

**International Criminal Court**

**Office of the Prosecutor**

## **Strategic Plan | 2016 - 2018**

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**16 November 2015**

The strategic plan of the Office of the Prosecutor (“OTP” or “Office”) is complementary to the strategic plan of the International Criminal Court (“ICC” or Court”) and focuses on OTP-specific strategies. The ICC strategic plan deals with matters of common concern to all organs of the Court, and integrates the relevant parts of organ-specific strategies.

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## Executive summary

1. The Strategic Plan (June 2012 – 2015) of the Office of the Prosecutor (“Office” or “OTP”) emphasised three essential shifts in strategy to improve the quality and efficiency of the Office’s work: (1) adopting a new prosecutorial policy,<sup>1</sup> (2) prioritising quality of work over quantity by focusing resources on fewer cases; and (3) improving the Office’s functioning.

In terms of impact, assessing the Office’s performance at the confirmation of charges hearing stage – following the adoption of the new strategy – provides a promising trend and serves as a helpful indicator of the appropriateness and pertinence of the strategy:

| CONFIRMATION<br>PERFORMANCE | Previous strategy<br>2003 - June 2012 |       | Strategy<br>June 2012 - 2015 |       | Performance<br>increase |
|-----------------------------|---------------------------------------|-------|------------------------------|-------|-------------------------|
|                             | Total                                 | %     | Total                        | %     |                         |
|                             |                                       |       |                              |       |                         |
| Per charges                 |                                       |       |                              |       |                         |
| Confirmed                   | 50                                    | 62.5  | 206 <sup>2</sup>             | 85.83 | +23.33%                 |
| Not confirmed               | 30                                    | 37.5  | 34                           | 14.17 |                         |
| Total                       | 80                                    | 100   | 240                          | 100   |                         |
| Per accused                 |                                       |       |                              |       |                         |
| Confirmed                   | 10                                    | 71.43 | 8                            | 100   | +28.57%                 |
| Not confirmed               | 4                                     | 28.57 | 0                            | 0     |                         |
| Total                       | 14                                    | 100   | 8                            | 100   |                         |

It is anticipated that the new strategy will similarly yield positive results with respect to the rate of convictions and successes in appeals over the next few years.

2. The Strategic Plan (2016 - 2018) builds upon the strengths of the Strategic Plan (2012 - 2015), while maintaining the shift in prosecutorial policy. It aims to further develop on the improved performance and to adapt to existing challenges.
3. The Office has identified six external challenges:
  - The security environment in which the Office operates has become increasingly complex, requiring flexible, pro-active, creative and intelligent strategies;
  - Cooperation remains critical to the Office’s ability to effectively and efficiently investigate and prosecute;

<sup>1</sup> Collecting diverse forms of evidence; prosecuting the most responsible (if needed through a building upward strategy); and aiming at being as trial-ready as possible from the earliest phases of proceedings, such as when seeking a warrant of arrest and no later than the confirmation of the charges hearing.

<sup>2</sup> The inclusion of the charges in the CAR Article 70 case (where each of the five suspects charged with offences against the administration of justice were charged with 42 to 43 counts) increases the sample drastically. If this case were not included, the figures would show: (a) a higher rate of confirmed charges (*i.e.*, 22-0, or 100%); and (b) a reduced number of accused brought forward for confirmation but all of whom having had their charges confirmed for trial.

- The high pace of technological evolution changes the sources of information, and the manner in which evidence is obtained and presented in court;
- The time period between the commission of crimes and the Office's investigation creates challenges for the preservation of evidence;
- Despite an increase in Office resources over the past two years, they are still insufficiently aligned with the demands placed upon the Office which must be met in accordance with its mandate under the Rome Statute;
- The lack of full coordination of efforts amongst all relevant actors makes it difficult to close the impunity gap for atrocity crimes under the Rome Statute as well as related crimes, including transnational and organised crime and acts of terrorism.

4. The nine strategic goals in this strategic plan are organised around three major themes:

- **Achieving high performance in relation to the Office's mandate**

Strategic goal 1: conduct impartial, independent, high quality preliminary examinations, investigations and prosecutions;

Strategic goal 2: continue to integrate a gender perspective in all areas of the Office's work and to pay particular attention to sexual and gender-based crimes ("SGBC") and crimes against and affecting children, in accordance with Office policies;

Strategic goal 3: further improve the quality and efficiency of preliminary examinations, investigations and prosecutions; and

Strategic goal 4: further adapt the Office's investigative and prosecutorial capabilities and network to the complex and evolving scientific and technological environment.

- **Creating the necessary conditions to fulfil the Office's mandate**

Strategic goal 5: achieve a basic size which can respond to the demands placed upon the Office so that it may perform its functions with the required quality, effectiveness and efficiency;

Strategic goal 6: contribute to strengthening cooperation, and promoting general support towards the mandate and activities of the Office;

Strategic goal 7: adapt the Office's protection strategies to the new security challenges; and

Strategic goal 8: ensure a professional, transparent and efficient management of the Office.

- **Contributing to a coordinated investigative and prosecutorial strategy to further close the impunity gap for ICC crimes**

Strategic goal 9: develop, with partners, a coordinated investigative and prosecutorial strategy to close the impunity gap.

5. The positive results achieved by the Office in the past three years have come at a cost. The speed at which the Office has been able to respond to situations requiring the exercise of its mandate has been affected by the need to prioritise quality over quantity of work. Some necessary investigations have had to be postponed. This has impacted on the Office's ability to react to ongoing crimes; negatively influenced perceptions of the Office; and forced the Office to overstretch its resources creating undue, prolonged pressure on its staff.
6. To ensure that the quantity as well as the quality of work can be sufficiently guaranteed, and to better align the demands placed upon the Office with the realities of what may be achieved, the Office has developed, as part of its new Strategic Plan (2016 - 2018), a forecast of its resource requirements. This also meets the expectation of the States Parties and the Committee on Budget and Finance ("CBF") that the Office "*properly cost[s] the new [strategic] plan based on the best available knowledge and experience (e.g. results of Activity Based Costing, work load indicators).*"<sup>3</sup>
7. Even with the proposed basic size, the Office will still need to prioritise amongst its cases. But it is anticipated that it will have the necessary depth of resources to absorb new cases with the required quality and efficiency and a reasonable level of prioritisation. The basic size will also create stability and financial predictability for future years, barring exceptional and unforeseen circumstances.
8. The forecast upon which the basic size model is predicated requires the following anticipated level of activities by the OTP on an annual basis (output):

|                                      |                |
|--------------------------------------|----------------|
| • Preliminary examinations           | 9              |
| • New situations under investigation | 1              |
| • Active investigations <sup>4</sup> | 6              |
| • Hibernated investigations          | 9              |
| • Pre-trial phase                    | 5              |
| • Trial phase                        | 5              |
| • Final appeals                      | 2 <sup>5</sup> |

<sup>3</sup> Report of the Committee on Budget and Finance on the work of its Twenty-Third session, ICC-ASP/13/15, 18 November 2014, para.51, available at [http://www.icc-cpi.int/iccdocs/asp\\_docs/ASP13/ICC-ASP-13-15-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/ASP13/ICC-ASP-13-15-ENG.pdf).

<sup>4</sup> Six active investigations refer to investigations at full capacity and thus not including any start-up or wrap-up phase.

<sup>5</sup> It can already be anticipated that the number of final appeals will increase to three beyond 2018. A peak of 3 final appeals will be reached in 2018 and possibly in 2017 already for short periods of time. However, the average under the current reporting period is two.

9. To meet this demand, the Office's budget needs to evolve, as does its staffing (in terms of headcount). The resource needs arising from the basic size model are explained and justified in detail in a subsequent report by the Office on the basic size of the OTP.

**The basic size of the OTP would require a yearly budget of 60.6 mio euros.** In comparison, the OTP's approved budget for 2015 was 42.2 mio euros,<sup>6</sup> thus representing a 43.6 per cent increase over existing resources.

|                              | Present<br>2015    | Basic Size | Difference |      |
|------------------------------|--------------------|------------|------------|------|
| <b>Budget<br/>(mio Euro)</b> | 42.2<br>(39.6+2.6) | 60.6       | +18.4      | +43% |
| <b>Staff (FTE)</b>           | 405                | 540        | +135       | +33% |

10. Throughout the basic size exercise, the Office has worked in close coordination with the other organs of the Court. Given the interrelationship between the basic size of the OTP and the activities of the other Court organs, the Office deemed it critical to ensure comprehensive consultations were undertaken with the Registry and the Presidency. In light of the overall future cost of the Court and the financial implications, States will need to decide on the pace in which this basic size can be reached, after having had sufficient time to decide upon the underlying justifications. Due to existing and anticipated demands and concomitant resource needs, the Office would like to achieve the proposed basic size within the timeframe of the present strategic plan.
11. In parallel to this strategic plan, the Office has defined 14 indicators that comprehensively cover the performance areas over which it has sufficient control. In addition, the strategic risks related to this strategic plan have been identified and assessed, and risk mitigation strategies have been put in place for the high level risks.
12. The combination of the new strategic plan, the budget, the performance indicators and the risk management initiatives offer States Parties and other stakeholders a comprehensive and integrated picture of the way forward for the Office.

<sup>6</sup> Including the full year impact (i.e.: 12-month basis) of the Contingency Fund which amounts to 2.6 Mio Euros.



## Strategic analysis | June 2012 - 2015

### Results of the strategic plan

#### Achieving results in court proceedings

13. The Strategic Plan (June 2012 – 2015) foreshadowed changes in the Office’s strategy at three levels:

- At the prosecutorial policy level, the Office shifted its attention:
  - i. from its previous “focused” investigative approach to “open-ended, in-depth investigations”;
  - ii. where appropriate, towards a “building upwards” strategy where culpability of the most responsible persons could not be sufficiently proven from the outset; and
  - iii. to being as trial-ready as possible from the earliest phases of the judicial proceedings, such as when seeking a warrant of arrest and no later than the confirmation of charges hearing.
- The Office requested an increase in resources for its investigations and prosecutions so as to achieve the required level of quality, while continuing to look for efficiency gains.
- The Office identified organisational changes needed to improve its performance (e.g. under the overall management and oversight of the Prosecutor, the three operational Divisions’ reporting lines were modified to the Deputy Prosecutor; Senior Trial Lawyers were placed in charge of the integrated teams; improvements were made to the processes and capabilities of each Division).

14. Annex 1 provides a detailed overview of the results achieved thus far with this new strategy.

15. The Strategic Plan (June 2012 - 2015) aimed to improve the Office’s prosecutorial results. A concrete indicator of the impact of this strategy is the number of cases in which charges were confirmed over the past three years.

| CONFIRMATION<br>PERFORMANCE | Previous strategy |       | Strategy         |       | Performance<br>increase |
|-----------------------------|-------------------|-------|------------------|-------|-------------------------|
|                             | 2003 - June 2012  |       | June 2012 - 2015 |       |                         |
|                             | Total             | %     | Total            | %     |                         |
| Per charges                 |                   |       |                  |       |                         |
| Confirmed                   | 50                | 62.5  | 206 <sup>7</sup> | 85.83 | +23.33%                 |
| Not confirmed               | 30                | 37.5  | 34               | 14.17 |                         |
| Total                       | 80                | 100   | 240              | 100   |                         |
| Per accused                 |                   |       |                  |       |                         |
| Confirmed                   | 10                | 71.43 | 8                | 100   | +28.57%                 |
| Not confirmed               | 4                 | 28.57 | 0                | 0     |                         |
| Total                       | 14                | 100   | 8                | 100   |                         |

16. These positive results were attained by allocating considerable resources to the cases against Laurent Gbagbo, Charles Blé Goudé (Côte d'Ivoire) and Bosco Ntaganda (Democratic Republic of Congo ("DRC")), and by using alternative (non-witness) forms of evidence in the Article 70 cases (Central African Republic). The Office will need to evaluate whether these positive results will continue in the trial and appeal phases of these cases. Given the pace of trials, a longer time perspective will be needed to assess the final impact of the new strategy.
17. In its 2012 - 2015 Strategic Plan, the Office committed itself to managing cases developed on the basis of its previous prosecutorial policy to the best of its ability. During this period, the Kenya situation gave rise to particular challenges for the Office. Several factors led the Prosecutor to withdraw the case against Messrs Uhuru Kenyatta and Francis Muthaura: the limited availability of evidence due to the specific nature of the case; the Prosecutor's limited access to evidence due to non-cooperation; and the lack of alternative investigative avenues to substitute for key evidence, which was ultimately eroded and found to be unreliable. The shift in prosecutorial policy heralded in the Office's Strategic Plan (June 2012 - 2015), emphasising the need to be trial-ready as early as possible, building cases upwards where necessary and increased reliance on varied forms of evidence, *inter alia*, will help mitigate and avoid the recurrence of such challenges the Office has faced in the past, in the future.
18. The positive results were achieved by focusing on the quality of the work rather than attempting to meet all the demands placed on the Office. Unforeseeable events such as the significant increase in Article 70 cases, the surrender of Bosco Ntaganda, the transfer of Charles Blé Goudé, the need to open new investigations in the Central African Republic, and the recent transfer of Dominic Ongwen, have all obliged the Office to each time drastically adjust its resource planning. This has been at the expense of other urgently needed activities such as making the hibernated

<sup>7</sup> The inclusion of the charges in the CAR Article 70 case (where each of the five suspects charged with offences against the administration of justice were charged with 42 to 43 counts) increases the sample drastically. If this case were not included, the figures would show: (a) a higher rate of confirmed charges (*i.e.*, 22-0, or 100%); and (b) a reduced number of accused brought forward for confirmation but all of whom having had their charges confirmed for trial.

cases<sup>8</sup> “trial-ready”, starting investigations into crimes allegedly committed by the other side of the conflict in Côte d’Ivoire, pursuing new crimes being committed in Libya and Darfur, and conducting further investigations required in Mali and the DRC.

### Increasing efficiency

19. The Office has made the following efficiency gains during the 2012 – 2015 period. Annex 2 provides a further breakdown of how these results were achieved:

|                                   | 2012    | 2013    | 2014    | 2015 <sup>9</sup> |
|-----------------------------------|---------|---------|---------|-------------------|
| <b>Budget (mio euro)</b>          | 27,7    | 28,2    | 33,2    | 39,6              |
| <b>Efficiency gain (mio euro)</b> | 183.962 | 848.175 | 457,824 | TBD               |
| <b>%</b>                          | 0.7%    | 3%      | 1.4 %   |                   |

20. It is important to note that the whole functioning of the Office is predicated on the efficient use of resources. Resources are being used in a flexible manner to cover peak moments in cases. Staff is being assigned to multiple cases or investigations where this is feasible (e.g. Senior Trial Lawyer in charge of one case and another investigation, each case manager doing one case and another investigation). Resort to outsourcing is done where it results in efficiencies and when it is appropriate to do so (e.g. selected transcription, certain forms of forensic work).

### Improving the organisational performance

21. The Office’s Strategic Plan (June 2012 – 2015) identified six strategic goals. These goals were broken down into objectives per year, the implementation of which depended on different factors such as results achieved, changes in the Office’s operating environment, lessons learned, and available budget. As shown in annex 1, most of the objectives linked to the six goals have been implemented.

#### Overview of the goals contained in the Strategic Plan (June 2012 – 2015)

1. Conduct impartial, independent, high-quality, efficient and secure preliminary examinations, investigations and prosecutions.
2. Further improve the quality and efficiency of preliminary examinations, investigations and prosecutions.
3. Enhance the integration of a gender perspective in all areas of the Office’s work and continue to pay particular attention to SGBC and crimes against children.
4. Enhance complementarity and cooperation by strengthening the Rome Statute System in support of the ICC and of national efforts in situations under preliminary examination or investigation.

<sup>8</sup> Libya 1; Libya 2; Darfur 1, 2&4; Darfur 3; CIV 1Bis (SG); Mali 1; DRC 3&4; Kenya Article 70; Uganda (Kony).

<sup>9</sup> The full amount of the 2015 efficiency gains will be part of the normal reporting to the CBF and States in 2016.

5. Maintain a professional office with specific attention to gender and geographical balance, staff quality and motivation, and performance management and measurement.
6. Ensure good governance, accountability and transparency.

## Environmental challenges

22. The Office must stay abreast of challenges in its environment and adapt its strategy to this new reality. The Office has identified six challenges which will influence its strategy for the period 2016 - 2018.

23. The presence and evolution of **technology** worldwide creates a rapidly changing environment in which the Office operates:

- The Office has witnessed an exponential increase in the use of mobile phones, tablets, smartphones and computers in the commission of crimes.
- The access to the internet by victims, witnesses and perpetrators creates a dynamic environment to monitor and confirm the commission of ICC crimes, as well as the activities and networks of perpetrators.
- The increased availability of satellite imagery and other remote sensing techniques offer new possibilities for monitoring and proving ICC crimes.
- New technologies also offer new ways of presenting cases in court through the use of, for instance, 3-D scanning, 360 degree photography, and facial recognition.
- The rapidly changing technology environment similarly offers new opportunities of protecting the confidentiality of the Office's operations, and staff and persons at risk due to their interaction with the Court.

24. The **time gap** between events on the ground and the moment when the Office can investigate can result in loss of evidence. This is contrary to the "golden hour" principle which recognises that the sooner one can be present at the crime scene, the higher the chances are that better quality evidence and leads will be discovered and secured. If the Office can ensure—with the assistance of appropriate partners—that evidence is preserved without doing harm, it will increase the prospects of securing reliable evidence, thereby enhancing the efficiency and effectiveness of investigations and prosecutions.

25. The Office recognises opportunities in its environment to reduce this time gap as much as possible. The widespread availability of phones with photo/video applications as well as extensive general access to the internet has meant that people are increasingly uploading relevant information onto the internet. One challenge for the future will be to ensure that such material remains available and searchable with adequate evidentiary details on such a dynamic

and volatile medium as the internet. In addition to such individuals, there are also the first responders—international forces, human rights organisations, non-governmental organisations (“NGOs”), media, etc.—who deploy into areas which the OTP has not been able to access (e.g. pending the opening of an investigation, required agreements, or security implications for staff or witnesses). While respecting each other’s mandate and independence, the Office has commenced discussions with the NGO community on how first responders could support the Office in its work and what support could be expected from the Office.

26. As already mentioned in the Strategic Plan (June 2012 - 2015), *“States and the Office have to evaluate how successful investigations and prosecutions can be conducted in situations where the necessary cooperation is lacking. **Cooperation** becomes more than ever before a critical success factor if the Office is going to achieve positive results.”*<sup>10</sup> The experience of the Office over the past three years has shown, on the one hand, how challenging it is when States do not provide genuine assistance, and, on the other, that strong cooperation can enhance the Office’s ability to perform its work. Over the 2012 - 2015 period, the varying levels of cooperation in the different situations under investigations have in some cases caused considerable delays and hindrance in investigations and prosecutions. This critical external factor remains one of the key challenges for the next three-year strategic period. The Office must continue to dedicate sufficient resources to facilitate cooperation, and to continue its strategic review of how to address the key obstacles impacting cooperation. In this context, the Office welcomes the ongoing efforts of the Assembly of States Parties (“ASP”) to review its recommendations on cooperation and to develop a strategy and action plan to support arrests, with a view to increasing the effectiveness and efficiency of cooperation and impact of the Court’s operations.

27. The **security** environment in which the Office operates has become increasingly complicated:

- In almost all cases in the confirmation of charges and trial phases have been or are confronted with incidents of obstruction of justice — in particular witness tampering.
- Despite the Office having further refined its operations, situations in which the OTP needs to undertake investigations have become increasingly complex environments from an operational perspective. Examples include Mali, the Central African Republic, and Libya.
- The Office’s work related to internationally operating and/or connected groups, as well as with respect to new situations, has greatly changed the risk profile of the institution.
- The general emergence of cyber threats has created a new security challenge for the Office, to which the Court has already been exposed.

<sup>10</sup> OTP Strategic Plan (June 2012-2015), 11 October 2013, p. 5, para. 3, available at [http://www.icc-cpi.int/en\\_menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/policies%20and%20strategies/Documents/OTP-Strategic-Plan-2012-2015.pdf](http://www.icc-cpi.int/en_menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/policies%20and%20strategies/Documents/OTP-Strategic-Plan-2012-2015.pdf).

28. The Office operates in an unpredictable environment which makes planning a challenge: (1) in recent years, the Office has seen fugitives unexpectedly surrendering, being arrested or transferred to the custody of the Court; (2) new situations emerged requiring the Office to open investigations almost every year; (3) Article 70 offences have also steadily increased in 2013 and 2014. This **unpredictability, in combination with the Office's existing resource limitations**, has meant that necessary investigations have had to be postponed.
29. The ICC is routinely confronted with situations where crimes falling within its jurisdiction have been committed on a massive scale. The consequences of these crimes are not only felt locally within the situation country. Individuals from all sides of these conflicts may be located outside the situation country. These may be victims or potential witnesses fleeing the violence, or perpetrators escaping from fear of prosecution or retaliation or preparing a comeback. Different law enforcement actors are taking initiatives to respond to this challenge. There is a risk, however, of overlap which can be avoided through **a higher level of coordination and complementarity**.
30. ICC crimes do not usually occur in isolation from other types of criminality, such as ordinary opportunistic crimes or transnational organised criminal activity. In particular, the impact of these latter crimes may fuel the conditions for the commission of crimes within the jurisdiction of the ICC and simultaneously frustrate efforts to re-establish the rule of law, bring perpetrators to account and provide justice for the victims. It is important to draw attention to the nexus between these crimes and ICC crimes so that others can contribute to the closing of the impunity gap for ICC crimes, by addressing these crimes that fall outside of the Court's jurisdiction.

## OTP mission and vision

31. The Strategic Plan (June 2012 – 2015) included a mission statement and a reference to the Office's intention to define the core values of the Office.
32. Both a mission statement and core values are important tools to communicate, to the outside world and staff, what the Office aims to achieve and what it stands for. They create predictability which increases the legitimacy of the Office. They provide guidance in decision-making and empower staff to take initiative. They help shape the most intangible yet critical part of any organisation, namely its workplace culture. If not managed explicitly, they tend to evolve implicitly.
33. The mission statement of the Office is in fact captured in the Preamble of the Rome Statute as it highlights the reason for the creation of the ICC and also the role the OTP has to play within this context. It ensures that the OTP will contribute to the prevention of the crimes of most serious concern to the international community through prosecutions in a complementary manner.

34. In line with its cultivated open culture, the Office embarked on a consultation process with staff to define its core values. This has resulted in the identification of three core values: **Dedication**, **Integrity** and **Respect**.

- **Dedication** captures the importance of striving toward excellence in our day-to-day work and our lives in general. It emphasises that the Office and all its staff members do not settle for mediocrity, but rather strive to excel in everything they do. It underscores the reality that only a genuine commitment to the mandate of the Court and a powerful work ethic will allow the Office to fulfil its mission and to achieve positive results for those who suffer the injustice of Rome Statute crimes.
- **Integrity** is the quality of acting honestly, transparently and justly in accordance with strong moral principles. This Core Value requires OTP staff not only to have strong moral principles, but to demonstrate these principles in our daily activities, both in the Office and outside, and in our dealings with staff members of the OTP, others in the Court and with all with whom we interact.
- **Respect** requires OTP staff to have due regard for the feelings, wishes, and rights of others and to demonstrate this in their actions. It includes genuine respect for diversity. It also requires them to uphold the values and rules of the OTP and the Court.

## Prosecutorial policy

35. In light of the results achieved with the Strategic Plan (June 2012 - 2015), the Office will continue its prosecutorial policy:

- Performing in-depth, open-ended investigations while maintaining focus.

The in-depth approach to investigations refers to the Office's approach to collect more and increasingly diverse forms of evidence to support its cases.

The open-ended aspect of the investigations means that the Office first identifies alleged crimes (or incidents) to be investigated within a wide range of incidents. Following this meticulous process, alleged perpetrators are identified based on the evidence collected. This approach implies the need to consider multiple alternative case hypotheses and to consistently and objectively test case theories against the evidence – incriminating and exonerating – to support decision-making in relation to investigations and prosecutions.

- Being as trial-ready as possible from the earliest phases of proceedings, such as when seeking an arrest warrant and no later than the confirmation of the charges hearing.

The Office will aim to present cases at the confirmation of the charges hearing that are as trial ready as possible. If this is not possible when the Prosecutor applies for a warrant of arrest or summons to appear (e.g. arrest opportunity, witnesses only willing to

cooperate after an arrest), the Office will only proceed with the application if there are sufficient prospects to collect further evidence to be trial-ready within a reasonable timeframe.

- Where deemed appropriate, the Office will implement a building-upwards strategy by first investigating and prosecuting a limited number of mid- and high-level perpetrators in order to ultimately have a reasonable prospect of conviction for the most responsible.

It remains the Office's policy not to prosecute cases where there are no reasonable prospects of conviction.

36. Pursuing this in-depth and open-ended approach, the Office will first focus on a wide range of crimes to properly identify organisations, structures and individuals allegedly responsible for their commission. It will then consider mid- and high level perpetrators in its investigation and prosecution strategies to build the evidentiary foundations for subsequent case(s) against those most responsible, if it cannot directly prove the responsibility of the latter. The Office will also consider prosecuting lower level perpetrators where their conduct was particularly grave and has acquired extensive notoriety.
37. The ICC is a Court of last resort. It seeks to bring justice to the victims of the most serious crimes of concern to the international community. While it is practically impossible for the Office to address the expectations of all victims, it will continue to take a victim-responsive approach throughout all aspects of its work, by (1) taking into accounts their views; (2) communicating, *where possible together with the Registry*, with the affected communities about the role of the Court and the Office's decisions, and (3) ensuring that their well-being is duly taken care of when they interact with the Office.
38. The Office published its policy on preliminary examinations in November 2013. This policy provides clarity on the process and criteria that may be applied by the Office in deciding on whether to open an investigation. Such process is conducted in accordance with the Rome Statute and in a holistic manner. Complementary to this policy, the Office is working on a case selection and case prioritisation policy which will clarify how the Office decides which cases to pursue once a situation has been opened for investigation. Two aspects are being considered within this policy: (1) how to identify cases that the Office should pursue, and (2) how to prioritise amongst those cases if the demands placed upon the Office exceeds the Office's resources. Subsequently, the Office will define its policy on how it proposes to end its involvement in a situation under investigation, the so-called: "exit strategy" for situations.
39. In June 2014, the Office adopted its SGBC Policy, the first such policy issued by an international court. Recognising the challenges of, and obstacles to, the effective investigation and prosecution of SGBC, the Office elevated this issue to one of its key strategic goals in its Strategic Plan (June 2012 - 2015). It will continue to implement this important policy through the new Strategic Plan (2016 - 2018).



40. The Office has also, whenever possible, focussed on the investigation and prosecution of crimes against children. At the time of writing, a comprehensive policy on children in and affected by armed conflict is being prepared by the Office.<sup>11</sup>

## Office strategy | 2016 - 2018

41. The Office has developed nine strategic goals for the period 2016 - 2018 to ensure that its performance is high and that the identified challenges (see paras. 22-29) are addressed. The goals can be regrouped around three major themes:

- **Achieving high performance in relation to the Office's mandate**

Strategic goal 1: conduct impartial, independent, high quality preliminary examinations, investigations and prosecutions;

Strategic goal 2: continue to integrate a gender perspective in all areas of the Office's work and to pay particular attention to SGBC and crimes against and affecting children, in accordance with Office policies;

Strategic goal 3: further improve the quality and efficiency of preliminary examinations, investigations and prosecutions;

Strategic goal 4: further adapt the Office's investigative and prosecutorial capabilities, as well as its professional network, to the scientific and technological environment in which it operates.

- **Creating the necessary conditions to fulfil the Office's mandate**

Strategic goal 5: achieve a basic size which can respond to the demands placed upon the Office so that it may perform its functions with the required quality, effectiveness and efficiency;

Strategic goal 6: contribute to the strengthening of cooperation and promote general support towards the mandate and activities of the Office;

Strategic goal 7: adapt the Office's protection strategies to new security challenges;

Strategic goal 8: ensure a professional, transparent and efficient management of the Office.

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<sup>11</sup> Other policies to advance the prioritisation of specific crimes under the Rome Statute are being contemplated by the Office, and may be implemented during the course of the Strategic Plan (2016-2018).

- **Contributing to a coordinated investigative and prosecutorial strategy to further close the impunity gap for ICC crimes**

Strategic goal 9: develop, with partners, a coordinated investigative and prosecutorial strategy to close the impunity gap.

42. The strategic goals will be developed in further detail in the following sections. Measurable objectives are set for 2016 for each strategic goal which are linked to the 2016 budget proposal. The objectives will be reviewed in light of the approved budget (2016), as well as unforeseen events if their cost implications cannot be absorbed without impacting on the objectives. The objectives have also been integrated into the performance indicators framework (see paras. 111-117 and annex 4).

### Achieving high performance in relation to the Office's mandate

#### Strategic goal 1: conduct impartial, independent, high quality preliminary examinations, investigations and prosecutions

43. A main goal of the Office is to meet the demand for its intervention in accordance with the Rome Statute with the required quality, effectiveness and efficiency.
44. The Office has experienced a much appreciated increase of resources in 2014 and 2015. This has enabled the Office to demonstrate what it can achieve with needed resources, in combination with the other changes that were made to the Office's strategy.
45. Notwithstanding these resource increases, the Office still faces a gap between needs and means. The Office rightly prioritises quality over quantity of work. However, faced with resource constraints, it has had to make difficult decisions by not starting certain investigations or placing others on hold. This has damaged the Office's ability to respond to evolving situations (e.g. Libya, Darfur, Mali), and impacted negatively in terms of perception (e.g. delay in investigating both sides in Côte d'Ivoire).
46. To achieve a situation where quantity as well as quality of work can be sufficiently guaranteed, as part of its new Strategic Plan (2016 - 2018), the Prosecutor has developed a forecast of the Office's resource requirements to better align the Office's expected demands with the required resources (see strategic goal 5).
47. This commitment accords with the expectation of the States Parties and the CBF that the Office *"properly cost[s] the new [strategic] plan based on the best available knowledge and experience (e.g. results of Activity Based Costing, workload indicators)."*<sup>12</sup>
48. Within the confines of available resources, the Office will continue to respond to the need for its intervention in accordance with the Rome Statute, making every effort to ensure quality. As the

<sup>12</sup> See *Supra*, note 3.

Office builds up towards its proposed basic size, priority will be given to building strong cases over pursuing all required cases. This necessary prioritisation will be reflected in its annual budget assumptions.

### **Objectives for 2016**

- To produce the yearly defined level of activities in light of the allocated budget.

### **Strategic goal 2: continue to integrate a gender perspective in all areas of the Office's work and to pay particular attention to SGBC and crimes against and affecting children, in accordance with Office policies**

49. In its Policy on SGBC, published in June 2014, the Office declared its commitment to (i) integrating a gender perspective and analysis into all areas of its work; (ii) being innovative in the investigation and prosecution of these crimes, (iii) providing adequate training for staff, (iv) adopting a victim-responsive approach in its work, and (v) paying special attention to staff interaction with victims and witnesses, their families and communities. The Office will also continue to ensure that its activities do not cause harm to victims and witnesses.
50. The Office will continue to pay particular attention to SGBC from the earliest stages to address specific challenges posed to the investigation and prosecution of these crimes, including under- or non-reporting owing to societal, cultural, or religious factors. Within its mandate, the Office will apply a gender analysis to all crimes within its jurisdiction. It will bring charges for SGBC wherever there is sufficient evidence to support such charges.
51. The Office will continue to enhance its institutional capacity to effectively investigate and prosecute SGBC through recruitment and/or training.
52. The Office will also monitor the implementation of the Policy.
53. Similarly, the Office will pay particular attention to crimes against children. To this end, a comprehensive Policy on Children will be finalised and implemented. Extensive consultations internally, with experts have been completed, and consultations with children, have been scheduled. The Policy will address issues relating to children in and affected by armed conflict, including the Office's interaction with them at different phases of its work, the best interests of the child, consent, protection and support. Following the adoption of this Policy, the Office will develop a plan to ensure effective implementation.

### **Objectives for 2016**

- Implement the SGBC Policy as planned;
- Finalise the Policy on Children and develop its implementation plan;
- Finalise the Policy to avoid re-traumatisation;

- Put in place specialised training for relevant staff on interviewing vulnerable witnesses.

**Strategic goal 3: further improve the quality and efficiency of preliminary examinations, investigations and prosecutions**

54. Achieving and maintaining a high level of quality and efficiency of the OTP's core activities is a continuous process of improvement. Many steps have been taken in the past three years which have resulted in the achievements presented in annex 1. But more can and must be done to consolidate and maintain the present level of quality and efficiency. Process improvement projects, lessons learned and development of new capabilities will help further shape the quality of the Office's output.

55. **Preliminary examinations** are one of the Office's three core activities. They can positively impact on future investigations and prosecutions, in addition to their potential to obviate ICC intervention through prevention and complementarity. The sub-goals for the 2016 - 2018 time period include: (1) further developing the added value of preliminary examinations for the Office's future investigations and prosecutions, (2) further encouraging national proceedings at the preliminary examination stage, (3) continuing to provide transparency of and public information on preliminary examinations activities, (4) further exerting the potential deterrent function of preliminary examinations, and (5) in the Office's strict application of the legal requirements of the Rome Statute, continue to guarantee the completion of its preliminary examinations in as timely a manner as this thorough legal assessment allows.

(1) Preliminary examinations are critical to the Office in its determination of whether to open an investigation. They also greatly facilitate the Office's investigative work in various ways, such as: e.g. by systematically capturing and exploiting open source data; and building networks of cooperation partners and contacts for handover for investigative activities; and identifying potential cases for future investigations. The Office will look for ways to further integrate its preliminary examinations work into its pre-investigative planning.

(2) Where potential cases falling within the Court's jurisdiction have been identified, the Office will continue to encourage genuine national investigations and prosecutions by the States concerned in relation to these crimes, in particular in situations presenting reasonable prospects of prosecutions at the national level.

(3) To promote a better understanding of the process, correct possible misperceptions and increase predictability, the Office will continue to provide information on its preliminary examination activities through, amongst others, the publication of a yearly overview report and related press release, the issuance of situation-specific reports or statements, and where appropriate, undertaking field activities.

- (4) Preliminary examinations can also help deter actual or would-be perpetrators of atrocity crimes through the threat of international prosecutions. In accordance with its policy, the Office will seek to perform an early warning function by systematically and proactively collecting open source information on alleged crimes that could fall within the jurisdiction of the Court. The Office will also react promptly to upsurges or serious risks of violence by reinforcing its early interaction with States, international, regional organisations and NGOs in order to fine-tune its assessment and coordinate next steps. Such steps may include field visits, targeted public statements and media interviews. The Office will further develop criteria for guiding such preventive activities.
- (5) The effective use of resources is also essential during preliminary examination activities. In accordance with this principle, the Office will continue its efforts to ensure that preliminary examinations are conducted on a continuous basis, without undue delays, and are completed as soon as all relevant sources of information have been explored. The Office will seek to reach a closure ratio of 1:1 over the period 2016 - 2018.

Such a determination is done by looking at the questions of jurisdiction, admissibility, gravity and interests of justice in a holistic manner. In particular, the on-going commission of crimes or new upsurges of violence may require further analysis. Likewise, the assessment of the ability and willingness of a State to conduct genuine investigations and prosecutions can be a lengthy process when national proceedings are being conducted; it is also however a process that, by its mere existence, leads to steps being taken by the national authorities, thereby avoiding a costly intervention by the Office through its own investigations and prosecutions.

56. In relation to **investigations**, the Office will continue to implement the present strategy. It will focus, in particular, on the following priority areas:

- Reducing the time gap between events on the ground and the Office's investigations by creating partnerships with first responders, creating a gateway for crime reporting and working with appropriate partners to preserve relevant information on the internet.
- Increasing its ability to collect different forms of evidence other than witness statements through continually enhancing its scientific and technology-related capabilities. Additionally, it will develop further partnerships to support this strategic need, so that in-house capacity is only developed where it is justified.
- Continuing to strengthen the Office's analysis function through the further roll-out of the Factual Analytical Database, the upgrade of analytical software, the roll-out of the Gender Analysis, and through strengthening the use of analytical products in investigative decision-making for planning, case selection and case review.
- Enhancing financial investigative capabilities.
- Continuing the review of investigative standards and to develop certification possibilities for staff.

- Continuing to increase the Office's investigative field presence.
57. The notion of positive complementarity during the preliminary examinations and investigations by the OTP is generating conflicting responses from stakeholders, with some indicating that strengthening national jurisdictions is the role of international cooperation programs while others expect the Office to assume a more robust role in this regard. As regards positive complementarity, the Office's position is that it will not act as a development agency towards situations under preliminary examination or under investigation but that it can contribute to complementarity through the normal execution of its mandate, including through (1) the sharing of its expertise in international criminal law, investigations or witness protection upon request, (2) the inclusion, where appropriate, of national investigators or prosecutors into its teams for the duration of an investigation, or (3) the participation in the coordination of national and ICC investigations.
58. The foundations for the future of the Office's work on the **prosecutions and appeals** were solidly laid in 2012 - 2015 through, *inter alia*, the recruitment of additional senior experienced staff, enhanced training and the introduction of regular internal case reviews.
59. The focus in the period 2016 – 2018 will be on the following priority areas:
- Improving the internal processes related to the core functions of the Prosecution Division: filings, disclosure and presentation of evidence;
  - Further developing the management capabilities of the leadership of the integrated teams;
  - Improving the design of criminal cases resulting from the collected evidence;
  - Standardising and enhancing the system of internal evidence review prior to a case being presented for prosecution;
  - Increasing the use of technology to prove and present cases in court;
  - Continuing to develop competencies on legal, oral and written advocacy through training and performance appraisals.
60. **Cooperation** has both an internal and external dimension. The internal dimension relates to the Office's operational excellence, for example, in how it prepares and submits requests for assistance. The external element—which is largely outside the Office's influence— refers, for example, to replies received by the Office to its requests for assistance. The Office will monitor the quality of its internal cooperation dimension and evaluate how it can improve its quality.

**61. Objectives for 2016**

## Preliminary examinations

- Further exploit the added value of preliminary examinations for investigative and prosecutorial purposes.

## Investigations

- Implement selected improvement projects in priority areas: closing time gaps, science and technology, analysis, investigative standards, financial investigations and field presence.

## Prosecutions and appeals

- Implement selected improvement projects in priority areas: internal processes, management capabilities, case design, case review process, technology, and key competences.

## Cooperation

- Assess the quality of the internal cooperation dimension, and implement selected improvement projects.

**Strategic goal 4: further adapt the Office's investigative and prosecutorial capabilities and network to the scientific and technological environment in which it operates**

62. One of the main challenges is to adapt the Office to the impact that technology has on its ability to monitor, prove and present crimes. The use of computers, internet, mobile phones, and social media, etc., has exponentially expanded worldwide, including in the countries in which investigations are undertaken by the Office.

63. As highlighted in annex 1, in the last three years, the Office has invested in its ability to handle these new forms of information and evidence. The hiring of cyber-investigators and analysts experienced in online investigations and phone communications has allowed the Office to improve its ability to identify, forensically collect and process this new evidence. These investments form a starting point in the Office's efforts in this regard.

64. However, technology is evolving so rapidly that it will be impossible for the Office to keep current if it does not combine investing in its own expertise with developing strategic partnerships for the purposes of outsourcing, when needed, and for understanding and shaping how future technology can assist it to execute its mandate. The Office has been working with the law enforcement community, NGOs, academic institutions and other partners to explore new possibilities to support the identification, collection and presentation of evidence through technology.

65. In this regard, the Office's strategy will be shaped in the following manner:

- Continue to implement capacity building in science- and technology-based evidence through recruiting more technology experts and investing in specialised equipment;
- Train staff in operational Divisions in the basic use of technology for investigative and prosecutorial purposes;
- Increase the use of technology in presenting its cases in court;
- Continue to develop partnerships to improve insight into new possibilities and threats coming from technological evolution and to identify outsourcing partners.

#### 66. **Objectives for 2016**

- Train all relevant staff in the basics of online investigations and handling of electronic evidence;
- Strengthen the Office's capability to use technology to present evidence in court.

### Create the necessary conditions to meet demand in an efficient manner

#### Strategic goal 5: achieve a basic size which is able to respond to the demands placed upon the Office with the required quality, effectiveness and efficiency

67. As highlighted above, the Office is often unable to respond swiftly to all instances in which its intervention is required under the Rome Statute. Adopting a basic size for the Office attempts to address this issue. The basic size model would also offer other important advantages. For instance, it would counter irregular growth and provide financial predictability to States. Additionally, it would offer the Office stability in its resources and related planning. The basic size model will also equip the Office with an ability to respond more adequately, and with the needed quality, without having to over-prioritise or constantly overstretch existing resources.
68. In a separate report, the Office has outlined in detail the resources required to reach the basic size of the Office and the methodology used in devising the model. In line with its new Strategic Plan (2016 - 2018), and in coordination with the other organs, the Office has developed a forecast of the expected demand for the next three years. While recognising that a demand-driven approach is the only approach consistent with the purpose of the ICC as outlined in the Rome Statute, the Office recognises that presenting a "full" demand-driven approach at all times would not be realistic, since this would require the OTP to respond to all demands made to it simultaneously in a manner that would vastly outstrip existing budgetary assumptions. Instead, the Office has adopted a demand-based approach, where prioritisation of activities will still be required, resulting in a pace below the level of full demand. This creates more resource stability for the Office and more predictability for the States Parties based on a projection of incremental growth, unless exceptional unforeseen circumstances were to materialise which could necessitate a deviation from the basic size model.



69. The forecast of such estimated demand **requires the Office to have the financial capability to carry out the following yearly level of activities:**

|                                       |                 |
|---------------------------------------|-----------------|
| • Preliminary examinations            | 9               |
| • New situations under investigation  | 1               |
| • Active investigations <sup>13</sup> | 6               |
| • Hibernated investigations           | 9               |
| • Pre-trial phase                     | 5               |
| • Trial phase                         | 5               |
| • Final appeals                       | 2 <sup>14</sup> |

70. The numbers presented above should not be seen as targets set by the Office. They represent an estimate of the yearly demand based on past experience. In light of the known demand on the Office, it is however expected that these numbers will materialise in the coming years. In relation to active investigations, as the Office has indicated in its Basic Size report and as external stakeholders have also raised in response to the draft of this strategic plan, it remains to be evaluated if six active investigations will be sufficient to meet the need for the OTP's intervention with a reasonable level of prioritisation amongst the pending cases.

71. In light of current projections, the Office estimates that the basic size, if fully met, will remain adequate for the 2019 - 2021 period. However, the Office will still review the basic size in line with its strategic planning for this period to further stabilise the estimates and adapt it to potential criminality falling within the Court's jurisdiction that could require its intervention

72. In relation to hibernated cases, the Office has already indicated in its previous strategic plan the need to bring them up to a state of trial-readiness. The alternative of waiting until an arrest or surrender occurs *-following the argument that one might otherwise spend efforts on a case that never goes to trial-* comes at too high a risk and cost for the Office: (1) it would increase the time gap between the events and the Office's intervention which comes at the cost of loss of evidence; (2) reviving a case after years is challenging if one doesn't preserve the existing evidence through regular contact with witnesses or through seizing important investigative opportunities; (3) it creates a high level of risk of failure that is disproportionate compared to the high profile nature of the cases; (4) it has a disproportionately high disruptive impact on other ongoing cases when the Office is forced to urgently reallocate resources from existing cases in order to get trial-ready within the limited time granted by Chambers. The Office faces an unacceptably high tension between the need to do new cases and to bring old cases to the new standard of trial-readiness.

73. The adequate size needed by the Office to meet the estimated demands in the coming three years with the required quality and efficiency is determined by three factors: (1) the resources

<sup>13</sup> Six active investigations refer to investigations at full capacity and thus not including any start-up or wrap-up phase.

<sup>14</sup> It can already be anticipated that the number of final appeals will increase to three beyond 2018. A peak of three final appeals will be reached in 2018 and possibly in 2017 already for short periods of time. The average under the current reporting period is two, however.

needed for each of the mandated activities and other remaining activities; (2) investments in further developing the quality and efficiency of the Office; and (3) the efficiency gains the Office can generate. The Office has demonstrated in the past that it is committed to making the best possible use of its resources. The efficiency gains mentioned in paragraph 19 and annex 2 attest to this assertion. The Office, together with the other organs, will continue to systematically look for new efficiency gains. It will report yearly on the newly implemented efficiency gains and on how this impacts the evolution of the Office towards the basic size.

74. Throughout the basic size exercise, the Office has engaged in close coordination with the other organs of the Court. Given the interrelationship between the 'basic size' of the OTP and the activities of the other Court organs, the Office deemed it critical to ensure that comprehensive consultations are undertaken with the Registry and the Presidency. In light of the impact of the basic size on the other organs of the Court, States will have to decide on the pace in which this basic size can be reached, after having had the time to reflect upon the underlying justification. As stated above, the financial roll-out will be presented in a detailed report on the Basic Size for the Court as a whole which States Parties have requested for the April 2016 CBF session.
75. The Office has explained its approach towards efficiency in annex 2. The Office has created an organ-wide permanent working group, tasked to systematically identify and evaluate possibilities for further efficiencies. The actual efficiency gains cannot be predicted at this stage but they will be taken into account on an annual basis to reduce the expected growth. Past and presently identified new efficiency gains (e.g. winding up and down phases in the investigations and prosecutions reducing the need for staffing) have been included into the model that defines the basic size.
76. In addition to achieving efficiencies internally, the Registrar and Prosecutor have also decided to look into the possibility of further synergies and efficiencies between both organs. The commitment was already identified in the Office's Strategic Plan (June 2012 - 2015) where it was indicated that such efforts would commence once the *ReVision* project was sufficiently advanced.

#### **77. Objectives for 2016**

- To implement the approved resource evolution in line with the basic size model and adapt the level of activity accordingly;
- To present the impact of the identified efficiency gains on the budget proposal for 2017;
- To review the continuum of services and the possible synergies and efficiencies between the Registry and the Office.

**Strategic goal 6: contribute to strengthening of cooperation and promoting general support towards the mandate and activities of the Office**

78. For a Court without its own enforcement powers, ensuring a proper enforcement of Chapter 9 of the Rome Statute and strengthening further cooperation support for investigations and prosecutions, as well as general diplomatic support for the Office's mandate, remains crucial.
79. The Office needs cooperation from a wide range of partners if it is to succeed in its mandate. States, civil society, (international) organisations, the affected communities, individual holding information or evidence all contribute to the Office's work.
80. The Office will continue to facilitate cooperation in relation to its preliminary examinations, investigations and trials in three ways:
1. by ensuring that there is strategic and operational advice and cooperation support available to the integrated teams. This includes effectively making and following-up on requests for assistance, galvanising efforts in cooperation with other actors for the arrest and surrender of individuals sought by the ICC, and maintaining general cooperation;
  2. by consolidating and further expanding the Office's network of general and operational focal points and judicial actors, and streamlining and standardising processes and interactions with partners (States, international and regional organisations, and NGOs);
  3. by continuing and increasing its efforts to communicate, in particular to engage meaningfully with affected communities, to enhance our understanding of their expectations and concerns, and their understanding of the Office's possibilities, limits and decisions throughout all phases of its activities.
81. The Office will also continue to engage with stakeholders to further increase understanding about its work and mandate, and to ensure continued general and diplomatic support.
82. From a strategic point of view, it is necessary to address both the need for situation-related cooperation in support of investigations and prosecutions, but also the general diplomatic and political support towards the Office and its mandate. This is even more important given the increasingly challenging political climate in which the Court operates by virtue of its mandate. For this purpose, the Office will engage, in coordination with the other Court organs as appropriate, with States, regional and international organisations, NGOs, and (other) networks to further increase understanding of the Office's work and mandate, and to ensure continued general and diplomatic support for the mandate, activities and resource requirements of the Office from relevant stakeholders.

**83. Objectives for 2016**

- Implement cooperation plans for the critical support needed for the Office's investigations and prosecutions;
- Expand network of operational focal points towards its three partners — States, international and regional organisations, and NGOs;
- Implement communication to stakeholders, in particular to the affected communities.

**Strategic goal 7: adapt the Office's protection strategies to new security challenges**

84. As illustrated in paragraph 27, security has become an even more critical component of the Office's operating environment. The Office is simultaneously operating in multiple, unstable environments where information, staff and witness security must be ensured. It is managing an ever increasing number of persons at risk due to their interaction with the Court. It is frequently confronted with more sophisticated and violent opponents. Maintaining the confidentiality of information remains a critical component of its operations. Additionally, its growing global presence increases risks to information security and the threat of cyber-attacks.

85. To date, the Office has largely been able to avoid the exposure of staff and witnesses. No staff member has been threatened or injured, although challenging situations have occurred. However, in 2014, information suggested that, for the first time, an OTP witness was likely targeted and killed due to his interaction with the Court. The Office has also seen an increasing pattern of witness interference through bribes, intimidation and threats. Experience demonstrates that such interferences may come from accused persons, (deliberate) leaks of sensitive information (e.g. identity of witnesses) by third parties or by witnesses themselves, or other causes. Responding to these actions – which may amount to potential Article 70 offences against the administration of justice – has been a serious resource drain.

86. The Office takes all reasonable precautionary measures to minimise the exposure of witnesses, such as through:

- Prioritising alternative forms of evidence where possible;
- Prioritising witnesses with a low risk profile;
- Taking confidentiality measures to protect and safeguard witnesses;
- Applying protection measures to limit further exposure in case of incident;
- Mapping relationships between witnesses, intermediaries and suspects to better predict and manage future cases of obstruction of justice once a person within a mapped network has been exposed;
- When relevant, requesting monitoring of the behaviour of arrested persons or related perpetrators;
- Investigating or requesting the investigation by national authorities to determine the source of interference so that protection schemes can be adapted accordingly and prosecutions can take place.

87. The present protection strategies can be strengthened in different areas to prepare the Office for future challenges:

- **Ability to appreciate newly emerging threats**

This challenge has two components.

Firstly, as the number of threat actors around the Office increase, so must our ability to collect and analyse security-related information to better understand the interests, intentions and capabilities of these actors. The Office and the Court have entities that focus on security analysis from different perspectives: Headquarters security, field security, witness security, and information security. Exchange of information already occurs between these entities. The development of a more robust security-related intelligence cycle and system of security information sharing will allow the Office and the Court to meet these new requirements through a more efficient use of resources.

Secondly, the Office is a small organisation that faces complex and fast evolving challenges. The Office requires partnerships with external actors who can assist in understanding new upcoming threats and related vulnerabilities, and in reviewing its protection strategies.

- **Ability to adapt to threats**

The Office is increasingly operating in high risk areas where maintaining confidentiality of its operations is often an important protection measure for its staff and those with whom they interact. A review of the methods and processes to ensure this confidentiality is required.

- **Ability to react**

The ability to take immediate and follow-up measures to manage security incidents is critical for staff and witnesses. It can be further developed from three different angles.

Firstly, the ongoing cooperation between the Office and the Victims and Witness Section and the Security entities of the Registry is critical to this aim. The existing protocols for inter-organ collaboration in such areas will undergo review to ensure a clear continuum of services, synergies and possible efficiency gains.

Secondly, the cooperation from States via the Victims and Witnesses Section is needed to ensure witnesses can be removed from risk areas on short notice, and that long-term solutions for their relocation are made available.

Finally, the ability to react also relates to the need to investigate incidents of offences against the administration of justice. The Office will apply the following policy in relation to such Article 70 offences:

- prioritise the investigation and prosecution by States through providing information and other forms of cooperation to assist national authorities to successfully prosecute such cases in domestic proceedings ;
- directly undertake the investigation and prosecution of such offences where a State is unable or unwilling to do so and the obstruction or interference is of such gravity or scale that it seriously affects the administration of justice at any stage of the proceedings. In any given case, the Office may also decide to conduct investigations and prosecutions itself when it concludes that the Court is better suited to exercise jurisdiction.

#### 88. *Objectives for 2016*

- Establish partnership with two key partners in relation to cyber and information security;
- Establish a coordinated security-related intelligence cycle with partners within and outside the Court;
- Finalise the updating of the field craft requirements;
- Review relevant existing protocols with the security entities of the Court and in particular the Victims and Witnesses Section of the Registry.

#### Strategic goal 8: ensure a professional, transparent and efficient management of the Office

89. For the Office to efficiently and effectively deliver its mandate, it must invest in building a well-managed organ/institution. This will ensure that its resource needs are properly identified and once provided, judiciously allocated and used. This will in turn provide States with the transparency that will ensure trust in the management of the Office. This strategic goal therefore focuses on how the Office can best ensure the management of its human resources, information and overall performance.

90. The Office will continue its efforts to further improve its gender and geographical balance. The measures described in annex 1 will be strengthened by a further increase of the outreach towards underrepresented groups, including for management positions.

91. The Office attaches great importance to the quality, motivation and well-being of its staff. If the right conditions are created for staff to perform, this will strongly influence the Office's ability to achieve its goals.

92. The quality of the staff will continue to be maintained through elevated recruitment standards, training and rigorous attention to performance management.
93. In addition, rolling out the Office's core values and entrenching them in the Office culture will further strengthen a working climate in which staff will feel motivated and invigorated to perform.
94. Staff motivation and well-being will be further monitored and reinforced through, *inter alia*, the implementation of the updated recommendations of the Working Climate Working Group and through the review of the occupational hazards (e.g. secondary traumatising, field working conditions, etc.).
95. Information management is a key asset for the Office. Steps have already been taken to improve the management of information through development of an information management strategy and a roll out of new applications such as the Investigation Management System and the Witness Management System. Given the importance of information management, the Office intends to update its information management strategy in close cooperation with the Registry and to review its information management structure and processes. This updating of the information management will not only focus on the mandated activities of the Office but also on how technology could support the further development of our management and administration.
96. The integrated teams supported by the Office's Divisions and Sections form a critical component of performance in relation to investigations and prosecutions. The monitoring of its functioning in practice as well as learning from the experiences acquired from the different teams will be an important lever to ensure performance.
97. The monitoring of and reporting on the performance and risk management of the Office is an important tool to manage overall performance. A lessons-learned system forms an essential complement to measuring performance.
98. The Office will continue to implement its performance indicators, risk management (see paras. 118-120) and lessons learned systems. This will enable the Office to ensure compliance with its major policies and standards, and that it will be accountable and transparent in the use of resources made available by the States Parties.

99. **Objectives for 2016**

- Improve gender and nationality balance;
- Implement all training and performance appraisals;
- Implement values' embedment program;
- Implement Working Climate recommendations;

- Perform occupational hazard review;
- Review of the information management strategy and structure; and
- Establish systems for performance indicators, risk management and lessons learned projects.

## Contribute to a coordinated investigative and prosecutorial strategy to further close the impunity gap for ICC crimes

### Strategic goal 9: develop with partners a coordinated investigative and prosecutorial strategy to close the impunity gap

100. The large number of ICC crimes committed in situation countries as well as the connection to other related crimes (organised, transnational, financial, terrorism) form a serious challenge to closing the impunity gap.
101. The Office is mandated by the Rome Statute to investigate and prosecute ICC crimes when relevant States are either unable or unwilling to do so genuinely. It has no mandate to deal with other instances of criminality closely associated with atrocity crimes, even though such crimes often fuel the continuation of a conflict and can lead to the commission of ICC crimes. Other organisations at the international (e.g. Interpol, Europol and Eurojust) and at the national level will need to take the lead in order to be truly effective in closing the impunity gap for ICC crimes.
102. To be effective in ICC crimes prevention, the relationship with other forms of crimes needs to be mapped and strategies developed to prevent the continuation of the commission of crimes. The Office invites relevant jurisdictions and organisations to take the lead on addressing these other crimes. The Office is willing to contribute, where appropriate and within its mandate and means, by sharing information and evidence in its possession that may be relevant to these interconnected areas of criminality. At the same time, the Office would be interested to explore how it can utilise and exploit existing information or evidence held by other jurisdictions or organisations on these other types of criminality that may be relevant to establishing the criminal liability of alleged perpetrators under the Rome Statute for either the core crimes of genocide, crimes against humanity and war crimes or with respect to offences against the administration of justice under Article 70.
103. The Preamble of the Rome Statute and the resolution of the ASP on complementarity issued at the 2010 Review Conference stress the need for measures at the national level and enhanced international cooperation to close the impunity gap and thus contribute to the prevention of crimes. The prevention of ICC crimes requires a collective effort and can take many different forms (e.g. educational and awareness, diplomatic intervention and brokering of peace efforts, peace keeping forces, economic growth and development, etc.). The text below focuses on the investigation and prosecution of ICC crimes, and the interrelationship between the work of the Office and that of other accountability actors.



104. By virtue of its mandate and within the limits of its capacity, the Office can only address a handful of cases. Accordingly, a broader effort is needed to help close the impunity gap for ICC crimes. The Office has seen many initiatives at the global, regional and national level in this regard. It welcomes this increased effort to end the most serious crimes of concern to the international community. At the same time, the Office recognises there is a risk of overlap between initiatives. Various coordination platforms are being created, parallel training programs are being developed, and different initiatives in relation to databases are emerging. The development of a coordinated strategy that strengthens the investigative and prosecutorial possibilities of the Rome Statute System will help optimise the benefits and output of existing initiatives. Such a coordinated strategy could, for instance, focus on the following elements with different actors assuming a role in light of their core competencies and capabilities:

- **Knowledge network**

Across the globe, practitioners are developing first-hand experience on how to deal with the specific challenges related to investigating and prosecuting ICC crimes. While there are already initiatives to share experiences (e.g. EU Network for investigation and prosecution of genocide, crimes against humanity and war crimes, Interpol), there is no global, systematic or centralised collection and sharing of such experiences which could result in internationally accepted standards.

- **Evidence preservation**

The preservation of evidence through first responder initiatives and better use of technology forms a critical challenge for the years to come. It is advisable to centrally develop partnerships with suitable first responders and technology experts so that all actors within the Rome Statute system may benefit from such links to better advance their respective mandates.

- **Open source crime database**

Many law enforcement agencies are identifying, collecting and analysing open source data which leads to duplication of efforts. While creating a common crime database based on open source information might be challenging, it must be possible to at least make available the analysis developed by different agencies. This will result in efficiency gains for investigators and prosecutors with more easily accessible data on potential crimes, witnesses and perpetrators. In this regard, the Office could share the open source databases and reports it has developed to support other agencies in their endeavours.

- **Platform for the exchange of confidential information**

Law enforcement agencies are investigating similar or related cases in the same situations, often looking at the same pool of witnesses or evidence and embarking on missions to interview the same persons without necessarily being aware of these duplicated efforts. Such duplication not only leads to contradictions in the statements taken but also exposes the witness to an increased risk of re-traumatisation due to the multiple interviews.

Knowledge on how to operate securely in foreign countries is being repeatedly developed.

The migration of victims, witnesses and perpetrators leads to a need to better connect information on crimes committed in conflict situations, with the location of alleged perpetrators and the presence of witnesses and/or evidence in yet another country.

The creation of confidential, operational information systems which fully respect internationally recognised human right standards, and (inter)national legal frameworks could provide a solution to some of the above information needs identified.

Systems like for instance Europol's SIENA (Europol's Secure Information Exchange Network Application) and Interpol's to be created Analysis File could offer interesting opportunities for this.

- **Capacity building by third parties other than the Office**

In post-conflict countries, there is frequently a need to rebuild institutional capacity and to develop the ability to address ICC crimes. Countries that have not created specific units to deal with war crimes, or have only done so recently, are often interested in training and technical assistance. The many existing and highly valuable development initiatives might be further strengthened through the creation of a globally available training and technical support capacity. It is not the Office's role to take the lead on such efforts. Others are better placed to do so. As explained in another part of the strategic plan, the OTP can only contribute within the context of its mandate.

105. The Office has had exploratory exchanges of view with partners in its network on the need and the requisite building blocks for a coordinated investigative and prosecutorial strategy to close the impunity gap for ICC crimes. Partners such as Interpol, EU Network for investigation and prosecution of genocide, crimes against humanity and war crimes, Europol, JRR (Justice Rapid Response) and contacted War Crime Units have expressed an interest in taking the initiative forward within the limits of their mandates and depending on the availability of resources. The Office will be looking to expand the pool of entities supportive of this initiative in its efforts towards the optimal implementation of this strategic goal.

106. **Objectives for 2016**

- Undertake further consultations on the content, conditions and implications of a coordinated investigative and prosecutorial strategy, assess findings and identify the Office's contribution.

**Implementation of the Strategic Plan (2016 – 2018)****Financial planning**

107. The financial impact of the Strategic Plan which also entails the implementation of the basic size model is explained in detail in the basic size report. The Basic Size however goes further and combines the impact of the strategic plan with the expected demand for the coming years. The strategic plan has informed the resources allocated directly or indirectly to the Office's mandated activities (preliminary examinations, investigations, prosecutions). It has used a similar basis for the composition of different teams as done by the previous Strategic Plan 2012 - 2015; it has refined the requirements (e.g.: including a building up and winding down phase for investigations and prosecutions).

108. The Basic Size of the OTP would require a yearly budget of 60.6 mio euros. In comparison, the OTP's approved budget for 2015 was 42.2<sup>15</sup> mio euros, thus representing a 43.6 per cent increase over existing resources.

|                          | Present            | Basic Size | Difference |      |
|--------------------------|--------------------|------------|------------|------|
| <b>Budget (mio Euro)</b> | 42.2<br>(39.6+2.6) | 60.6       | +18.4      | +43% |
| <b>Staff (FTE)</b>       | 405                | 540        | +135       | +33% |

109. To evolve from the present total budget to the required one, the Office is prioritising (1) trials, given that they touch upon the most essential performance indicator, and (2) preliminary examinations, given their importance and cost-effectiveness (especially if they result in States honouring their primary responsibilities to genuinely investigate and prosecute). The required capacity for parallel investigations and investment in quality are gradually being phased in.

110. In light of current projections, the Office estimates that the basic size, if fully met, will remain adequate for the next strategic plan cycle of 2019-2021. However, the Office will review the basic size in light of its strategic planning for that three-year period to further stabilise the predictions estimates and to adapt it to possible changes in the level of atrocity crimes requiring the Office's intervention in accordance with the Rome Statute.

<sup>15</sup> Including the full year impact (i.e.: 12-month basis) of the Contingency Fund which amounts to 2.6 Mio Euros.

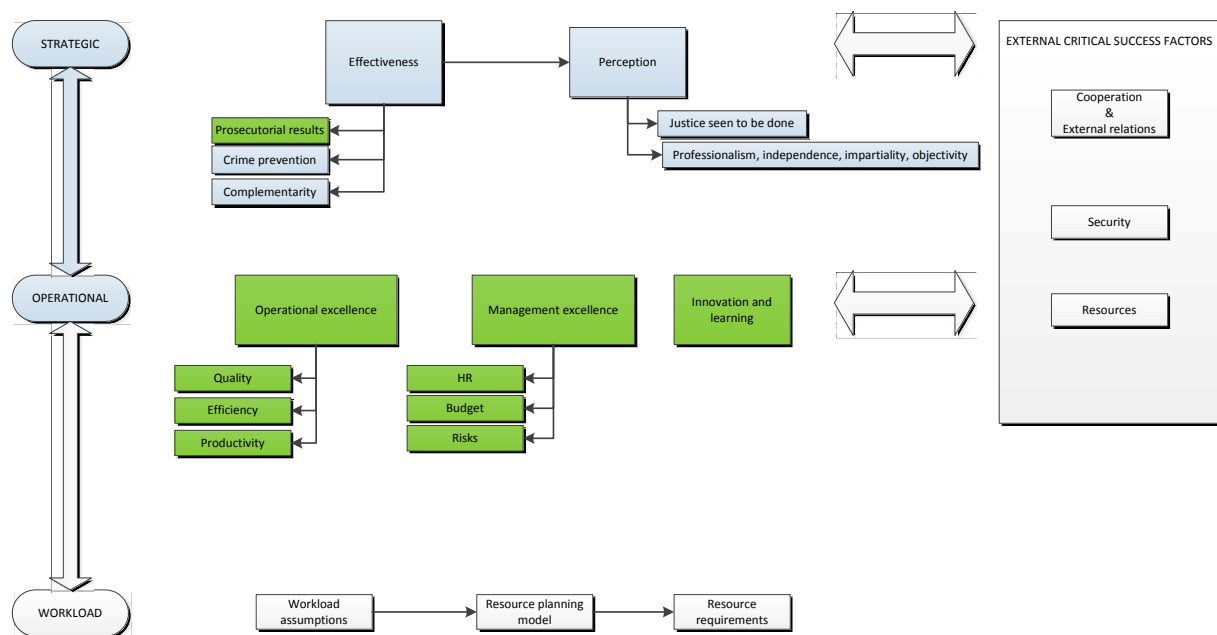
| Budget   | 2015 | 2016  | 2017 | 2018 | 2019 <sup>16</sup> | 2020 | 2021 |
|----------|------|-------|------|------|--------------------|------|------|
| Mio Euro | 42.2 | 46.09 | 53.1 | 60.6 | 60.6               | 60.6 | 60.6 |

111. The Office looks forward to engaging with States Parties to define a feasible timeline to establish the basic size of the OTP in light of the overall evolution of the Court's budget and the financial possibilities of States, after they have had the opportunity to decide upon the justifications provided for the basic size.

#### Performance indicators

112. The Office stated in its Strategic Plan (June 2012 - 2015) that it intended to evaluate whether a focused and limited set of indicators might be suitable for the Office. Such indicators would help the Office obtain more focused information on its performance, and how the strategy is being implemented. They would also assist the Office to report on its performance to its stakeholders.
113. The Office has developed a generic performance measurement framework of interrelated indicators. The Office identified over 60 possible indicators after reviewing potentially relevant performance indicators. From these, it selected 14 indicators. The Office has received positive feedback on its generic framework and its start-up set of indicators from the other organs and external experts. The generic framework identifies all areas that are relevant to the performance of the Office. In this sense, it provides a comprehensive overview. However, not all relevant areas are sufficiently within the Office's control, and as such cannot be a reliable indicator of the Office's performance. For instance, the Office contributes to the reduction of crime through its preliminary examinations, investigations and prosecutions. But the actual evolution of crimes in situation countries, assuming this could be accurately measured, depends on a number factors and actors unrelated to the Office's intervention. For instance, crime figures might go down due to the opening of a new ICC investigation but this decrease may equally be due to the presence of international forces, international or economic pressure or because the objectives of the campaign of one of the fighting groups have been achieved. The model therefore clearly distinguishes between what the Office sufficiently controls (highlighted in green) and other factors beyond its control:

<sup>16</sup> Beyond 2018, the inflationary costs on for instance UN salary scale or Euro-Dollar exchange have not been calculated



114. Strategic indicators measure whether the Office is achieving its intended mandate under the Rome Statute. Operational indicators measure whether the Office is implementing its strategy which in turn is assumed to impact positively on the strategic indicators. Workload indicators help to determine the resources needed to implement the strategy. External critical success factors refer to conditions which are outside of the Office's control but that must be met to achieve results at the operational and strategic level.

115. The set of 14 selected start-up indicators covers the areas highlighted in green in the model above:

| Area of performance           | Indicator  |
|-------------------------------|--|
| <b>Strategic</b>              |  |
| <b>Effectiveness</b>          | <ol style="list-style-type: none"> <li>Prosecutorial results in terms of perpetrators <ul style="list-style-type: none"> <li>Arrest warrants/ summonses to appear granted/ requested</li> <li>Persons confirmed / charged</li> <li>Persons convicted / charged</li> </ul> </li> <li>Counts granted / counts charged at stage of arrest warrant, confirmation, trial</li> </ol> |
| <b>Operational</b>            |  |
| <b>Operational excellence</b> |  |
| <b>Quality<sup>17</sup></b>   | <ol style="list-style-type: none"> <li>Pattern of judicial findings on how the Office conducts its preliminary examinations, investigations and prosecutions<sup>18</sup></li> <li>Compliance with key Office policies and standards</li> <li>Quality of interaction with the Office</li> </ol>  |
| <b>Efficiency</b>             | <ol style="list-style-type: none"> <li>Yearly achieved efficiency gains</li> </ol>   |
| <b>Productivity</b>           | <ol style="list-style-type: none"> <li>Milestones per core activity: planned versus actual</li> </ol>  |
| <b>Management excellence</b>  |  |
| <b>HR</b>                     | <ol style="list-style-type: none"> <li>Implementation of training program per year: planned versus actual</li> <li>Working climate survey</li> </ol>   |

<sup>17</sup> The indicators 1 and 2 also reflect the quality of investigations and prosecutions.

<sup>18</sup> In particular at the Appeals phase.

|                                |  |
|--------------------------------|--|
|                                | 10. Staff well-being   |
|                                | 11. Evolution of the overall gender and nationality balance per year                       |
| <b>Financial management</b>    | 12. Yearly implementation of the budget  |
| <b>Risks</b>                   | 13. Implementation rate of measures to control priority risks out of the OTP risk register |
| <b>Innovation and learning</b> | 14. Impact of improvement projects on effectiveness, operational and management excellence |

116. In addition to the above-mentioned performance indicators, the Office identified the following five external critical success factors that need to be analysed when evaluating the Office's performance.

| External critical success factor | Indicator  |
|----------------------------------|--|
| <b>Cooperation</b>               | 1. Yearly assessment of the evolution of cooperation per case<br>2. Yearly assessment of the evolution of general support to the Office                                    |
| <b>Security</b>                  | 3. Yearly evaluation of the areas and duration of inability to operate due to unmanageable security situation<br>4. Yearly evolution of the impact of witness interference |
| <b>Resources</b>                 | 5. Evolution of resources versus demand  |

117. The Office is in parallel working with the other organs to identify common ICC-wide indicators. Annex 4 outlines the full integration between the strategic plan, the budget objectives and the proposed performance indicators.

118. The Office will be working on the roll-out of as many of the above-mentioned indicators as possible in 2016. As it acquires additional experience, the Office will refine and, if needed, adapt and/or expand the number of indicators. However, at this stage, the Office is opting for a pragmatic and focused start-up.

### Risk management

119. The Office has identified six strategic risks which could undermine the results it aims to achieve with its Strategic Plan (2016 – 2018):

- Trust in the Office diminishing due to misperceptions that it is insufficiently independent or impartial.
- Performance declining due to low quality in its core activities.
- Performance declining due to under-implementation of the strategic plan.
- Insufficient resources to implement the strategic plan.
- Lack of cooperation affecting its core activities and implementation of the strategy.
- Security prohibiting or significantly restricting the Office from operating.

120. The Office presently assesses the likelihood and impact of these risks as follows:

|                                    |  |   |                 |
|------------------------------------|--|---|-----------------|
| <b>High</b>                        | <i>Impartiality &amp; independence negative perception</i><br><i>Low quality core activities</i> | <i>Insufficient resources</i><br><i>Lack of cooperation</i> | <i>Security</i> |
| <b>Medium</b>                      |  | <i>Under-implementation of the strategic plan</i>           |                 |
| <b>Low</b>                         |  |   |                 |
| <b>Impact</b><br><b>Likelihood</b> | <b>Low</b>   | <b>Medium</b>   | <b>High</b>     |

121. The Office will monitor the evolution of the medium level risks (yellow). It has also put in place risk mitigation strategies for the high level risks (red) and will monitor their implementation.

#### Office structure

122. The structural review of the Office carried out by Price Waterhouse Coopers ("PwC") in 2013 revealed that the Office's organisational arrangement is well adapted to the tasks it needs to fulfil. There is therefore no need for a major review of the Office's structure as is being done for the Registry through the ReVision project.

123. The Office is, however, closely looking to see whether a limited number of changes are required to optimise its organisational harmony, functioning and efficiencies.

## Annex 1 – Results of the Strategic Plan (June 2012 – 2015)

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1. The Strategic Plan (June 2012 – 2015) foreshadowed changes to the Office’s strategy at three levels:
  - At the prosecutorial policy level, the Office shifted its attention:
    - i. from its prior “focused” investigative approach to “open-ended, in-depth investigations”;
    - ii. towards a “building upwards” strategy, if responsibility of the most responsible persons could not be sufficiently proven from the outset; and
    - iii. to being as trial-ready as possible from the earliest phases of proceedings such as when seeking an arrest warrant and no later than the confirmation hearing.
  - The Office requested an increase in resources for the investigations and prosecutions to achieve the required level of quality, while continuing to look for efficiency gains.
  - The Office identified organisational changes that would increase the performance (e.g. under the overall management and oversight of the Prosecutor, the three operational Divisions’ reporting lines were modified; experienced Senior Trial Lawyers were placed in charge of the integrated teams; improvements were made to the processes and capabilities of each Division).
2. This annex provides an overview of the results that have been achieved so far with this new strategy. The overview first outlines the actual shift in achieved overall performance. The overview then highlights the main achievements for each of the six strategic goals that the Office had defined for the period June 2012 - 2015.

### Results at the level of mandated activities

3. **In terms of preliminary examinations**, over the period June 2012 - October 2015, the Office has conducted nine preliminary examinations on a yearly average. In total, 13 distinct situations have been subject to preliminary examinations, including six new ones. Five preliminary examinations were completed, including three which led to a decision not to proceed (Korea, Comoros referral,<sup>19</sup> Honduras) and two which led to the opening of an investigation (Mali, Central African Republic II). A sixth preliminary examination may be completed as well, pending authorisation from the Court’s Judges to proceed to an investigation as per the Prosecutor’s request of 13 October 2015 (Georgia).

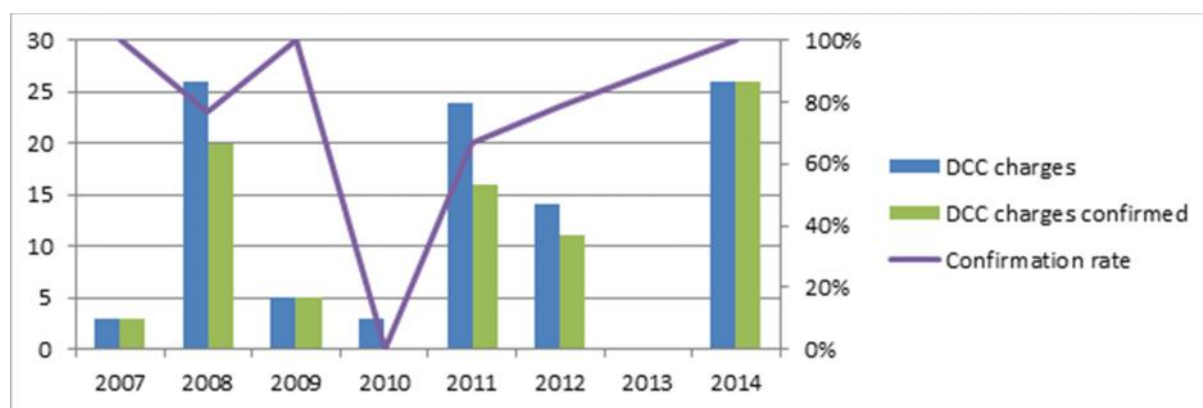
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<sup>19</sup> This decision was rendered in November 2014.



4. **In terms of investigations and prosecutions**, a central aim of the Strategic Plan (June 2012 – 2015) was to improve the Office’s prosecutorial results. The prosecutorial results in fact reflect the effectiveness and quality of the Office’s investigations and prosecutions. The Strategic Plan (June 2012 - 2015) acknowledged that a transitional period was required during which cases based on the previous strategy would need to be strengthened if possible, and presented in court if there were still reasonable grounds to believe that the case would lead to a conviction. In parallel, cases based on the new standards would be developed. The Strategic Plan (June 2012 - 2015) explicitly stated that it would aim to increase the percentage of charges confirmed and the Office’s conviction rate.<sup>20</sup>
5. Comparing data on the confirmation of charges and accused committed to trial between the previous and present strategy shows an important increase in performance. Annex 2 provides a more detailed breakdown of the supporting data:

| CONFIRMATION<br>PERFORMANCE | Previous strategy<br>2003 - June 2012 |              | Strategy<br>June 2012 - 2015 |              | Performance<br>increase |
|-----------------------------|---------------------------------------|--------------|------------------------------|--------------|-------------------------|
|                             | Total                                 | %            | Total                        | %            |                         |
| Per charges                 |                                       |              |                              |              |                         |
| Confirmed                   | 50                                    | <b>62.5</b>  | 206 <sup>21</sup>            | <b>85.83</b> | <b>+23.33%</b>          |
| Not confirmed               | 30                                    | 37.5         | 34                           | 14.17        |                         |
| Total                       | 80                                    | 100          | 240                          | 100          |                         |
| Per accused                 |                                       |              |                              |              |                         |
| Confirmed                   | 10                                    | <b>71.43</b> | 8                            | <b>100</b>   | <b>+28.57%</b>          |
| Not confirmed               | 4                                     | 28.57        | 0                            | 0            |                         |
| Total                       | 14                                    | 100          | 8                            | 100          |                         |



<sup>20</sup> OTP Strategic Plan (June 2012-2015), 11 October 2013, page 36, para. 97.

<sup>21</sup> The inclusion of the charges in the CAR Article 70 case (where each of the five suspects charged with offences against the administration of justice were charged with 42 to 43 counts) increases the sample drastically. If this case were not included, the figures would show: (a) a higher rate of confirmed charges (*i.e.*, 22-0, or 100%); and (b) a reduced number of accused brought forward for confirmation but all of whom having had their charges confirmed for trial.

6. These results at the confirmation of the charges stage offer a first indication of the impact of the new strategy. These positive results were achieved by allocating considerable resources to the cases against Laurent Gbagbo and Charles Blé Goudé (Côte d'Ivoire), and by making use of alternative forms of evidence in the Article 70 cases (Central African Republic). The Office will also evaluate the results at the trial and appeals phases of the proceedings. Given the pace of trials, a longer time perspective is needed to assess the final impact of the new strategy.
7. During this time period, the Office also had to face important challenges in the Kenya case against Messrs Uhuru Kenyatta and Francis Muthaura. Several factors led to the Prosecutor's decision to withdraw the case: the limited availability of evidence due to the specifics of the case, the Office's limited access to evidence due to non-cooperation, and the lack of alternative investigative avenues to substitute for unreliable key evidence. The Office committed in the Strategic Plan (June 2012 - 2015) to manage cases based on the previous strategy to the best of its ability. The shift in prosecutorial policy announced in the June 2012 – 2015 plan, emphasising the need to be trial-ready as early as possible, building cases upwards where necessary and increased reliance on varied forms of evidence, aims to, *inter alia*, mitigate and adequately respond to the challenges experienced in the previous cases should they arise in future situations.

### Efficient use of resources

8. The States Parties have supported the Office's Strategic Plan (June 2012 - 2015) through an important increase in **resources**. This has contributed, together with the other measures in the strategy, to the prosecutorial results in Table 1. It has allowed the Office to more adequately staff some of its cases and to collect more diverse forms of evidence.
9. However, the present resources are still insufficient to enable the Office to adequately meet its most pressing demands. Unforeseeable events like the dramatic increase in Article 70 cases, the surrender of Bosco Ntaganda, the transfer of Charles Blé Goudé, the need to open new investigations in the Central African Republic, and the recent transfer of Dominic Ongwen required the OTP to adjust its resource planning. And this has been at the expense of other urgently needed activities such as making the hibernated cases trial-ready in line with the present prosecutorial policy, starting the investigation into the other side of the conflict in Côte d'Ivoire, pursuing new crimes being committed in Libya and Darfur, and conducting further investigations required in Mali or the DRC.
10. Although the efficiency gains made by the Office in the June 2012 – 2015 period were considerable, they could not offset the impact of the unforeseen events.
11. The Office is constantly confronted with an over-demand of its services which calls for the most efficient use and management of its resources. The Office has been systematically striving to make the most efficient flexible use of its resources, including temporarily assigning staff members from one case to another at the same time to the extent possible.

12. After exploring how best to measure the **efficiency of the Office**, the OTP has concluded that:

- It is difficult to draw accurate conclusions on efficiency at the overall level of the core activities (preliminary examination, investigation, prosecution). This is because (1) the total number of core activities of the Office is relatively low, (2) the activities differ in scope, and (3) they are performed under different cooperation, resource and security conditions over many years.
- It could be possible to develop efficiency indicators for sub-activities of each core activity that are frequently performed and that are quite similar in nature (e.g. average duration of statement taking; average transcription time), but this approach may not be possible for all sub-activities (e.g. analytical product, arrest warrant application). Before such an approach could be considered, an accurate activity-based costing system would be needed which is still under development at the Court.
- Identifying, measuring and reporting efficiency gains remain the best approach available to managing the Office's resources efficiently.

13. The Office has made the following efficiency gains in the 2012 – 2015 period in addition to the gains made in the previous years which are not reflected here. Annex 3 provides a further breakdown of how these results were achieved:

|                               | 2012    | 2013    | 2014    | 2015 <sup>22</sup> |
|-------------------------------|---------|---------|---------|--------------------|
| <b>Budget (mio euro)</b>      | 27,7    | 28,2    | 33,2    | 39,6               |
| <b>Efficiency gain (euro)</b> | 183.962 | 848.175 | 457,824 | TBD                |
| <b>%</b>                      | 0.7%    | 3%      | 1.4 %   |                    |

## Implementation of objectives per strategic goal

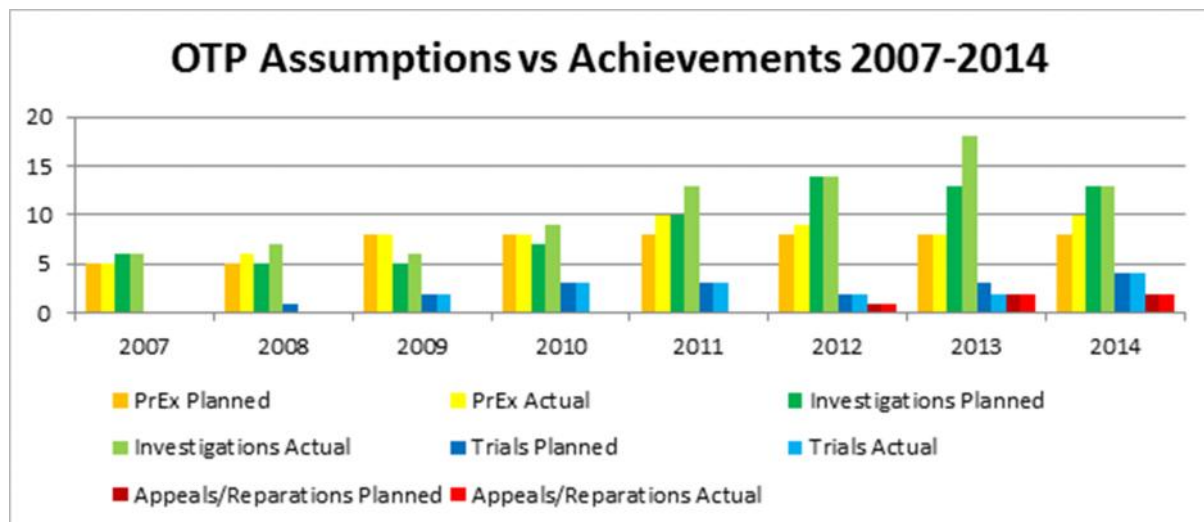
14. The Strategic Plan (June 2012 - 2015) identified **six strategic goals** for which possible yearly objectives were developed. As indicated in the strategic plan, the tentative list of objectives has been reviewed on an annual basis based on the results achieved, changes in the Office's operating environment, lessons learned by the Office, and the available budget. The most significant achievements at the level of the identified objectives are highlighted here.

- **Strategic goal 1: conduct impartial, independent, high-quality, efficient and secure preliminary examinations, investigations and prosecutions**

15. The main objective in the June 2012 - 2015 plan which supported this goal was to produce the level of annual activities foreseen in the budget assumptions. The comparison between the planned and actual output shows that the OTP met its budget assumptions. However,

<sup>22</sup> The full amount of the 2015 efficiency gains will be part of the normal reporting to the CBF and States in 2016.

this was only done by (1) postponing planned investigations in light of unforeseeable new demands; (2) delaying activities in ongoing investigations to support cases where an arrest, transfer or surrender had occurred, and by (3) delaying further investigative work needed to supplement evidence in the hibernated cases to meet the new higher standards used by the Office.



- **Strategic goal 2: further improve the quality and efficiency of preliminary examinations, investigations and prosecutions**

#### Preliminary examinations

16. The Strategic Plan (June 2012 - 2015) identified the need to communicate more in relation to the preliminary examinations and to conduct activities to maximise a preventative impact where possible. Both results have been achieved.
17. In accordance with the strategic plan, the Office published its Policy on preliminary examinations in November 2013 and has issued a public report on its preliminary examination activities on an annual basis since 2011. The most recent activities report was also highlighted publically through a press release; a new practice the Office has adopted to make its preliminary examinations activities more accessible. Further, during the reporting period, the Office published five situation-specific reports to outline the basis of the Prosecutor's decisions (e.g., reports relating to Mali, Korea, CAR II, Comoros referral and Honduras) or to provide an update on specific situations under preliminary examinations (interim report on the situation in Colombia). The Office has also issued a number of public statements explaining the rationale behind its decisions to open, or not, preliminary examination in some situations (e.g. Palestine, ISIS, Egypt).
18. The Office has undertaken preventive activities, such as public statements and/or field visits, in situations displaying a serious risk of violence, such as the situation in Nigeria prior to the holding of general and state elections in February-March 2015, and with respect to Burundi. In accordance with its policy on preliminary examination and in light of the global nature of the Court and the complementarity principle, the Office has devoted relatively limited

efforts with a significant impact at the preliminary examination stage towards encouraging States to carry out their primary responsibility to investigate and prosecute international crimes. The efforts have been notably focused on situations under phase III of the preliminary examination process (in particular, Afghanistan, Colombia, Georgia, Guinea, and Nigeria) and have included, depending on the prevailing circumstances, in-country missions, requests for information on national proceedings, and consultations with national authorities, intergovernmental and non-governmental organisations for the purpose of identifying pending impunity gaps and the scope for possible remedial measures.

19. During this period, the Office decided as a matter of best practice that the conduct of preliminary examinations should be centralised within the Situation Analysis Section (“SAS”). A redefinition of the roles of the two sections of the Jurisdiction, Complementarity and Cooperation Division (“JCCD”) has meant that SAS focuses on preliminary examinations and the International Cooperation Section (“ICS”) provides support to joint/integrated teams in on-going situations (investigations and prosecutions). Further, SAS has taken over the crime pattern analysis function previously performed by the Investigations Division (“ID”) with respect to situations under preliminary examination.

### **Investigations**

20. The major development objectives for investigations have progressed. (1) The ability to collect evidence other than statements has increased through the creation of a cyber-unit and a technology advisory board, the initial training of investigators in online-investigations, and the increase of forensic capacity. (2) The analysis function has been further developed through the recruitment of additional analysts and support staff, the definition of a Factual Analytical Database to support teams, the testing of analytical software, the development of gender analysis capability, and through the roll-out of a systematic Source Evaluation model. (3) Investigative standards have been or are in the process of being reviewed by an external scientific advisory board and by a group of experts in investigations of international crimes. Training has been provided to all investigators in relation to the PEACE-model for interviewing of witnesses. Training has been increased for all staff. (4) Focused recruitment has brought on board new skill sets in line with the present strategy (e.g. cyber; telecommunications; military; country knowledge). A competence management system is being rolled out to map current profiles and align them through recruitment and training with the desired profiles. (5) The longer term or permanent field presence of investigators has been systematically implemented (Mali, Côte d’Ivoire, Central African Republic, Uganda). (6) The protection of persons at risk on account of their interaction with the Office has been increased through a streamlining of internal processes and through the present roll-out of a witness management system which has been purchased together with the Victims and Witnesses Section of the Registry.

### **Prosecutions**

21. Progress has also been made on the main objectives. (1) The Office recruited more experienced lawyers, including senior trial lawyers who currently lead the integrated teams that conduct investigations and prosecutions. (2) Additional positions have been created and

staff recruited in order to improve the performance capacity of the teams; (3) A systematic and comprehensive internal case review before a review panel independent from the team is conducted prior to any case being brought forward, to provide the Prosecutor and ExCom with an independent opinion on the status of a case before taking any major decisions. (4) A continuing legal education program, composed of legal, oral and written advocacy training has been implemented. (5) Competencies to use alternative forms of evidence to develop and present cases are being developed. (6) An internal Measuring and Developing Managers ("MDM") program has been developed in consultation with Registry's Human Resources Section ("HRS"), which includes regular coaching as well as 360° review of the performance of all PD senior managers.

- **Strategic goal 3: continue to integrate enhance the integration of a gender perspective in all areas of our work and continue to pay particular attention to SGBC and crimes against children**

22. The Office published its Policy on SGBC in June 2014. The various divisions and sections in the Office are in the process of implementing the SGBC policy in all aspects of their work. For instance, the template for investigation plans has been updated to cover a systematic planning and reporting in relation to SGBC. Guidelines in relation to the new gender analysis methodology are developed and will be tested in new investigations. The PEACE-model interviewing of vulnerable witnesses is being prepared and sufficient investigators to support the teams will be trained in it.

23. A working group to develop an Office policy in relation to children in and affected by armed conflict has started its work. The Office has held staff and expert consultations; consultations with children and youngsters are scheduled to take place.

- **Strategic goal 4: enhance complementarity and cooperation by strengthening the Rome Statute System in support of the ICC and of national efforts in situations under preliminary examination or investigation**

24. Three main themes were developed in the June 2012 - 2015 plan: (1) improve the Office's cooperation model by having JCCD take the lead on strategic contacts and having ID maintain operational contacts; (2) develop networks and support efforts by others to investigate and prosecute ICC crimes; and (3) strengthen understanding of the Office's work through communications.

25. The Office has started to implement the new cooperation model in situation countries like Côte d'Ivoire, Mali and the Central African Republic, and with other countries which frequently interact with the OTP. JCCD has also developed a structured database with an enhanced monitoring mechanism for incoming and outgoing requests for assistance (RFAs), as well as standardisation of language and processes, where possible.

26. Cooperation and complementarity also include investigations and prosecutions by national authorities both within and outside situations under preliminary examination or investigations: the primary responsibility of States to investigate and prosecute is a

cornerstone of the Rome Statute and is essential to close the impunity gap for such crimes. Over time, the Office has seen an increase in compliance with requests for assistance from States. This may indicate a growing consolidation of the Rome Statute system and an increasing closure of the impunity gap.

27. The Office has continuously sought to develop stronger relationships with relevant national and international authorities and their dedicated investigative and prosecutorial entities, as well as existing networks for judicial cooperation and expert groups on key thematic issues (such as SGBC), to enhance coordination of activities and develop a common understanding of how to conduct such investigations and prosecutions. The Office has dedicated much effort to increasing and strengthening its presence in transnational networks of practitioners (such as the EU Genocide network, CARIN, IberRed) and to maximising the mutual sharing of information and assistance between the Office and national judicial authorities.

- **Strategic goal 5: maintain a professional office with specific attention to gender and nationality balance, staff quality and motivation, and performance management and measurement**

28. The Office paid particular attention to improving the **gender and nationality balance**. Vacancy announcements and selection methods were revised to avoid any potential bias in the selection process. Outreach towards underrepresented groups was done via different channels (e.g. Interpol, Justice Rapid Respond ("JRR"), the Institute for International Criminal Investigations ("IICI"), etc.). Underrepresented groups were prioritised in shortlisting for interviews. The composition of interview panels was verified to ensure gender and geographical diversity.

29. Even though the Office has undertaken this systematic effort to improve its gender and nationality balance since June 2012, further progress is needed. More effort is required to reach underrepresented groups so that sufficient qualified candidates apply.

| Geographical balance  | Budgeted posts Professional staff |          |          |            | All posts (budgeted, GTA, G+P) |          |    |
|-----------------------|-----------------------------------|----------|----------|------------|--------------------------------|----------|----|
|                       | Target                            | Result   |          | Difference | Result                         |          |    |
|                       | %                                 | Dec-12 % | Apr-15 % |            | Dec-12 %                       | Apr-15 % | %  |
| <b>Africa</b>         | 13.11                             | 19.12    | 18.71    | -0.41      | 20                             | 19       | -1 |
| <b>Asia</b>           | 18.43                             | 5.88     | 5.04     | -0.84      | 5                              | 6        | 1  |
| <b>Eastern Europe</b> | 8.37                              | 7.35     | 7.19     | -0.16      | 9                              | 9        | 0  |
| <b>GRULAC</b>         | 16.06                             | 8.09     | 6.47     | -1.62      | 7                              | 6        | -1 |
| <b>WEOG</b>           | 44.04                             | 59.56    | 62.59    | 3.03       | 59                             | 60       | 1  |



| Gender balance | Budgeted posts<br>Professional staff |             |             |            | All posts<br>(budgeted, GTA, G+P) |             |                 |
|----------------|--------------------------------------|-------------|-------------|------------|-----------------------------------|-------------|-----------------|
|                | Target                               | Result      |             | Difference | Result                            |             |                 |
|                | %                                    | Dec-12<br>% | Apr-15<br>% |            | Dec-12<br>%                       | Apr-15<br>% | Difference<br>% |
| <b>Female</b>  |                                      | 45.65       | 44.29       | -2.36      | 52                                | 52          | 0               |
| <b>Male</b>    |                                      | 54.35       | 55.71       | 1.36       | 48                                | 48          | 0               |

30. While geographical representation for the OTP will always be influenced by the areas in which it needs to operate, the Office believes that more progress is needed in relation to the gender and nationality balance. Efforts will be exerted in this regard guided by the Office's commitment to select only amongst the best candidates. It will prioritise this in its 2016-2018 strategy, acknowledging however that this will be a gradual process.

31. **Staff quality** formed another important component of this strategic goal. PwC indicated in its 2013 report the high level of professionalism and commitment of the Office's staff and this remains the case.

Staff quality has been ensured through a variety of steps in addition to the already high recruitment standards. The OTP promulgated its Code of Conduct on 5 September 2013 and subsequently all staff were trained on it. Work has been finalised on a project led by the Deputy Prosecutor on creating core values for the Office.

States Parties have supported this effort to have quality staff by increasing the training budget.

The Office has ensured that performance appraisals were systematically done (84% in 2014), and in a proper manner: training was provided to managers and staff for this purpose and Office-wide guidelines were issued to avoid inflated appraisals.

32. The Office attaches great importance to **staff motivation and well-being**. A task force on working climate made recommendations to the Prosecutor based on a review of past staff surveys, focus group discussions with OTP staff and baseline questionnaires. The recommendations of the working group have been approved by the Prosecutor and have been disseminated OTP-wide. The Office is working on a policy to avoid secondary traumatisation of staff and is reviewing with the Registry how to best ensure the well-being of its staff (e.g. medical support in the field, burn-out prevention). Even though the Office has not been able to organise a systematic measurement of the motivation, well-being and culture within the Office, the OTP management has noticed signs of a positive shift towards an environment in which staff feels at ease in expressing their views and taking initiatives to improve the functioning of the Office. The Office intends to monitor this shift in a more systematic way as part of its future system of performance indicators.



33. The **management and measurement of the overall performance** of the Office (as opposed to the individual performance) is well illustrated through the achievements highlighted in the previous paragraphs. The main objectives in relation to this strategic goal have also been implemented. (1) The roles between ExCom, the operational Divisions and integrated teams, as well as the leadership of the integrated teams have been clarified, as suggested by PwC. (2) A working group has defined a limited yet comprehensive set of performance indicators which are being rolled out (see paras. 111 to 117 of the Strategic Plan (2016 - 2018)). (3) The Office has adopted a lessons learned concept paper and staff has been trained to facilitate structured discussions on lessons learned. The Legal Advisory Section ("LAS") has been entrusted with ensuring that best practices are identified, documented and implemented. (4) Court-wide an update of the risks faced by the Court has been performed. In parallel, LAS in cooperation with ID has developed a risk management framework, and ID has completed a pilot project in this regard.

- **Strategic goal 6: ensure good governance, accountability and transparency**

34. As highlighted above, internally the Office has taken the steps PwC recommended to clarify its **internal governance** structure relating to the role of the Deputy prosecutor, ExCom, the operational Divisions and the leadership within the integrated teams. It has also taken the issue of risk management and performance measurement forward.

35. At the **inter-organ level**, the governance framework remains unchanged. The cooperation between the organs has however significantly improved.

36. In relation to **accountability** towards States Parties, the following steps can be highlighted: (1) Since 2014, the budget has been explicitly linked to the OTP strategic plan through the expected annual level of activities and the main improvement projects derived from the strategic plan; (2) the Office has also reported on its achievements through the annual performance reporting as well as through separate briefings to the CBF, the Hague Working Group ("HWG") and ASP; (3) the Office has strongly contributed to resolving the pending matter on the role and responsibilities of the Independent Oversight Mechanism ("IOM").

37. Efforts relating to **transparency** have been highlighted above related to preliminary examinations and the SGBC policy.

## Annex 2 – Efficiency gains

- The table below provides a summary of efficiency gains during the period June 2012 - 2015. A more detailed description of the nature of the saving is provided along with the estimated cost that has been saved.

| Description of Efficiency   | Details of Cost  | Total saving 2012 | Total saving 2013 | Total saving 2014 <sup>23</sup> |
|---|--|-------------------|-------------------|---------------------------------|
| <b>Travel Related</b>   |  |                   |                   |                                 |
| <b>Non-implementation of the UN Policy of Business Class for flights over nine hours replaced with a cost effective Economy Comfort</b> | In 2013, circa 125 ID missions with flight times over nine hours were bought at economy rate (1,580€) as opposed to following UN policy of Business Class (3,300€), meaning that the travel for these flights resulted in 197,000€ instead of 412,000€.  |                   | Circa 215,000€    |                                 |
| <b>Increasing the duration of missions in the field to facilitate more activity for the cost of a single air fare.</b>                  | In 2013 and currently in 2014, missions are on average 3-5 days longer than in previous years. Longer missions allow more activity to take place on the cost of a single air fare. It is estimated extended activity may have saved up to ten additional missions deploying. Each mission of two persons with average ticket of 1,580€ = 2x10x1580 = 31,600€.  | €112,875          | Circa 32,000€     |                                 |
| <b>Outsourcing</b>  |  |                   |                   |                                 |
| <b>In certain areas, such as Transcription the use of outsourced has allowed to significantly reduce costs.</b>                         | Since 2010, the Office has outsourced much of the Transcription in English & French and some minority languages. Revision and QC are still undertaken in house. Effectively this has reduced staff overheads by 8 FTE. This reduced staffing costs by 570,000 €. The actual cost of transcription in the period has never surpassed 100,000€ - while never compromising on quality and improving delivery times. |                   | Circa 470,000€    |                                 |
| <b>Field Accommodation</b>  |  |                   |                   |                                 |
| <b>Where conditions have permitted (Ivory Coast) ID use of residential accommodation instead of use of Hotels and reducing DSA have</b> | During Oct 12-Oct 13, the OTP house was utilised approximately for 600 nights. DSA (Room %) for Abidjan is 95€ (95*600=57,000€).<br>The House rental +overheads cost approx. 44,000€, leaving an efficiency  | €3687.5           | €33,187.5         | €21,000                         |

<sup>23</sup> CBF/24/7.

|   |   |               |
|---|---|---------------|
| <b>achieved significant operational savings.</b>  | gain of 13,000€ This set up also reduced the need to have additional office space (8,000€). During 2014, a reduced level of occupancy diminished the overall efficiency gain, but based on the same calculation, a saving of €21,000 above residence in Hotels in Abidjan was made.   |               |
| <b>ID Administration</b>  |   |               |
| <b>Creation of a centralised Admin unit in ID</b>   | Reducing one GS staff by having centralised unit = 70,900€. More efficient use of stationary, based on 2012 saved circa 3,000€.   | Circa 74,000€ |
| <b>Article 15</b>   |   |               |
| <b>A new system was introduced whereby those wishing to submit communications to the Office are now encouraged to make an appointment and/or to send their queries by post or e-mail.</b> | The practical benefit is that the number of visitors has reduced from an average of 20 per month to one. In Euro terms, this means: each visit is 30 minutes, with two staff, that is 1 hour per visit = 40 €per visit (800€ per month, 9,600€ per year). On a yearly basis this amounts to savings of about 9,000 €.   | Circa 9,000€  |
| <b>Improved Office Automation</b>   |   |               |
| <b>Improved Office Automation</b>   | Using Microsoft SharePoint technology, request workflows have been implemented to allow service providers to receive work requests and create work tasks that are notified to team members by automatic emails. OTP implemented a variety of work processes in this way to make efficiency gains across the Office including Transcription requests ("DPU"); Information Security and access control administration ("KBU"), Information gathering and tasking for integrated teams (starting with Libya team). | €67,400       |
| <b>A new automated routine for verification of documents for disclosure has been developed internally by IEU. This will save four working days every month.</b>                           | The process previously in place required manual verification of electronic files. This, on average, would take five working days of a GSOL staff every month (in Euro terms this equals about 17,700 € per year). The automated routine saves 80% of that time as the application verifies the files without the need to manually open them for the check.  | Circa 14,000€ |
| <b>Improved submission of mission plans</b>   |   |               |
|   | Reduction of late submissions of mission plans (48 missions of multiple travellers) has reduced both work time  | €41,154       |

|   |  |         |
|---|--|---------|
|   | through inefficient and last-minute processing (9% of 1 FTE) and reduced the cost of higher last-minute airfares – 9% of 1 FTE= 6,507€ + 34,647€ in lower airfares amounts to a total of 41,897€.  |         |
| <b>Leave management</b>   |  |         |
| <b>Simplification of leave management process</b>   | Based on an average saving of 15 minutes per leave form (individual, supervisor and Admin).  | €6,840  |
| <b>Witness management</b>   |  |         |
| <b>Co-ordination: Better co-ordination, simplifying or clarifying areas of responsibility and reducing overlap will have the effect of freeing up resources</b> | OTP currently has about 100 witnesses that require co-ordination and significant effort spent managing them. Re-engineering of the workflow and reporting procedures is likely to save at least three hrs per week in meeting time spent between Units, Teams and managers co-ordinating. (Avg. four persons)<br>3hrs*4*52= 624hrs.  | €34,000 |
| <b>Change of in field-deployment concept</b>  |  |         |
|   | Procedure changed to ensure witness in place before HQ deployment to the field has ensured no wasted deployment. Based on 11 occasions of no-shows saved at least two investigators airfare (circa 1500€ + DSA (circa 200€) – Savings equivalent to 1700*2*11.   | €37,400 |
| <b>Field operations</b>   |  |         |
| <b>Improved audit and reconciliation of field offices' expenses. Efficiency achieved thanks to improved internal co-ordination between GAU and ID-OSU</b>       | Reconciliation of field offices' MOD's has been improved in terms of both quality and time. The time reduction can be assessed in one quarter, that is, 25% of the fiscal year. Due to the increased level of activities in the field, actual expenses were 40% higher than the budget. The affected activity has always required on average 2.5 FTE (GSOL level) in GAU. The cost benefit can be estimated as GSOL salary * (2.5 * 40%) (i.e.: theoretically required increase in FTE) * 25% (i.e.: reduction in reconciliation time) = Euro 73.3k * 1.10 = Euro 80.6k. | €80,630 |
| <b>Trip Settlement</b>  |  |         |
| <b>Co-ordination: better co-ordination inside the Office and faster submission of verified claims to the Registry for final booking.</b>                        | Re-engineering of processes has reduced turn-around time of trip settlement from 90 days to 60 days and has allowed for 49% growth in number of missions processed to be absorbed by current staff. The affected activity has always required at least 1 FTE (GSOL level) in GAU.  | €47,800 |

|  |  |            |                     |
|--|--|------------|---------------------|
|  | The cost benefit can be estimated as<br>GSOL salary * 1.49 (i.e.: theoretically<br>required increase in FTE) * 33% (i.e.:<br>reduction in submission time) = Euro<br>73.3k * 0.6517 = € 47,800.  |            |                     |
| Reduction frequent meetings                                |  |            |                     |
| Investigation Division management meeting                  | The two hr meeting is being held once a month instead of every two weeks. The meeting, attended by 17 senior managers is still held on a frequency to address all the necessary issues facing the Division.  |            | €35,000             |
| Security Briefing  | A refocus and reformatting of a core security briefing is estimated to have saved the units producing the product at least six hours per week – over 300 hrs per year – equivalent to approx. 0.2 FTE which is redeployed to undertake other operational tasks. Financially this is equivalent to approx. 18,000€. |            | €18,000             |
| Recruitment  |  |            |                     |
| Use of video-conference instead of face-to-face interviews | Based on saving in flight tickets and DSA for candidates to travel to the Hague. Using an average (Intercontinental/ European flight ticket + DSA) The average saving per Face to Face is approx. 1,500€. Total saving 1500 X 34 video conferencing undertaken.  |            | €51,000             |
| Training   |  |            |                     |
| Reduction of cost of specialized training                  | Collaborative approach to developing and delivering core investigative training has been delivered for 47,000€ for the design & delivery of three courses – 44 persons. Normal fee is 3000€ per person. Cost should have been 132,000€ - Actual cost 47,000€ = 85,000€ saving.                                     |            | €85,000             |
| Total  |  | €183,962.5 | €848,187.5 €457,824 |

### Annex 3 - Improvement of the results at the confirmation stage

1. This annex clarifies and explains the methodology used to compare the performance of the current strategy with the previous one. The table below indicates that the OTP's performance under the Strategic Plan (June 2012 - 2015) has improved. On average, charges per accused were more likely to be confirmed.

| CONFIRMATION<br>PERFORMANCE | Previous strategy<br>2003 - June 2012 |              | Strategy<br>June 2012 - 2015 |              | Performance<br>increase |
|-----------------------------|---------------------------------------|--------------|------------------------------|--------------|-------------------------|
|                             | Total                                 | %            | Total                        | %            |                         |
| Per charges                 |                                       |              |                              |              |                         |
| Confirmed                   | 50                                    | <b>62.5</b>  | 206 <sup>24</sup>            | <b>85.83</b> | <b>+23.33%</b>          |
| Not confirmed               | 30                                    | 37.5         | 34                           | 14.17        |                         |
| Total                       | 80                                    | 100          | 240                          | 100          |                         |
| Per accused                 |                                       |              |                              |              |                         |
| Confirmed                   | 10                                    | <b>71.43</b> | 8                            | <b>100</b>   | <b>+28.57%</b>          |
| Not confirmed               | 4                                     | 28.57        | 0                            | 0            |                         |
| Total                       | 14                                    | 100          | 8                            | 100          |                         |

2. In order to make a proper comparison, it must be determined which cases fall under the new prosecutorial strategy and which one do not. Investigations that were entirely conducted during the time period June 2012 - 2015 fall within the new prosecutorial strategy (e.g. CAR Article 70). Cases dating from before but to which the Office was able to apply its new strategy during the period also fall within this category (Côte d'Ivoire: Laurent Gbagbo, Charles Blé Goudé; DRC: Bosco Ntaganda). The table below shows which accused<sup>25</sup> fell under the previous and current strategy. The data shown represent the day that the Document Containing the Charges ("DCC") was filed with the Pre-trial Chamber.

<sup>24</sup> The inclusion of the charges in the CAR Article 70 case (where each of the five suspects charged with offences against the administration of justice were charged with 42 to 43 counts) increases the sample drastically. If this case were not included, the figures would show: (a) a higher rate of confirmed charges (*i.e.*, 22-0, or 100%); and (b) a reduced number of accused brought forward for confirmation but all of whom having had their charges confirmed for trial.

<sup>25</sup> This table does not include all cases or investigations performed by the Office. Some arrest warrants are still pending, are presently under investigation, or are hibernated investigations. The current table therefore only shows the cases that have been through a confirmation process before a Pre-Trial Chamber.

| Previous strategy 2002 - 2012    |                          | Strategy June 2012-2015 |                          |
|----------------------------------|--------------------------|-------------------------|--------------------------|
| Central African Republic         |                          |                         |                          |
| Jean-Pierre Bemba Gombo          | 18/08/2010 <sup>26</sup> | Article 70              | 30/06/2014 <sup>27</sup> |
| Democratic Republic of the Congo |                          |                         |                          |
| Thomas Lubanga Dyilo             | 28/08/2006 <sup>28</sup> | Bosco Ntaganda          | 10/01/2014 <sup>29</sup> |
| Germain Katanga                  | 26/06/2008 <sup>30</sup> |                         |                          |
| Callixte Mbarushimana            | 03/08/2011 <sup>31</sup> |                         |                          |
| Mathieu Ngudjolo                 | 12/06/2008 <sup>32</sup> |                         |                          |
| Kenya                            |                          |                         |                          |
| Art 70                           | 01/09/2011 <sup>33</sup> |                         |                          |
| Uhuru Muigai Kenyatta            | 19/11/2011 <sup>34</sup> |                         |                          |
| William Samoei Ruto              | 15/08/2011 <sup>35</sup> |                         |                          |
| Joshua Arap Sang                 | 15/08/2011 <sup>35</sup> |                         |                          |
| Sudan                            |                          |                         |                          |
| Bahr Idriss Abu Garda            | 10/09/2009 <sup>36</sup> |                         |                          |
| Abdallah Banda Abakeer Nourain   | 19/10/2010 <sup>37</sup> |                         |                          |
| Saleh Mohammed Jerbo Jamus       | 19/10/2010 <sup>37</sup> |                         |                          |
| Côte d'Ivoire                    |                          |                         |                          |
|                                  |                          | Laurent Gbagbo          | 25/01/2013 <sup>38</sup> |
|                                  |                          | Charles Blé Goudé       | 27/08/2014 <sup>39</sup> |

3. To assess the number of charges presented and confirmed, the DCCs were studied and compared to the decisions of the Pre-Trial Chambers. The table below is the result of this study and was used as the basis for comparison.

<sup>26</sup> *Prosecutor v Jean-Pierre Bemba Gombo*, ICC-01/05-01/08-856-AnxA-Red, 18/08/2010, Revised Second Amended Document Containing the Charges.

<sup>27</sup> *Prosecutor v Jean-Pierre Bemba Gombo, Aime Kilolo Musamba, Jean-Jacques Mangenda, Fidele Babala Wandu and Narcisse Arido*, ICC-01/05-01/13-526-Conf-AnxB1, 30/06/2014, Document Containing the Charges.

<sup>28</sup> *Prosecutor v Lubanga*, ICC-01/04-01/06, 28/08/2006, Document Containing the Charges, Article 61(3)(a).

<sup>29</sup> *Prosecutor v Ntaganda*, ICC-01/04-02/06, 10/01/2014, Document Containing the Charges.

<sup>30</sup> *Prosecutor v Katanga*, ICC-01/04-01/07, 26/06/2008, Amended Document Containing the Charges Pursuant to Article 61(30)(a).

<sup>31</sup> *Prosecutor v Mbarushimana*, ICC-01/04-01/10-tEN, 03/08/2011, Prosecution's document containing the charges submitted pursuant to Article 61(3)(a).

<sup>32</sup> *Prosecutor v Ngudjolo Chui*, ICC-01/04-01/07-584 and annexes, 12/06/2008, Amended Document Containing the Charges.

<sup>33</sup> Start of confirmation hearing.

<sup>34</sup> *Prosecutor v Francis Kirimi Muthaura and Uhuru Muigai Kenyatta*, ICC-01/09/20/11, 24/08/2012, Public redacted version of the updated document containing the charges.

<sup>35</sup> *Prosecutor v William Samoei Ruto, Henry Kiprono Kosgey, and Joshua Arap Sang*, ICC-01/09-01/11-261-AnxA, 15/08/2011, Document Containing the Charges.

<sup>36</sup> *Prosecutor v Bahr Idriss Abu Garda*, ICC-02/05-02/09-91-Red, 25/09/2009, Prosecution's document containing the charges submitted pursuant to Article 61(3)(a) of the Statute.

<sup>37</sup> *Prosecutor v Abdallah Banda Abakaer Nourain & Saleh Mohammed Jerbo Jamus*, ICC-02/05-03/09, 11/11/2010, Public redacted version of Document Containing the Charges Pursuant to Article 61(30)(a) of the Statute filed on 19 October 2010.

<sup>38</sup> *Procureur v Laurent Gbagbo*, ICC-02/11-01/11, 25/01/2013, Document Amendé de notification de Charges

<sup>39</sup> *Procureur v Charles Blé Goudé*, ICC-02/11-02/11, 27/08/2014, Version Corrigée du Document de notification des charges.

|                   | Previous strategy  |                          |                           | Current strategy   |                          |                           |
|-------------------|--------------------|--------------------------|---------------------------|--------------------|--------------------------|---------------------------|
| Situation country | Sum of DCC charges | Sum of Charges confirmed | Country Confirmation rate | Sum of DCC charges | Sum of Charges confirmed | Country Confirmation rate |
| <b>CAR</b>        | <b>5</b>           | <b>5</b>                 | <b>100.00</b>             | <b>214</b>         | <b>180</b>               | <b>84.19</b>              |
| Arido             |                    |                          |                           | 43                 | 12                       | 27.91                     |
| J.-P. Bemba       | 5                  | 5                        | 100.00                    | 43                 | 42                       | 97.67                     |
| Kilolo            |                    |                          |                           | 43                 | 42                       | 97.67                     |
| Mangenda          |                    |                          |                           | 43                 | 42                       | 97.67                     |
| Wandu             |                    |                          |                           | 42                 | 42                       | 100.00                    |
| <b>CdI</b>        |                    |                          |                           | <b>8</b>           | <b>8</b>                 | <b>100.00</b>             |
| C.B. Goudé        |                    |                          |                           | 4                  | 4                        | 100.00                    |
| L. Gbagbo         |                    |                          |                           | 4                  | 4                        | 100.00                    |
| <b>DRC</b>        | <b>42</b>          | <b>23</b>                | <b>63.46</b>              | <b>18</b>          | <b>18</b>                | <b>100.00</b>             |
| B. Ntaganda       |                    |                          |                           | 18                 | 18                       | 100.00                    |
| C.                |                    |                          |                           |                    |                          |                           |
| Mbarushimana      | 13                 | 0                        | 0.00                      |                    |                          |                           |
| G. Katanga        | 13                 | 10                       | 76.92                     |                    |                          |                           |
| M. Ngudjolo       | 13                 | 10                       | 76.92                     |                    |                          |                           |
| T. Lubanga        | 3                  | 3                        | 100.00                    |                    |                          |                           |
| <b>KEN</b>        | <b>24</b>          | <b>16</b>                | <b>66.67</b>              |                    |                          |                           |
| Hussein Ali       | 5                  | 0                        | 0.00                      |                    |                          |                           |
| Kenyatta          | 5                  | 5                        | 100.00                    |                    |                          |                           |
| Kosgey            | 3                  | 0                        | 0.00                      |                    |                          |                           |
| Muthaura          | 5                  | 5                        | 100.00                    |                    |                          |                           |
| Ruto              | 3                  | 3                        | 100.00                    |                    |                          |                           |
| Sang              | 3                  | 3                        | 100.00                    |                    |                          |                           |
| <b>SUD</b>        | <b>9</b>           | <b>6</b>                 | <b>66.67</b>              |                    |                          |                           |
| Abu Garda         | 3                  | 0                        | 0.00                      |                    |                          |                           |
| Banda             | 3                  | 3                        | 100.00                    |                    |                          |                           |
| Jerbo             | 3                  | 3                        | 100.00                    |                    |                          |                           |
| <b>TOTAL</b>      | <b>80</b>          | <b>50</b>                | <b>62.5%</b>              | <b>240</b>         | <b>206</b>               | <b>85.83%</b>             |



## Annex 4 – Link between goals, budget objectives and performance indicators 2016

The table hereunder shows the link between the goals of the Strategic pPlan (2016 – 2018), the related objectives set for 2016 in the budget proposal of the Office, and the 14 identified performance indicators. Some of the 14 generic indicators are repeated in the table each time when this is required. It leads to a total of 31 indicators in the table but these will be regrouped in line with the 14 generic indicators.

| Strategic goal  | Objective 2016   | Performance indicator  |
|---|--|--|
| <b>1. Conduct impartial, independent, high quality preliminary examinations, investigations and prosecutions</b>  | 1. To produce the yearly defined level of activities in light of the allocated budget    | 1. Milestones per core activity: planned versus actual   |
|   |  | 2. Pattern of judicial findings on how we conduct our preliminary examinations, investigations and prosecutions          |
|   |  | 3. Compliance with OTP policies & standards  |
|   |  | 4. Quality of interaction with the OTP   |
|   |  | 5. Lessons learned implemented   |
|   |  | 6. Prosecutorial results in terms perpetrators<br>Arrest warrants/summonses to appear granted/requested:                 |
|   |  | <ul style="list-style-type: none"> <li>a. Persons confirmed / charged</li> <li>b. Persons convicted / charged</li> </ul> |
| <b>2. Continue to integrate a gender perspective in all areas of the Office's work and to pay particular attention to sexual and gender-based crimes ("SGBC") and crime against and affecting children, in accordance with Office policies.</b> | 1. Sexual and Gender Based Crimes Policy implemented as planned                          | 7. Counts granted / counts charged at stage of arrest warrant, confirmation, trial.                                      |
|   |  | 8. Milestones: planned versus actual   |
|   |  | 9. Impact of improvement projects on effectiveness, operational and management excellence                                |
|   | 2. Specialised training for relevant staff on interviewing vulnerable witnesses provided |  |
|   | 3. The Policy on children and implementation plan adopted.                               |  |

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| <b>3. Further improve the quality of the preliminary examinations, investigations and prosecutions</b>   | <p><b>Preliminary examination</b></p> <ol style="list-style-type: none"> <li>1. Define the possibilities to further integrate the investigative needs and start-up in the preliminary examination phase</li> <li>2. Further increase the communication in relation to preliminary examinations</li> <li>3. Further develop the early response function to upsurges or serious risks of violence</li> </ol> <p><b>Investigations</b></p> <ol style="list-style-type: none"> <li>1. Implement the selected improvement projects related to the priority areas: closing time gap, forensics and technology, analysis, standards, financial investigations and field presence</li> </ol> <p><b>Prosecutions and appeals</b></p> <ol style="list-style-type: none"> <li>1. Implement the selected improvement projects related to the priority areas: internal processes, management capabilities, case design, case review process, technology, key competences</li> </ol> <p><b>Cooperation</b></p> <ol style="list-style-type: none"> <li>1. Assessment of the quality of the internal cooperation dimension done and the selected improvement projects implemented</li> </ol> | <ol style="list-style-type: none"> <li>10. Milestones: planned versus actual</li> <li>11. Impact of improvement projects on effectiveness, operational and management excellence</li> </ol> |
| <b>4. Further adapt the Office's investigative and prosecutorial capabilities and network to the scientific and technological environment in which it operates</b> | <ol style="list-style-type: none"> <li>1. All relevant staff trained in the basics of online investigations and handling of electronic evidence</li> <li>2. Capability to use technology to present evidence in court strengthened</li> </ol>  | <ol style="list-style-type: none"> <li>12. Milestones: planned versus actual</li> <li>13. Impact of improvement projects on effectiveness, operational and management excellence</li> </ol> |

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| <b>5. Achieve the basic size so that it can respond to demands placed upon the Office with the required quality, effectiveness and efficiency</b> | <ol style="list-style-type: none"> <li>1. To implement the approved resource evolution and adapt the output accordingly</li> <li>2. To present the impact of the identified efficiency gains on the budget proposal for 2017</li> <li>3. To review the continuum of services and the possible synergies and efficiencies between the Registry and OTP</li> </ol>   | <ol style="list-style-type: none"> <li>14. Milestones: planned versus actual</li> <li>15. Impact of improvement projects on effectiveness, operational and management excellence</li> <li>16. Yearly achieved efficiency gains</li> </ol>                 |
| <b>6. Contribute to the strengthening of the cooperation and promote general support towards the mandate and activities of the Office</b>         | <ol style="list-style-type: none"> <li>1. Cooperation plans for the critical support to the investigations implemented as planned</li> <li>2. Expansion of network of operational focal points towards 3 partners</li> <li>3. Communication to stakeholders implemented as planned</li> </ol>  | <ol style="list-style-type: none"> <li>17. Milestones: planned versus actual</li> <li>18. Impact of improvement projects on effectiveness, operational and management excellence</li> </ol>   |
| <b>7. Adapt the Office's protection strategies to the new security challenges</b>   | <ol style="list-style-type: none"> <li>1. Establish a partnership with two key partners in relation to cyber and information security</li> <li>2. Establish a coordinated security-related intelligence cycle with partners within and outside the Court</li> <li>3. Update of the field craft requirements finalised</li> <li>4. Review of existing protocols with the security entities within Registry</li> </ol> | <ol style="list-style-type: none"> <li>19. Milestones: planned versus actual</li> <li>20. Impact of improvement projects on effectiveness, operational and management excellence</li> </ol>   |
| <b>8. Ensure a professional, transparent and efficient management of the Office</b>   | <ol style="list-style-type: none"> <li>1. Improved gender and nationality balance</li> <li>2. All training and performance appraisals implemented</li> <li>3. Values' embedment program implemented</li> </ol>   | <ol style="list-style-type: none"> <li>21. Evolution of the overall gender and nationality balance per year</li> <li>22. Implementation of training program per year: planned versus actual</li> <li>23. Working climate survey (incl. values)</li> </ol> |

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|   | 4. Working climate recommendation implemented   | 24. “  |
|   |   | 25. Staff well-being   |
|   | 5. Occupational hazard review performed   | 26. Impact of improvement projects on effectiveness, operational and management excellence |
|   | 6. Review of the information management strategy and structure  | 27. “  |
|   | 7. Systems for performance indicators, risk management and lessons learned established  | 28. Yearly implementation rate of the budget   |
|   |   | 29. Implementation rate of measures to control priority risks out of the OTP risk register |
| 9. <b>Develop with partners a coordinated investigative and prosecutorial strategy.</b> | 1. Consultations on the content, conditions and implications of a coordinated investigative and prosecutorial strategy assessed and OTP’s contribution identified | 30. Milestones: planned versus actual  |
|   |   | 31. Impact of improvement projects on effectiveness, operational and management excellence |