators)*”.<sup>15</sup> The Basic Size report provides the Office's best possible present answer to this request. Further refinement will take place in line with the development of an adequate activity-based costing system in combination with an efficient registration of workload data. This might further strengthen the estimation in the years to come. Annex 2 shows the complexity and variety of activities of the Office. Setting up detailed workload indicators and an activity based costing system will therefore require a careful cost-benefit analysis and time.

This does not detach from the fact that the Office is already able to provide a solid explanation of the resource requirements in annex 2, based on the available workload data and our professional experience. The fact that a large number of staff is performing on regular basis beyond the expected working hours, and is accumulating a high level of outstanding leave and Compensatory Time Off (CTO-days), supports the finding that the OTP is still overstretched when it comes to matching resources and demands put on it. As an example, in 2014, the Investigation Division accumulated 802 untaken annual leave days and 723 unused CTO days, a combined total of 1525 days of extra activity while still having to postpone many required activities.

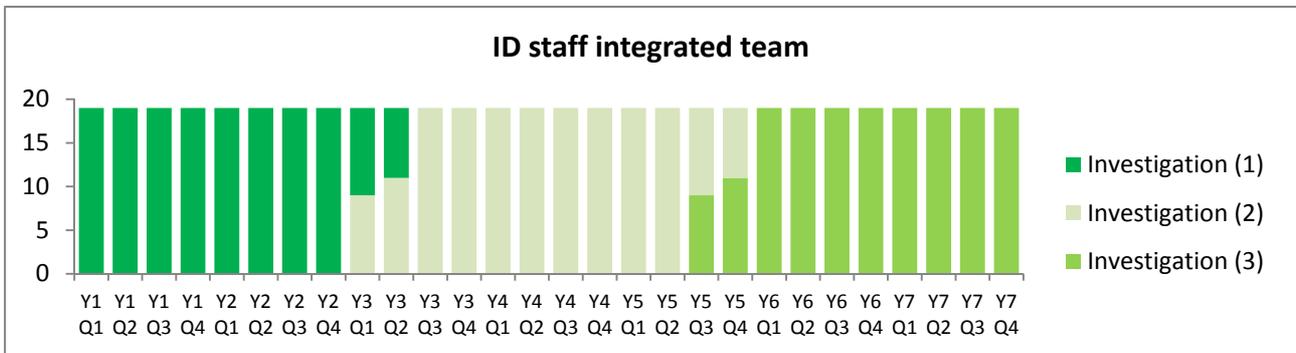
<sup>14</sup> Libya 3, Darfur 5, Mali 3, DRC 7, arms trafficking and pillaging. Based on its case selection and prioritization policy the Office is presently performing a systematic mapping of the required investigations in existing situations which will lead to an increase of the minimum number of 5.

<sup>15</sup> ICC-ASP/13/20. CBF 23<sup>rd</sup>. Para 51

27. The financial impact of peaks and troughs of workload through stop/start approach to investigations and prosecutions will be mitigated by the basic size capacity on the one hand, and introducing a start-up and wrap-up phase on the other hand:



An added benefit is that the start-up and wrap-up phases offer a durable stability in terms of resources when applied in a controlled and sequential manner.<sup>16</sup> E.g.: investigative staff can be switched from one investigation to another in these phases, either gradually building up, or moderately scaling down.



28. The resource capacity to provide support to the various mandated activities as well as the general running of the Office of the Prosecutor cannot be calculated in the same way as outlined above. The various managerial, operational or administrative support activities often simultaneously assist multiple Office mandated activities. As a result, resource capacity for the support and management activities of the Office has been calculated by linking support activities directly to the totality of mandated activities, where applicable, and by providing a separate justification for the remaining activities. Annex 2 provides a breakdown of activities per section or unit, outlining their primary activities and resource capacity required to match such activities.

**2. Required resources to meet estimated demand**

29. In order to properly staff the identified number of activities required to meet the estimated demand, the Office requires 540 staff members under the basic size.

<sup>16</sup> While at a macro-level this model does work, it does not change the reality that at the micro-level during an investigation there will be moments of sudden peaks which will have to be compensated through temporary support from other teams. For the purposes of this report, it suffices however to stay at the macro-level.

<i>Activity</i>	<i>Current headcount<sup>17</sup></i>	<i>Basic team</i>	<i>Parallel activities</i>	<i>Basic size headcount</i>	<i>Increase</i>
<b>Programme 2100 – The Prosecutor</b>					
Prosecutor	2	/	/	2	=
IOP	11	/	/	13	+2
IMC	1	/	/	1	=
<b>Sub-programme 2110 – Legal Action Service</b>					
<i>General Support</i>					
Legal Advisory Section	5	/	/	5	=
<b>Sub-programme 2120 – Services Section</b>					
<i>Expert and Operational Support</i>					
Information & Evidence Unit	15	/	/	18	+3
Knowledge Base Unit	5	/	/	9	+4
Language Services Unit	(35) 44 <sup>18</sup>	/	/	35	=
<i>General Support</i>					
Knowledge Base Unit	6	/	/	10	+4
General Administration Unit	7	/	/	8	+1
Management	1	/	/	1	=
<b>Programme 2200 – Jurisdiction, Complementarity and Cooperation Division</b>					
<i>Situation Analysis Section</i>					
Analysts	12	1.5	10	15	+3
Coordination and management	1	/	/	2	+1
<i>International Cooperation Section</i>					
Management	1	/	/	1	=
International cooperation advisers	9	1.6	6	10	+1
General coop. & external relations	3	/	/	3	=
Technical and legal support	4	/	/	4	=
Divisional management	2	/	/	2	=
Admin support	2	/	/	2	=
<b>Programme 2300 – Investigations Division</b>					
<i>Investigations</i>					
Investigators	53	13	6	78	+25
Factual Analytical database	6	3	6	18	+12
Information Management Assistant	5	1	6	6	+1
Analysts	12	3	6	18	+6
<i>Prosecutions</i>					
Investigators	10	2	5	10	=
Analysts	5	1	5	5	=

<sup>17</sup> The current headcount is composed of data as previously provided to the CBF and thus includes vacancies.

<sup>18</sup> The current headcount includes 9 freelance field interpretation resources for language services (LSU) to support current cases. However, due to the changing nature of the required languages which is difficult to assess in advance, often extremely limited in duration, and only required for field locations, the Basic Size does not take this number into account in assessing the final size of the Office although this resource requirement will still be funded as GTA and incorporated in staff costs.

<i>Activity</i>	<i>Current headcount<sup>17</sup></i>	<i>Basic team</i>	<i>Parallel activities</i>	<i>Basic size headcount</i>	<i>Increase</i>
<i>Hibernated cases</i>					
Tracking unit	0	/	/	4	+4
Investigative team	0	/	/	13	+13
Witness monitoring	3	/	/	3	=
Crime pattern analysis	2	/	/	4	+2
Divisional management	6	/	/	7	+1
Admin & Planning	4	/	/	6	+2
<i>Expert &amp; Operational Support</i>					
Protection Strategies Unit	11	/	/	16	+5
Operational Support Unit	26	/	/	36	+10
Gender and Children Unit	(4) 5 <sup>19</sup>	/	/	5	+1
Data Processing Unit	8	/	/	10	+2
Scientific Response Unit	9	/	/	16	+7
<b>Programme 2400 – Prosecutions Division</b>					
Deputy Prosecutor <sup>20</sup>	2	/	/	2	=
<i>Investigations</i>					
Trial lawyers	7	2	4	8	+1
<i>Prosecutions</i>					
Senior Trial Lawyers	8	0.5	20	10	+2
Case manager coordinator	0	/	/	1	+1
Case Managers	9	0.5	20	10	+1
Legal Assistant	13	/	/	15	+2
<i>Pre-trial</i>					
Trial Lawyer	20	5	5	25	+5
Trial Support Assistant	3	1	5	5	+2
<i>Trial</i>					
Trial Lawyer	28	7	5	35	+7
Trial Support Assistant	4	1	5	5	+1
<i>Appeals</i>					
Appeals Counsel	6	/	/	12	+6
Case manager	1	/	/	1	=
<i>Hibernated cases</i>					
Trial Lawyer	3	/	/	9	+6
Divisional management	3	/	/	2	-1
Admin & Planning	2	/	/	4	+2
<b>Total</b>	<b>405</b>			<b>540</b>	

<sup>19</sup> Similar to LSU, one resource is allocated to the expert network to support field activities. The Basic Size does not take this number into account in assessing the final size of the Office although this resource requirement will still be funded as GTA and incorporated in staff costs.

<sup>20</sup> For budgetary purposes only, the Deputy Prosecutor (ASG) is allocated to the Prosecutions Division together with his/her Personal Assistant.

## IV. Efficiency gains

30. When one is constantly confronted with over-demand, then looking for the most efficient use of resources becomes a key management activity and one that the Office is committed to – systematically looking at making the best and flexible use of its resources. While in the early years of its existence, the Office absorbed new concurrent cases through spreading its resources too thinly at the expense of quality, it has now resorted to only finding efficiency gains without impacting on the quality of its work.

31. The Office has explored how to best measure its efficiency gains. It has reached the following conclusions:

- (a) At a macro level, comparing preliminary examinations, investigations or prosecutions, few if any conclusions can be drawn relating to efficiency given that there are relatively low numbers, and each mandated activity differs in complexity, operating environments as well as resources allocated. However, having the basic resources in place, allowing for timely planning of activities, reducing the need for a stop-start approach will already have long term efficiency gains.
- (b) It is possible to develop efficiency indicators for sub-activities of each mandated activity that are frequently performed and that are quite similar in nature (e.g. average duration of statement taking; average transcription time). This approach is not possible for all sub-activities (e.g. analytical product, arrest warrant application). Before such an approach could be systematically applied, an accurate activity-based costing system is needed.
- (c) Identifying, measuring and reporting specific efficiency gains on an annual basis is presently still the most adequate approach available to the Office to show its commitment to managing its resources efficiently.

32. Data on how the Office made efficiency gains before 2012 have been absorbed into the previous budgets without specific reporting. Data in relation to specific efficiency gains have been kept track of since 2012. They show a systematic effort which the Office will continue to undertake in the future:

	2012	2013	2014	2015
Budget (euro)	27,7 mio	28,2 mio	33,2 mio	39,6
Efficiency gain (euro)	183.962	848.175	442.670	tbd
%	0.7%	3%	1.3%	

33. Efficiency, sound processes and planning are at the core of the basic size concept, where forecasts have been projected utilising the presently identified efficiencies and processes sequenced for optimisation of time and resources. Roles and activities contained within this document have also been examined with efficiency in mind – such as a Senior Trial Lawyer covering an active investigation as well as a case before the chambers, an increased use of field based investigators or with technology where for instance remote access & electronic forms can reduce downtime in the field. Where the Office believes it had sufficient certainty in relation to future efficiency gains, these have also been included (e.g. build-up and winding-down phases).

34. To continue this effort the Office has created a permanent working group which will try to systematically identify efficiency gains inside the Office and between the OTP and the other organs, in particular the Registry. The exact amount of savings to be expected cannot be predicted, and each year additional new efficiencies will become more difficult to identify. However, the Office will continue to report on its yearly gains and include their impact into future budgets.

## V. Quality investment

35. The Office has been able to improve its prosecutorial results due to a deliberate choice to prioritize quality over quantity. Achieving the basic size will allow it to ensure that quality and quantity of work are both met.

36. Maintaining the required quality also requires investments so that the Office can maintain its expertise and capabilities and at the same time invest into new areas of expertise. As explained in the new draft strategic plan 2016-2018, technology for instance is offering new possibilities to the Office to collect information and evidence and to present its cases in court, as well as presenting new challenges for which the Office needs to prepare itself. But it can only do so if it keeps abreast of relevant technological developments.

37. The proposed yearly investment in quality combines 4 essential factors: (1) investment in training, (2) replacement of expert equipment, (3) acquisition of new expertise and technology and (4) development of networks<sup>21</sup> and research to stay aware of developments that impact on our mandated activities. These networks will also ensure that the Office can strike the right balance between what it can and should do in house due to the frequency and cost of such activity and what it should outsource.

An estimation of our current yearly needs for investment for the foreseeable future requires a budget of approximately €600.000 Euro which equates to only 0.9% of the overall basic size budget.<sup>22</sup>

As an example, the 2016 quality investments which are required include:

2016	
Investigations	Roll-out of an investigative management system, OTP Gateway for crime reporting
Analysis	Roll out of the Factual Analysis Database
Forensics	Acquisition of 3D Crime Scene capability, replacement of drone
Protection/ Security	Roll out of Witness Management System
Training	PEACE – Advanced training; On-Line Investigations

## VI. Financial roll-out

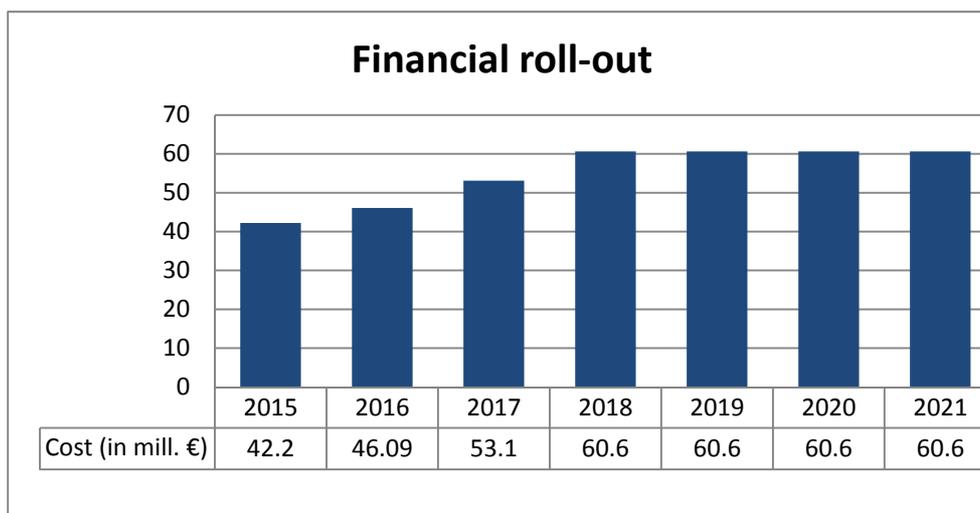
38. Total yearly cost of the basic size model:	60.58 mio €
(a) Basic size staffing:	52.7 mio €
(b) Basic size non-staff costs:	6.24 mio €
(c) Investment in quality:	0.6 mio €
(d) Expected UN Salary scale increase by 2018:	1.04 mio € and
(e) Efficiency gains:	tbd. <sup>23</sup>

39. The table below shows the financial implementation plan which presents a phasing in over different years. This table is based on the 2015 monetary value and will have to be adapted to take into account inflation and other factors known to be outside of the OTP's control (e.g. additional changes to UN Salary scale post 2018, exchange rates, etc.).

<sup>21</sup> The scientific advisory board and technology advisory board created by the Office; the law enforcement community; civil society.

<sup>22</sup> The advanced copy of the Basic Size report distributed to CBF members did not include existing quality investments and thus had a lower total amount dedicated to quality investment. This has been rectified in the current version by transferring the relevant amount from non-staff costs to quality investment.

<sup>23</sup> The range of yearly efficiency gains is difficult to ascertain. However, consistent with previous years, identified efficiency gains will be reflected in future budget requests of the Office.



40. While the data have to be approached with caution for the reasons explained above (see para 12, 39), a forecast has also been made of how the next phase of the Office would look like if the present assumptions would continue to be valid.

The required resources will continue to stay within the same range (as indicated in the table at para 29) with the caveat that no exceptional circumstances occur.

## VII. Resource comparison<sup>24</sup>

41. A true cost-benefit analysis of the OTP would require measuring different outcomes, for instance: (1) the rate at which serious violations of international criminal law are committed; (2) the rate at which violations of international criminal law are investigated and prosecuted in domestic legal systems; (3) the expressive value of justice done and seen to be done; and (4) the actual results in Court.

All of the above are important factors to which the OTP contributes as part of the ICC and the Rome System. However, it will be very difficult if not impossible to measure these outcomes and to isolate the impact of the OTP on the first three outcomes from the impact of other actors.

The last outcome (*results in Court*) is one over which the OTP has sufficient control to be held accountable. As explained in the new strategic plan 2016-2018, the results at the level of the confirmation hearing show the positive results of the new strategy that was launched in the plan June 2012 – 2015. The coming years will show if these results continue to be produced at the level of trials and appeals. However, making a cost-benefit analysis of the OTP also requires insight into the other outcomes, which presently are not available. The work being done by the OTP and the ICC on performance measurement might provide answers to this in the future.

42. In light of the challenge to measure the full cost-benefit of the OTP, this section focuses on comparing the Court with its closest international analogues and some domestic examples. To begin with, the most similar international entities to the ICC are the ICTR and the ICTY.

<sup>24</sup> This section was researched with the assistance of an external consultant to the ICC.

<i>Tribunals</i>	<i>ICTR</i> <sup>25</sup>	<i>ICTY</i> <sup>26</sup>	<i>ICC</i>	<i>ICC Basic Size</i>
<i>Reference year</i> <sup>27</sup>	2003	2000	2015	2018
<b>Context</b>				
Situations <sup>28</sup>	1	1	9	12
Temporal scope	1 year	8 years	12 years	15 years
OTP Budget <sup>29</sup>	27.5	50.6	42.2	60.6
OTP Staffing	177	370	405	540
<b>Average per situation</b>				
Budget	27.5	50.6	4.7	5.1
Staffing	177	370	45	45

The figures show that:

- (a) The average budget per situation of both the OTP/ICC (current size) and basic size is lower than both the OTP/ICTY and OTP/ICTR.
- (b) Likewise, the average number of staff per situation is lower for both the ICC/OTP current size and ICC/OTP basic size than both ICTR/OTP and ICTY/OTP.

The comparison is even more favourable for the ICC because it faces a number of difficulties that the ICTR and ICTY did not face:

- (a) The ICC is currently dealing with 9 simultaneous situations, leading to extra costs (*e.g. field offices, security assessments, country expertise, higher number of languages than the other tribunals*).
- (b) The possibility to use the same evidence in multiple cases as a consequence of working in one country is a benefit that the OTP in general does not enjoy.
- (c) The context of cooperation and security varies from country to country (and in time), which impacts on the investigative opportunities.
- (d) The ability to work in one country provides advantages of developing better networks over time, something which the OTP/ICC cannot do to the same extent.

43. An alternative method of comparison would look at the averages staffing and budget levels per case. The reason for non-inclusion is because there are no reliable data available on number of investigations, prosecutions and no preliminary examinations for these International Criminal Tribunals on which we can rely on with sufficient certainty.<sup>30</sup>

44. Another way of putting the basic size of the OTP into perspective is to compare its costs with comparable cases/investigations in national systems. There are relatively few domestic criminal investigations that involve crimes of the seriousness and scope of those investigated by the ICC. The cases that come closest are usually terrorism cases.

It is difficult to find information on such cases because states do not regularly publish their costs, but some data is available. The data suggests that the ICC has far fewer resources (and by extension far lower costs) than comparable domestic cases.

<sup>25</sup> Eighth Annual Report of the ICTR, UN Doc. No. A/58/140, dated 11 July 2003, at paras. 19-43), Review of the Office of the Prosecutor at the International Criminal Tribunals for Rwanda and for the former Yugoslavia, UN Doc. No. A/58/677, dated 7 January 2004.

<sup>26</sup> Seventh Annual Report of the ICTY, UN Doc. No. A/55/273, dated 7 August 2000, at paras. 20-98, Report of the Secretary-General on the Financing of the ICTY, UN Doc. No. A/55/517, dated 24 Oct. 2000.

<sup>27</sup> The reference year for the ICTY and ICTR were chosen after consultation with the respective Tribunals' representatives. This interaction occurred per CBF 2014 request in comparing the ICC-OTP with other international criminal tribunals.

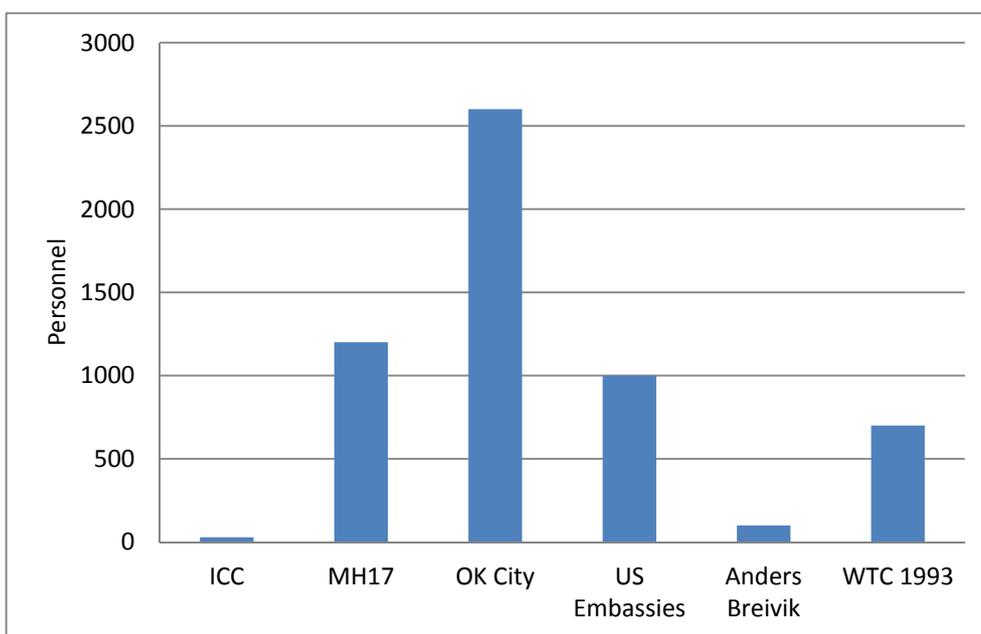
<sup>28</sup> While multiple countries were eventually involved, the ICTY dealt with 1 situation in line with the definition used by the ICC.

<sup>29</sup> Each OTP is represented in millions of Euros. All figures have been adjusted for inflation.

<sup>30</sup> Specifically, it is not possible to derive from the Annual Reports with sufficient certainty how many investigations or proceedings were taking place, nor at what stage they were; such a comparison would also not include the preliminary examination activity that the ICC has to perform. Hence it was found to be an inaccurate basis to use as point of reference at this stage. With this caveat in mind, the following findings are still provided

	<i>Crime level</i>	<i>Resources to investigate</i>
ICC	Most serious crimes of concern to the international community Mass atrocities affecting 100s to 1000s of victims in each situation	30 - 1 cooperation advisor - 20 = investigative team - 9 = prosecutor's pre-trial team
MH17 Crash	298 dead	More than 1,200 personnel <sup>31</sup>
Oklahoma City Bombing	168 dead	Approx. 2,600 personnel <sup>32</sup>
US Embassy Bombings	224 dead	More than 900 personnel <sup>33</sup>
Anders Breivik Killings	77 dead	More than 100 personnel <sup>34</sup>
2003 WTC Bombing	6 dead	More than 700 personnel <sup>35</sup>

As the chart below shows, the ICC has had to investigate crimes comparable to the worst crimes to take place in domestic jurisdictions, but has had far fewer resources than those domestic investigations.



## VIII. Conversion of posts

45. The Basic Size model is shown to be stable for the foreseeable future (Strategic Plan cycles 2016-2018, 2019-2021) barring major shifts in demand.<sup>36</sup> As such, within the model, the majority of the positions (those that can transition from one case to another, or are required on a continuous basis to support such activities) should not be considered a

<sup>31</sup> 840 Dutch police officers are involved in MH17 crash investigation, dated August 1, 2014, available at [http://www.dutchnews.nl/news/archives/2014/08/840\\_dutch\\_police\\_officers\\_are/](http://www.dutchnews.nl/news/archives/2014/08/840_dutch_police_officers_are/); Scott Neuman, Australia Sending 190 Police to Secure MH17 Wreckage, dated July 25, 2015, available at <http://www.npr.org/sections/thetwo-way/2014/07/25/335189945/australia-sending-190-police-to-secure-mh17-wreckage>; FAW Special Operations Flight MH17, available at <https://www.politie.nl/en/themes/qa-flight-mh17.html>.

<sup>32</sup> Howard Pankratz, *Bomb Trials Costs \$82.5 Million*, denverpost.com, Nov. 3, 1998, available at <http://extras.denverpost.com/bomb/bomb1103.htm>.

<sup>33</sup> FBI, East African Embassy Bombings, available at <https://www.fbi.gov/about-us/history/famous-cases/east-african-embassy-bombings-1998>.

<sup>34</sup> Walter Gibbs & Elinor Schang, *Norway Police To Track Killer's Funds in Year-Long Probe*, REUTERS NORWAY (Aug. 3, 2011), <http://in.reuters.com/article/2011/08/03/idINIndia-58607220110803>.

<sup>35</sup> FBI, First Strike: Global Terror in America, dated 26 February 2008, available at [https://www.fbi.gov/news/stories/2008/february/tradebom\\_022608](https://www.fbi.gov/news/stories/2008/february/tradebom_022608).

<sup>36</sup> See also para. 12

temporary requirement. At least the resources for those activities that cannot transition – such as country knowledge experts and specific language requirements for a situation country, (field interpreters, translators and transcribers) would remain a GTA resource.

46. The Office will make a limited number of conversions now and a broader proposal will be made in 2017 depending on the positions the States take on the basic size report.

47. The conversion of the GTA into budgeted posts will:

- (a) Provide resource stability
- (b) Have positive cost implications (administration to manage the contracts)
- (c) Increase the ability to attract high level candidates
- (d) Positively impact on staff motivation and performance.

## IX. Impact on permanent premises

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*Impact on permanent premises*

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Required OTP office space	540 staff & 40 interns
Space not utilized at HQ	
Field staff	36
Working from home	tbd <sup>37</sup>
<b>Office space required</b>	<b>544</b>
<b>Office space available</b>	<b>557</b>

48. In conclusion, there is sufficient space to accommodate the basic size model in the new premises even before considering the office space made available due to working from home.

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<sup>37</sup> The Office Policy on working from home is still under development. Evaluation of roles that could eventually be undertaken away from the permanent premises is currently ongoing. This may result in additional office space availability.

## Annex I

### Extrapolation of the estimated demand

#### A. Preliminary remark

1. The planning developed hereunder is based on an extrapolation of past experience. This experience has been corrected, where necessary, to reflect the new OTP strategy. For instance, while the approach towards preliminary examinations has not fundamentally changed, the approach towards investigations has been adapted.

2. A clear tension exists between the necessary resource planning and predictability on the one hand, and the fluid and unpredictable environment in which the OTP operates on the other hand. While the assumptions in the planning are based on past experience (*e.g. a new situation every year; a fugitive turning up every 3 years*), (1) the factors determining which case moves into which next phase (hibernation, trial, etc.) are random; (2) on top of this, practice has also shown that each case differs in nature and conditions (security, cooperation, resources). Both these factors lead to the conclusion that the projections below provide a basis for the basic size of the OTP but that the use of these resources will inevitably be adapted to the reality faced by the Office every year. It does however provide the Office with the resources needed to absorb its work with a reasonable level of prioritization amongst the activities.

#### B. Summary overview

3. The two tables below provide an overview of the same data but viewed from two perspectives: one shows the regrouping of the data per operational activity and the other, per potential case. A more detailed explanation of the adopted timelines follows thereafter, broken down per activity.<sup>12</sup>

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<sup>1</sup> The first table below contains mandated activities that are already certain and others foreseeable on the basis of assumptions coming out of the extrapolation; the latter have been selected randomly so it might be that other cases actually move forward depending on the circumstances. The darker green (■) depicts a start –or wrap-up phase of an investigation utilizing half a team. The patterned green (■) represents a case resourced by hibernation module.

<sup>2</sup> The second table below contains mandated activities that are already certain and others foreseeable on the basis of assumptions coming out of the extrapolation; the latter have been selected randomly so it might be that other cases actually move forward depending on the circumstances. The darker green (■) depicts a start –or wrap-up phase of an investigation.

Per case	Strategic Plan 2016-2018							
	2015		2016		2017		2018	
	Sem 1	Sem2	Sem 1	Sem2	Sem 1	Sem2	Sem 1	Sem2
<b>Uganda - DO</b>								
Investigation	Light Green	Light Green	Light Green	Green				
Pre-trial	Light Blue	Light Blue	Light Blue					
Trial				Dark Blue				
<b>DRC 6</b>								
Investigation	Light Green							
Pre-trial	Light Blue							
Trial		Dark Blue						
<b>Cdl 1 – LG &amp; CBG</b>								
Investigation	Green							
Pre-trial	Light Blue							
Trial		Dark Blue						
Appeal								Dark Blue
<b>Mali 2</b>								
Investigation	Light Green	Light Green	Green					
Pre-trial	Light Blue	Light Blue	Light Blue	Light Blue				
Trial					Dark Blue	Dark Blue	Dark Blue	Dark Blue
<b>Cdl 2</b>								
Investigation		Green	Light Green	Light Green	Light Green	Light Green	Green	
Pre-trial					Light Blue	Light Blue	Light Blue	Light Blue
Hibernation								Purple
<b>CAR 2(a)</b>								
Investigation	Light Green	Light Green	Light Green	Light Green	Green			
Pre-trial			Light Blue	Light Blue	Light Blue	Light Blue		
Trial							Dark Blue	Dark Blue
<b>CAR 2(b)</b>								
Investigation	Light Green	Light Green	Light Green	Light Green	Light Green	Green		
Pre-trial				Light Blue				
Trial								Dark Blue
<b>New inv 1</b>								
Investigation			Green	Light Green	Light Green	Light Green	Light Green	Green
Pre-trial						Light Blue	Light Blue	Light Blue
<b>New inv 2</b>								
Investigation				Green	Light Green	Light Green	Light Green	Light Green
Pre-trial							Light Blue	Light Blue
<b>New inv 3</b>								
Investigation					Green	Light Green	Light Green	Light Green
Pre-trial								Light Blue
<b>New inv 4</b>								
Investigation					Green	Light Green	Light Green	Light Green
Pre-trial								Light Blue
<b>New inv 5</b>								
Investigation						Green	Light Green	Light Green
<b>New inv 6</b>								
Investigation							Green	Light Green
<b>New inv 7</b>								
Investigation								Green
<b>De-hipernated inv</b>								
Investigation								
Pre-trial							Light Blue	Light Blue
<b>CAR 1</b>								
Trial	Dark Blue	Dark Blue	Dark Blue	Dark Blue	Dark Blue	Dark Blue	Dark Blue	Dark Blue
Appeals								
<b>KEN 1</b>								
Trial	Dark Blue	Dark Blue	Dark Blue	Dark Blue	Dark Blue	Dark Blue	Dark Blue	Dark Blue
Appeals								
<b>CAR art 70</b>								
Trial	Dark Blue	Dark Blue	Dark Blue	Dark Blue	Dark Blue	Dark Blue	Dark Blue	Dark Blue
Appeals								

Per activity	Strategic Plan 2016-2018							
	2015		2016		2017		2018	
	Sem 1	Sem2	Sem 1	Sem2	Sem 1	Sem2	Sem 1	Sem2
<b>Investigations</b>	<b>5</b>	<b>5</b>	<b>5</b>	<b>5</b>	<b>5</b>	<b>6</b>	<b>6</b>	<b>6</b>
1. Uganda – DO								
2. DRC 6								
3. Cdl 1								
4. Mali 2								
5. Cdl 2								
6. CAR 2(a)								
7. CAR 2(b)								
8. New inv 1								
9. New inv 2								
10. New inv 3								
11. New inv 4								
12. New inv 5								
13. New inv 6								
14. New inv 7								
<b>Hibernated investigations</b>	<b>9</b>	<b>9</b>	<b>9</b>	<b>9</b>	<b>9</b>	<b>9</b>	<b>8</b>	<b>9</b>
1. Uganda – JK								
2. DRC 3 & 4							?	
3. Cdl 1 (SG)								
4. Mali 1								
5. Cdl 2								
6. DAR 1,2&4								
7. DAR 3								
8. Libya 1								
9. Libya 2								
10. Kenya art 70								
<b>Pre-trials</b>	<b>4</b>	<b>2</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>5</b>
1. Uganda – DO								
2. Mali 2								
3. DRC 6								
4. Cdl 1								
5. Cdl 2								
6. CAR 2(a)								
7. CAR 2(b)								
8. De-hib. inv.								
9. New inv 1								
10. New inv 2								
11. New inv 3								
12. New inv 4								
<b>Trial</b>	<b>5</b>	<b>5</b>	<b>4</b>	<b>5</b>	<b>5</b>	<b>5</b>	<b>6</b>	<b>5</b>
1. CAR 1 (Bemba)								
2. Kenya 1								
3. Uganda – DO								
4. DRC 6								
5. Cdl 1								
6. CAR art 70								
7. Mali 2								
8. CAR 2(a)								
9. CAR 2(b)								
<b>Appeals</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>2</b>	<b>3</b>
1. CAR 1 (Bemba)								
2. CAR art 70								
3. Kenya 1								
4. Cdl 1								

### C. Preliminary examinations

4. During the period 2004-2015 the Office has opened 23 preliminary examinations (PrEx), 9 of which led to an investigation into the situation at hand, 5 led to a decision not to proceed, and 9 were still on-going at the time of writing.

5. The OTP currently conducts at least **8** PrEx on average per year; however this average number has increased from approximately 5 in the first six years to 8 in the past five years. It is fair to assume that this trend will continue, and that the average number of PrEx per year will steadily increase. This assumption is based notably on the fact that, on average, over the full period, the OTP has opened 2 new PrEx and closed 1 per year. If this 2:1 ratio remains accurate over the coming years, then the number of parallel PrEx should normally increase by 1 every year.

6. With additional resources – some which were received in 2014, some still required, the OTP aims to reach a ratio of 2:2 ratio (two new/two completed PrEx per year) so to stabilize the number of parallel PrEx activities at around 9.

<i>Preliminary examination</i>	<i>Over full period 2004-2014</i>	<i>Over past 5 years 2010-2014</i>	<i>Extrapolation 2016-2018</i>
Average number per year	81/11 = 7.36	46/5 = 9.2	9
Average number of new per year	22/11 = 2	8/5 = 1.6	2
Average number of completed per year	14/11=1.27	7/5=1.4	1

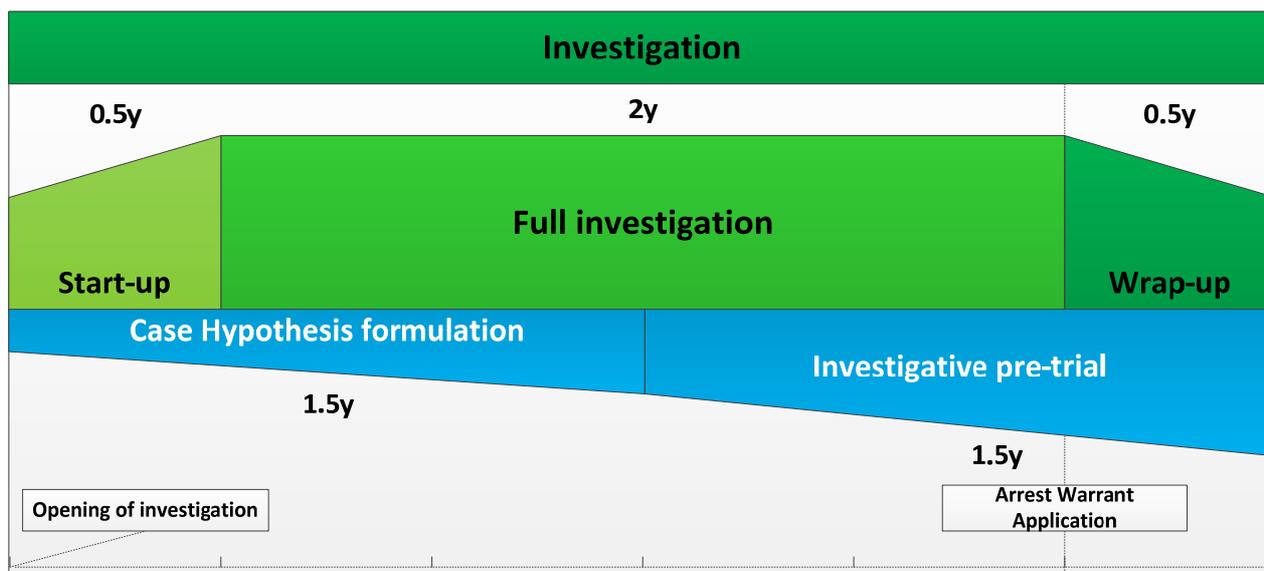
7. The table below provides an overview all PrEx conducted by the OTP.

<i>Year</i>	<i>Max Number</i>	<i>Min number</i>	<i>Average</i>	<i>Situations</i>	<i>New PrExs</i>	<i>Closed/Completed PEs</i>
2004	2	0	1	<b>UGA, DRC</b>	UGA, DRC	UGA, DRC
2005	7	6	5.5	CAR, <b>DAR</b> , CDI, COL, NIG, VEN, IRQ	CAR, DAR, CDI, COL, NIG, VEN, IRQ	DAR
2006	7	5	6	CAR, CDI, COL, NIG, <b>VEN</b> , <b>IRQ</b> , AFG	AFG	VEN, IRQ
2007	5	4	3.5	<b>CAR</b> , CDI, COL, NIG, AFG	-	CAR
2008	6	6	6	CDI, COL, NIG, AFG, <b>KEN</b> , GEO	KEN, GEO	-
2009	8	7	7.5	CDI, COL, NIG, AFG, <b>KEN</b> , GEO, PAL, GUI, HON	PAL, GUI	KEN
2010	8	8	8	CDI, COL, NIG, AFG, GEO, PAL, GUI, HON	HON	-
2011	10	8	9	<b>CDI</b> , COL, NIG, AFG, GEO, PAL, GUI, HON, KOR, <b>LIB</b>	KOR, LIB	CDI, LIB
2012	9	7	8	COL, NIG, AFG, GEO, <b>PAL</b> , GUI, HON, KOR, <b>MAL</b>	MAL	PAL, MAL
2013	8	8	8	COL, NIG, AFG, GEO, GUI, HON, KOR, COM	COM	-
2014	11	8	9.2	COL, NIG, AFG, GEO, GUI, HON, <b>KOR</b> , <b>COM</b> , <b>IRQ</b> , <b>CARII</b> , UKR	IRQ, CARII, UKR	KOR, COM, CARII

## D. Active investigations

8. The average duration of past active investigations cannot be used as a reliable reference because some were hibernated without meeting the present standard of being trial-ready before triggering proceedings and none of them were properly resourced. In order to extrapolate the average yearly number of active investigations, the average duration of an investigation therefore needs to be revisited.

9. The average duration of an active investigation is estimated to take 3 years, comprising a start-up phase of 6 months, a full capacity investigation of 2 years and a wrap-up phase of 6 months. The start-up and wrap-up phases will require fewer resources (50%), as explained in annex 2.

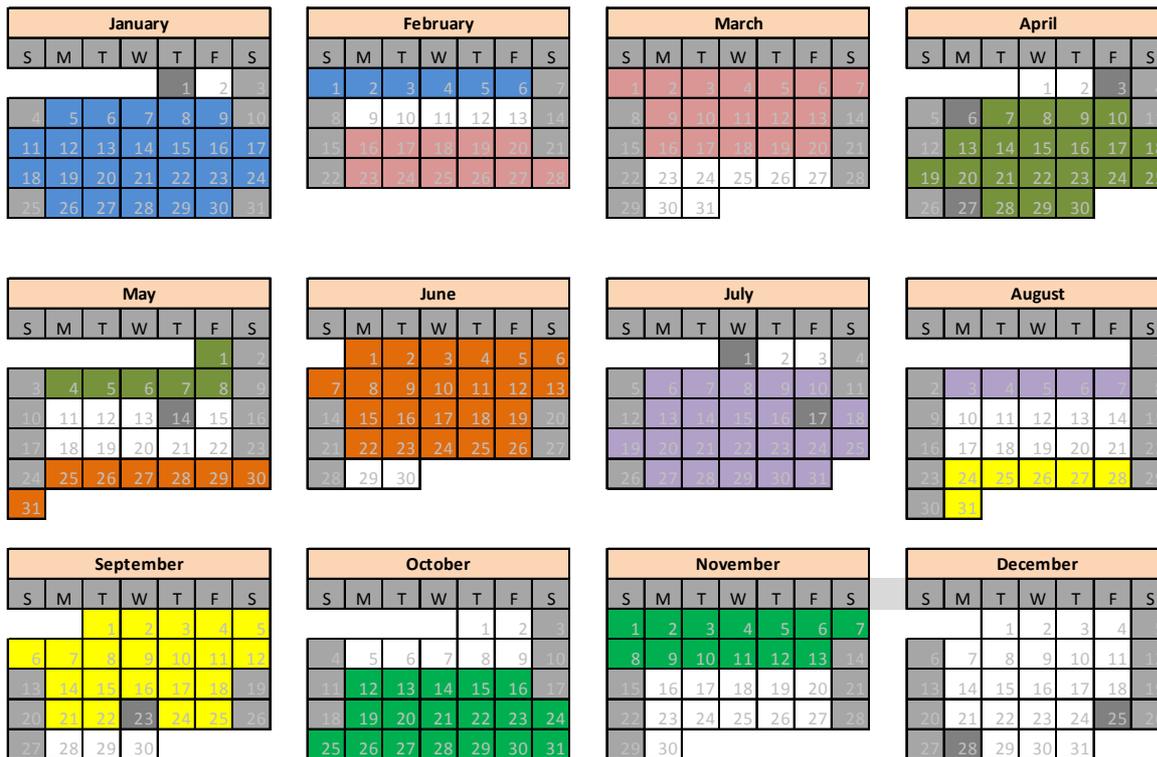


10. **Start-up phase for the proposed average duration (0,5 y):** During the start-up the handing over of information, knowledge and contacts takes place between the preliminary examination team and the newly created integrated team. The newly integrated team studies the culture and context of the country and the preliminary examination material, while security and operational assessments are being made in order to set up operations in the field. Missions to identify sources of information, establish a network of cooperation, organise logistics and to help narrow down the possible cases to investigate from a relevance and feasibility perspective are undertaken.

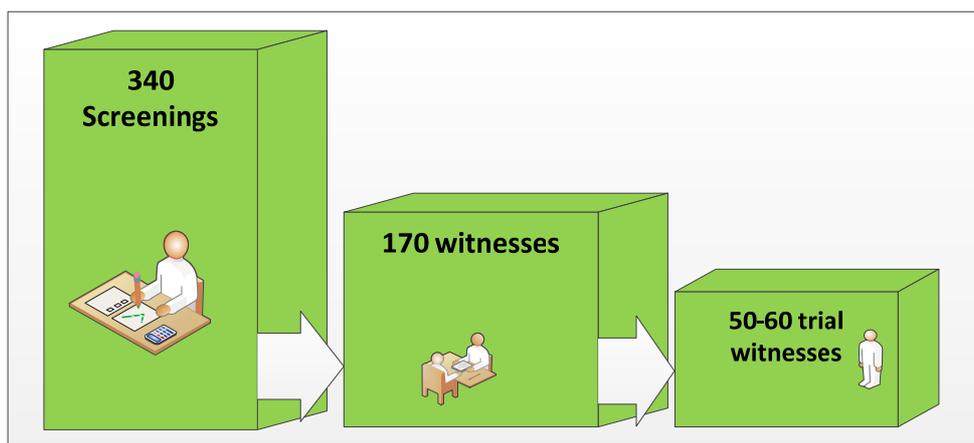
11. **Full investigation phase for the proposed average duration (2 y):** The current OTP strategy aims at collecting more evidence and at diversifying the collection of types of evidence other than witness statements. Obtaining additional means of proof for the crimes under investigation will not preclude the need for witness statements. The latter will continue to prove essential for direct proof of the relevant facts and to provide corroboration or to authenticate and enhance the evidentiary value of the new types of evidence collected. Given that collecting witness statements is the most time-consuming activity of the collection effort, it will have a central role in determining the required timeline for an investigation (critical path method). Prior to a statement being taken, a number of screenings need to be made in order to filter the witnesses on investigative value. For those witnesses found to be relevant, interview missions are organized. 1 mission cycle facilitates the taking of 3 witness statements. On average, it requires 4 days to interview a witness.<sup>3</sup> The preparation, actual mission, and debrief time for a mission combined with other tasks at the headquarters creates a mission collection cycle of 5 weeks (see annex II, para 26-31 for more details). A full mission cycle allows for 7 deployments per team per year, which is reflected by the different colours in the year cycle below.

<sup>3</sup> The OTP uses the PEACE-model to interview witnesses against the highest of standards.

## 2015 7 Mission cycles in a year



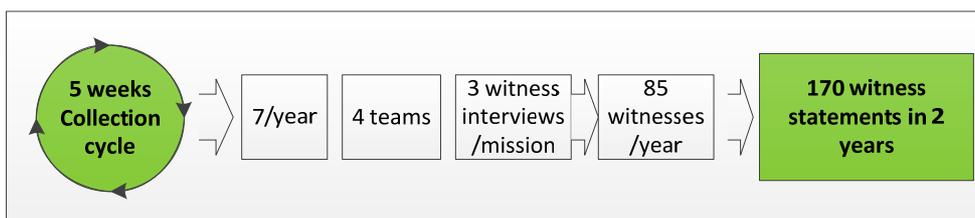
Experience has shown that in order for a case to be deemed trial-ready with regard to witness statements, between 50 and 60 witnesses should be ready to testify in Court.<sup>4</sup> This number of trial witnesses takes into account the current average and the existing prosecutorial strategy. In more complex investigations, this number could increase. In order to secure 50 to 60 trial witnesses, past experience has shown that it is essential to interview more witnesses to reach to that level of having 50 to 60 witnesses with relevant information for trial and also to have back-up witnesses, due to witnesses dropping out because of intimidation or other external factors. Roughly, a ratio of 3 witnesses to 1 trial witness will ensue.



Prior to an individual becoming a witness, a screening must take place. On past experience, 2 screenings are normally required to obtain a single witness. To attain 170 witnesses, on average, 340 individuals per investigation will be screened beforehand. It requires 4

<sup>4</sup> See also para. 30 annex II on alternative forms of evidence and witness statements as evidence.

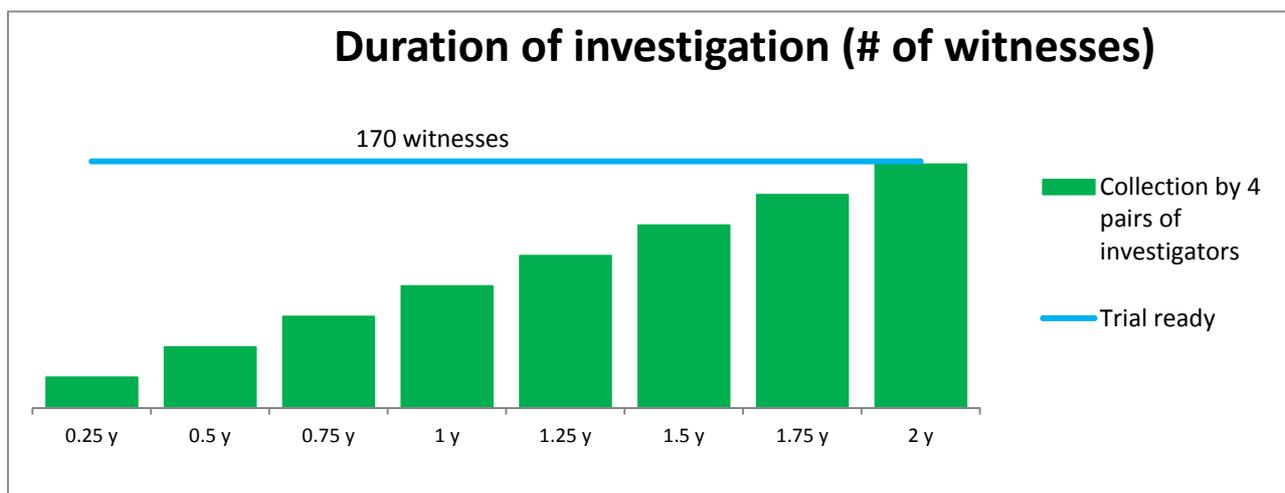
collection teams 2 years to collect around 170 witness statements<sup>5</sup> necessary to arrive at the required number of trial witnesses.<sup>6</sup>



In relation to the collection of witness statements, the OTP has considered three different options to shorten the duration of an investigation:

- (a) Reduce the number of witnesses interviewed;
- (b) Reduce the scope and detail of witness statements by conducting less lengthy interviews; and
- (c) Increase of resources.

12. Of all three options, the third is the only justifiable option that does not impede the OTP strategic goal aimed at ensuring the quality of our activities. Reducing the quantity or completeness of witness statements implies that the investigative and prosecutorial standards would be affected. The OTP has kept its investigative resources per integrated team that does the investigations at the same level as in the previous strategic plan and in the budget 2014 and 2015 submissions with the exception of 1 extra online investigators (as explained in annex II, para 30), additional resources for the Factual Analytical Database (see annex II, para 32), and a short-term field international cooperation advisor during the start-up phase of an investigation (see annex II, para 78-79).



Under the basic size, the number of witnesses per year the OTP anticipates to interact with is as follows:

Active investigation:	340 screenings over 2 years => 170/year 170 witnesses over 2 years => 85/year
6 active investigations:	1020 screened individuals/year (170*6) 510 witnesses/year (85*6)
5 Trials with 170 witnesses:	850 witnesses/year of which 250-300 trial witnesses
Hibernated cases:	1530 witnesses/year (170*9)
<b>Total:</b>	<b>2890 witnesses/year</b> (510+850+1530) + yearly 510 new witnesses minus the exit of cases

<sup>5</sup> This average is in accordance with current average number of witness statements taken under recent investigations

<sup>6</sup> This calculation takes into account rest and recuperation, leave, etc.

It should be noted that the number of witnesses will increase every year by 510 persons as a result of 6 continuous investigations generating 85 witnesses each per year. At the same time, where cases are being ceased and the OTP duty of care is discontinued, the number of witnesses will also decrease. This evident impact is yet to be evaluated. Hence, the number of witnesses and its impact requires a re-evaluation every three years, similar to the projection of mandated activities.

13. **Wrap-up phase for the proposed average duration (0,5 y):** During the wrap-up phase the remaining investigative steps are being undertaken and the measures to maintain contact with the witnesses and to ensure their protection are verified. If there is no expectation of an imminent arrest, then the steps are taken to organize the case file so that the investigation can be hibernated.

14. Applying retroactively the estimate of 3 years to the past investigations in combination with starting parallel investigations each time when this could have been considered, leads to the following corrected pattern of active investigations:

Past experience	2004		2005		2006		2007		2008		2009		2010		2011		2012		2013		2014		Average
Current strategy	Sem 1	Sem2	5.8																				
<b>Investigations</b>	2	4	5	5	5	5	5	3	5	5	5	5	6	6	7	8	8	8	9	10	6	5	
1. Uganda – LRA																							
2. Uganda - UPDF																							
3. DRC 1																							
4. DRC 2																							
5. DRC 3																							
6. DRC 4																							
7. DRC 5																							
8. DRC 6																							
9. DAR 1, 2 & 4																							
10. DAR 3																							
11. CAR 1																							
12. CAR 1b																							
13. CAR 2a																							
14. CAR 2b																							
15. KEN 1																							
16. KEN 2																							
17. Cdl 1, bis, ter																							
18. Cdl 2																							
19. Libya 1																							
20. Libya 2																							
21. Libya 3																							
22. Mali 1																							
23. Mali 2																							

15. The conclusion of the table above is that with an average of 6 parallel investigations the Office would have been able to deal appropriately with the demand, while having to prioritize in a reasonable way amongst the investigations.

16. Applying the logic of 6 parallel investigations to the future demand results in the following pattern which phases in the 6 active investigations only from 2017 in order to spread the growth over time. The visual below includes the start –and wrap-up phases.<sup>7</sup>

Investigations	Strategic Plan 2016-2018							
	2015		2016		2017		2018	
	Sem 1	Sem2	Sem 1	Sem2	Sem 1	Sem2	Sem 1	Sem2
<b>Investigations</b>	5	5	5	5	5	6	6	6
1. Uganda – DO								
2. DRC 6								
3. Cdl 1								
4. Mali 2								
5. Cdl 2								
6. CAR 2(a)								
7. CAR 2(b)								
8. New inv 1								
9. New inv 2								
10. New inv 3								
11. New inv 4								
12. New inv 5								
13. New inv 6								
14. new inv 7								

<sup>7</sup> The table below contains mandated activities that are already certain and others foreseeable on the basis of assumptions coming out of the extrapolation; the latter have been selected randomly so it might be that other cases actually move forward depending on the circumstances.

## E. Hibernated investigations

17. Not all investigations lead directly to a voluntary appearance, arrest, or surrender. Where there is a lapse in time between the end of an investigation and the apprehension or voluntary appearance of a suspect, a case is considered hibernated. In hibernated cases, the Office normally has to fulfil two tasks: (1) deal with judicial proceedings as they occur (e.g. admissibility challenges Libya), and (2) take the necessary steps to preserve the evidence (maintaining contact with witnesses, seizing investigative opportunities). Given that the Office however has a number of old cases which were hibernated without being trial-ready under the current standards, there is a need to foresee a limited investigative capacity to rectify this situation. This extra capacity will also be used (1) to help with the de-hibernation of cases (to ensure cooperation of witnesses and organize their presence in Court; limited additional investigative steps; witness protection; etc.), and (2) to absorb peaks in other cases

18. The Office still has 9 cases in hibernation:

- 1) Uganda (J. Kony)
- 2) DRC 3&4
- 3) Dar 1,2&4
- 4) Dar 3
- 5) Libya 1
- 6) Libya 2
- 7) Mali 1
- 8) CdI 1 (S. Gbagbo)
- 9) Kenya Art 70

19. In order to determine a de-hibernation ratio to properly configure a reasonable projection, the Office has looked at its past experience with regard to hibernated cases. Counting from the first concluded investigation, it is possible to estimate an average of cases potentially de-hibernating. Although the frequency of suspects turning up is erratic and in the past three years there has been an increase in frequency<sup>8</sup>, an average of 1 individual turning up every 3 years can be inferred.

<i>De-hibernation ratio</i>	
Cases	22
De-hibernations	3
Reporting period	2006-2015 (10 years)
<b>Average de-hibernations</b>	1 per 3 years

In the period 2016-2018, based on the ratio above, it is possible that at least one of the hibernated investigations might transition into de-hibernation.

20. The Office has seen that 53% of its past investigations led to an immediate appearance, arrest or surrender.

<i>Delayed arrest, surrender appearance</i>		<i>Immediate arrest, surrender, appearance</i>	
1.	Uga	1.	DRC 1
2.	DRC4	2.	DRC2
3.	DRC 6	3.	DRC3
4.	Dar 1,2&4	4.	Dar 3
5.	CdI 1 (SG&CBG)	5.	CAR
6.	Lib 1	6.	Ken 1
7.	Lib 2	7.	Ken 2
8.	Ken art 70	8.	CdI1 (LG)
		9.	CAR Art 70
8		9	
47%		53%	

<sup>8</sup> 2013: Bosco Ntaganda, 2014: Charles Blé Goudé, 2015: Dominic Ongwen

The new strategy of the Office (*building upwards via mid-level or notorious perpetrators where needed*) and a more robust arrest strategy should allow for a higher number of cases moving immediately to confirmation hearing. Anticipating this higher rate of immediate arrests or appearances, the basic size assumes a ratio of 75% or 3 out of 4 concluded investigations moving into pre-trial phase.<sup>9</sup>

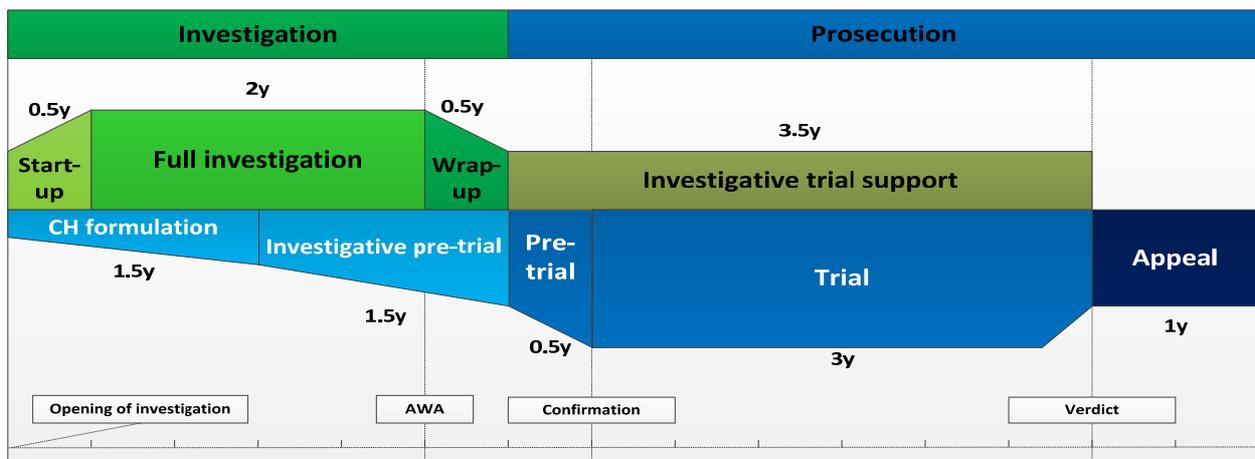
	Strategic Plan 2016-2018							
	2015		2016		2017		2018	
	Sem 1	Sem2	Sem 1	Sem2	Sem 1	Sem2	Sem 1	Sem2
<b>Hibernated investigations</b>	<b>9</b>	<b>9</b>	<b>9</b>	<b>9</b>	<b>9</b>	<b>9</b>	<b>8</b>	<b>9</b>
1. Uganda – JK								
2. DRC 3 & 4							?	
3. Cdl 1 (SG)								
4. Mali 1								
5. Cdl 2								
6. DAR 1,2&4								
7. DAR 3								
8. Libya 1								
9. Libya 2								
10. Kenya Art 70								

21. In light of the above, the de-hibernation of a case every 3 years combined with the 75% of finalized investigations moving immediately to pre-trial, leads to the following results:

- (a) 9 hibernated cases on average per year
- (b) 5 new trials in the period 2016-2018 (1 de-hibernated + 4 active investigations)<sup>10</sup>

**F. Pre-trial phase**

22. As illustrated in the graph below, the pre-trial phase builds a bridge between two distinct phases in the operational activities of the OTP: investigations and prosecutions. As soon as the investigation is sufficiently progressed to have a Case Hypothesis (CH), the Prosecution Division increases its capacity to form an investigative pre-trial team. The team will prepare the investigation’s transition towards trial. Firstly, through the stage of refining the CH from a legal perspective to the development of arrest warrant applications and, secondly, through to the stage of confirmation of charges following apprehension or voluntary appearance.



<sup>9</sup> The table below contains mandated activities that are already certain and others foreseeable on the basis of assumptions coming out of the extrapolation; the latter have been selected randomly so it might be that other cases actually move forward depending on the circumstances.

<sup>10</sup> Assuming that all cases pass confirmation of charges, which is considered to be the standard in light of the present prosecutorial strategy. 12 investigations will be conducted between 2016 and 2018 of which 6 will be finalized. With the anticipated arrest rate of 75%, 4 (4.5) investigations will lead immediately to trial.

23. The investigative pre-trial phase is assumed to take 1.5 year. The pre-trial phase building upwards towards confirmation hearing is assumed to take 0.5 year. The durations are based on the required activities and are explained in more detail in annex 2 where the resources are justified for each operational activity.

24. In order to create sufficient stability for the Office to absorb the work based on the assumptions for the period 2016-2018, there is a need for 5 pre-trial teams due to:

- (a) Active investigations reaching the halfway point, which is when the investigative pre-trial team is created; and
- (b) Number of hibernated cases assumed to result in a fugitive before Court (1 every 3 year).
- (c) Number of new investigations immediately resulting in an arrest (75%).<sup>11</sup>

		Strategic Plan 2016-2018							
		2015		2016		2017		2018	
		Sem 1	Sem2	Sem 1	Sem2	Sem 1	Sem2	Sem 1	Sem2
<b>Pre- trials</b>		<b>4</b>	<b>2</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>5</b>
1. Uganda – DO									
2. Mali 2									
3. DRC 6									
4. Cdl 1									
5. Cdl 2									
6. CAR 2(a)									
7. CAR 2(b)									
8. De-hib. inv.									
9. New inv 1									
10. New inv 2									
11. New inv 3									
12. New inv 4									

## G. Prosecutions

25. Currently 5 cases are simultaneously in the trial stage:

- (a) *The Prosecutor v. Jean-Pierre Bemba Gombo*;
- (b) *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*;
- (c) *The Prosecutor v. Bosco Ntaganda*;
- (d) *The Prosecutor v Kilolo et al* for article 70 offences committed in the course of the Bemba trial; and
- (e) *The Prosecutor v. Charles Blé Goudé and Laurent Gbagbo*.

With the new OTP strategy it is expected that cases brought to confirmation will move to trial, given that the Office aims at *being trial-ready from the earliest phases of proceedings such as when seeking an arrest warrant and no later than the confirmation hearing*.<sup>12</sup> The case of *The Prosecutor v. Dominic Ongwen* should therefore also be assumed as moving to the trial stage next year.

This means that a total of 5 cases will reach the trial stage next year, with the Bemba trial being at the deliberations stage in 2015 and the Dominic Ongwen being added for 2016.

26. The Office is increasingly presenting more and more diverse evidence in Court. On average, and as already mentioned, it expects to bring 50-60 witnesses to court which is an increase on its previous cases. With the present duration of the examination-in-chief and cross-examination, a trial would take 3 years.

<sup>11</sup> The table below contains mandated activities that are already certain and others foreseeable on the basis of assumptions coming out of the extrapolation; the latter have been selected randomly so it might be that other cases actually move forward depending on the circumstances.

<sup>12</sup> Draft OTP Strategic Plan 2016-2018, p. 9, para 13

The Judiciary is working with the participants to the proceedings to find ways to reduce this timeline.<sup>13</sup>

		Strategic Plan 2016-2018							
		2015		2016		2017		2018	
		Sem 1	Sem2	Sem 1	Sem2	Sem 1	Sem2	Sem 1	Sem2
Trial		5	5	4	5	5	5	6	5
1. CAR 1 (Bemba)									
2. Kenya 1									
3. Uganda – DO									
4. DRC 6									
5. Cdl 1									
6. CAR art 70									
7. Mali 2									
8. CAR 2(a)									
9. CAR 2(b)									

## H. Appeals

27. It is anticipated that the average number of cases on final appeal will increase in the coming years (including multi-accused cases). Assuming on the basis of comparative experience (e.g. the ad hoc Tribunals), that every judgment will be appealed by the OTP or the convicted person, it is possible to make an estimate on basic capacity.

28. Based on the low number of ICC final appeals so far, we cannot determine with absolute certainty an average duration of an appeal phase. Nevertheless, it is provisionally set on 2 years based on the appellate proceedings in Lubanga and Ngudjolo.

29. As the Office builds up to the basic size, an average of 2 final appeals per year can eventually be expected based on the projected timelines of the present and future trials for the period of 2016-2018. It is however expected that 3 final appeals will be reached by the end of 2018 and that this number appears to remain stable at 3 in the years following the current Strategic Plan given the current projections.<sup>14</sup>

		Strategic Plan 2016-2018							
		2015		2016		2017		2018	
		Sem 1	Sem2	Sem 1	Sem2	Sem 1	Sem2	Sem 1	Sem2
Appeals		0	0	1	1	2	3	2	3
1. CAR 1 (Bemba)									
2. CAR art 70									
3. Kenya 1									
4. Cdl 1									

<sup>13</sup> The table below contains mandated activities that are already certain and others foreseeable on the basis of assumptions coming out of the extrapolation; the latter have been selected randomly so it might be that other cases actually move forward depending on the circumstances.

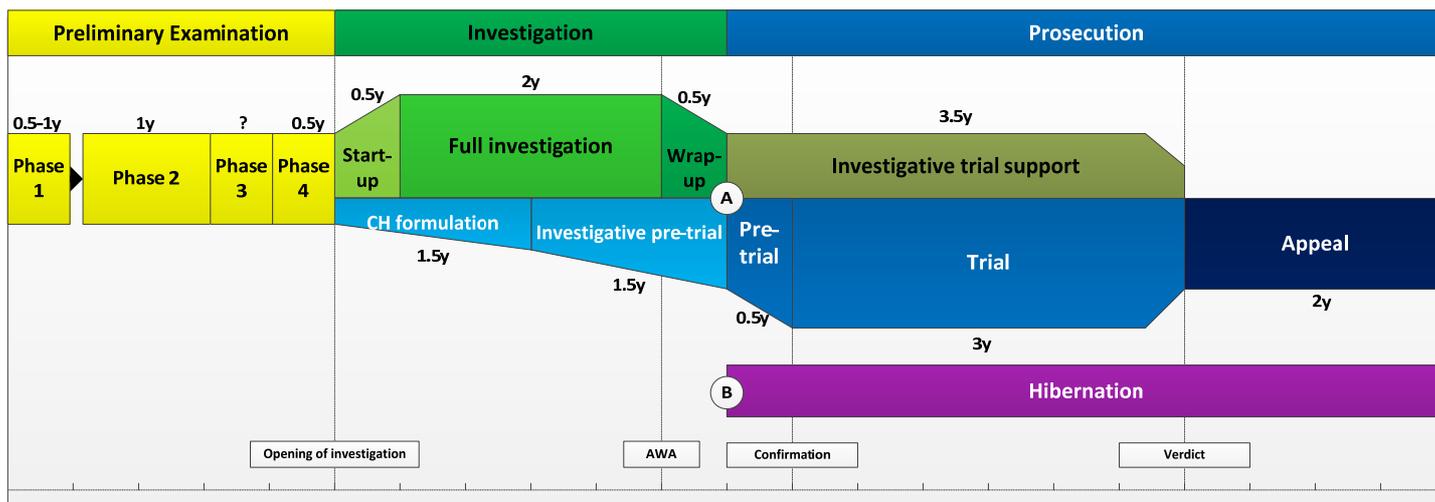
<sup>14</sup> See fn. 58

## Annex II

### Resource justification for mandated activities

#### A. Phasing of OTP activities

1. In order to explain the required resources for preliminary examinations, investigations and prosecutions, the different phases are projected on a theoretical timeline. It is an exercise based on averages because more flexibility is required in day-to-day OTP activities. Building on this projected timeline, every phase will be explained in the report with a breakdown of its resource justification.



2. The average preliminary examination commences with a period varying between 6 months to 1 year of gathering and analysing information with a view to assessing whether alleged crimes fall within the jurisdiction of the Court. This is followed where need, by the formal opening of a preliminary examination where the subject-matter jurisdiction is studied. A 1 year duration can be expected but variations often occur depending on the nature of the situation examined. The subsequent phase focuses on admissibility (complementarity and gravity), and often entails the assessment of national proceedings which inevitably makes it impossible to establish a definite duration of this phase. The last phase of approximately half a year consists in finalizing the full assessment, including in relation to the interests of justice, in order to inform the Prosecutor's decision on the possible opening of an investigation into a new situation.

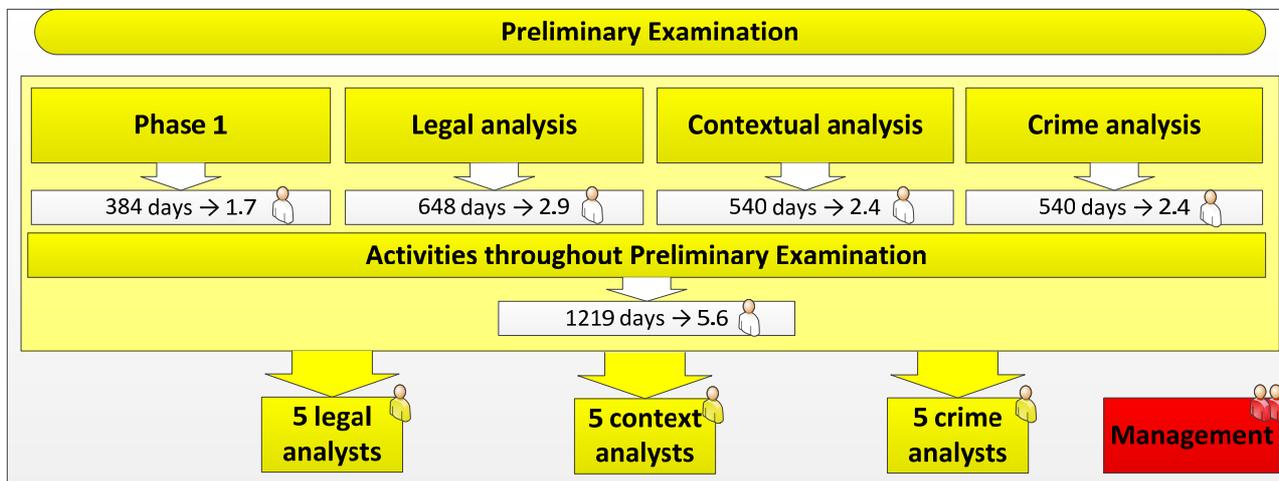
3. A situation may involve multiple investigations. In principle, at least the two sides of a conflict will be investigated if both sides have allegedly committed crimes. The two investigations will be conducted in parallel to avoid any perception of partiality. Furthermore, it is possible more than two investigations will take place. This depends on different factors: crimes representativeness, investigative strategy, prosecutorial goals in situation country, complementarity, etc. As mentioned, each investigation is estimated to take 3 years.

4. In parallel to the actual investigation a pre-trial phase starts as soon as a Case Hypothesis (CH) has been formulated. The pre-trial phase is composed of 2 parts: (1) the investigative pre-trial phase (1.5 years), during which the evidence is further analysed, the CH further refined, the arrest warrant prepared and preparatory steps for the disclosure are taken, and (2) the confirmation pre-trial stage, which also translates in the commencement of the prosecution phase. On average, the confirmation pre-trial phase lasts 6 months. The foreseen 6-month length covers the period of time elapsed between initial appearance of a suspect and completion of the confirmation of charges process. In this phase, the confirmation hearing is a critical event. If, however, the suspect is at large and cannot be found, ordinarily no confirmation hearing will take place, and the case will go into hibernation.

5. In what follows, the resource justification for all OTP mandated activities will be provided. Annex 3 will offer a similar explanation for the supporting activities.

**B. Basic team preliminary examination**

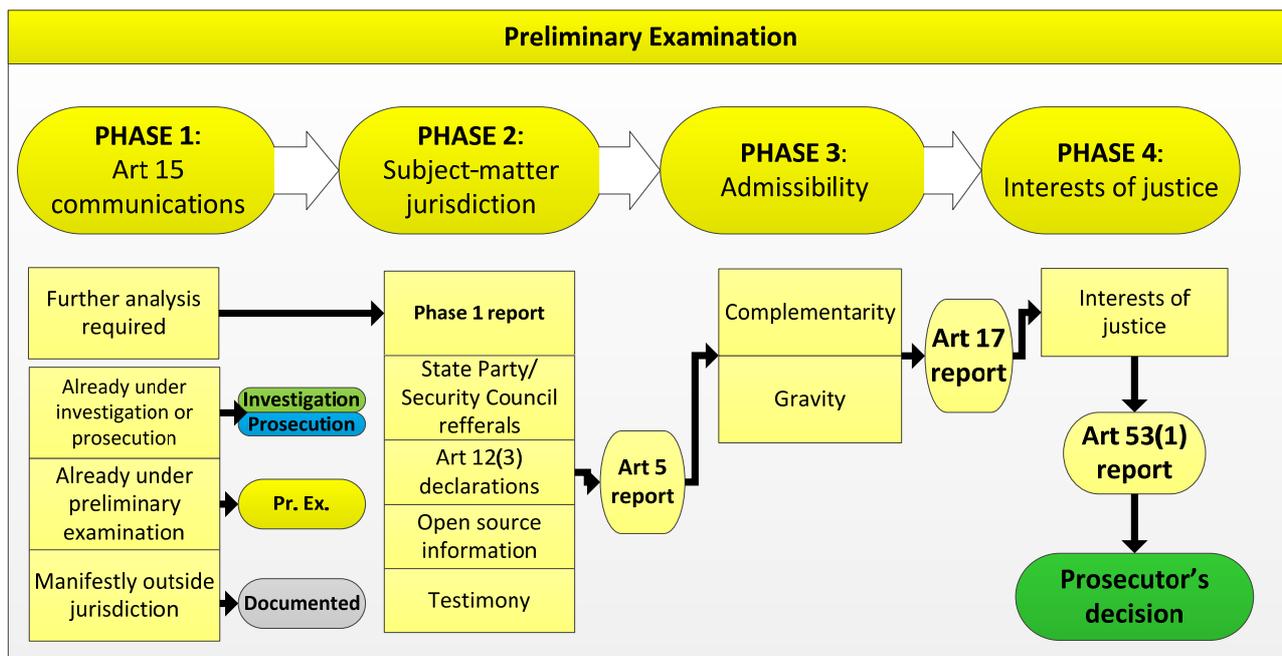
6. Taken as a whole, the activities of a preliminary examination require 17 FTE under the Strategic Plan 2016-2018.



7. The Situation Analysis Section (SAS) carries out all preliminary examinations and provides advice on complex matters of fact and law regarding jurisdiction, admissibility, and the interests of justice, in particular taking into account the interests of victims. As explained in the present OTP Strategic Plan (June 2012-2015), conducting preliminary examinations is one of the three mandated activities of the Office, together with investigations and prosecutions. Preliminary examinations are not only critical for deciding on whether to open investigations, they also serve to lay a firm foundation for cooperation in situations where new investigations are opened. Preliminary examinations can also have a preventative effect and can serve to foster domestic efforts, potentially obviating the need for intervention by the Court. Lastly, the vital analytical work conducted by SAS feeds into the analysis that is essential to successful investigations when the Prosecutor decides to open an investigation in a situation.

**1. Preliminary Examination process**

8. In order to distinguish those situations that warrant investigation from those that do not, and in order to manage the analysis of the factors set out in article 53(1), the Office has established a filtering process comprising four phases. While each phase focusses on a distinct statutory factor for analytical purposes, the Office applies a holistic approach throughout the preliminary examination process.



9. **Phase 1** consists of an initial assessment of all information on alleged crimes received under article 15 ('communications'). The purpose is to analyse and verify the seriousness of the information received, filter out information on crimes that are outside the jurisdiction of the Court and identify those that appear to fall within the jurisdiction of the Court. Specifically, the initial assessment distinguishes between communications relating to: (1) matters which are manifestly outside the jurisdiction of the Court; (2) a situation already under preliminary examination; (3) a situation already under investigation or forming the basis of a prosecution; or (4) matters which are neither manifestly outside the jurisdiction of the Court nor related to situations already under preliminary examination or investigation or forming the basis of a prosecution, and therefore warrant further analysis.

10. Communications deemed to be manifestly outside the Court's jurisdiction may be revisited in light of new information or circumstances. Communications deemed to require further analysis will be the subject of a dedicated analytical report which will assess whether the alleged crimes appear to fall within the jurisdiction of the Court. Such communications shall be analysed in combination with open source information, such as reports from the United Nations, non-governmental organisations and other reliable sources for corroboration purposes.

11. **Phase 2** represents the formal commencement of a preliminary examination of a given situation. It focuses on whether the preconditions to the exercise of jurisdiction under article 12 are satisfied and whether there is a reasonable basis to believe that the alleged crimes fall within the subject-matter jurisdiction of the Court. Phase 2-analysis is conducted in respect of all article 15 communications that were not rejected in Phase 1, as well as of information arising from referrals by a State Party or the Security Council, declarations lodged pursuant to article 12(3), open source information, and testimony received at the seat of the Court.

Phase 2-analysis entails a thorough factual and legal assessment of the crimes allegedly committed in the situation at hand, with a view to identifying potential cases falling within the jurisdiction of the Court. The Office may further gather information on relevant national proceedings, if such information is available at this stage. Phase 2 leads to the submission of an 'Article 5 report' to the Prosecutor, in reference to the material jurisdiction of the Court as defined in article 5 of the Statute.

12. **Phase 3** focusses on the admissibility of potential cases in terms of complementarity and gravity pursuant to article 17. In this phase, the Office will also continue to collect information on subject-matter jurisdiction, in particular when new or ongoing crimes are alleged to have been committed within the situation. Phase 3 leads to the submission of an

‘Article 17 report’ to the Prosecutor, in reference to the admissibility issues as defined in article 17 of the Statute.

13. **Phase 4** examines the interests of justice. It results in the production of an ‘Article 53(1) report’ which provides the basis for the Prosecutor to determine whether to initiate an investigation in accordance with article 53(1).

**2. Activities throughout the preliminary examination**

14. As article 15 sets out, at the preliminary examination stage the Office may receive information on alleged crimes and may seek additional information from States, organs of the United Nations, intergovernmental or non-governmental organisations and other reliable sources. Accordingly, the Office can send requests for information to such sources for the purpose of analysing the seriousness of the information received.

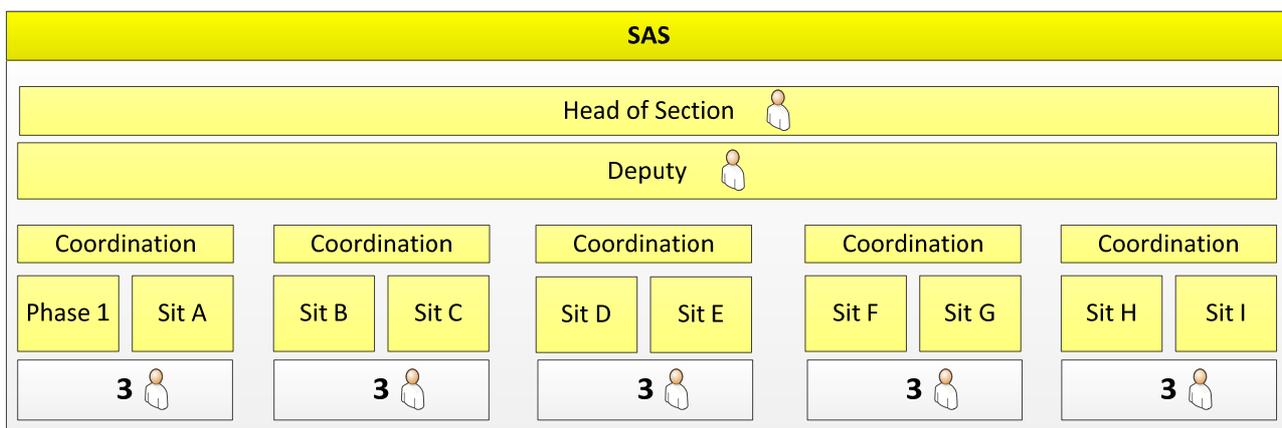
15. The Office may also undertake field missions to the territory concerned in order to consult with the competent national authorities, the affected communities and other relevant stakeholders, such as civil society organisations

16. Additionally, SAS is responsible for providing regular public information on its preliminary examination activities, including through early interaction with stakeholders, dissemination of relevant statistics on article 15 communications, public statements, periodic reports, and information on high level visits to the concerned States.

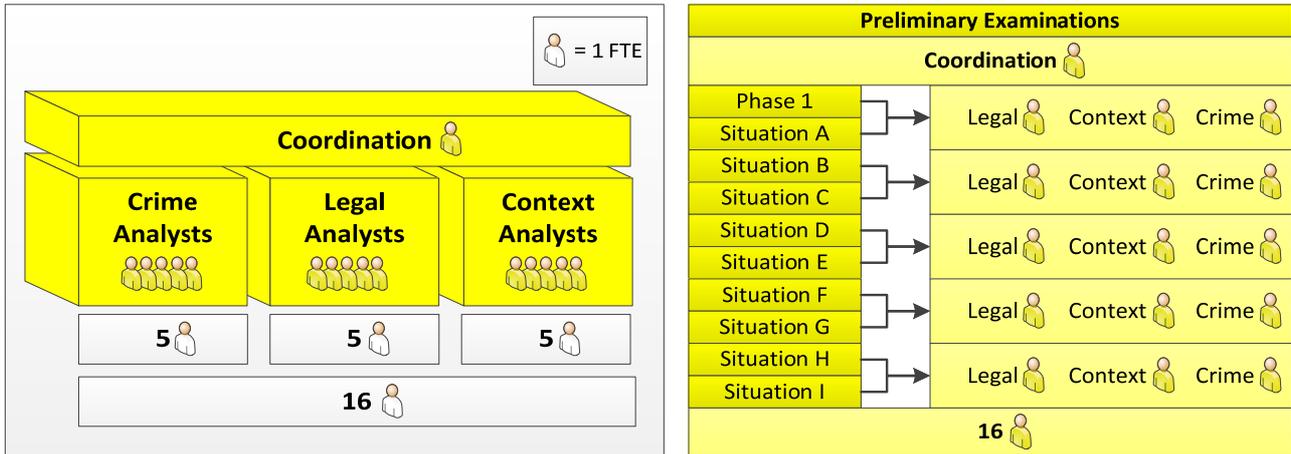
**3. Overview of composition**

17. SAS currently has one Senior Situation Analyst (P4), one Situation Analyst (P3) and three Associate Situation Analysts (P2) on established posts. In addition, SAS currently has eight GTA positions, including two Situation Analysts (P3 level), four Associate Situation Analysts (P2 level), and two Assistant Situation Analysts (P1 level).

18. The P1 Assistant Situation Analysts normally perform crime pattern analysis, including information gathering and management. The P2 Associate Situation Analysts and the P-3 Situation Analysts are assigned evenly to phase II situations and phase III situations and perform legal, contextual and/or factual analysis in accordance with their respective skills. Networking with victims’ associations, NGOs, national authorities, international organisations, and other international partners is also a shared responsibility of P2-P3 analysts. The P3 Situation Analysts also act as lead analysts on the situations assigned to them, namely by coordinating activities, outlining next steps and ensuring progress of the given preliminary examination.

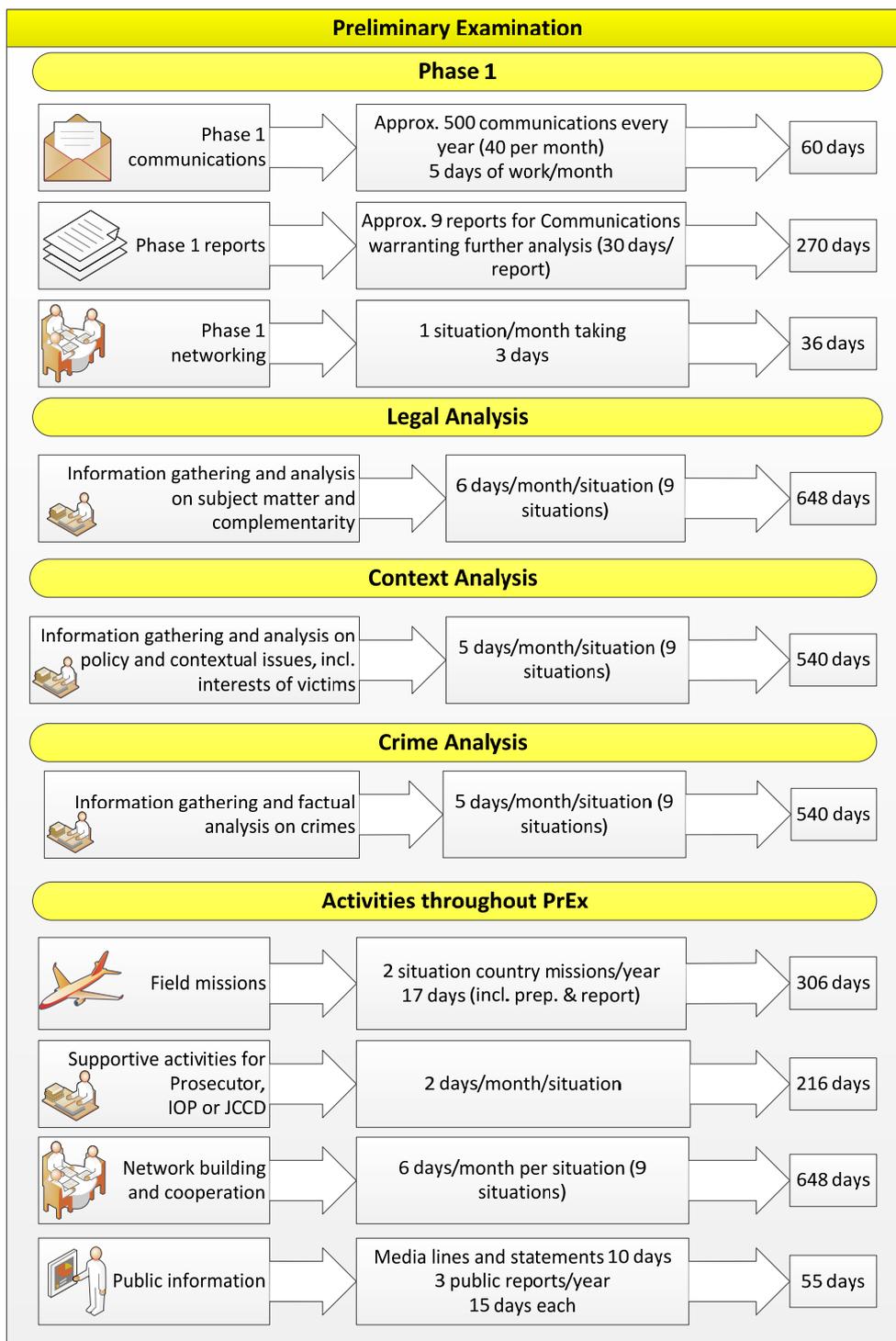


19. In order to cope with a workload of 9 preliminary examinations per year within a reasonable timeframe, the level of SAS resources will need to increase from the current 13 to an estimated 17 FTE posts, excluding the administrative positions covered at the divisional level.<sup>1</sup> The additional four positions include one Assistant Situation Analyst (P1), two Situation Analysts (P3), and a Deputy Head of Section. The increase will provide the section with the required number of lead analysts to coordinate 9 preliminary examinations (2 each). Under the proposed model, three analysts would be assigned half-time to each of the 9 preliminary examinations, as well as phase 1 activities, and cover the three main types of analysis performed by SAS (legal, contextual and crime analysis).



<sup>1</sup> See annex III, chapter 2

4. Justification of resources



20. Thus, throughout the Preliminary Examination, three types of analysis (legal, context, crime) take place. A team of 1.5 FTE<sup>2</sup> focuses on these 3 different topics, and depending on the nature of the situation and the applicable phase of the Preliminary Examination, some types of analysis might temporarily receive more attention and resources than others. The requested team of 1.5 FTE per Preliminary Examination would provide for the necessary depth in resources to cater for this. Of the 3 FTE working on two situations, one FTE at P-3 level will take, on top of his/her substantive work, a coordinating

<sup>2</sup> Following the workload illustrated on previous page, workload of 3319 days or 15 FTE spread over 9 situations + phase 1 activities results in teams of 1.5 FTE per situation

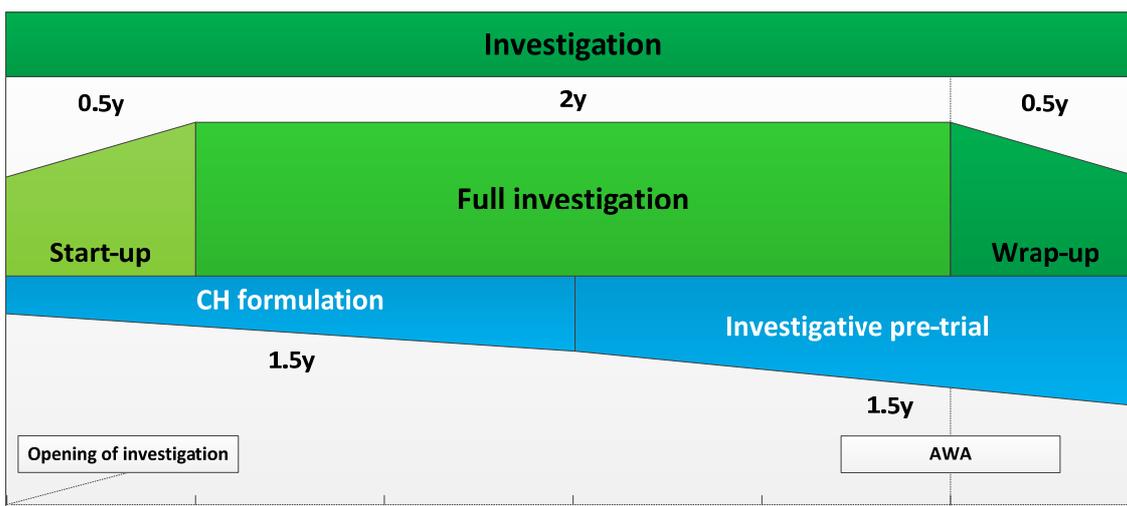
role. Overall and on average, this division of labour results in 1.5 FTE throughout the process equally spread over the phase 1 activities, crime, context and legal analysis. As one can note from the illustration above, phase 1 activities require roughly the same amount of resources as a full preliminary examination into a situation. Overall, 4 teams of analysts will conduct a preliminary examination for 2 situations each and another team will conduct phase 1 activities along with 1 preliminary examination.

21. These 5 different teams of analysts require proper coordination. The deputy head of section assists the Head of Section in this regard. This additional capacity is necessary to maintain adequate external representation of the SAS in high-level meetings given the number of situation countries the OTP is facing. It should also allow SAS to better face its linguistic challenges as a more diverse demand emerges. The deputy will ensure proper editorial and legal review of analytical products.

## C. Basic team investigation

### 1. Investigation process

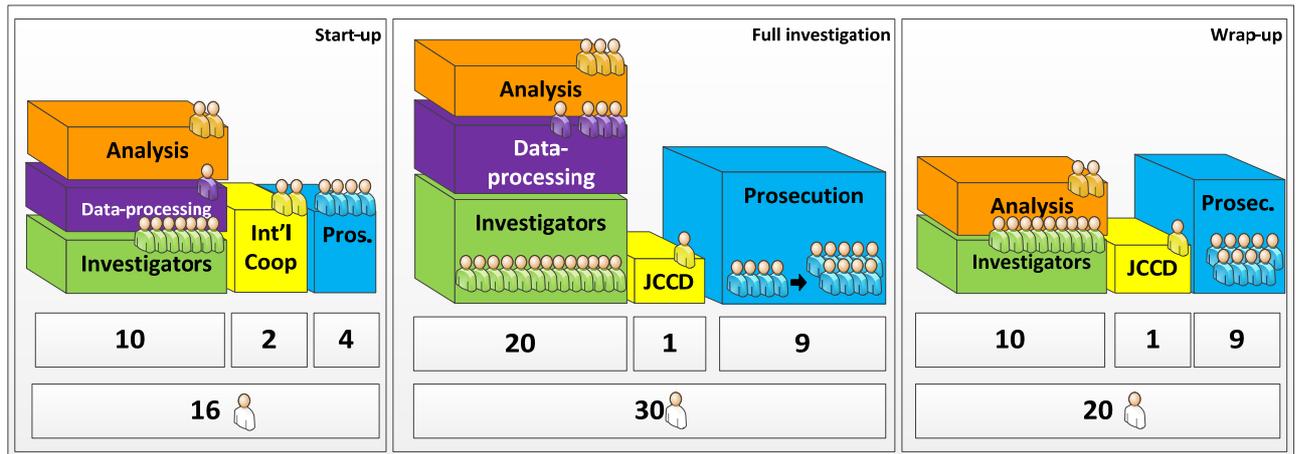
22. The different phases of an investigation are illustrated below. As already advanced, an investigation includes a start-up and a wrap-up phase. These phases allow for a smooth transition from one investigation to another. From a resource perspective, these phases are less intensive and require around 50% of full capacity for the investigation division while the prosecution division will see its capacity gradually increase as its role moves towards presentation of a case in court.



### 2. Overview of composition

23. The picture below represents an overview of all resources required within an integrated team based on its previously submitted composition as reflected in the strategic plan June 2012-2015 and the budgets for 2014 and 2015. Three positions have been added to the previous model: two additional FAD assistants<sup>3</sup> and one online investigator. For the duration of the start-up phase, international cooperation temporarily requires an additional JCCD staff member.

<sup>3</sup> Approved under resolution 'ICC-ASP/13/Res.1', 217.



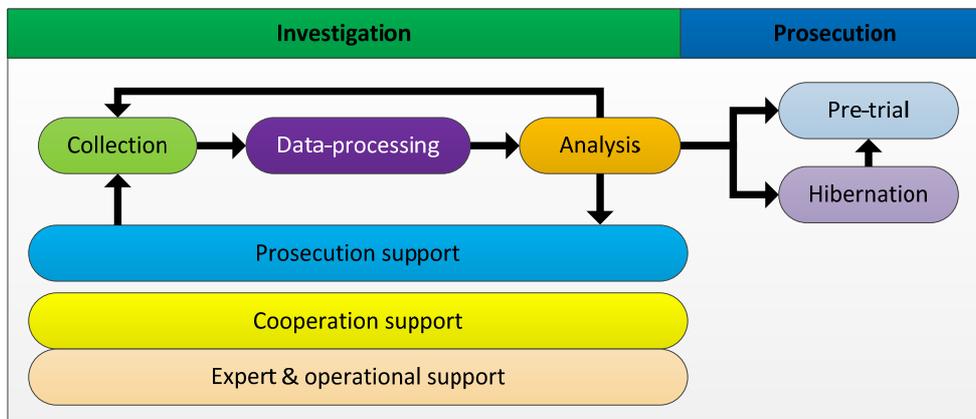
Throughout the life cycle of an integrated team the resources evolve as follows:

	Start-up 0.5 y	Full investigation 2 y	Wrap-up 0.5 y
JCCD	2	1	1
ID	10	20	10
PD	4	9	9
<b>Total</b>	<b>16</b>	<b>30</b>	<b>20</b>

24. The above model describes a standard integrated team. Sometimes, however, resource requirements are higher due to increased case complexity. Additional suspects or incidents under investigation may require more capacity. One additional pair of investigators, an analyst and potentially an increase in other divisions will be required per additional incident or suspect. It should be noted however that (1) this would be exceptional, (2) limited in resources and (3) temporary (GTA for the duration of the full investigation phase (2y)).

### 3. Justification of resources

25. The diagram below illustrates the general process of an investigation. In the following paragraph, each of the major activities will be clarified, the required resources will be highlighted and an explanation justifying these required resources will be provided. Similar analysis for the prosecution phase, hibernated cases resources and resources dedicated to international cooperation and judicial assistance will be provided in the following chapters. In annex 3, the resources for expert and operational support and general management and administration will be discussed.



(a) *Collection*

26. During the start-up of the investigation a small team is formed. The newly integrated team studies the culture and context of the country and the preliminary examination material, while security and operational assessments are being made in order to set up operations in the field. Initial missions are conducted to identify sources of information, establish a network of cooperation, organise logistics and to help narrowing down the possible cases to investigate from a relevance and feasibility perspective.

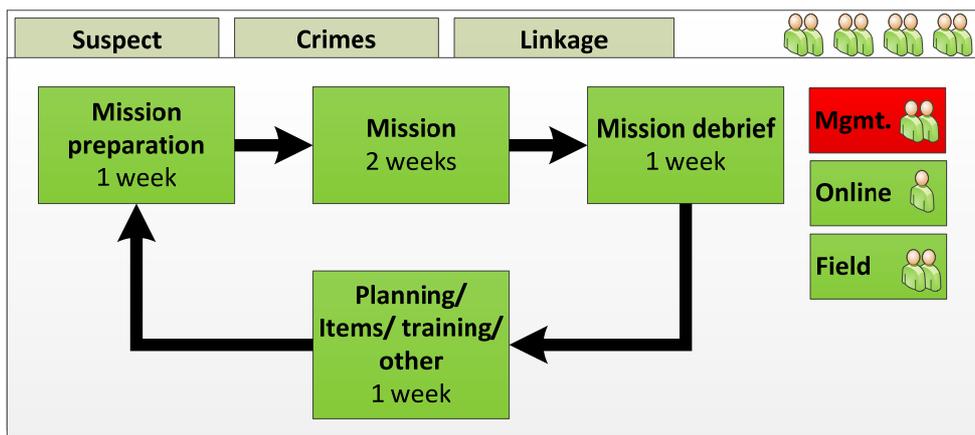
27. The end of the start-up phase signifies the formation of a fully resourced integrated team and the commencement of evidence collection. During the collection phase, investigators collect evidentiary materials such as witness statements, documentary evidence, crime scene material, etc. In any investigation, there are three key elements: (1) the crimes committed, (2) the linkage of organization and suspects to the crimes and (3) the role, knowledge and intent of the suspects. Broadly, two pairs of collectors are allocated to crime base activity, which include obtaining evidence on the crimes under investigation – how they occurred, type and level of victimisation, identification and interview of witnesses and victims of those crimes, etc. In parallel, 2 other pairs focus on suspects and linkage. For suspects, it is necessary to conduct lines of inquiry into role, knowledge and intent, as well as the linkage between any organization involved and the crime, including knowing more about its purpose, structure, functioning and activities. As part of the effort in linking the suspects with crimes, a specialized financial investigation follows up on the financing and logistics required by the individuals and/or organisations to commit the crimes.<sup>4</sup> Whether it is an investigative activity on crime base or, suspects and linkage, one essential recurring element is witness interaction.

28. The 4 pairs of investigators undertake 5 week cycles of activities. 1 week is dedicated to prepare the upcoming missions. This requires ensuring up to date knowledge regarding the case and the interviewee, identification of knowledge gaps, detailed interview questionnaire for each person, etc. The mission itself takes 2 weeks and entails travel and deployment to the situation country and face-to-face interviews with potential witnesses, undertaken in a discrete and confidential manner. Upon return, a 1 week mission de-briefing is required. The mission de-briefing involves registration of all relevant material, updating the system with essential information obtained, biographical or security information and ensuring that the team is updated on the results. During this week, new leads and lines of enquiry are also identified. Finally, a week is reserved where administration, training, coordination meetings of the integrated teams and the division, and other case-related activities such as maintaining contact with witnesses takes place. The Investigation Division is also pursuing a number of development projects, and accordingly, the cycle also uses that same week for such activities.

29. Next to these 8 investigators occupied in the mission cycle, 2 field-based investigators are dedicated to leads development, public investigative activities, coordination with partners and follow-up steps from concluded missions. Furthermore, a specialized investigator conducts online investigations from HQ. The activities of the online investigator are focused on searches on the web to collect leads and information and evidence. For complex tasks, they rely on the cyber experts active in the Scientific Response Unit (SRU). The whole process is managed by a Team Leader and Deputy Team Leader who occasionally undertake collection missions as well.

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<sup>4</sup> ICC-ASP/13/10, 215, 217



30. Following the OTP strategic plan 2012-2015, the OTP has enhanced its capabilities to collect other forms of evidence in addition to witness statements, in particular scientific and cyber evidence. A more diverse range of evidence will be submitted during the coming years.<sup>5</sup> Technological innovations in everyday life have an increasing impact on the type of evidence that can be presented in court. Currently, the OTP already makes extensive use of satellite imagery, cyber investigations, telecommunications data, crime scene investigations (CSI), financial investigations, and other evidentiary materials. Non-witness related evidentiary materials allow the OTP to adequately verify the accuracy of witness statements, thus contributing to the quality of the case.

Historically, non-testimonial evidence<sup>6</sup> has amounted to a yearly average of 15.000 items for all ongoing investigations. The increasing widespread availability of technology in terms of mobile phones, laptops and other digital media carriers will impact on the OTP investigations which is the reason to increase the ability in the team to deal with these new forms of evidence as well as the forensic support by the Scientific Response Unit (SRU) to the team. The further evolution of technology and its impact on the OTP has been identified as a strategic goal for the Office. For illustration, the table below shows a comparison of collection between the first and last three investigations.



31. During the winding down phase of the investigation all steps are taken to prepare the case to go to trial or to be hibernated. The remaining investigative activities are performed. It is verified if all material has been properly processed. Witness contact data are updated and witness focal points designated. The well-functioning of the witness protection systems is verified.

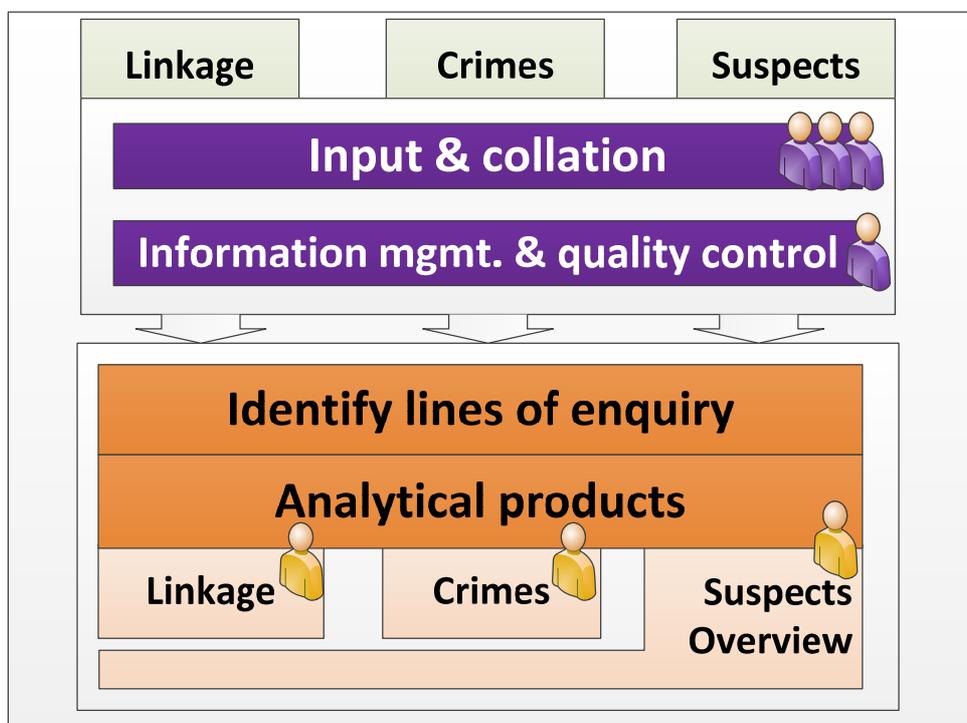
<sup>5</sup> OTP Strategic Plan, 4, 18

<sup>6</sup> Thus excluding witness statement transcriptions.

(b) *Data-processing and analysis*

32. Under the Basic Size, an average of about 85 witness statements<sup>7</sup> and 10.000 items of evidence will be processed and analysed every year, including crime scene evidence and internal reports, digital evidence and satellite imagery, equating to a total of 70.000 pages<sup>8</sup>. Before the analysts can produce their analytical products (databases, reports, maps, relational charts, briefings, etc.) and present their findings the collected material needs to be processed and quality controlled. Processing involves the input, collation and referencing of evidence. For each analyst, 1 data-inputter is provided. Together with the investigators and analysts data-inputters are responsible for the input of the above identified material into the Factual Analytical Database and the Investigation Management System.

In the past, analysts have been too much occupied with data-processing due to resource constraints. Many analytical products were dropped in every investigation because the analysts could not complete the task on time, or they were seriously delayed, or they could not be updated with incoming new evidence. This had a negative impact on the quality of the investigations and cases brought before the judges. The 2015 Budget Proposal consequently requested additional capacity (2 data inputters per active investigation). The increased collection of material still requires an extra third data inputter per team which will free up analytical capacity.



33. The “intelligence-led investigation” is considered as best practice for complex criminal investigations. Analysis plays a leading role in keeping a good overview of all the relevant information and evidence, providing guidance, and answering the key factual questions about criminal group structures, their communications, and crime patterns.<sup>9</sup>

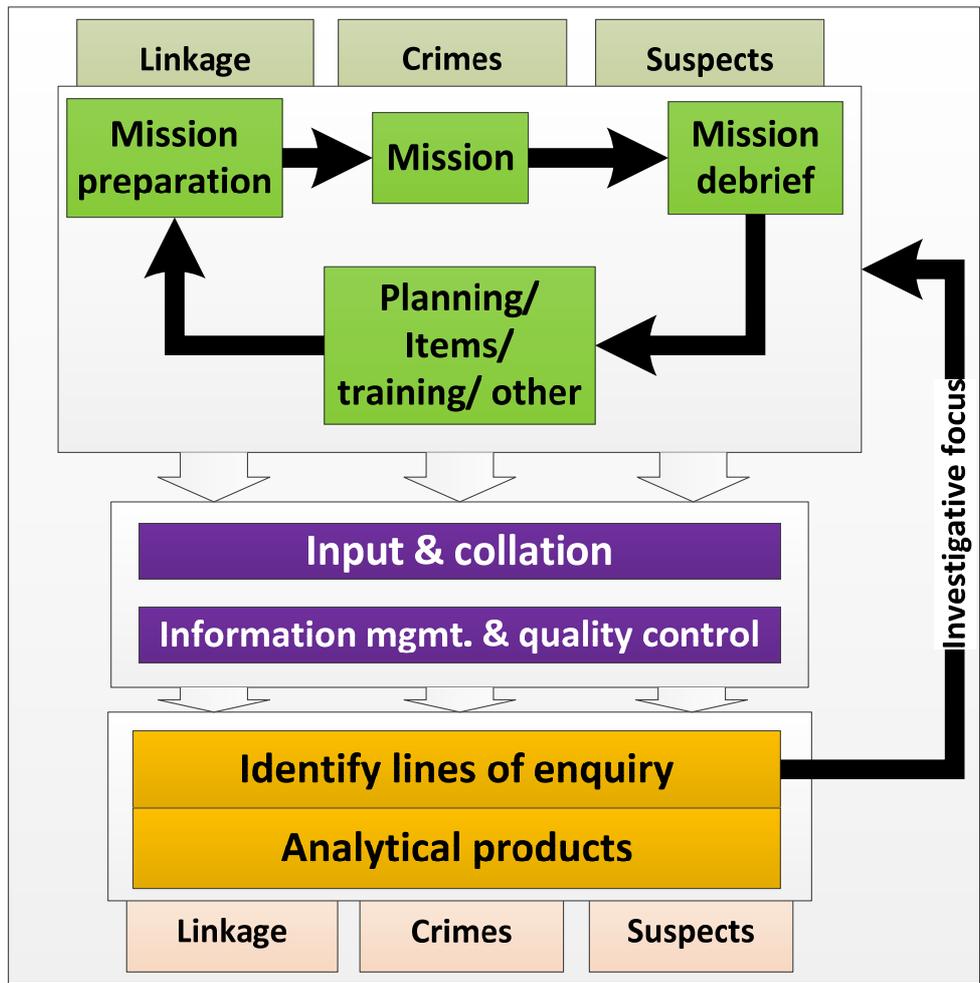
The analytical work results in the identification of supplementary lines of inquiry and analytical findings (incident reports, structural analysis, relation mapping, crime patterns, profiles, etc.). These analytical products are fed back into the collection cycle where the investigators are now able to focus on more case-relevant leads or lines of inquiry. The analysts’ tasks are organised along the same lines as investigators (suspects, crimes and linkage).

<sup>7</sup> On average 20 pages per statement resulting in 3360 pages for 170 statements.

<sup>8</sup> 70.000 pages is roughly the equivalent of 2 Encyclopaedia Britannica’s (32.640 pages).

<sup>9</sup> ICC-ASP/13/10, 216

34. All in all, the underlying figure illustrates the whole process or investigative cycle where the analytical feedback in relation to the collection efforts is illustrated.



(c) Prosecution support

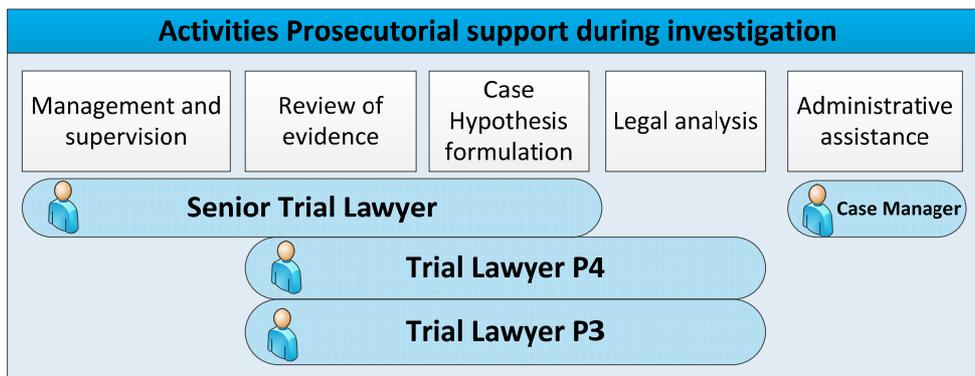
35. Over the duration of an investigation, PD contemplates the initial deployment of a confined module of 4 persons for the purposes of the start-up phase of an investigation. The module consists of trial lawyers working under the supervision of a Senior Trial Lawyer (STL). Their activities mainly focus on formulation of the Case Hypotheses thereby contributing to the strategic goal of conducting open-ended investigation. After the Case Hypothesis has been formulated, the investigation will go further into depth to further assess the validity of the case hypothesis. For this full investigation, legal analysis of evidence and ensuing drafting of an AWA, a full investigative pre-trial team of 9 persons<sup>10</sup> is engaged (PD component of the integrated team). The team will work on in-depth legal analysis of the evidence to see if the case is on its way to becoming trial-ready, on giving guidance to the collection and analysis, on the preparation of an arrest warrant and on the disclosure preparation.

36. Similar to the resources in ID, PD has a relatively stable level of staff engaged in the integrated teams as a whole, given that 5 pre-trial teams and 5 trial teams allow for a buffer in times of higher resource requirements. When activity is lower in one domain, the extra capacity will be required on another domain.

37. Before Case Hypotheses are formulated, it is necessary to review all information and conduct a legal analysis. Furthermore, from the outset, the STL is in charge of the whole

<sup>10</sup> Headcount is 9. However, in budget terms it is 8 FTE given that the Senior Trial Lawyer and Case Manager are engaged in two different cases

investigation. The Case Manager (in charge of classification of evidence, disclosure, handling filings and other tasks connected to the preparation of a case) provides assistance throughout the case. The diagram below illustrates the activities of PD before the pre-trial phase commences.



38. The Senior Trial Lawyer is entrusted with the task of leading the integrated team and providing overall guidance on the investigation of cases. Each STL is expected to handle one case in court while simultaneously providing guidance to an active investigation, supported by the P4 Trial Lawyer as well as other PD members under his or her supervision.

39. Review of evidence is an essential activity for PD. The collected evidentiary materials and witness statements are evaluated in terms of future admissibility and probative weight. In other words, a factual and legal analysis pertaining to the quality and persuasive value of the evidence, if filed in a judicial setting, takes place. A retrieval and preliminary analysis of the evidence is conducted by the Legal Assistant, which is then shared with the Associate Trial Lawyers, and Trial Lawyers. The exercise is coordinated by the P-4 Trial Lawyer, who reports directly to the STL. The team then undertakes the drafting of the Case Hypothesis which is subject to further refinement. The development of the CH finds its basis in the collected evidence and the initial analysis. In turn, the collection efforts by the investigators can be provided with case-specific guidance. The exercise of identifying additional lines of enquiry supports the analytical duties. This results in more focused collection efforts where gaps in the evidence are identified and further investigation needs are communicated to the investigators.

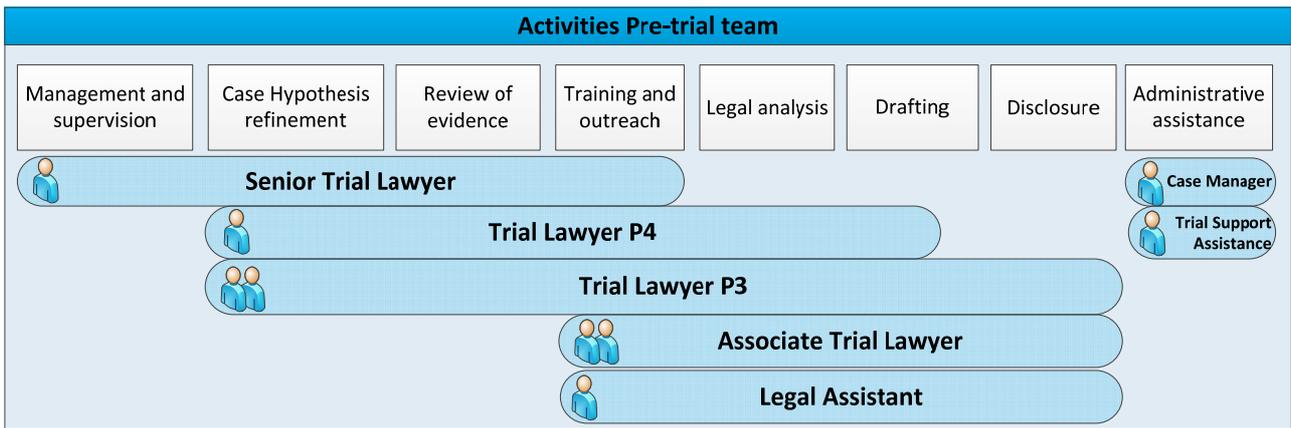
40. The Case Manager, as advanced, has a supporting role vis-à-vis the lawyers. He/she manages and handles the files and information and is dedicated to two integrated teams at the same time.<sup>11</sup> Further legal and administrative assistance, in particular with regard to disclosure, is provided by the Trial Support Assistant. Both functions continue providing support until the end of the trial stage.

41. The figure below illustrates which tasks are undertaken by the PD-staff in the integrated team after a Case Hypothesis has been formulated. Having commenced as an open-ended investigation, the investigation will now proceed with a more in-depth approach. This requires an increase of resources from PD to further refine the Case Hypothesis and to prepare for an upcoming application for an arrest warrant (AWA) or a summons to appear.

42. Legal analysis is undertaken by the entire PD team. Lawyers need to be familiarized with the case which requires a considerable amount of examination of facts and law. Major legal analytical projects are undertaken as well. Documents such as legal memos, overview charts and chronologies of events<sup>12</sup> take a considerable amount of time. Training and external outreach are also division-wide activities that regularly occur.

<sup>11</sup> Hence the 0.5 FTE in the total of 8 FTE for PD in the investigative pre-trial phase

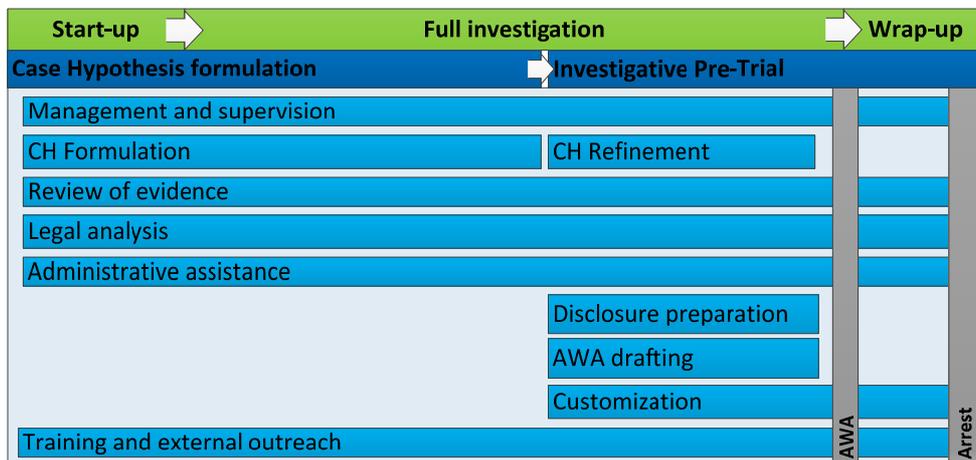
<sup>12</sup> The chronologies of events used during trial phase build upon the chronologies produced by the analysts during the investigation phase. During the trial, an update is required due to reassessments of evidence



43. Once the STL concludes that there is a solid case that should be brought to court, the process of preparation of an application for a warrant of arrest or a summons to appear begins. Under the Office’s internal procedures, the team must present its case and the evidence supporting it to an internal review panel, which determines whether the case is ripe for filing, whether there are any evidentiary gaps and whether the team’s legal and factual theories are sound. The AWA/summons precludes an arrest or an appearance and an eventual confirmation hearing.

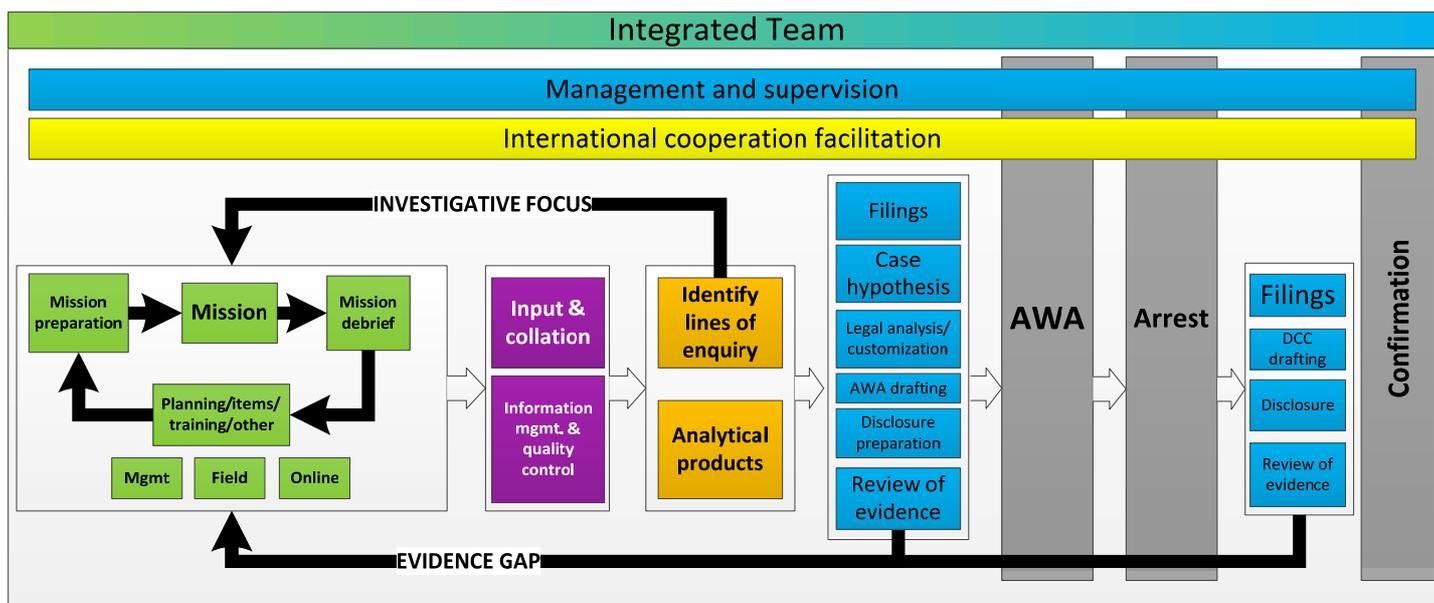
44. Disclosure related activities differ significantly depending on the stage of proceedings. As already explained, the new prosecutorial strategy aims at investigations being trial-ready as early as possible. This means that at the AW-stage, it may be easier to predict what materials will require disclosing to the defence, which should assist the OTP in satisfying the statutory disclosure requirements closer to the moment when arrest and surrender takes place. Disclosure related activities are performed by the Trial Lawyers, Legal Assistant, and Case Manager, supported by a Trial Assistant and with the technical assistance of the Knowledge Base Unit (KBU).

45. In the figure below the key activities of PD throughout the investigation are represented.



**4. General overview of the integrated team activities**

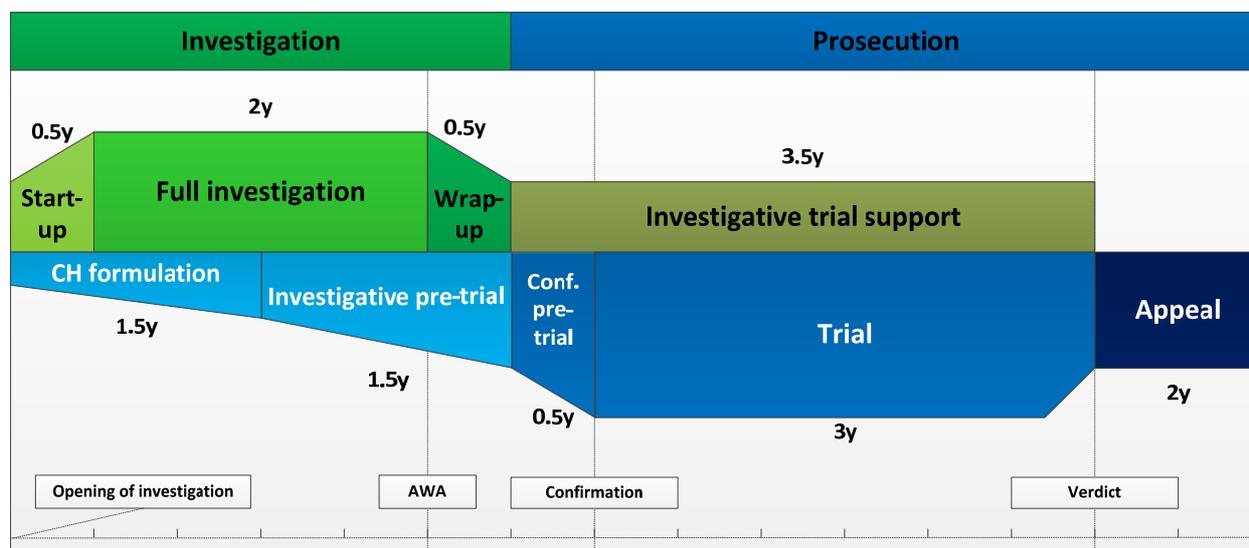
46. The following diagram illustrates and summarizes all activities of the integrated team over the course of an investigation.



## D. Basic team prosecution

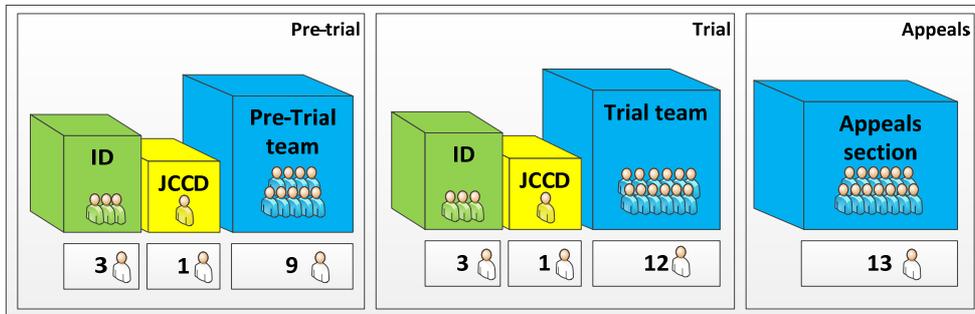
### 1. Prosecution process

47. The prosecution phase commences after the conclusion of an investigation and consists of the confirmation, trial and appeals stages. Pre-trial related activities are initiated during the investigation phase, as illustrated below. In total, the period covering the preparation of an AWA/summons during investigation (“investigative pre-trial” in the graphic below) and the completion of the confirmation pre-trial phase proper, will take up to 2 years. The trial phase, which includes a trial preparation period, the presentation of cases by Prosecution and Defence, as well as a final stage comprising closing arguments and, eventually, sentencing, is calculated to last around 3 years, depending on multiple and OTP-external factors. Appeals procedures take around 2 years.



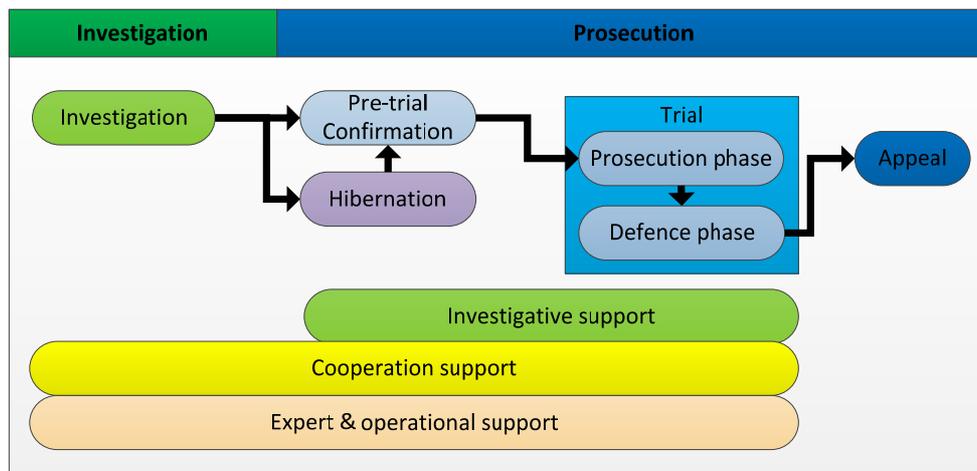
## 2. Overview of composition

48. The Pre-trial Confirmation stage concludes with a decision confirming charges, which, in turn, initiates the trial stage.<sup>13</sup> A trial will ordinarily be followed by an appeals phase. During all these stages, a PD team will be in charge of presenting the case before the relevant Chamber. In addition to the core prosecution teams in charge of the case, investigative support is provided by the investigators. Also the international cooperation support stemming from JCCD continues throughout the proceedings.



## 3. Justification of resources

49. The following diagram illustrates the general process of a prosecution. In what follows, each of these major activities will be clarified, the required resources will be pointed out and an explanation will justify these required resources. Activities with regard to hibernated cases will be discussed in the following section.



### (a) Pre-trial Confirmation phase

50. From the perspective of the Prosecution Division, pre-trial-related activities already commence during an investigation, where a case is formed, and, in terms of resources, a pre-trial team has already been constituted at that stage. This chapter, however, considers the pre-trial activities of this team only after the investigation has been concluded. For the justification of the size of the pre-trial team that builds up towards an AWA during an investigation, please refer to the chapters above.

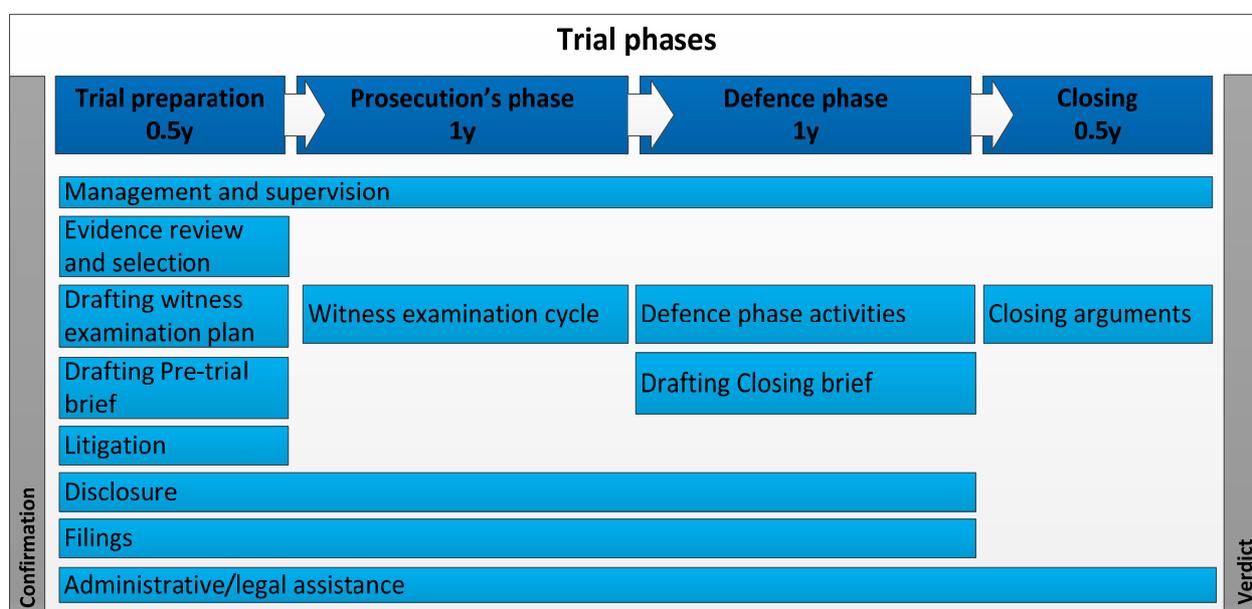
51. At this juncture, the PD team must build on the work done during the investigation phase. The team's priority is to prepare the case for presentation at the confirmation hearing, which involves, inter alia, the preparation of a Document Containing the Charges

<sup>13</sup> A PTC can also decide not to confirm charges (in which case the OTP can come back with new facts or evidence, or adjourn proceedings and ask the OTP to consider providing further evidence or amending the charges (article 61 (7) (b) and (c)).

(DCC), for which a full internal evidence review is required. The team must also prepare the list of the evidence that it will rely on at the confirmation hearing, as well as file any supplementary charts or documents required by the Chamber. Finally, the team must disclose to the defence the evidence it intends to rely on at the confirmation hearing in a timely and efficient manner, as well as a significant amount of material falling under article 67 (2) and/or rule 77.

(b) *Trial*

52. After charges are confirmed, the case proceeds to the trial phase. A trial team consisting of 12 PD staff go through all phases of the trial process: trial preparation, the presentation of the Prosecution's case, the Defence's case, the closing stage and, if there is a conviction, the sentencing phase. Similarly to the investigation phase, the duration is dependent on external factors. For instance, the approach of the Defence to the case (including its ability to make agreements as to relevant facts) and the Chamber's exercise of its regulatory powers play a critical role in this regard. Having said this, it is an objective of the OTP to make more efficient use of courtroom time; at the same time, there are ongoing lessons learned efforts at the Court aimed at making proceedings more efficient and expeditious. Considering these factors, and on the basis of the accumulated experience, it is possible to predict an average duration of three years per trial.<sup>14</sup>



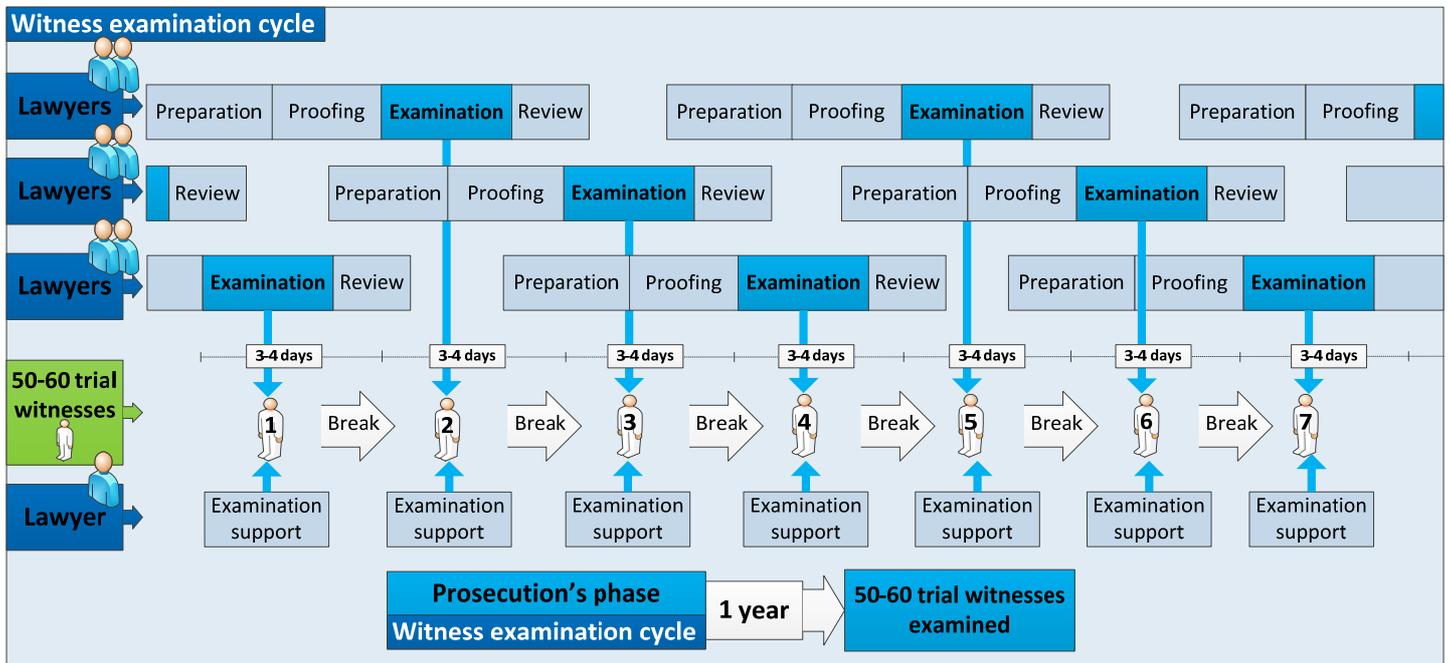
53. The trial preparation phase involves litigation pertaining to various matters such as conduct of proceedings, protocols regulating the conduct of parties during trial as well as any legal challenges brought by the defence. While dealing with these matters, the trial team must continue with its core business of ensuring that the case is adequately prepared for trial presentation. This involves, inter alia, deciding on order of witnesses, defining the best methods for presentation of non-testimonial evidence, drafting of the opening statement, witness security issues and other strategic discussions. Prior to the commencement of trial, any outstanding disclosure must also be done. The latter is a particularly huge and resource intensive exercise. Disclosure-related activities might still be required during the trial phase.

54. The presentation of the Prosecution's case is largely dominated by the witness examination cycle. As soon as the first witness is examined in Court and the evidence is being presented, the activities will almost exclusively revolve around this cycle. Bearing in mind that (a) the maximum available days for one courtroom amounts to 215 days<sup>15</sup>, (b) that the OTP will make more efficient use of courtroom time in presenting its evidence

<sup>14</sup> The reparations phase, during which the OTP plays a peripheral role, is not counted.

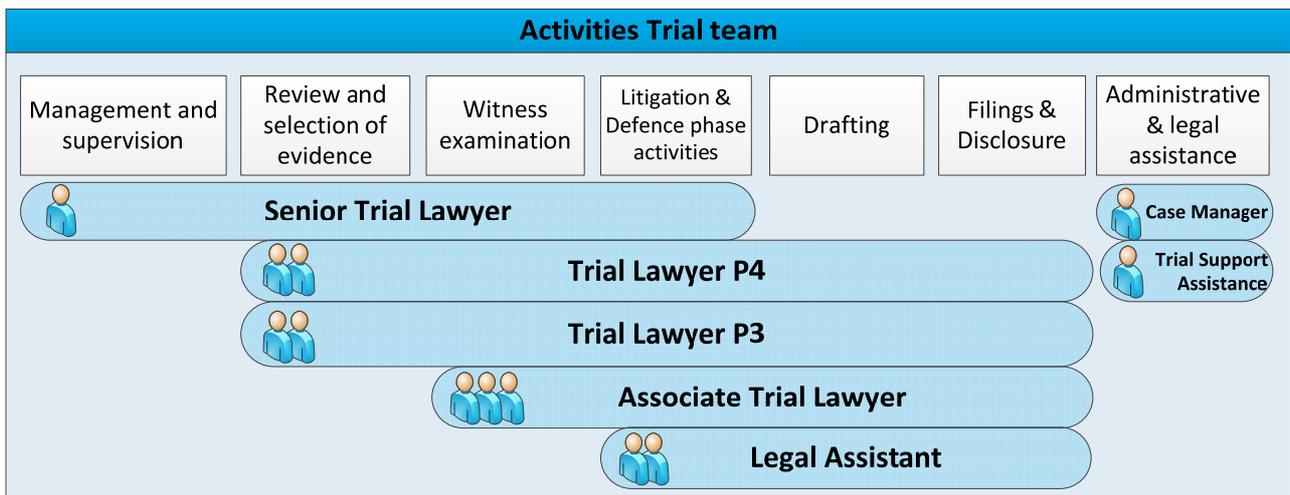
<sup>15</sup> CBF24/07P01

which can shorten the witness examination period to 3-4 days, and (c) that 50-60 trial witnesses combined with other forms of evidence has been set as the threshold for presenting a qualitative case at the highest of standards, the OTP requires 1 year to conclude the Prosecution’s phase. Two lawyers are occupied with 1 witness and follow through a consistent cycle throughout.



55. The duration of the Defence case is something beyond the Prosecution’s control. For the purpose of this report, the duration has been set at 1 year to adequately provide the defendant with time to make his/her case.

56. The illustration below sets out an overview of the different activities undertaken by the PD resources during a trial.



57. Investigative resources are required both in the prosecution and defence phases. Activities include investigations for the purpose of rebuttal of defence lines and cross-examination of witnesses. During the defence phase, investigation into the credibility and rebuttal of defence witnesses’ testimony also requires a minimum of three investigative resources. Ideally, 2 investigators and 1 analyst support the prosecutorial phase.

58. The cooperation advisor continues his/her work during the trial phase, on elements relating to pending materials for which conditions of receipt need to be amended or

protective measures to be sought by the Chamber concerned. More particularly, during the trial, the international cooperation advisor will deal with issues that arise during the course of proceedings, including challenges to the legality of evidence collected from states via requests for assistance, the possible summoning of witnesses who have refused to voluntarily cooperate further, the ongoing protection needs of witnesses, new issues arising from litigation that require the seeking or production of additional evidence, cooperation of States on issues related to witness inferences or offences against the administration of justice, or on litigation related to non-compliance.

59. The trial finishes with the closing phase, where extensive and time-consuming written closing submissions are drafted, and closing arguments are made. If there is a conviction, then normally an adjournment will be ordered and a sentencing hearing will be scheduled.<sup>16</sup> At the hearing, the PD team will (a) present additional evidence on the relevant sentencing factors; (b) point at the existing evidence on the record which is deemed relevant for sentencing purposes; and (c) seek to determine on the basis of the applicable legal and factual arguments which is the adequate sentence on the basis of the gravity of the crimes and the culpability of the accused. The OTP intervention as a party to the proceedings finishes here. If there is a reparations process, OTP will only play a side role.

(c) *Appeals*

60. The Appeals Section presently consists of 7 staff (1 Senior Appeals Counsel and Head of the Section, 5 appeals counsel and a case manager).<sup>17</sup> Bearing in mind: (a) the anticipated increased number of cases proceeding to the final appeals phase (some of these involving two accused persons and one involving multiple accused (5 persons)); (b) the increased workload generated by final appeals—full appellate activity (full briefing and hearings), as opposed to appeals hearings only in 2014; (c) the increased number of cases in the pre-trial and trial phases that will require interlocutory appellate and drafting work by the Appeals Section; (d) the increased role of the Appeals Section in legal advisory work and preparation of submissions and filings for pre-trial and trial teams; (e) the increased number of cases in all other phases of the Prosecution’s activities which also generate significant work for the Appeals Section (in particular, preliminary examinations, review proceedings, reparations, early release proceedings, revision and compensation proceedings); and (f) that the most significant increase in work for the Appeals Section is anticipated for the more labour and resource intense activities required for final appeals and interlocutory appeals, the Appeals Section will require additional resources.

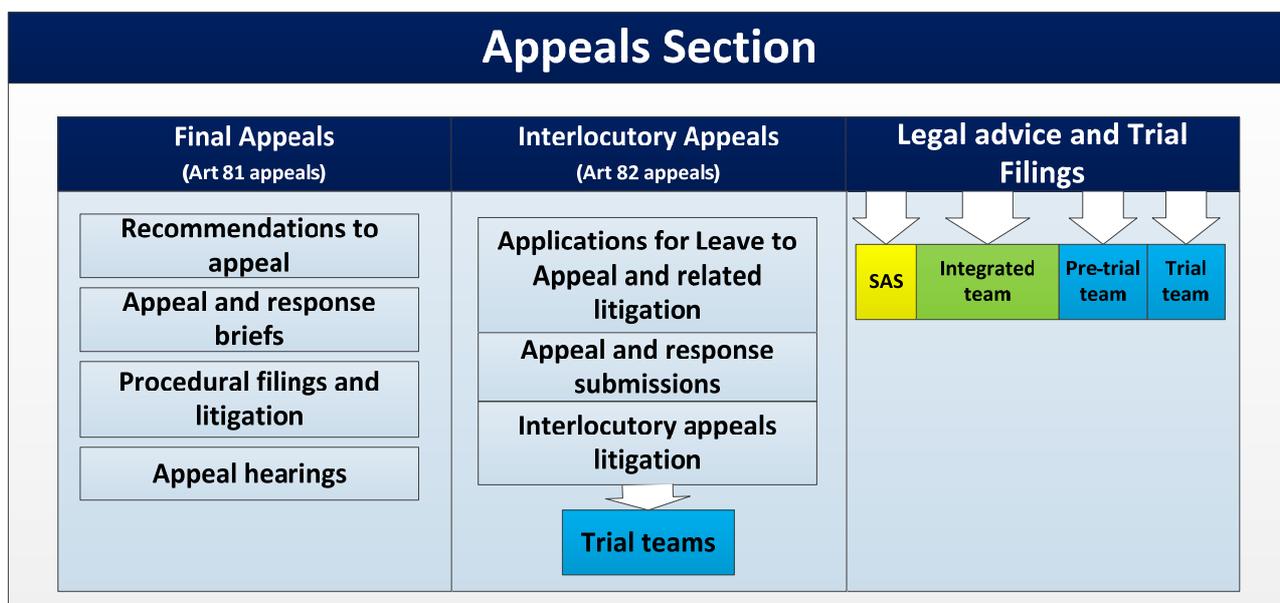
61. The activities of the Appeals Section encompass final appeals, interlocutory appeals, and legal advice and drafting work for a wide range of OTP activities, in particular for integrated teams in confirmation, pre-trial and trial phases. The Appeals Section’s first responsibility is to conduct final appeals in relation to convictions, acquittals and sentences under article 81 Rome Statute. This includes both bringing Prosecution appeals against acquittals and sentences, and responding to appeals brought by the defence against convictions and sentences. In this context, the Section is responsible for recommending whether to appeal, drafting appeal and response briefs, conducting all litigation and drafting all filings in the appeal phase, and representing the Prosecution in oral appeals hearings. Secondly, the Appeals Section is responsible for all interlocutory appeals, including those on admissibility and jurisdiction, provisional release and detention, and appeals for which leave to appeal is sought,<sup>18</sup> and for conducting all related litigation work and drafting all necessary filings. This includes bringing applications for leave to appeal Pre-Trial and Trial

<sup>16</sup> A separate hearing is mandatory if the defence or the Prosecution request it, which has been the practice to date.

<sup>17</sup> The ASP Staffing Table currently indicates that 2 trial lawyers are also assigned to work in the Appeals Section fulltime. However, this does not reflect the current make-up of the Appeals Section. Although the Appeals Section on occasion draws on assistance from the Trial teams, for example when preparing briefs on the final appeals and oral arguments, this does not amount to 2 full-time trial lawyers working in the Section. The trial lawyers assist in addition to their full-time trial responsibilities.

<sup>18</sup> Interlocutory Appeals are governed by Article 82 Rome Statute. They consist of appeals against all Pre-Trial Chamber and Trial Chamber decisions which are taken before a final judgment is rendered under article 74 of the Rome Statute. Under Article 82, a limited set of decisions may be appealed “as of right” by the parties (e.g. decisions on admissibility and jurisdiction, provisional release and detention, decisions by the Pre-Trial Chamber to act on its own initiative). However, the majority of other decisions can only be appealed if the Chamber which issued the decision grants one or more of the parties leave to appeal such decision under article 82(1)(d).

Chamber decisions (ALAs), and responding to ALAs brought by other parties.<sup>19</sup> The Section’s interlocutory appeals activity encompasses all appeals prior to final judgments, and relates to decisions taken in both pre-trial and trial proceedings. By drafting all necessary filings for interlocutory appeals and related proceedings, the Appeals Section greatly supports the pre-trial and trial teams. Thirdly, the Appeals Section has a significant legal advisory role vis-à-vis integrated teams. The Section provides legal advice and memos to pre-trial and trial teams on substantive and procedural issues arising in their cases and litigation (and for use in their cases), drafts significant trial motions and responses for pre-trial and trial teams, and argues them in oral hearings as required (for example, in relation to article 53(3) requests to review the Prosecution’s decisions not to investigate or to prosecute; compensation requests under article 85; reparations proceedings under article 75; early release proceedings under article 110, and other pre-trial and trial filings that include significant procedural or legal submissions). It also plays a significant role in reviewing drafts from JCCD such as Preliminary Examination reports and Article 15 requests, in particular on legal issues. The Appeals Section is also responsible for preparing (and keeping updated) an extensive legal digest of all decisions and judgments issued by the Court (Appeals Chamber, Trial Chamber, Pre-trial Chamber) since its inception, coordinates fortnightly legal meetings for lawyers and other staff in the Prosecutions Division (and other Divisions), and organises (and itself conducts) trainings throughout the year on written advocacy, appellate advocacy (written and oral), and topics in international criminal law and procedure.



62. In 2014, the Appeal Section supported nine active cases in the pre-trial, trial or earlier phases.<sup>20</sup> It also conducted two cases with limited final appeals activity— for each this was limited to an appeals hearing only— as these cases had been fully briefed with written submissions in the previous year.<sup>21</sup> In addition, in another case the Appeals Section recommended a final appeal against a trial judgement but appeal proceedings did not occur as the Prosecution and the Defence mutually withdrew their appeals before any appellate briefing activity was undertaken.<sup>22</sup> As should be clear from the above (and represented in the table below), the expected increase in the period 2016-2018 in cases and work in final

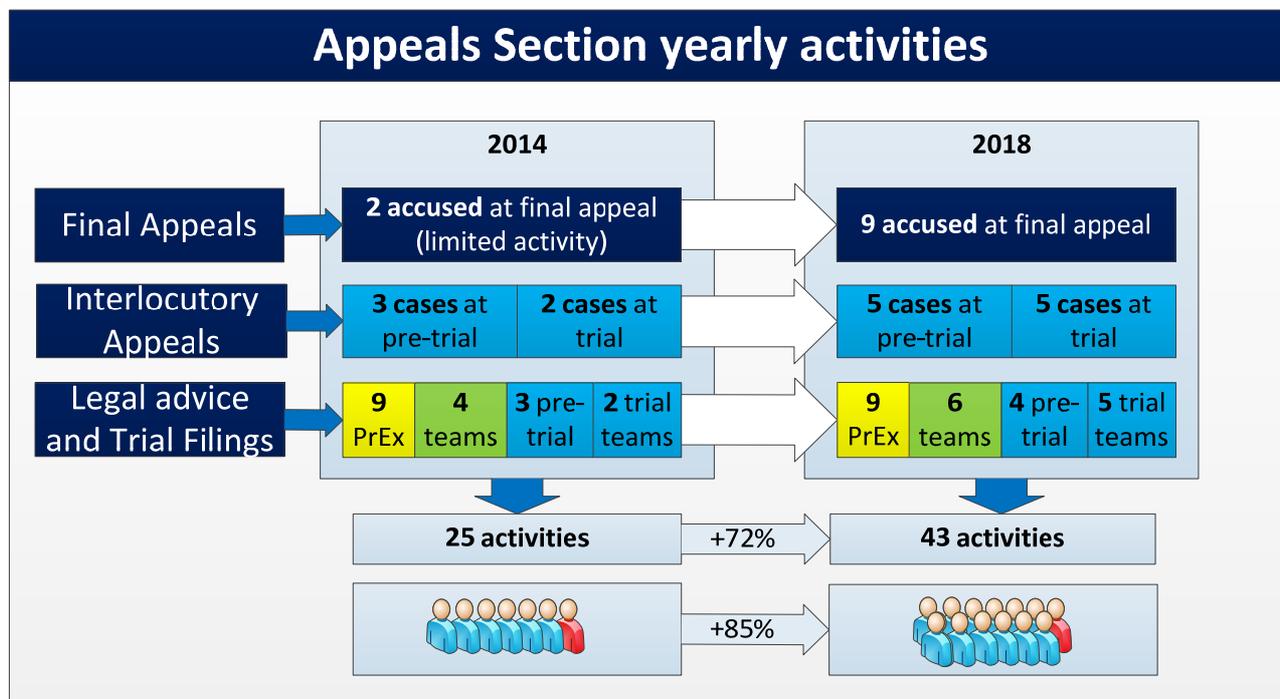
<sup>19</sup> ALAs are governed by Article 82(1)(d) Rome Statute. The party seeking leave to appeal must show that the issue arises from the decision; significantly affects the fair and expeditious conduct of the proceedings or the outcome of the trial; and that resolution by the Appeals Chamber may materially advance the proceedings. If the Chamber grants leave to appeal, the parties then file their respective appeal submissions on the interlocutory appeal before the Appeals Chamber, which decides the matter. Victims and other participants may also be allowed to participate in the appeal proceedings and make submissions and the Prosecution has a right to respond to those submissions.

<sup>20</sup> Ntaganda, Bemba et al, Banda, Kenyatta, Gbagbo, Blé Goudé, Ruto & Sang, Bemba, Gaddafi & Senussi.

<sup>21</sup> Lubanga, Ngudjolo.

<sup>22</sup> Katanga.

and interlocutory appeal proceedings, and in cases in all phases of the Prosecution's work, significantly impact on the Appeals Section's overall workload. In particular, in 2017 and 2018 the Appeals Section expects to conduct on an annual basis full final appeals activity in 3 cases which presently involve a total of 8 (2017) and 9 (2018) accused persons. Under the Basic Size, the Appeals Section will therefore require 13 FTE to cope with the increased number of activities as well as to overcome previous overstretching.



### E. Basic team hibernation/article 70 activities

63. The conclusion of an investigation will push a case either into trial or into hibernation – depending on whether or not an arrest or voluntary appearance occurs. Cases that go into hibernation (a freezing of investigative activity) still require that evidence is preserved (maintaining contact with witnesses, addressing issues that might affect their willingness or ability to testify). Additionally, new investigative opportunities that occur also require the capacity to react in a timely fashion. Further, the accumulated experience shows that certain situations which, although in theory, have been hibernated continuously generate a significant amount of work in practice, both in terms of litigation and of follow-up activities (refinement of the case, identification of potential additional charges, preservation of new evidence, witness protection, etc.). Cases which can be considered closed – such as where verdicts have been pronounced or where proceedings have been definitively halted,<sup>23</sup> also continue to create some ‘hibernation type’ activities (e.g.: exit strategy, response to acts of retaliation).

64. With the past experience in mind, and with an eye to prevailing conditions on the ground, it is possible to provisionally predict that within the next cycle of Strategic Plan – 2016-2018, 1 case is likely to be de-hibernated.

65. In addition, the Office faces a specific need for the coming years.<sup>24</sup> Due to previous under-resourcing and the hibernation practices of cases under the previous prosecutorial strategy, some of the current hibernated cases are not considered to be ‘trial ready’ by the current standards. Waiting until an arrest occurs to force a de-hibernation of the case poses serious risks to the Office in terms of not having sufficient time to bring the case up to standard and it furthermore causes delays and therefore extra costs. When required, this

<sup>23</sup> DRC1, DRC2, KEN2

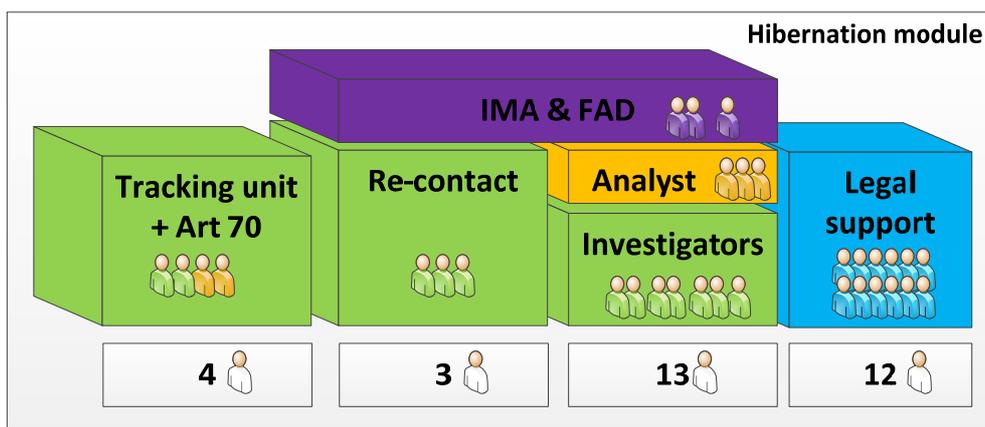
<sup>24</sup> The exact duration of this need will depend on the speed with which the basic size is reached, the time required to bring the hibernated cases to a state of trial-readiness, and the impact of the de-hibernation of cases.

capacity will be used for responding to de-hibernated cases and, to help with peak moments in other cases if possible.

66. Next to this capacity dealing with hibernated cases, the Office has considered creating a tracking unit. It has not done so up until now given that its fugitives' locations were either known or required military operations to find and arrest them. With the new strategy, the Office will investigate, *where needed*, mid-level or notorious perpetrators so that it can build upwards towards the most responsible. In such circumstances the need for a tracking unit will become more relevant.

67. At the same time, such a unit could independently from the main case team investigate cases of obstruction of justice (Art 70). The Office's cases have been increasingly confronted with efforts to bribe, threaten, intimidate or hurt witnesses. Such efforts require an immediate and deterrent response. They have weighed heavily on the Office's resources. The Office's present and future policy is to rely where possible on national authorities to investigate and prosecute such matters. It will limit its own investigations into art 70 offenses to those cases where a State is not able or willing to do so and the obstruction or interference is of such gravity or scale to seriously affect a case in the pre-trial, trial or appeal phase; the Office may also decide to conduct an investigation and prosecution when it concludes that the Court is better placed as a forum to exercise jurisdiction in the instant case. In addition, even in those investigations that will be conducted by national authorities, the Office will still have to pursue some investigative steps to better assess the ongoing criminality in order to produce a proper referral and will have to ensure constant cooperation with the national investigative and prosecutorial bodies.

**1. Overview of composition**



**2. Justification of resources**

68. For the purpose of preserving evidence across the varying cases, investigators are required to maintain contact – speaking to the witness via telephone or face to face, verifying their situation, update the person on developments (if any) and ensure a contact report is produced, relevant files updated (at least once a year), and that co-ordination is done for follow-up activities with support units/ PD. It is anticipated that approximately 1530 individuals would require follow-up – based on an average of 170 witnesses per hibernated case. It is foreseen that the activities outlined above for each witness will take approximately 0.3 days plus approximately 3% would require additional support of about 3 days.<sup>25</sup> In order to cover this workload, 3 resources are required. In addition, there may be some requirement for contact and follow up with witnesses from ‘closed’ cases. It is difficult to estimate numbers or workload, and although it will remain necessary to maintain such contact and follow up, it is presently not expected to have a significant strain on resources.

<sup>25</sup> 1530 individuals requiring 0.3 day each= 459 days; 3% of 1530 individuals requiring 3 days each= 138 days; Total: 597 days or 2.7 FTE.

69. The Office requires an extra need of 13 investigative resources for the coming years in order to work on those cases put into hibernation while not being trial ready and in order to respond to the de-hibernated cases. To make the hibernated cases trial-ready, the team would be required to review the evidence in line with the prevailing case hypothesis, identify knowledge and evidence gaps, exploit new potential evidence, identify new leads and interview additional or re-interview existing witnesses. The team would also need to evaluate if the standard and methodology of the witness statements, documentary and other forms of evidence are in line with current expectation of quality standards in addition to reviewing if technological and forensic advances produce potential new evidence collection opportunities. Next to the requirement of bringing all hibernated cases to a state of trial-readiness, this same capacity will be used to respond to the tasks that materialize when a case is actually de-hibernated: ensuring witness cooperation, adding new evidence to a limited extent, preparing for confirmation hearing, etc. The additional resources would reflect a reduced investigative team of 13 persons, comprising of 1 senior investigator, 3 pairs of investigators, 3 analysts, 1 Information management assistant and 2 FAD data input resource.

70. The monitoring and tracking by the OTP of the movements of suspects and other individuals of interest can be an important element in the fight against impunity. In order to maintain up to date files on suspects and associates' locations and when necessary to inform PD (see under), Registry and Judges, who in turn issue specific cooperation and arrest requests to the competent national authorities, a dedicated resource is required. Activities include undertaking constant information monitoring, on a 24/7 basis including weekends, to be aware of relevant movements and generate any necessary alerts, open source monitoring, leads' development in the field, follow-up on lines of enquiry (e.g. financial), coordination with partners. Alternatively, when required, this team will focus on Article 70 investigations, either by performing them or by preparing a hand-over to national authorities. It is foreseen that the unit will be staffed by 4 resources, 2 investigators supported by 2 analysts.

71. Concerning the prosecutorial support, resources are required not only to become involved in the activities related to hibernated cases (litigation, follow-up and case development), in particular those which require prosecutorial support on an on-going basis. In addition, prosecutorial support, both in terms of legal advice and guidance as well as litigation and pre-litigation activities, will be required in relation to the tracking unit and art 70 activities. In relation to tracking activities, PD lawyers will provide legal guidance as to arrest opportunities, examine different legal options, analyse together with JCCD the legal implication of seeking arrest in a given forum, and, also in coordination with JCCD, engage with national authorities on the legal aspects of any arrest operation. In relation to article 70 activities, the experience of the Office shows that these cut across all situations and cases, and are extremely time- and resource intensive. To date, the Office has detected the commission of article 70 offences in at least 6 cases before the Court. This has forced the Office to develop ways to react timely in order to avoid that its cases, and in particular its witness base, becomes eviscerated as a result of illegal witness interference. In turn, this places taxing demands on PD: even if the Office decides to delegate the prosecution of the offences in question to one or more national authorities, putting together the dossier that will be transmitted to national authorities (which only the OTP can do, considering the requirements of confidentiality and the sensitivity of witness-related information) is a heavy task that demands the existence of sufficient internal resources being able to work full-time on that particular task. Thus, where delegation is neither feasible nor desirable, the prosecutorial capacity in this hibernation module will serve as the core resource to drive the process. This capacity consists of 2 P4 trial lawyer, 4 P3 trial lawyers, 4 associate trial lawyers, 1 assistant trial lawyer and 1 trial support assistant.

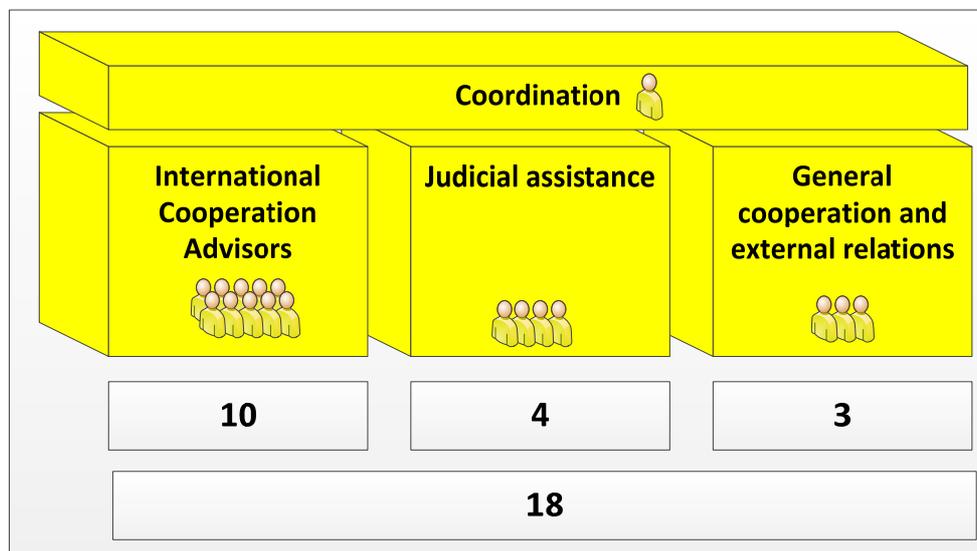
72. In addition to the above activities, the hibernation module might also be used as a buffer to cover for critical needs emanating from the live cases (active investigations and prosecutions). The peaks that already can be anticipated (see annex I, para 3) and unexpected increased resource requirements, might, at least partially, be covered with this capacity so that the impact on the phases' durations and staff pressure is reduced.

**F. Basic team international cooperation & judicial assistance**

73. Without effective and predictable cooperation, the OTP cannot do its work. All aspects of evidence gathering and the investigative process, from, inter alia, deployment to the territory of States, to the provision of records, to the execution of compulsory measures such as search and seizures, the tracing and recovery of assets, the compelling of witnesses or the arrest of suspects, all rely on judicial assistance from national authorities or international organisations. As such, cooperation plays a crucial role in enabling the integrated teams to obtain the evidence required to enable a successful prosecution in court. Only by working with relevant national and international authorities, who act as the enforcement arm of the Court, can the ICC implement its judicial mandate. Cooperation also has a broader dimension beyond the provision of formal assistance through judicial assistance. The OTP and the Court as a whole also rely on the existence of an enabling environment at the national and international level to support its activities. This crucial work includes familiarising key decision makers with the work of the OTP to enable execution of judicial assistance requests, cultivating support and understanding of the Court among relevant stakeholders, dispelling or correcting misinformation that can often impede or inhibit effective cooperation, and working with the relevant constituencies of the Court at the ASP and its subsidiary bodies, United Nations family, including the Security Council, African Union, European Union, Organisation of American States and other international, regional and national bodies to integrate and mainstream the role of justice in complex multidimensional efforts geared towards fragile post-conflict settings.

74. The International Cooperation Section (ICS) of the JCCD is responsible for leading these processes in support of the activities of the OTP, combining under the overall supervision and coordination of the Head of ICS: (1) situation-specific international cooperation advisors within each integrated team responsible for effecting all judicial assistance requests; (2) general cooperation and external relations; and (3), the provision of technical and legal advice on judicial assistance issues across the OTP.

**1. Overview of composition**



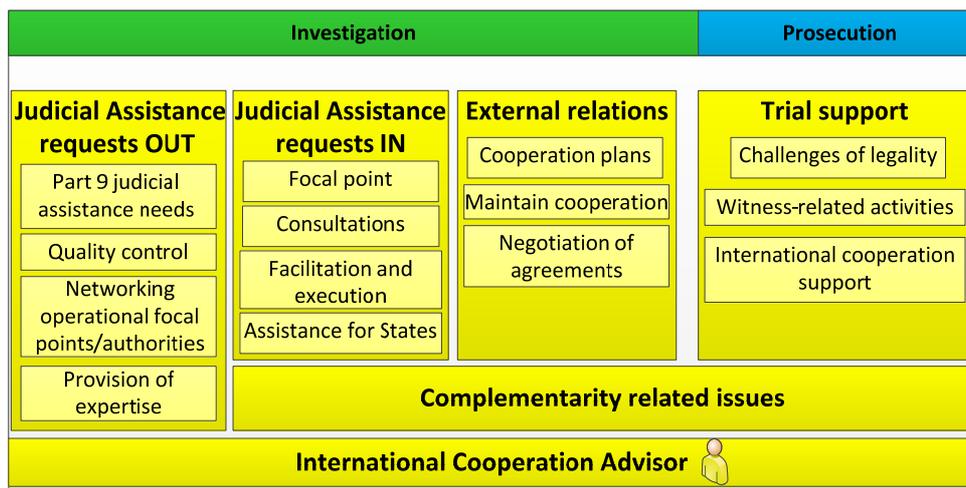
**2. Justification of resources**

*(a) Cooperation advisors within integrated team*

75. As noted above, none of the steps necessary for a successful investigation and prosecution can be conducted without effective cooperation. ICS presently supports each integrated team with one International Cooperation Adviser. This person is responsible for the following:

- (a) **Requests for Assistance:** facilitating all judicial assistance needs and requests of the team to States Parties, Non-Party States, international or regional inter-governmental organisations and specialised agencies, multinational military deployments or peacekeeping operations, non-governmental organisations, and private actors. This includes facilitating all consultations (both before and after request have been sent) with the requested entity, to ensure that all the requirements of the requested entity have been met, and to resolve any problems that may have arisen to enable timely execution, and to consult on any issues related to the conditions of receipt of evidence, as foreseen in articles 96-97 of the Statute.
- (b) **Operational support:** establishing operational focal points so that the integrated team has continuous access to the territory, physical evidence and witnesses concerned, and to provide prompt responses and feedback to the team on any problems identified by the team or by the national authorities concerned. This will involve significant start-up consultations, including at the strategic or political level, where new and/or politically or regionally sensitive types of assistance are being sought by the OTP for the first time, or are being made to particular States or organisations with whom the OTP has had no prior cooperation. The Cooperation Advisor will also be heavily involved in, and will work on galvanizing efforts for, the setting-up, operationalization and execution of arrest and surrender operations in conjunction with the Registry and the territorial State concerned. The Cooperation Advisor is also responsible for providing technical level expertise to the team, including on the legal requirements of the national law of the requested State or the procedures of the requested organisation. The Cooperation Advisor will also support the Protection Strategies Unit (PSU) in securing cooperation of national authorities in the adoption and implementation of relevant protective measures that are not taken care of by the Victims and Witnesses Section (VWS) in light of the division of responsibilities.
- (c) **External Relations:** acting as the working level focal point for external actors on issues related to the ongoing investigation and prosecution, including with embassies in The Hague, with relevant Government ministries in capitals, with International Organisations and specialised agencies, with NGOs, as well as with the media, in conjunction with the Public Information Unit. Responsibilities also include generating and maintaining general support and promoting understanding of the work of the OTP in relation to the investigation or prosecution concerned.
- (d) **Incoming requests for assistance:** responsible for the timely execution of incoming request for assistance from States to the OTP within the framework of article 93(10). The International Cooperation Advisor is also involved in consultations with States on burden sharing and cooperation in relation to other cases in situations under investigation.

76. Because of her/his close interaction with multiple national and international actors and local stakeholders who are present in the situation, the International Cooperation Advisor will often be called upon to provide critical strategic insights in the overall analysis of the situation and the progressive developments of the investigation plan and case theory. During the trial, the work of International Cooperation Advisor continues to deal with issues that arise during the course of proceedings, including challenges to the legality of evidence collected via cooperation, the possible summoning of witnesses who have refused to voluntarily cooperate further, the ongoing protection needs of witnesses, new issues arising from litigation that require the seeking or production of additional evidence, cooperation of States on issues related to witness inferences or offences against the administration of justice, or on litigation related to non-compliance, as well as ongoing external relations support activities.



77. On a yearly average, he/she undertakes 20 mission notifications and issues 50 Requests for Assistance while fulfilling his/her other tasks and duties.

78. This critical function requires presence as well in the field as at the HQ to be in contact with respectively partners on the ground and the integrated team. The model whereby cooperation advisors are regularly on mission and supporting increasingly diversified evidence collection needs is impacting on the ability of the integrated team to function. At the same time an initial short-term presence of cooperation advisors in the field at the start-up phase of investigations where the volume of cooperation activity peaks will greatly contribute to enhanced and timelier cooperation by partners. It will also enable the OTP to move faster and so maximise the effectiveness and pace of its investigative mandate. The Office is therefore revisiting the way it has organized its cooperation work within the investigative teams:

- (a) 1 dedicated international cooperation advisor at headquarters per situation
- (b) 1 short-term international cooperation advisor in the field per active investigation during the start-up phase (see periods highlighted in orange below), who will rotate to the start-up phase for the next new investigation.<sup>26</sup>

New investigations	2015	Strategic Plan 2016-2018		
		2016	2017	2018
<b>Field International Cooperation Advisor required:</b>		1	1	1
<b>Situation 1</b>		New sit 1		
<b>Situation 2</b>			New sit 2	
<b>Situation 3</b>				New sit 3

79. As described above, the basic size foresees one international cooperation advisor forming part of each integrated team from the beginning of an investigation until the conclusion of a trial. Ideally the same advisor should remain active in the same situation country to benefit from their country expertise and their network of cooperation

<sup>26</sup> The table below contains mandated activities that are already certain and others foreseeable on the basis of assumptions coming out of the extrapolation; the latter have been selected randomly so it might be that other cases actually move forward depending on the circumstances.

interlocutors. Nonetheless, as the prosecution stage moves into the deliberation phase, an advisor will be able to move to another integrated team while overseeing any residual functions for the pending trial. It is worth noting that the cooperation advisors often extend beyond the model below as they will be involved in external relations functions even after the completion of team activity to deal with residual issues that will continue to arise from the national level. According to the estimated level of activities, the basic size model foresees that the OTP will need 10 international cooperation advisors. In practice this means an increase of 1 position from the current budget, bearing in mind that JCCD currently has 9 international cooperation advisors, including 2 positions financed from the contingency fund for the Ongwen case. 1 field based international cooperation advisor at the P3-level is needed per year as displayed above.<sup>27</sup>

ICS Advisor	2015	Strategic Plan 2016-2018		
		2016	2017	2018
International Cooperation Advisor required:	7	9	10	9
Advisor		Cdl		
				New sit 4
Advisor		CAR		
Advisor		Kenya		
			New sit 3	
Advisor		CAR art 70		
Advisor			New sit 2	
Advisor		UGA		
Advisor		DRC		
Advisor		MALI		
Advisor		New sit 1		
Field Advisor (GTA)		New sit 1	New sit 2	New sit 3

(b) *General Cooperation and External Relations*

80. This area is composed of one International Cooperation Adviser (P-4) and two Associate International Cooperation Advisers (P-2).

81. The International Cooperation Advisers working on general cooperation and external relations provide strategic advice and support to the Prosecutor, the OTP senior leadership in the context of strategic discussions within the OTP, as well as regarding the drafting of policy papers and position documents. They also prepare the diplomatic visits to the seat of the Court as well as general missions abroad of the Prosecutor, Deputy Prosecutor and the Director of JCCD with external relations elements, including by facilitating meetings, and preparing relevant background information and draft speeches, and accompanying the senior officials, when relevant.

82. Responsibility includes the establishment and management of external relations with States, international organisations and NGOs, and for galvanising general support for key issues and messages of the Office in this regard, as well as developing and maintaining

<sup>27</sup> The table below contains mandated activities that are already certain and others foreseeable on the basis of assumptions coming out of the extrapolation; the latter have been internally provisionally and randomly identified so it might be that other cases actually move forward depending on the circumstances.

networks of support with diplomatic communities, NGOs, educational institutions and other relevant networks. Through these relations and networks they disseminate and galvanise support for key messages of the Office. In the same vein, the International Cooperation Advisers dealing with general cooperation and external relations matters represent the Office during discussions on various issues under consideration of the Assembly of States Parties (ASP) and/or its subsidiary bodies, affecting the work of the Office.

83. The International Cooperation Advisers also coordinate, internally and externally with other Court Organs and third parties as appropriate, the compilation and drafting of reports, including for the UN and the ASP; represent the Office in the coordination of inter-Organ issues; assist the Public Information Unit (PIU) on the public information activities of the Office and interaction with affected communities and representing the Prosecutor and/or Director of JCCD; and deliver key messages of the Office in public fora.

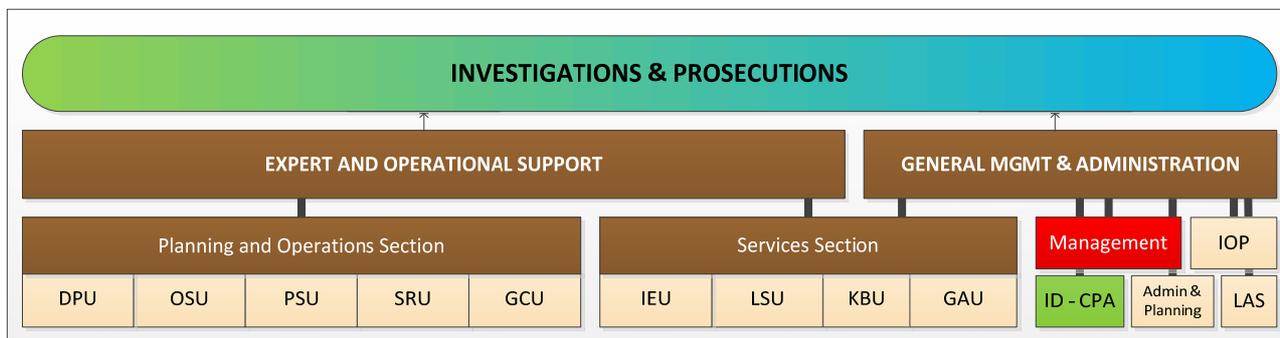
(c) *Technical and Legal Support*

84. A dedicated judicial assistance component in ICS serves to provide expert technical advice and support to all ICS integrated team members on judicial assistance issues. This involves one Judicial Cooperation Adviser (P-4), one Judicial Cooperation Assistant (G6) and one Legal Assistant (G4). The judicial assistance component provides strategic, technical and operational advice, support and guidance to all International Cooperation Advisers in order to ensure quality control, channeling of and follow up to all judicial assistance requests and responses sent on behalf of integrated teams in conformity with relevant procedures and standards, including through checking of all requests for assistance, conducting periodic training, developing standard templates and protocols, following up with national authorities on mutual legal assistance processes and agreeing with external stakeholders on possible improvements and development of best practices. It is responsible, in association with each International Cooperation Adviser, for tracking compliance and maintaining all records related to outgoing and incoming requests for assistance in the RFA database.

85. The JCCD Legal Advisor (P-4), who provides legal advice across the division, is in charge of providing advice on transversal legal issues arising out of the work of the situation analysts and of the international cooperation advisers in each situation under investigation where jurisdictional or complementarity related issues arise. The Legal Advisor also supports the division on litigation concerning matters of jurisdiction, admissibility and judicial assistance, working alongside the prosecution and appeals sections on written and oral submissions as required; and engages in the negotiation and conclusion of agreements or Memorandums of Understanding with national actors, international organizations or peacekeeping operations to support OTP operations.

## Annex III

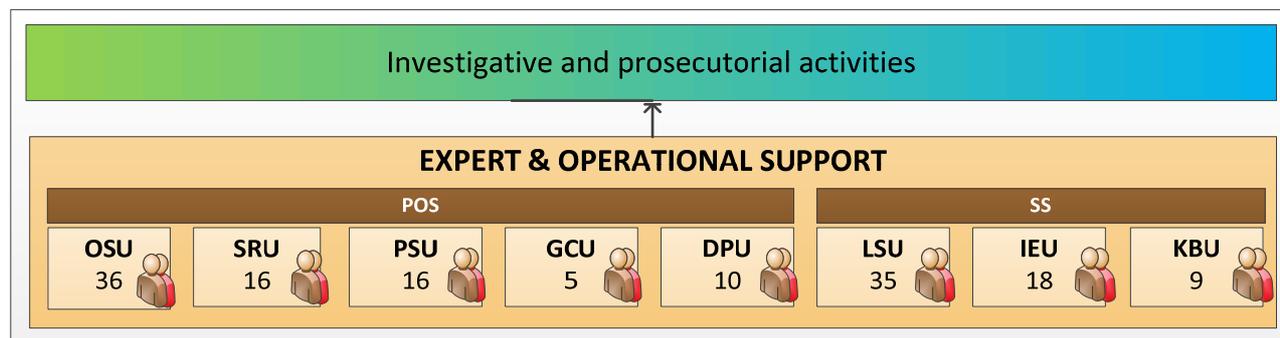
### Resource justification supporting activities OTP



#### A. Expert & Operational Support

1. Regardless of a case being in preliminary examination, investigation or prosecution phase or in hibernation, ongoing expert and operational support is fundamental. This chapter will use the projected caseload to determine the basic size of the OTP in terms of expert and operational support under the Strategic Plan 2016-2018.

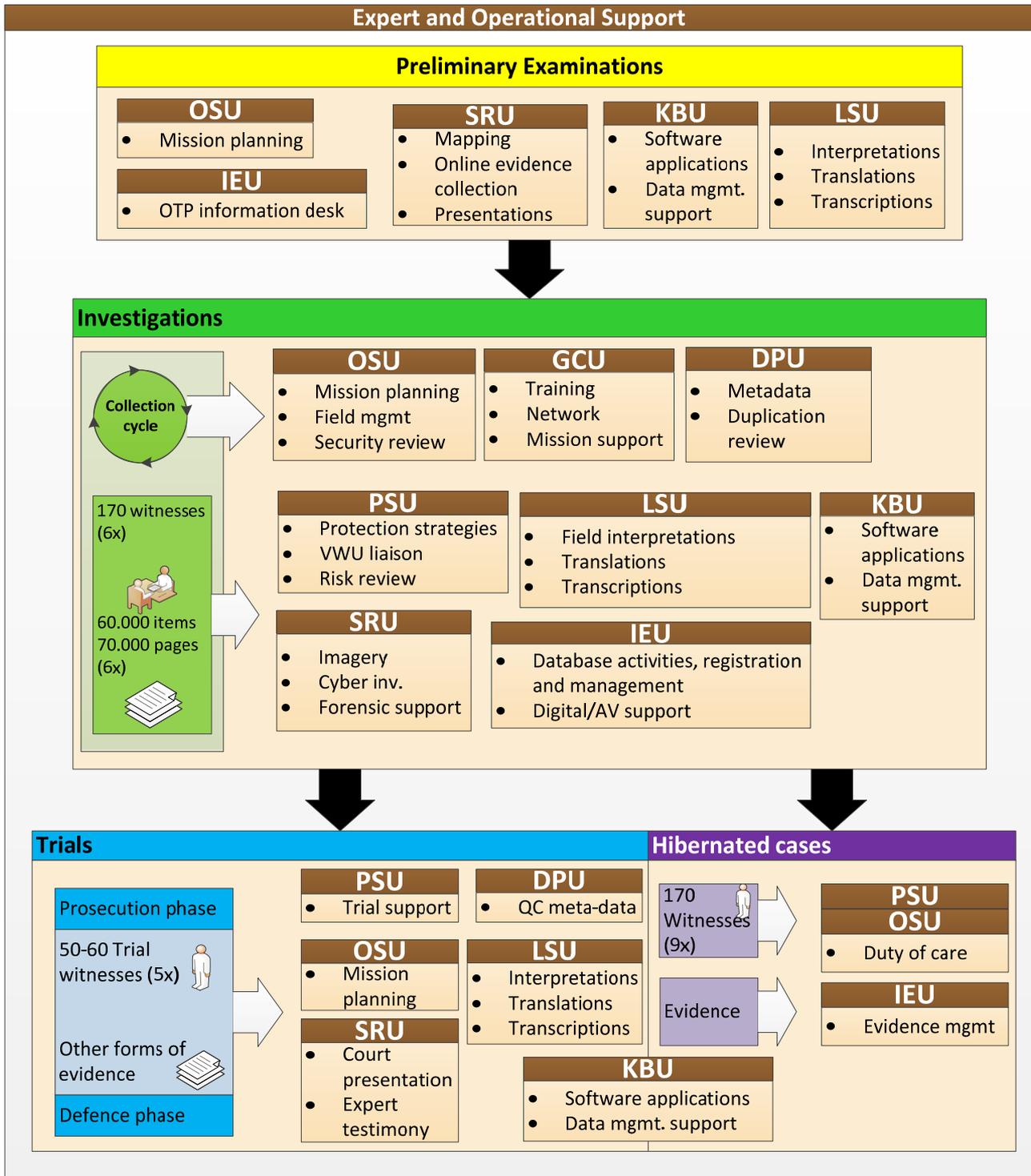
##### 1. Overview of composition



##### 2. Justification of resources

2. The supporting units provide an essential contribution to the investigations: the protection of persons interacting with the Court, the safety of staff, the provision of scientific services, assisting witnesses and investigators with vulnerable persons, the handling of evidence, and interpretation, translation, and transcription, etc. All these activities occur in close cooperation and in consultation with the Registry. Together the OTP and the Registry aim for a continuum of services. The resources that are required for the support units are for the most part dependent on the actual investigations: the more investigators present in the field, the more field support is needed; the more witnesses contacted, the more persons potentially need to be protected; etc. The support occurs on a continuous basis regardless of what stage the preliminary examination, investigation or prosecution is in. In what follows, a breakdown of the support activities will be described.

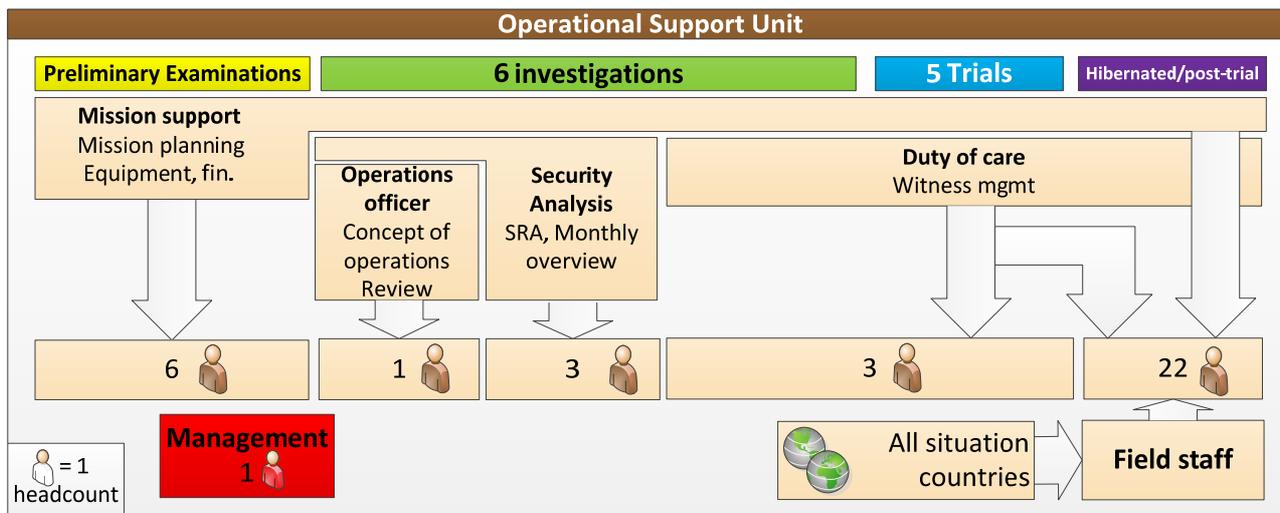
3. As the diagram below suggests, the Knowledge Base Unit (KBU) is directly supporting the mandated activities as part of the Office's Expert and Operational support. Because part of the unit is engaged in activities with an Office-wide focus as well, its resources will be justified under the chapter below describing General Administration and Management (annex III, para 56-59).



(a) Operational Support Unit (OSU)

4. OSU is responsible for a holistic approach to operations within the OTP from preliminary examinations to investigations and prosecutions. The Unit develops Office specific operations through detailed risk assessments, mission planning, field craft and field presence to ensure personnel can deploy and operate within risk mitigated environs. The defining of a concept of operations is directly linked to the mission objectives of the teams deploying. It requires an in-depth knowledge of what a team intends to do and of the potential suspects and their allies so that an appropriate way of operating in the field can be defined to ensure staff and operational security. This is different from what the Registry provides as a security service which is aimed at responding to general insecurity factors as opposed to

defining the actual concept of operations. OSU is in charge of defining the field craft of the Office so that confidentiality is maintained in all circumstances where it is required.



5. The mission planning and deployment management is undertaken by the Mission Planning Centre (MPC); it ensures amongst other activities coordination with Registry specific entities<sup>1</sup> such as the Travel Unit, Field Security Unit and Field Operations Section to name just a few. It also manages external coordination with hotel and others service providers for confidentiality of reservations and logistics in line with mission-specific concept of operations.

6. Having a field presence allows OSU to effectively manage crucial operational support (*transportation of staff/witnesses, assessments and identification/clearance of interview locations, response to urgent shifts in team needs*).

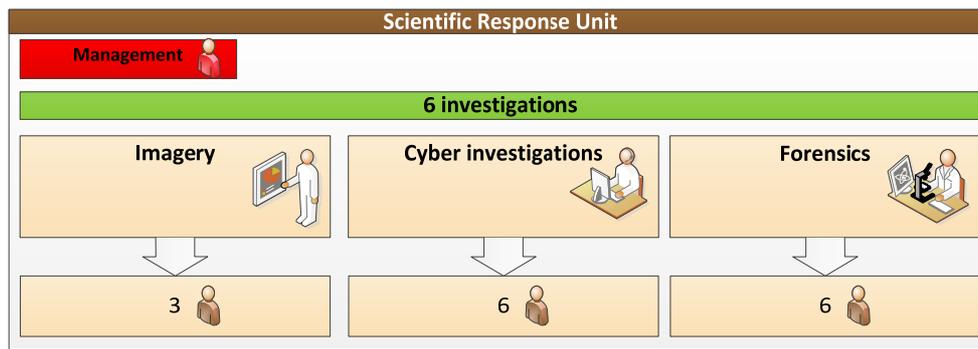
7. OSU is also responsible for direct management of witnesses in the areas of operations when investigators are not in the field. Finally, through its Field Operations Assistant, OSU ensures the management of operational expenditure and assets in the field in accordance with the Court’s Financial Rules and Regulations.

*OSU*

Witness management	5% of witnesses (2890 from 6 active investigations <sup>2</sup> , 5 trials and 9 hibernation) requiring higher level support (5 days a year) + 4 days/month witness finances. Total 770 days	3.5
Security Risk Assessment/ Monthly overviews/ Ad-hoc reports	1 Risk Assessment for each situation and satellite country (20 days) with monthly updating (1.5 days). 9 situation countries and 9 satellite countries: 360+ 297=657 days; Additional assessments for missions in 3 <sup>rd</sup> country locations (15 days); Total: 672 days	3
Operations officer	Concept of operations, focal point for security, logistics and operations, supervisor for analytical products	1
Field staff	3 persons per active investigation (1 P-3 Field Operations Officer, 1 G-6 Field Operations Liaison Coordinator and 1 G-5 Field Operations Liaison Assistant) and 4 to cover trial support	22
Mission planning	Projected 420 investigators’ trips, 36 OSU, 36 GCU and 90 Forensic trips; Total 582 trips for 6 active investigations. 100 investigators trips, 90 OSU trips, 45 GCU trips and 75 Forensic trips; 310 trips for 5 active trials. JCCD: 50 trips and 55 other trips. Office total: 997 trips taking up 1.2 days each; Total: 1196.4 days	5.4
Management		1
<b>Total OSU</b>		<b>35.9</b>

<sup>1</sup> The names quoted are entities that existed prior to and during the ReVision project and thus subject to updating.  
<sup>2</sup> See also annex I, para 12

(b) *Scientific Response Unit (SRU)*

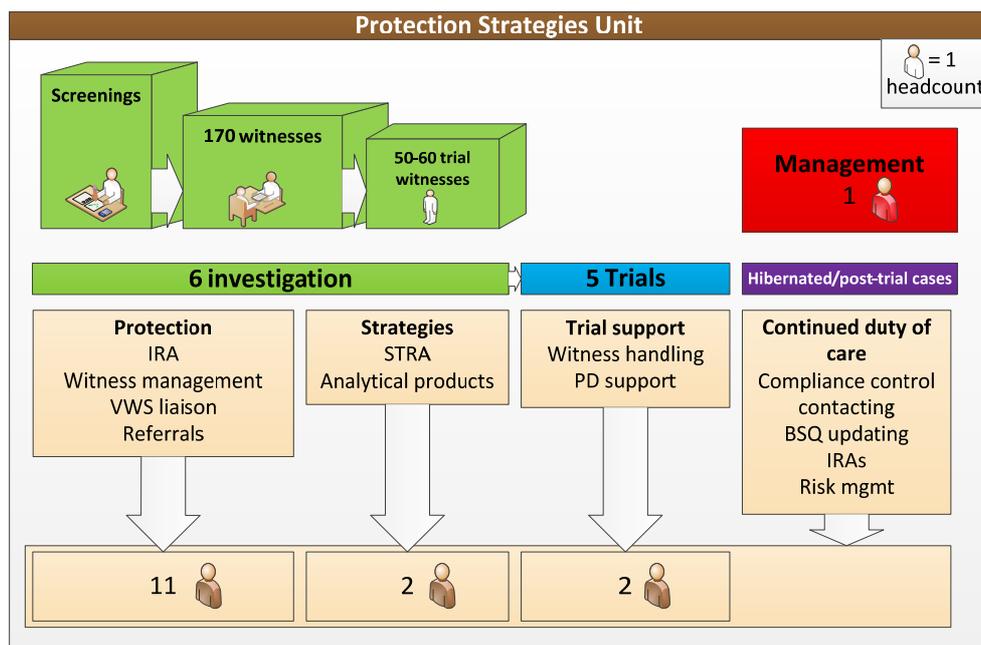


8. SRU provides scientific & related services to the Office of the Prosecutor, mainly during investigations and prosecutions, with a lower involvement during preliminary examinations. Its mission are multiple and include (1) visualisation of evidence in support of trials, (2) collecting, analysing and presenting scientific evidence triangulated with documentary and testimonial evidence, (3) identifying, providing, and coordinating forensic and technological expertise, (4) research and review of latest forensic and technological innovations to ensure the Office adherence to best practices, and (5) ensuring training and provision of guidelines and policies for the Office.

9. Provision of forensic services is organized as follows:

- (a) Imagery includes mapping and GIS analysis, earth observation, and other forms of remote sensing (i.e. satellite imagery, analysis of sound and shockwave), and infographics (e.g. Court presentations, 360°, etc.)
- (b) Forensics includes crime scene investigations (including drone photography), exhumations and autopsies, clinical examinations, forensic epidemiology, criminalistics (notably document/handwriting analysis, ballistics, audio enhancement and voice recognition, digital imaging, etc.)
- (c) Cyber-investigations includes data acquisition/analysis/presentation from digital carriers and online (website, e-mails, cloud etc.). Cyber-experts advise integrated teams and notably investigators trained as first responders for online data collection. Lastly, they develop Division-wide projects as anonymization, virtual machine and dedicated network for online data collection.

<i>SRU</i>	<i>Workload</i>	<i>FTE</i>
Training & compliance control	40 days/year	0.2
Imagery	Mapping and GIS analysis, earth observation 100/year taking 4 days each (400 days)	2
<i>Imagery requests</i>		
<i>Digital imaging</i>	Infographics, advice, assistance design, printing: 85/year taking 0.5 day (42.5 days)	1
	Court presentations, 360°; total based on past experience and estimates: approx. 1 person full-time or 221 days	
Forensics	It is envisaged that for every active investigation, 1 person is engaged with: crime scene examinations, exhumations, autopsies, clinical examinations, document/handwriting analysis, video/audio enhancing, drone, digital imaging etc. As well as reconnaissance missions forensic missions	6
Cyber investigations	Collection from internet, e-mails, digital carriers, mobile devices, etc. Based on current team workloads, 1 resource per active investigation is required.	6
Management		1
<b>Total SRU</b>		<b>16.2</b>

(c) *Protection Strategies Unit (PSU)*

10. PSU is responsible for the holistic management of OTP witnesses, which requires the coordination between the teams, PSU, OSU, GCU and when relevant VWS. The unit conducts general security threat and risk assessments (STRA's), provides advice and implements protection measures for individuals at risk due to their association with the OTP based on individual risk assessments (IRA's). PSU is engaged with the team throughout the process, from first contact through to post-verdict.

11. During the investigation phase the unit develops an STRA for each situation and case. The STRA highlights the threat and risks to the various witness categories and defines a strategy to mitigate the risks. The witness protection strategy provides guidelines for situation specific witness management and protection.

12. During the screening phase of a potential witness an IRA is developed prior to taking a statement from an individual. The IRA is conducted to determine the risk level of an individual (and dependents) due to his association with the OTP and eventual disclosure and testimony. The IRA identifies witness-specific risk mitigation and protection measures to allow a witness to testify in a secure environment.

13. The STRA and IRA are regularly updated (e.g.: changes in the general security environment, individual security incidents, and changes in the circumstances of an individual, changes in the judicial phases and periodically).

14. PSU performs complementary duties with regards to the VWS. While the VWS takes care of high cost/high impact measures (witness protection program), the PSU focuses on low cost, non-intrusive measures (e.g. panic button, safe haven, etc). PSU is also the unit that prepares with the team the referral requests to the VWS. This combination leads to a well-functioning continuum of services. PSU is also responsible for the coordination of witness-related trial support in liaison with the VWS, including the organisation of witness handovers, collection of passports, and other logistics related to trial preparation.

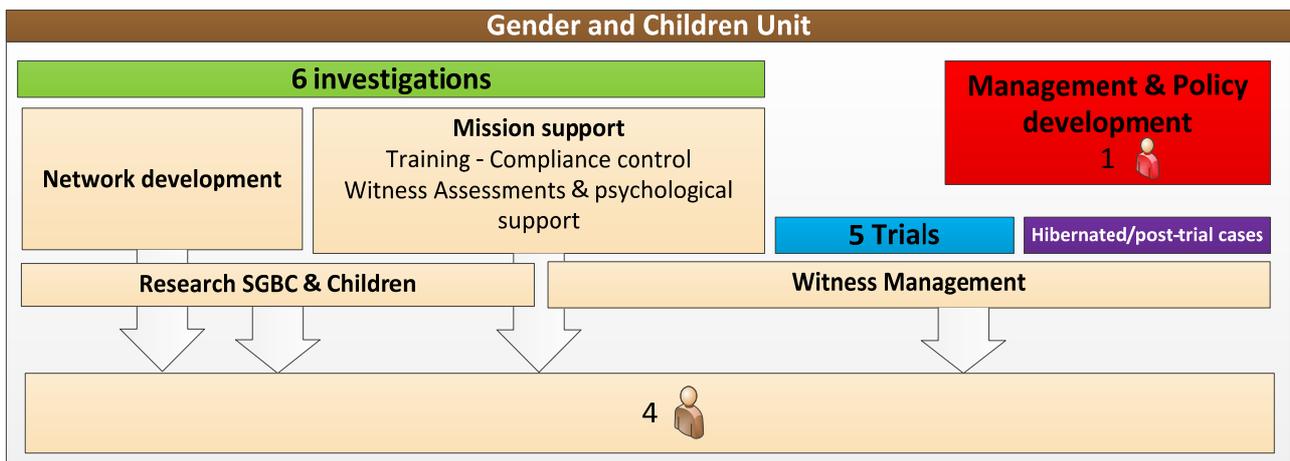
15. The unit provides final input on redaction requests and lifting of redactions to ensure continuous witness protection, and provides management with information related to witness management and protection. Following the testimony of the witness at trial and the return of the witness from the VWS to the OTP, PSU is responsible for the security, safety and welfare of the witness upon their return to the country of residence.

16. The OTP maintains its duty of care to all witness associated with hibernated cases and ceased cases. In this regard the unit is responsible for the compliance control for the

regular contacting, updating of Biographical Security Questionnaire (BSQ) information, IRAs and risk management of all witnesses.

<i>PSU</i>	<i>Workload</i>	<i>FTE</i>
Witness Management Co-ordination + liaison + coordination with teams, OSU, GCU and VWS	1 day every week per active investigation and case in trial (52 days * 6 inv. + 5 trials= 572 days)	2.6
Security Threat Risk Assessment (STRA) + Protection Strategies (PS) + Ad-hoc reports	STRA and PS for investigations: 18 days/year per investigation (18x6 inv.= 108 days); Biannual review of STRA and PS: 16 days/year per investigation (16x6 inv.= 96 days); Annual update of STRA and PS for trials: 18 days (18x5 trials= 90 days); Yearly review of hibernated cases: 7 days per hibernated case (7x9 hib.= 63 days); Ad-hoc reports: 2-3 reports per investigation taking 15 days per investigation (15x6 inv.= 90 days); Total 447 days	2
Individual Risk Assessment (IRA) <sup>3</sup>	1020 screenings for 6 investigations : 0.3 day each	1.5
<i>IRA initial witness screening</i>	510 IRAs for witnesses (6 investigations):1.5 day each	3.5
<i>Full IRAs</i>	2360 IRAs (1530 hibernation, 850 trials): 0.3 day each	3.2
<i>Updating of IRAs</i>		
Referrals	40 referrals on average. Taking 2 days each	0.4
Trial support	Protection review for disclosure, witness related redaction advise, missions for high-risk witnesses, and handover to VWS; taking 288 days	1.3
Filings support & Review and annexes	600 taking 0.3 days each	0.8
Management		1
<b>Total PSU</b>		<b>16.3</b>

(d) Gender and Children Unit (GCU)



17. GCU plays an important role in relation to policy development of the Office in relation to sexual and gender-based crimes (SGBC), crimes against children, and the handling of vulnerable witnesses in general. It ensures the implementation of the policy as well as constant research to improve the Office’s methods in relation to these policies, including through the provision of training.

18. Given its specific role, GCU supports the investigation teams in different ways:

<sup>3</sup> See also annex I, para. 12

- (a) Provision of training on SGBC and crimes against children
- (b) The Unit organizes pre-deployment briefings for teams to prepare them for the theatre within which they will operate, sensitize them to issues which will facilitate productive interviews and good interaction with people.
- (c) Provision of leads for the investigation of SGBC and crimes against children based on the networks that they have developed.
- (d) Identification of expert and overview witnesses.
- (e) Ensuring the well-being of witnesses. This entails the assessment of vulnerable witnesses in the field and advice on whether and under what conditions an interview can proceed. It also includes organizing the provision of psycho-social support, where needed in coordination with VWS.
- (f) Other tasks include liaising with Victims Participation and Reparation Section (VPRS) and teams on matters relevant to field operations of VPRS and OTP and acting as the OTP focal point for referrals for support and assistance for witnesses from VWS.
- (g) In supporting the investigatory missions, the Unit is also involved in the review of evidence and the provision of psycho-social support during exhumation.

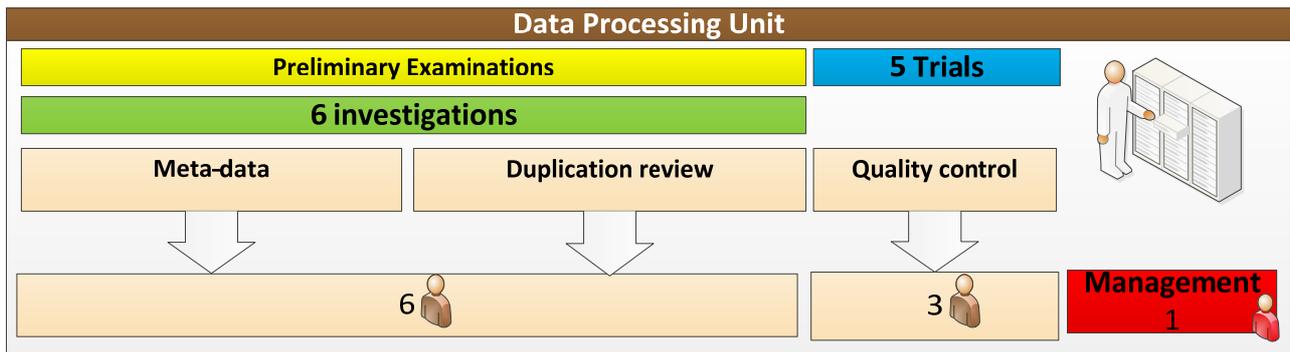
19. During the trial phase, GCU is involved in the psycho-social preparation of witnesses. While for hibernated cases, the Unit supports investigators in maintaining contact with witnesses, conducts re-assessments of their psychological condition and is responsible for referrals for support and assistance.

<i>GCU<sup>4</sup></i>	<i>Workload</i>	<i>FTE</i>
Training and compliance control	Country specific training, Training, Preparation and delivery 10 days per year per investigation	0.3
Network development	For all 6 active investigations 3 missions of 5 days per quarter (3*5*4=60 days)	0.3
Research SGBC	6 active investigations, 3 days per investigation per month, (6*3*12) 216 days	1.0
<b>Mission support</b>		
<i>Witness assessments</i>	121 vulnerable witnesses (15% of 510 witnesses in investigation and 300 trial witnesses) <sup>5</sup> taking 2.5 days to assess. (including mission travel) (121*2.5= 304 days)	1.4
<i>Witness assistance</i>	57 vulnerable witnesses requiring expert assistance taking 5 days. (7% of 510 witnesses in investigation or 300 trial witnesses) (57*5=285 days)	1.3
Management & Policy review		1
<b>Total GCU</b>		<b>5.3</b>

<sup>4</sup> The surplus of 0.2 FTE is accounted for by use of psycho-social experts from the GCU expert network.

<sup>5</sup> See also annex I, para 12.

(e) Data Processing Unit (DPU)



20. The mission of DPU is to catalogue the evidence collected and registered, as effectively and quickly as possible, in order to facilitate timely analysis, review and use in Court. The purpose of this process, which spans preliminary examinations, investigations and prosecutions, is to:

- (a) Provide metadata to prioritize material for analysis and review, run general searches and ensure sufficient information to give meaning to a piece of evidence once it is in the electronic evidence system
- (b) Ensure the metadata to be disclosed meets the requirements of the eCourt protocol for each case
- (c) Provide sufficient description and summary to search through A/V material and handwritten documents
- (d) Identify duplicates and versions of items to facilitate review and informed disclosure.

21. Past experience indicates a projected total of approximately 60000 items of evidence to be added per year across 6 active investigations.<sup>6</sup> All material should undergo basic cataloguing, quality control and duplicate review.

22. There is no particular role for DPU with regard to hibernated cases, up until the point that new evidence has been collected in the context of a hibernated case where meta-data must be provided while cataloguing.

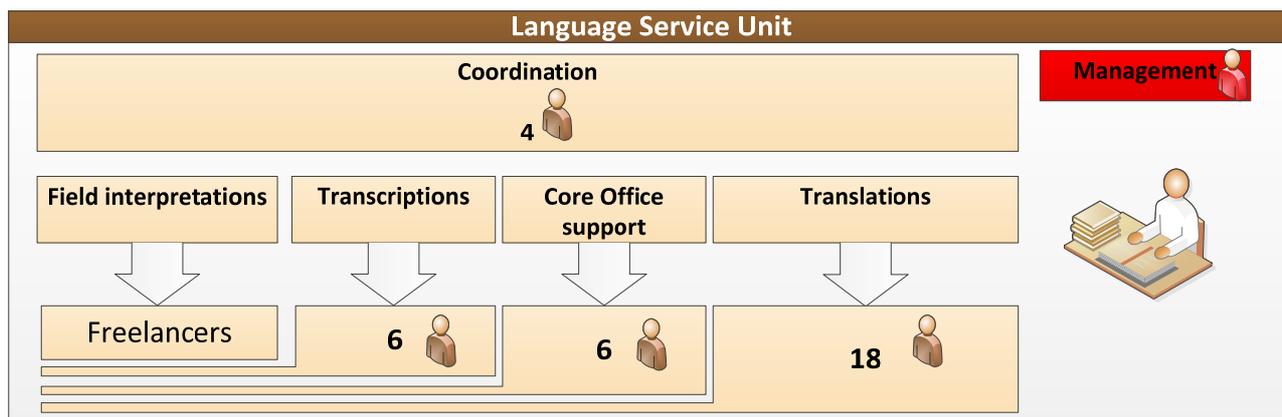
DPU	Workload <sup>7</sup>	FTE
Metadata	Approx. 10000 items of evidence treated per investigation at 45 items per day. 1 FTE per investigation. <sup>8</sup>	6
Quality control	Approx. 10000 items of evidence reviewed per investigation at 90 items per day. 0.5 FTE per investigation. <sup>9</sup>	3
Management		1
<b>Total DPU</b>		<b>10</b>

<sup>6</sup> The 60.000 items of evidence for all 6 investigations includes on average 10.000 items per investigation every year as well as the witness statements, digital evidence, satellite imagery, etc. (see annex II, para. 32)

<sup>7</sup> Although DPU also undertakes activities related to preliminary examinations, its resource impact is negligible

<sup>8</sup> See fn.

<sup>9</sup> See fn.



(f) *Language Services Unit (LSU)*

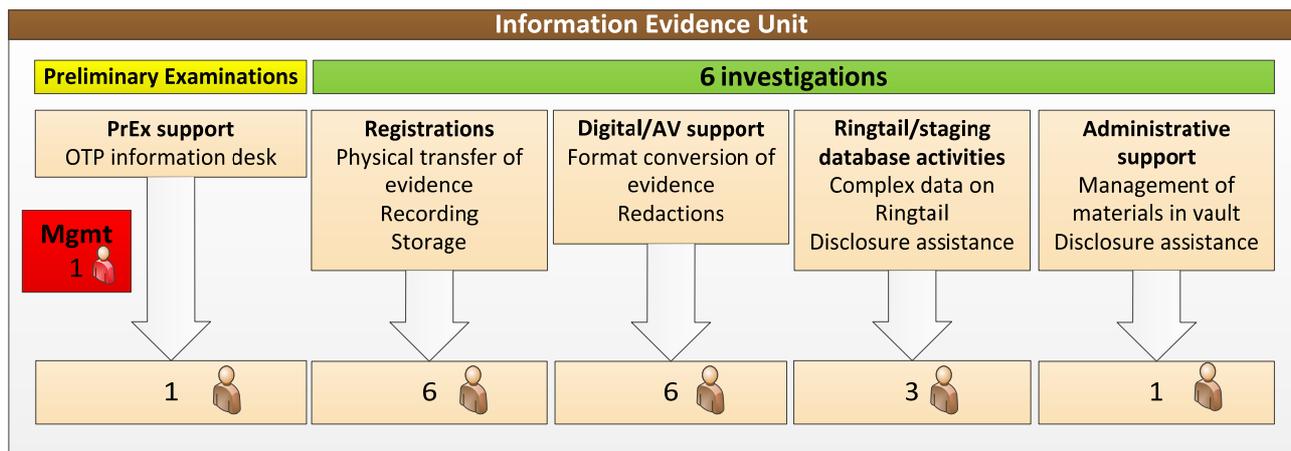
23. LSU provides a broad variety of language support during the preliminary examination, investigation and prosecution<sup>10</sup> phases. The three main areas of work – albeit not the only ones - are field interpretation, transcription and translations as required for the OTP. The requirement for language services is often volatile on account of uncertainty around, amongst other things, (1) how many and which languages will be encountered in any given situation country, especially regarding insider witnesses and victims whose evidence may need transcribing, and interpreting and translating into a working language and also regarding the accused, who are entitled to translations of evidence in a language they fully understand, (2) the commonness and other particularities of the languages involved, (3) the possible reach of an investigation beyond the situation country necessitating additional languages, and (4) the team's capacity to work in both working languages.

24. Due to the fluidity of language support needs the Unit adopts a mixed in-house and outsourcing approach to the extent that confidentiality requirements permit and, where circumstances allow, seeks to employ adaptable language staff that can cover a broad range of service areas. Language services are usually required in volume immediately from the start-up phase and continue on into the trial phase.

25. In view of the above, experience shows that for the base technical staff, a minimum of 2.75 translator FTE and 1 transcriber FTE are needed per investigation across the languages (an additional 1.5 Translator FTE is required to support core Office needs). Interpretation is predominantly serviced by freelancers though staff supplement this service area where efficiency, case familiarity and confidentiality require. To provide the support in, for example, processing service requests and contracts, deploying interpreters, and outsourcing translation and transcription, 1 FTE is needed per investigation. In addition, for the work across the various situations in the key service areas, the coordinators ensure: (1) efficient and effective sourcing, recruitment, tasking and management of internal and external language resources, (2) cost-effective provision of timely and quality services to the Integrated Teams in line with Office agreed procedures and standards, and (3) technical induction and mentoring of staff, especially for languages for which no formal qualifications exist, as well as technical services themselves. Overall management of LSU is undertaken by the head of unit.

<sup>10</sup> Significant language needs also arise in trial, e.g.: (1) KEN art 70 investigation + its impact on the ongoing court case; (2) investigations into Defence case; and (3) new evidence arising mid-trial;.

(g) Information Evidence Unit (IEU)



26. IEU has five main operational functions: registration, Digital or AV support, Ringtail and staging database activities, preliminary examinations support and administrative support. Registration involves the physical transfer of the evidence.

27. Support to the preliminary examinations is provided by IEU through the management of the OTP Information Desk that receives all art 15 communications. All communications are filtered after an initial assessment; the materials are scanned and placed in TRIM for JCCD review. This requires 1 FTE. Along with the Pre-Registration Forms, Chain of Custody of the item is recorded and the evidence scanned and placed in the database, accompanied with relevant meta-data. This evidence is then securely stored in the IEU Vault. This requires 1 FTE per investigation. Digital and A/V support involves handling audio-visual or digital materials during investigation and converting evidence to specifications provided for by the eCourt protocol later on<sup>11</sup>. For example, converting video files to Windows Media Video (WMV) format. It could also include redactions and the provision of subtitles in conjunction with LSU. 1 FTE per active investigation shoulders these responsibilities. Further, concerning the Ringtail and staging database activity which involves getting complex data onto the Office’s evidence database (Ringtail) as efficiently as possible, 1 FTE can support 2 investigations. Moreover, administration incorporating management of material in the vault as well as disclosure of the original evidence and reporting activities which is governed by the eCourt protocol and the storage of the original material in the vault requires 1 FTE.

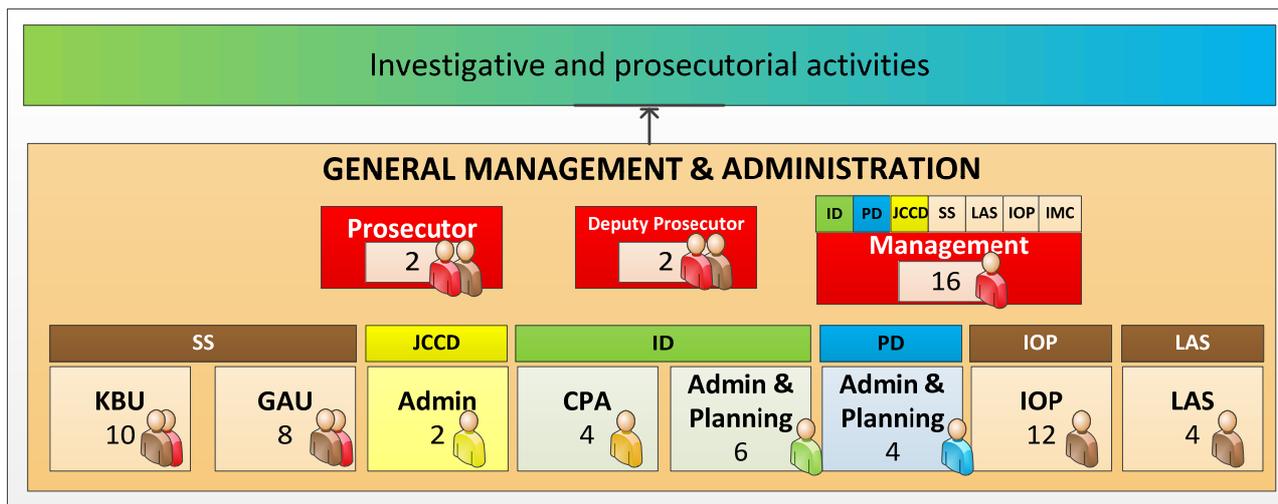
28. Finally, management of the entire team requires 1.0 FTE. This involves the oversight of all business activities, in addition to advising the Office of matters relating to evidence management. The manager is also the formal Custodian of all evidence collected by the OTP.

**B. General management and administration**

**1. Overview of composition**

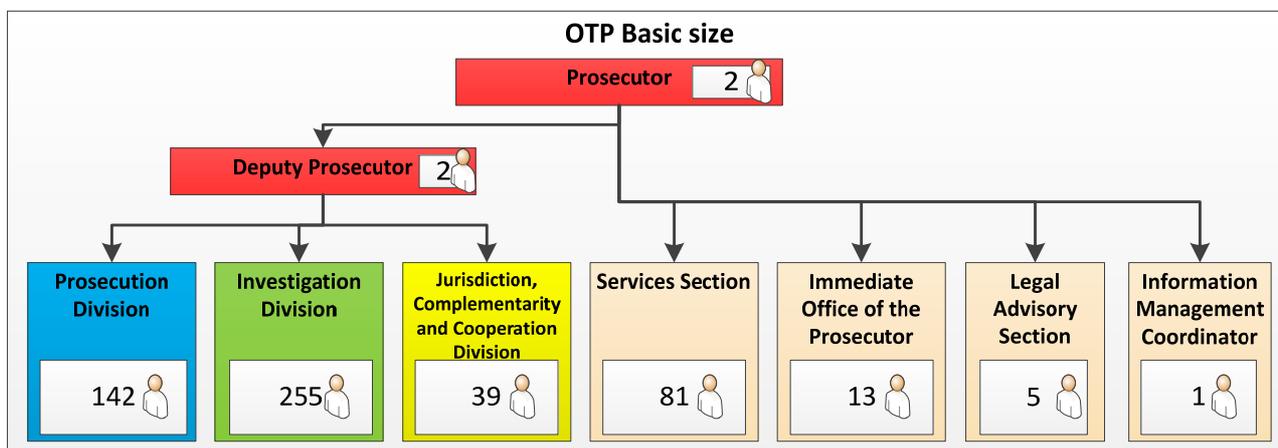
29. Similar to Expert and Operational Support, General Management and Administration directly supports the mandated activities described in annex II. In contrast to the Expert and Operational Support however, they are not specifically allocated to particular mandated activities and since their main focus is Office-wide, the resources justified below are categorized as General Management and Administration, separate from Expert and operational Support.

<sup>11</sup> Adopted by the Trial Chamber towards the beginning of the trial.



## 2. Justification of resources

### (a) *Management*<sup>12</sup>



30. Within the Office of the Prosecutor, management and oversight of the mandated activities and general running of the Office require the same basic management functions as any business or organisation.<sup>13</sup> The Office is comprised of three Divisions and two Support Sections: the Jurisdiction, Complementarity and Cooperation Division, the Investigation Division, the Prosecution Division, the Services Section and the Legal Advisory Section. The Deputy Prosecutor, assisted by a Personal Assistant, supervises and coordinates all three Divisions.

31. While each Division and Section has a specific set of roles and activities, each has the basic management functions to perform, namely the Planning, Organising, Staffing, Directing and Controlling of their respective areas. Each Division and Section will be

<sup>12</sup> The numbers displayed in the diagram represent the whole of the OTP under basic size 2016-2018 and thus include managers and their personal assistants. Moreover, The Office is currently in the midst of undergoing an internal review to decipher whether minor structural adjustments or rethinking are needed to further improve performance and productivity. It is not expected that this process will yield any major structural change or fundamentally alter the resource projections of the basic size model.

<sup>13</sup> The Office has regrouped the following functions to reflect the senior management level which supports the Prosecutor and Deputy Prosecutor. Some of the positions indicated with an asterisk are justified elsewhere in the document as part of the section they supervise: JCCD: 4 (director and personal assistant, head of ICS, head of SAS\*); ID: 7 (director and personal assistant, investigations coordinator, head of POS, head of ISAU, senior financial investigator, LEN-officer); PD: 2 (director and personal assistant); SS: 1 (Senior Manager Services Section); LAS: 1 (head of section\*); IOP: 1 (head of section\*), IMC: 1 (Information Management Coordinator); Total: 16 management positions.

responsible for the provision of necessary management information, in order to effectively organise, plan and run the Office in an effective and efficient manner.

32. Specifically within the OTP, and relevant across all the Divisions and Sections, management will provide the essential context and support for the Office and the integrated teams to succeed. This includes, for example assisting with investigative planning or the development of litigation strategies, depending upon the stage of the proceedings; maintaining the consistent application of standard operating procedures, covering a wide range of activities, across all of the teams; intervening, as necessary, at the senior management level to support effective and efficient team management and providing for continued professional development of staff.

(i) *Jurisdiction, Complementarity and Cooperation Division*

33. The Division, led by the Director, is composed of the International Cooperation Section (ICS) and Situation Analysis Section (SAS). The Director is assisted by a Personal Assistant.

34. The ICS is headed by the JCCD Co-ordinator. The role of the JCCD Coordinator is to: (1) Assist the Director of JCCD in the management of the Division and; (2) Coordinate with the Investigation and Prosecution Coordinators as necessary.

35. The SAS is led by a Head of Section.<sup>14</sup> The Head of Section would be in charge of (a) coordinating and supervising the review process of all article 15 communications received by the Office; (b) Coordinating and supervising all the Office's preliminary examination activities, including legal, contextual and factual analyses, and reviewing and editing all analytical products by the Situation Analysis Section; (c) Coordinating and supervising the OTP's public communication, network building and external relations activities with regard to preliminary examinations and; (d) advising and reporting to ExCom, including JCCD director, and the Prosecutor on all preliminary examination matters.

(ii) *Prosecutions Division*

36. The Division, led by the Director, is composed of the Prosecution Section and the Appeals Section and assisted by a Special Assistant. The Director is assisted by a Personal Assistant.

37. Within Prosecutions, the Director is supported by Senior Trial Lawyers who lead the Offices' integrated teams (mentioned in annex II, para 22). The Appeals Section is headed by a Senior Appeals Counsel.

38. The Special Assistant assists the Director with regard to resource planning, budget and service needs, collection and collation of management information and assistance in producing and monitoring Divisional objectives, she/he coordinates with the Services Section for budgetary and service needs, and with OTP-HR for recruitment (see also annex III, para 68).

(iii) *Investigations Division*

39. The Division, led by the Director, is supported by the Investigations Coordinator and the Head of Planning and Operations. In addition, the divisional management counts the head of ISAU, the Senior Financial Investigator, and the Law Enforcement Network (LEN) officer in its number. The Director is assisted by a Personal Assistant.

40. The role of the Investigations Coordinator is to (1) supervise the ID members in the integrated teams, advise investigative team leaders on all investigative matters; b) ensure investigative standards, harmonised practices, quality control and development projects in all matters related with investigations (2) Supervise ISAU activities; (3) Coordinate with the JCCD and PD Co-ordinator and STLs where necessary; (4) Create and maintain a network with national law enforcement organisations in relation to investigations. The

<sup>14</sup> Whose role is also justified in annex

Investigation Co-ordinator is assisted by the Head of ISAU; the Senior Financial investigator and LEN Officer.

41. The Head of ISAU conducts an overall evaluation of the analysis processes, tools and products on a yearly basis, including feedback from end-users, managers and the analysts, to ensure quality assessment, and compliance with the analytical standards, he/she develops the analysis function as well as conducts lessons learned as necessary. The Senior Financial investigator is responsible for standardisation across the integrated teams with regard to financial investigation and adherence to best practices, developing SOPs and maintaining networks. The LEN Officer assists in the creation and maintenance of the LEN network which is focused on, in cooperation with JCCD, the development of Strategic Goal 9 of the new Strategic Plan.

42. The role of the Head of Planning & Operations is to: (1) Assure the adequate planning of and support to the investigations and supervision of GCU, SRU, OSU, DPU, PSU, Admin and Planning; (2) Support integrated teams with specialised services; (3) Oversee issues related to the safety and well-being of staff members and witnesses; and (4) Coordinate the collection of security-related information between the integrated teams, PSU, OSU and JCCD.

(iv) *Services Section*

43. The Services Section (SS), through its specialised units, provides critical support functions in the areas of language expertise, physical and electronic evidence handling, technical assistance for OTP-specific information management, disclosure process, and financial and administrative management. The Section adopts a flexible approach and ensures an effective coordination with the Registry to allow a seamless provision of common services, in a continuum of activities that is aimed at meeting clients' needs with minimum resources

44. The Services Section, comprising of the General Administrative Unit (GAU), Knowledge Based Unit (KBU), Information and Evidence Unit (IEU) and the Language Services Unit (LSU) is headed by the Senior Manager Services Section. The units in SS perform activities which are not, nor can be, carried out by sections or units in other parts of the Court and are essential to OTP operations. The SS provides the operational Divisions with the necessary support services to fulfil their mandates. The Section also represents the OTP in financial, budgetary and resource-related matters before the CBF, the State Parties' delegates at the Hague Working Group (HWG) and other stakeholders, such as NGOs and international institutions. In addition, it manages service requirements arising from OTP operational needs and requested from the Registry and finally the Section represents the Office in Court-wide initiatives and projects.

(v) *Information Management Coordinator*

45. As the Office increasingly relies on electronic content, and the data and evidence used to conduct investigative and prosecutorial activities are collected, stored and analysed in an electronic format, the Office's information management environment is growing increasingly complex. The proper regulations and legal requirements regarding in particular electronic file management, information processing, evidence management and disclosure represent a critical need for the Office of the Prosecutor. They require a full-time management resource – the Information Management Coordinator (IMC) – dedicated to ensuring the ongoing development and compliance of the processes adopted, the security and the consistency of the data and information being processed and managed.

46. Currently, information management tasks are performed by different units in successive phases of information management. The cross-divisional nature of the workflow calls for the development of an information management strategy that can streamline the processes, provide guidance for the effective coordination of these tasks and for a function that can ensure compliance to such strategy throughout the Office.

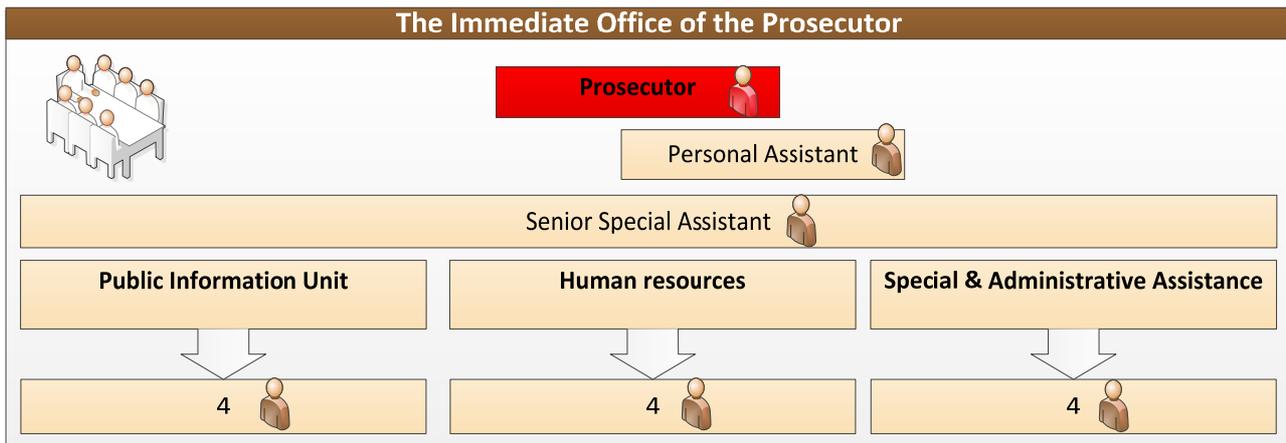
47. The IMC has an important role in ensuring that information, that together with the Office's staff forms the Office's most strategic asset, flows seamlessly within the Office, is managed through consistent applications within the Office, is protected, is available (with

the due limitations imposed by the confidentiality of the matter) to the rest of the Court and is compatible with the court-wide systems (e-Court).

48. The IMC role is strategic and oriented towards business processes design. The IMC plays a vital role in ensuring the development, implementation and maintenance of an information management strategy within the Office.

49. The IMC interfaces with his/her equivalent in the Registry and makes sure that, on the one hand the Registry provides the appropriate infrastructure services and, on the other hand, the court-wide strategic direction on information management is consistent with the specific needs of the Office.

(b) *Immediate Office of the Prosecutor*<sup>15</sup>



50. The Immediate Office of the Prosecutor (IOP) provides assistance and strategic advice to the Prosecutor in the day-to-day fulfilment of her functions and overall management and quality control of the Office; coordinates all strategic and administrative matters addressed to the Prosecutor and makes recommendations for action; coordinates internal and inter-organ activities on behalf of the Prosecutor; processes, prepares and vets all communications – correspondence, speeches, reports statements, *inter alia* – on behalf of the Prosecutor for final approval; coordinates ExCom meetings and review of filings, and communication with the Divisions, Sections, and the integrated teams; ensures the Office manages its specific human resources needs, and has in place a well-qualified and motivated workforce through its Human Resources team (OTP-HR), manages and assists the Office in the effective dissemination of information through its Public Information Unit (PIU).

51. The Prosecutor (USG) is supported by one Senior Special Assistant (P-4), who is in charge of OTP-HR, PIU and other staff of the Immediate Office and coordinates the functions of the IOP under the Prosecutor’s direct supervision. The IOP has one HR Liaison & Coordination Officer (P-3), who is supported by two administrative staff. PIU comprises of two Public Information Officers (P-2), supported by the Public Information Assistant (GS-OL). Two Special Assistants to the Prosecutor (one P-2 and one P-1) serve the IOP in the form of facilitating, primarily, ExCom’s review and processing of filings of the Office, coordinating ExCom and other managerial meetings and related responsibilities (e.g. taking minutes, preparing draft decisions for review and approval), and perform other tasks as assigned by the Prosecutor and the Senior Special Assistants. One Personal Assistant to the Prosecutor (GS-PL) and an additional Administrative Assistant (GS-OL) provide administrative support directly to the Prosecutor, the Senior Special Assistant and the IOP as a whole, respectively.

52. The workload of the Office has increased significantly, generating a constant demand for critical – prosecutorial, managerial, operational and strategic – decisions. The

<sup>15</sup> The Office is currently in the midst of undergoing an internal review to decipher whether minor structural adjustments or rethinking are needed to further improve performance and productivity. It is not expected that this process will yield any major structural change or fundamentally alter the resource projections of the basic size model.

projected assumptions on which the basic size model is built will maintain this demand. The functions of the IOP and the assistance it furnishes to the Prosecutor in the fulfilment of her mandate, and given the Prosecutor's commitment, as manifested in the new Strategic Plan of the Office (2016-2018) to "ensure a professional, accountable, transparent and efficient management of the Office" (*strategic goal 8*), the Office will be seeking to increase the staffing of the IOP as part of the basic size model. The addition of a Special Assistant (P3) to the existing resources of the IOP<sup>16</sup> is foreseen to help cope with the volume and complexity of the matters dealt with by the Immediate Office. This new added post would report directly to the Senior Special Assistant to the Prosecutor.

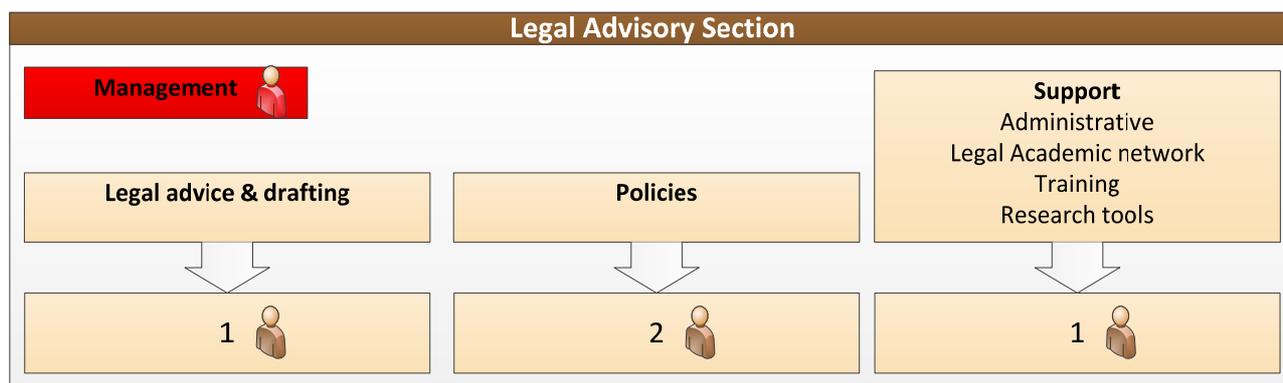
53. **OTP-HR:** The Prosecutor is assisted in properly staffing her Office by having a small HR Team. This team ensures efficient liaison between the Office and the Human Resources Section of the Registry; assists in harmonising policies between the Office and the rest of the Court; assists OTP managers with recruitment processes and strategies and ensures that HR related activities adhere to the Staff rules and regulations as well as relevant HR policies, codes and administrative documents at the Court. On behalf of the Prosecutor, OTP-HR also represents the Office in inter-organ consultations on HR matters and advises OTP management accordingly, including on workforce planning, annual training needs analysis and implementation, performance appraisals, OTP working climate issues and employee grievances/conflict resolutions. The OTP-HR is comprised of one professional and two GS-OL staff. As part of the basic size model, and related recruitment activities, as well as the specific HR needs of the Office and in line with strategic goal 8 referenced above, the resources of OTP-HR will need to be increased by an additional professional staff (P2).

54. **PIU:** Given its independent mandate as a party to the proceedings, OTP requires its own public information unit to address issues across all situations and cases and to impart key messages for the benefit of the public at large. This includes explaining OTP strategies and policies in preliminary examinations and in situation and case selection; explaining and providing updates on investigative and prosecutorial activities; and defending the OTP's positions and interests.

PIU proposes strategic priorities and drafts action plans consistent with the overall public information strategic approach set by the Prosecutor, including developing public information strategies from the preliminary examination phase of a situation through to trial and beyond.

PIU is responsible for delivering timely and accurate information and information products on the Office's positions and activities to the public at large and target audiences, through various means of communication, including the media. The Unit also develops and implements initiatives to ensure publicity and understanding of relevant OTP activities for national and international audiences. While the Office's activities and caseload have significantly increased, since the Unit was established in 2007, with a corresponding demand for higher volumes and a broader range of public information activities, the resources of PIU have not been sufficiently aligned to this new reality. The projected assumptions of the basic size of the Office will also entail that the current workload of PIU will not only continue at its already demanding levels, but will increase. To adequately respond to this operational need and anticipated increased demand, and in line with the strategic goal of, *inter alia*, "[...] promoting general support towards the mandate and activities of the Office" (*strategic goal 6*), an additional Public Information Officer (P2) will be required as part of the basic size of the Office.

<sup>16</sup> It bears noting that the composition of Immediate Offices of the Prosecutor at the *ad hoc* tribunals for instance at the height of their activities are, on average, equal or larger as it concerns special assistants and advisors to the Prosecutor directly embedded in the immediate office.

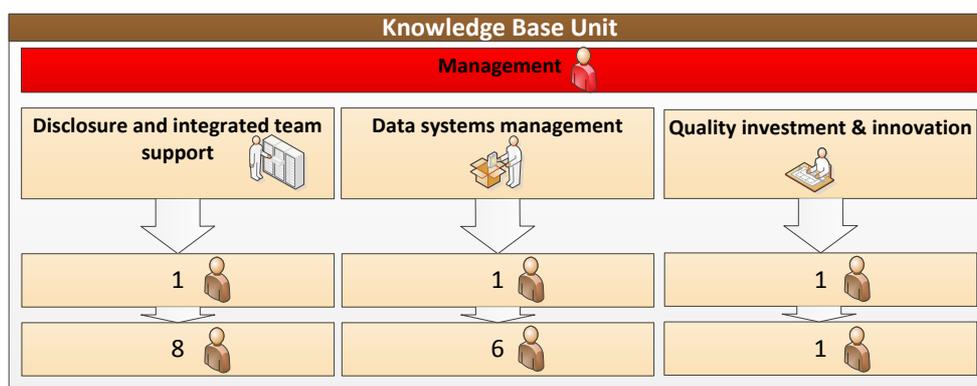
(c) *Legal Advisory Section*

55. The Legal Advisory Section (LAS) is to provide the Prosecutor and the Office with legal research and advice in respect to reports, and publications, advice on individual staff cases, as well as the review and drafting of contracts. LAS is responsible for the coordination and development of the Offices' internal regulatory framework, involving the development of policies, SOPs and guidelines and the coordination of their implementation. The Section is also responsible for coordination of the development of a Court-wide Case Law database as well as the preparation and dissemination of Weekly Court Reports and update a digest of chambers decisions. Finally LAS, supports OTP-HR in the preparation of training plans and ensuring the implementation of approved plans. LAS also organises and runs a series of Guest Lectures on issues of general interest to the Office and the Court as a whole; and at the request of the Prosecutor or ExCom, legal fora on thematic issues with internal speakers.

<i>LAS</i>	<i>Workload<sup>17</sup></i>	<i>FTE</i>
Provision of legal advice upon request to the Prosecutor, ExCom, Divisions, Sections, Units and teams	Provision of legal research and advice in respect of reports, etc., provision of legal advice and drafting in respect of individual staff cases, contribution to development of Court-wide agreements, documents on privileges and immunities, policies and administrative instructions, drafting and review of contracts (media, rent, equipment, support, consultants, special advisors and assistants); input for UN juridical yearbook; review of draft publications by colleagues	1.3
Development and maintenance of the Office's internal regulatory framework	Coordinate development of policies and coordination of their implementation; coordinate development, updates and implementation of internal regulatory documents, including the Operations Manual, SOPs, Confidentiality agreements / undertakings, Code of Conduct, Gift Register, Style Guide; development of methodology and repository for capture and implementation of lessons learned; development and implementation of assurance / compliance mechanisms	1.5
Development, introduction, maintenance and management of legal research tools	Coordination of development of a Court-wide Decisions and Judgment database; management of Legal Tools coordination; preparation and dissemination of Weekly Court Reports	0.5
Provision, upon request of the Prosecutor, of specific training to Office staff	Coordination of external training for Office; provision of internal training on Legal Tools, preparatory works databases, the Code of Conduct, Lessons Learned Portal, OTP policies, etc.; facilitation of Lessons Learned exercises	0.4

<sup>17</sup> These workload indicators have been compiled following an internal analysis.

<i>LAS</i>	<i>Workload<sup>17</sup></i>	<i>FTE</i>
Development of the Office's legal academic network	Development of legal academic network, including OTP Guest lectures (finding speakers, preparation, hosting, feedback) and responding to inquiries from academics; provision of presentations to visitors, conferences etc.; maintenance of contact with special advisors; management of the UCLA Forum on behalf of the Office	0.2
Administrative support	Management of leave and travel matters; management of supplies; provision of logistical support; management of new arrivals / induction; acting as section focal point for SAP, FMU, IT and other central services; maintenance of legal memoranda collection for use by all OTP, as well as storage of other LAS work product; scheduling meetings; drafting of meeting minutes	0.2
General management	Management, supervision, administration of Section's staff and tasks; performance appraisals; contributions to ExCom, Office and Court management; management of Section's interns (selection, evaluation, provision recommendations / references); recruitment, including participation in recruitment for other parts of the Office and Court	1.3
<b>Total LAS</b>		<b>5.4</b>

(d) *Knowledge Base Unit*

56. KBU supports the Office in both operations and management contexts. KBU's organisation allows it to cover three areas of expertise: (1) data management support for integrated teams including disclosure, (2) technical management of OTP specific information systems and (3) knowledge management and quality initiatives and process innovation. Each of these activities is supervised by a coordinator. General management of the unit is undertaken by the Head of Unit.

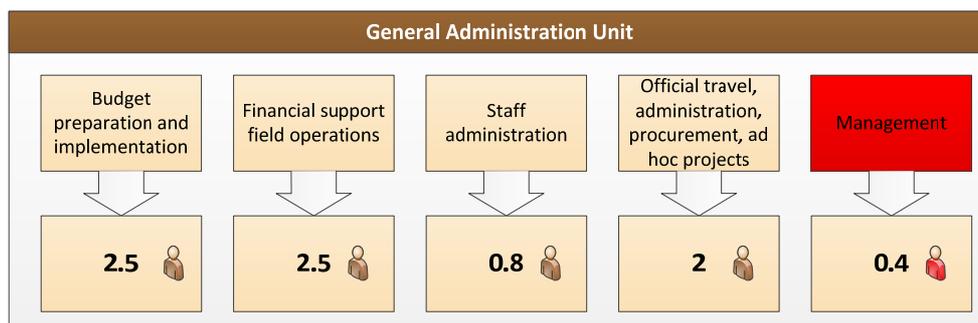
57. Servicing the integrated teams and other service providers, KBU provides operational technical information management support focussing on databases and information management tools to optimise information structures including for disclosure. This support is also needed to cater for the information linked to preliminary examinations, hibernated cases, pre-trials and appeals. The basic requirement to support 6 active investigations and 5 trials and the hibernation activity is 6 FTE, being approximately a ratio of 2 cases per database coordinator. For all active investigations and trials, two Disclosure Search Assistants support the integrated teams by performing text search and data mining capabilities for disclosure and case preparation purposes. Additionally they perform the technical maintenance of the data mining tools.

58. The second area of KBU concerns data systems management. KBU's workload is driven by the number and complexity of software applications utilised by the office. As new software and systems are adopted, more specialisations are required within KBU to support OTP users. Currently the office uses four main systems: Trim, Ringtail, Wynyard and SharePoint. These systems are managed by P-2 Information Officers supported by one Technical Assistant (GSOL). These staff are necessary to cater for the management of security groups, access control and configuration of the systems to meet the work-flows and

practices of the team within the office. It is assumed that customisations, data storage facilities and infrastructure support and maintenance will be provided by the IMSS (formerly ICT) in the Registry.

59. The third area of KBU concerns support to knowledge management, quality initiatives and process innovation. Two resources (P3 Project Manager and GS-OL Assistant) are required to run, facilitate or coordinate office-wide improvement projects. The continual focus on quality, institutional process improvement and the evolution of a learning culture within the OTP requires that resources are made available to ensure success. The Office is implementing substantial changes to its practices in the areas of information management in its operational and management activities. Skills in project management and business process optimisation are essential to realise actual benefits to operations across all divisions and sections.

(e) *General Administration Unit*



60. The General Administration Unit (GAU) plays a key role in the financial administration and management of the Office, and is responsible for Budget, Finance and HR Administration and acts as a focal point on these matters for the Office. GAUs activities can be broadly divided into 4 main areas of activity.

61. Concerning budget preparation and implementation monitoring, GAU is the centralising co-ordinating function for annual and Contingency Fund budget preparation, including document provision and elaboration for CBF, HWG and ASP meetings.

62. With regard to financial support for field operations, GAU is responsible for the management of OTP funds, including certification, monitoring, forecasting and expenditure reporting from the field. GAU ensures the appropriate allotment of expenditures and fund availability as well as the efficient and timely reconciliation.

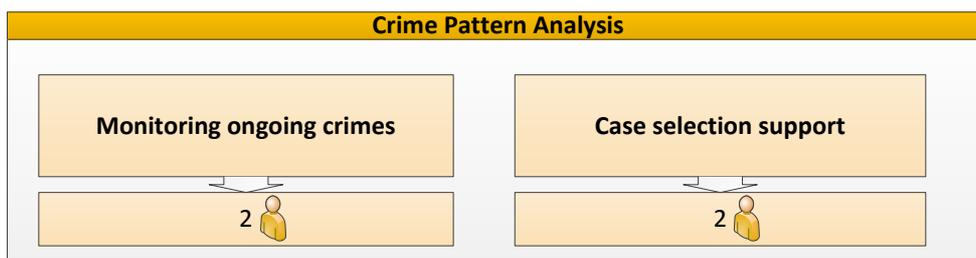
63. For staff administration and individual contractors, GAU is responsible for the administration of posts and staffing tables, ensuring appropriate allotment codes, forecasting, processing of temporary contracts, individual contractors and consultants, including their payments. In addition GAU co-ordinates the OTP Internship & Visiting professional programme with the focal points of the Divisions and Sections of the Office.

64. Finally, to cover official travel, administration for procurement and *ad hoc* projects, GAU manages the travel budget – the control and certification of travel claims as well as co-ordinating procurement for all equipment and contractual services linked to the Office's operations and activities. GAU ensures efficient and transparent use of resources, avoiding duplication of purchases as well as managing the implementation of the procurement plan.

<i>GAU</i>	<i>Workload</i> <sup>18</sup>	<i>FTE</i>
Budget preparation and implementation	Budget preparation and implementation. Develop OTP budget in accordance with ExCom guidelines, drafting of narratives, preparations of CBF documents and reports supporting approval performance reports. Expenditure analysis and forecasting. Quarterly reports to ExCom on expenditure and budget implementation including GTA plans. Tracking and monitoring of all allotments and object expenditures relevant to the Office; maintain current data on allotments/redeployments; preparations of input for forecasts and reports on the budget for the Office. Maintain and analyse accuracy on cost allotments/object of expenditures and financial status of accounts. Maintain expenditure monitoring records to support forecast and expenditure plans. Close monitoring of previous and current year obligations; Total: 542 days	2.5
Field operations	Manage Field Operations Accounts Reporting; maintain account data to cover witness and general operating expenses under financial obligation for account holders; reporting on field operations, administration of funds compliance vis á vis policies. Training and guidance, fund advances, annual declarations, reconciliation and certification of expenses; Total: 557 days	2.5
Staff administration	Staff: Data verification, post maintenance, forecasting and reporting. Processing and submission of GTA request; prepare and maintain GTA tables, quarterly reports. Ensure closure of previous year HR obligations. Maintain records of ExCom approved GTA plan status. Maintain established posts table, analyse variances and periodic reports. Make redeployments as necessary to meet costs. Liaise with HR staff admin on master data; liaison with Staff Strategy (OTP), develop guidelines and ensure compliance as necessary. Individual Contractors and consultants: Processing of contract requests for contractors and consultants; create SAP requisitions; maintain files and update records; create and authorize payment; follow up with Finance for payment. Follow up service records and fees payment; oversee settlements and resolve discrepancies. Ensure closure of previous year HR obligations.  Internship and Visiting Profession programme: Coordination, distribution of applications, consultation with Divisions, arranging arrivals, induction, resolve issues; Total: 171 days	0.8
Official travel, administration, procurement, ad hoc projects	Timely closure of previous year obligations. Travel expenditure reports for budget planning and analysis of budget irregularities, forecasting and fund redistribution. Travel approval, certification, troubleshooting and training. Preparation of annual procurement budget and plan. Funding redeployments, create SAP requisitions. Participation in Procurement Review Committee. Bank signatory, <i>ad hoc</i> projects, Unit Intranetsite; info/documents collection for administration Manual. Administrative and secretarial support to services sections, maintain leave records, travel plans and claims support, focal point for ASP and CBF. Extra-budgetary fund management i.e.: legal tools, requests process, travel, fund monitoring, reporting OTP wide support for SAP travel/procurement and HR modules. Briefings, and one-to-one support, develop competence; liaise with Registry; resolve minor SAP problems: Total 435 days	2
Management	Team meetings, appraisals, task assignment and clarification, Manual compliance; Total 97 days	0.4
<b>Total GAU</b>		<b>8.2</b>

<sup>18</sup> This workload has been calculated on the results of consistent activity tracking by the Unit. After an analysis of the data, the following FTE requirements appeared.

(f) *Crime Pattern Analysis*

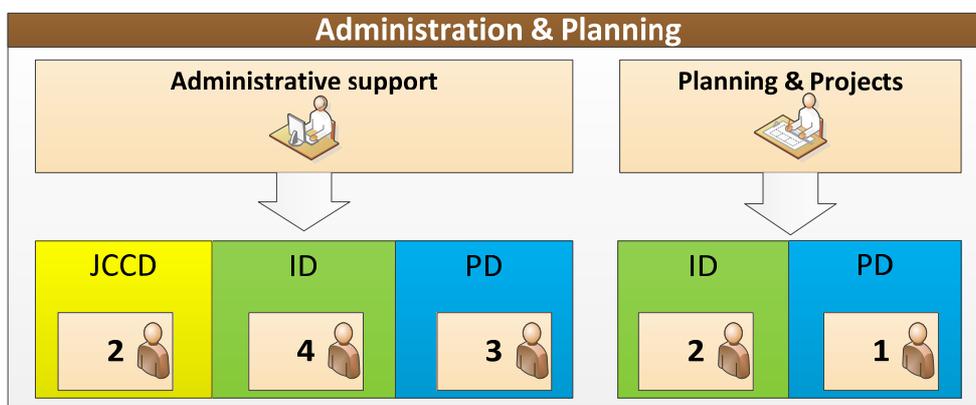


65. Crime Pattern Analysis (CPA) is a small unit, part of the Investigations Division, tasked with conducting crime pattern analysis. The unit undertakes the following activities:

- (a) Monitoring of on-going crime in situations referred by the United Nations Security Council (UNSC) is currently required for 2 such situations. This work is required to support the periodical reports of the Prosecutor to the UNSC (twice a year for each situation) and involves constant monitoring of open sources as well as communications received by the Office regarding alleged crimes falling within the jurisdiction of the Court committed in the two situation countries; the collection of such information (including through social media, etc.), storage of the sources in record management databases, input and processing in analytical databases, production of major standard reports twice a year for each such Situation, and *ad hoc* production of analytical reports for particularly grave crime incidents.
- (b) CPA is also engaged in crime pattern analysis to support case selection. In order to adequately support case selection, the unit should be providing analysis of crime patterns relevant to multiple potential cases within and across situations under investigation, to assess crime gravity and other features, and to assist management and the Prosecutor in decision-making to select cases for investigation in the most objective and accurate manner. There is a need to develop data collection, input and database processing for this specific purpose, 2 major reports per year, and *ad hoc* analysis upon request from management.

<i>Crime pattern analysis</i>	<i>Workload</i>	<i>FTE</i>
Monitoring ongoing crimes	2 UNSC-referred situation countries: 2 yearly reports/situation, open source monitoring, record management;	2
Case selection support	Monitoring new crimes in 8 situation countries under investigation and for 1 new situation every year requiring CPA: data collection, collation, analysis, reporting, ad hoc analysis	2
<b>Total</b>		<b>4</b>

(g) *Administration and planning*



66. In order to allow for the proper functioning of the Office, Divisions and Sections require administrative and planning support. As well as basic administrative tasks that assist the functioning of any office, there is a need for accurate tracking of leave and overtime, collection, collation; production of management information, and assistance in the monitoring of recruitment and training. Within the Investigation and Prosecution Divisions<sup>19</sup> there is additional need for planning and project support. The planning and project resources, assisted by the administrative support, help drafting the budget narrative (assumptions, resource needs, objectives, etc.), will ensure the timely production and analysis of management information and report to the Division's Directors (recruitment plan, training plan, risk management, performance indicators, etc.), and will take the lead of improvement projects of their respective Divisions, specifically with regard to management and efficiency.

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<sup>19</sup> For planning and projects within PD, see annex III, para 38 where this function is covered by the Special Assistant.

## Annex IV

### High-level analysis of the impact of the next OTP Strategic Plan on the operations of other organs

1. After its twenty-third session, the Committee on Budget and Finance (“the Committee”) requested that the Court evaluate the potential significance for its operations of the Strategic Plan of the Office of the Prosecutor (“the OTP” or “the Office”).<sup>1</sup> The OTP Strategic Plan relies on increased resources to be able to meet the demands of the Office’s intervention. This increase is quantified through the “OTP Basic Size” exercise which provides a forecast of resource requirements over the next years, focusing on the OTP’s needs and operational requirements. As the OTP does not operate in a vacuum, any such increases trigger additional activities in the other organs of the Court, in particular its service provider, the Registry. For example, interconnection between organs is evident in terms of courtroom capacity: if the OTP needs to respond to the demand for its intervention, resulting in a higher number of investigations than presently done, this will have consequences on the resources needed by the other organs if multiple arrests occurred: with only one team in the Registry to support all courtrooms activities and eighteen judges, the Court would have insufficient resources to handle an increased workload within a reasonable timeframe. This should be properly factored in so that the States can take a decision on the Court’s future size from a holistic perspective. At its twenty-third session, the Committee therefore also requested “that the other organs of the Court affected by the OTP Strategic Plan provide an analysis of any impact of the next OTP Strategic Plan on their operations to the Committee by 30 June 2015”.<sup>2</sup> This Annex provides a high-level analysis of this impact.

2. The OTP has involved the Presidency and the Registry in the review of its basic size. The assumptions used by the OTP and the activities described to gauge the level of resources required are nevertheless focused on the OTP’s Preliminary Examination, Investigation and Prosecution phases. Since the basis for the evaluation exercise requested by the Committee is the OTP strategy, the other organs initially used the same assumptions as the basis for their evaluations. However, it quickly became apparent that the impact was also linked to other activities that fall outside of the scope of the OTP, whether judicial, such as reparations or witness protection for the Defence, or operational, such as the need to keep field Office open beyond the OTP’s timeframe of operations, and that some of these activities had been taken into account in the OTP assumptions. Additional work was therefore required from both organs to complete their high-level evaluation.

3. The OTP’s basic size model implies a substantial increase over time in the work of the Judiciary. The OTP assumes that there would be up to five cases at the pre-trial phase and four to six cases at the trial phase throughout the period 2016-2018, which looks broadly realistic. However, if OTP’s assumption of an overall prosecution phase of only 3.5 years for pre-trial plus trial proves over-optimistic in practice, there could be a further increase over time in the number of cases at trial.

4. With the availability of three substantial courtrooms in the new premises, it will be possible to hold more trial hearings simultaneously than at present, subject to the provision of the necessary courtroom support staff. The key practical constraint will become the number of judges available to sit in trials. With the prospect of four cases simultaneously at the trial hearing stage in 2016<sup>3</sup>, the judiciary already expects scheduling constraints next year on how quickly the existing trials can progress. Beyond a certain point, any further increase in the number of simultaneous trials would require a move towards consecutive rather than simultaneous hearings, further reducing the rate of progress of individual cases, unless there was an increase in the number of judges sufficient to enable the cases to proceed independently. It is not possible at present to predict when this point will be

<sup>1</sup> *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Thirteenth session, New York, 8-17 December 2014 (ICC-ASP/13/20), vol. II, part B.2, paras. 51 and 52*

<sup>2</sup> *Ibid.*

<sup>3</sup> Even though four simultaneous trial hearings are being set as the prospect, the OTP will need 5 trial teams for all cases that are in the trial phase (see also annex II on the estimated demand).

reached, but taking the OTP's output assumptions and extrapolating them beyond 2018 suggests that it could be reached within the next few years.

5. Considering the new Registry structure and the new approach to administration, the Registry was able to use some of the OTP assumptions to determine a high-level impact. Without going into the details of the projections made for all Registry Sections, it should be noted that the number of investigations planned by the OTP – six investigations ongoing in parallel and one new situation opened every year – has a considerable impact on the Registry. With regard, in particular, to the new Registry Division of External Relations, the Registry's approach was to seek to temper the impact of the OTP assumptions by using historical ratios to ensure that projections were not made mechanically, adding a new field office whenever a new situation is created. Of major relevance to this Division, the new OTP strategy is based on the assumption that between 50 and 60 witnesses would be required to testify in Court (implying that the OTP will interview 170 witnesses per investigation). Because of the Registry's witness protection mandate, this assumption has a direct impact on the Registry's resource requirements. Although work is ongoing in both organs to limit this impact, it remains an element to be factored into the equation. The Registry also identified the need to maintain some resources after the OTP considers all activities to be discontinued in any given case (for example, at the end of an investigation or on exhaustion of appeals) since the Registry's witness and victim support mandate requires resources to be maintained on cases that are "closed" from an OTP point of view. Although limited, the additional requirements specific to the Registry's mandate have been included in the analysis, including in particular the need for additional field office presence, with the OTP assumption that, out of every three new investigations, two will be in a new situation country.

6. With regard to judicial forecasts and their impact on the Registry's Division of Judicial Support Services, it should be noted that the OTP assumes that 75 per cent of all investigations will result in the direct execution of warrants of arrest and forecasts the consequent immediate start of judicial proceedings. This has major consequences for Court-wide projections. As mentioned above, the running of 4 cases during the year has an impact on the judiciary's resources. Likewise, this will have an impact on the Registry's required judicial support teams. Additionally, while the OTP is able to rotate its resources from one investigation to another, taking full advantage of economies of scope, the Registry is not always in a position to do so, and new investigations can require additional resources from a purely practical point of view (for example, interpretation in a language not currently supported at the Court). The number of new situations and new languages that will potentially have to be supported means that the Registry rather than the OTP will require additional resources to support judicial proceedings.

7. In terms of operational support, the Registry and the OTP have taken a similar high-level quantification approach and applied ratios to increase the resources available for operational support to the additional judicial and prosecutorial activities. It should be noted that the Court's permanent premises are both a source of an increase in support resources (for example in security services) and a potential bottleneck for the maximum level of activities that can be planned: the Court needs to be able to house its staff within its permanent premises and the field premises. The number of workplaces is a factor to consider without it being a reason not to allow the Court to grow towards the required staffing level to meet the demand that is put on it. The present projection however allows the Court to absorb the staffing level into its premises until 2018.

8. With these assumptions in mind, the high-level results of the OTP basic size forecast and its impact on the Registry show comparable average resource growth in the organs with a comparable increase in staff over the coming years. However, as a result of the structural difference between the two organs described above, while the OTP forecast of resource requirements appears to stabilise at a ceiling after a couple of years, the Registry's ceiling is only materialising later in longer-term projections. The averages are comparable but the rates of increase are different: the Registry impact is spread over a longer timeframe which might not yet be fully reflected in the current high-level exercise.

9. It has proven difficult to calculate the impact of the OTP increase on the resources of the other organs and further analysis is required. This was understood by the Committee at its twenty-fourth session when it requested the Court to provide a “basic size” budget for the whole organization (including the Registry)<sup>4</sup> at its twenty-sixth session, pointing out that it required a description of the “reasonable shape” the Court would have given its anticipated level of activity.<sup>5</sup> Work will continue within the Court to meet this objective.

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<sup>4</sup> Report of the Committee on Budget and Finance on the work of its twenty-fourth session, ICC-ASP/14/5, para. 78, advance version

<sup>5</sup> *Ibid.*

## Annex V

### Abbreviations

Afg.	Afghanistan
ALA	Application to leave for appeal
ASP	Assembly of States Parties
AW	Arrest Warrant
AWA	Arrest Warrant Application
A/V	Audio/Visual
BSQ	Biographical Security Questionnaire
CAR	Central African Republic
CBF	Committee on Budget and Finance
CdI	Côte d'Ivoire (Ivory Coast)
CH	Case Hypothesis
CBG	Charles Blé Goudé
COL	Columbia
CM	Case Manager
COM	Comoros (Islands)
CPA	Crime Pattern Analysis
CTO	Compensatory Time Off
DAR	Darfur
DCC	Document Containing the Charges
DO	Dominic Ongwen
DPU	Data Processing Unit
DRC	Democratic Republic of the Congo
ExCom	Executive Committee
FAD	Factual Analytical Database
FTE	Full Time Equivalent
FMU	Facilities Management Unit
GAU	General Administration Unit
GCU	Gender and Children Unit
GEO	Georgia
GIS	Geographic Information System
GTA	General Temporary Assistance
GUI	Guinee
HON	Honduras
HQ	Headquarters
HR	Human resources
HWG	Hague Working Group
ICC	International Criminal Court
ICS	International Cooperation Section
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
ID	Investigations Division
IEU	Information and Evidence Unit
IMA	Information Management Assistant
IMC	Information Management Coordinator
IMSS	Information Management Services Section

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IOP	Immediate Office of the Prosecutor
IRQ	Iraq
IRA	Individual Risk Assessment
ISAU	Investigative Strategies and Analysis Unit
JCCD	Jurisdiction, Complementarity and Cooperation Division
JK	Joseph Kony
KBU	Knowledge Base Unit
KEN	Kenya
KOR	Republic of Korea
LAS	Legal Advisory Section
LEN	Law Enforcement Network
LG	Laurent Gbagbo
LIB	Libya
LRA	Lord's Resistance Army
LSU	Language Services Unit
MAL	Mali
MPC	Mission Planning Centre
NIG	Nigeria
NGO	Non-Governmental Organization
OSU	Operational Support Unit
OTP	Office of the Prosecutor
PD	Prosecutions Division
PIU	Public Information Unit
PrEx	Preliminary Examination
PSU	Protection Strategies Unit
PTC	Pre-Trial Chamber
RFA	Request for Assistance
SAP	Systems, Applications and Products in Data Processing
SAS	Situation Analysis Section
SGBC	Sexual and Gender Based Crimes
SOP	Standard Operating Procedures
SRA	Situation Risk Analysis
SRU	Scientific Response Unit
SS	Services Section
STL	Senior Trial Lawyer
SP	Strategic Plan
STRA	Situation Threat and Risk Assessment
US	United States (of America)
UKR	Ukraine
UN	United Nations
UNSC	United Nations Security Council
UPDF	Uganda People's Defence Force
VEN	Venezuela
VPRS	Victims Participation and Reparation Section
VWS	Victims and Witnesses Section

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