

Draft paper on some policy issues before the Office of the Prosecutor

for discussion at the public hearing in The Hague on 17 and 18 June 2003

This draft policy paper defines a general strategy for the Office of the Prosecutor, highlights the priority tasks to be performed and determines an institutional framework capable of ensuring the proper exercise of its functions. The policy and structure of the Office of the Prosecutor are designed in full recognition of the specific nature of the International Criminal Court, which is intended to operate as an institution that is novel and unique in the challenges that it faces and is designed to be complementary to national systems. They also take into account the logistical constraints that will limit the practical scope of action of the Court.

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I. Introduction

The Office of the Prosecutor is responsible for receiving referrals and any substantiated information on crimes of genocide, crimes against humanity and war crimes, for examining them and for conducting investigations and prosecutions before the Court.

1. Independence of the Office of the Prosecutor

Under the Statute, the Office of the Prosecutor acts independently as a separate organ of the International Criminal Court. It is the responsibility of the Chief Prosecutor to initiate criminal proceedings in accordance with the duties and powers provided for in the Rome Statute after the jurisdiction of the Court has been triggered by way of a referral of a situation by a State Party or the UN Security Council, or after an authorisation by the Pre-Trial Chamber in cases where the Chief Prosecutor acts *proprio motu*.

An effective International Criminal Court requires not only a Chief Prosecutor who is independent, but also an institutional framework which ensures that the Office of the Prosecutor strictly respects the bounds of the Statute, while taking crucial decisions without undue pressure or restraint. Under the Statute, the Office of the Prosecutor is not only vested with *legal independence* from the other organs of the Court. It is also granted *operational independence*. The Chief Prosecutor has full authority over the management and administration of the Office, including staff, facilities and other resources.

2. General overview of functions

Any State Party or the Security Council may refer to the Chief Prosecutor a situation in which one or more crimes within the jurisdiction of the Court appear to have been committed, requesting the Chief Prosecutor to investigate the situation for the purpose of determining whether one or more specific persons should be charged with the commission of the crime.

The Chief Prosecutor may also initiate investigations *proprio motu* on the basis of information received on crimes within the jurisdiction of the Court provided by any source. In this case, the Chief Prosecutor cannot launch a full-fledged investigation on his own. He must first analyse the seriousness of the information received and may seek, for this purpose, additional information from States, organs of the United Nations, intergovernmental or non-governmental organisations, or other reliable sources that he or she deems appropriate, and may receive written or oral testimony at the seat of the Court. If on the basis of this preliminary analysis, the Chief Prosecutor concludes that there is a reasonable basis to proceed with an investigation, he shall submit to the Pre-Trial Chamber a request for authorisation of an investigation, together with any supporting material collected.

In deciding whether to initiate an investigation or to seek the authorisation of the Pre-Trial Chamber for an investigation, the Chief Prosecutor must consider the following factors:

- (i) the sufficiency of information available, that is, the factual and legal basis of allegations of crimes;
- (ii) the admissibility of the case under article 17; and

- (iii) taking into account the gravity of the crime and the interests of victims, whether there are nonetheless substantial reasons to believe that an investigation would not serve the interests of justice.

Upon conclusion of the investigation, the Chief Prosecutor determines whether to prosecute one or more persons. He may conclude that there is not a sufficient basis for a prosecution because:

- (i) there is not a sufficient legal or factual basis to seek a warrant of arrest or summons to appear;
- (ii) the case is inadmissible under article 17; or
- (iii) a prosecution is not in the interests of justice, taking into account all the circumstances, including the gravity of the crime, the interests of victims and the personal circumstances of the alleged perpetrator (age and infirmity), and his or her role in the alleged crime.

At the request of the State making the referral or the Security Council, the Pre-Trial Chamber may review a decision of the Chief Prosecutor not to investigate or prosecute. In addition the Pre-Trial Chamber may, on its own initiative, review a decision of the Chief Prosecutor not to proceed if it is based solely on the argument that the investigation or prosecution would not be in the interests of justice.

II. Principles and goals

1. The complementary nature of the International Criminal Court

The efficiency and success of the International Criminal Court should not be measured by the number of cases that reach the Court, but rather by the absence of trials by the ICC as a consequence of the effective functioning of national systems.

1.1. The principle of complementarity

The ICC is not intended to replace national courts, but to operate when national structures and courts are unwilling or unable to conduct investigations and prosecutions.

Unlike the *ad hoc* tribunals for the former Yugoslavia and for Rwanda, the ICC does not have primacy over national systems. The ICC is complementary to national systems. This means that a case before the Court is admissible only when national jurisdictions are unable or unwilling to act. Thus, in cases of concurrent jurisdiction between national systems and the ICC, the former have priority.

The principle of complementarity represents the express will of States Parties to create an institution that is global in scope while respectful of State sovereignty.

Consequently, in deciding whether to investigate or prosecute, the Chief Prosecutor must first assess whether there is or could be an exercise of jurisdiction by national systems with respect to particular crimes within the jurisdiction of the Court. For that purpose, the Chief Prosecutor must consider whether a case is admissible under article 17 of the Rome Statute, the article that most clearly manifests and sets out the system of complementarity of the Court.

Article 17 of the Statute identifies the grounds on which the Court shall determine that a case is inadmissible. The system is based on a presumption in favour of State action. The Court shall declare a case to be inadmissible when:

- (i) the case is genuinely being investigated or prosecuted by a State;
- (ii) the case has been genuinely investigated by a State and the State has decided not to prosecute the person concerned; or
- (iii) the person concerned has already been tried for the conduct in question and a trial by the ICC is not permitted under the rule of double jeopardy (*ne bis in idem*) as defined by the Statute.

This presumption in favour of State action is not absolute and article 17 does provide for exceptions. The Court will be able to declare a case to be admissible when a State is unwilling or unable genuinely to carry out the investigation or prosecution. Unwillingness constitutes a subjective criterion (or subjective test), while genuine inability constitutes an objective criterion (or objective test).

The subjective criterion is linked to the lack of willingness of a State to act in a particular case. In order to assess this unwillingness, the Chief Prosecutor will need to assess – and the Court to decide – whether that national decision has been made and proceedings are or were being undertaken for the purpose of shielding the person concerned from criminal responsibility: there has been an unjustified delay which is inconsistent with an intent to bring the person concerned to justice; or the proceedings were not or are not being conducted independently or impartially.

The objective criterion describes the inability of a State to act in a case. In order to assess this, the Chief Prosecutor, as well as the Court as a whole will need to determine whether “due to a total or substantial collapse or unavailability of its national judicial system, the State is unable to obtain the accused or the necessary evidence and testimony or otherwise unable to carry out its proceedings”. This provision was inserted to take account of situations where there was a lack of central government, or a state of chaos due to the conflict or crisis, or public disorder leading to collapse of national systems which prevents the State from discharging its duties to investigate and prosecute crimes within the jurisdiction of the Court.

The system of complementarity is not exclusively designed to safeguard national sovereignty. It is also and principally based on the recognition that the exercise of national jurisdiction over such crimes is not only a right but also a duty of States. Indeed, the principle underlying the concept of complementarity is that States remain responsible and accountable for investigating and prosecuting crimes committed under their jurisdiction and that national systems are expected to maintain and enforce adherence to international standards. This principle is emphasised in the Preamble of the Rome Statute, recalling that “*it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes*”.

1.2. What does complementarity imply for the Office of the Prosecutor?

Beyond considerations of principle, it is clear that logistical and material constraints to international intervention will limit the action of the ICC, which will not and cannot deal with all crimes. It is therefore indispensable to ensure that all States, in particular those which are now Parties to the Rome Statute, co-operate with the ICC in the fight against impunity, using the instruments and procedures envisaged in the legal framework of the Statute.

From this perspective, complementarity should be understood as a system that concurrently protects national sovereignty and promotes State action. The success of the International Criminal Court needs to be assessed in light of this dual objective of protection and promotion of State action.

As a consequence of this dual objective underlying the system of complementarity, the Office of the Prosecutor must monitor and assess the efforts made by national authorities, as required by the complementarity regime, as well as co-operate with national jurisdictions. This should be a major role of the Office of the Prosecutor: to use its best efforts to help State authorities to fulfil their duty to investigate and prosecute at the national level. The Office of the Prosecutor can achieve this objective in various ways. Close co-operation is called for in assisting States to undertake State action, using means appropriate in the particular circumstances of a given case. For instance, in certain situations, it might be possible and advisable to assist a State genuinely willing to investigate and prosecute by providing it with the information gathered by the Office from different public sources.

This spirit of close co-operation also requires that the Office of the Prosecutor promote all national efforts to combat international crimes. The Office will also undertake regular and serious assessment of all these efforts, taking into consideration the need to respect the diversity of legal systems, traditions and cultures.

2. The global nature of the International Criminal Court

Despite all efforts deployed to promote State action, it is clear that there will be cases in which national systems will not be able or willing to fulfil their principal duty of investigating and prosecuting the most serious crimes of concern to the international community as a whole. In such cases, the ICC must fill the gap created by the failure of States to satisfy their duty to investigate and the Office of the Prosecutor will need to exercise its investigative powers with firmness and efficiency, using the means and procedures provided by the Statute.

In light of its permanent and global nature, the Office might be seized with more than one situation at a time, some or all of them involving an untold number of victims as well as many alleged perpetrators. Some of these situations could indeed be similar in magnitude to those that precipitated the establishment of the *ad hoc* tribunals.

The Office of the Prosecutor will need to design a strategy that takes into account the global nature of the ICC, thus allowing it to concurrently handle several situations while respecting limited resources.

There might be cases where the number of suspects will be limited. But by their nature, it is very probable that situations might involve a large number of victims and alleged perpetrators. In these cases the design of a prosecutorial policy or strategy must take into account not only the challenge raised by the number of victims and perpetrators but also the fact that the crimes within the jurisdiction of the court may have been committed by individuals acting as part of a group or organisation.

2.1. Who should be prosecuted?

Should the Office seek to bring charges against all alleged perpetrators? The Statute gives some guidance to answer this question. The Preamble affirms that “*the most serious crimes of concern to the international community as a whole must not go unpunished*”. It continues that States Parties to the Statute are determined to establish a “permanent International

Criminal Court in relationship with the United Nations system, with jurisdiction *over the most serious crimes of concern to the international community as a whole*". Accordingly, the Statute provides in article 5 that, "[t]he jurisdiction of the Court shall be limited to the most serious crimes of concern to the international criminal community as a whole". Article 17, dealing with admissibility, adds to the complementarity grounds one related to the gravity of a case. It states that the Court (which includes the Office of the Prosecutor) shall determine that a case is inadmissible where "*the case is not of sufficient gravity to justify further action by the Court*". The concept of gravity should not be exclusively attached to the act that constituted the crime but also to the degree of participation in its commission.

Furthermore, the Statute gives to the Chief Prosecutor the power not to investigate or not to prosecute when such an investigation or prosecution would not serve the interests of justice.

The global character of the ICC, its statutory provisions and logistical constraints support a preliminary recommendation that *in cases of alleged crimes occurring on a massive scale, the Office of the Chief Prosecutor should focus its investigative and prosecutorial efforts and resources on those who bear the greatest responsibility, such as the leaders of the State or organisation allegedly responsible for those crimes.*

2.2. Modalities of investigation

In order to prove the responsibility of leaders, the investigation must put emphasis on a comprehensive analysis of crimes committed, in order to piece together patterns and chains of command, and to collect the type of evidence making it possible to establish the criminal responsibility of those who designed the plans, gave the orders or otherwise supervised or failed to prevent the commission of crimes, in accordance with the Statute.

This is the model of investigation that guides the organisation of the structure of the Office of the Prosecutor, which is described in Part II below. In order to establish the facts, this structure includes an Analysis Unit, responsible for assessing the situation as a whole, as well as an Investigation Section, which will allow for an in-depth study of the individual responsibility of persons involved in such facts.

Taking into account the particular challenges raised by the type of crimes within the jurisdiction of the Court, the Investigation Teams should have an interdisciplinary character and should be led by lawyers. The trial lawyers presenting the case before the judges will be in charge of designing the investigation strategy and defining the evidence to be compiled in order to establish the elements of the crimes to be investigated. They will also be supervising the Investigation Teams.

This modality of investigation should allow the Office not only to establish the commission of individual crimes but also to determine the way in which such crimes were integrated in co-ordinated action, as well as proving leadership responsibility.

Should the Office of the Prosecutor successfully establish, at trial, the existence of a criminal system with leaders and lesser levels of executors and participants, the Office will necessarily undertake further investigations of other members of the organisation responsible for the crimes.

In this context, complementarity once again may play a part in preventing impunity. If the ICC has successfully prosecuted the leaders of a State or organisation, thereby having contributed its part to prompt necessary political change in the State concerned, the ICC

might then be able to return other, less grave cases within that situation to the re-invigorated national authorities that then would again be willing or able to act. In other cases, the international community might be ready to combine national and international efforts to ensure that perpetrators or serious international crimes are brought to justice.

III. Organisation of the Office of the Prosecutor

1. Introduction

The organisation of the structure of the Office of the Prosecutor is the result of a thorough process of consultations with leading experts in various fields relevant to the work of the Office during the establishment phase of the Court's first year. One of the basic assumptions throughout this process was that investigations and prosecutions of the International Criminal Court should focus on the responsibility of leaders, as stated above. This ambitious task can only be fulfilled with a best practice as the basis for the organisation instead of copying traditional criminal justice structures which are often designed to deal with large numbers of more or less similar (and often minor) crimes.

Inssofar as the Court's jurisdiction is not *per se* limited to any specific country or region, the requirements for investigation and analysis of the facts and the background will be different for every situation under scrutiny. Only a project-oriented as opposed to a static organisation model can bring the desired results. The needs and particular facts of the specific case must determine the composition of Investigation Teams. A static organisation which is determined by post levels and fixed hierarchies would be counter-productive.

The structure of the Office of the Prosecutor described below forms the nucleus of a fully operational international prosecution service: the core of permanent staff members sets the quality standards, develops policies, and integrates and makes use of additional temporary capacity that is brought in on a situation-specific basis. The proposed number and the levels of the posts should enable the Office of the Prosecutor to administer a maximum of two simultaneous Preliminary Examinations or Evaluation Teams (under articles 15, paragraph 2 or 53 paragraph 1) as well as a maximum of three investigations of cases – taking into account that one situation will normally require the investigation of several cases. If the level of investigative and preliminary examination or evaluation activity increases, additional temporary assistance capacity would be required. The proposed structure to be completed by December 2004 would be composed of approximately 130 persons altogether, including three Investigations Teams. The availability of the three Investigation Teams is phased in, so that one is available from January 2004 onwards, a second from June 2004 and the third from October 2004.

2. The Immediate Office of the Prosecutor and directly subordinate sections

2.1. The Immediate Office of the Prosecutor

The Immediate Office of the Prosecutor has a basic administrative support capacity as well as an internal oversight capacity, which protects the independence of the Office of the Prosecutor, working closely with outside auditors as appropriate. Additionally, the Immediate Office of the Prosecutor provides working level capacity in two essential areas.

a) The External Relations and Complementarity Unit

The Office must be able to analyse information on massive violations of international criminal law, as it becomes available. It must have the capacity to obtain and analyse general background information from any source on:

- (i) situations in crisis countries where there is an armed conflict and war crimes being committed;
- (ii) what the response of the national criminal justice system to such crimes is; and
- (iii) what the international community and individual States are doing to assist the authorities of the country in crisis to respond adequately to the situation and the crimes.

In order to facilitate access to information available, promote, monitor and properly assess national efforts to combat crimes within the jurisdiction of the Court, as required by the complementarity regime, there will be a special Unit on complementarity and external relations within the Immediate Office of the Prosecutor.

The *functions* of this Unit include the following:

- facilitate access to and the gathering of public information available from any source on situations of conflict that might, by their nature, fall within the jurisdiction of the Court.
- engage and maintain an ongoing dialogue with States Parties and as well as with governmental and non-governmental organizations;
- monitor and assess action already undertaken at the State level.
- negotiate cooperation agreements and arrangements with States as required by the complementarity regime; and
- advise the Chief Prosecutor on further action required in response to situations.

b) The Public Information Unit

As an independent organ of the Court, the Office of the Prosecutor must have its separate mass media and public relations capacity. This does not duplicate the broad public information programme of the Registry. Rather, the Office of the Prosecutor needs its own Spokesperson and an adviser on public communications to assist the Chief Prosecutor in designing and implementing responsible and focused public relations policies. The activities of the Office of the Prosecutor, its openness to governments, victims and witnesses must be reflected in mass media without involving the Chief Prosecutor himself in personal interviews or contacts with the press. This is particularly important in an international prosecutorial environment that operates on the basis of the complementarity regime.

2.2. Sections directly subordinate to the Immediate Office of the Prosecutor

a) The Legal Advisory and Policy Section

There are some legal advisory and policy functions that cut across all Preliminary Examination and Investigation Teams and sections and units within the Investigation and Prosecution Divisions in the Office of the Prosecutor.

Among them are the following functions: (i) to provide independent specialist legal advice and legal drafting, in particular on questions pertaining to admissibility and jurisdiction (especially subject-matter jurisdiction), general international law, comparative law,

state co-operation and enforcement of sentences; (ii) to manage all legal training of members of the Office of the Prosecutor, general temporary assistance staff and gratis personnel, including the liaising with outside experts or institutions; (iii) to co-ordinate the work on the Regulations of the Office of the Prosecutor and the legal drafting work; (iv) to co-ordinate the legal drafting work in the Office of the Prosecutor under articles 9(2)(c) and 51(2)(c), as well as the consultations under article 52, and rules 8 and 14, and to represent the Office in the Court's committee for legal texts; (v) to develop, maintain and make available to members of the Office of the Prosecutor comprehensive and effective legal research tools; (vi) to represent the Office of the Prosecutor in Court-wide co-operation on library resources, research tools and publication of Court documents; and (vii) to co-ordinate all legal matters relevant to victims' participation in proceedings and reparations, in co-operation with the Unit for Victims and Registry, as well as providing policy advice to the Chief Prosecutor on questions relevant to victims.

The Legal Advisory and Policy Section is responsible for these and other related functions which are not contained within the scope of activity of any of the two Divisions alone.

b) The Services Section

In order to preserve the authority of the Chief Prosecutor over the management and administration of the Office under article 42, paragraph 2 of the Statute, the Office of the Prosecutor must also have its independent budgeting capacity, the ability to organise professional training required by the activities of the Office, and adequate human resources capacity to meet the recruitment goals and policies of the Office. The Office of the Prosecutor requires a Senior Manager whose responsibilities include overall review of the efficiency and spending within the Office. The Senior Manager heads the Services Section which comprises the Language Services Unit and the Information and Evidence Protection Unit.

i) *The Language Services Unit.* The working-level needs for language services within the Office should be provided by a Language Services Unit in the Office. In volume most of the translation work done for an international prosecution service is not introduced as exhibits in one or more trials, but is used as working documents during the investigation or as disclosure material. There must be a common revision service in Registry for documents that will serve as exhibits, while other translation needs of the Office of the Prosecutor should be provided for by that Office itself. This requires a strong general temporary assistance capacity to meet surges in translation needs. The unpredictability in terms of which specific languages will be required reinforces the necessity of relying on budgeted general temporary assistance. The Office must also provide for its own interpretation services in connection with investigative and other activities.

ii) *The Information and Evidence Unit.* Unless the Office has a well-functioning electronic, physical and normative management system for information, potential evidence and evidence, the Court's fact-finding and analysis capacity will be severely hampered, if not disabled. The experience of other internationalised criminal jurisdictions shows that this is a critical faculty of the Court as a whole. The most obvious function that must be accurately performed by the Office of the Prosecutor in this area is preservation of potential evidence and evidence, in order to prevent its contamination. Proper evidence control is vital. But the Office must also have an effective, comprehensive, rational and cost-effective information storage system, with clear procedures for the handling, retention, storage and security of information and physical evidence from the moment it comes into the possession of the Office, through initial analysis, preliminary examination, and the

session of the Office, through initial analysis, preliminary examination, and the possible later stages of investigation proper, trial, appeal, reparations and ultimate review. All information and potential evidence has to be stored, both in its physical form and (if technically possible) in electronic format within an advanced Document Management and Archiving System. If duplication of storage and retrieval is to be prevented, a common centre for information and retrieval must be established in one of the Court's organs.

c) The Knowledge-Base Section

Having an information, potential evidence and evidence system that functions at the highest levels of efficiency, reliability and security requires adequate technical knowledge-base support and investment in the most suitable software. For these reasons the 2004 budget provides for a separate Knowledge-Base Section.

3. Investigation and prosecution

3.1. Introduction

The most fundamental functions of the Office of the Prosecutor are those of the Investigation and Prosecution Divisions. This explains why the highest officials in the Office of the Prosecutor immediately after the Chief Prosecutor – that is the Deputy Prosecutors – lead these Divisions themselves. This will afford the highest level of professionalism and authority to the important work of the Divisions. In accordance with the Rome Statute, Deputy Prosecutors shall be elected by the Assembly of States Parties from a list of candidates provided by the Prosecutor.

3.2. The Investigation Division

The Investigation Division comprises the Analysis Section and the Investigation Section.

a) The Analysis Section

The many tasks before the Office of the Prosecutor require an adequate *analytical* capacity within the Office. If the Office can only react to crises quite some time after crimes which fall within the jurisdiction of the Court have been committed, one major reason for establishing a standing, permanent International Criminal Court will have been defeated. Without such capacity, the Office of the Prosecutor cannot give full effect to the complementarity regime of the Rome Statute or make its decisions on a sufficiently reliable factual basis.

A responsible complementarity policy of the Office of the Prosecutor requires an *analytical capacity to monitor relevant crises in a timely manner*. Only if internal structures, processes and problems within a State which make it seem possible that war crimes are committed are detected sufficiently early on, can the Office of the Prosecutor contribute to the provision of effective assistance to the criminal justice system of that country or use other instruments at its disposal as appropriate. This is one reason why the Analysis Section of the Office must be strengthened, to include analysts that could focus on countries or regions.

A proper analytical capacity is also required to ensure that the *preliminary examination* process under article 15, paragraph 2 be focused and effective. The Prosecutor is obliged to “analyse the seriousness” of all communications received by the Office of the

Prosecutor. There is a steadily increasing stream of such communications. Additional information can be sought by the Office to assist the preliminary examination of such information. Even when standard forms for the submission of information are developed and made available on the website of the Office, the statutory requirements will necessarily lead to considerable amounts of documentation that will have to be adequately and responsibly processed within the Office. Analysts with a well-trained ability to assess the seriousness and accuracy of information are crucial in making the obligatory preliminary examination process focused and cost-effective. They can strengthen the ability of each Preliminary Examination Team to base its recommendations on a solid factual basis without unnecessary delay.

It requires analysts with sufficient experience and expertise to work effectively with lawyers and investigators to achieve this objective and to assist in the identification and proper definition of complex patterns of criminal conduct, as well as in ascertaining the contextual elements of crimes within the jurisdiction of the Court. Only when these different professional groups within the Office of the Prosecutor work closely together in the fact-finding and -analysis processes will the quality of the Chief Prosecutor's applications under article 15, paragraph 3 meet the highest factual and legal standards, thereby ensuring that the investigations proper authorised by a Pre-Trial Chamber will in turn be cost-effective, and, equally important, that the Office and the Court as a whole concentrate their limited resources on the most serious violations of international criminal law.

b) The Investigation Section

This is one significant reason why the administrative structures budgeted for in the Office of the Prosecutor provide for an open, horizontal organisation with the *Investigation* (later Trial) Teams in the Investigation Section at the operational centre of the Office and with very short vertical lines of authority. Analytical, investigative, prosecutorial and other legal expertise within the Office will be fully available to these Teams, ensuring that their needs are given the highest priority. Only multi-disciplinary Teams with strong interaction between the different professional groups and with clear legal direction on criteria for the selection of suspects and crimes, on the applicable elements of crimes and modes of liability, and on the means of proof required, will be able to execute the mandate of the Office of the Prosecutor to investigate and prosecute the most serious crimes of concern to the international community as a whole.

The Investigation Teams must, therefore, have sufficient investigative capacity at several professional grade levels. Investigators must include investigating lawyers, police investigators and investigating analysts who all bring different skill-sets to the investigative process. The Teams are led and controlled on a day-to-day basis by a Case Controller, a lawyer with extensive experience in the management of criminal investigations. A strong working-level capacity is required, with the possibility to expand it further by using general temporary assistance. This provides flexibility to the organisation, insofar as its growth in capacity can be followed by effective shrinking to the core permanent staff level within reasonable time. A small number of core investigation experts who serve all Investigation Teams is also required, including experts in forensic pathology, asset tracking and computer forensics.

c) The Unit for Victims

The structure also provides for a Unit for Victims within the Office of the Prosecutor to respond adequately to specific operational needs relevant to victims. The responsibilities of this Unit include advising and assisting the Investigation Teams with statement-taking

when the potential witness is traumatised, especially in cases involving children or sexual assault. The extensive rights of victims to participate in proceedings before the Court raise additional operational questions for the Office of the Prosecutor. It is also important to ensure that questions relevant to property damage, destruction and plundering are asked during the main interviewing of prosecution witnesses so that the number of witnesses who need to be re-interviewed after a conviction for the purposes of reparations proceedings is reduced to the extent possible. The Unit for Victims also assists with statement-taking at the seat of the Court more generally.

3.3. The Prosecution Division

a) The Prosecution Section

The Prosecution Division has an important role to play even at this early stage of the life of the Office of the Prosecutor. The Preliminary Examination Teams as well as the Investigation Teams are normally legally supervised and directed by the prosecutors in the Prosecution Section. The Senior Prosecutor is ultimately responsible for presenting the investigated cases in court and as such he or she shoulders the immediate burden to prove the prosecution case. Hence, the Senior Prosecutor directs the entire investigative process and gives instructions to the Case Controller leading the Investigation Team on legal and factual issues. The Case Controller ensures that the resources available to the Team are appropriately used to provide sufficient focus, direction and progress in the investigation and case preparation. Other lawyers in the Prosecution Section assist the Senior Prosecutors in the execution of their supervisory responsibility during case preparation and later in proceedings before the Court.

The Prosecution Section must also provide a professional case secretary or Case Support Officer to each Investigation Team to keep all files and documents relevant to a case in order from the very beginning of an investigation until the end of trial proceedings. This case support supplements the activities of the Information and Evidence Unit to manage the information and potential evidence within the Office of the Prosecutor. Each case must have a complete hard-copy archive which is updated at all times. During trial, the Case Support Officer provides documentary and other support to the Senior Prosecutor and other prosecutors in the trial team.

b) The Appeals Section

The Prosecution Division must also provide drafting and litigation support and coordination in connection with interlocutory *appeals* generated during case-preparatory activities. It requires strong expertise to effectively evaluate the merits of potential or actual interlocutory appeals against the decisions of the Pre-Trial Chamber and to prepare legal submissions concerning appeals proceedings to be submitted to the Court's Appeals Chamber. A separate Appeals Section is thus required in the Prosecution Division.