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Report of the Bureau on complementarity

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I. Background and mandates

1. At its second meeting on 6 April 2021, the Bureau appointed Australia and Uganda as *ad country* focal points for the topic of complementarity (also considered an “Assembly Mandate”). As such, Australia and Uganda were focal points in both The Hague Working Group and the New York Working Group in the lead-up to the twentieth session of the Assembly.

General mandates

2. At the nineteenth session of the Assembly (“ASP19”), States Parties resolved to continue and strengthen, within the appropriate fora, effective domestic implementation of the Rome Statute to enhance the capacity of national jurisdictions to prosecute the perpetrators of the most serious crimes of international concern in accordance with recognized fair trial standards, pursuant to the principle of complementarity.¹

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

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

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

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

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

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

Review of the International Criminal Court and the Rome Statute system

9. In the context of the wider State Party-driven review process commenced in 2019, the Review Resolution passed by the Assembly in 2020 at its nineteenth session took note “of the fact that some issues identified by the Group of Independent Experts are already under active consideration by the Court or in the Bureau working groups, facilitations and other forums, and that such work should continue and should be coordinated with the larger review process with a view to avoid duplication and benefit from synergies.”⁶ Relatedly, the Assembly also indicated work should continue on the priority topic of “Complementarity,

¹ *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Nineteenth session, The Hague, 14-16 December 2020* (ICC-ASP/19/20), vol. I, Part III, ICC-ASP/19/Res.6, para 128.

² ICC-ASP/19/Res.6, para. 133 and annex I, para. 14(a).

³ ICC-ASP/19/Res.6, para. 134 and annex I, para. 14(b).

⁴ ICC-ASP/19/Res.6, para. 136.

⁵ ICC-ASP/19/Res.6, para. 135.

⁶ ICC-ASP/19/Res.7.

and the relationship between national jurisdictions and the Court” and that progress should be reported to the Assembly in advance of its twentieth session.⁷

10. Further background on this priority review topic, including its intersection with the mandate and work of the Independent Expert Review (IER), is set out in the “Report of the Bureau on complementarity”, welcomed by the Assembly at its nineteenth session.⁸ The Assembly also noted the recommendations made in that report on future consultations on the topic of complementarity (see paragraph 16 below).⁹

11. Paragraph 7 of Review Resolution ICC-ASP/19/Res.7 required Assembly Mandates designated as responsible for “assessing and taking possible further action on relevant [IER] recommendations” to submit to the Bureau the outcome of its consideration and proposals for next steps by 1 November 2021.

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

13. On 1 November 2021, the focal points therefore submitted to the Bureau a short report of their activities in 2021 relevant to the review process and pursuant to paragraph 7 of Review Resolution ICC-ASP/19/Res.7. That report foreshadowed that this “Report to the Bureau on complementarity” would set out a more detailed summary of *all* complementarity-related activities this year (i.e. including on sexual and gender-based crimes), along with general findings, and draft language for the omnibus resolution. It was also foreshadowed that the present report would set out a proposed focus for future work and consultations on complementarity, particularly in the context of the review process.

Sexual and gender-based crimes

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

15. On 6 April 2021, the Bureau assigned this mandate to Australia and Uganda as focal points for the topic of complementarity on the basis that their general mandate also extended to assisting “on issues such as...sexual and gender-based crimes”, as it had in 2020.

II. Organisation of work

16. As noted above, in their “Report of the Bureau on complementarity” submitted ahead of the Assembly’s nineteenth session, the focal points (Australia and formerly Romania) suggested that there appeared to be broadly four streams of work that the focal points could concurrently focus on in 2021:¹²

“(1) Continuing dialogue with the Prosecutor and OTP on the forthcoming (policy) papers on complementarity and completion, and any revisions to its existing policy papers, including on preliminary examinations, as appropriate. This dialogue would need to respect judicial and prosecutorial independence and discretion, as well as the reality that a new Prosecutor will take office in the course of 2021.

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

⁷ ICC-ASP/19/Res.7, para. 9(b) (referencing ICC-ASP/18/Res.7 paras 18 and 19).

⁸ ICC-ASP/19/Res.6, para. 133, citing the *Report of the Bureau on complementarity*, ICC-ASP/19/22.

⁹ ICC-ASP/19/Res.6, para. 133, citing the *Report of the Bureau on complementarity*, ICC-ASP/19/22.

¹⁰ https://asp.icc-cpi.int/iccdocs/asp_docs/ASP20/RM-Comprehensive_Action_Plan-ENG.pdf.

¹¹ ICC-ASP/19/Res.6, para. 60 and annex I, para 10(d).

¹² ICC-ASP/19/22, para 41.

principle of complementarity, to build on the work of the IER with a view to a possible ASP or States Parties' statement or resolution on complementarity by ASP20.

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

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

17. Not wishing to prejudice any decision of the Review Mechanism on the categorisation and allocation of IER recommendations during the first half of 2021, the focal points focused their initial two meetings on streams of work that were not directly related to the IER recommendations. This included initial informal consultations with the OTP on its *draft Policy on Situation Completion* (in line with the first stream of work) and an informal meeting on supporting the Court in developing jurisprudence on sexual and gender-based crimes (SGBC).

18. At its third meeting, the focal points presented and sought feedback on a programme of work for the remainder of the year, which aimed to progress discussions on certain priority IER recommendations related to complementarity.

19. At its fourth and final meeting, the focal points facilitated preliminary discussions with the OTP and other stakeholders specifically on recommendations 227 and recommendations 262 – 265, having been identified as priority recommendations for discussion in the second half of 2021.

20. A planned fifth joint meeting on complementarity and cooperation, focusing on the division of labour between the ASP and the Court (linked to consideration of recommendation 247(ii)), was unfortunately deferred to 2022 due to scheduling issues.

III. Summary of meetings and informal consultations

21. As set out above, in 2021, the focal points held four meetings and informal consultations on the issue of complementarity with relevant stakeholders, including States, all organs of the Court, and representatives of civil society and international organizations. All informal consultations within The Hague Working Group were also open to Observer States, non-States Parties and civil society organizations. A summary of these meetings is set out below.

First meeting: OTP Policy on Situation Completion

22. The focal points facilitated a first meeting on 30 April 2021 to discuss the OTP's (then) *draft Policy on Situation Completion*, particularly in light of relevant IER recommendations.

23. The Office made three introductory points. First, the Policy on Situation Completion was part of former Prosecutor Bensouda's legacy, attempting to capture the lessons of experience to shape a policy on situation completion that could be used now and in the future. It was designed to complete a trilogy of policy papers, that included the Policy Paper on Preliminary Examinations and the Policy Paper on Case Selection and Prioritisation. Second, a flexible approach was being adopted in terms of the policy's applicability in practice, so as not to bind the hands of the Prosecutor-elect. Third, the draft policy was a technical legal document which provided a general framework within which the Office would apply completion strategies, adapted to the circumstances of the particular situations under investigation.

24. The Office underscored that many relevant IER recommendations had already been captured in the draft policy (e.g. R244 (in part), R245, and R247 (in part)), while others may be better situated in a broader Court-wide protocol (e.g. R247 (in part)), and several others

were still being internally discussed (in particular R243-244, R249 and R250) to see whether and how the Office could better address them in the policy.

25. States Parties welcomed the presentation, as well as the opportunity to engage and ask questions about the draft policy. There was significant interest amongst some States Parties and other stakeholders in holding additional meetings in the future to discuss the Policy, including with the Prosecutor-elect when his term of office commenced.

26. A revised and final version of the Policy was subsequently published on 15 June 2021.

27. A more comprehensive record of this meeting is available at the complementarity resources page of the ASP website.¹³

Second meeting: “Developing jurisprudence on sexual and gender-based crimes”

28. On 16 July 2021, the focal points in collaboration with Women’s Initiatives for Gender Justice (WIGJ) facilitated a panel discussion to identify ways to support the ICC in developing jurisprudence on sexual and gender-based crimes (SGBC). This included a discussion on avenues to support professional development of the judiciary.

29. Gabrielle McIntyre, Chair of the Board of WIGJ, explained how the Prosecutor has the responsibility to assist the Chambers in understanding the proper legal characterization of facts and bears the burden of persuading the judges beyond reasonable doubt that the facts alleged have been established. Ms McIntyre commented that judges were subjective beings and that there were still misunderstandings about sexual violence. She explained that ICC judges have an opportunity to set standards through rulings and decisions which refute outmoded understandings of SGBC. She noted that it was critical that judges were aware of the implicit biases that they hold for there to be an opportunity for self-correction. She suggested that the most appropriate way to address implicit biases was through training.

30. Rosemary Grey, lecturer at Sydney Law School and the Co-Director of the Sydney Centre for International Law, underlined the importance of gender sensitivity in Chambers. She explained the ways in which gender analysis was relevant. This included, for example, when interpreting law, making findings of fact, applying procedural rules, and in interactions with victims. Dr Grey suggested that judges could use gender analysis when applying the principle of complementarity. She also noted that the ASP could play a greater role in providing resources for gender training and that the Assembly should put more emphasis on gender expertise in the context of ICC judicial elections.

31. H.E. International Criminal Court Judge Socorro Flores Liera delivered comments in her personal capacity. She underlined the importance of gender-sensitive judging and expressed appreciation that the topic of SGBC was given a role in the complementarity facilitation. Judge Flores emphasised that structural discrimination of women impacted the way justice was delivered and suggested that judicial institutions should develop gender-sensitive approaches to judging. She also noted that there were inherent biases within judicial systems and that the attention to SGBC on the international level was relatively young. Judge Flores concluded by noting the transformative power of ICC decisions and explained how the reasoning of judges could contribute to further accountability for SGBC.

32. There was appreciation amongst stakeholders for the focus placed on this topic in response to the relevant Bureau mandate. Some States Parties shared their own national experiences and initiatives in dealing with SGBC both from a legislative and a practitioner point of view. A State Party spoke of the influence of discriminatory socio-cultural patterns and negative gender stereotypes on the administration of justice. A civil society organization noted that they had set up a project titled ‘A Gender-sensitive Approach to Training Judges of the International Criminal Court (ICC) and Judges of other International Courts and Tribunals’.

33. The focal points concluded by highlighting it was clear the complementarity facilitation should continue to be used as a platform for progressing discussions on this issue.

¹³ See at: https://asp.icc-cpi.int/en_menus/asp/complementarity/Pages/Resources.aspx

Third meeting: Consideration of draft work programme

34. On 19 July 2021, the focal points presented their work programme for the remainder of 2021, having waited for the Review Mechanism to publish its “Comprehensive Action Plan” (CAP). The focal points noted that Chapters XII and XIII touched on a range of complementarity-related issues, captured in recommendations 226 – 267. The CAP allocated almost all of these recommendations to the OTP as the formal entity responsible, with the complementarity facilitation listed as the “platform for assessment”. Recommendations on “Complementarity and Positive Complementarity” (262 – 265) were allocated to both the OTP *and* the complementarity focal points as the entity responsible. Recommendation 247(ii) (establishing an ASP working group on developing domestic justice processes) was also allocated to the complementarity focal points, though on the understanding that this would be progressed jointly with the cooperation facilitators.

35. The focal points proposed facilitating discussions in the second half of 2021 on IER recommendations that were identified by both the Court¹⁴ and Review Mechanism as requiring dialogue with the ASP to progress assessment and implementation. The focus would also be on priority recommendations, as identified by the Experts and Review Mechanism. On that basis, it was decided that further meetings in 2021 would focus on recommendation 227 (gravity threshold), recommendations 262 – 265 (complementarity and positive complementarity), and recommendation 247(ii) (division of labour between the ASP and Court, including establishment of a possible ASP working group on developing domestic justice processes).

36. The focal points also indicated a willingness to facilitate meetings with the OTP whenever they were in a position to provide updates or seek views on the development of their policies in response to the IER recommendations. For example, some recommendations suggested updates to the Policy Paper on Preliminary Examinations (e.g. R226 on article 15 communications) and some suggested developing new policies (e.g. R248 on a “life-cycle” strategy for the OTP’s involvement in a situation or R243 on situation prioritisation). The focal points noted the OTP had previously foreshadowed the development of a policy paper on its understanding and practice of complementarity and that it would be valuable to engage on this.

37. The OTP indicated that the new Prosecutor was still forming his vision on complementarity related issues and that prosecutorial independence did not bar interaction with States Parties on such matters. It was suggested that the proposed approach to the workplan was feasible, with the caveat that any discussions on a possible paper on complementarity was subject to the vision of the new Prosecutor.

38. Some States Parties intervened to support the proposed work programme and the importance of ongoing dialogue with the OTP on these issues. Others highlighted that such dialogue needed to respect the OTP’s independence, particularly when it came to the implementation of IER recommendations directed to it. One State Party highlighted interest in future dialogue on recommendation 226 (developing an OTP policy criteria on preliminary examinations based on Article 15 communications) and recommendations 243 – 246 (development of an OTP policy on hibernation and de-prioritisation).

Fourth meeting: “Complementarity, including the concept of Positive Complementarity (R262 – R265) and the Gravity Threshold (R227)”

39. The focal points facilitated a meeting on 1 October 2021 on IER recommendations pertaining to complementarity, including the concept of “positive complementarity” (R262 – 265) and the “gravity threshold” (R227). This was a fruitful but preliminary discussion.

40. It was noted by the Deputy Prosecutor that the OTP was engaged in a significant process of transition, with the new Prosecutor re-examining policies and practices, and that the Prosecutor needed further time in which to accomplish this process. In that context, the discussion focused on establishing a baseline understanding of the concepts of “gravity” and “complementarity and positive complementarity”.

¹⁴ See further paragraphs 410-413 and 501 of the “Overall Response of the International Criminal Court to the Independent Expert Review of the International Criminal Court and the Rome Statute System – Final Report”, dated 14 April 2021.

41. On the question of the gravity threshold (R227), the OTP recalled and explained the difference between gravity as a legal threshold (under article 17(1)(d) of the Rome Statute and existing case law) and gravity as a function of the Prosecutor's discretion in matters of case selection and prioritisation. In this regard, it was noted that focusing on the application of Prosecutorial discretion might allow the Office to consider how best to implement R227 as a function of prioritisation among cases selected for investigation and/or prosecution. It was highlighted that R227 appeared directed to the Office's policy and practice at the initial filtering stage before preliminary examinations were opened, rather than decisions on opening investigations, which were subject to a statutory based test.

42. The OTP agreed with the notion expressed in the IER Report that complementarity be considered as part of a situation's entire life cycle. The OTP contrasted its narrower approach to complementarity, as part of an admissibility assessment, with the broader role of States Parties in delivering capacity building and technical assistance, which the OTP could not practically do.

43. Christian Nygård Nissen, Advisor at the Royal Danish Embassy to the Kingdom of the Netherlands, reflected on the Kampala Review Conference in 2010 and suggested the most important idea arising from the Kampala stocktaking exercise was viewing the Court and States as components of the broader Rome Statute system, rather than separate individual parts. There was no universally agreed definition of "positive complementarity", but States Parties had a slightly different understanding from the way the OTP used it. Mr Nissen suggested that rather than focusing on the relationship between the ICC and States Parties in situations where crimes have been committed, States should come together in supporting domestic investigations and prosecutions of crimes, particularly where a State is unable to do so. Mr Nissen suggested that further discussions were needed to resolve tensions between the OTP and States Parties in respect of defining "positive complementarity".

44. Elizabeth Evenson, from Human Rights Watch, stated that the IER directed its recommendations on complementarity and positive complementarity to the OTP, and thus the Office should remain the decision maker when it comes to their assessment (a point echoed by some States Parties). Ms Evenson highlighted that the Court was not a development agency, but that Court officials remained key resources in promoting positive complementarity. She underlined that the primary objective of preliminary examinations should be a timely determination of whether the ICC would activate its jurisdiction and that positive complementarity approaches may only be applicable in certain preliminary examinations. Nonetheless, efforts by the OTP to encourage national justice efforts should be an important and secondary policy goal.

45. Support was expressed for those IER recommendations dealing with positive complementarity. It was noted by one delegation that Preliminary Examinations should be taken solely to consider whether to move forward with an investigation and that positive complementarity should not delay opening investigations. There was support for seeing the implementation of the relevant IER recommendations move forward. There was also interest in renewing discussions on situation completion, which were started earlier in the year.

46. One delegation suggested the OTP's approach to positive complementarity needed to be addressed in the review process to focus more on the prosecutions of individuals rather than pressuring States to improve their domestic institutions. It was suggested that positive complementarity activities be moved into the Registry to facilitate cooperation. One State Party suggested that there needed to be a greater focus by the OTP on benchmarks and timeframes.

47. The OTP concluded by underlining that "positive complementarity" had gained a different meaning for the OTP and States Parties, a point echoed by some other delegations. There was agreement by some that "positive complementarity" for the ASP was oriented more towards strengthening national capacities through international cooperation, while the OTP implemented "positive complementarity" by not rushing to judge a State's unwillingness or inability, preferring to practically encourage relevant and genuine national proceedings.

48. A more comprehensive record of this meeting is available at the complementarity resources page of the ASP website.¹⁵

Other activities

49. Finally, at ASP19 in 2020, Australia as focal point on complementarity at the time co-sponsored two relevant side-events, held virtually in the week before the ASP. These two events served to highlight the importance of the principle of complementarity in practice.

50. The first side event was hosted by the International Center for Transitional Justice (ICTJ) and titled ‘The Shared Responsibility of Criminal Accountability: Universal Jurisdiction Cases for International Crimes and the Meaning of Accountability for Syria’s Victims’. The event highlighted the ways in which national and international prosecutors, as well as civil society, can work together to enhance cooperation in support of the various accountability initiatives already underway, including universal jurisdiction cases.

51. The second side event launched a book titled *Intersections of Law and Culture at the International Criminal Court*. Regarding complementarity, it was highlighted that the book aptly explained and explored the myriad difficulties of prosecuting criminal cases at the international level, and conversely the relative ease from a cultural perspective of prosecuting cases domestically. It was suggested that the book could therefore be used to support the position that national prosecutions are indeed the preference, with international prosecutions only taking place as a last resort.

IV. General findings

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

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

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

55. Informal consultations and meetings on complementarity in 2021 have underlined that there continues to be significant value in facilitating dialogue between the ASP and the Court on complementarity issues, including “positive complementarity”. There is broad support for achieving greater clarity and predictability in the interpretation and application of the principle of complementarity, particularly in respect of the relationship between national jurisdictions and the Court. Preliminary discussions on “positive complementarity” – and associated IER recommendations – have revealed that more could be done to build a shared understanding of this term and any differences in definitions adopted by the ASP and Court.

56. In the context of the review process, the focal points recognised ongoing interest from States Parties in a more direct and structured dialogue between States Parties and the Prosecutor and his Office on complementarity and related IER recommendations (R226 – 267), particularly as the Prosecutor progresses his stated review of relevant OTP policies and practices on complementarity in early 2022. It is positive that the OTP has welcomed such discussions, noting they need to continue to respect judicial and prosecutorial independence

¹⁵ See at: https://asp.icc-cpi.int/en_menus/asp/complementarity/Pages/Resources.aspx

and discretion, particularly as regards any assessment and implementation of these recommendations.

57. Initial discussions on raising the “gravity threshold” (R227) and “complementarity and positive complementarity” (R262 – R265) were valuable in establishing a baseline understanding of the concepts and early OTP views on the relevant recommendations. Similarly, discussions on the OTP’s *Policy on Situation Completion* and associated IER recommendations (e.g. R243 – R250) elicited interest from States Parties in continuing to engage in dialogue on the detail of the policy. However, many IER recommendations allocated to the complementarity facilitation as a “platform for discussion” have not yet been the subject of dialogue between the OTP, States Parties, and other stakeholders, including some recommendations with a timeline for assessment by the 2nd half of 2021.

58. To maintain the momentum behind the review process, there remains interest from some States Parties and other stakeholders in seeing a more developed response from the OTP in early 2022 in order to better understand its proposed approach to complementarity-related IER recommendations (i.e. R226 - R267). It was noted that any discussion on a possible OTP paper on complementarity (foreshadowed under the former Prosecutor) was subject to the vision of the new Prosecutor. In the view of the focal points (and some States Parties), a paper or similar document outlining the OTP’s vision on complementarity – including the relevant IER recommendations – would assist in more effectively engaging States Parties on the topic, particularly with a view to building a shared understanding of key concepts, terms, and practices.

59. The discussions on “positive complementarity” and the role of States Parties also underlined the value in having a dedicated meeting on the relationship between the ASP and the Court, with a particular focus on recommendation 247(ii) (establishment of a possible ASP working group on developing domestic justice processes). While this could not be scheduled in 2021, it should nevertheless be pursued as a priority in early 2022.

60. Finally, on the issue of SGBC that amount to Rome Statute crimes, the focal points are of the view that the consultations held this year have revealed that there would be value in ongoing consultations in 2022 to engage interested States Parties and other relevant actors to identify ways to support Court efforts in this regard.

V. Conclusion and recommendations

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

62. In the review process, it appears that the streams of work -- outlined in paragraph 16 above – remain broadly relevant for guiding discussions on complementarity in 2022 (noting that States Parties did not indicate a need to “stocktake” or cover complementarity-related issues not already identified in the review process at this time). It is noted that all complementarity-related recommendations (R262 – 267) are listed as requiring assessment by the first half of 2022 (and in some cases the 2nd half of 2021). In that context, it would be important to facilitate dialogue between the OTP and States Parties as early as possible in 2022 to ensure these timeframes are met. As noted above, any material (a policy paper or otherwise) from the OTP on their approach to complementarity, “positive complementarity”, and relevant IER recommendations, would assist in facilitating this engagement.

63. There is also support for the Bureau to continue to engage interested States Parties and other relevant actors to identify ways to support Court efforts with respect to SGBC that amount to Rome Statute crimes. Whether the focal points on complementarity are best placed to carry forward this work or another (possibly dedicated) focal point, is a discussion that could be continued in 2022 in consultation with the Review Mechanism.

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

Annex I

Contributions from complementarity stakeholders

I. The President of the Assembly of States Parties

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

1. The Assembly of States Parties is the custodian of the Rome Statute system. While the Assembly itself has a very limited role in strengthening the capacity of domestic jurisdictions to investigate and prosecute serious international crimes, it is a key forum for matters of international criminal justice. Combating impunity at both the national and the international levels for the most serious crimes of concern to the international community as a whole is the core objective of the Statute.
2. The President of the Assembly, Ms. Silvia Fernández de Gurmendi, has consistently highlighted the importance of the principle of complementarity in various international fora, including in her speeches in the annual meeting of the Informal Ministerial Network for the International Criminal Court held during the high-level week of the United Nations General Assembly and the meetings of regional groups, as well as the meetings of the subgroups of the European Union and the Organization of American States.
3. In the bilateral context, the President met and exchanged views with the President of the United Nations General Assembly and other officials of the United Nations, Ministers of Foreign Affairs, the Heads of Mission, representatives of civil society organizations, bar associations, academic institutions and media, similarly highlighting that the Court is complementary to national jurisdictions in strict adherence to the principles and values enshrined in the Rome Statute.
4. The President has continued to promote and raise awareness of the principle of complementarity. A full appreciation of the complementary nature of the jurisdiction of the Court could lead to greater acceptance of the Court and an increase in the number of States Parties, leading to universality.

II. The Secretariat of the Assembly of States Parties

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

5. In spite of this year's continued difficulties and the increased workload faced by the Secretariat of the Assembly due to the COVID-19 pandemic, the Secretariat has continued to carry out its outreach, information-sharing and facilitating function. Consistent with past practice and when appropriate, the Secretariat has coordinated with the co-focal points in carrying out these activities via the "Complementarity Platform for technical assistance",¹ which aims at facilitating links between States Parties requesting technical assistance and actors in a position to assist national jurisdictions in their efforts to strengthen capacity to investigate or prosecute Rome Statute crimes. This Platform is designed for States Parties to indicate their technical legal assistance needs. Once the Secretariat receives a request, it coordinates with possible capacity building providers.
6. Following consultations with States Parties and representatives from the Court and civil society, on 2 July 2021, the Secretariat conveyed a note verbale to States Parties² aimed at facilitating links between States Parties requesting technical assistance with actors that may be able to assist national jurisdictions in their efforts to investigate or prosecute Rome Statute crimes. The Secretariat invited States Parties to indicate their technical legal

¹ https://asp.icc-cpi.int/en_menus/asp/complementarity/Documents/ICC%20complementarity%20template%20platform%20EN.pdf

² ICC-ASP/20/SP/41.

assistance needs by completing the Complementarity Platform. Once the Secretariat received a request, it would coordinate with the requesting State, such as sharing information with actors that may be able to assist. No requests for technical assistance were received from States Parties in 2021.

7. The Secretariat encourages States Parties to view the Platform as an important step in the State-driven process of complementarity, and where relevant, to assess their capacity-building needs at the national level, and to respond to the questionnaire contained in the Platform. The objectives of the facilitation and the Platform can only be achieved through the active participation by a greater number of States. The Secretariat encourages interested States to complete the Platform and submit via email to: ASPcomplementarity@icc-cpi.int.³

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

III. The Court

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

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

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

11. The Court has extensive investigative and prosecutorial experience and expertise from various aspects of judicial proceedings gathered throughout its activities in the situations under investigation and preliminary examination. It has continued to exchange best practices and lessons learned, as well as to provide its inputs where requested on the requirements of the Rome Statute, with its interlocutors, as well as amongst relevant networks of practitioners. On occasions, on a cost-neutral basis, and on invitation, the Court has also allowed staff with specific expertise to participate in training activities which focus on addressing the Rome Statute crimes at a national or international level. Furthermore, within the framework of the Rome Statute, in particular article 93, paragraph 10, the Court has, upon request, shared information with and assist national jurisdictions in their related investigations. Vice versa as reiterated by the States Parties in the omnibus resolution, the Court has been called on to benefit from the experiences and lessons learned by States and other international criminal law institutions that have themselves investigated and prosecuted Rome Statute crimes. The

³ For further information on the Complementarity Platform see: https://asp.icc-cpi.int/en_menus/asp/complementarity/Platform/Pages/default.aspx

Court's annual judicial seminar has provided valuable opportunities for an exchange of views and experiences between the judges of the Court and judges from national jurisdictions.

IV. Broader efforts of the international community

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

12. **Africa Legal Aid (AFLA)** has continued its efforts to support victims of serious crimes, particularly female victims of sexual and gender-based violence, to ensure their meaningful participation in the justice process in Mali, Southern Africa and the Gambia. Through advocacy, capacity building, and publications, AFLA continues to push for the prosecution of serious crimes of international concern committed in the Gambia during the 22-year reign of Yahya Jammeh. AFLA has continued its training on gender-sensitive adjudication for ICC judges and judges of other international courts and tribunals.

13. Within the **American Bar Association**, the Atrocity Crimes Initiative's (a joint initiative of the ABA's Center for Human Rights and Criminal Justice Section) projects continued work to strengthen prevention and accountability for atrocity crimes through law and policy. The Crimes Against Humanity Working Group convened several discussions among legal experts, civil society, and other stakeholders in the US to examine gaps in domestic law on accountability for crimes against humanity. The International Criminal Justice Standards Project continued its effort to address challenges faced by practitioners working in various roles and levels of the international criminal justice system, holding several virtual discussions and progressing towards a practical guide on judgment drafting for cases of international crimes.

14. In the week of 8 March 2021, a new (online) training on International Criminal Law (ICL) and Transnational Criminal Law (TCL), was co-organised by the **T.M.C. Asser Instituut**, the Antonio Cassese Initiative and the International Nuremberg Principles Academy. The high-level training course for national judges and prosecutors aimed to strengthen domestic legal capacities in French-speaking African countries, including Niger, Burkina Faso, DRC and Mali, that face challenges in the administration of justice.

15. **Australian Centre for International Justice (ACIJ)** continued to work on Australia's response to allegations of war crimes by Australian forces in Afghanistan between 2005 and 2016. ACIJ's public and private advocacy focused on Australia's legal obligations and international best practices for domestic investigations into international crimes. The organization highlighted ways to improve victim participation within the existing criminal law framework. ACIJ welcomed the establishment of the Office of the Special Investigator to investigate allegations relating to Afghanistan but continues to advocate for a permanent, independent war crimes unit to improve Australia's capacity to investigate and prosecute international crimes.

16. **The Coalition for the International Criminal Court (CICC)** continued to call for the full alignment of Ukrainian legislation with international criminal and humanitarian law. In May, civil society welcomed the adoption of the Ukrainian legislation harmonizing domestic law with international criminal and humanitarian law by the Parliament. In September, CICC members urged the Ukrainian President to sign and promulgate the law without delay. CICC members in Ukraine have also continued calling for the prompt ratification of the Rome Statute by Ukraine, and strengthening of national authorities' capacities to effectively investigate and prosecute Rome Statute crimes.

17. The **Comision Mexicana de Defensa y Promocion de los Derechos Humanos (CMDPDH)** submitted in June a communication to the ICC OTP, as it considers that there is a reasonable basis to believe that crimes within the ICC's jurisdiction were committed in Mexico between 2007 and 2017. The communication reports the policy and patterns of murders committed by the Mexican Federal Forces, as well as the lack of will and capacity of Mexico to investigate and prosecute them. The communication presented was based on the study of 64 cases that refer to a total of 173 direct victims of murder, in terms of the Statute.

18. **Defiende Venezuela**, through the Crimes Against Humanity Observatory (CAHO), has documented and denounced 21 events constituting the crimes of torture, persecution, and other inhumane acts under Article 15 of the Rome Statute concerning the preliminary examination Venezuela I. The communications analysed the principle of complementarity, detailing the internal procedure that the cases should have followed and evidenced absolute inactivity of the State in conducting genuine investigations. We also trained more than 300 people from civil society on the community's impact on the current complementarity analysis.

19. **The EU Genocide Network**, a forum of national authorities competent for investigating and prosecuting core international crimes, organized two plenary meetings, via videoconference and in hybrid format. The March meeting focused on steps towards accountability for crimes committed in Syria, specifically the use of chemical weapons. The November meeting was dedicated to cooperation of national authorities with the ICC and UN investigative mechanisms. The sixth EU Day Against Impunity was marked online on 23 May and presented accountability efforts by the EU and Member States for crimes committed in Syria since 2011. During the year, the Network supported training activities for prosecutors and investigators, co-organised with various partners, to raise understanding on the specifics of investigating and prosecuting core international crimes. Furthermore, a new expert report was delivered at the end of the year focusing on linkages between embargo or restrictive measures violations and complicity in committing core international crimes.

20. **Human Rights Watch** pressed the new government in the Democratic Republic of Congo to adopt an accountability strategy for serious crimes and tracked progress by the Special Criminal Court to advance accountability in the Central African Republic. The organization continued to press for a domestic trial for crimes committed during Guinea's 2009 stadium massacre, amid a more uncertain landscape after a September coup. The organization called on Ukraine's president to sign a law to incorporate prosecution of international crimes into domestic law and expressed concern that the closure of the ICC's preliminary examinations in the Colombia and UK/Iraq situations could be counterproductive to progress in national justice.

21. **The International Bar Association** Hague Office continued its Implementing Legislation Project with the publication of "Strengthening the ICC and the Rome Statute System: A Guide for States Parties", including detailed recommendations for States Parties to establish comprehensive and effective national frameworks and to support domestic prosecutions, in accordance with the principle of complementarity. This online resource was launched in October 2021 with the ASP President, the ICC President and Registrar participating. In June 2021, the IBA ICC Moot Court engaged 493 students from 46 countries to enhance their knowledge of the ICC, the Rome Statute and international criminal law.

22. **The International Center for Transitional Justice (ICTJ)** promotes complementarity by offering timely analysis, creating spaces to advance global discussions, and supporting domestic jurisdictions. In Uganda, ICTJ strengthened victims' participation, bridging the gap between the ICC, including VPRS, and affected communities, including through radio shows, and as amicus on reparations recommendations. ICTJ is now finalizing the Judicial Benchbook on International Criminal Law before Uganda's ICD. In Colombia, ICTJ worked to ensure the effective realization of victims' rights when participating during hearings and documenting violations and built the technical capacities of key national stakeholders in proceedings in the comprehensive system. In the Syrian context, ICTJ continued to support the formal opposition in support of the justice demands of Syrian organizations and victims' groups and to advance war crimes investigations and universal jurisdiction. In Ukraine, ICTJ provided essential assistance to government and civil society for addressing violations in a way that is balanced, addresses the concerns of minorities, and helps set conditions for sustainable peace.

23. **The International Nuremberg Principles Academy** continued its activities regarding capacity building despite the challenges posed by COVID-19. The Summer Academies for Young Professionals were conducted in French and in English on a digital Platform. An in-situ training course on core international crimes was conducted for Ivorian magistrates (together with ODH) in Abidjan. An intensive course on Human Rights, International Criminal Law, and Transitional Justice was organized together with Club des Amis du Congo in Kinshasa, DRC. The Academy supported Chinese participants in the ICC Moot Court with a lecture and continued its work on the French version of Lexsitus.

24. **Justice Rapid Response (JRR)** continued to work closely with accountability actors at the national level providing them with highly specialized expertise from the JRR Roster to strengthen their capacity to investigate and prosecute international crimes. Case-based mentoring, with a strong emphasis on maintaining local ownership, enabled States to benefit from tailored capacity-building support in a variety of areas, including international crimes' investigations and prosecutions, SGBV, witness protection, psychosocial support, victim participation and crime analysis. Among current ICC preliminary examination countries, JRR has intensified its collaboration with the Special Jurisdiction for Peace in Colombia, providing mentoring support on investigations of SGBV, including gender persecution, crimes affecting children and crime analysis. In the context of this collaboration, JRR hosted a first exchange of lessons-learned and best practices between JEP prosecutors, investigators and analysts and their counterparts in other countries supported by JRR. JRR also began working with the Specialised Department for International Crimes within the Office of the Prosecutor General of Ukraine.

25. The **Open Society Justice Initiative (OSJI)** continued to work with local civil society to build cases for national prosecution and advocate reforms necessary to make genuine domestic prosecutions and trials possible. Together with Syrian partners, the Justice Initiative built cases for prosecution under universal jurisdiction in European states, collaborated with national war crimes units, advocated for more comprehensive forms of criminal accountability for Syrian atrocities in the longer term, and explored the merits of a possible treaty-based, pooled-jurisdiction tribunal for Syria. The Justice Initiative continued to support litigation in Kenya related to SGBC and police shootings. Together with TRIAL International, the Justice Initiative published briefing papers on the law and practice of universal jurisdiction on Rome Statute crimes in eleven countries in order to enhance understanding of domestic systems of prosecutions. The reports include a comparison between domestic codifications of these crimes and the Rome Statute text. Further, the Justice Initiative assisted local stakeholders to think through the proposed design of possible new accountability mechanisms in various countries on the basis of its handbook, *Options for Justice: A Handbook for Designing Accountability Mechanisms for Grave Crimes*.

26. **Parliamentarians for Global Action (PGA)** organized several virtual high-level meetings to strengthen the capacity of domestic authorities to try international crimes through the implementation of the Rome Statute: a global Consultative Assembly of Parliamentarians on the ICC and the Rule of Law with the participation of 85 Parliamentarians, and three regional events: a Middle East and North Africa Parliamentary Working Group meeting to inter alia, advance the implementation of the Statute in Jordan and Palestine; a Workshop on the Fight Against Impunity for Mass Atrocities, hosted by the Nigerian Parliament which also served to discuss the implementation of the Statute complementarity provisions in Cabo Verde, and The Gambia; and a Regional Seminar on International Justice for the legislators from Latin America, including Chile, Colombia, and Ecuador. PGA also organised a visit to the ICC for Parliamentarians from Ghana to advance the implementing legislation process, and assisted its members in Ukraine in finalising the adoption of the implementing legislation. PGA also provided to its members technical assistance on draft laws effectively implementing the Statute, while countries of Latin America (4), Africa (1) and Europe (1) are already working towards the adoption of the implementing legislation.

27. On 7 October 2021 **Sisma Mujer, Colombia Diversa, Comisión Colombiana de Juristas, Corporación Humanas, and ECCHR** submitted before the Office of the Prosecutor their 'Observations to the Benchmark Consultation Report'. In this document, we acknowledged the importance of the preliminary examination for the development of positive complementarity in Colombia. Particularly, we expressed its contribution to addressing the important challenges in the investigation and prosecution of some crimes, which either have incipient advances –murder of civilians– or are lacking any advances whatsoever, such as sexual violence or crimes by paramilitaries. Despite these highlights from civil society, the preliminary examination was closed.

28. **TRIAL International**, together with WITNESS, provided support to the civil party lawyers based in the Democratic Republic of Congo during the investigation and prosecution of Chance Muhonya under the principle of complementarity. In 2019, Chance's militia moved into Kahuzi Beiga National Park, illegally exploited the park's protected natural resources and sold them to buy weapons which they later used to commit myriad international

crimes. The domestic Tribunal found Chance guilty of crimes against humanity and war crimes, awarding reparations to victims. The Court also found Chance guilty of environmental crimes and recognized their seriousness: an important precedent in the DRC.

29. On 11 December 2020 **Ukrainian Legal Advisory Group (ULAG)** organised a side-event on the margins of the 19th ASP Session “Future of International Justice: Accountability Mechanism for Grave Crimes in Ukraine”. Available options to increase Ukraine’s capacity to advance the principle of complementarity and ensure accountability for grave crimes as well as ways to generate political will as an essential and basic ingredient for effective justice-related processes were discussed by the panellists. In July 2021 the organisation held another international expert discussion “Role of Justice in Peacebuilding: Selecting an effective model for Ukraine” during which panellists, leading domestic and international experts in the field of international law, looked at justice and accountability for grave crimes as an integral element to the conflict resolution and sustainable peace in Ukraine; considered existing models of accountability mechanisms and the role of the international community in creating an effective model for Ukraine.

30. **Women’s Initiatives for Gender Justice (WIGJ)** continued to work in Colombia to increase understanding of obstacles to the prosecution of all forms of sexual violence. Consultations have been conducted to inform the development of national guidelines explaining the circumstances under which acts of “other forms of sexual violence,” including those identified by survivors, can rise to the level of crimes under the purview of the Attorney General’s Office and the Special Jurisdiction for Peace (JEP), generating individual criminal responsibility. Together with FIDH, WIGJ issued a paper reviewing the work of the OTP on SGBC investigation and prosecution from 2012 to 2021 and identifying key recommendations for future work.

Annex II

Draft resolution language for the omnibus resolution

[Note: elements from the ASP19 omnibus resolution relating to sexual and gender-based crimes have been included here given the Bureau's decision to continue to assign this mandate to the complementarity co-focal points]

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

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

Welcoming also in this regard relevant contributions from the Court relating to sexual and gender-based crimes, such as the Office of the Prosecutor's Policy Paper on Sexual and Gender-Based Crimes,⁴ as well as contributions from States Parties and other relevant actors, including initiatives for advancing the knowledge and understanding of such crimes, and convinced that these initiatives should be an integral part of strategic dialogues and actions to strengthen the Court and national courts in the fight against impunity, while fully respecting their judicial independence,

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

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

1. *Recalls* the primary responsibility of States to investigate and prosecute the most serious crimes of international concern and that, to this end, appropriate measures need to be adopted at the national level, and international cooperation and judicial assistance need to be strengthened, in order to ensure that national legal systems are willing and able genuinely to carry out investigations and prosecutions of such crimes;
2. *Resolves* to continue and strengthen, within the appropriate fora, effective domestic implementation of the Rome Statute, to enhance the capacity of national jurisdictions to prosecute the perpetrators of the most serious crimes of international concern in accordance with internationally recognized fair trial standards, pursuant to the principle of complementarity;
3. *Welcomes* the international community's engagement in strengthening the capacity of domestic jurisdictions and inter-State cooperation to enable States to genuinely prosecute Rome Statute crimes;
4. *Also welcomes* efforts by the United Nations, international and regional organizations, States and civil society in mainstreaming capacity-building activities aimed at strengthening national jurisdictions with regard to investigating and prosecuting Rome Statute crimes into existing and new technical assistance programmes and instruments, and *strongly encourages* additional efforts in this regard by other international and regional organizations, States and civil society;
5. *Welcomes*, in this regard, the adoption of the 2030 Agenda for Sustainable Development⁵ and *acknowledges* the important work being undertaken with regard to

⁴ <https://www.icc-cpi.int/iccdocs/otp/OTP-Policy-Paper-on-Sexual-and-Gender-Based-Crimes--June-2014.pdf>.

⁵ United Nations General Assembly resolution 70/1.

promoting the rule of law at the national and international levels and ensuring equal access to justice for all;

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

7. *Encourages* the Court to take note of the best practices of relevant international and *national* organizations, tribunals, and mechanisms related to sexual and gender-based crimes, including practices related to investigation, prosecution and training, in solving challenges related to crimes under the Rome Statute, including sexual and gender-based crimes, while reiterating its respect for the independence of the Court;

8. *Recognizes* the importance of achieving accountability for all Rome Statute crimes while recalling that there is no hierarchy between them, *encourages* the Bureau to engage with interested States Parties and other relevant actors to identify ways to support Court efforts in this regard with respect to sexual and gender-based crimes that amount to Rome Statute crimes, with a view to reporting thereon to the ~~twentieth~~ **twenty-first** session of the Assembly;

9. *Welcomes* the report of the Bureau on complementarity **and the recommendations made on future consultations set out therein**, ~~takes note of the recommendations made on future consultations set out therein and without prejudice to any decision of the Assembly on future processes regarding the Report of the Independent Expert Review~~, and *requests* the Bureau to remain seized of this issue and to continue the dialogue with the Court and other stakeholders on complementarity, including on complementarity-related capacity-building activities by the international community to assist national jurisdictions, on possible situation-specific completion strategies of the Court and the role of partnerships with national authorities and other actors in this regard; and also including to assist on issues such as witness and victims protection and sexual and gender-based crimes;

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

11. *Encourages* States, international and regional organizations and civil society to submit to the Secretariat information on their complementarity-related activities and *further welcomes* the efforts made by the international community and national authorities, including national capacity building activities to investigate and prosecute sexual and gender-based crimes that may amount to Rome Statute crimes, in particular the continued efforts on the strategic actions to ensure access to justice and to enhance empowerment of victims at national level, recalling the recommendations presented by the International Development Law Organization⁶ during the fourteenth session of the Assembly;

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

⁶ International Development Law Organization paper entitled "Complementarity for sexual and gender-based atrocity crimes", November 2015.

Rome Statute crimes and the strengthening of access to justice for victims of such crimes, including through international development assistance;

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

Annex III

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

With regard to **complementarity**,

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

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

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

With regard to **proceedings of the Court**,

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