

**SECRETARIAT OF THE ASSEMBLY OF STATES PARTIES TO THE ROME STATUTE
OF THE INTERNATIONAL CRIMINAL COURT**

THE HAGUE WORKING GROUP OF THE BUREAU

Complementarity

First meeting

23 May 2024

Summary

The meeting was chaired by the representatives of the ad country co-focal points, Ambassador Mirjam Blaak (Uganda) and Ambassador Gregory French (Australia).

1. Presentation of the draft programme of work.

Ambassador Blaak outlined the facilitation's 2024 work plan, which include: continuing dialogue with the Court and stakeholders on complementarity, focusing on capacity building by the international community; maintaining discussions on gender-based crimes to support the Court in addressing such crimes under the Rome Statute; working on the implementation of the independent expert review recommendations assigned to the facilitation; and promoting the use of the complementarity platform for information exchange and capacity building. Additionally, she noted that two meetings would be organized later in the year: a joint meeting with a cooperation facilitation on the Prosecutor's new policy on complementarity and cooperation, and another meeting focused on gender-based crimes. The facilitation would also support the launch of the OTP strategy on complementarity and cooperation in June 2024.

2. Updates from the OTP on implementation of IER recommendations.

Ambassador French noted that the Office of the Prosecutor (OTP) would update the facilitation on implementing the independent expert review recommendations, specifically those related to complementarity (recommendations 226 to 267). He noted that these recommendations were detailed in the Annex of the workplan. He clarified that most recommendations had been assigned to the OTP, except for a few (recommendation 247, subsection ii, and recommendations 262 to 265), which were jointly allocated to the OTP and the complementarity facilitation. He noted that all complementarity-related recommendations had been assessed and were being implemented. He acknowledged and appreciated the high workload of the OTP, as well as their ongoing engagement with these recommendations.

Mr. Mamadou Racine Ly (Adviser to the Prosecutor, OTP) provided an update on implementation of the IER recommendation, namely R226 to R229 on situation and case selection, R233 to R238 on selection and prioritisation of cases and perpetrators, R243 to R250 on situation prioritisation, hibernation, and closure, R251 to R253 on the functioning of the preliminary examinations section, R254 to R261 on the length of preliminary examination activities, R266 to R267 on transparency of preliminary examinations.

Mr Ly noted that the OTP was developing a consolidated policy paper to replace the four existing ones, i.e. the policy paper on the Interest of Justice of 2007, on Preliminary Examinations of 2013, on Case Selection and Prioritisation of 2016 and on Situation Completion of 2021. He added that since August 2021, the Office has been working on a framework to focus OTP resources on fewer situations, enhancing outcomes across investigations, better engagement with victims and communities, and to successful cases in court. He enumerated among the situations and cases that falls within the jurisdiction of the Court under the Rome Statute, the new selection and prioritization criteria will include, inter alia, gravity of the alleged crime; complementarity with national jurisdictions; representativeness of the

cases; crime prevention; degree of responsibility of the alleged perpetrators; and feasibility of investigations and prosecutions. He indicated that the new policy aims at streamlining and expediting procedures, incorporating situation-specific strategic plans and completion targets as envisaged by the IER recommendations (R241, R242, R249 and R250).

This policy paper will follow from the Prosecutor's discretionary authority and ensure clarity and transparency as indicated in R266 to R267 in relation to his decisions. He noted that this paper would not give rise to legal rights, and it will be subject to revision based on evolving practice and jurisprudence. He clarified that while the work on policy is still ongoing internally and with the collaboration of a group of special advisers, the Office has already made significant steps on the implementation of the recommendations as already indicated previously (see matrix) . He added that, in developing the new policy, the Office will follow its usual approach by conducting external and broad consultations with a wide range of stakeholders.

3. Updates on from the OTP on complementarity-related situation-specific completion strategies.

Regarding OTP's general approach to complementarity-related situation-specific completion strategies (R262 to 265 related to complementarity and positive complementarity) Ms. Eugenia Valenzuela (Legal Officer (Complementarity and Civil Society), OTP) indicated that the OTP had adopted a progressive approach towards complementarity in both ongoing situations and during the closure of preliminary examinations as well as completion of investigations. She added that complementarity initiatives were integrated at all stages of OTP activities across all situations and cases.

Regarding the Libya situation she noted that complementarity activities were ongoing, most notably the OTP joining a Joint Team in 2022 to investigate crimes against migrants crossing the Central Mediterranean Route, facilitating various investigative activities and information-sharing, which has led to the issuance of arrest warrants at the domestic level. Ms. Valenzuela also referred to the May 2024 Prosecutor's briefing to the UN Security Council on Libya and the announcement of a roadmap that could lead to the completion of the investigation phase by the end of 2025. The roadmap includes cooperation and complementarity initiatives to expand the OTP's impact in Libya. Deputy Prosecutor Nazhat Khan's April 2024 mission to Tripoli focused on discussing the roadmap and deepening the dialogue with Libyan authorities.

With regards to the situation of Venezuela, she indicated that the OTP was actively engaging in complementarity activities. After the announcement of the initiation of the investigation in November 2021, a Memorandum of Understanding (MoU) was signed to enhance cooperation and facilitate the Prosecutor's mandate. A second MoU established an OTP office in Venezuela, with a Work Plan signed in December 2023 outlining priority areas and activities. In April 2024, the Prosecutor inaugurated an in-country OTP office in Caracas, with a technical mission planned to advance activities.

She also noted that the OTP had completed preliminary examinations in Colombia and Guinea, recognizing the national authorities' genuine efforts to investigate and prosecute Rome Statute crimes. Agreements were signed with both governments to ensure sustained progress in domestic proceedings. In Colombia, annual high-level missions and an Action Plan have facilitated deeper collaboration. Recent engagements included briefings on the OTP policy on gender persecution and an agreement to establish a complementarity office in Bogota. In Guinea, ongoing engagement and support for the trial of crimes committed during the 28 September 2009 events is guided by an MoU. The OTP supports Guinea's accountability efforts, with the trial now in the closing arguments phase.

Concerning the situation in Central African Republic (CAR), she noted that the OTP continued to engage in domestic accountability efforts following the completion of the investigation phase, supporting the Special Criminal Court (SCC), with activities such as exchange of information, support in exhumation and identification projects, and maintaining continued cooperation. She noted that

Deputy Prosecutor Niang's visits to Bangui aimed at strengthening cooperation and noted that MoUs had been signed with the CAR Government and the SCC.

With regards to the DRC situation, Mr. Ly added that the Memorandum of Understanding signed in June 2023 provides a framework supporting national judicial authorities in accordance with the principle of complementarity. He also noted the November 2023 workshop on the processing of priority cases chaired by the Deputy Prosecutor Niang was part of this MoU and allowed the Office to receive initial information on the status of processing of priority cases, to identify cases that would require synergies, and to assess needs in terms of capacity building and training. In February 2024 the Forensic Science Section of the OTP conducted a joint mission in Kinshasa to assess the DRC's forensic capacity and needs and explored avenues for implementation of a forensic rotation model with external partners in support for domestic investigations and prosecutions. He concluded noting that the Office was currently working with national authorities to organize training sessions for Congolese judicial professionals and members of the National Human Rights Commission, based on the expressed needs by the Congolese authorities.

In response to a question concerning updates on preliminary examinations, Ms. Valenzuela indicated that for example the situation in Venezuela II was well advanced but complex, necessitating extensive research, consultations, and analysis of substantial material including submissions by the government of the referring State. While there is no specific timeline, a determination is hoped to be reached soon.

With regards the situations in in Nigeria and the Democratic Republic of the Congo (DRC), Mr. Ly noted that the OTP had been implementing a two-track approach since 2021. This strategy, outlined in the Office's new policy paper on complementarity and cooperation, involves supporting capacity building at the national level while simultaneously advancing cases internationally. This approach has also been applied in Venezuela and Colombia and is considered very useful. Mr. Ly noted that in the DRC, the Office has been working with national authorities on the "Priority cases" before the referral of June 2023. This collaboration continues while the Office is considering the new referral of June 2023. In November 2023 a workshop on the processing of priority cases chaired by the Deputy Prosecutor Niang allowed the Office to receive initial information on the status of processing of priority cases, to identify cases that would require synergies, and to assess needs in terms of capacity building and training. In February 2024 FSS conducted a joint mission in Kinshasa to assess the DRC's forensic capacity and needs to and explore avenues for implementation of a forensic rotation model with external partners in support for domestic investigations and prosecutions. The Office is currently working with national authorities with the assistance of different stakeholders to organize training sessions for Congolese judicial professionals and members of the National Human Rights Commission, based on the needs expressed by the competent Congolese authorities to the Office.

The two-track approach remains central to the strategy. Mr. Ly noted that Nigeria was a very compelling case where the OTP gives a chance to the principle of complementarity in Nigeria but remaining committed to move forward with investigations in the absence of genuine efforts by Nigerian authorities.

In response to a question regarding the potential of using the CAR's SCC model to other investigations like the DRC, Ms. Valenzuela agreed that a cooperative model like this, if effective in other situations, would be welcomed. This approach is not driven solely by the OTP but aligns with the complementarity and cooperation policy's goal to find creative and innovative ways to support local and regional accountability efforts to fulfil the Rome Statute system's mandate. She added that the OTP had a strong relationship with the SCC and hoped to develop similar relationships with other entities in different situations.

In response to a question, with reference the recent establishment of a new in-country office of the OTP in Caracas, on how the OTP would be financing activities envisaged under the policy on complementarity and cooperation, Mr. Fabio Rossi (External Relations Adviser, OTP) noted that the Office had established a dedicated Trust Fund to support the implementation of the policy on

complementarity and cooperation and that a Note Verbale, to be circulated soon, would announce that the fund is open for voluntary contributions to support programmatic activities under the new policy, enhancing the Office's dynamic complementarity engagement and support in various situations and thematic areas. Last year's budget introduced plans to shift extra budgetary contributions to this area to clarify the core activities funded through the regular budget and highlight new areas of work through the Office's renewed complementarity approach via voluntary contributions. He added that some other activities under the policy, in particular respecting cooperation, are inherently part of the Office's investigative work and funded through the regular budget; the Trust Fund will primarily rely on contributions from State Parties to support additional policy areas.

Mr. Ly clarified that the Office's vision last year was to establish five field offices, however, currently only two are operational: one in Kiev, which has been active since last year, and one in Venezuela. Plans for field offices in Libya and Darfur are on hold at the moment and efforts are ongoing for offices in Bangladesh and Myanmar. He noted that the goal of establishing these field offices is to reduce the high travel costs and limit the budgetary impact. Although exact figures are not yet available, it is believed that the operational field offices have positively impacted the budget by reducing expenditures.

Mr. Rossi explained that the Office's overall field presence was not exclusively tied to the complementarity policy. The field-based approach supports various functions, including investigative activities. The trust fund specifically aims to support the dedicated areas outlined in the policy, which may not always be directly related to or benefit from the field offices.

4. Updates from the OTP on the regional launch of the policy on complementarity and cooperation on 25 April and upcoming launch in the Hague.

Ms. Valenzuela indicated that on 25 April the OTP had successfully launched the Policy on Complementarity and Cooperation with events held in locations where complementarity activities are intense, emphasizing the importance of engaging with local communities. The main launch event took place at the Colombian Ministry of Foreign Affairs in Bogota, attended by diplomats, civil society members, judicial system officials, and academia. The Prosecutor highlighted the Office's vision for supporting complementarity efforts globally and praised Colombia's progress in accountability. Various speakers, including the Minister of Foreign Affairs and representatives from Colombian institutions and civil society, discussed Colombia's success as an example of complementarity and the supportive role of the OTP. Simultaneously, Deputy Prosecutor Niang attended a launch event hosted by the SCC in CAR, covered by local media. On the same day, Deputy Prosecutor Nazhat Khan met with civil society organisations in Tunis. During the meeting, she discussed the policy paper, emphasizing civil society's role, as well as matters relating to the Libya situation.

Ms. Valenzuela expressed appreciation for the support of governments hosting and supporting the launch events, including CAR, Colombia, Australia, France, Japan, Senegal, and Uganda. An event at the ICC's seat on June 20th will mark the launch of the policy paper and the Complementarity and Cooperation Trust Fund.

In response to a question on the Policy's implementation plans Ms. Valenzuela highlighted that the OTP is working on an implementation plan for the Policy paper, involving extensive engagement with various stakeholders such as States Parties and civil society organizations. Additionally, plans are underway for implementing activities within the umbrella of the Complementarity and Cooperation forum introduced in the policy paper. Launching the policy paper in The Hague aims to gather input from stakeholders to enhance its impact and potentially foster synergies and collaborations for optimal outcomes.
