

**International Criminal Court  
Office of the Prosecutor**

## **Strategic plan | June 2012-2015**

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11 October 2013

The ICC strategic plan deals with matters of common concern and integrates the relevant parts of organ-specific strategies.

The strategic plan of the Office of the Prosecutor (OTP) is complementary to the ICC strategic plan and focuses in more detail on OTP-specific strategies.

## Table of contents

Executive summary	5
Court-wide mission	9
OTP-specific mission	9
Core values of the OTP	10
Environmental analysis	11
Review of the prosecutorial strategy	13
OTP strategic goals June 2012 - 2015	17
Priority objectives per strategic goal	18
<i><u>Strategic goal 1: conduct impartial, independent, high quality, efficient and secure preliminary examinations, investigations and prosecutions</u></i>	18
<i><u>Strategic goal 2: further improve the quality and efficiency of—</u></i>	
2.1 preliminary examinations	19
2.2 investigations	20
2.3 prosecutions	25
<i><u>Strategic goal 3: enhance the integration of a gender perspective in all areas of our work and continue to pay particular attention to sexual and gender based crimes and crimes against children</u></i>	27
<i><u>Strategic goal 4: enhance complementarity and cooperation by strengthening the Rome system in support of the ICC and of national efforts in situations under preliminary examination or investigation</u></i>	28
<i><u>Strategic goal 5: maintain a professional office with a specific attention to—</u></i>	
5.1 gender and nationality balance	30
5.2 staff quality and motivation	30
5.3 performance management and measurement	31
<i><u>Strategic goal 6: ensure good governance, accountability and transparency</u></i>	33

Performance measurement	34
Financial planning	36
ANNEX A: Link between the OTP strategic plan and budget 2014	38
ANNEX B: Methodology used to develop the OTP strategic plan	43

## Executive summary

1. The mission statement of the ICC has been complemented with an OTP-specific mission statement.
2. During the first nine years, the Office was able to create a functioning organisation, and to respond to high demand by using a strategy of focused investigations and prosecutions combined with the practice of rotating staff to cases with the greatest needs. This strategy established the Office as a relevant actor in the international arena and resulted in the first signs of its impact: the monitoring of situations under preliminary examination has impacted positively on national proceedings; the Office has been able to conduct multiple investigations in seven situations; the UN Security Council referred two situations; the importance of the justice component in peace negotiations became increasingly apparent, and there are signs that the intervention of the Office might have resulted in (at least temporary) decreases in some of the types of crime committed. Such results are positive in light of the start-up phase and the complex environment in which the Office operates.
3. While the past strategy has achieved a number of positive results, the Office has to evaluate whether it is adapted to future challenges:
  - The demand on the OTP remains very high and is not expected to decrease in the foreseeable future. The resources are not sufficient to meet this demand.
  - The developing jurisprudence indicates that the OTP needs to be (more) trial-ready at an earlier stage in the proceedings. The judges require of the OTP to submit more and different kinds of evidence than what the Office considered would suffice in its focused investigations and prosecutions approach.
  - The Office is investigating increasingly complex organisational structures that do not fit the model of traditional, hierarchical organisations. It is doing so with more limited investigative tools than are at the disposal of national law enforcement agencies. It can only do so if there is full cooperation from States.

The Office and the Court have to develop a better understanding of how new forms of organisations function and to create clarity on how such cases can be investigated and prosecuted.

States and the Office have to evaluate how successful investigations and prosecutions can be, in situations where the necessary cooperation is lacking. Cooperation becomes more than ever before a critical success factor if the Office is to produce positive results.

4. The OTP will make strategic changes at three levels in light of new challenges:

a. Policy

Due to the requirement of higher evidentiary standards and the expectation of being trial-ready earlier, the notion of focused investigations is replaced by the principle of in-depth, open-ended investigations while maintaining focus. The Office will expand and diversify its collection of evidence so as to meet the higher evidentiary threshold. The Office will consider multiple case hypotheses throughout the investigation which will further strengthen decision-making in relation to actual prosecutions.

It will aim at presenting cases at the confirmation hearing that are as trial-ready as possible. If meeting such a threshold is not possible at the moment of applying for an arrest warrant or a summons to appear, the Office intends to only proceed with the application if there are sufficient prospects to further collect evidence to be trial-ready within a reasonable timeframe.

The required evidentiary standards to prove the criminal responsibility of those bearing the greatest responsibility might result in the OTP changing its approach due to limitations on investigative possibilities and/or a lack of cooperation. A strategy of gradually building upwards might then be needed in which the Office first investigates and prosecutes a limited number of mid- and high-level perpetrators in order to ultimately have a reasonable prospect of conviction for those most responsible. The Office will also consider prosecuting lower level perpetrators where their conduct has been particularly grave and has acquired extensive notoriety.

b. Resources

The Office is unable to perform high quality preliminary examinations, investigations and prosecutions without a substantial increase in resources. The Office has reviewed different alternatives to the increase (*decreasing quality, prolonging timelines, or permanently decreasing the number of core activities*) and none of them are viable options.

The Office will continue to systematically look to improve its efficiency and cost-effectiveness, in order to limit the request for more resources as much as possible.

c. Organizational performance

By making changes to the Office's organisational capabilities performance will be further optimised.

The main change for the Jurisdiction, Cooperation and Complementarity Division (JCCD) will be the introduction of a revised cooperation model: JCCD will manage the strategic international contacts to establish the cooperation framework with partners and the Investigation Division (ID) will manage and support the implementation at the operational level.

In respect of ID the following changes will be made:

- enhancing its capabilities to collect other forms of evidence in addition to witness statements, in particular scientific evidence;
- enhancing its analytical capabilities;
- completing and validating its investigative standards with a panel of international experts, and further training its staff accordingly;
- increasing its field presence where possible;
- implementing a realignment of its staff profile with the new investigative requirements;
- conducting a strategic review of its protection capabilities in close cooperation with the Registry.

In respect of the Prosecution Division (PD) the focus of its change will be:

- hiring more senior trial lawyers to lead the investigations and prosecutions;
- improving the legal guidance given by PD to the investigations;
- creating an independent case-review capacity to advise ExCom on strategic decisions in relation to cases;
- improving the presentation of cases to Chambers;
- enhancing the capacity of the Office to handle appeals and contribute positively to the evolution of the law and practice applicable at the ICC.

The functioning of the Office as a whole will undergo the following changes:

- readjusting the relationship between ExCom, the joint/trial teams and the divisions;
- further implementing the lessons learned system for the Office;
- reorganising the information management function within the Office and reviewing the longer term information and IT strategy for the OTP;
- reinforcing the work of the Public Information Unit of the Immediate Office;
- improving the management and measurement of performance of staff and of the Office as a whole.

5. The change in strategy which is described above has been translated into six strategic goals.
  1. Conduct impartial, independent, high-quality, efficient and secure preliminary examinations, investigations and prosecutions.
  2. Further improve the quality and efficiency of the preliminary examinations, the investigations and the prosecutions.
  3. Enhance the integration of a gender perspective in all areas of our work and continue to pay particular attention to sexual and gender based crimes and crimes against children.

4. Enhance complementarity and cooperation by strengthening the Rome System in support of the ICC and of national efforts in situations under preliminary examination or investigation.
5. Maintain a professional office with specific attention to gender and nationality balance, staff quality and motivation, and performance management and measurement.
6. Ensure good governance, accountability and transparency.

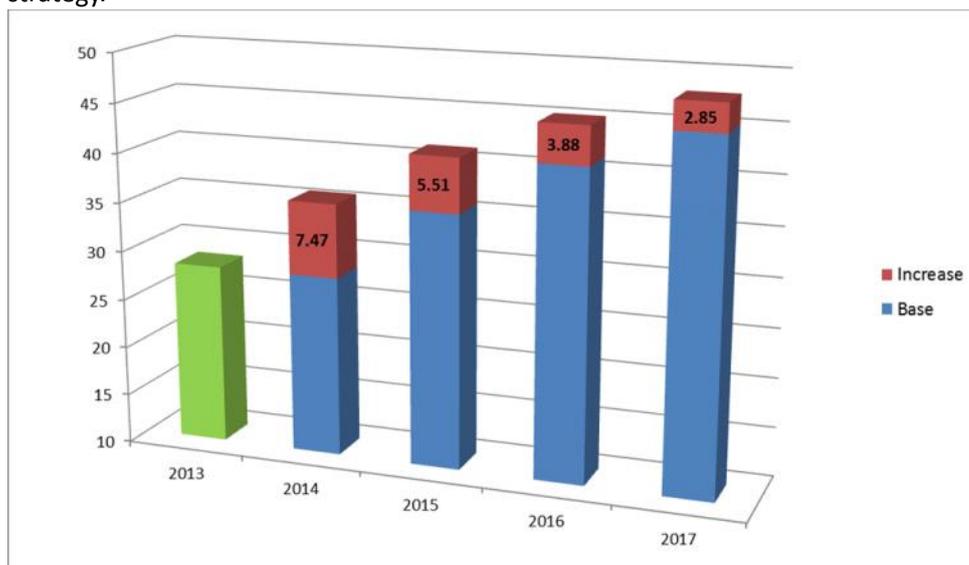
These strategic goals have been broken down into measurable objectives. The measurable objectives for 2014 have been linked to the budget 2014.

6. Determining the (cost-)effectiveness, productivity, quality and efficiency of the Office is a highly complex matter. While the Office has in the past been commended for its performance-indicators, it will review its indicators together with external partners such as academics and practitioners. The implementation of its new strategy will take time. However performance indicators like those relating to confirmation of charges and convictions will be measures of the shorter term performance. Given that cooperation impacts significantly on the success of the Office, the measurement of effective and swift support from State Parties and others will also be an important factor in this assessment.

7. Financial planning

The Office will request an important increase in resources over the coming years. While the changes in the investigation and prosecutorial strategy, and organisational changes will contribute to improving performance, lack of adequate resources is the most critical factor to ensure that the Office will successfully face the new challenges and the demands on the Office.

The table hereunder provides an overview of the increases the Office will request for, based on the present assumptions regarding the workload and the consequences of the new strategy.



## Court-wide mission

8. Within the international criminal justice system the International Criminal Court will:
- conduct preliminary examinations, investigations, prosecutions and trials of the most serious crimes within its jurisdiction fairly, effectively and impartially;
  - maintain judicial and prosecutorial independence;
  - be administratively transparent, efficient and accountable;
  - ensure effective participation of victims and appropriate protection of persons at risk from their interaction with the Court;
  - fight against impunity and contribute to the prevention of crime and long lasting respect for the rule of law.

## OTP-specific mission

9. Working with partners within the international criminal justice system we, in the Office of the Prosecutor, will impartially and independently strive to bring justice to the victims of the most serious crimes of concern to the international community, to contribute to ending impunity and to the respect for the rule of law by:
- conducting preliminary examinations, investigating and prosecuting in our quest to establish the truth;
  - limiting the need for the Court's intervention through complementarity;
  - promoting peace by preventing the commission of such crimes;
  - protecting the safety, well-being , dignity and privacy of victims, witnesses and others at risk on account of their interaction with the OTP;

within an environment, where all are treated with fairness and respect.

## OTP core values

10. Common core values are essential to creating a high performing office. It provides clarity respecting the type of person the Office should employ, it offers transparency and predictability for those dealing with the Office and it will guide staff in showing initiative, taking decisions and assessing their (own) performance.

Given the complex environment and sensitive nature of the work of the Office, the need for a set of core values to which all staff subscribe and adhere, is even more important.

11. The Office has already identified the following five fundamental rules in its *Code of Conduct* for staff:

1. Respect, regard and adhere to the Rome Statute and the Rules of Procedure and Evidence.
2. Conduct yourself in a manner befitting the status of international civil servants, displaying the highest standards of integrity, independence, impartiality, professionalism and confidentiality.
3. Be conscious of the purpose of the Court and the crucial role the Office plays in investigating and prosecuting international crimes, and in the administration of justice.
4. Respect human rights and fundamental freedoms, the principle of equality before the law, the presumption of innocence and right to a fair trial.
5. Be respectful, courteous and considerate towards victims and witnesses, all staff members, elected officials of the Court and all counsel.

12. These five fundamental rules will in the coming months be complemented by a set of values that will further define the Office's culture. The Office will engage in an Office-wide exercise to identify these values and to translate them into all relevant aspects of our organization (e.g. recruitment, training, appraisals).

## Environmental analysis

### Past achievements

13. During the first nine years, the main challenges of the OTP were to create a functioning Office, to respond to the high demand for its intervention and to establish the relevance of the ICC.
14. An Office structure has been established in which preliminary examinations are handled by JCCD. Joint and trial teams composed of staff from the three operational divisions<sup>1</sup> conduct the investigations and prosecutions. They report to an executive committee<sup>2</sup> (ExCom) that advises the Prosecutor in her decision-making. Operating standards have been developed over the years, and have been consolidated in an Operations Manual. Today the OTP is capable, *with the assistance of the Registrar, States and other partners*, to perform its core functions of preliminary examinations, investigations and prosecutions, according to the standards of the Office, in multiple countries under varying and difficult circumstances.
15. To meet the high demand and to establish its relevance, the Office developed a strategy of focused investigations and prosecutions: limiting the evidence to be presented in Court was expected to increase the expeditiousness and efficiency of the investigations and the proceedings. The Office also adopted a strategy of limited growth in resources notwithstanding the fact that the number of simultaneous situations and cases grew extensively over time. This strategy of limited resources was expected to reinforce the complementarity principle. It also accorded with the limited possibilities and willingness of States to increase the Court's resources. The focused approach together with a rotational model in which resources were shifted to the cases with the greatest needs was expected to enable the Office to absorb its growing workload. This strategy, followed during its first nine years, established the Office and made it a relevant actor in the international arena and resulted in the first signs of its impact: the monitoring of situations under preliminary examination has impacted positively on national proceedings; the Office has been able to conduct multiple investigations in seven situations; the UN Security Council referred two situations; the importance of the justice component in peace negotiations is increasingly apparent, and there are signs that the intervention of the Court might have resulted in (at least temporary) decreases of some forms of crimes committed. Such results are positive in light of the start-up phase, and the complex environment in which the Office operates.

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<sup>1</sup> JCCD, ID and PD.

<sup>2</sup> Prosecutor, Deputy Prosecutor, Director and Coordinator of each operational division, Head of the Appeals Section, Head of the Legal Advisory Section, and the Head of Services Section for administrative matters.

## Future challenges

16. While the past strategy achieved a number of positive results, the Office has to evaluate whether it is organised to meet and adapt to future challenges.
17. The demand on the OTP remains very high and is not expected to decrease in the foreseeable future:
  - Close monitoring and frequent interaction with countries where situations are under preliminary examination result in an increased ability and willingness of those countries to conduct genuine investigations and prosecutions. However the Office is presently not able to sustain such high intensity efforts due to a lack of resources.
  - None of the situations under investigation can yet be closed: investigations are on-going; new investigations are still justified; arrests are pending and judicial proceedings are taking place. The Office will continue with its policy of investigating and prosecuting Rome Statute crimes no matter which side in a given conflict in a situation may be alleged to have committed them.
  - New situations might have to come under preliminary examination or investigation.

The rotational model that was used to meet the staffing demand for the Office's investigations and prosecutions has surpassed its limits. Current staffing levels are insufficient to meet all the demands. The OTP was initially set up to support two teams engaged in parallel investigations. Over time investigations have increased to seven. At the same time, the evidence obtained in investigations where no arrest had taken place had to be preserved and safeguarded. Moreover, investigators providing support during trial increasingly became an important function requiring resources. However, this increased demand was absorbed without any real increase in investigative resources, namely, by reducing the team size per case and by delaying needed investigative activities. While such strategic decisions were justified at the time as explained above, it has resulted in an untenable situation currently: active investigations which are understaffed and investigations in hibernation where the capacity is lacking to maintain contact with the witnesses and preserve their cooperation.

18. The developing jurisprudence reflects that the OTP needs to be (more) trial-ready at an earlier stage in the proceedings and that judges expect the Office to submit a more substantial range of evidence in its cases.

The OTP will continue to analyse the Court's decisions in relation to its investigative and prosecutorial practices in order to learn from experiences acquired and to determine whether further changes are needed. In the next decade, the Office needs to put a strong emphasis on success in court in its pursuit of the truth. This is an essential component so as to ensure the credibility of the Office and its long term impact. While the Office will continue to put forward the best case possible in relation to the present proceedings, it will also manage a transitional phase before the results of its new strategy become tangible while the jurisprudence continues to develop.

19. The Office does investigations and prosecutions into often complex structures with the most responsible often keeping a distance between themselves and the crimes, using different mechanisms to conceal their role.

The structures through which these crimes are committed cover a broader range than the traditional, clear hierarchical structures. They include ideology-driven cellular structures like those encountered in the world of terrorism, as well as temporary and much more fluid structures based on the mobilisation of communities.

Investigations of the most responsible persons who try to create plausible deniability for themselves pose challenges similar to organised crime investigations in national jurisdictions. The Office however faces an even bigger challenge as the investigative tools it has at its disposal are more limited and depend on State cooperation. Specialised investigative techniques are in most cases neither feasible nor available (e.g. infiltration, interception of voice and electronic communication, controlled delivery, etc.). Such obstacles can only be overcome with full cooperation from all partners involved.

The OTP and the Court have to develop a better understanding of the way new forms of organisations function but also have to create clarity on how such cases can be investigated and prosecuted, particularly in the light of the challenges outlined.

States and the Office have to evaluate how successful investigations and prosecutions can be conducted in situations where the necessary cooperation is insufficient or lacking. Cooperation becomes more than ever before a critical success factor if the Office is to achieve positive results.

## Review of the prosecutorial strategy

20. The Office will introduce strategic changes at three levels to adapt to the changing environment: at the policy level, at the resource level and at the level of its organisational performance.

### Policy review

21. The Office has followed a prosecutorial strategy based on the following principles:

- Investigating and prosecuting perpetrators bearing the greatest responsibility.
- Focused investigations and prosecutions.
- A positive approach to complementarity.
- Take a victim-centred approach in all aspects of the work of the OTP.
- Maximising the preventive impact.

22. In the light of limitations in investigative possibilities and/or a lack of cooperation and the required evidentiary standards, the Office is re-thinking its approach to proving the criminal responsibility of the most responsible. In such circumstances a strategy of gradually building upwards is needed. The Office would therefore first investigate and prosecute a limited number of mid- and high-level perpetrators in order to ultimately have a reasonable chance to convict the most responsible. The Office will also consider prosecuting lower level perpetrators where their conduct has been particularly grave and has acquired extensive notoriety. Such a strategy will in the end be more cost-effective than having unsuccessful or no prosecutions against the highest placed perpetrators.
23. Given the expectation from the judges to receive cases which are trial-ready at the confirmation hearing and with a higher standard of evidence, the Office is adapting its prosecutorial strategy accordingly.

Firstly, it will expand and diversify its collection of evidence so as to meet the expectations of the Chambers.

Secondly, it will apply multiple case hypotheses –incriminating and exonerating- throughout the investigation which will further strengthen decision-making in relation to prosecutions.

Thirdly, the Office will aim at presenting cases at confirmation hearing that are as trial-ready as possible. If meeting such a threshold is not possible at the stage of applying for an arrest warrant or summons to appear (e.g. the need to act swiftly due to an arrest opportunity or witnesses only willing to cooperate after an arrest), the Office intends to only proceed with the application if there are sufficient prospects to further collect evidence to be trial-ready within a reasonable timeframe.

The notion of focused investigations is therefore replaced by the principle of in-depth, open-ended investigations while maintaining focus to avoid over-expanding the investigations at the expense of efficiency.

The expected result of this shift in strategy will be an increased confirmation of charges and conviction rate. The higher cost of the investigation will be compensated in part by the efficiency gains downstream and the increased cost-effectiveness flowing from positive trial outcomes.

## **Resource review**

24. The Office is unable to produce high quality preliminary examinations, investigations and prosecutions without a substantial increase in resources. The Office is also not able to meet all the requests for its intervention, which ultimately impacts negatively on its legitimacy. For example, the Office is unable to conduct a proper second investigation in the Côte d'Ivoire due to the workload from the existing cases.

The Office therefore proposes a phased increase of resources over a period of four years.<sup>3</sup> Emphasis is placed on the initial investment of sufficient resources to develop cases as fully as possible even before engaging the judicial process. The aim is to be as trial-ready as possible by the confirmation of charges hearing. This should allow the Office to move speedily to trial following confirmation, thus reducing delay and cost at that stage. Moreover, careful planning and investment of sufficient resources at the outset should ensure that a successful outcome in the eventual trial proceedings is obtained.

25. There are no defensible alternatives to the increase of resources:

- The OTP cannot compromise on its quality. The requested increase is needed to reach higher quality standards required. Without this increase, other investments in resources risk not being cost-effective.
- Compensating, by way of a reduction of the basic team composition or by prolonging investigations or prosecutions, is not a viable option due to the need for a swift response to unfolding situations. Such delays could also result in loss of evidence (e.g. due to death or disappearance of witnesses) or in other hidden costs elsewhere in the Court's budget (e.g. witness protection).
- Permanently reducing the number of simultaneous investigations and prosecutions is not a viable option given the need for the Office's intervention.
- Savings that could be made in other areas (e.g. training or equipment) are too small to be relevant and impact on the quality which is central the Office's new strategy.

26. The Office is mindful of the important investment it is requesting States to make in order to enhance the effectiveness of its intervention. In order to limit the request as much as possible, the Office will continue to systematically look for possibilities to improve its efficiency and cost-effectiveness:

- through close cooperation with the Registry;
- by strengthening information management systems;
- by fulfilling disclosure obligations to the defence and the Chambers with greater efficiency, in order to avoid delays and help the Chambers ensure that pre-trial and trial proceedings are expeditious and fair;
- by institutionalising a lessons learned practice and process in order to learn from past experience;
- through cooperation with the Court's Office of Internal Audit to enhance compliance with rules governing key features of the OTP's operations;

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<sup>3</sup> See para. 99 ("Financial planning").

- by strengthening the capacity of the Joint Teams to become high-performance teams operating to a high level of skill and efficiency.

## Organisational performance review

27. While the shift in prosecutorial strategy and the increase in resources will have a significant positive impact on the ability of the Office to successfully investigate and prosecute, the Office will also introduce changes to its organisation to further optimise the quality and efficiency of its work. The points hereunder will focus on the most important changes while more detailed information is offered in the section on the priority objectives per strategic goal.
28. The main change for JCCD will be the introduction of a revised cooperation model: JCCD will manage the strategic international contacts to establish the cooperation framework with partners and ID will manage and support the implementation at the operational level.
29. In respect of the Investigation Division the following changes will be made:
- enhancing capabilities to collect various forms of evidence in addition to witness statements, in particular scientific evidence;
  - enhancing analytical capabilities;
  - completing and validating investigative standards with a panel of international experts, and training staff accordingly;
  - increasing field presence where possible;
  - implementing a realignment of staff profile (*gender, nationality, professional background, language and level of experience*) with the new investigative requirements (*increased country knowledge and field presence, diversified collection, higher level of experience*);
  - further enhancing the protection capabilities of the Office together with the Registry.
30. In respect of PD the following changes will be made:
- hiring more senior trial lawyers to lead the investigations and prosecutions;
  - improving the legal guidance given by PD to the investigations;
  - creating an independent case-review capacity to advise ExCom on strategic decisions in relation to cases;
  - improving the presentation of cases to Chambers;

- enhancing the capacity of the Office to handle appeals and contribute positively to the evolution of the law and practice applicable at the ICC.

31. The functioning of the Office as a whole will undergo the following changes by:

- readjusting the relationship between ExCom, the joint/trial teams and the divisions by:
  - increasing delegation so that ExCom focuses on strategic issues;
  - improving the quality of reporting so that ExCom can be better informed of the status of the cases and of the options available including their assessment;
  - moving from a joint leadership for investigations and prosecutions to a model where (1) PD has the ultimate responsibility in the team, and (2) the mechanisms to ensure a proper functioning of a joint or trial team are closely monitored (e.g. process for case review, integrated planning, progress reporting, respect of competencies within the team, etc.)
- focusing on longer term development of the core competencies of the Office, and on quality and compliance review;
- Institutionalising a lessons learned practice and process in order to learn from past experience;
- reorganising the information management function within the Office and reviewing the longer term information and IT strategy for the OTP;
- improving the management and measurement of performance of staff and of the Office as a whole.

***OTP strategic goals June 2012 - 2015***

32. The OTP has identified six strategic goals for the period 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 the preliminary examinations, the investigations and the prosecutions.
3. Enhance the integration of a gender perspective in all areas of our work and continue to pay particular attention to sexual and gender based crimes and crimes against children.
4. Enhance complementarity and cooperation by strengthening the Rome System in support of the ICC and of national efforts in situations under preliminary examination or investigation.

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

### ***Priority objectives per strategic goal***

33. This section of the strategic plan develops in more detail each of the strategic goals for the period 2013 – 2015. In addition to clarifying the rationale behind each goal, it also provides an overview of the tentative list of tangible objectives that the OTP will seek to achieve within this time period. These objectives will be reviewed yearly based on the results achieved, the changes in the OTP's operating environment and its lessons learned.

Annex A reflects the integration of the strategic goals with the budget objectives 2014 and the related performance indicators.

#### **Strategic goal 1: Conduct, impartial, independent, high quality, efficient and secure preliminary examinations, investigations & prosecutions**

##### **34. Quality and efficiency**

The quality and efficiency of the core activities will be guaranteed through (1) the standards set out in the OTP operations manual, (2) training, (3) carefully planned and controlled implementation of the core activities, including an increasing emphasis on quality control and compliance, and (4) a continuous improvement process through lessons learned which all teams and units will conduct in principle at least twice a year.

##### **35. Quantity**

The completed output for each core activity for the coming 3 years is difficult to predict. While the Office supports the idea of multi-annual forecasts, its workload and outputs are primarily determined by external factors outside of its control, including:

- the commission of crimes that fall under ICC jurisdiction;
- the unique investigative requirements of each case;
- adequate resources;
- effective cooperation
  - to assess the genuineness of national investigations and prosecutions;
  - to access evidence;
  - to effect the arrest of suspects;
- the security situation in the areas where the Office investigates;
- the political dynamics surrounding each situation.

The Office will produce an annual, best possible forecast of its volume of activities. Activities that could not be foreseen will be covered via the contingency fund.

### 36. Security

The protection of staff and persons at risk on account of their interaction with the Office is crucial in order to conduct successful investigations and prosecutions.

In addition to improving protection,<sup>4</sup> the OTP will continue to define, for each situation in which it operates, a strategy that prevents or manages the foreseeable risks. It will continue to collaborate with partners, particularly the Registry, in the implementation of this strategy.

In the case of attempts to obstruct justice, the Office has adopted an active investigation and prosecution strategy designed to protect the integrity of the case.

### 37. Objectives 2013 – 2015

- To produce the following output in 2014, if the proposed budget is approved:
  - Public, preliminary examinations: at least 7
  - Investigations
    - Situations 8
    - Active investigations 5
    - Hibernated investigations 8
    - Trial/Appeal phase support 7
    - Art. 70 investigations Confidential
  - Trials 3
  - Appeals 4
- To review the status of investigations in hibernation, to take stock of the work to date and assess the need for additional investigative and prosecutorial steps (2014 – 2015).
- To have systematically updated security assessments for each situation, which identify the foreseeable risks and required mitigating measures (2013 – 2015).
- To implement all required mitigating measures in cooperation with the Registry and other partners as planned (2013 – 2015).
- Art. 70 strategy implemented (2013 – 2015).

### **Strategic goal 2.1: Further improve the quality and efficiency of the preliminary examinations**

38. Preliminary examinations are the first step in the core activities of the Office. At this stage the Office seeks to collate and analyse relevant information on crimes, proceedings and interests of victims in order to determine whether there is a reasonable basis to open an

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<sup>4</sup> See para. 49.

investigation. Assessing whether relevant and genuine national proceedings are taking place forms part of this analysis and often requires monitoring the situation over a prolonged period of time.

The Office intends to further improve the knowledge and understanding of the preliminary examination process and decision making by publically sharing more information about its basis, purpose and method. This will enhance transparency and understanding and prevent misperceptions about this aspect of the work of the Office.

39. National authorities conducting genuine investigations and prosecutions will obviate the need for the Court's intervention. This is one of the most cost-effective ways for the Office to intervene. The OTP will achieve this by independently and impartially monitoring situations, reporting on situations and engaging States and other partners to undertake or support genuine national proceedings. The Office has learned that, in order to increase its impact, a sustained, intense monitoring of and interaction with the State and other relevant stakeholders, in particular civil society, respecting situations under preliminary examination, is a critical success factor which is the reason. This necessitates an increase of resources in this area.

40. Given that the opening of a preliminary examination creates expectations amongst the affected communities, an enhanced communication strategy is critical.<sup>5</sup>

#### 41. Objectives 2013-2015

- Policy on preliminary examinations issued (2013).
- Yearly report on status of preliminary examinations (2013 – 2015).
- Publication of reports outlining the basis of certain decisions taken by the Prosecutor on situations under preliminary examination (2013 – 2015).
- Activities aimed at having a preventative impact conducted as planned (2013 – 2015).
- Lessons learned translated into good practices to be implemented and captured in the Operations Manual (2013 – 2015).

#### **Strategic goal 2.2: Further improve the quality and efficiency of investigations**

42. During its first nine years the approach of the Office was based on a number of strategic choices.

The first was to have focused investigations with sufficient, but limited evidence being presented in Court for the reasons explained earlier.<sup>6</sup> Applying a rotational model in which

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<sup>5</sup> See also para. 68.

<sup>6</sup> See para. 15.

resources were shifted across investigations was a second strategic choice. The third was to have a limited field presence during its start-up phase so as not to expose staff and witnesses to risk while the Court was developing its protection strategies and capabilities. The fourth strategic choice was to test different investigative models throughout 2004-2009 in joint teams which brought together staff with different professional and national backgrounds. The alternative of adopting investigative standards from the beginning was rejected because the Office did not consider it mandatory to do so before some practical experience had been gained and also because it wanted to test the approaches from different systems. Since 2009, the Operations Manual<sup>7</sup> has been in place and covers, amongst other things, all steps of the investigative process. As issues surfaced during the first trials and through lessons learned processes, standards were also refined (e.g. disclosure, management of intermediaries).

43. As explained above, the changed environment in which the Office operates and lessons learned from its early years required the Office to review its strategy in relation to investigations and prosecutions.<sup>8</sup>

The shifts in strategy and resources that have been identified will have a major positive impact on the ability to conduct successful investigations: *build upwards strategy; open ended, in-depth investigations; expanded investigation teams.*<sup>9</sup>

The changes to the organizational capabilities of the other parts of the Office and of the Office as a whole will also be essential: *a new cooperation model; increased legal guidance and case review by PD; a redefined relationship between ExCom, joint/trial teams, and divisions as well as within joint teams; improved Office-wide information management; institutionalised lessons learned processes.*<sup>10</sup>

This section of the strategic plan focuses on the main changes that will be implemented within ID. The Office has, in a consultative process internally and with external partners, identified the critical success factors that need to be managed in order to conduct successful investigations. These have been evaluated and those factors internal to ID, requiring an important shift in light of the new strategy, are further highlighted hereunder.

### Overview of the critical success factors for investigations

External to the Investigation Division	Internal to the Investigation Division
1. Clarity on evidentiary standards	9. Investigative strategy
2. Prosecutorial goals and strategy	10. Investigation management
3. Legal guidance for the investigations	11. Investigative standards

<sup>7</sup> An updated version was developed in 2011.

<sup>8</sup> See paras. 16-19.

<sup>9</sup> See paras. 21-26.

<sup>10</sup> See paras. 27-28, 30-31.

4. Timely and effective cooperation	12. Witness management
5. Security	13. Field presence
6. Number of resources	14. Quality of resources
7. Office-wide information management	15. Cultural sensitivity
8. Investigative tools	16. Research and development

**44. Enhancing the capabilities to collect other forms of evidence**

While witness statements and other documentary evidence will always remain part of our collection effort, the Office has explored the possibilities of collecting alternative forms of evidence. Where possible, documents were seized, medico-forensic work was done, intercept material was exploited and financial avenues were explored.

The challenges that the Office faces with regard to witnesses, including intimidation and protection, as well as requests from Chambers for more diversified evidence have required a rethinking on the use and reliability of witness evidence. The Office is also facing an explosive growth in its access to digital data, including from (smart)phones and tablets, servers or from the possibilities offered by the internet. The increased access to such evidence in combination with its high degree of reliability requires an expansion in the Office capability to collect these forms of scientific evidence.

The Office will expand its expert capabilities in the field of voice communication, electronic data and cyber investigations. Additionally, it will expand and enhance its cooperation with partners in order to strengthen the ability to collect alternative forms of evidence. The investigation plans will, from the start of each investigation, include a systematic review of the options for obtaining evidence alternative to witness statements.

**45. Enhancing analytical capabilities**

The Office aims at strengthening the quality and use of analysis, including to assist in investigations management and case selection. The increase in the number of investigators and analysts will lead to more, and better quality of, evidence being collected. Adequate resources for data input and collation will have to be made available to support analysis.

Proper analysis of information and evidence will become even more critical to the determination of the nature of crimes committed and identifying possible targets. The Office aims at upgrading several areas of investigative analysis, including telecommunications, organisational structures and evaluation of sources. In addition to the improvement of standard analytical products (reports on crimes, links, structures, sources, etc.), the Office will enhance its databases to have all relevant information, for instance, concerning persons or incidents, better structured and integrated, for easy retrieval.

While PD will review the facts to make a legal determination, the role of the analysts will focus on giving advice on which facts have been established with sufficient certainty, identifying gaps in the evidence, generating potential leads and providing an overview of leads that have not yet exploited.

**46. Certification of staff**

Given the diverse backgrounds of staff within ID, it is essential to implement a uniform standard in relation to investigation methods. The Operations Manual presently provides for this necessary framework. Given the importance of the investigations of the ICC, the highest possible standards should apply. The Office is therefore creating a multilateral project group which will have the task of (1) identifying and validating the best practices in relation to international investigations, and (2) designing a certification process. Multiple partners from the other tribunals and the law enforcement and academic sectors have already committed to participation in this longer term project.

In the meantime, the Office will continue to review its standards through the lessons learned process and ensure consistent application through training and quality control.

**47. Revised staffing structure**

The Office values having staff from diversified backgrounds. It strengthens the capacity to, amongst others, identify alternative ways of finding evidence, be sensitive to witnesses and operate in different environments.

The new approach to investigations requires the Office to assess whether its current mixture of level of experience, types of expertise, language, gender and nationality accords with the new requirements. These requirements can be summarised as the need to have a higher field presence, a stronger embedding of country or regional experts into the investigative teams, increased capability to deal with new forms of evidence and increasing the experience level of staff recruited in order to strengthen the traditional as well as the more specialised investigative capabilities.

**48. Increased field presence and country knowledge**

The Office has relied on a limited field presence, given the often difficult environment in which it operates in combination with the development of protection strategies and capabilities. At the same time, experience over the years has demonstrated the value of being more (visibly) present in the field. This offers more possibilities to be reached and to develop and manage networks that can support the investigations. The Office will therefore explore new models of field presence in concert with the Registry. While ID will take the lead in this change in field presence of the Office, it will also consider the need for the presence of members of other divisions.

The Office will also aim to have a stronger presence of persons from the region of the situation country as this will help in a better understanding of the situation and in increased access to evidence. Initially the Office had country experts embedded in its first investigation teams but it had to abandon that idea due to resource constraints. While this shift in strategy will come with added security challenges, the Office believes that these risks can be managed and they will not outweigh the expected benefits.

Finally, partners play a critical role in supporting the investigations. Not only are international public organisations and NGO's often the first at a crime scene but individual citizens are uploading more and more footage onto the Internet. While respecting each other's mandate and independence the Office intends to, as part of its lessons learned, evaluate the role that the NGO-community has played in its investigations, and to explore

how new forms of cooperation would allow the Office to directly access to evidence that has been identified by these first responders.

#### 49. Improving witness protection

The protection of persons at risk on account of their interaction with the Office is critical to the success of investigations and prosecutions, and is accordingly an important part of the strategy of the OTP. From the outset, it is an integral part of the planning and execution of investigative activities. Although the Office has not experienced the death of a witness to prevent testimony, there is clearly an increase in attempts to hurt or interfere with persons interacting with the Office or their relatives. The level of sophistication with regard to interference with witnesses has increased. Blogs and social media also create new protection challenges, particularly with names of persons allegedly interacting with the Court being published. All of this results in a general climate of fear and in reduced cooperation of witnesses which impacts on the ability of the Office to investigate and prosecute.

Given that protection is so critical, the OTP and the Victims and Witnesses Unit (VWU), two years ago, established a protocol that provides for clear responsibilities and coordination mechanisms to ensure the best possible protection for persons at risk on account of their interaction with the Office. The protocol needs to be reviewed in order to assess whether the protection strategy, tools and organisation continue to meet the current security risks the Court has to deal with. The Office will support the Registrar in the implementation of a plan to reform and reorganise the VWU.

The OTP and the VWU will also start consultations for the protocol on provision of assistance to witnesses.

The Office will continue to investigate and where necessary prosecute offences against the administration of justice. However, the Office strategy of focusing on the collection of evidence other than witness testimony, for example forensic and documentary evidence, voice and cyber communication, will also minimise the personal risk of injury and further traumatisation to persons, on account of their interaction with the Office.

#### 50. Objectives 2013-2015

- Enhancing the capabilities to collect alternative forms of evidence
  - Scientific advisory board created (2013)
  - Policy on cyber investigations developed (2014)
  - Cyber investigative capabilities implemented (2014 – 2015)
  - Guidelines on telecommunications investigations developed (2014)
  - Guidelines on forensic investigations reviewed (2014)
- Enhancing analytical capabilities
  - Review of the role of the analysts (2013)
  - Upgrading of the quality of analytical products (2014 – 2015)
  - Development of improved analytical databases (2014 – 2015)

- Certification of staff
  - Multilateral working group created (2013)
  - Identification and validation of international standards (2014 – 2015)
  - Training of investigators and analysts in revised standards done (2014 –2015)
  - Feasibility of a certification of all investigative staff evaluated (2015)
- Revised staffing composition
  - Review of staffing composition in light of new investigative strategy (2013)
  - Transition towards new staffing composition (2014 – 2015)
- Increased field presence and country knowledge
  - Development and planning of new field presence strategy (2014)
  - Implementation of the new field presence strategy (2014 – 2015)
  - Development of new cooperation model with first responders (2014 – 2015)
- Improving witness protection
  - Strategic review of the protection capabilities with the Registry (2013-2014)
  - Protocol with the VWU on the provision of assistance to witnesses established (2014)
- Lessons learned respecting investigative activities translated into good practices and captured in the Operations Manual (2013 – 2015).

**Strategic goal 2.3: Further improve the quality and efficiency of prosecutions**

51. The OTP will continue to conduct focused prosecutions in which we present the relevant evidence in a clear and efficient way. With the first trials being concluded, sufficient experience has been acquired to review and consolidate the existing practices. As part of its strategy to further improve the quality and efficiency of prosecutions and enhance prosecutorial results, the OTP will continue to review the Court's decisions in relation to its prosecutorial practices to determine whether a change to its prosecutorial strategies and standards is necessary.
52. The OTP will identify, consolidate and apply good practices in relation to filings and hearings with the aim of enhancing consistency, efficiency and quality.
53. The OTP will also actively contribute to the in-depth inter-organ lessons learned review of the judicial processes in order to improve the fairness, transparency and expeditiousness of the proceedings.
54. The Office will change its leadership model for the joint teams. The past joint leadership model comprised a representative of each operational division jointly leading an investigation. The Office has decided to give the end responsibility for a joint team to the most senior PD representative in the team. This decision emphasises that the ultimate objective of the team is to establish the truth and to determine which case should be prosecuted on the basis of the evidence collected. The shift implies that while PD leaders

will have strategic control in the team, they will have to respect the competencies of the representatives of other divisions to make it work. It will require a different skill-set obliging the senior trial lawyer from PD leader to be able to lead without micro-managing, manage multidisciplinary teams, and integrate different interests while at the same time providing legal guidance. The legal guidance will be further strengthened through reorganisation of the PD teams. The functioning of the joint teams will further be closely monitored by ExCom at least in the initial management of the change, given that they are critical for the success of the investigations and prosecutions.

55. The decision to prosecute a person and to trigger judicial proceedings against him/her is one of the most important decisions to be taken by the Office. The Office has accordingly decided to organise an internal review committee, independent of the joint team, which will advise ExCom on the strength of the presented case and on the desirability of proceeding with the prosecution.
56. PD will also continue its programs of advocacy training, in both oral and written advocacy, at the trial and appellate levels in order to enhance the skill, confidence, and efficacy of counsel dealing with cases before the Chambers.

**57. Objectives 2013-2015**

- Increased hiring of senior trial lawyers to lead investigations and prosecutions (2013 – 2014).
- Prosecutorial strategies and standards reviewed (2013 – 2014).
- Witness preparation guidelines to focus evidence fairly and effectively developed, applied and included in the Operations Manual (2013).
- Improved case review process established (2013).
- Improved quality of filings and presentation of cases in Court (2014).
- Templates for identified filings developed and implemented (2013 – 2014).
- Revised training program for prosecutors defined in annual Training Plan and implemented (2013 – 2014).
- Evidence disclosure practices revised, implemented and Operations Manual updated (2014).
- Pexo guidelines revised, implemented and Operations Manual updated (2014).
- Legal guidance systems and processes by PD lawyers to investigations reviewed and implemented (2014).
- A legal research database available to the whole OTP (2014).

- Lessons learned of prosecutorial performance in Court translated into good practices and incorporated into the Operations Manual (2013 - 2015).

**Strategic goal 3: Enhance the integration of a gender perspective in all areas of our work and continue to pay particular attention to sexual and gender based crimes and crimes against children**

58. Notwithstanding a serious and systematic underreporting of sexual and gender-based violence, as well as of the crimes committed against children, the OTP will focus on these crimes and will continue to pay special attention to them from the stage of preliminary examinations, through to its case selection. These crimes will be factored into the assessment of gravity.

59. Bearing in mind the many challenges that face the Office with regard to the investigation and prosecution of these crimes, the Office will continue to be innovative in its evidence collection and presentation of these charges in Court.

60. The Office has also given special attention to its interaction with victims of such crimes by training its investigators to better deal with vulnerable victims and witnesses, in particular, victims of sexual and gender-based violence and children. Psychosocial assessments will be conducted to determine if the witness may be interviewed without the risk of re-traumatisation. The Office will further implement an appropriate specialisation model for the interviewing of children, and of victims of sexual and gender-based violence.

61. In addition to learning from its own experiences, the Office intends also to draw on the experience of the other tribunals in investigating and prosecuting sexual and gender based violence.

62. Gender-sensitive approaches to investigations, including the availability of skilled male and female investigators to enable same-sex and mixed-sex investigations as appropriate will be taken into consideration.

**63. Objectives 2013-2015**

- Sexual and Gender Based Crimes Policy finalised (2013).
- Guidelines on novel ways of proving sexual and gender based violence on a large scale developed (2014).
- Policy to avoid re-traumatisation or secondary traumatisation defined (2014).
- Children Policy finalised (2014).
- Specialised training for investigators to interview vulnerable witnesses reviewed and implemented (2014 – 2015).

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

## **Cooperation**

64. Cooperation is crucial to the success of the core activities of the OTP. Support for the activities of the Office at all stages of its operations takes many forms and comes from many different partners. It entails the logistical support to allow the OTP to operate around the world; it determines the accessibility of the information and evidence needed; it impacts considerably on our ability to protect staff and persons at risk on account of their interaction with the Court; it determines the access to expertise which is not available within the OTP, and it determines whether Court orders are implemented and arrests effected. In sum, it is a crucial factor in determining the pace and success of the OTP's core activities.

The increase of the OTP's investigative and prosecutorial activities combined with the limited resources of JCCD has put a strain on its cooperation model. The setting of cooperation priorities within the joint and trial teams reduces this tension to some extent but it is an insufficient solution given that too many requests for assistance remain pending for too long even though the JCCD staff is working hard to deal with all of them. A reengineering of the cooperation model will allow improving the speed of cooperation and increases the chances of a positive reply. The Office is to introduce a new model of organising its cooperation approach in which the strategic contacts are managed by JCCD while the operational contacts will be handled by ID. The strategic contacts will determine the scope and structure for cooperation while the operational contacts will, within the established framework, prepare the specific cooperation need, and follow-up on its implementation. ID will keep JCCD fully informed and JCCD will remain responsible for the actual transmission of RFAs.

65. Cooperation requires trust and respect between the partners, alignment of interests and an established network of contacts.

The OTP will strive to increase trust and respect by ensuring transparency and predictability through the publication of its policies, more transparency of its activities (e.g. the publication of policies and reports on certain situations under preliminary examination) and through further development of proper accountability mechanisms as envisaged within the framework of the Rome Statute (see goal 5.3).

## **Complementarity**

66. Cooperation is also essential to support complementarity in situations under preliminary examination or investigation. The assistance of States and other partners can enable a State to genuinely investigate and prosecute crimes that fall within the jurisdiction of the Court, obviating the need for the Court's intervention. The OTP will assist in such efforts, where appropriate.

67. Cooperation and complementarity also include investigations and prosecutions by national authorities outside of situations under preliminary examination or investigation. Conflict situations often create emigration flows of perpetrators and victims. This phenomenon also influences the emergence of new organised crime activities. Some States have already created dedicated investigative and prosecutorial entities to deal with the needs of such victims or to hold alleged perpetrators of crimes, who move into their territories, accountable. The OTP will seek to develop stronger relationships with national authorities in order to enhance coordination of activities and develop a common understanding of how to conduct such investigations and prosecutions. Together with Interpol, the Office is exploring ways to create a common platform for improved interaction between the relevant members of the law enforcement community.

## Communication

68. Communication remains a critical function to ensure understanding and cooperation from all stakeholders, partners and the communities the OTP serves. The Office will continue promoting a greater understanding of its work through timely and accurate information to the public at large and to targeted audiences using local, national and international media. The Office will support special projects which enhance public understanding of its work: projects such as the production of documentaries, involving opinion shapers, prominent members of the international community and intellectuals who can contribute to explaining its activities. The Office will contribute to the Court's external communication.

### 69. Objectives 2013-2015

- Cooperation plans for the critical support to the investigations successfully implemented (2013 – 2015).
- Cooperation models allowing for a faster response to cooperation needs developed with key partners (2013 – 2015).
- Law Enforcement Network (LEN) further established with investigative, prosecutorial and other entities to increase the exchange of information, the coordination of activities and the development of common standards (2013 – 2015).
- Increased complementarity by encouraging genuine national proceedings where States show willingness and an ability to conduct genuine investigations and prosecutions, and by encouraging efforts of other States and partners to provide assistance (2013 – 2015).
- Adequate budgetary resources secured through engagement with the CBF and ASP (2013 – 2015).
- Communication plans implemented as planned (2013 – 2015).

**Strategic goal 5.1: Maintain a professional office with a specific attention to gender and nationality balance**

70. The OTP considers the respect for gender and nationality balance to be an important guarantee of its sensitivity to diversity, which is in itself essential to the proper functioning of the Office. Good gender balance and geographical diversity of staff enhances the capacity of the OTP to perform effectively.

71. While the OTP will only recruit the best possible staff, it will at the same time ensure that the recruitment and selection processes are set up to enable and promote gender and nationality balance. Vacancy announcements, panel composition and selection methods will be reviewed to avoid any bias. Outreach will be organised to underrepresented groups. The Office will strive to establish proper representation at all levels of the organisation.

**72. Objectives 2013-2015**

- Recruitment and selection processes reviewed (2014).
- Compliance with revised recruitment and selection processes ensured (2014–2015).
- Improved gender and nationality balance based on revised recruitment and selection processes and the performance of applying candidates (2014–2015).

**Strategic goal 5.2: Maintain a professional office with a specific attention to staff quality and motivation**

73. Quality and motivation of staff is another important factor that impacts on the performance of the Office. Quality of staff refers not only to their skill set but also to the values to which they adhere.<sup>11</sup> Both are essential for a well-functioning and high performing Office.

74. Quality of staff will primarily be managed through a rigorous selection procedure, an increased attention to proper performance management and an increased provision of training. Good performance will be recognised and underperformers will be helped to improve to the extent possible. In addition the Office will continue to create a culture of learning. The Office must constantly learn from its experiences and thereby become a learning organisation, in order to fulfil its innovative mandate.

75. The motivation of staff is strongly influenced by the working climate and by staff expectations about their job and career development prospects. The Office is at present addressing the most important problems that have been identified by staff during various surveys, and will take appropriate measures to improve the motivation of staff as well as to manage expectations.

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<sup>11</sup> See paras. 10-12.

**76. Objectives 2013-2015**

- OTP core values adopted and Code of Conduct promulgated (2013 – 2014).
- Recruitment and selection standards for all vacancies reviewed (2013 – 2015).
- Performance Management training for managers (2013).
- New individual performance appraisal system introduced (2013 – 2014).
- Career and development policy defined (2014).
- Key working climate issues within the OTP's control addressed including by means of implementing the Working Climate Task Force action plan (2013 – 2015).

**Strategic goal 5.3: Maintain a professional office with specific attention to performance management and measurement**

77. The OTP has, in addition to individual performance, in the past also focused on its overall organisational performance. The implementation of the rotational model and other measures like the outsourcing of transcriptions or a revised way of organising field presence resulted in efficiency gains. The development of the Operations Manual contributed significantly to standardisation of practices thereby enhancing the quality and efficiency of its core activities. More can be done to optimise the functioning of the Office.

78. The introduction of a revised strategic planning process, of an institutionalised, systematic lessons learned process as well as the review of the investigative and prosecutorial strategies and standards have and will further improve the performance of the Office.

79. The development of a research and development agenda (e.g. cyber investigations; alternative ways of proving sexual and gender based violence; new approaches to cooperation; ways of proving the responsibility within different types of organisation, etc.) will complement the cycle of internal review and evaluation.

80. Information is a critical asset for the Office next to its staff. The Office faces two major challenges in this regard. Firstly, as proceedings increasingly rely on electronic documents and correspondence, the Office's information environment is growing increasingly complex. Given the sensitive and important nature of this activity, it requires a well-thought through process and supporting systems as well as careful planning and quality control. Secondly, as the Office has refined its way of working throughout the years and given the need to deal with new (electronic) forms of evidence, there is a need to revise its information and IT strategy. The recruitment of an information management coordinator, and close cooperation with the Registry to adapt the IT strategy to the needs of the Office, is therefore envisaged.

81. Price Waterhouse Coopers (PWC) conducted a structural review of the Office in the first half of 2013. They viewed the OTP's organisational structure and processes. They found OTP staff to show a high level of commitment and professionalism. In addition to emphasising the need for a substantial increase of resources for the OTP, PWC has given valuable recommendations on areas where it can further improve its structure and functioning:

- To clarify the relationship between ExCom and the joint/trial team leadership, between ExCom and the Divisions and Sections and the relationship within the joint team itself.
- To further re-assess the division of responsibilities at the senior management level of the Office.
- To appoint a quality manager responsible for making quality standards explicit and encouraging the exchange of best practices in the Office.
- To formalise the priority setting process of the Office so that a more systematic assessment of the need for intervention is combined with the feasibility and consequences of starting a new investigation.

The Office has commenced working on the above recommendations.

The Prosecutor and Registrar have also agreed to start a process of strategic review of the interaction between both organs so that areas for optimisation might be implemented to the benefit of the service delivery as well as the efficiency of the Court as a whole.

82. To manage performance it is also essential to measure performance. The present status of performance measurement and future plans of the Office in this regard are reflected in paragraphs 88 - 98.

83. The management of performance also entails the management of risks. While the Office contributes to the management of the Court-wide risks, it also faces two types of OTP-specific risks.

The first and most important category is the case-related risks (e.g. loss of evidence, lack of cooperation, etc.). The Executive Committee manages these through direct interaction with and giving direction to the joint and trial teams.

The second category is composed of more generic organisational risks (e.g. risk of misconduct, fraud, etc.). The assurance mapping performed by the UN OIOS in 2011 showed that while most of these second category risks are being managed, there is also a need to further formalise and document the risk management system in regard to these risks.

#### 84. Objectives 2013-2015

- To review the OTP's structure in order to increase its effectiveness and efficiency (2013).

- To clarify the relationship between ExCom and the joint/trial team leadership, between ExCom and the Divisions and Sections and the relationship within the joint team itself.
- To further re-assess the responsibilities at the senior management level of the OTP (2013 – 2014).
- To appoint the Head of Legal Advisory Section as quality manager responsible for making quality standards explicit and encouraging the exchange of best practices in the Office. All lessons learned cycles performed as planned (2013 – 2015).
- To formalise the priority setting process of the Office (2014).
- Research and development agenda implemented as planned (2013 – 2015).
- To formalise the risk management system (2014).

**Strategic Goal 6: Ensure good governance, accountability and transparency**

**85. Good governance and accountability**

The OTP will work constructively, externally and internally, with the organs of the Court, with the aim of finding solutions to common problems, respecting the mandates of the other Organs and within the context of its own independent mandate. The Prosecutor will responsibly and accountably exercise full authority over the management and administration of the Office, including the staff, facilities and other resources, in full compliance with the applicable procedures, Rules and Regulations.

The Prosecutor is accountable to the ASP which is required to provide management oversight to the Prosecutor in order to enhance the OTP's efficiency and economy.<sup>12</sup> The Office shall support the development of effective independent oversight mechanisms (IOM) by the ASP, respecting the independence of the Office. Staff of the OTP are accountable to the Prosecutor. A member of the Office shall not seek or act on instruction from any external source.<sup>13</sup>

The Prosecutor is responsible for the OTP budget preparation, ensuring that the most effective budget is prepared, taking into account the Office's requirements, and in compliance with the fulfilment of its mandate and that of the Court. The Prosecutor is responsible for the implementation of such results-based budgeting, ensuring the most efficient use of the available resources and, with the assistance of the Registry, ensuring that Financial Regulations and Rules are respected.

**86. Transparency**

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<sup>12</sup> Article 112(2)(b) of the Rome Statute

<sup>13</sup> Article 42(1) of the Rome Statute.

The Office will take steps to enhance transparency throughout all phases of its activities to the extent possible, in view of its duties of privacy and confidentiality vis-à-vis staff, witnesses and partners. Announcement of decisions and activities will, insofar as is possible, be made in advance, to ensure predictability and allow other actors, including States Parties, to take these into consideration.

The Office will promote open and constructive engagement with stakeholders, including civil society, the ASP and its subsidiary bodies (working groups, study group on governance) and audit structures.

#### **87. Objectives 2013-2015**

- Full compliance with the Governance framework (2013 – 2015).
- Establishment of IOM supported (2013 – 2014).
- Public reports on identified decisions and activities issued (2013 – 2015).
- Results-based budget submitted (2013 – 2015).
- OTP Compliance Framework further defined and put into practice (2013 – 2015).

### ***Performance measurement***

88. Measuring the performance of an organisation is critical to ensuring focus and to managing results.

The Office has evaluated its past performance in paragraphs 13 to 18.

Given that over one year has passed since the new Prosecutor has taken over, this section of the strategic plan will first highlight the main changes and achievements since then. It will thereafter focus on how the Office intends to further develop its performance measurement.

#### **Achievements Jun 2012 – June 2013**

89. The preliminary examinations, investigations and prosecutions have been kept on track.

90. The new model of in-depth, open-ended investigations has been implemented in the Mali situation.

91. A new strategy has been developed for the Office which is reflected in this document. It was developed through a broad internal and external consultation process (see annex B).

92. The new capacity model for ensuring high quality investigations and prosecutions has been applied for the contingency fund requests for Mali and DRC 6, as well as for the 2014 budget.
93. From an organisational perspective the main changes have been:
- The Structure has been changed. In the past, the Deputy Prosecutor was responsible only for PD. The new Deputy Prosecutor has been made responsible for the supervision of all three operational divisions.
  - ExCom has been expanded to include the Senior Appeals Counsel, head of the Appeals Section, and the head of the services section for administrative matters.
  - ExCom has started a process of decentralisation and delegation of decision-making.
  - A redistribution of responsibilities at the level of ExCom has resulted in reducing the time that the Director of ID had to spend on inter-organ and governance matters.
  - A regular schedule of meetings of all OTP managers to discuss policy and organisational development matters has been created.

### **Future approach towards performance measurement**

94. Having a comprehensive set of indicators to measure all aspects of performance remains a challenging task conceptually and due to the lack of time for development and research.
95. To evaluate the (cost-) effectiveness of the Office requires first determining what outcome the Office is supposed to produce: prevention of crimes, complementarity achieved, justice done (and seen to be done), etc. Thereafter, one needs to determine how to measure the impact of the Office on the outcome which comes with challenges of isolating its impact from that of many other actors and factors and with the challenge of organizing a reliable measurement.

To evaluate the productivity, quality and efficiency of the Office also poses conceptual challenges when one is dealing with a limited number of cases which are furthermore different in nature and investigated under different and complex conditions.

While the Office has been commended in the past for the quality of its performance indicators, it intends to evaluate whether a refocused and limited set of indicators might be more suitable for the Office (e.g. using the confirmation or conviction rate of persons and charges).

96. The development of relevant and feasible performance indicators is a complex and delicate work which requires considerable effort. The Office has focused its budget increase on strengthening the quality and efficiency of its preliminary examinations, investigations and prosecutions. It will therefore have to rely on external (pro bono) support from partners to be able to take all aspects of performance measurement forward. The Office will start a

consultation process with academics and practitioners with expertise in the field of justice and performance measurement to determine a way forward.

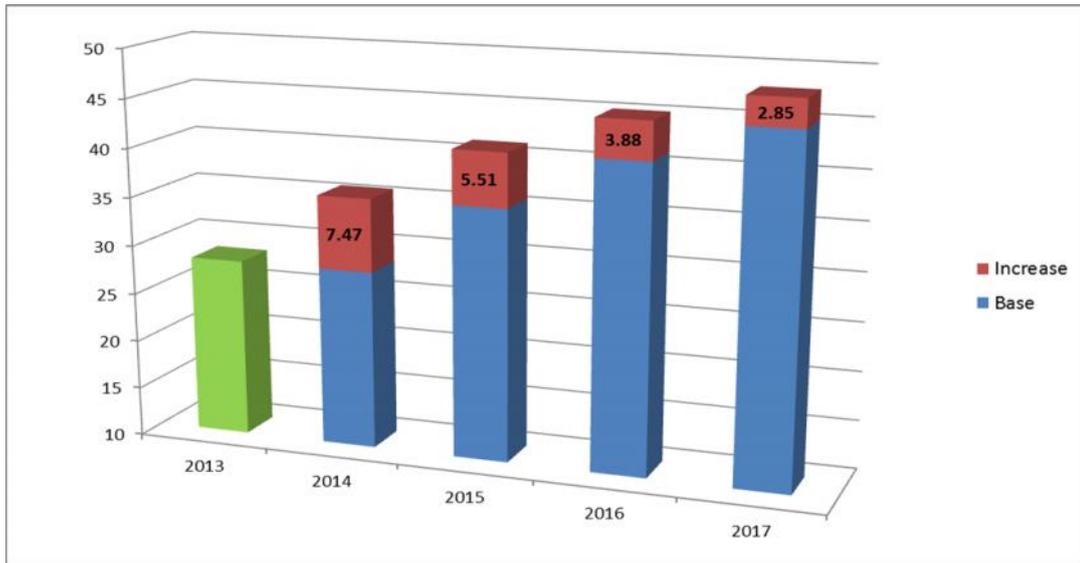
In the meantime, it will report on its performance by ensuring that the budget assumptions are met and by linking the objectives formulated in this strategic plan to the budget and to the performance indicators mentioned therein. It will report on the actual implementation through the yearly performance report produced by the Court.

97. In working on performance measurement, the Office will pay special attention to its mandate of effective prosecutions while pursuing the truth. The Office will aim for an increase of the percentage of charges confirmed and its conviction rate. To achieve this, a transitional period will be required during which the new strategy will be implemented while the Office continues to present the best possible case to support its existing cases and while the evidentiary standards are being further clarified through the Court's jurisprudence.
98. Evaluating the Office's success will also require measuring the level of effective support it receives from States Parties, intergovernmental organizations, NGOs and others to overcome the obstacles it faces in executing its mandate.

### ***Financial planning***

99. The Office is requesting an important increase of resources over a period of four years. While the changes in strategy as well as organisational changes will contribute to improving its performance on the judicial front, the lack of resources is the most critical factor, affecting the ability to successfully face the new challenges and demands on the Office.

The table hereunder provides the States with the hoped for increases based on the present workload assumptions and on the new strategy.



100. The proposed 2014 budget increase is based on the introduction of the revised OTP strategy. Even though the demand for the Office’s intervention is at present not being met, the Office has decided to temporarily decrease the number of active investigations from seven to five. This should allow the Office to absorb the increase of resources and offers as a benefit to the State Parties a phasing in of the extra cost.
101. The increase for 2015 is reflective of the fact that the staff recruited in 2014 will be on board full-time.
102. The increases for 2016 and 2017 are the result of the anticipated increase of the active investigations, by one each year, so that the same level of activities is again reached for the Office in 2017.

**ANNEX A: Link strategic plan and budget 2014**

103. The aim of the Office is to have a good integration between its strategic plan, the budget and its performance indicators. This integration has been achieved to a large extent. Given that the OTP strategic plan has been finalised after the issuance of the ICC budget proposal 2014, an updated table further improving the link between them has been developed and is presented hereunder.
104. A review to determine a feasible list of objectives in light of the workload and of the available budget will be done after the 2014 ASP.

Expected results	Responsible	Performance indicators	Target 2014
<b>OTP Strategic Goal 1</b> Conduct impartial, high quality, efficient and secure preliminary examinations, investigations and prosecutions	JCCD	Planned versus actual	All activities aimed at having a preventative impact implemented as planned
	PD	Planned versus actual investigations  Planned versus actual trials and appeals	5 active, 8 hibernation and Art. 70  3 trials and 4 appeals
	ID	Planned versus actual investigations  Planned investigative steps versus executed  Planned versus actual	5 active, 8 hibernation and Art. 70  80% or more of the investigative steps within the ID control on track Investigations under hibernation reviewed  Security assessment made and mitigating measures implemented
<b>OTP Strategic Goal 2.1</b> Further improve the quality and efficiency of the preliminary examinations	JCCD	Number of situations that are affected by a decision  Proportion of analytical reports delivered on time and substantiated to the Executive Committee	Yearly report on status of preliminary examinations  Reports in respect of situations under preliminary examination published  Lessons learned captured in Operations Manual

Expected results	Responsible	Performance indicators	Target 2014
<p><b>Strategic goal 2.2</b></p> <ul style="list-style-type: none"> <li>• First phase of the review and validation of the investigative standards achieved</li> <li>• Cyber- and Telecom investigative capacity developed</li> <li>• New field presence model defined and tested</li> <li>• First phase of an improved quality control model implemented</li> <li>• Efficiency gains through process review identified and achieved</li> </ul>	<p><b>ID</b></p>	<p>Planned versus actual</p> <p>“ “</p> <p>“ “</p> <p>“ “</p> <p>Identified efficiency gains</p> <p>“ “</p> <p>“ “</p> <p>“ “</p> <p>“ “</p>	<p>80% or more of the steps within ID control on track</p> <p>“ “</p> <p>“ “</p> <p>“ “</p> <p>2% of total budget</p> <p>Transition towards new staffing composition on track</p> <p>Improved field presence on track</p> <p>Review of protection and assistance strategies and protocols implemented</p> <p>Lessons learned captured in Operations Manual</p>
<p><b>OTP Strategic Goal 2.3</b></p> <p>Further improve the quality and efficiency of prosecutions by reviewing its prosecutorial strategies, enhancing the quality of litigation both in filings and in court, and identifying and applying good practices learned</p>	<p><b>PD</b></p>	<p>Rate of acceptance of submissions and granting of requests by the Chambers</p> <p>Time in which Prosecution case is presented (actual court days) for each case</p> <p>Number of witnesses per case maintained at lowest levels to minimise exposure</p> <p>Planned versus actual</p> <p>“ “</p> <p>“ “</p> <p>“ “</p>	<p>≥ 80%</p> <p>≤ 6 months</p> <p>Minimum possible while respecting new evidentiary standard</p> <p>Prosecutorial strategies and standards reviewed</p> <p>Witness preparation guidelines to focus evidence fairly and effectively developed, applied and included in the Operations Manual</p> <p>Code of Conduct promulgated (in conjunction with LAS)</p> <p>Improved case review process established</p>

Expected results	Responsible	Performance indicators	Target 2014
		<p>“ “</p> <p>“ “</p> <p>“ “</p> <p>“ “</p> <p>“ “</p> <p>“ “</p>	<p>Revised training program for prosecutors defined in annual Training Plan and implemented</p> <p>Evidence disclosure practice revised, implemented and Operations Manual updated (with LAS)</p> <p>PEXO guidelines revised, implemented and Operations Manual updated</p> <p>Legal guidance systems and processes by PD to investigations reviewed and implemented</p> <p>Legal research database available to whole OTP</p> <p>Lessons learned captured in Operations Manual</p>
<p><b>OTP strategic Goal 3</b> Enhance the integration of a gender perspective in all areas of our work and continue to pay particular attention to sexual and gender based crimes and crimes against children</p>	<p><b>LAS</b></p> <p><b>ID</b></p>	<p>Planned versus actual</p>	<p>Gender Based Crimes Policy</p> <p>Policy to avoid re-traumatisation or secondary traumatisation</p> <p>Children policy</p> <p>Specialised training for staff on how to deal highly vulnerable witnesses reviewed, including investigators interview training</p>
<p><b>OTP Strategic Goal 4</b> Enhance cooperation and strengthen the Rome System in supporting the ICC as well as national systems' efforts in situations under preliminary examination or investigation.</p>	<p><b>JCCD</b></p>	<p>Development of national judiciary and legal framework to address crimes</p> <p>Number of meetings / conferences / seminars / visits dedicated to drawing attention on the need to strengthen national jurisdictions</p>	<p>Cooperation plans for the critical support to investigations successfully implemented</p> <p>Cooperation models allowing for a faster response to cooperation needs developed with key partners</p> <p>Law Enforcement Network (LEN) to increase exchange of information, coordination of activities and development of common standards further established</p> <p>Genuine national proceedings encouraged in States object of</p>

OTP strategic plan June | 2012 - 2015

		Planned versus actual " "	preliminary examinations  Communication plan implemented as planned
Expected results	Responsible	Performance indicators	Target 2014
<b>OTP strategic goal 5.1</b> Maintain a professional office with a specific attention to gender and nationality balance	<b>The Prosecutor</b>	Planned versus actual  " "	Recruitment and selection process reviewed  Improved gender and nationality balance
<b>OTP Strategic Goal 5.2</b> - Maintain a professional office with a specific attention to staff quality and motivation <ul style="list-style-type: none"> <li>• Implement training programme for competency based interviews.</li> <li>• Create and update a roster of qualified candidates for roles in the OTP</li> <li>• In liaison with HR, delivery of the annual OTP training plan for staff</li> <li>• Career and development policy defined</li> <li>• Key working climate issues within OTP's control addressed</li> </ul>	<b>The Prosecutor</b>	Planned versus actual  Number of staff trained  Percentage of roles for which a list of candidates is available  Proportion of annual training plan implemented  Planned versus actual  Planned versus actual	Core values development and implementation plan on track  At least 50%  >50% (to be increased year on year)  At least 70%  Policy on career and development  All planned measures implemented
<b>OTP Strategic Goal 5.3</b> - Maintain a professional office with specific attention to performance management and measurement <ul style="list-style-type: none"> <li>• Enhance coordination with other Court's organs and streamline inter-organ processes</li> <li>• Review internal processes to streamline work-flow and increase efficiency</li> <li>• OTP internal structure reviewed in order to increase its effectiveness and efficiency</li> </ul>	<b>The Prosecutor</b>	Resource savings  Percentage of errors and time lag  Planned versus actual  " " " " " "	2% of previous cost of the process involved  Error rate <5%  Relationship between ExCom, Joint and Trial teams, and Divisions/Sections and within Joint Teams clarified  Responsibilities at intra-organ and inter-organ level redistributed  Head of LAS appointed quality manager

<ul style="list-style-type: none"> <li>• Link OTP strategy-budget-indicators established</li> <li>• Risk management system formalised</li> </ul>		<p>“ “</p> <p>“ “</p>	<p>R&amp;D agenda implemented</p> <p>Priority setting process redefined</p> <p>Risk management formalised</p>
Expected results	Responsible	Performance indicators	Target 2014
<p><b>OTP Strategic Goal 6</b></p> <p>- Ensure good governance and transparency</p> <ul style="list-style-type: none"> <li>• Provision of legal advice, including, with regard to disciplinary matters, development of the Office’s internal regulatory framework</li> <li>• Develop strategic policies</li> <li>• Update Operations Manual</li> <li>• Lessons Learned concept institutionalised and percentage of lessons implemented</li> <li>• Finalise the OTP Code of Conduct and ensure its alignment with the Court’s Code</li> </ul> <p>Ensure Staff are informed about and are compliant with the Code of Conduct</p>	<p><b>The Prosecutor</b></p>	<p>The level of satisfaction of OTP clients with legal advice</p> <p>Number of policies created</p> <p>Percentage of annual updates</p> <p>Percentage of annual action points implemented</p> <p>Actual proportion of improvements/developments implemented.</p> <p>Percentage of staff informed about the Code</p> <p>Number of non – compliance issues</p>	<p>100% accuracy and satisfaction</p> <p>At least 3</p> <p>&gt;70%</p> <p>At least 90%</p> <p>&gt;90%</p> <p>100%</p> <p>Zero</p> <p>OTP Compliance Framework defined and put into practice</p>

**ANNEX B: Methodology to develop the strategic plan**

- Strategic assessment translated into draft strategic plan with goals and measurable objectives

Action	Responsible	Timing
Production of first draft plan	Director of ID	End 2012 – beginning 2013
Provisional approval of plan	ExCom	Beginning 2013
Consecutive consultation with OTP managers OTP staff External partners	ExCom ExCom JCCD	March – June 2013
Strategic stock-taking exercise with 20 OTP staff and 12 external partners	ExCom	June 2013
Link strategic plan and budget and performance indicators	Head of service section	July 2013
Review and expansion of plan	Director of ID	August 2013
Provisional approval of plan	ExCom	August 2013
Final consultation with OTP managers	ExCom	September 2013
Finalisation of plan	Director of ID	September – October 2013
Approval of plan	ExCom	October 2013
Communication to ASP	Prosecutor	November 2013
Development of action plans	OTP managers	November – December 2013
Reporting system to monitor implementation	Director ID	December 2013