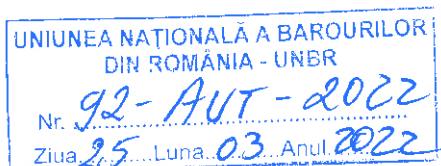




MINISTERUL JUSTITIEI

4/2021/24.03.2022



24 martie 2022

Domnului avocat dr. Traian Briciu
Președintele Uniunii Naționale a Barourilor din România

Stimate domnule Președinte,

Vă aducem la cunoștință că Ministerul Afacerilor Externe a comunicat către Ministerul Justiției, la data de 23 martie 2022, invitația de sprijinire a Biroului Procurorului CPI (OTP) prin detașarea de experți naționali în sistem secondment (posturi cu profil juridic la nivel internațional pentru anchetarea infracțiunilor de genocid, crime de război și crime împotriva umanității comise pe teritoriul Ucrainei în cadrul anchetei demarate de către OTP) pentru cele 10 zone prioritare descrise în anexă, precum și criteriile de competență aferente acestora.

În ce privește domeniul de la pct. 3 referitor la avocați, vă adresăm rugămintea de a disemina această invitație în rândul colegilor, astfel încât, în măsura în care cei care îndeplinesc criteriile menționate, eventual și pentru alte domenii din anexă, să aibă posibilitatea de a se înscrie.

Menționăm că o cerință prealabilă este reprezentată de nominalizarea echilibrată a candidaților femei și bărbați, cu privire la toate domeniile cuprinse în anexă.

Vă adresăm rugămintea să ne confirmați dacă există persoane care doresc să candideze, până la data de 26 martie 2022. Pentru celeritate, comunicarea poate avea loc prin e-mail, la adresele dreptinternational@just.ro, cabinet.sds-ciobanu@just.ro

Vă mulțumim pentru colaborare și vă asigurăm de aleasa noastră considerație.

Nelu CIOBANU
Secretar de stat
Ministerul Justiției





24 03.22
Dna. V. M. al. 1
Ministerul Afacerilor Externe
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MINISTERUL AFACERILOR EXTERNE

Nr. G/1482/22 martie 2022

Stimate domnule secretar de stat,

După cum cunoașteți, la 2 martie 2022, România și alte 38 de state, inclusiv toate SMUE, au sesizat în comun Procurorul Curții Penale Internaționale (CPI) cu privire la anchetarea infracțiunilor de genocid, crime de război și crime împotriva umanității comise pe teritoriul Ucrainei, inclusiv în contextul războiului de agresiune declanșat de Federația Rusă împotriva Ucrainei.

Demersul a urmărit accelerarea procedurilor judiciare ale instanței internaționale și demararea de îndată a anchetei Procurorului CPI, în special în legătură cu situația actuală din Ucraina, existența unei sesizări a statelor părți nemaifăcând necesară obținerea autorizării Camerei Preliminare.

Deși nu este stat parte la Statutul de la Roma, Ucraina a creat baza exercitării jurisdicției CPI pe teritoriul său prin depunerea unor declarații de acceptare a competenței Curții în temeiul art.12, alin.3 din Statut. Astfel, la 17 aprilie 2014, Guvernul de la Kiev a depus pe lângă Grefa Curții o declarație prin care recunoaște jurisdicția CPI în scopul identificării, urmăririi și judecării autorilor infracțiunilor de competența CPI săvârșite pe teritoriul Ucrainei în perioada 21 noiembrie 2013 - 22 februarie 2014. La 8 septembrie 2015, Ucraina a depus o nouă declarație de acceptare a jurisdicției CPI cu privire la crime împotriva umanității și crime de război comise pe teritoriul său, începând cu 20 februarie 2014. Aceasta din urmă este o declarație pe termen nedeterminat, care asigură temeiul legal pentru extinderea jurisdicției instanței internaționale pe teritoriul ucrainean până la momentul prezent. La 11 decembrie 2020, Procurorul a anunțat încheierea examinării preliminare, stabilind că există motive întemeiate pentru a crede că pe teritoriul ucrainean au fost săvârșite crime de război și crime împotriva umanității, urmând să decidă cu privire la solicitarea autorizării unei anchete.

Transmitem, anexat, scrisoarea primită din partea Procurorului CPI, prin care acesta anunță deschiderea, la 2 martie 2022, a anchetei în legătură cu situația din Ucraina, în baza sesizării sus-amintite, vizând atât faptele acoperite de examinarea preliminară începând cu 21 noiembrie 2013, cât și alte infracțiuni de competența Curții comise recent pe teritoriul ucrainean.

În conformitate cu art. 18 alin. (2) din Statutul de la Roma, statele părți sunt invitate ca, în termen de o lună de la primirea acestei notificări, să informeze CPI cu privire la orice anchete, finalizate sau în derulare, asupra cetățenilor proprii sau altor persoane care se află sub jurisdicția lor, referitoare la presupusele infracțiuni comise în Ucraina.

Menționăm, în context, că Procurorul Karim Khan a întreprins demersuri pentru asigurarea cooperării statelor în vederea colectării de probe, efectuând, recent, vizite de lucru în Ucraina și Polonia, respectiv înaintând Federației Ruse o solicitare de organizare a unei discuții pe marginea chestiunilor care fac obiectul mandatului Biroului său. Totodată, mai multe state membre ale UE au confirmat, cu diverse ocazii, angajarea într-un proces de strângere de probe cu privire la crimele internaționale comise de către forțele ruse.

Domnului Nelu Ciobanu
Secretar de stat
Ministerul Justiției

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Nesecret

MINISTERUL AFACERILOR EXTERNE

De asemenea, Biroul Procurorului CPI (OTP) a adresat statelor părți, printr-o notă distinctă (anexată), o invitație de sprijinire a activității OTP prin detașarea de experți naționali și furnizarea de contribuții financiare voluntare. În documentul în cauză sunt enumerate zece zone prioritare care ar putea fi susținute prin detașarea experților naționali, fiecare categorie beneficiind de o descriere a criteriilor de competență necesare pentru a răspunde exigențelor postului.


Vă informăm că, în urma demersurilor Procurorului CPI, Franța, în calitate de Președinție a Consiliului UE, a sugerat un răspuns coordonat din partea statelor membre pentru a asigura OTP resursele necesare derulării în mod eficient a anchetei. În acest sens, Franța a solicitat SMUE comunicarea, până la 31 martie 2022, a contribuțiilor avute în vedere ca răspuns la nota OTP, urmând ca această chestiune să fie discutată la nivelul Grupului de lucru al Consiliului UE privind dreptul internațional public – Curtea Penală Internațională (COJUR-CPI).

Având în vedere cele de mai sus, vă adresăm rugămintea de a ne informa, pe cât posibil până la 30 martie 2022, cu privire la posibilitatea de a detașa experți naționali în cadrul Biroului Procurorului OTP, conform solicitării, precum și referitor la existența unor anchete ale autorităților române privind presupuse infracțiuni de competența CPI comise în contextul situației din Ucraina.

În ceea ce privește desemnarea experților naționali, reamintim poziția MAE privind necesitatea continuării dialogului interinstituțional în vederea stabilirii unei proceduri naționale cu scopul de a facilita selectarea candidaților adecvați pentru posturi cu profil juridic la nivel internațional, aspect ce a fost semnalat, la sugestia Ministerului Justiției (adresa nr.86165/21.09.2021), inclusiv Consiliului Superior al Magistraturii.

Menționăm că, din rațiuni de celeritate, informațiile de mai sus au fost transmise simultan și Parchetului de pe lângă Înalta Curte de Casație și Justiție.

Cu deosebită considerație,


Corneliu Feruță
Secretar de stat



OTP2022/005608

The Office of the Prosecutor of the International Criminal Court ("Office" or "OTP") presents its compliments to the States Parties to the Rome Statute ("States Parties").

The Office extends through this Note Verbale an invitation to all States Parties to provide assistance to the Office, including through the provision of national experts on a secondment basis and voluntary financial contributions, in order to address its urgent resource needs and allow it to effectively address all situations presently under investigation or in trial.

With respect to the provision of national experts on a secondment basis, States Parties are particularly encouraged to nominate candidates for the positions listed in Annex, which have been identified as a priority by the Office. More detailed information on job functions and related administrative arrangements are available on request.

In accordance with articles 44(2) and 36(8) of the Rome Statute, the Office will ensure that in selecting nominated candidates it shall have regard to a fair representation of women and men for all positions, representation of the principal legal systems of the world for legal positions, and equitable geographical representation.

With respect to voluntary financial contributions, a Trust Fund is being established to receive such contributions pursuant to article 116 of the Rome Statute in order to support the work of the Office in the following priority areas:

- (i) Use of new advanced technological tools and equipment in the collection, analysis and language-processing of evidence;

- (ii) Provision of enhanced psycho-social support to witnesses and survivors, as well as broader additional witness protection and support measures;
- (iii) Enhancement of dedicated and specialised capacity with respect to investigations into crimes of sexual and gender-based violence and crimes against children.

The Office of the Prosecutor stands ready to provide additional information and engage with States Parties in order to facilitate such contributions. The contact point at the Office of the Prosecutor is Ms Sonja Spierings (sonja.spierings@icc-oci.int).

The Office of the Prosecutor of the Court avails itself of this opportunity to renew to States Parties the assurances of its highest consideration.



The Hague, 7 March 2022

ANNEX

Priority positions for nomination of national experts for secondment

1. Investigators

Key Tasks / Requirements:

- Collect, screen and handle information and evidence in accordance with OTP standard operating procedures, including conducting sensitive and complex investigative interviews;
- Develop investigation leads, lines of enquiry and manage external sources, including victims, witnesses and intermediaries;
- Conduct field missions to conflict and post-conflict regions, in accordance with established security protocols;
- Review, analyse and process information and evidence.

Desirable areas of investigative expertise: ICC crimes investigations, dealing with traumatised victims, sexual and gender based violence, military investigations, cyber-investigations, financial investigations.

Desirable language skills: Arabic, Russian, Spanish, Ukrainian.

2. Analysts

Key Tasks / Requirements:

- Analysis of crime patterns, including large numbers of victims and incidents;
- Analysis of organisational structures (political, military or others);
- Analysis of telecommunications, including Call Data Records, radio communication systems and intercepts;
- Critical source evaluation for witnesses and other sources (credibility, reliability);
- OSINT collection and analysis, including social media and various content (text, video, audio, meta-data, etc.);
- Advanced software skills (databases, Geographic Information Systems, Social Network Analysis, etc.).

Desirable language skills: Arabic, Russian, Spanish, Ukrainian, French.

3. Lawyers

Key Tasks / Requirements:

- Experience in international criminal law / international humanitarian law;
- Expertise on the law of evidence, including legal requirements for evidence collection, cooperation, authenticity, admissibility and disclosure;
- Country-specific expertise with respect to situations under investigation by the OTP is desirable.

Desirable language skills: Arabic, Russian, Spanish, Ukrainian, French.

4. Military Analysts

Key Tasks / Requirements:

- All of the above for Analysts;
- In addition: expertise on military issues, including military intelligence analysis, military doctrine, chains of command & control, operations, logistics, weaponry and ammunition.

Desirable language skills: Arabic, Russian, Spanish, Ukrainian, French.

5. Forensic Video and Image Analysts

Key Tasks / Requirements:

- Screening and assessing media files;
- Video and image authentication;
- Image comparison including geolocation.

Desirable language skills: mainly Arabic, Russian, Spanish, Ukrainian, French.

6. Satellite Imagery Specialists

Key Tasks / Requirements:

- Analysing and processing satellite imagery;
- Assessing satellite imagery reports;
- Creating interactive maps;
- Remote sensing.

7. Interpreters / Transcribers / Translators / Terminologists

Key Tasks / Requirements:

- Expertise in one or more of the following languages combined with English: Arabic, Burmese, Bengali, Cebuano, Dari, Filipino, Fur, Kirundi (in combination with French also), Pashto, Rohingya, Russian, Sango (in combination with French also), Spanish, Tagalog, Ukrainian, Hebrew.

8. Psycho-social expert for witness related support

- Well experienced in engaging with survivors and witnesses suffering from trauma;
- Strong experience in working with women and children.

Desirable language skills: Arabic, Russian, Ukrainian.

9. Protection Strategies Officer (analysis)

- Analyst / Witness Protection specialist;
- Experience in conduct threat and risk assessments with respect to witnesses in criminal investigations / prosecutions;
- Experience in the development of witness protection strategies in the context of criminal investigations.

10. Field Operations Officer

- Field based operations officers with strong experience in logistics;
- Experience in managing and implementing security and field activity in support effective mission deployment.



TO ALL STATES PARTIES
AND OTHER STATES WITH JURISDICTION

Ref.: OTP2022/006180

Date: 16 March 2022

Your Excellency,

In accordance with article 18(1) of the Rome Statute (“Statute”) of the International Criminal Court (“ICC” or the “Court”), I hereby wish to notify you that, on 2 March 2022, acting under article 53(1) of the Statute, I initiated an investigation with respect to alleged crimes within the jurisdiction of the Court committed in the Situation in Ukraine.

Ukraine is not a State Party to the Rome Statute of the ICC, but it has twice exercised its prerogatives to legally accept the Court’s jurisdiction over alleged crimes under the Rome Statute occurring on its territory, should the Court choose to exercise it, pursuant to article 12(3) of the Rome Statute. The first declaration lodged by the Government of Ukraine accepted ICC jurisdiction with respect to alleged crimes committed on Ukrainian territory from 21 November 2013 to 22 February 2014. The second declaration extended this time period on an open-ended basis to encompass ongoing alleged crimes committed throughout the territory of Ukraine from 20 February 2014 onwards.

The investigation which has now been opened has been initiated under article 53(1) on the basis of State Party referrals submitted pursuant to articles 13(a) and 14 of the Statute. On 1 March 2022, the Office of the Prosecutor (the “Office”) received a State Party referral from the Republic of Lithuania. On 2 March 2022, the following coordinated group of States Parties submitted a joint referral: Republic of Albania, Commonwealth of Australia, Republic of Austria, Kingdom of Belgium, Republic of Bulgaria, Canada, Republic of Colombia, Republic of Costa Rica, Republic of Croatia, Republic of Cyprus, Czech Republic, Kingdom of Denmark, Republic of Estonia, Republic of Finland, Republic of France, Georgia, Federal Republic of Germany, Hellenic Republic, Hungary, Republic of Iceland, Ireland, Republic of Italy, Republic of Latvia, Principality of Liechtenstein, Grand Duchy of Luxembourg, Republic of Malta, New Zealand, Kingdom of Norway, Kingdom of the Netherlands, Republic of Poland,

Republic of Portugal, Romania, Slovak Republic, Republic of Slovenia, Kingdom of Spain, Kingdom of Sweden, Swiss Confederation, United Kingdom of Great Britain and Northern Ireland. On 7 March 2022, the Republic of North Macedonia additionally informed the Office that it wished to associate itself with the above mentioned joint referral, while Japan notified the Office of its referral of the Situation in Ukraine on 9 March 2022.

In accordance with the overall jurisdictional parameters conferred through these referrals, and without prejudice to the focus of the investigation, the scope of the situation now under investigation encompasses any past and present allegations of war crimes, crimes against humanity or genocide committed on any part of the territory of Ukraine by any person from 21 November 2013 onwards.

My decision to initiate the investigation follows the findings of the preliminary examination previously conducted by the Office, which I have reviewed and confirmed. In particular, I am satisfied that there is a reasonable basis to believe that crimes within the jurisdiction of the Court have been committed in Ukraine in relation to the events already assessed during the preliminary examination stage, a summary of which is attached to this letter. Additionally, given the increase in intensity and territorial expansion of the armed conflict in recent weeks, as well as the open-ended scope of the referred situation, this investigation will also encompass any new and ongoing alleged crimes falling within the jurisdiction of the Court.

I wish to recall that the preliminary examination process conducted to date is a filtering mechanism. It is only through opening a formal independent and objective investigation, however, that the truth can be determined. In this regard, article 54(1)(a) of the Rome Statute requires my Office to investigate incriminating and exculpatory circumstances equally in order to establish the truth.

The opening of an investigation is also without prejudice to the possibility for my **Office** to revisit its admissibility assessment, whether pursuant to article 18 or article 19 of the Statute, upon a significant change of circumstances as a result of genuine proceedings undertaken at the national level.

In accordance with article 18(2) of the Statute, I invite you to inform the Court, within one month of receipt of this notification, whether your State is investigating, or has investigated, its nationals or others within its jurisdiction, with respect to the above criminal acts allegedly committed in the Situation in Ukraine.

Should you have any questions relating to this notification, your staff should not hesitate to contact Ms Vera Hanus, International Cooperation Adviser (+31 70 515 9653 or Vera.Hanus@icc-cpi.int), or the Office's judicial cooperation email address at (OTPJudicialCooperation@icc-cpi.int).

Please accept, Your Excellency, the assurances of my highest consideration.

A handwritten signature in black ink, appearing to be 'K.A.A. Khan', with a horizontal line underneath it.

Karim A. A. Khan QC
Prosecutor



Situation in Ukraine | Summary of Preliminary Examination Findings

1. The situation in Ukraine has been under preliminary examination since 25 April 2014.¹ On 17 April 2014, the Government of Ukraine lodged a declaration under article 12(3) of the Statute accepting the jurisdiction of the Court over alleged crimes committed on its territory from 21 November 2013 to 22 February 2014. On 8 September 2015, the Government of Ukraine lodged a second declaration under article 12(3) of the Statute accepting the exercise of jurisdiction of the ICC in relation to alleged crimes committed on its territory from 20 February 2014 onwards, with no end date. On 29 September, based on Ukraine's second declaration under article 12(3), the Prosecutor announced the extension of the preliminary examination of the situation in Ukraine to include alleged crimes occurring after 20 February 2014 in Crimea and eastern Ukraine.²

2. On 28 February 2022, the Prosecutor announced his intention to proceed with opening an investigation into the Situation in Ukraine, as rapidly as possible. The Prosecutor noted his preparedness to request judicial authorisation, under article 15(3) of the Statute, while also noting the alternative route for opening an investigation in response to a State Party referral, under article 53(1) of the Statute.³

3. On 1 March 2022, the Office received a State Party referral from the Republic of Lithuania. On 2 March 2022, the following coordinated group of States Parties submitted a joint referral: Republic of Albania, Commonwealth of Australia, Republic of Austria, Kingdom of Belgium, Republic of Bulgaria, Canada, Republic of Colombia, Republic of Costa

¹ ICC-OTP, The Prosecutor of the International Criminal Court, Fatou Bensouda, opens a preliminary examination in Ukraine, 25 April 2014.

² ICC-OTP, ICC Prosecutor extends preliminary examination of the situation in Ukraine following second article 12(3) declaration, 29 September 2015.

³ ICC-OTP, Statement of ICC Prosecutor, Karim A.A. Khan QC, on the Situation in Ukraine: "I have decided to proceed with opening an investigation.", 28 February 2022.

Rica, Republic of Croatia, Republic of Cyprus, Czech Republic, Kingdom of Denmark, Republic of Estonia, Republic of Finland, Republic of France, Georgia, Federal Republic of Germany, Hellenic Republic, Hungary, Republic of Iceland, Ireland, Republic of Italy, Republic of Latvia, Principality of Liechtenstein, Grand Duchy of Luxembourg, Republic of Malta, New Zealand, Kingdom of Norway, Kingdom of the Netherlands, Republic of Poland, Republic of Portugal, Romania, Slovak Republic, Republic of Slovenia, Kingdom of Spain, Kingdom of Sweden, Swiss Confederation, United Kingdom of Great Britain and Northern Ireland. On 7 March 2022, the Republic of North Macedonia additionally informed the Office that it wished to associate itself with the above mentioned joint referral. On 9 March 2022, Japan further notified the Office of its referral of the situation in Ukraine.

4. On 2 March 2022, acting under article 53(1) of the Statute, the Prosecutor announced that he had decided to initiate an investigation into the Situation in Ukraine, with respect to any past and present allegations of war crimes, crimes against humanity or genocide committed on any part of the territory of Ukraine by any person from 21 November 2013 onwards.⁴

5. The Prosecutor's decision to initiate an investigation follows the findings of the preliminary examination previously conducted by the Office. In particular, the Office has during this assessment already found a reasonable basis to believe crimes within the jurisdiction of the Court have been committed, and has identified potential cases that would be admissible. This document sets out a summary of those findings. Additionally, given the increase in intensity and territorial expansion of the armed conflict in recent weeks, as well as the open-ended scope of the referred situation, the investigation now opened will also encompass any new and ongoing alleged crimes falling within the jurisdiction of the Court.

6. As set out in its 2020 Report on Preliminary Examination Activities, the Office has concluded that there is a reasonable basis to believe that crimes within the jurisdiction of the Court have been committed in Ukraine.⁵

⁴ ICC-OTP, Statement of ICC Prosecutor, Karim A.A. Khan QC, on the Situation in Ukraine: Receipt of Referrals from 39 States Parties and the Opening of an Investigation, 2 March 2022.

⁵ ICC-OTP, Report on Preliminary Examination Activities (2020), 14 December 2020, paras. 267-290.

7. Specifically, the Office has concluded that the information available provides a reasonable basis to believe that, from 26 February 2014 onwards, in the period leading up to, and/or in the context of the occupation of the territory of Crimea, the following crimes were committed: wilful killing, pursuant to article 8(2)(a)(i); torture, pursuant to article 8(2)(a)(ii); outrages upon personal dignity, pursuant to article 8(2)(b)(xxi); unlawful confinement, pursuant to article 8(2)(a)(vii); compelling protected persons to serve in the forces of a hostile Power, pursuant to article 8(2)(a)(v); wilfully depriving protected persons of the rights of fair and regular trial, pursuant to article 8(2)(a)(vi); the transfer of parts of the population of the occupied territory outside this territory (with regard to the transfer of detainees in criminal proceedings and prisoners), pursuant to article 8(2)(b)(viii); seizing the enemy's property that is not imperatively demanded by the necessities of war, with regard to private and cultural property, pursuant to article 8(2)(b)(xiii) of the Statute.

8. In addition, the Office has considered the information available with regard to alleged offences under article 7 of the Statute, and found a reasonable basis to believe that acts amounting to crimes had occurred in the context of the period leading up to and during the (ongoing) occupation of Crimea: murder, pursuant to article 7(1)(a); deportation or forcible transfer of population (with regard to the transfer of detainees in criminal proceedings and prisoners), pursuant to article 7(1)(d); imprisonment or other severe deprivation of physical liberty, pursuant to article 7(1)(e); torture, pursuant to article 7(1)(f); persecution against any identifiable group or collectivity on political grounds, pursuant to article 7(1)(h); and enforced disappearance of persons, pursuant to article 7(1)(i) of the Statute.

9. In addition, the Office has concluded that the information available provides a reasonable basis to believe that, in the period from 30 April 2014 onwards, at least the following war crimes were committed in the context of the armed conflict in eastern Ukraine: intentionally directing attacks against civilians and civilian objects, pursuant to article 8(2)(b)(i)-(ii) or 8(2)(e)(i); intentionally directing attacks against protected buildings, pursuant to article 8(2)(b)(ix) or 8(2)(iv); wilful killing/murder, pursuant to article 8(2)(a)(i) or article 8(2)(c)(i); torture and inhuman/cruel treatment, pursuant to article 8(2)(a)(ii) or article 8(2)(c)(i); outrages upon personal dignity, pursuant to article 8(2)(b)(xxi) or article 8(2)(c)(ii);

rape and other forms of sexual violence, pursuant to article 8(2)(b)(xxii) or article 8(2)(e)(vi) of the Statute.

10. In addition, if the conflict was international in character, there is a reasonable basis to believe that the following war crimes were committed: intentionally launching attacks that resulted in harm to civilians and civilian objects that was clearly excessive in relation to the military advantage anticipated (disproportionate attacks), pursuant to article 8(2)(b)(iv); and unlawful confinement, pursuant to article 8(2)(a)(vii) of the Statute.

11. The Office has also concluded that potential cases likely to arise from an investigation of these alleged crimes would be admissible pursuant to article 17(1)(a)-(d) of the Statute.

12. With respect to complementarity, the Office has determined that the competent Ukrainian authorities as well as the competent Russian authorities are either: (i) inactive, in the sense of an absence of “tangible, concrete and progressive investigative steps” to identify the criminal responsibility of those alleged to have committed the crimes;⁶ or (ii) the national judicial system of the relevant competent authority is unavailable within the meaning of article 17(3), resulting in the inability of the authorities to obtain the accused or the necessary evidence and testimony or otherwise their inability to carry out their proceeding.

13. With respect to gravity, the Office has found that the potential cases it identified are of sufficient gravity with due regard to their scale, nature, manner of commission and impact, considering both quantitative and/or qualitative factors.

14. Having completed its subject-matter and admissibility assessments, the Office has not otherwise identified substantial reasons to believe that an investigation would not serve the interests of justice.

15. In its examination of the available information the Office has been mindful of the nature of the determination under article 53(1), the low threshold applicable, as well as its object and purpose.⁷ Moreover, the Office’s limited powers at the preliminary examination

⁶ *Simone Gbagbo Admissibility Decision*, para. 65. See also *Simone Gbagbo Admissibility Appeal Judgment*, para. 122.

⁷ See e.g. *Bangladesh/Myanmar Article 15 Decision*, paras. 126-130; *Georgia Article 15 Decision*, para. 63; *Kenya Article 15 Decision*, para. 205.

stage have inevitably restricted the scope of its findings summarised above. While the Office has been able to determine that there is a reasonable basis to believe that crimes within the jurisdiction of the Court have been committed, it has not been able, nor is it required, to come to a determination on *all* allegations received.

16. In this context, the Office recalls that the crimes identified during a preliminary examination should be considered as examples of relevant criminality within a situation, in light of the threshold requirement of determining whether “*a crime* within the jurisdiction of the Court has been or is being committed”.⁸ Accordingly, once the threshold for initiating an investigation is met, the Prosecutor may proceed with an investigation into the situation as a whole and not just the particular acts or incidents identified and brought forward to substantiate that threshold.⁹ To do otherwise would be to pre-determine the direction of a future investigation, and narrow its scope, based on the limited information available at the preliminary examination stage. It would convert the facts provisionally identified as meeting this threshold into binding parameters that would regulate the scope of any future investigative inquiries. This approach would be inconsistent with the Prosecutor’s duty of independent and objective investigation and prosecution, as set out in articles 42, 54 and 58 of the Statute.¹⁰

17. In particular, as the Appeals Chamber has stressed in the context of another situation, restricting the permitted scope of an investigation to the factual information obtained during a preliminary examination would erroneously inhibit the Prosecutor’s truth-seeking function.¹¹ The Appeals Chamber further stressed that the Prosecutor is mandated, under article 54(1)(a) of the Statute to ‘extend the investigation to cover all facts and evidence relevant to an assessment of whether there is criminal responsibility under this Statute, and, in doing so, investigate incriminating and exonerating circumstances equally’. It further

⁸ Statute, article 53(1)(a) (emphasis added).

⁹ See *Kenya Article 15 Decision*, paras. 74-75, 205; *Georgia Article 15 Decision*, paras. 63-64.

¹⁰ See Appeals Chamber, *Judgment on the appeal against the decision on the authorisation of an investigation into the situation in the Islamic Republic of Afghanistan*, (Afghanistan Appeals Judgment) ICC-02/17-138, 5 March 2020, para. 61; *Bangladesh/Myanmar Article 15 Decision*, paras. 126-130; *Kenya Article 15 Decision*, paras. 74-75, 205; Pre-Trial Chamber I, *Decision on the Prosecutor’s request for authorization of an investigation*, ICC-01/15-12, 27 January 2016, paras. 63-64.

¹¹ *Afghanistan Appeals Judgment*, para. 61. See also Pre-Trial Chamber III, *Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar*, ICC-01/19-27, 14 November 2019, paras. 126-130; *Kenya Article 15 Decision*, paras. 74-75, 205; Pre-Trial Chamber I, *Decision on the Prosecutor’s request for authorization of an investigation*, ICC-01/15-12, 27 January 2016, paras. 63-64.

recalled that under article 54(1)(b) of the Statute, the Prosecutor is required to '[t]ake appropriate measures to ensure the effective investigation and prosecution of crimes within the jurisdiction of the Court'; and that the Prosecutor's duty, according to article 54(1) of the Statute, is 'to establish the truth'. Accordingly, the Appeals Chamber emphasised that, in order to obtain a full picture of the relevant facts, their potential legal characterisation as specific crimes under the jurisdiction of the Court, and the responsibility of the various actors that may be involved, the Prosecutor must carry out an investigation into the situation as a whole.¹²

18. In conclusion, the crimes identified above are illustrative only. The Prosecutor's investigation will not be limited only to the specific crimes that informed the assessment at the preliminary examination stage. The Office will be able to expand or modify the investigation with respect to the acts identified above or other alleged acts, incidents, groups or persons and/or to adopt different legal qualifications, including any new crimes that may allegedly be committed in Ukraine, so long as any cases identified for prosecution are sufficiently linked to the situation, which will encompass Rome Statute crimes within the jurisdiction of the Court allegedly committed in Ukraine from 21 November 2013 onwards.¹³

| OTP

¹² *Afghanistan Appeals Judgment*, para. 60.

¹³ See *Afghanistan Appeals Judgment*, para. 79. See also *Kenya Article 15 Decision*, paras. 74-75, 205; *Georgia Article 15 Decision*, paras. 63-64; *Burundi Article 15 Decision*, paras 192-194; *Bangladeshi/ Myanmar Article 15 Decision*, para.124.