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Assembly of States Parties

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Report of the Bureau on complementarity

I. Background

1. At its first meeting in 2018, the Bureau re-appointed Australia and Romania, under a silence procedure, as *ad country* focal points, on 6 March 2018. As such, Australia and Romania are focal points in both The Hague Working Group and the New York Working Group in the lead-up to the seventeenth session of the Assembly.

2. At the sixteenth session of the Assembly, States Parties resolved to continue and strengthen, within the appropriate fora, effective domestic implementation of the Statute to enhance the capacity of national jurisdictions to prosecute the perpetrators of the most serious crimes of international concern.[1] Consequently, the subsidiary bodies of the Assembly and the organs of the Court were essentially given the following mandates: 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]

3. 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 seventeenth session of the Assembly.[3] 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]

II. General findings

4. 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.

5. 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

6. 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.

[1] *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Sixteenth session, New York, 4-14 December 2017* (ICC-ASP/16/20), vol. I, Part III, ICC-ASP/16/Res.6, para 109.
[2] Ibid., annex, para. 14 (a).
[3] Ibid, para. 14(b).
[4] ICC-ASP/16/Res.6, para. 117.

7. In 2018, a number of meetings and consultations on the issue of complementarity were held with relevant stakeholders, including States, all organs of the Court as well as with 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 brief summary of these consultations is provided below and summaries circulated to participants previously are attached in annex III.

8. On 23 April 2018, the co-focal points outlined a draft 2018 program of work which had been circulated on 23 April 2018 and held the first informal consultation on complementarity in The Hague Working Group and, following further interest from delegations, chaired a discussion on the topic "How does the complementarity process work in law and in practice during the different stages of the Court's activities" presented by a representative from the Office of the Prosecutor (OTP). The meeting discussed how States retain primary responsibility to exercise their criminal jurisdiction over the crimes set out in the Statute and the role of the ICC is complementary to that duty. Further, the speaker also noted that the Court had ruled that admissibility determinations are case specific, this requires an examination of whether the national proceedings encompass the same person for the same conduct as that which forms the subject of the case before the Court.

9. On 18 September, following further interest from delegations, the co-focal points chaired an informal information session in The Hague Working Group on the topic "Understanding how article 18 of the Rome Statute (preliminary rulings regarding admissibility) works including deferrals, notifications to States under article 18 and when and how States can raise admissibility issues" presented by an OTP representative. The presenter provided an overview of the article 18 procedure while noting the limited practice and case law to date on its application. The speaker noted that a State's request for deferral must be lodged within one month of receipt of notification from the Prosecutor that an investigation will commence into a situation. The request has immediate suspensive effect. The speaker noted that extrapolating from the case law to date might suggest that the burden rests on the State lodging the admissibility challenge to substantiate its claim, also reflected in rule 53, while noting that the burden of proof under article 18(2) had not yet been tested. On the issue of admissibility assessments at the stage before investigations are opened, the presenter said the Prosecutor is required to identify the potential cases that are likely to arise from an investigation into the situation, encompassing the persons or groups of persons that appear to be involved and the types of conduct alleged.

10. Following consultations with ICC States Parties and representatives from the Court and civil society, on 24 September, the Secretariat conveyed via note verbale to ICC States Parties a "Complementarity Platform for technical assistance" aimed at facilitating links between ICC 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 ICC 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. We encourage interested States to complete the Platform and submit via email to: ASPcomplementarity@icc-cpi.int. The Complementarity Platform is attached as annex IV.

11. On 30 October, the co-focal points chaired an informal information session with two panel discussions on the topics: "Complementarity: obligations, rights and challenges, including for Non-States Parties" featuring Mr. Rod Rastan, Legal Adviser from the ICC Office of the Prosecutor and Professor Carsten Stahn of Leiden University and "Complementarity in practice: efforts by domestic, regional and international jurisdictions to investigate or prosecute Rome Statute crimes" featuring Mr. Xavier-Jean Keita, Principal Counsel, ICC Office of Public Counsel for the Defence, Ms Evelyn Ankumah, Executive Director, Africa Legal Aid, Dr Marta Bo from the Asser Institute and Antonio Cassese Initiative. The first panel remarked that the over the past decade, ICC action has increasingly affected non-party States for example Afghanistan, Burundi, Georgia, Palestine, Ukraine. There are two main procedural avenues for non-party States – article 18 allows States to make deferral requests and article 19 provides avenues for admissibility

challenges. If a State chooses to not engage with the Court, the Court could take a pragmatic approach and assess information from other sources such as pleadings, victims, defendant, amici. In the speaker's view if there is a complete absence of information, the Court can draw certain inferences and may leave preliminary examination open until national proceedings progress.

12. Questions were raised in relation to the length of preliminary examinations, the role and mandate of the Court in asserting to monitor situations and ongoing changing complementarity assessments. It was also queried whether States would be able to clarify what was intended in the Rome Statute given the case law on complementarity was still developing. A speaker responded that there was a legitimate question as to whether preliminary examinations and their timeframes can be improved and whether the ICC had the mandate or resources to engage in detailed monitoring, and added that that there could not be an artificial imposition of timelines as each situation was fact-specific.

13. For the second panel, Mr. Keita spoke about the benefits of ensuring national efforts for defendants particularly improving defendants' rights. He also reiterated that all of the rights under the Rome Statute should be made available to defendants. Ms Ankumah described the ICC as the "backup generator" and should be last in line to those with jurisdiction. She added that hybrid and regional mechanisms played an important role in accountability. Justice was always preferable closer to home and while the ICC plays an important role in Africa, local ownership was important for legitimacy as well. Dr Bo described training initiatives provided to 25 judges and prosecutors from Francophone African countries to increase their capacity to prosecute and try international and transnational crimes, and to strengthen their ability to protect fair trial rights enshrined in international instruments.

14. Over the course of the year one delegation maintained the view that, because the strengthening of national capacities to investigate or prosecute international crimes is a consequence, but not a part, of the principle of complementarity enshrined in the Rome Statute, the ICC´s budget and system should not be utilized for such purpose. States Parties and the Court have also previously expressed the view that the role of the Court itself is limited in actual capacity-building for the investigation and prosecution of Rome Statute crimes "in the field". Rather, this is a matter for States, the United Nations and relevant specialized agencies, other international and regional organizations and civil society.

15. The Court can, however, in the course of implementing its mandate within the framework of the Rome Statute, in particular article 93, paragraph 10, upon request, share information with and assist national jurisdictions. The Assembly of States Parties has an important role to play in continuing the dialogue on the efforts of the international community in strengthening national jurisdictions through complementarity activities, thereby enhancing the fight against impunity.

16. It is important to recall that issues arising from the admissibility of cases before the Court under article 17 of the Rome Statute all remain a judicial matter to be addressed by the judges of the Court. 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 always preserve the integrity of the Rome Statute and the effective, independent functioning of its institutions.

III. The President of the Assembly of States Parties, and the Secretariat

17. 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.

18. The President of the Assembly, H.E. O-Gon Kwon, has consistently highlighted the importance of the principle of complementarity in various fora. At the 15th Asian Law Institute (ASLI) Conference, held in Seoul on 10-11 May 2018, the President noted that cooperation and complementarity were two of the major challenges. With respect to complementarity, he stated that the Court is a court of last resort whose jurisdiction can only be triggered when domestic jurisdictions are unable or unwilling to deal with the situations therein. It is the obligation and responsibility of individual countries concerned to investigate and prosecute heinous crimes committed in their jurisdictions.

19. At other international events, the President similarly highlighted that under the principle of complementarity, it is the responsibility of the State having jurisdiction to investigate or prosecute the crimes within the jurisdiction of the Court, and that the Court's role is complementary. Such statements were made at, inter alia, the Commemoration of the 20th Anniversary of the Rome Statute, organized by the Coalition for the International Criminal Court, The Hague, 15 February 2018; High-level dialogue: "South America and the International Criminal Court: 20 years of the Rome Statute – national and regional experiences in combating impunity and preventing crime", Quito, 7 June 2018; United Nations Security Council Arria-formula meeting on UNSC-ICC relations: achievements, challenges and synergies, New York, 6 July 2018; Bled Strategic Forum, Bled, 10-11 September 2018; Regional Conference on International Humanitarian Law in Asia-Pacific: Taking Stock, Moving Forward, Jakarta, 26 September 2018; and Fifty-seventh annual session of the Asian-African Legal Consultative Organization (AALCO), Tokyo, 11 October 2018.

20. On 11 September 2018, the President issued a statement reiterating that "[o]ne of the cornerstones of the Rome Statute system is that it recognizes the primary jurisdiction of States to investigate and prosecute atrocity crimes. The jurisdiction of the Court is only complementary to domestic jurisdictions."

21. More broadly, the President has taken up the mantel in promoting and raising awareness of the principle of complementarity, and in defending the Court where required. 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.

22. The Secretariat of the Assembly 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. 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 internet portal.

IV. The Court

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

23. 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.[5]

[5] Report of the Bureau on stocktaking: Complementarity, Taking stock of the principle of complementarity: bridging the impunity gap (ICC-ASP/8/51, paras.3, 6-7).

24. Nevertheless, the Court and its different organs currently engage in activities which may contribute to enhancing the effectiveness of national jurisdictions' capacity to prosecute serious crimes. Each has different roles to play in different situations. These efforts can contribute to decreasing the overall financial and capacity burden placed on the Court in the long term, as strengthening of national capacities can have an impact on the case load of the Court.[6]

25. In particular, the Court has extensive investigative and prosecutorial experience and expertise from various aspects of judicial proceedings gathered throughout its activities in 11 situations under investigation and 10 situations under preliminary examination. It has continued to provide its views on the requirements of the Rome Statute, and share these experiences and best practices with its interlocutors, for example through the issuance of various policy papers by the Office of the Prosecutor (notably its Policy on Sexual Gender Based Crimes and its Policy on Children), as well as amongst relevant networks of practitioners. On occasions, on a cost-neutral basis, the Court has also assigned staff with specific expertise to join in training 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 may, upon request, share 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.

V. Broader efforts of the international community

26. **Africa Legal Aid (AFLA)** held consultation conferences on 'Emerging Trends on Complementarity' with regional stakeholders from Central, East and West Africa, and shared lessons from Africa with Asian stakeholders at the Asia-Africa Legal Consultation Organization (AALCO) meeting in Tokyo. The Hague Working Group equally benefited from AFLA's expertise on the subject matter in the form of a presentation. AFLA will convene a Side Event at ASP 17 entitled: 'Complementarity in Action: Bringing Yahya Jammeh to Justice in the Gambia'.

27. During the Rome Statute's 20th anniversary year, the **Coalition for the ICC (CICC)** organized and/or supported activities seeking the robust realization of the principle of complementarity, including advocacy encouraging full & effective implementation of the Statute. The Coalition also mobilized civil society to strategize collectively on ensuring this fundamental pillar of the Rome Statute system receives the attention and support it needs – not least at a Regional Strategy Meeting in the Americas region. The CICC , International Federation for Human Rights (FIDH), Human Rights Watch, No Peace Without Justice, Open Society Justice Initiative, Women's Initiatives for Gender Justice, and the World Federalist Movement-Institute for Global Policy also called on the European Union to appoint a Special Representative for IHL and International Justice to promote compliance with international humanitarian law and seek justice for victims of Rome Statute crimes, thereby assisting complementarity efforts."

28. The **T.M.C. Asser Institute** and the **Antonio Cassese Initiative** organized a training on international and transnational criminal law in The Hague from 5-9 February 2018. The participants were 25 judges and prosecutors from Francophone African countries including Burkina Faso, Cote d'Ivoire, Mali and Niger. The goal was to increase the magistrates' capacity to prosecute and try international and transnational crimes, and to strengthen their ability to protect fair trial rights enshrined in international instruments. The training modules – delivered in French – covered challenges to the domestic prosecutions of international crimes, the principle of complementarity, fair trial rights, and cooperation with the International Criminal Court. Later in 2018 and on the basis of participants' feedback, a follow up e-learning session was organized. The training is part of the first phase of a larger project, i.e. the setting up of a training school for judges and prosecutors

[6] Ibid., para.43.

from countries facing challenges in the administration of justice. Partners in this project are the Nuremberg Academy and the African Institute of International Law.

29. The **EU Genocide Network**, forum of national authorities competent for core international crimes, organized two plenary meetings at Eurojust in The Hague. The first meeting addressed the preservation of open source information available on social media for purposes of investigation and prosecution of core international crimes and the second meeting focused on measures to prevent secondary traumatic stress for domestic practitioners. Further, the third EU Day Against Impunity was organized on 23 May by the Bulgarian EU Presidency, the Genocide Network, Eurojust, the ICC and the European Commission with the aim of promoting national investigations and prosecutions of the most heinous crimes among the decision makers and general public. The EU Genocide Network also organized a workshop on cooperation between national authorities and the United Nations International, Impartial and Independent Mechanism on Syria (IIIM), supported by the Ministry of Foreign Affairs of the Netherlands.

30. **Human Rights Watch** published a report recommending steps the Office of the Prosecutor and international partners can take to encourage national prosecutions during preliminary examinations. The organization expressed concern about a lack of domestic accountability in Côte d'Ivoire, including regarding a new decision to grant amnesties to hundreds of persons. It continued to raise concerns regarding measures that could undermine the effectiveness of the Special Jurisdiction for Peace in Colombia. The organization pressed for progress in the domestic case of alleged grave crimes committed at a stadium in Guinea in 2009, and encouraged progress by the Special Criminal Court in the Central African Republic.

31. The **International Bar Association (IBA)** ICC & ICL Programme convened and participated in numerous meetings and consultations to exchange views, updates and strategic ways forward on fair trials and equality of arms in international and domestic contexts. The Programme contributed to the Training in Trial Observations in Bogota, Colombia in May 2018, with a presentation on fair trial standards in international criminal tribunals and their relevance to planned proceedings in Colombia. In October 2018, in a headline event at the IBA Annual Conference in Rome, ICC Prosecutor Fatou Bensouda discussed States' obligations under the Rome Statute with IBA Executive Director, Dr Mark Ellis, and the ICC&ICL Programme's high-level panel in Rome brought views from diplomats, the ICC, counsel and civil society on progress and challenges in implementing the Statute. At ASP 17, the Programme will launch 'Legal representation, fairness and access to justice in hybrid tribunals and specialised chambers', with the support of the ASP's co-focal points on complementarity. This report discusses the relevance of the ICC's standards and practices for legal representation to institutions holding trials for international crimes.

32. As part of its mission to promote complementarity for the investigation and prosecution of international crimes, the **International Center for Transitional Justice** (ICTJ) provided its expertise to help design criminal justice responses in a number of countries, including the Special Jurisdiction for Peace in Colombia, the Specialized Chambers for criminal prosecution in Tunisia (pursuant to the Tunisian Transitional Justice Law) and the Special Investigative Cell within the Ministry of Justice in Côte d'Ivoire. ICTJ has also continued to engage with the International Crimes Division in Uganda and has started activities in Armenia and Sri Lanka. Lastly, ICTJ has finalized a comprehensive report analysing specific issues in relation to five hybrid courts which will be presented and launched in the margins of the 2018 Assembly of State Parties, in The Hague, in partnership with the International Bar Association

33. **Parliamentarians for Global Action (PGA)** has conducted several missions (e.g. to Central African Republic and Ukraine), a sub-regional Seminar (National Congress of Honduras), meetings and conferences, including on the 20th Anniversary of the Rome Statute, to mobilize parliamentarians to advance the Rome Statute implementation process, prioritize domestic accountability mechanisms and sign cooperation agreements with the ICC. In 2018, as a result of the PGA engagement, the draft law on Cooperation with the ICC was approved in Costa Rica and Dominican Republic; Argentina signed its third and fourth cooperation agreements with the ICC, and legislative progress on the implementing legislation has been made in several countries, further accelerated through the Consultative

Assembly of Parliamentarians on the ICC and the rule of Law in Kyiv, Ukraine, attended by approximately 100 legislators worldwide on 16-17 November 2018.

34. **Women's Initiatives for Gender Justice** continued to work with civil society and State partners in Uganda and the Democratic Republic of Congo (DRC) to strengthen capacities in the area of international justice. In South Kivu, DRC, Women's Initiatives held a workshop with judicial officers to exchange experiences and knowledge on adjudicating sexual violence as an international crime. In addition to interacting with peers from three territories, the judicial officers exchanged views with two ICC judicial officers via video conference. A capacity strengthening training on the prosecution of sexual violence as an international crime was also held for prosecutors from six territories of South Kivu. In Uganda, a workshop with women affected by the conflict was held on international and national justice and human rights mechanisms, as well as a training with a civil society partner to augment knowledge of international justice processes.

VI. Conclusion

35. The above 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.

36. In this context it is recommended that the Assembly adopt the draft provisions on complementarity contained in annex I to this report. Finally, it is also recommended that the Assembly consider also making complementarity an agenda item to be discussed at future sessions.

Annex I

Draft resolution language for the omnibus resolution

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,

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 Development[1] 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 *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

[1] United Nations General Assembly resolution 70/1.

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 eighteenth 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[2] 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 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.

Annex II

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; and

(b) *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 eighteenth session of the Assembly;

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

Annex III

Summaries of 2018 meetings

A. Informal consultations on complementarity – 23 April 2018

Topic: How does the complementarity process work in law and in practice during the different stages of the Court's activities?

1. The meeting was chaired by co-focal focal points, Ambassador Brett Mason (Australia) and Ambassador Brîndusa-Ioana Predescu (Romania), and aimed to provide States with information on complementarity as a legal provision governing the admissibility of particular cases, as set out in articles 17-19 of the Statute.

2. Mr. Rod Rastan, Legal Adviser, Office of the Prosecutor, recalled that according to the Statute, States retain primary responsibility to exercise their criminal jurisdiction over the crimes set out in the Statute and the role of the ICC is complementary to that duty, as emphasised in the preamble: "*Recalling* that it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes" and "*Emphasizing* that the International Criminal Court established under this Statute shall be complementary to national criminal jurisdictions".[1] At the same time, the Statute vested with the Court the authority to determine questions of forum allocation where there was a contestation over where a particular case should be heard.[2]

3. It was noted that technically the Statute did not impose any obligation on States with respect to complementarity: articles 17-19 created certain rights for States (as well as for a defendant) that States could elect to exercise - in implementation of their primary responsibility to exercise their criminal jurisdiction over such crimes - and to challenge the admissibility of particular cases. Similarly, while a State might elect not to provide the Court with relevant information concerning national proceedings, failure to do so could impact on the Court's admissibility assessment.

4. It was recalled in this regard that States bore the burden of proof when lodging a challenge,[3] and that Chambers of the Court had held that to discharge this burden, it must be provided with "evidence of a sufficient degree of specificity and probative value" to demonstrate existence of relevant proceedings. [4] In that context, the Appeals Chamber, in explaining its rationale, had recalled its earlier statement that "it is an essential tenet of the rule of law that judicial decisions must be based on facts established by evidence. Providing evidence to substantiate an allegation is a hallmark of judicial proceedings; courts do not base their decisions on impulse, intuition and conjecture or on mere sympathy or emotion".[5]

5. Mr. Rastan also recalled that the admissibility determination is by definition case specific,[6] requiring an examination of whether the national proceedings encompass the same person for the same conduct as that which forms the subject of the case before the Court. As the Appeals Chamber has stated: "for a case to be inadmissible under article 17(1)(a) of the Statute, national investigations must cover the same individual and

[1] Preamble, paras. 6 and 10, ICC Statute.
[2] *Prosecutor v. Joseph Kony et al.*, Decision on the admissibility of the case under article 19(1) of the Statute, ICC-02/04-01/05-377, 10 March 2009, para. 45, 51.
[3] *See* rule 58(1), ICC RPE; *Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali*, Judgment on the appeal of the Republic of Kenya against the decision of Pre-Trial Chamber II of 30 May 2011 entitled "Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute"; ICC-01/09-02/11-274, 30 August 2011, para.61.
[4] *Ibid.*, para. 2.
[5] *Ibid.* para.61, (recalling Judgment on the appeals of the Defence against the decisions entitled 'Decision on victims' applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06, a/0082/06, a/0084/06 to a/0089/06, a/0091/06 to a/0097/06, a/0099/06, a/0100/06, a/0102/06 to a/0104/06, a/0111/06, a/0113/06 to a/0117/06, a/0120/06, a/0121/06 and a/0123/06 to a/0127/06', Situation in Uganda (ICC-02/04-179 OA, ICC-02/04-01/05-371 OA2), Appeals Chamber, 23 February 2009, para. 36).
[6] As the Appeals Chamber has stated, "article 19 of the Statute relates to the admissibility of concrete cases"; ICC-01/09-02/11-274, para. 39.

substantially the same conduct as alleged in the proceedings before the Court".[7] Mr. Rastan went on to discuss the meaning of the phrase "substantially the same conduct" as it had been developed by the Appeals Chamber in later *Gaddafi and Al-Senussi* cases,[8] and its possible rationales. Discussion also focussed on how considerations of admissibility factor into the Prosecutor's and the Chamber's assessment at the article 15 and article 18 stages, as well as the scope for the Court to revisit admissibility determinations under article 19(10) of the Statute.

6. The focal points intended to hold future information sessions on the legal aspects of complementarity.

[7] ICC-01/09-02/11-274, para. 1. *See also* PTCI: "it is a *conditio sine qua non* for a case arising from the investigation of a situation to be inadmissible that national proceedings encompass both the person and the conduct which is the subject of the case before the Court"; *Prosecutor v. Lubanga*, Decision on the Prosecutor's Application for a warrant of arrest, Article 58 ('Article 58 Decision'), ICC-01/04-01/06-8-US-Corr, 24 February 2006, para. 31.

[8] *Prosecutor v. Saif Al-Islam Gaddafi and Abdullah Al-Senussi*, Decision on the admissibility of the case against Saif Al-Islam Gaddafi, Gaddafi and Al-Senussi' (ICC-01/11-01/11-344-Red), Appeals Chamber, 31 May 2013; *Prosecutor v. Saif Al-Islam Gaddafi and Abdullah Al-Senussi*, Judgment on the appeal of Mr. Abdullah Al-Senussi against the decision of Pre-Trial Chamber I of 11 October 2013 entitled 'Decision on the admissibility of the case against Abdullah Al-Senussi', Gaddafi and Al-Senussi (ICC-01/11-01/11-565 OA6), Appeals Chamber, 24 July 2014.

B. Informal consultations on complementarity – 18 September 2018

Representatives of the ad country co-focal points, Ms. Christina Hey-Nguyen (Australia) and Ms. Raluca Karassi (Romania), chaired the meeting.

1. Informal information session

1. The informal information session on judicial aspects of complementarity focused on the topic "Understanding how article 18 of the Rome Statute (preliminary rulings regarding admissibility) works including deferrals, notifications to States under article 18 and when and how States can raise admissibility issues". The topic was chosen in response to the feedback received and interest expressed by delegations on obtaining further information and clarity on this subject.

2. Mr. Rod Rastan, Legal Adviser, Office of the Prosecutor (OTP), gave an overview of the article 18 procedure while noting the limited practice and case law to date on its application. The Office of the Prosecutor routinely sends out notification letters in compliance with article 18(1). To date, however, no State had triggered the article 18(2) procedure by requesting the Prosecutor to defer to that State's investigation.

3. It was recalled that article 18 serves to obtain a preliminary ruling on admissibility at the earliest stage of the Court's procedure when an investigation is opened. The article 18 notification applies to investigations opened following either a State Party referral or an article 15 authorisation –it does not apply to Security Council referred situations.

4. In terms of timing under an article 15 procedure, Chambers have also confirmed that, article 18 becomes applicable once the investigation is authorised by the Pre-Trial Chamber, and not when the application is lodged.[9]

5. The notification is to be sent out to "all States Parties and those States which, taking into account the information available, would normally exercise jurisdiction over the crimes concerned", while article 18(2) says "*a State* may inform the Court…" (emphasis added). This means that, similar to articles 17 and 19, the article 18 procedure is available both to States Parties and non-Party States.

6. Under article 18(2), the State concerned may inform the Court within one month or receipt of the notification that "it is investigating or has investigated its nationals or others within its jurisdiction with respect to criminal acts which may constitute crimes referred to in article 5 and which relate to the information provided in the notification to States".

7. As to the level of specificity that the Prosecutor must provide, it was recalled that in order to assess admissibility before investigations are opened, the Prosecutor is required to identify the 'potential cases' that are likely to arise from an investigation into the situation, encompassing the persons or groups of persons that appear to be involved and the types of conduct alleged.[10] The PTC II in the Kenya authorisation decision observed that the criteria for potential cases at the article 15 stage could be relevant also for the article 18 procedure, noting "this would facilitate a mutual understanding between the Court and the relevant State(s) as to the scope of the complementarity assessment dictated by article 18(2)-(5) of the Statute".[11]

8. A State's request for deferral has immediate suspensive effect. As article 18(2) provides: "[a]t the request of that State, the Prosecutor *shall defer* to the State's investigation of those persons …" (emphasis added). Nonetheless, the provision also allows the Prosecutor to apply to the PTC to authorise it to proceed with its investigation notwithstanding the deferral request, by continuing: "…*unless* the Pre-Trial Chamber, on the application of the Prosecutor, decides to authorize the investigation". Such a ruling might involve, for example, an assessment as to the level of identity of the cases concerned

[9] *Situation in the Republic of Kenya*, 'Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya' (Kenya Article 15 Decision), 31 March 2010, ICC-01/09-19-Corr, para.51.
[10] Kenya Article 15 Decision, para.58. *See also* regulation 49(2), Regulations of the Court.
[11] Kenya Article 15 Decision, para.51.

(degree of sameness) or of the genuineness of the national proceedings concerned, in line with the two-step inquiry governing article 17 admissibility determinations.[12]

9. In terms of the scope of the deferral request, the expression "the State's investigation of those persons" suggests that a deferral request would regulate the admissibility of those specific cases that the State informs the Court of.

10. At any time during the article 18 process – whether pending an admissibility ruling from the PTC or after the Prosecutor has deferred – article 18(6) provides for certain interim measures to be undertaken, upon request to and authorisation by the Chamber, to enable the Prosecutor "to pursue necessary investigative steps for the purpose of preserving evidence where there is a unique opportunity to obtain important evidence or there is a significant risk that such evidence may not be subsequently available".

11. As to the burden of proof, it was recalled that the Prosecutor must determine to the reasonable basis standard that the cases or potential cases identified would be admissible.[13] The Pre-Trial Chamber must be satisfied to the same standard when reviewing the Prosecutor's application under article 15 of the Statute.[14]

12. Discussions during questions focused on where the burden of proof might fall in the context of the different stages of the article 18 process. Discussion also focussed on the question of the type of proceedings which may be notified to the Court, given the reference in the preamble and article 1 of the Statute to the ICC being complementary to "national criminal jurisdictions".[15] In particular, in the Burundi situation, it was recalled that the Pre-Trial Chamber considered the relevance to an admissibility assessment of certain non-criminal inquiries (national commissions of inquiries) to the extent that those inquiries had relevant investigative powers.[16]

2. Other matters

13. Representatives of the ad country co-focal points informed the delegations that the consultation rounds on the complementarity platform developed together with the ICC Secretariat had concluded and that the platform would be circulated to all States Parties shortly via note verbale and they welcomed any contributions.

[12] See summary of informal information session held on 23 April 2018.
[13] Article 53(1)(b), ICC Statute and rule 48, ICC RPE.
[14] Kenya Article 15 Decision, para.21.
[15] See e.g. *Situation in the Republic of Burundi*, Public Redacted Version of "Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Burundi" (Burundi Article15 Decision), ICC-01/17-X-9-US-Exp, 25 October 2017, ICC-01/17-9-Red, 9 November 2017, paras. 151-152.
[16] See e.g. discussion in Burundi Article15 Decision, paras 151-153. See also *Situation in the Islamic Republic of Afghanistan*, Public redacted version of "Request for authorisation of an investigation pursuant to article 15", 20 November 2017, ICC-02/17-7-Conf-Exp, ICC-02/17-7-Red, 20 November 2017, para.268.

C. Informal consultations on complementarity – 30 October 2018

The Ambassadors of the ad country co-focal points, Ambassador Brîndusa-Ioana Predescu (Romania) and Ambassador Matthew EK Neuhaus (Australia), chaired the meeting.

1. Informal information session

1. The meeting envisaged two panel discussions on the topics: "*Complementarity: obligations, rights and challenges, including for Non-States Parties*" Professor Carsten Stahn of Leiden University and Mr. Rod Rastan, Legal Advisor in the ICC-OTP, and "*Complementarity in practice: efforts by domestic, regional and international jurisdictions to investigate or prosecute Rome Statute crimes*" featuring Mr. Xavier-Jean Keita, Principal Counsel, ICC Office of Public Counsel for the Defence, Ms. Evelyn Ankumah, Executive Director, Africa Legal Aid, and Dr. Marta Bo from the Asser Institute and Antonio Cassese Initiative.

a) Complementarity: obligations, rights and challenges, including for Non-States Parties

2. During the first panel **Prof. Stahn** stated that complementarity is seen to have two main dimensions. On the one hand, complementarity is seen in a narrow technical-legal sense, i.e. as a tool to sort out conflicts of jurisdiction between the ICC and domestic jurisdictions under Art. 17. On the other hand, as a structural principle in the Rome Statute as a system of justice (namely issues such as, primary responsibility of domestic jurisdictions; effective implementation of the Rome Statute; cooperation of ICC with domestic jurisdictions; outreach and 'capacity building').

3. Regarding the first dimension of complementarity as admissibility, Prof. Stahn remarked that over the past decade, ICC action has increasingly tended to affect nationals of non-States Parties, noting four preliminary examinations (Afghanistan, Palestine, Ukraine and possibly Philippines once its withdrawal takes effect in March 2019), and two investigations (Burundi and Georgia). He also noted two preliminary examinations that had already been closed (the Republic of Korea and the Registered Vessels of Comoros, Greece and Cambodia). Prof. Stahn indicated that the effect of the Rome Statute on non-States Parties was not unforeseen. Since its establishment, the ICC has engaged not only with States Parties, but with a large number of non-States Parties as well. In this regard, he stated that there is an emerging line of practice in the shape of two main procedural avenues for non-States Parties engagement with the Court. On the one hand, article 18 allows States to make deferral requests, and on the other hand, article 19 provides for States to mount admissibility challenges. He noted that an article 19 admissibility challenge was raised by the Ruto (Kenya) case which confirmed States bear the burden of proof in complementarity analysis. He added that there is academic debate as to whether there should be a greater deference or margin of appreciation to non-States Parties and noted that further litigation would be needed to clear this issue.

4. Prof. Stahn further indicated that the Appeals Chamber in the Gaddafi, Al-Senussi (Libya) cases confirmed what are the requirements for a State needs to raise a challenge before the Court. There is the "same person, same conduct test" and provided the following 3 guidelines: i) "ordinary crime" prosecution possible; ii) conduct investigated must be substantially the same and iii) it is necessary to use, as a comparator; the underlying incidents under investigation both by the Prosecutor and the State being the same. He indicated that the fact that complementarity is dynamic and constantly evolving makes this problematic in practice.

5. Prof. Stahn stated that the second dimension of complementarity as a structural principle of the Rome Statute system showed interesting new dynamics. On the one hand, the closure of preliminary examinations or completion strategy for situations have been widely discussed. With regard of timing, he noted that the experience shows that preliminary examinations involving admissibility issues are the most complex. On the other hand, there is an interesting increasing interplay with new accountability forums and regional mechanisms involving non-States Parties e.g., IIIM Syria, Myanmar Investigative mechanism, Hybrid Courts, and the Malabo Protocol.

6. In his conclusion, Prof. Stahn referred to a proposal made by the former US Ambassador David Scheffer at the recent Nuremburg Academy Forum (19-20 October 2018) for the establishment of an informal mechanism and platform for dialogue to build bridges with non-States Parties. He emphasized that having additional channels for dialogue might be useful in the future.

7. **Mr. Rod Rastan** focussed on obligations, rights and challenges. On obligations, he noted that complementarity strictly speaking does not create obligations for States, since States are not obligated to exercise their national jurisdiction in relation to article 17, nor required to provide evidence or information to the Court about their national proceedings, except in support of any challenge they might bring. The complementarity provisions under article 17 create certain rights for States, it does not pose an obligation as such. However, there is of course an implied incentive for States to engage with the Court in article 17, in order to notify the Court of the existence of relevant national proceedings which might create a conflict of jurisdictions and to inform the Court as early as possible – with the goal to avoid duplicative and parallel processes in relation to the same case. This is also in line with the rights of defendants not to be subject to parallel proceedings before the ICC and national courts, which are also served by the Statute's complementarity provisions. On rights, it was noted that the relevant 'rights' of States to invoke the complementarity provisions set out in article 17 are available equally to States Parties and non-States Parties: since articles 17-19 apply without distinction to any State with jurisdiction.

8. In terms of challenges, the presentation discussed possible approached to allocating the burden of proof at the article 18 stage, the level of detail/specificity needed in resolving complementarity challenge or ruling, in the light of the case law of the Court to date, and how a potential situation of impasse might be resolved when a State is unable or refuses to cooperate with providing the Court with the particulars of a national proceeding.

Questions and answers session

9. Questions were also raised in relation to the length of preliminary examinations, the role of the Court in asserting to monitor situations and ongoing changing complementarity assessments. Prof. Stahn remarked that there was a legitimate question as to whether preliminary examinations and their timeframes can be improved and whether the ICC had the resources to engage in detailed monitoring, while noting at the same time that there could not be an artificial imposition of timelines as each situation was fact-specific.

10. With regards to a question regarding the relationship between the Court and other mechanisms/forums, the speakers noted that while these have specific purposes such as strengthening domestic investigations and prosecutions. It was noted that some might have the potential to enable coordination with regard to the investigative and evidence preservation activities of the ICC-OTP (such as the investigative mechanism for Myanmar), or might serve a division of burden function and help facilitate the completion strategy of the Court in a particular situation (such as the recently created CAR Special Court), while others might help enable future accountability responses in situations where the Court presently lacks jurisdiction, (such as Syria or alleged ISIL crimes in Iraq). In any event these can serve to generate open platforms of exchange to gain synergies that can be mutually complimentary, while avoiding duplication of work.

b) Complementarity in practice: efforts by domestic, regional and international jurisdictions to investigate or prosecute Rome Statute crimes

11. During the second panel, **Mr. Keita** emphasized that complementarity is not only a question regarding States but also regarding parties to the proceedings at the Court, of which the defence is one. He noted that complementarity is a complex term not even mentioned in the me Statue, except in the Preamble. Mr. Keita further spoke about the benefits of ensuring national efforts for defendants particularly improving defendants' rights. He also reiterated that all the rights under the Rome Statute should be made available to all defendants in an equal way.

12. Mr. Keita also noted that the complementarity is triggered when States are unwilling and unable to prosecute. He noted however that many countries are willing but unable due to lack of capacity to exercise the high standards of the Rome Statute. In such cases he encouraged 'positive complementarity' providing training to these Sates with support of the Court.

13. **Ms. Ankumah** noted that complementarity means that the ICC is last in line as a default court, needed only when other courts are unwilling or unable to take responsibility, and described the ICC as the "backup generator" that only needs to be used when the prime electricity power sources fail to deliver. Ms. Ankumah indicated that complementarity reflects the notion that justice, preferably, should be done at home and, or as close as possible to home. She emphasized that unfortunately many crimes go unpunished in Africa, and that is why Africa needs the ICC as that back-up generator. Yet, African alternatives for criminal justice should be promoted.

14. She indicated that when it comes to complementarity, the Rome Statute only seems to have an eye on the ICC itself and national courts, i.e. the classic criminal courts of States on whose territory the crimes concerned have been committed. She noted that no reference is made to the numerous hybrid or special tribunals that have been or are planned to be set in place at national or regional levels for crimes committed in countries like South Sudan, Habre's Chad, Cambodia or the Central African Republic. Ms. Ankumah added that hybrid and regional mechanisms played an important role in accountability, and that while the ICC plays an important role in Africa, local ownership was important for legitimacy as well. She provided examples regional efforts including trial of Hissène Habré by Sierra Leone and efforts to try Yahya Jammeh in Ghana. In her view, such special courts demonstrate to be much cheaper and may have greater legitimacy.

15. **Dr. Bo** indicated that complementarity represented the cornerstone of the Rome Statute. She stressed that States are the main bearers of the responsibility to prosecute international crimes and that for that reason, strengthening domestic justice sectors is crucial to achieve complementarity. She described training initiatives provided to 25 judges and prosecutors from Francophone African to increase their capacity to prosecute and try international and transnational crimes, and to strengthen their ability to protect fair trial rights enshrined in international instruments. She noted that trainings in international criminal law, transnational criminal law and international humanitarian law and practice oriented and aim to increase the necessary knowledge and skills required by judges and prosecutors. She noted that trainings provide a safe and trusted environment for sharing best practices and experiences in order to strengthen domestic judicial and prosecutorial capacity, as well as increase cooperation among national judiciaries and with the ICC. She further described the main challenges encountered by domestic jurisdictions. Such challenges include: domestic implementation of ICL; complementarity ('same case test'); elements of international crimes; classification of armed conflict; counterterrorism and international humanitarian law; exercise of universal jurisdiction; management of and writing judgements in complex cases; investigation planning; witness protection; command responsibility and linkage issues; forensic evidence; open source evidence.

Questions and answers session

16. With regards to a question concerning complementarity and national proceedings, Mr. Keita noted that is extremely important for the Court to monitor that domestic jurisdictions have all provisions of the Rome Statute in place, e.g. issue of death penalty in Libya. With regards a question on regional Courts, Ms. Ankoumah noted that the issue of the immunities provision of the African Court while unfortunate should not be a reason to throw out the whole Malabo Protocol. She added that the protocol expanded the offences, including environmental and economic crimes, and stressed that the ICC is the last line of defence.

17. A question was raised with regards to trainings results. Ms. Bo indicated there are two types of outcomes. On the one hand, increased knowledge on how complementarity works means a change in the perception of national experts towards the ICC. On the other hand, some results show that trainings generate informal channels of communication that may be beneficial for issues such as extradition and mutual legal assistance. She added that it was crucial to increase support to introduce international (criminal) law in the university curriculum to become magistrates, which was inexistent in some of the target countries, to be better equipped to address these types of cases.

Annex IV


Cour
Pénale
Internationale

International
Criminal
Court

COMPLEMENTARITY AND THE INTERNATIONAL CRIMINAL COURT (ICC)

Platform for technical assistance

Guidance notes

- **Australia, Romania and the Secretariat of the ICC Assembly of States Parties invite ICC States Parties seeking technical assistance to investigate or prosecute Rome Statute crimes (genocide, crimes against humanity, war crimes and crime of aggression), to outline their technical assistance needs in the following platform.**
- The Secretariat will work with the requesting State seeking assistance to facilitate links with actors that may be in a position to assist, drawing on the existing Assembly Secretariat complementarity web platform.[1] The request will not be posted on the web platform unless agreed by the State.
- **Please complete all fields**. For **column C** - please select one or more of the following thematic areas, where relevant:
  - o Implementing legislation, criminal law and procedure reform;
  - o Training and advice;
  - o Witness and victims protection;
  - o Judicial infrastructure;
  - o Strengthening legal representation;
  - o Court management;
  - o Security support;
  - o Other areas.
- For **column E** – please indicate in if this is a new or existing request. If this is an existing request, we kindly ask that you indicate which organization originally received it. We will endeavour to liaise with the organization to coordinate and avoid duplication.
- For **column K** - this information may be shared by the Secretariat with other States and the wider donor community. Please let us know in if there are any directions for handling this information, including any specific confidentiality requirements.
- **Any questions? Please contact:**

  Gaile A. Ramoutar, Legal Officer and Secretariat focal point for complementarity: ASPcomplementarity@icc-cpi.int

This document has been developed by the Assembly Secretariat and complementarity co-focal points, Australia and Romania, in accordance with our respective mandates.[2]

[1] https://asp.icc-cpi.int/en_menus/asp/complementarity/List-of-Actors/Pages/default.aspx.

[2] *Official Records of the Assembly of States Parties to the Rome Statue of the International Criminal Court, Fifteenth session, The Hague. 16–24 November 2016* (ICC-ASP/15/20), ICC-ASP/15/Res.5, and sixteenth session, New York, 4-14 December 2017 (ICC-ASP/16/33) and ICC-ASP/16/Res. 6).

A. Country	*B. Date*	*C. Thematic area*	*D. Details of request*	*E. Is this a new or existing request?*	*F. Short/ long term goal*	*G. Preferred timing and partners*	*H. Estimated funding requirements*	*I. Location(s)*	*J. Contact Person(s) (name, title, department, email address)*	*K. Share request with third parties (yes/ no/ other instructions)*	*L. Additional comments*
EXAMPLES											
Example Country A	18 September 2017	Witness and victims protection and support	Advice on establishment of specialised independent body with expertise on victim and witness protection		To allow for witness and victim participation and reparation	2 years, prefer assistance from French speaking states	USD200,000	ABC province	Mrs CEF, Ministry of Justice a@email.com	Yes	
Example Country B	18 September 2017	Witness and victims protection and support	Advice on reintegrating witness into communities following testimonies		To allow for witness and victim participation and reparation	2 years, prefer UN organisations	USD200,000	DEF province	Mrs ABC, Ministry of Justice xyz@email.com	Yes	
Example Country C	18 September 2017	Strengthening legal representation	Assistance developing legal aid scheme for defence and victim representation		To ensure fair trials	3 months prefer assistance from English speaking states	EUR100,000				
Example Country D	18 September 2017	Strengthening legal representation	Training to interact with vulnerable witnesses		To allow for witness and victim participation and reparation	3 months prefer assistance from English speaking states	EUR500,000	National level	Mr. XYZ, Ministry of Justice aaa@email.com	Please notify before sharing	

A. Country	*B. Date*	*C. Thematic area*	*D. Details of request*	*E. Is this a new or existing request?*	*F. Short/ long term goal*	*G. Preferred timing and partners*	*H. Estimated funding requirements*	*I. Location(s)*	*J. Contact Person(s) (name, title, department, email address)*	*K. Share request with third parties (yes/ no/ other instructions)*	*L. Additional comments*