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### Report of the Bureau on complementarity

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## I. Background and mandates

1. On 31 January 2023, the Bureau appointed Australia and Uganda as *ad country* focal points for the topic of complementarity, including sexual and gender-based crimes (also considered an “Assembly Mandate”). As such, Australia and Uganda were focal points in both The Hague Working Group and the New York Working Group in the lead-up to the twenty-second session of the Assembly.

### *General mandates*

2. At the twenty-first session of the Assembly (“ASP21”), States Parties resolved to continue and strengthen, within the appropriate fora, effective domestic implementation of the Rome Statute to enhance the capacity of national jurisdictions to prosecute the perpetrators of the most serious crimes of international concern in accordance with recognized fair trial standards, pursuant to the principle of complementarity.<sup>1</sup>

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

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

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

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

7. 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*

8. The Review Resolution passed by the Assembly in 2021 indicated work should continue on the priority topic of “Complementarity, and the relationship between national jurisdictions and the Court” and that progress should be reported to the Assembly in advance of its twenty-first session.<sup>6</sup>

9. 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 twenty-first session.<sup>7</sup> The Assembly also noted the recommendations made in that report on future consultations on the topic of complementarity.<sup>8</sup>

<sup>1</sup> ICC-ASP/21/Res.2, para 134.

<sup>2</sup> ICC-ASP/21/Res.2, para. 140 and annex I, para. 14(a).

<sup>3</sup> ICC-ASP/21/Res.2, para. 141 and annex I, para. 14(c).

<sup>4</sup> ICC-ASP/21/Res.2, para. 143.

<sup>5</sup> ICC-ASP/21/Res.2, para. 143.

<sup>6</sup> ICC-ASP/21/Res.4, para. 11(b) (referencing ICC-ASP/18/Res.7, paras. 18 and 19).

<sup>7</sup> ICC-ASP/21/Res.2, para. 140, citing the *Report of the Bureau on complementarity*, ICC-ASP/21/19.

<sup>8</sup> ICC-ASP/21/Res.2, para. 1140, citing the *Report of the Bureau on complementarity*, ICC-ASP/21/19.

10. In the Review Mechanism’s “Comprehensive Action Plan” (CAP),<sup>9</sup> the complementarity focal points were assigned as the “platform for assessment” of IER recommendations 226 – 267, with the Office of the Prosecutor (OTP) formally “allocated” all recommendations except for 247(ii) and 262 – 265 (which listed both the OTP and complementarity focal points).

### ***Sexual and gender-based crimes***

11. At its twenty-first session, the Assembly recognised “the importance of achieving accountability for all Rome Statute crimes while recalling that there is no hierarchy between them” and encouraged the Bureau “to engage with interested States Parties and other relevant actors to identify ways to support Court efforts in this regard with respect to sexual and gender-based crimes that amount to Rome Statute crimes, with a view to reporting thereon to the twenty-second session of the Assembly”.<sup>10</sup>

12. On 31 January 2023, the Bureau re-assigned this mandate to Australia and Uganda as *ad country* focal points for the topic of complementarity on the basis that their general mandate also extended to assisting “on issues such as ... sexual and gender-based crimes”, as it had in 2022 and previously in 2021.

## **II. Organisation of work**

13. As noted in their “Report of the Bureau on complementarity”<sup>11</sup> submitted ahead of the Assembly’s twentieth session, the focal points (Australia and Uganda) suggested that there appeared to be broadly four streams of work:

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

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

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

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

14. To facilitate the work set out above, the focal points held a first meeting on 16 June 2023, and a second meeting on 16 October 2023.

## **III. Summary of meetings**

15. As set out above, in 2023, the focal points held two meetings on the issue of complementarity. A summary of these meetings is set out below.

### ***First meeting: Update from the Office of the Prosecutor (OTP) on their assessment of the complementarity-related recommendations and questions on the complementarity platform***

16. The focal points facilitated a first meeting on 16 June 2023 to receive an update on the implementation of the IER recommendations and to address some questions related to the complementarity platform. Following a presentation of the facilitation’s work plan for the

<sup>9</sup> See at: [https://asp.icc-cpi.int/iccdocs/asp\\_docs/ASP20/RM-Comprehensive Action Plan-ENG.pdf](https://asp.icc-cpi.int/iccdocs/asp_docs/ASP20/RM-Comprehensive Action Plan-ENG.pdf)

<sup>10</sup> ICC-ASP/21/Res.2, para. 64 and annex I, para 14(b).

<sup>11</sup> ICC-ASP/19/22, para 41.

year, the focal points recalled that all complementarity related recommendations had been positively assessed and were being implemented.

17. A more comprehensive record of this meeting is available at the complementarity resources page of the ASP website.<sup>12</sup>

***Second meeting: Update on Siracusa institute symposium and an update from the Office of the Prosecutor (OTP) on Complementarity and SGBC Related Policies***

18. The focal points facilitated a second meeting on 16 October 2023 to hear an update from the 25th Anniversary Commemoration Symposium held at the Siracusa Institute and receive an update from the OTP on their SGBC and crimes against children policies.

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

***Other activities***

20. At ASP21 in 2022, Australia and Uganda, as co-focal points on complementarity including SGBC, co-sponsored a side-event relevant to the facilitation mandate. Australia co-sponsored a further two relevant side-events. These three events served to highlight the importance of the principle of complementarity in practice as well as engage stakeholders on topics related to the prosecution of sexual and gender-based crimes.

21. The first side event was hosted by Africa Legal Aid (AFLA) and titled '*Gender Diversity and the Rome Statute System*'. The event highlighted the importance of gender diversity in the Court, and the need to provide a meaningful safe space for people of all genders and promote awareness of gender biases. The discussions further highlighted the need to practice gender diversity to ensure a better understanding of crime, victims, and perpetrators, as well as foster a more inclusive and impartial international criminal justice system. Chargé Heckscher provided closing remarks.

22. The second side event titled '*A sustainable model for responding to conflict-related sexual violence in Ukraine*' was organised by the Ministry of Foreign Affairs of the Netherlands, in partnership with Australia, the United Kingdom, Poland, Canada, Women's Initiative for Gender Justice, Global Rights Compliance, and the International Federation for Human Rights (FIDH). The event discussed the importance and value of locally owned solutions to ended sexual violence in both conflict and peacetime, and how international practice and standards can assist such efforts. A representative from the Ukrainian Office of the Prosecutor General also presented on Ukraine's Conflict-Related Sexual Violence strategy.

23. The third side event was co-organised by Australia, Columbia, Argentina, Emergent Justice Collective, Justice Rapid Response, Centre for Justice and Accountability and Global Justice Centre titled '*In Pursuit of Intersectional Justice at the International Criminal Court and Beyond A closer look at the intersectional dimensions of slavery crimes*'. The event focussed on the importance of intersectionality in investigations, analysis and prosecution – including related to sexual and gender-based crimes – and the use of intersectional approaches in international criminal law practice more broadly. Chargé Heckscher provided opening remarks.

## **IV. General findings**

24. 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.

25. It is generally understood by States Parties, the Court and other stakeholders that international cooperation, in particular through rule of law development programmes aimed

<sup>12</sup> See at: <https://asp.icc-cpi.int/complementarity/Resources>

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

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.

26. 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.

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

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

29. The focal points welcome the consultation process underway and forthcoming launch of the OTP Policy on Complementarity and Cooperation, which will assist in a shared understanding of key concepts, terms, and practices.

30. 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 2024 to engage interested States Parties and other relevant actors to identify ways to support Court efforts in this regard.

## V. Conclusion and recommendations

31. 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.

32. In the review process, it appears that the streams of work – outlined in paragraph 13 above – remain broadly relevant for guiding discussions on complementarity in 2024.

33. 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.

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

## Annex I

### Contributions from complementarity stakeholders

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

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

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

2. The President of the Assembly, Ms. Silvia Fernández de Gurmendi, has consistently highlighted the importance of the principle of complementarity in various international fora, including in her participation in the *Oxford University Roundtable* held on 2 and 3 March 2023; *Conference on Amendments: Towards one Comprehensive Jurisdictional Regime for all Crimes within the Jurisdiction of the International Criminal Court* in Vienna, Austria, on 6 October 2023 and the High-Level Regional Seminar *The International Criminal Court and the Asia-Pacific: past, present and future of the Rome Statute – vision for the greater regional solidarity* held on 14 and 15 November in Seoul, Republic of Korea.

3. In the context of the twentieth-fifth anniversary of the adoption of the Rome Statute, the President of the Assembly continuously underscored the importance of the principle of complementarity. In her interventions at the commemorative events held in The Hague on 12 July, New York on 17 July and in Siracusa, Italy on 12 and 13 October 2023, the President of the Assembly referred to the global reach of the Court, as well as the continued need to improve cooperation with States to galvanize State support.

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

5. The President of the Assembly has continuously promoted and raised awareness of the principle of complementarity and emphasised that a full appreciation of the complementary nature of the jurisdiction of the Court could lead to greater acceptance of the Court and an increase in the number of States Parties, leading to universality.

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

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

6. The Secretariat has continued to carry out its outreach, information-sharing and facilitating function. Consistent with past practice and when appropriate, the Secretariat has coordinated with the co-focal points in carrying out these activities via the “Complementarity Platform for technical assistance”, which aims at facilitating links between States Parties requesting technical assistance and actors in a position to assist national jurisdictions in their efforts to strengthen capacity to investigate or prosecute Rome Statute crimes. This Platform is designed for States Parties to indicate their technical legal assistance needs. Once the Secretariat receives a request, it coordinates with possible capacity building providers.

7. Following consultations with States Parties and representatives from the Court and civil society, on 9 May 2023, the Secretariat conveyed a note verbale to States Parties<sup>1</sup> aimed at facilitating links between States Parties requesting technical assistance with actors that may be able to assist national jurisdictions in their efforts to investigate or prosecute Rome Statute crimes. The Secretariat invited States Parties to indicate their technical legal assistance needs by completing the Complementarity Platform. Once the Secretariat received a request, it would coordinate with the requesting State, such as sharing information with actors that may be able to assist. The Secretariat also received two official requests for technical assistance from two States Parties on 1 and 6 June 2023 respectively. The Secretariat started consultations with the Court and other potential stakeholders to facilitate technical assistance to these countries.

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

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

### III. The Court

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

10. The Court 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 and those formulated in the organs' strategic plans for 2023-2025. The Office of the Prosecutor, in particular, attaches significant value to enhancing partnerships with situation countries, third states, accountability mechanisms, and other stakeholders as appropriate, to advance cooperation and complementarity efforts to support national processes where possible, and in turn further strengthen its ability to effectively exercise its mandate to investigate and prosecute Rome Statute crimes. 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. The Office's renewed approach to cooperation and complementarity is reflected in its policy on the subject matter, issued in draft form for comments in September 2023<sup>3</sup> ) in which the Office underlined its commitment to deepen its engagement with national authorities and extend its provision of support to domestic action in line with the Rome Statute. 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. The Office's deepening engagements with national stakeholders and local civil society organisations, including through the Office's enhanced field presence, further contributes to these ongoing efforts.

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

<sup>1</sup> ICC-ASP/22/SP/31.

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

<sup>3</sup> See at: <https://www.icc-cpi.int/news/icc-office-prosecutor-launches-public-consultation-policy-complementarity-and-cooperation>

specific expertise to participate in training activities, which focus on addressing the Rome Statute crimes at a national or international level. The Court’s annual judicial seminar as well as its seminar for domestic focal points for cooperation have provided valuable opportunities for an exchange of views and experiences between the representatives of the Court and representatives from national jurisdictions. The 2023 edition of the Judicial Seminar, held under the title “Role of National Courts in the International Criminal Justice System”<sup>4</sup>, specifically aimed to support the effective implementation of the principle of complementarity by promoting understanding of the ICC’s legal framework and jurisprudence in relation to the principle of complementarity; by facilitating networking between courts; and by providing a platform for an exchange of experiences, practices and lessons learned from proceedings of serious international crimes. The many available sources of support for the capacity building of national jurisdictions were also highlighted at the Seminar, which was financially supported by the European Commission.

12. Furthermore, within the framework of the Rome Statute, in particular article 93, paragraph 10, the Court, in particular the Office of the Prosecutor, has, upon request, shared information with and assisted national jurisdictions in their related investigations. The Office of the Prosecutor is strengthening its efforts in this regard through the use of technology as accelerant: overhauling its technological architecture allows the Office to not only receive, process and preserve larger data sets, but also categorise and analyse volumes of information using tools including machine learning and advanced cognitive services that are strengthening in turn the Office’s position to provide evidence and analytical products in support of national proceedings. Additionally, by engaging and exploring innovative partnerships for action, such as through the Office’s participation in Joint (Investigation) Teams for Ukraine and for Libya with respect to crimes against migrants, the Office is opening new avenues for cooperation and sharing of information with domestic prosecution authorities, with tangible dividends already achieved.

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

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

13. This year, **Africa Legal Aid (AFLA)** convened gatherings in its gender-sensitive judging series on User-Generated Evidence Under International Criminal Law, and The Use of Artificial Intelligence in International Criminal Courts. In collaboration with the Centre for the Study of Violence and Reconciliation, the Embassies of the Netherlands and Sweden and UN Women, AFLA convened a symposium on Preventing Gender-based Violence in Southern Africa, which brought together stakeholders from Botswana, Lesotho, and South Africa, the three countries with the world’s highest rape rates. AFLA will co-sponsor a side event at ASP 22 entitled Beyond Ukraine highlighting specific African country situations that deserve attention.

14. The **Australian Centre for International Justice (ACIJ)** launched their policy paper, ‘Challenging Impunity: Why Australia Needs a Permanent, Specialized International Crimes Unit’, advocating for reforms to improve Australia’s institutional framework for international crimes investigation. ACIJ continued to monitor Australia’s response to allegations of war crimes by Australian forces in Afghanistan, calling for improved outreach to affected communities, particularly in light of the upcoming war crimes trials in Australian courts. ACIJ continues to work with partners to submit confidential briefs to the Australian Federal Police, seeking the opening of criminal investigations for international crimes, consistent with the principle of complementarity.

15. Since the Russian 2022 invasion, the **Center for Civil Liberties** has focused its efforts on documenting war crimes and other human rights violations in pursuit of justice and accountability. Together with other civil society organizations we set up the “Tribunal for Putin” (T4P) initiative and documented more than 40,000 war crimes. This year CCL systematically engaged in advocacy activities both at the national and international levels, including governmental and NGOs sectors for the Rome Statute ratification. Also, we

<sup>4</sup> See at: <https://www.icc-cpi.int/news/report-5th-icc-judicial-seminar>



monitored the war crime trials of Russian perpetrators. In addition, CCL continues to work on promoting the international criminal justice system and the rule of law, IHL compliance, implementing legal mechanisms for prosecuting Russian war crimes committed in Ukraine and the creation of a Special Tribunal to prosecute the crime of aggression against Ukraine.

16. The **Coalition for the International Criminal Court (CICC)** The Coalition for the International Criminal Court (CICC) supported activities promoting understanding and the realization of the principle of complementarity. In 2023, the CICC secretariat supported efforts and engagement by member organisations in several countries around the world. CICC members have been involved in promoting complementarity in several countries, such as the Central African Republic, Colombia, Guinea, Mexico, Ukraine and Venezuela.

17. The **Comisión Mexicana de Defensa y Promoción de los Derechos Humanos (CMDPDH)** held a side event during the 54th session of the Human Rights Council to share with State Parties the experiences of victims, collectives of victims and civil society organizations in the context of crimes under the jurisdiction of the ICC committed in The Philippines, Brazil and Mexico as a result of ‘war on drugs’ related policies. The event served to raise awareness on this issue, as well as shed light –through the participation of individual victims– on the human cost and suffering derived from the implementation of these policies.

18. During this year, **Defiende Venezuela, Un Mundo Sin Mordaza and the Crimes Against Humanity Observatory**, continued their efforts to advance the investigation in the Venezuela I Situation. In this regard, they actively participated in the two consultation processes led by the Victims Participation and Reparations Section, supporting 467 victims in sending information on domestic investigations to the Court. With this, the willingness of the victims to resume the investigation was expressed, given the inactivity and lack of genuine investigations at the domestic level. Likewise, the organizations sent communications to the Prosecutor's Office on 22 events that could be considered crimes against humanity.

19. In June 2023, the **European Center for Constitutional and Human Rights (ECCHR)**, jointly with the Ukrainian Legal Advisory Group (ULAG), submitted a criminal complaint to the German Federal Public Prosecutor General regarding international crimes committed in Ukraine. Through its partner lawyers, ECCHR supports a number of victim-witnesses in investigations and trials in Germany, Sweden and Austria regarding international crimes committed by State authorities in Syria. Moreover, ECCHR published three expert opinions as part of the legislative reform process of international crimes proceedings in Germany. On a number of other conflicts, ECCHR advised, mentored and trained civil society organizations on strategic case building in international crimes cases.

20. The **EU Genocide Network** organized one Ad hoc meeting between civil society organisations and national authorities on the war in Ukraine, and two plenary meetings. The spring meeting was dedicated to the issue of corporate criminal accountability for core international crimes. In the margins of the spring meeting, the Network co-organised with partners an advanced workshop on international humanitarian law and counter-terrorism for national investigators and prosecutors. The autumn meeting was devoted to the topic of investigations and prosecutions of core international crimes committed by ISIS against the Yazidi community. In 2023, the Network Secretariat and Eurojust produced three publications: (1) a factsheet, published on the occasion of the 8th EU Day against Impunity, entitled At a Glance: Universal Jurisdiction in EU Member States which provides an overview of the current state of universal jurisdiction in the legislations of EU Member States; (2) a report on the application of the principle of legality, right to a fair trial and other protected rights in core international crimes cases, a selected case-law of the ECHR, and (3) a paper on the crime of aggression in the national laws of EU Member States, Genocide Network Observer States and Ukraine. The 2023 European Ombudsman Award winning Guidelines for civil society organisations on documenting international crimes and human rights violations for accountability purposes, produced last year by the Genocide Network, Eurojust and ICC-OTP have been translated to additional language versions and are now available in English, Ukrainian, French, Spanish and Arabic.

21. In June 2023, the **European Center for Constitutional and Human Rights (ECCHR)**, jointly with the Ukrainian Legal Advisory Group (ULAG), submitted a criminal complaint to the German Federal Public Prosecutor General regarding international crimes

committed in Ukraine. Through its partner lawyers, ECCHR supports a number of victim-witnesses in investigations and trials in Germany, Sweden and Austria regarding international crimes committed by State authorities in Syria. Moreover, ECCHR published three expert opinions as part of the legislative reform process of international crimes proceedings in Germany. On a number of other conflicts, ECCHR advised, mentored and trained civil society organizations on strategic case building in international crimes cases.

22. **Human Rights Watch (HRW)** monitored Guinea’s landmark domestic trial on crimes committed during the September 2009 stadium massacre. The ICC prosecutor’s office played a key role in spurring this trial and should continue its monitoring. HRW tracked proceedings at the Special Criminal Court in Central African Republic and Colombia’s Special Jurisdiction for Peace, and national consultations related to accountability in the Democratic Republic of Congo and Gambia. HRW called on Ukraine to align its national legislation with the Rome Statute and urged governments to bolster Ukraine’s judicial capacity to address serious crimes.

23. The **International Bar Association (IBA)** Hague Office continued its Implementing Legislation Project by advancing the recommendations contained in “Strengthening the ICC and the Rome Statute System: A Guide for States Parties”<sup>5</sup>, aiming at the establishment of comprehensive and effective national frameworks to support domestic prosecutions in accordance with the complementarity principle. In June 2023, the IBA ICC Moot Court Competition engaged 600 students from 46 countries to enhance their knowledge of the ICC, the Rome Statute and international criminal law.<sup>6</sup> In November 2023, ICC Prosecutor Karim Khan was a featured speaker during the IBA Annual Conference, with over 5000 lawyers from 130 jurisdictions participating.<sup>7</sup>

24. The **International Center for Transitional Justice (ICTJ)** promotes complementarity by offering analysis, advancing global discussions and supporting domestic jurisdictions: providing assistance to the SJP in Colombia; gathering activists and victims with the ICC in Libya; engaging journalists on ICC’s processes in the Philippines; supporting Syrian organisations and victims’ groups on war crimes investigations and UJ cases; bridging the gap between Ugandan victims and the ICC through community outreach and public information sessions, radio shows and meetings with the TFV; engaging with Ukrainian victims on the international criminal proceedings in different jurisdictions; strengthening the capacity of Yemen’s judiciary and the NCI/VHR.

25. In 2023, **International Federation for Human Rights (FIDH)**, together with its member organisations, continued to support complementarity between the ICC and national authorities, in favour of meaningful and victim-centered justice. Notably, FIDH actively participated in the long-awaited domestic trial on Guinea’s 2009 massacre, alongside over 600 victims; recalled the ICC’s order for the Prosecutor to further justify his decision to close the preliminary examination in Colombia and the importance of meaningful outreach to victims and civil society; held consultations with Ukrainian CSOs and shared recommendations on accountability avenues for the crime of aggression; and made recommendations for effective cooperation and meaningful implementation of victims’ rights in investigations and prosecutions for international crimes in the Mutual Legal Assistance treaty.

26. **Justice Rapid Response (JRR)** continued to support transitional justice and accountability at the national level by providing highly specialized expertise from the JRR Roster to increase the effectiveness and strengthen the capacity of both national authorities investigating and prosecuting international crimes and civil society organisations documenting international crimes and/or litigating cases on behalf of victims before national courts. When working with national authorities JRR has provided support through case-based mentoring support and training, with an emphasis on maintaining local ownership. States and CSOs have benefited from expertise in a variety of areas including international crimes’ investigations and prosecutions, SGBV expertise, child rights expertise, victim participation, psychosocial support, military expertise, OSINT and environmental crimes. Among ICC situation countries, JRR has supported accountability actors in relation to

<sup>5</sup> See at: <https://www.ibanet.org/document?id=ICC-Report-Rome-Statute-October-2021>

<sup>6</sup> See at: <https://iccmoot.com/>

<sup>7</sup> See at: <https://www.ibanet.org/conference-details/CONF2244>

Bangladesh/Myanmar (Universal jurisdiction cases), the Democratic Republic of the Congo (Kasai Provincial Commission on Truth, Justice and Reconciliation and cases at the national level), Ukraine (support to Ukrainian investigators and prosecutors, including at the regional level, as well as support to investigations and for cases filled by CSOs abroad under universal jurisdiction) and Venezuela (Universal jurisdiction cases).

27. During 2023, the **Open Society Justice Initiative (OSJI)** has been supporting documentation efforts and national litigation in relation to the conflicts in Syria, Ukraine, and Yemen, among other countries. For example, the Justice Initiative has collaborated with national war crime units and pursued cases for prosecution of crimes committed in Syria under extra-territorial jurisdiction principles in several European states. The Justice Initiative and other programs of the Open Society Foundations have provided significant support to accountability efforts for grave crimes committed in Ukraine, including collaboration with Ukraine's Prosecutor General's office, other national prosecutor's offices, an analysis of the impact of immunities on prosecuting the crime of aggression, and submissions seeking sanctions.

28. **Parliamentarians for Global Action (PGA)** continued its efforts on complementarity during 2023. PGA was engaged on the Rome Statute Amendments (mobilized States to amend the Statute to align the jurisdictional regime of the Crime of Aggression with the other three core crimes and played an instrumental role in facilitating the ratification of all war crimes amendments by its members in Uruguay). PGA also worked to strengthen domestic legal frameworks on complementarity and/ or cooperation in Ghana, Ecuador and Mexico. PGA was actively involved in the negotiation proceedings that led to the adoption of the Mutual Legal Assistance Convention. Finally, during the 43rd plenary session of the ACP-EU Joint Parliamentary Assembly in June, PGA organized a meeting with experts, CSOs representatives, and parliamentarians from the Central African Republic, the European Parliament, Ghana, Italy, Malawi, Namibia, Niger, and Suriname in support of the ICC and international accountability and justice.

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

30. From May to September 2023, in partnership with the Ukrainian Legal Advisory Group (ULAG), **Women's Initiatives for Gender Justice (WIGJ)** provided a hybrid training to Ukrainian legal practitioners on incorporating international standards and best practices in addressing conflict-related sexual violence. Trainees attended 16 online sessions and had the opportunity to exercise skills on interviewing and planning an investigation during a 3-day in-person training in Kyiv. This was complemented by a Trainers' Guide, developed based on a needs assessment, featuring all modules discussed during the training and additional resources and tips for trainers. Additionally, a mentorship programme was set up between Ukrainian legal representatives of victims and experts of international criminal law.

## Annex II

### Draft language for inclusion in the omnibus resolution

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

#### Preamble

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

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

*Welcoming also* in this regard relevant contributions from the Court relating to sexual and gender-based crimes, such as the Office of the Prosecutor's Policy Paper on Sexual and Gender-Based Crimes,<sup>1</sup> as well as contributions from States Parties and other relevant actors, including initiatives for advancing the knowledge and understanding of such crimes, and convinced that these initiatives should be an integral part of strategic dialogues and actions to strengthen the Court and national courts in the fight against impunity, while fully respecting their judicial independence,

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

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

#### Activities of the Court

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

#### Complementarity

1. *Recalls* the primary responsibility of States to investigate and prosecute the most serious crimes of international concern and that, to this end, appropriate measures need to be adopted at the national level, and international cooperation and judicial assistance need to be strengthened, in order to ensure that national legal systems are willing and able genuinely to carry out investigations and prosecutions of such crimes;

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<sup>1</sup> <https://www.icc-cpi.int/iccdocs/otp/OTP-Policy-Paper-on-Sexual-and-Gender-Based-Crimes--June-2014.pdf>.

2. *Resolves* to continue and strengthen, within the appropriate fora, effective domestic implementation of the Rome Statute, to enhance the capacity of national jurisdictions to prosecute the perpetrators of the most serious crimes of international concern in accordance with internationally recognized fair trial standards, pursuant to the principle of complementarity;
3. *Welcomes* the international community's engagement in strengthening the capacity of domestic jurisdictions and inter-State cooperation to enable States to genuinely prosecute Rome Statute crimes;
4. *Also welcomes* efforts by the United Nations, international and regional organizations, States and civil society in mainstreaming capacity-building activities aimed at strengthening national jurisdictions with regard to investigating and prosecuting Rome Statute crimes into existing and new technical assistance programmes and instruments, and *strongly encourages* additional efforts in this regard by other international and regional organizations, States and civil society;
5. ~~*Welcomes, in this regard, the adoption of the 2030 Agenda for Sustainable Development*<sup>2</sup> and *acknowledges the important work being undertaken with regard to promoting the rule of law at the national and international levels and ensuring equal access to justice for all;*~~
6. *Stresses* that the proper functioning of the principle of complementarity entails that States incorporate the crimes set out in articles 6, 7 and 8 of the Rome Statute as punishable offences under their national laws, to establish jurisdiction for these crimes and to ensure effective enforcement of those laws, and *urges* States to do so;
7. *Welcomes* the report of the Bureau on complementarity and the recommendations made on future consultations set out therein,<sup>3</sup> and *requests* the Bureau to remain seized of this issue and to continue the dialogue with the Court and other stakeholders on complementarity, including on complementarity-related capacity-building activities by the international community to assist national jurisdictions, on possible situation-specific completion strategies of the Court and the role of partnerships with national authorities and other actors in this regard; and also including to assist on issues such as witness and victims protection and sexual and gender-based crimes;
8. *Also welcomes* the information by the Secretariat of the Assembly of States Parties on the progress in giving effect to its mandate to facilitate the exchange of information between the Court, States Parties and other stakeholders, including international organizations and civil society, aimed at strengthening domestic jurisdictions; *welcomes further* the work that has already been undertaken by the Secretariat and the President of the Assembly, and *requests* the Secretariat to, within existing resources, continue to develop its efforts in facilitating the exchange of information between the Court, States Parties and other stakeholders, including international organizations and civil society, aimed at strengthening domestic jurisdictions, and to invite States to submit information on their capacity needs for the consideration of States and other actors in a position to provide assistance, and to report on the practical steps taken in this regard to the twenty-~~second~~<sup>third</sup> session of the Assembly;
9. *Encourages* States, international and regional organizations and civil society to submit to the Secretariat information on their complementarity-related activities and *further welcomes* the efforts made by the international community and national authorities, including national capacity-building activities to investigate and prosecute sexual and gender-based crimes that may amount to Rome Statute crimes, in particular the continued efforts on the strategic actions to ensure access to justice and to enhance empowerment of victims at national level, recalling the recommendations presented by the International Development Law Organization<sup>4</sup> during the fourteenth session of the Assembly;
10. *Encourages* the Court to continue its efforts in the field of complementarity, including through exchange of information between the Court and other relevant actors, while recalling the Court's limited role in strengthening national jurisdictions and *also encourages* continued

<sup>2</sup> United Nations General Assembly resolution 70/1.

<sup>3</sup> ICC-ASP/22/19.

<sup>4</sup> International Development Law Organization paper entitled "Complementarity for sexual and gender-based atrocity crimes", November 2015.

inter-State cooperation, including on engaging international, regional and national actors in the justice sector, as well as civil society, in exchange of information and practices on strategic and sustainable efforts to strengthen national capacity to investigate and prosecute Rome Statute crimes and the strengthening of access to justice for victims of such crimes, including through international development assistance;

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

12. ~~Notes the ‘Dakar Seminar on complementarity and cooperation’, held on 23-25 May 2022, which emphasised the importance of collective efforts to ensure the effective implementation of the principle of complementarity, with a particular focus on States from the Economic Community of West African States (ECOWAS) and also welcomes the signing of the Dakar Declaration.<sup>5</sup>~~

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<sup>5</sup> See at: <https://www.icc-cpi.int/sites/default/files/2022-06/20220525-declaration.pdf>

## Annex III

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

With regard to **complementarity**,

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

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

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

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