

Draft Regulations of the Office of the Prosecutor

Book 1: Mission and organisation

The Rome Statute of the International Criminal Court and the Rules of Procedure and Evidence adopted by the Assembly of State Parties set out the principles applied by the Office of the Prosecutor in taking its decisions. The guidance set out in these Regulations is intended to complement those principles. The Regulations do not replace the principles of the Statute or Rules or substitute for an understanding of them.

Transparent decision making and consistency of approach are vital factors in promoting respect for the enforcement of international justice and fostering complementarity. The guidelines, standard operating procedures and Code of conduct contained in these Regulations will inculcate, maintain and demonstrate the fairness and consistency of the decision making and legal practice of the Office of the Prosecutor.

Part 1: The Regulations

Section 1: The Regulations and the mandate and objective of the Office of the Prosecutor

Regulation 1: The Regulations of the Office of the Prosecutor

- 1.1. The Chief Prosecutor of the International Criminal Court adopts Regulations for all members of the Office of the Prosecutor pursuant to the authority under article 42(2) of the Statute and rule 9 of the Rules of Procedure and Evidence of the Court.
- 1.2. The Regulations are an instrument for the effective management and administration of the Office of the Prosecutor. They establish guidelines, standard operating procedures¹ and a Code of conduct that shall be followed by all members of the Office of the Prosecutor.
- 1.3. The Regulations in their latest version are accessible for all staff on the intranet and in hard copies with the chiefs of section. The authoritative version is kept by the Chief Prosecutor. In addition, they are posted on the website of the Court in the working languages of the Court.
- 1.4. The Regulations of the Office of the Prosecutor are to be read in conjunction with, and are subject to, the Statute, the Rules of Procedure and Evidence, the Elements of Crimes, the Regulations of the Court, the Staff Regulations and the Staff Rules.
- 1.5. For the purposes of these Regulations:
 - (a) “Assembly of States Parties” means the Assembly of States Parties to the Rome Statute of the International Criminal Court, adopted at Rome on 17 July 1998;

- (b) “Court” means the International Criminal Court;
- (c) “Presidency” means the Presidency of the International Criminal Court;
- (d) “Chief Prosecutor” means the Prosecutor elected in accordance with article 42(4) of the Statute;
- (e) “Registrar” means the Registrar of the International Criminal Court elected in accordance with article 43(4) of the Statute;
- (f) “Rules of Procedure and Evidence” means the Rules of Procedure and Evidence, adopted by the Assembly of States Parties as adopted at the First Session of the Assembly of States Parties in New York on 3-10 September 2002;
- (g) “Statute” means the Rome Statute of the International Criminal Court, adopted in Rome on 17 July 1998;
- (h) “Office” means the Office of the Prosecutor of the International Criminal Court;

Regulation 2: The Office of the Prosecutor

- 2.1. The Office of the Prosecutor is one of the four organs of the Court (article 34(c) of the Statute).
- 2.2. The Office of the Prosecutor is independent from all other organs of the Court, other international organisations, States Parties and non-States Parties, and intergovernmental and non-governmental organisations. A member of the Office shall not seek or act on instructions from any external source (article 42(1) of the Statute).

Section 2: Amendment of the Regulations

Regulation 3: Standing Committee

- 3.1. A Standing Committee on the Regulations is hereby established. It shall make recommendations to the Chief Prosecutor regarding amendments or additions to the Regulations, either on its own initiative or upon consideration of proposals made by any member of the Office of the Prosecutor.
- 3.2. The Standing Committee shall be composed of the Deputy Prosecutors and of one member each of the Analysis Section, the Investigation Section, the Prosecution Section, the Appeals Section, the Legal Advisory and Policy Section, the Services Section and the Knowledge-Base Section, as designated by the respective chief of the section. Once a year, the Standing Committee elects a chairperson.
- 3.3. The Standing Committee holds meetings as may be required and in any event twice per calendar year. The Chief of the Legal Advisory and Policy Section will coordinate the preparation of the meetings of the Committee in consultation with the Deputy Prosecutors.

Regulation 4: Amendment procedure

- 4.1. The Regulations can only be amended by the Chief Prosecutor. Before adopting or amending the Regulations, the Chief Prosecutor shall consult with the Registrar on all matters that may affect the operation of the Registry.

- 4.2. All proposals for amendments or additions to the Regulations shall be addressed to the chairperson of the Standing Committee. The Standing Committee shall consider the merit of any suggestion received. Members of the Standing Committee may also suggest amendments or additions to the Regulations.
- 4.3. The Standing Committee shall strive to make decisions by consensus. It shall submit its decisions to the Chief Prosecutor in the form of recommendations. If consensus can not be achieved, the Committee shall so report to the Chief Prosecutor, both detailing the different views and explaining why consensus was not achieved.
- 4.4. An amendment to the Regulations shall not be applied retroactively to the detriment of a person under investigation or prosecution or who has been convicted.

[Part 2: Mission of the Office of the Prosecutor]

[Part 3: Structure of the Office of the Prosecutor]

Book 2: Standards of conduct and training

Part 1: Code of conduct

Regulation 1: Values and principles

The Office of the Prosecutor values and promotes the highest standards of efficiency, competency and integrity amongst its members,² at all levels of seniority. The provisions of this Part shall:

- (a) inculcate and uphold the standard of excellence expected from all members of the Office;³
- (b) establish a set of general standards of conduct for all members of the Office as well as specific, illustrative standards of conduct;
- (c) provide measures to promote compliance and rectify non-compliance with these standards of conduct.

Regulation 2: Scope of application of the Code

- 2.1 The standards of this Code apply to the Chief Prosecutor and Deputy Prosecutors, all general services and professional staff members of the Office, temporary and *gratis* personnel and law clerks of the Office.
- 2.2 The standards of this Code apply exclusively within the scope of the performance of individual duties and the individual exercise of inherent and delegated powers.⁴
- 2.3 This Code is subject to the provisions of the Statute, the Rules of Procedure and Evidence, the Regulations of the Court and the Staff Regulations and Staff Rules, and operates notwithstanding the code of conduct of the Victims and Witnesses Unit⁵ and any other national or international standards to which members of the Office may be held.⁶ This Code forms an integral part of the Regulations of the Office.

Regulation 3: General standards

- 3.1. Members of the Office shall uphold the principles and purposes of the Statute, fulfil their solemn undertaking to the Court; and adhere to the Rules of Procedure and Evidence, the Regulations of the Court, the Staff Regulations, the Staff Rules, the Financial Regulations and Rules, and the Regulations of the Office. To this end, members of the Office should be fully familiar with these texts and be aware of amendments thereto.
- 3.2. Members of the Office shall establish and promote a unified international legal culture within the Office, rooted in the principles and purposes of the Statute, without bias for the rules and methods of any one national system or legal tradition.⁷
- 3.3. In accordance with the standards set out in this Code, members of the Office shall, in all matters arising in the performance of their duties or the exercise of their powers, and in all their dealings within the Office and in relations to the Court, governments, organisations and individuals:

- (a) maintain the independence of the Office and refrain from seeking or acting on instructions from any external source;⁸
- (b) conduct themselves honourably, professionally, faithfully, impartially and conscientiously;⁹
- (c) respect the confidentiality of investigations and prosecutions;¹⁰
- (d) endeavour to establish the truth in preliminary examinations, investigations and prosecutions, in accordance with article 54 of the Statute and Regulation 10;¹¹
- (e) promote the effective [and expeditious] investigation and prosecution of crimes within the jurisdiction of the Court;¹²

Regulation 4: Specific standards of independence

The standard of independence¹³ includes, *inter alia*:

- (a) remaining unaffected by any individual or sectional interests and in particular any pressure by any State, organ of the United Nations, intergovernmental or non-governmental organisation or the media;¹⁴
- (b) refraining from any activity which is likely to affect the confidence of others in the independence of the Office;
- (c) refraining from the exercise of other occupations of a professional nature [without the approval of the Chief Prosecutor];¹⁵
- (d) refraining from any activity which is likely to interfere with the performance of duties and the exercise of powers;
- (e) not being influenced by fear or intimidation.¹⁶

Regulation 5: Specific standards of honourable and professional conduct

The standard of honourable and professional conduct is the embodiment of the dignity of the Office through words and deeds. Honourable and professional conduct includes, *inter alia*:

- (a) dignified and courteous conduct before the Chambers of the Court, as befitting a high institution of international criminal justice;
- (b) dignified and courteous conduct in the presence of Judges, high officials of the Court, State officials, and other dignitaries;
- (c) dignified, courteous, collegial and supportive conduct towards all other members of the Office and other organs of the Court;¹⁷
- (d) respect for the rights of persons protected during investigation, dignified and courteous conduct towards the persons being investigated and professional conduct towards the legal representatives;¹⁸
- (e) respect for the rights of accused; dignified and courteous conduct towards accused persons, and professional conduct towards their legal representatives;
- (f) respect for the rights of victims and witnesses,¹⁹ and respect for their interests and personal circumstances; dignified and courteous conduct towards victims and witnesses, professional conduct towards their legal representatives, and sen-

sitive conduct towards victims, particularly victims of sexual and gender violence and violence against children;²⁰

- (f) compliance with measures adopted by the Chief Prosecutor or other Organs of the Court, as may be applicable, in order to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses;²¹
- (g) respect for the human rights and fundamental freedoms recognized by international law, consistent with the Statute and treatment of persons without distinctions²² founded on grounds such as gender,²³ sexual orientation, age, race, colour, language, religion or belief, political or other opinion, national, ethnic or social origin, wealth, birth or other status.²⁴

Regulation 6: Specific standards of faithful conduct

The standard of faithful conduct is the fulfilment of the trust reposed in the members of the Office by the Chief Prosecutor. Faithful conduct includes, *inter alia*:

- (a) subordination of personal interests to the interests of the Office, of the Court as an institution and, more broadly, [to the interests] of international justice;²⁵
- (b) acting solely within the scope of individual duties and within the [bounds][confines] of inherent or delegated powers;²⁶
- (c) due deference to the authority of the Chief Prosecutor, Deputy Prosecutors and their designated representatives[,] acting within the scope of their powers;
- (d) due deference to the decisions of collegial bodies²⁷ and of superiors[,] acting within the scope of their powers;
- (e) setting an unimpeachable example for subordinate members of the Office and providing appropriate direction, guidance and support;²⁸
- (f) full compliance with instructions received through appropriate channels of authority within the Office, and due consideration to general guidance and specific recommendations;
- (g) full compliance with arrangements and agreements binding on the Office;²⁹
- (h) respect for the principles of this Code, and concerted effort to prevent, oppose and address any departure therefrom through,³⁰ *inter alia*, the measures provided in Regulation 13.

Regulation 7: Specific standards of impartial conduct

The standard of impartial conduct is the fair-minded and moderate treatment of persons and issues, and is fully compatible with thorough investigation and analysis and with vigorous advocacy.³¹ Impartial conduct includes, *inter alia*:

- (a) respect for the presumption of innocence, particularly by avoiding expressions of opinion on the guilt or innocence of an accused in public or outside the proper context of proceedings before the Court,³²
- [(b) ensuring that the right person is prosecuted for the right offence³³;
- (c) full conformity with the applicable rules on disclosure of evidence,³⁴
- (d) refusal to engage in direct or indirect *ex parte* communication with Judges or Chambers of the Court on the merits of trial or appeal proceedings during the

course of those proceedings unless otherwise authorised under the Statute or the Rules of Procedure and Evidence, or unless otherwise instructed by the relevant Chamber or Judges,³⁵

- (e) refraining from expressions of opinion that could, objectively, adversely affect the standard of impartial conduct, whether through the communications media, in writing or in public addresses or actions, outside the context of proceedings before the Court;³⁶
- (f) requesting to be excused from any matter as soon as grounds for disqualification arise, especially those indicated in article 42(7) and rule 34(1).³⁷

Regulation 8: Specific standards of conscientious conduct

The standard of conscientious conduct is diligent and systematic perseverance towards clear goals. Conscientious conduct includes, *inter alia*:

- (a) efficient and competent completion of individual tasks;
- (b) clear and timely requests for assistance where required for the efficient and competent completion of individual tasks;
- (c) meaningful review of the work product of others, where required;
- (d) awareness of developments in international criminal law and in professional methods and standards;³⁸
- (e) regular and diligent participation in training within the Office.³⁹

Regulation 9: Specific standards of confidentiality

The standard of confidentiality is to safeguard confidences held within the Office or parts thereof. Confidentiality includes, *inter alia*:

- (a) full conformity to policies and procedures of the Office regarding confidentiality of documents, proceedings, and other matters;⁴⁰
- (b) discernment and vigilance regarding all communications that may raise issues of confidentiality, particularly communications with persons outside the Office;
- (c) immediate reporting of suspected breaches of confidentiality directly and exclusively to the Chief Prosecutor [or to the Adviser under Regulation 13], where such suspected breaches would pose a danger to the safety, well-being or privacy of a victim, witness or third person;⁴¹
- (d) containment of reported breaches of confidentiality by refraining from unnecessary discussion thereof in any context.

Regulation 10: Specific standards of truth-seeking

Seeking the truth includes, *inter alia*:

- (a) upholding the central aim of investigation and analysis, namely to provide the factual and evidentiary basis for an accurate assessment of whether there may be criminal responsibility under the Statute;⁴²
- (b) investigation of both incriminating and exonerating circumstances as a matter of equal priority and with equal diligence;⁴³

- (c) assessment of the materiality of facts and the probative value of evidence according to all relevant circumstances and irrespective of mere advantage or disadvantage to any potential case;⁴⁴
- (d) prompt reporting of concerns which, if substantiated, would tend to render a previous conviction made by the Court unsafe, bring the administration of justice into disrepute or constitute a miscarriage of justice; and full conformity to the applicable rules on disclosure of new evidence.⁴⁵

Regulation 11: Specific standards of effective investigation and prosecution

The standard of effective investigation and prosecution includes, *inter alia*,

- (a) preservation of the integrity of information and evidence held within the Office and refusal to compromise the effective retention, storage and security of information and evidence;
- (b) reasoned evaluation of facts, evidence and law, particularly in preparing and conducting the tests of reasonable basis, *prima facie* admissibility, interests of justice and reconsideration, considering applicable factors and criteria and taking into account the interests protected in the Statute in each case;⁴⁶
- (c) close scrutiny and attentive evaluation of facts, evidence and law in preparing and conducting the test of substantial grounds.⁴⁷

[Regulation 12: Adviser for standards of conduct⁴⁸

- 12.1. The Chief Prosecutor shall designate one staff member of the Office to serve as Adviser for Standards of Conduct, for a renewable fixed period determined by the Chief Prosecutor. The designated person should be of high moral character and discerning and tactful disposition, and have particular competency in professional ethics.
- 12.2. The designated person shall assume the function of Adviser in addition to the exercise of ordinary duties.
- 12.3. When acting in the capacity of Adviser, as provided in this Code, the designated person shall report exclusively and confidentially to the Chief Prosecutor.
- 12.4. The Adviser shall assist the Chief Prosecutor to promote full compliance with this Code and to reinforce standards of excellence in conduct. In particular, the Adviser shall exercise the following functions:
 - (a) consultations as provided in Regulation 13;
 - (b) reports and recommendations as provided in Regulation 14;
 - (c) recommendations for amendment of this Code, in accordance with Book 1, Part 1, Regulation 4.2.
- 12.5. The Adviser shall also ensure, in collaboration with other members of the Office:
 - (a) that prospective members of the Office are made aware of the standards of conduct expected of members of the Office, particularly through the training measures provided in Part 2, Regulation 16.

- (b) that training on standards of conduct forms part of the induction programme for all members of the Office, and is included, where appropriate, in subsequent training programmes;
- (c) that a general review of standards of conduct forms part of mission preparations and mission reports, indicating any particularly positive or negative patterns of conduct.⁴⁹

Regulation 13: Consultations

- 13.1. The Adviser shall be directly and immediately available for consultations with any member of the Office regarding general or specific matters related to compliance with this Code, whether concerning the conduct of the member seeking consultations or the conduct of any other member of the Office.⁵⁰
- 13.2. The name of the member seeking consultations and the content of consultations shall be confidential and protected by privilege in favour of the member seeking consultations, without whose consent such information shall not be disclosed by the Adviser in the course of any proceeding or to any person, except to the Chief Prosecutor, directly and upon request, as provided in Regulation 14.⁵¹ The Chief Prosecutor alone retains full discretion to withhold or disclose such information as required for the purposes of performance appraisal or disciplinary proceedings.⁵² The Adviser shall notify the member seeking consultations of this Regulation prior to undertaking consultations.
- 13.3. In the course of consultations, the Adviser may, inter alia,
 - (a) seek a clear description of the concerns of the member of the Office;
 - (b) review relevant rules, regulations, policies, procedures and guidelines;
 - (c) consult with the member of the Office on the application of standards of conduct;
 - (d) provide guidance to the member of the Office on the application of standards of conduct;
 - (e) inform the member of the Office of the special regime provided in the Rules of Procedure and Evidence regarding conduct of the Prosecutor and Deputy Prosecutor.⁵³
- 13.4. The Adviser may invite any member of the Office, individually or as a group, to hold such consultations as may be advisable to promote compliance with this Code. Members of the office shall offer collegial co-operation to the Adviser in this regard. Regulation 13.2 shall apply, *mutatis mutandis*, to such consultations.
- 13.5. If a member of the Office can show good cause not to first report to the Adviser, nothing in this Regulation precludes a member of the Office from reporting concerns regarding compliance with this Code directly to the Chief Prosecutor, or submitting a complaint to the Presidency, as the case may be.⁵⁴

Regulation 14: Reports and recommendations

- 14.1. The Adviser shall report regularly and directly to the Chief Prosecutor on efforts to promote compliance with this Code, and provide a general assessment of standards of conduct within the Office, including any particularly positive or negative patterns of conduct; to this end, the Adviser may seek information from any member of the

Office. A report under this subsection shall not include privileged or otherwise confidential information, unless requested by the Prosecutor.⁵⁵

- 14.2. In situations of clear or flagrant non-compliance with this Code, the Adviser shall inform the Chief Prosecutor, directly and without delay.⁵⁶ Where the conduct of a Deputy Prosecutor is in question, the Adviser shall inform the Chief Prosecutor. Where the conduct of the Chief Prosecutor is in question, the Adviser shall inform the Chief Prosecutor in the presence of a Deputy Prosecutor, and, additionally, shall inform the Presidency.⁵⁷
- 14.3. The Adviser may provide recommendations to the Chief Prosecutor on measures to rectify general or specific situations of non-compliance with this Code.
- 14.4. The fact that a member of the Office has sought consultations with the Adviser regarding his or her conduct shall form the basis of a favourable inference by the Chief Prosecutor. Where such conduct results in disciplinary or other proceedings, the Chief Prosecutor shall take appropriate steps to ensure that such a favourable inference is drawn.⁵⁸

Regulation 15: Non-compliance measures taken by the Prosecutor

- 15.1. The Chief Prosecutor may take any non-disciplinary measures to rectify non-compliance with this Code. Such measures may include, *inter alia*,
 - (a) instructing a member of the Office to take, or refrain from, a particular course of action;
 - (b) excusing or disqualifying a member of the Office from acting in a particular matter;
 - (c) issuing general or specific policies, procedures or guidelines on conduct;
 - (d) re-assigning tasks within the Office;
 - (e) providing for additional training or support.
- 15.2. Disciplinary measures shall be subject to the Staff Rules, Staff Regulations or the Rules of Procedure and Evidence, as the case may be.⁵⁹

Part 2: Training

Regulation 16: Values and principles

The Office of the Prosecutor values the vital role of training in ensuring the highest standards of efficiency, competency and integrity, and promotes comprehensive and ongoing training for all staff members. The provisions of this Part shall:

- (a) provide for induction training and ongoing training within the Office;
- (b) establish the scope and subject matter of training within the Office;
- (c) assign clear responsibilities for the organisation and management of training within the Office.

Regulation 17: General

- 17.1. The Office offers professional in-house training on a regular basis. All staff of the Office are obliged to participate in such training, in accordance with this Part.
- 17.2. The organisation and management of the legal training is the responsibility of the Legal Advisory and Policy Section in close consultation with the Deputy Prosecutors and the Section Chiefs. Other training is organised and managed by the Senior Manager in close consultation with the Deputy Prosecutors and the section chiefs. Staff members and others with special expertise may be requested to participate as instructors for training sessions.

Regulation 18: Induction course

- 18.1. Upon commencement of service in the Office of the Prosecutor, all staff shall take part in an induction course.
- 18.2. For professional, and, where appropriate, general services staff, the course shall include the following issues, as required:
 - (a) the main organisational features of the Court and the Office of the Prosecutor;
 - (b) jurisdictional issues;
 - (c) substantive law of the Court;
 - (d) procedural law of the Court;
 - (e) general international law;
 - (f) trial advocacy (including written and oral trial advocacy);
 - (g) appellate advocacy (including written and oral trial advocacy);
 - (h) the Code of conduct;
 - (i) respect for diversity and cultural sensitivity, and relevant internal policies;
 - (j) all forms of unlawful discrimination, harassment and other improper behaviour, and relevant internal policies;
 - (k) confidentiality and relevant internal policies.
- 18.3. The induction course shall furthermore cover all other issues addressed in the Regulations.
- 18.4. With regard to the training provided for in Sub-regulations 18.2.(a) – (e) and (h) and 18.3., the Chief of the Legal Advisory and Policy Section decides the subject matter to be covered in close consultation with the respective section chiefs of the staff members who attend a particular training course.

Regulation 19: Induction to a new situation

- 19.1. At the start of each new investigation the Investigation Team shall undergo training specifically addressing the factual and legal problems that are likely to be encountered in the specific situation.
- 19.2. The organisation and management of the training referred to in Sub-regulation 19.1. above is the responsibility of the Case Controller and the Senior Prosecutor in

charge of the Investigation, in close consultation with the Senior Manager and the Chief of the Legal Advisory and Policy Section.

Regulation 20: Ongoing education

- 20.1. All staff members shall receive ongoing education throughout their professional career at the Office of the Prosecutor.
- 20.2. Generally, all staff members shall attend training sessions at least once a year at the Office.
- 20.3. Sub-regulation 17.2. shall apply, *mutatis mutandis*, to the organisation and management of the training referred to in Sub-regulation 20.1.

Book 3: Operations manual

[Part 1: Complementarity practice]

[Issues to be considered in this Part are:

- standard monitoring activities;
- open sources evaluation;
- bilateral agreements, activities, dialogue;
- assessment of inability, unwillingness; complementarity in the judicial process.]

Part 2: The management of preliminary examination, article 53(1) evaluation, and start of investigation

Section 1: Values and principles

Regulation 1: Values and principles

The Office of the Prosecutor conducts preliminary examinations under article 15 and evaluations under article 53 of the Statute. The provisions of this Part shall:

- (a) ensure the efficient and timely implementation of preliminary examinations and evaluations;
- (b) establish a transparent and rational decision making process during preliminary examinations and evaluations that guarantees accurate, reasonable and consistent results;
- (c) enable the Chief Prosecutor to base his decision of whether to start an investigation on a reliable basis, both factually and legally.

Section 2: Preliminary examination and initiation of investigation *pro-prio motu* pursuant to articles 13(c), 15

Regulation 2: Preliminary examination

All information made available to the Office of the Prosecutor under article 15 of the Statute shall be analysed with a view to assessing the seriousness of its allegations or propositions. For this purpose, the reliability of the source of the information obtained and the information itself shall be preliminarily examined to determine whether the alleged criminal conduct may fall within the jurisdiction of the Court *ratione materiae, personae, loci* and *temporis*, and whether a case is or would be admissible.

Regulation 3: Responsibility for implementation of preliminary examination; Preliminary Examinations Log; Communications Register

- 3.1. The Deputy Prosecutor (Investigations) is responsible for the preliminary examination of all information received under article 15⁶⁰ in close co-operation with the Deputy Prosecutor (Prosecutions).⁶¹ The Deputy Prosecutor (Investigations) shall keep a Log of all article 15 preliminary examinations conducted (Preliminary Examinations Log).
- 3.2. The Log shall be considered an internal document prepared by the Office of the Prosecutor in connection with the investigation or presentation of a case as specified

by rule 81(1) of the Rules of Procedure and Evidence, and not be subject to disclosure.

- 3.3. The Senior Manager of the Services Section shall, upon registration of incoming information and material in accordance with Book 4 (Information and evidence management), forward a copy of such information and material to the Deputy Prosecutor (Investigations). The Senior Manager shall keep a Register of all communications made under article 15 (Communications Register). The Register shall be accessible in electronic format on a shared network drive for all members of the Office.⁶²
- 3.4. The Senior Manager shall confirm receipt of the incoming information with the person(s) or organisation(s) who provided the information in a manner that prevents any danger to the safety, well-being and privacy of those who provided the information or the integrity of investigations or proceedings⁶³ and inform them that the information will be preliminarily examined.
- 3.5. The Deputy Prosecutor (Investigations) regularly reports to the Chief Prosecutor on the developments regarding incoming information and the state of the Preliminary Examination Log.⁶⁴

Regulation 4: Preliminary Examination Teams

- 4.1. The Deputy Prosecutor (Investigations) establishes, as required, standing article 15 Preliminary Examination Teams, taking into consideration, as far as possible, the need to ensure an adequate representation of knowledge of the relevant legal systems and languages in the Team. Each Team shall consist of persons from the Investigation and Analysis Sections, a prosecutor and a legal adviser. The lawyers shall instruct the Preliminary Examination Team on relevant legal issues, in particular on questions of jurisdiction, admissibility and other relevant legal matters, such as the contextual elements of the crimes.
- 4.2. The Deputy Prosecutor (Investigations) designates a Preliminary Examination Team leader for each Team.
- 4.3. Each Preliminary Examination Team reports to the Deputy Prosecutor (Investigations) or a designated subordinate through the Team leader. The Deputy Prosecutor (Investigations) and the Chief of the Analysis Section or their designated subordinates shall consult regularly on the work progress of the Preliminary Examination Teams.
- 4.4. The Deputy Prosecutor (Investigations) or a designated subordinate shall allocate communications submitted under article 15 to specific Teams upon receipt from the Services Section.⁶⁵
- 4.5. The Preliminary Examination Teams shall first make an assessment of the credibility and reliability of the sources of information. The Teams shall, to the extent possible, preliminarily characterise the nature of alleged crimes, identify those involved, recommend targets of a possible investigation, and assess the likelihood of a successful completion of such an investigation. The Teams shall furthermore tentatively assess the admissibility of a possible case under article 17 of the Statute and draw attention to all factors that may be relevant for the assessment of whether there are substantial reasons to believe that such investigation would not serve the interests of justice (article 53(1)(c) and rule 48), taking into account the general policy of the Office in that matter.

Regulation 5: Request for additional information

In order to analyse the seriousness of the information received, the Deputy Prosecutor (Investigations) or his or her designated subordinate, upon recommendation by a Preliminary Examination Team, may seek additional information in accordance with article 15(2) of the Statute.

Regulation 6: Preliminary examination report; draft investigation plan

- 6.1. After the Preliminary Examination Team has preliminarily examined the communication and any other material that may have been received or requested pursuant to article 15(2) of the Statute, the Team shall give a written report⁶⁶ about the preliminary examination, covering all issues as specified in Regulation 4.4. The report shall be accompanied by a reasoned recommendation⁶⁷ on further action to the Deputy Prosecutor (Investigations) and the Deputy Prosecutor (Prosecutions).
- 6.2. If the Deputy Prosecutor (Investigations) and the Deputy Prosecutor (Prosecution), after reviewing the report, agree that the situation does not merit starting an investigation, the material shall be treated as not constituting a reasonable basis to proceed with an investigation.⁶⁸ Those who provided the information shall be informed of such decision in accordance with article 15(6) and rule 49(1).
- 6.3. If the Deputy Prosecutor (Investigations) and the Deputy Prosecutor (Prosecution) agree that the situation may merit starting an investigation, they shall have set up a draft investigation plan⁶⁹ based on the report and recommendations of the Preliminary Examination Team. The Deputy Prosecutor (Prosecutions) designates a Senior Prosecutor to supervise the drafting of the investigation plan (Senior Prosecutor seized of the case).⁷⁰ The drafting team also comprises the members of the Preliminary Examination Team, including a legal adviser from the Legal Advisory and Policy Section, and, as may be required, additional prosecutors.
- 6.4. If the Deputy Prosecutor (Investigations) and the Deputy Prosecutor (Prosecution) do not reach agreement, they shall submit the matter to the Chief Prosecutor, who decides whether a draft investigation plan shall be set up.
- 6.5. The draft investigation plan shall address and elaborate on, to the extent possible and appropriate, and in a tentative manner, the following:
 - (a) an assessment of whether there is a reasonable basis to believe that a crime within the jurisdiction of the Court has been or is being committed (article 53(1)(a) of the Statute);
 - (b) the relevant background of the situation, placing the alleged offences in a broader geographical, social and cultural context;
 - (c) an explanation why the alleged offences warrant a full investigation against the backdrop of other alleged offences where such a step might not be recommendable;
 - (d) an identification of the crime base incidents to be investigated and a description of likely suspects, together with the overall aim of the investigation;
 - (e) a tentative indication of possible charges, modes of liability and potential defences, if any, as provided for in article 31 of the Statute;
 - (f) an explanation of the role and place of these likely suspects in the relevant chains of authority;

- (g) the whereabouts, if known, of the possible suspects and the likelihood to arrest them;
 - (h) an assessment of the admissibility of a possible case under article 17 of the Statute;
 - (i) a preliminary indication of resources, time and staff likely to be required to complete the investigation;
 - (j) a preliminary indication of the main categories of evidence and the amount of evidence that is likely to be required to prove the possible charges;
 - (k) matters of State co-operation and security;
 - (l) an explanation of how the investigation and prosecution of the alleged crimes or perpetrators is expected to fit in with the broader context of cases pursued by the Office;
 - (m) potential dangers to the integrity of the investigation or the life or well-being of victims and witnesses that could arise once the victims are informed of the intention of the Chief Prosecutor to seek authorisation, in accordance with rule 50(1) of the Rules of Procedure and Evidence;
 - (n) any other matter that may be of relevance for a decision to start an investigation in the light of the specific situation.
- 6.6. The report prepared by the Preliminary Examination Team and the draft investigation plan shall be considered internal documents prepared by the Office of the Prosecutor in connection with the investigation or presentation of a case as specified by rule 81(1) of the Rules of Procedure and Evidence, and not be subject to disclosure.
- 6.7. The draft investigation plan is submitted by the Deputy Prosecutor (Investigations) and the Deputy Prosecutor (Prosecutions) to the Chief Prosecutor, together with a reasoned recommendation⁷¹ on whether authorisation to investigate pursuant to article 15(3) of the Statute should be requested before the Pre-Trial Chamber, paying specific attention to the interests of justice as specified by article 53(1)(c) and rule 48. The report of the Preliminary Examination Team shall also be submitted to the Chief Prosecutor in case it has not been submitted before.

Section 3: Article 53(1) evaluation and start of investigation pursuant to articles 13(a) and (b)

Regulation 7: Article 53(1) evaluation⁷²

All information made available to the Office by the Security Council or a State Party shall be analysed with a view to assessing the seriousness of its allegations or propositions (rule 104(1) of the Rules of Procedure and Evidence). For this purpose, the information obtained shall be preliminarily examined with a view to determining the reliability of the source, whether the alleged criminal conduct may fall within the jurisdiction of the Court *ratione materiae, personae, loci* and *temporis* and whether a case is or would be admissible.

Regulation 8: Responsibility for implementation of article 53(1) evaluation; article 53(1) evaluation log

- 8.1. The Chief Prosecutor is responsible for the evaluation of all referrals under article 53(1) of the Statute and rule 104(1) of the Rules of Procedure and Evidence.⁷³ The Deputy Prosecutor (Investigations) shall keep a Log of all article 53(1) evaluations conducted.
- 8.2. The Log shall be considered an internal document prepared by the Office of the Prosecutor in connection with the investigation or presentation of a case as specified by rule 81(1) of the Rules of Procedure and Evidence, and not be subject to disclosure.
- 8.3. Upon registration of incoming referrals in accordance with Book 4 (Information and evidence management), the Senior Manager of the Services Section shall forward a copy of such information and material to the Chief Prosecutor and the Deputy Prosecutor (Investigations).
- 8.4. The Deputy Prosecutor (Investigations) regularly reports to the Chief Prosecutor on the developments regarding the state of the article 53(1) evaluation Log.

Regulation 9: Article 53(1) Evaluation Team

- 9.1. The Chief Prosecutor establishes an article 53(1) Evaluation Team (Evaluation Team) in the event of a referral of a situation by the Security Council or a State Party. The Evaluation Team shall consist of one or more prosecutors designated by the Deputy Prosecutor (Prosecutions), one or more persons designated by the Deputy Prosecutor (Investigations), the Senior Analyst and the Chief of the Legal Advisory and Policy Section. The lawyers shall instruct the Evaluation Team on questions of jurisdiction, admissibility and other relevant legal matters.
- 9.2. The Chief Prosecutor designates an Evaluation Team leader.
- 9.3. The Evaluation Team reports to the Chief Prosecutor through the Team leader.
- 9.4. The Evaluation Team shall make an assessment of the credibility and reliability of the sources of information indicated in the referral. The Evaluation Team shall, to the extent possible, preliminarily characterise the nature of alleged crimes, identify those involved, recommend targets of a possible investigation, and assess the likelihood of a successful completion of such an investigation. The Evaluation Team shall furthermore tentatively assess the admissibility of a possible case under article 17 of the Statute in cases of a referral by a State Party and draw attention to all factors that may be relevant for the assessment of whether there are substantial reasons to believe that such investigation would not serve the interests of justice (article 53(1)(c)), taking into account the general policy of the Office in that matter.

Regulation 10: Request for additional information

In order to analyse the seriousness of the information received, the Deputy Prosecutor (Investigations) or his or her designated subordinate, upon recommendation by an Evaluation Team may seek additional information in accordance with rule 104(2) of the Statute.

Regulation 11: Article 53(1) evaluation report; draft investigation plan

- 11.1. After the Evaluation Team has examined the incoming material and any other material that may have been requested pursuant to rule 104(2) of the Rules of Procedure and Evidence and Regulation 10, the Team shall prepare a written report⁷⁴ about the article 53(1) evaluation covering all issues as specified in Regulation 9.3.
- 11.2. If the report of the Team concludes that the situation does not merit an investigation, it shall contain a recommendation on how to explain and communicate the decision to the general public.
- 11.3. The Team leader shall submit the report directly to the Chief Prosecutor with a copy to the Deputy Prosecutors.
- 11.4. If the report of the Team concludes that the situation does merit an investigation, a Senior Prosecutor is designated by the Deputy Prosecutor (Prosecutions) to supervise the drafting of an investigation plan⁷⁵ (Senior Prosecutor seized of the case) based on the report of the Evaluation Team. The drafting team also comprises the members of the article 53 Evaluation Team, a legal adviser from the Legal Advisory and Policy Section and, as may be required, additional prosecutors.
- 11.5. Sub-Regulations 6.5. to 6.7. are applicable *mutatis mutandis*.

Section 4: Decision to start investigation⁷⁶

Regulation 12: Decision to start or not to start investigation

- 12.1. Upon conclusion of the preliminary examination or article 53(1) evaluation, the decision to start an investigation under article 53(1) or to request authorisation to commence an investigation from the Pre-Trial Chamber pursuant to article 15(3) is made by the Chief Prosecutor,⁷⁷ taking into consideration the draft investigation plan, the recommendation by the Deputy Prosecutor (Investigations) and the Deputy Prosecutor (Prosecutions) and all other information available to him or her on the given situation. No decision is to be taken without prior establishment of a draft investigation plan.
- 12.2. The Office of the Prosecutor shall start an investigation of crimes within the jurisdiction of the Court unless one of the three factors enumerated under article 53(1) and rule 48 of the Rules of Procedure and Evidence applies. Pursuant to article 53(1) of the Statute, the Chief Prosecutor may desist from investigation, if:
 - (a) the information available to the Chief Prosecutor does not provide a reasonable basis to believe that a crime within the jurisdiction of the Court has been or is being committed;
 - (b) the case is or would not be admissible under article 17 of the Statute,⁷⁸ or
 - (c) there are substantial reasons to believe that an investigation would not serve the interests of justice, after both the gravity of the crime and the interests of the victims have been taken into account.⁷⁹
- 12.3. A reasonable basis to believe that a crime within the jurisdiction of the Court has been or is being committed (article 53(1)(a)) exists if the information available to the Chief Prosecutor contains indications that make it seem possible that crimes within

the jurisdiction of the Court have been or are being committed.⁸⁰ Factors to be considered are, *inter alia*,

- (a) whether the information received contains facts that suggest that acts falling within the jurisdiction of the Court under articles 5 to 12 of the Statute have been committed;
- (b) the reliability of the source, the credibility of the information, and the incriminating weight of the material;
- (c) the availability of evidence which may be relevant for proving alleged crimes and modes of liability.

Regulation 13: Internal review of decision not to start investigation

- 13.1. Any new information or facts that may lead to a reconsideration of the decision not to investigate shall be immediately brought to the attention of the Deputy Prosecutor (Investigations).
- 13.2. The Deputy Prosecutor (Investigations) shall assess the new facts and information in the light of Regulation 12 and, if appropriate, refer the case or situation back to the competent Preliminary Examination or article 53(1) Evaluation Team.

Part 3: Investigation

Section 1: Values and principles

Regulation 14: Values and principles

The Office of the Prosecutor conducts investigations in accordance with Part 5 of the Statute and Chapter 5 of the Rules of Procedure and Evidence. The provisions of this Part shall:

- (a) ensure that all investigations respect the obligation to the endeavour to establish the truth in every case, as stipulated by article 54(1)(a) of the Statute;
- (b) ensure that all investigations are in conformity with the interests and personal circumstances of victims and witnesses and the rights of persons arising under the Statute, as provided in article 54(1)(b) and (c) of the Statute;
- (c) warrant the focused, timely, effective and thorough carrying out of investigations.

Section 2: General

Regulation 15: Conduct of investigations

- 15.1. All investigations shall be directed and supervised by the Senior Prosecutor seized of the case, or a prosecutor designated by him or her, in close co-operation with the Deputy Prosecutor (Investigations).
- 15.2. All investigative measures on the territory of a State shall be in conformity with Part 9 of the Statute, with arrangements entered into with a State pursuant to article 54(3)(d) of the Statute, with orders of the Pre-Trial Chamber under article 57(3)(d) of the Statute, and/or with the resolution of the United Nations Security Council referring the situation to the Court.

Regulation 16: Investigation Teams

- 16.1. For every investigation, an Investigation Team shall be established. The team shall comprise at least one member of the Preliminary Examination or Evaluation Team to ensure continuity.
- 16.2. All Investigation Teams are directed by a Senior Prosecutor or a lawyer designated by him or her. A Case Controller is designated by the Deputy Prosecutor (Investigations) in consultation with the Senior Prosecutor seized of the case. The Case Controller undertakes the management and co-ordination tasks which the Senior Prosecutor, or his or her designated subordinate, does not perform, and does so in close

co-operation with the Senior Prosecutor. The Case Controller may delegate operational and logistical matters to other Team members from the Investigation Section.

Regulation 17: [role of investigators]

Regulation 18: [role of analysts]

Section 3: Investigation plan; draft charges document; proof chart

Regulation 19: Documents as investigation management tools

Investigation plans, draft charges documents and proof charts are essential management tools to ensure focused and professional investigations. Every Investigation Team shall make active use of all three documents. They shall be regularly updated by every Investigation Team.

Regulation 20: Investigation plan

- 20.1. All investigations are conducted following an investigation plan. The investigation plan is developed from the draft investigation plan provided for in Regulations 6 and 11, as submitted to the Chief Prosecutor for decision to start an investigation.
- 20.2. The investigation plan describes the different steps of the investigation which are necessary to achieve the aim of the investigation, the anticipated outcome of each investigative step and alternative strategies.
- 20.3. The investigation plan shall be considered an internal document prepared by the Office of the Prosecutor in connection with the investigation or presentation of a case as specified by rule 81(1) of the Rules of Procedure and Evidence, and not be subject to disclosure.
- 20.4. The Senior Prosecutor seized of the case shall ensure that the investigation plan and its updates are brought to the attention of all members of the Investigation Team. The Senior Prosecutor or a lawyer he or she designates shall brief the Investigation Team on the legal basis for the investigation and the implications of this basis for the conduct of the investigation.

Regulation 21: Draft charges document

- 21.1. A tentative draft charges document shall be prepared by the Investigation Team as early as possible under the supervision of the Senior Prosecutor seized of the case or the lawyer he or she designates, drawing on the written report by the Preliminary Examination or article 53(1) Evaluation Teams and the investigation plan. As a working hypothesis, the draft charges document shall preliminarily identify possible crime base incidents, the suspect(s), the elements of the crimes allegedly committed by the suspect(s), and the modes of liability under which the suspects may be charged. The draft charges document shall be regularly updated and refined in the course of the investigation.

- 21.2. The draft charges document shall also anticipate possible defences in relation to suspects.
- 21.3. The Investigation Team shall bear in mind the responsibility of the Office to contribute to focused and expedient proceedings by limiting cumulative charging to a reasonable measure.
- 21.4. The legal theories concerning crimes and modes of liability in the draft charges document shall be consistent with the general approach to these questions taken by the Office.⁸¹ The Legal Advisory and Policy Section shall ensure that there is consistency in the legal approach taken by all Teams.
- 21.5. The draft charges document shall be considered an internal document prepared by the Office of the Prosecutor in connection with the investigation or presentation of a case as specified by rule 81(1) of the Rules of Procedure and Evidence, and not be subject to disclosure.

Regulation 22: Proof chart

- 22.1. A proof chart shall be set up at the start of every investigation by the Senior Prosecutor seized of the case and maintained by the member of the Investigation Team he or she designates. It shall be updated on a weekly basis. The chart shall be kept in the Investigation Team directory on the network of the Office. Once per month, or when the Deputy Prosecutor (Investigations) or the Deputy Prosecutor (Prosecutions) so decides, an updated version of the chart shall be printed and securely displayed in the operations area of the Investigation Team, clearly indicating the new evidence made available since the previous version of the chart.
- 22.2. The proof chart shall contain the evidence made available relating to the elements of crimes and the modes of liability which are considered likely for inclusion in the charges document. It shall be linked to the draft charges document.
- 22.3. All evidence included in the chart shall be clearly marked by its type, such as witness statements or documents. Links between different pieces of evidence shall be clearly denoted.
- 22.4. Investigation Team work product in the form of evidentiary assessments of and commentary on pieces of evidence shall be kept separately. This work product shall be considered an internal document prepared by the Office of the Prosecutor in connection with the investigation or presentation of a case as specified by rule 81(1) of the Rules of Procedure and Evidence, and not be subject to disclosure.

Section 4: Interviews

Subsection 1: Witness interviews

Regulation 23: General

- 23.1. Witness interviews are conducted either by the Office under articles 57(3)(d) or 99(4) or by national authorities in accordance with Part 9 of the Statute.

- 23.2. The prosecutor and all other members of the interviewing team shall ensure that the rights of the witness under the Statute are respected.

Regulation 24: Preparation of interview

- 24.1. Investigators and analysts shall prepare the interview under the direction of a prosecutor, taking into consideration the investigation plan and all other available material.⁸²
- 24.2. The interviewing team shall keep the interview structured and the witness focused on the relevant facts.
- 24.3. The prosecutor shall ensure the admissibility of the interview as evidence at trial.

Regulation 25: Start of interview

- 25.1. Prior to the beginning of the interview, the witness shall be informed of the following:
- (a) The person of the interviewer and his or her role in the investigation;
 - (b) The fact that the witness may be called to testify before the Court and that, if called as witness, his or her identity may have to be disclosed to the Court, the accused, and to defence counsel for the accused;
 - (c) The fact that the witness cannot be compelled to incriminate himself or herself or his or her spouse, child or parent who is an accused person, in accordance with rule 75 of the Rules of Procedure and Evidence;
 - (d) The fact that a copy of the witness statement may be transmitted to a State pursuant to a request made by that State under article 93(10)(b)(i)a. of the Statute and the possible protective measures available in that case;⁸³
- 25.2. Prior to the beginning of the interview, or, as appropriate, in the course of the interview, the witness shall be informed of the following:
- (a) The mandate of the Court, the Office and the Court's and Office's powers and authorities;
 - (b) The procedures available to the Court for ensuring the protection of confidential information provided to the Court, as well as for the protection and security of the witness;
 - (c) The nature and scope of the investigation in the context of which the witness is being questioned, as appropriate, and why the witness is being approached;
 - (d) That fact that the Office cannot provide assistance concerning resettlement issues *et cetera* for witnesses and/or their relatives.
- 25.3. No inducement of whatever kind shall be offered to the witness in exchange for his assent to being questioned or otherwise.

Regulation 26: Record of interview

- 26.1. In accordance with rule 111 of the Rules of Procedure and Evidence, a record of questioning shall be made.⁸⁴

- 26.2. Any identifying information about the witness other than his or her name, such as names of persons mentioned by the witness, addresses, telephone numbers *et cetera*, shall not be included in the record, but in the Witness Identification Form (see Regulation 27).
- 26.3. The record shall note the date, time and place of, and all persons present during the questioning (rule 111 of the Rules of Procedure and Evidence).
- 26.4. All records shall be taken in the first person singular. They shall contain, to the extent possible, the following information:
 - (a) the sequence of events witnessed by the person making the statement, in chronological order;
 - (b) identification details of all perpetrators;
 - (c) a comprehensive description of all crimes witnessed;
 - (d) a description of the scene of the crime;
 - (e) actual words spoken by the suspects and by other people in the presence of the suspects;
 - (f) a description of any documents or other evidence that the witness may bring to the interview, along with an explanation of their relevance;
 - (g) the ability of the witness to see or hear things mentioned in the record;
 - (h) any other information that may assist in determining the credibility of the statement.
- 26.5. The record shall be initialled on each page by the person recording and conducting the questioning, the person questioned, the interpreter,⁸⁵ and, if present, his or her counsel and, where applicable the judge or the prosecutor present.
- 26.6. The interviewer is responsible for the safekeeping of the original record and, if applicable, all documents and other evidence provided by the witness, and shall ensure registration with the Information and Evidence Unit.

Regulation 27: Witness Identification Form

- 27.1. For each witness, a confidential Witness Identification form shall be created.
- 27.2. The Witness Identification Form shall be kept separate from the record at all times. Information contained in the Form shall not be disclosed absent the express consent of the Senior Prosecutor seized of the case.
- 27.3. The Witness Identification Form shall contain:
 - (a) identifying and contact information, such as: name, place and date of birth, gender, nationality, mother tongue, languages spoken, present and former address(es), phone and fax number(s) present and former occupation(s);
 - (b) testimony related information, such as: possession of valid passport, passport details, travel details, security related details, support related details;
 - (c) details concerning documents or other evidence that the witness has provided.
- 27.4. The Witness Identification Form shall be signed by a member of the interviewing team.

Regulation 28: Witness as potential suspect

If during the interview facts are made known on the basis of which there are grounds to believe that the witness has committed a crime within the jurisdiction of the Court, he or she shall be immediately treated as a suspect for the purpose of these Regulations, in particular be informed of his or her rights under article 55(2) of the Statute.

Regulation 29: Support persons

- 29.1. Generally, only members of the interviewing team should be present at the interview.
- 29.2. If necessary, the witness shall be offered a support person (for example a family member, a religious adviser, counsellor or victims assistance worker) to be present during the interview.
- 29.3. The role of the support person is limited to giving mental support to the witness. He or she may not participate in or otherwise interfere with the interview process. The support person shall be informed of her function prior to the interview.
- 29.4. The presence of the support person at the interview shall be noted in the record.

Regulation 30: Victims of sexual or gender violence

- 30.1. [general]
- 30.2. [audio- and video-recording, rule 112(4)]

Regulation 31: Hearsay evidence

Hearsay evidence is to be clearly identified as such in the record. The record shall explain the source (author or originator) of the hearsay evidence referred to by the witness.

Regulation 32: Expert witness

- 32.1. Records of interviews with expert witnesses shall include the person's qualifications and experience.
- 32.2. If professional terminology is used by the expert witness, he or she shall be asked to add an everyday explanation of the words and terms used.

Regulation 33: Interpreters

- 33.1. The role of the interpreter is to assist the interviewer. The interviewer controls the interview process at all times.
- 33.2. The interpretation must be *verbatim*. Paraphrasing is to be avoided.
- 33.3. The witness shall be instructed to speak only when the interpreter has finished the interpretation. [The interpreter should only translate the words of the witness and interviewer.]

- 33.4. Off-the-record conversation between the interpreter and the witness shall be kept to a minimum. The contents of all conversations must be shared with the interviewer. During breaks, neither the witness, nor the interpreter, nor any member of the interviewing team, shall discuss any matters material to the interview.
- 33.5. In case of uncertainty about a response, the interviewer shall immediately request clarification.

[Regulation 34: Interview in a unique investigative opportunity]

Regulation 35: Interview by national authorities pursuant to a request under Part 9

A request to a State for co-operation and assistance in form of testimony (article 93(1)(b)), shall specify the formal requirements for the interviewing as provided in the Statute, the Rules of Procedure and Evidence and this Section.

[Regulation 36: Record of questioning for subsequent presentation at trial]

Subsection 2: Interview of suspects and accused

Regulation 37: Preparation of interview

- 37.1. Investigators and analysts shall prepare the interview under the direction of a prosecutor, taking into consideration the investigation plan and all other available material.⁸⁶
- 37.2. All necessary arrangements with defence counsel(s) shall be made as early as possible.
- 37.3. The interviewing team shall try to anticipate the potential arguments of the suspect or accused and to develop strategies of how to deal with them.
- 37.4. The interviewing team shall keep the interview structured and the witness focused on the relevant facts.
- 37.5. The prosecutor shall ensure the interview is conducted in a manner which will not lead to admissibility problems at trial.

Regulation 38: Start and conduct of interview

- 38.1. A suspect shall be informed of his rights under article 55(2) prior to being questioned. It shall be noted in the record that the suspect has been informed of his or her rights.
- 38.2. In addition, the suspect or accused shall be informed of the following:
- (a) The mandate of the Court [and the Court's powers and authorities] and the Office;
 - (b) The nature and scope of the investigation in the context of which the witness is being questioned, as appropriate;
 - (c) The person of the interviewer and his or her role in the investigation.

Regulation 39: Record of the interview

- 39.1. The interview shall be audio- or video-recorded in accordance with rule 112.
- 39.2. The suspect or accused shall be informed, in a language he or she fully understands and speaks, that the questioning is to be audio- or video-recorded, and that he or she may object. The fact that this information has been provided and the response given by the suspect or accused shall be noted in the record. All other procedures as specified in rule 112(1) shall be followed.
- 39.3. If the person objects, a record of the questioning shall be made in accordance with rules 112(1)(a) and 111 of the Rules of Procedure and Evidence.⁸⁷
- 39.4. The record shall note the date, time and place of, and all persons present during the questioning (rule 111 of the Rules of Procedure and Evidence).
- 39.5. All records shall be taken in the first person singular. They shall contain, to the extent possible, the following information:
 - (a) the sequence of events witnessed by the suspect or accused making the statement, in chronological order;
 - (b) identification details of all perpetrators, if appropriate;
 - (c) a comprehensive description of all crimes witnessed;
 - (d) details of exonerating information and circumstances;
 - (e) a description of the scene of the crime;
 - (f) any other information that may assist in determining the credibility of the statement.
- 39.6. The record shall be initialled on each page by the person recording and conducting the questioning, the person questioned, the interpreter,⁸⁸ and, if present, his or her counsel and, where applicable the judge or the Prosecutor present.
- 39.7. The interviewer is responsible for the safekeeping of the original record and, if applicable, all documents and other evidence provided by the witness, and shall ensure registration with the Information and Evidence Unit.

[Subsection 3: Other contacts with accused and suspects than when formally interviewed]

[Regulation 40: At the request of the accused/suspect]

[Regulation 41: At the request of the Office of the Prosecutor]

Part 4: Prosecution

[Section 1: Values and principles]

[Section 2: Internal review procedure for the draft charges document]

[Section 3: Decision to prosecute]

Book 4: Information and evidence management

Section 1: Values and Principles

Regulation 1: Values and principles

The provisions of this Section shall:

- (a) ensure the complete availability of all evidence and other information that can be stored electronically for any reason of retrieval;
- (b) ensure the preservation of the integrity of evidence for trial;
- (c) contribute to the efficient and timely implementation of preliminary examinations and evaluations, investigations, and prosecutions.

Section 2: Introduction

Regulation 2: General

- 2.1. All evidence and other information shall be stored electronically for any reason of retrieval.
- 2.2. Each piece of evidence and other information that can not be electronically stored shall be registered and described within the Information Management System (IMS) on a surrogate sheet.
- 2.3. Unless otherwise indicated, the duties and responsibilities identified in Sections 2 to 12 of this Book are those of the Services Section.
- 2.4. All information and material received by the Office, including the additional information sought by it, for preliminary examination under article 15 of the Statute and for article 53(1) evaluation under rule 104 of the Rules of Procedure and Evidence, shall be subject to Section 11 of this Book.

Section 3: Storage of evidence and information

Regulation 3: Evidence Registration Number

- 3.1. Every piece of evidence shall be marked with a unique Evidence Registration Number. Documentary evidence shall carry a separate Evidence Registration Number for each page of the document.
- 3.2. The Evidence Registration Number shall contain no additional [meta-]information in itself.
- 3.3. An Evidence Registration Number shall be given to the evidence as soon as possible. The Evidence Registration Number shall be recorded on any other document

that in any way relates to the evidence (for example the Evidence Registration Form).

- 3.4. No item which is or may become of evidential value is to be considered as evidence at any stage of the proceedings until it is given an Evidence Registration Number. No copy of any such item shall be made that does not have an Evidence Registration Number.

Regulation 4: Storage of documentary evidence

- 4.1. Every document shall be scanned to create electronic images as early as possible. Every document shall be electronically processed (for example by way of Optical Character Recognition) to ensure that the entire content of the document is free-text-searchable.
- 4.2. It is the responsibility of the Case Controller to ensure that documents collected by his or her Team are scanned within a defined time span agreed upon with the Deputy Prosecutor (Investigations).
- 4.3. This Regulation shall apply to any document collected or received by the Investigation Team or by any third person on behalf of the Investigation Team during the entire investigation.
- 4.4. [All documentary evidence [to be used in trial] that is in languages other than one of the working languages of the Court shall be translated into at least one of the working languages of the Court. [The translation of documentary evidence in languages other than one of the working languages of the Court shall be registered with its own Evidence Registration Number as well as be scanned and processed for free-text-search.]

Regulation 5: Storing of audio- and video-based evidence

All audio- and video-based evidence, whether collected by the Investigation Team or on its behalf by any third person or otherwise received, shall be digitalised and stored within the IMS as early as possible. A security copy of the original source shall be produced and shall be located alongside the original within the vault. The Evidence Custodian is responsible for a proper long-term archiving of all audio and video based evidence.

Regulation 6: Registration of artefacts and other evidence

Physical objects that cannot be scanned by reason of their natural consistency shall be registered within the IMS and shall be given additional meta-information in accordance with Section 4 of this Book.

Section 4: Meta-information

Regulation 7: Storing of meta-information

- 7.1. At the time of scanning, every piece of evidence which is electronically stored within the IMS shall be assigned additional electronic data (“meta-information”).

- 7.2. Items of evidence without meta-information will not be treated as evidence. The Services Section shall refuse the storage of physical and/or electronic pieces of evidence that lack meta-information.

Regulation 8: Range of meta-information

- 8.1. The range of meta-information shall be determined by the Deputy Prosecutor (Investigations) in close consultation with the Deputy Prosecutor (Prosecutions). As a minimum, every piece of evidence shall carry the following meta-information:
- (a) the date and time of collection or receipt, in accordance with Section 10 of this Book;
 - (b) the place of collection described in as much detail as possible (for example site, house, room, cabinet, binder);
 - (c) the name of the person collecting the item;
 - (d) if applicable, the person from whom the item was collected;
 - (e) if applicable, whether it is national security information (Section 12 of this Book).
- 8.2. In addition, if applicable, meta-information shall be given on
- (a) the production and location of every working copy, if any, of the documentary item, in accordance with Regulation 11.3.;
 - (b) every occasion, if any, on which the item was presented in court, in accordance with Regulation 12.;
 - (c) every occasion, if any, on which the item was introduced through a witness, as well as the identity of the witness, in accordance with Regulation 13.
- 8.3. Documents in languages other than one of the working languages of the Court shall carry an abstract in at least one of the working languages of the Court. If a translation of the document exists, the translation shall be part of the meta-information.⁸⁹
- 8.4. Audio and video evidence shall carry meta-information regarding the names of persons shown or recorded on the evidence as well as information with regard to the date, time and place of the creation of the recording.

Regulation 9: Changes to meta-information

- 9.1. Stored meta-information shall not be changed nor be deleted without the permission of the Case Controller. Additional meta-information may be added during the investigation.
- 9.2. Once evidence has been presented in court or disclosed, the meta-information of such evidence must not be changed nor deleted without notification to the Court and/or the party or parties to whom it was disclosed. Additional meta-information can be added in the course of the trial.

Section 5: Retrieval

Regulation 10: Retrieval of stored information

- 10.1. All stored material shall be accessible for all investigation and prosecution purposes. Restrictions on retrieval of or access to documents may be ordered for reasons of security or confidentiality by the Senior Prosecutor seized of the case or a designated subordinate.
- 10.2. All material requiring special security or confidentiality measures shall be identified before storage within the IMS. In case of doubt, a decision on scanning may be made by the Deputy Prosecutor (Investigations).

Regulation 11: Working copies

- 11.1. Working copies of all evidence shall only be made available by way of reproduction of the electronically stored image of the evidence or, in case of an audio or video recording, of the digitalised version of the recording. The original of all items shall be stored by the Services Section. The Section shall not release any originals unless otherwise ordered by the Deputy Prosecutor (Investigations).
- 11.2. The Services Section shall set up a uniform filing and document management system. The Section shall ensure that a uniform working copy file exists in relation to each investigation. The organisation of the file shall be linked to the organisation of the electronic copies of the documents. As far as possible, the master and sub-files in the working copy version shall mirror the directories and sub-directories in the electronic version.
- 11.3. The production and the location of a working copy shall be noted as meta-information of the document.

[Section 6: Disclosure⁹⁰]

Section 7: Presentation of evidence to the Court

Regulation 12: Registration of exhibit information

The fact that a piece of evidence will be or has been presented in court shall be registered as meta-information of the stored evidence. In case a piece of evidence is presented in court more than once, a separate registration for every subsequent presentation shall be made.

Regulation 13: Registration of witness relations

The witness through which a piece of evidence will be introduced or has been introduced shall be registered as meta-information of the evidence. Every additional introduction shall be registered separately.

Regulation 14: Electronic presentation

Unless otherwise ordered by the Court, all documents shall be presented electronically, with a view to enabling the Court to use the same electronic search and retrieval functions as those used by the Office of the Prosecutor.

Section 8: Archiving and deleting stored information

Regulation 15: Archiving of information

All information presented in court at the pre-trial or trial stages of the proceedings shall be archived in electronic form together with the other records and particulars of the case. Exemptions may be ordered by the Senior Prosecutor seized of the case for reasons of security and confidentiality.

Regulation 16: Deletion of stored information

No stored information may be deleted. The Deputy Prosecutor (Investigations) may order deletion of information in the case of documents containing personal information concerning an accused after acquittal only if the information clearly has no relevance for other cases and other investigations.

Section 9: Data security

Regulation 17: Responsibilities

The Senior Manager of the Services Section is responsible for the security and confidentiality of the information stored in the IMS. He works in close consultation with the Chief of the Information Technology and Communication Services Section (ITCSS) and with the Chief of the Security Section on all questions regarding information security.

Regulation 18: Auditing and logging

All access to stored information shall be logged by the system. The log files shall be audited by the Chief Prosecutor in the event of a suspected breach of confidentiality. Log files shall be accessible only for the Chief Prosecutor him- or herself or an especially designated subordinate.

Regulation 19: Backup and disaster recovery

- 19.1. The IMS shall reach an agreement with the ITCSS on regular backups of the entire information and data stored in the IMS by ITCSS. Backup material shall be stored securely and not on the premises of the Court.⁹¹
- 19.2. Agreement shall also be reached on a complete and exhaustively tested disaster recovery system.

Regulation 20: Other security measures

For all other matters of data security, the common provisions of the Court shall apply.

Section 10: Management of evidence away from the seat of the Court

Regulation 21: General

- 21.1. Pursuant to article 54 of the Statute, the Chief Prosecutor may collect evidence during field missions on the territory of a State in accordance with the provisions of Section 9 of the Statute or as authorised by the Pre-Trial Chamber under Article 57(3)(d). All such evidence collection is subject to this Section.
- 21.2. The Regulations on management of evidence away from the seat of the Court are to ensure the integrity of all evidence collected. Proper collection and handling includes packaging, labelling, transportation, storage and maintenance of the chain of custody at all times.

Regulation 22: Evidence Officer

- 22.1. For every investigation, at least one Evidence Officer shall be appointed by the Case Controller. The Evidence Officer is responsible for receiving, properly labelling, recording and retaining possession of all evidence collected and for maintaining the Evidence Seizure Record Form, and the Evidence Registration Form for each item of evidence.
- 22.2. The Evidence Officer is further responsible for collating the evidence and keeping the collection of evidence focused both in order to avoid duplication and to ensure completeness.

Regulation 23: Protection and recording of physical evidence to be collected

- 23.1. All evidence shall be protected from external influences that endanger the preservation of the evidence. It shall be handled with all due care.
- 23.2. If possible, evidence shall be photographed or videotaped *in situ* before collection begins and prior to any disturbance by the Investigation Team. The location and position of the evidence shall be recorded in a detailed sketch before collection.
- 23.3. The actual collection of evidence shall be documented by photographs or videotaped. If the necessary equipment is not available, clear and comprehensive written notes shall be made. The Evidence Officer shall safely store the photographs, videotapes and/or notes.

Regulation 24: Registration and collection of evidence; Evidence Seizure Record Form; Evidence Registration Form

- 24.1. For all evidence collected at a particular site, an Evidence Seizure Record Form shall be kept by the Evidence Officer. All items collected shall be included in the Form. A signed [carbon] copy of the Evidence Seizure Record Form may be used as

a receipt for the person in charge of the premises (for example, the owner or tenant) and shall be provided to him or her.

- 24.2. For every individual item of evidence, an Evidence Registration Form shall be maintained. It shall contain the date and time when the object was first collected, the exact place where it was collected and the name of the investigator by whom it was collected. The item shall be concisely described in the Form.
- 24.3. Upon collection all evidence shall be sealed in an envelope or box. The envelopes and boxes shall be sealed with a tamper-proof tape. The person sealing the envelope or box shall sign over the tape. The Evidence Officer shall then register the item in the Evidence Registration Form and sign it. The envelope or box, the Evidence Seizure Record Form and the Evidence Registration Form shall bear a common reference number, in case any one of them is accidentally detached from the others.

Regulation 25: Potentially exonerating evidence

During evidence collection, all care shall be taken to identify exonerating evidence. The Evidence Officer shall ensure that potentially exonerating evidence is properly identified and labelled as such in the Evidence Registration Form. If any material points to further potentially exonerating material, this potential shall be recorded. If the lead is not pursued further, the reasons for this decision shall be recorded on the Evidence Registration Form.⁹²

Regulation 26: Chain of custody

- 26.1. All evidence shall be accounted for at all times. It shall constantly be in the possession of the collector or the individual authorised to have possession of the item. Such possession includes storage of the material in secure premises. The Case Controller shall ensure that all members of the Investigation Team are aware of the procedures for transfer of custody.
- 26.2. Every transfer of custody shall be recorded in the Evidence Registration Form. The entry shall indicate the date and time of the transfer, the person from whom the physical evidence was released, the person who received the item and the reasons for which the custody was transferred. The persons involved shall sign the Form every time custody is transferred. The person transferring custody shall ensure that the name of the recipient is clearly legible in the Form, and the person receiving the custody shall check that all seals are intact.
- 26.3. The person who has custody of the evidence shall keep the envelope or box containing such evidence on him or her, in direct line of sight or ensure that it is kept in a secure area to which no one else has access. If the seal becomes damaged, the cause of the damage shall be investigated and, if necessary, the content checked against the list to ensure that nothing is tampered with. The person in custody of the physical evidence shall prevent any improper handling of the envelope or box during loading/unloading which may damage the seals.

Regulation 27: Registration upon arrival at the seat of the Court

Upon arrival at the seat of the Court, all physical evidence shall be handed over to the Services Section without delay for processing in accordance with Sections 2 and 3. The last person to have custody of the evidence shall ensure that the Evidence Registration Form and the Evidence Seizure Record Form are complete. The evi-

dence will not be accepted for storage unless the documentation has been properly completed. The person handing over the evidence shall advise the Services Section of any special handling requirements or health precautions.

Section 11: Duties of the Services Section concerning information received by the Office under article 13, 14 and 15

Regulation 28: Register

- 28.1. The Senior Manager of the Services Section shall keep a Register of all information received by the Office under article 15, or by way of referral by a State Party pursuant to articles 13(a) and 14(2) or the Security Council under article 13 (b), including the additional information sought by the Office under article 15(2) and rule 104.
- 28.2. Information received under article 15 shall be defined as all material by means of which the provider of such material wishes to bring the alleged commission of crimes to the attention of the Office.
- 28.3. In cases of doubt whether material received fulfils the criteria provided for in Sub-regulation 28.2., the material shall be forwarded to the Deputy Prosecutor (Investigations) for assessment after scanning and before any meta-information is assigned pursuant to Regulation 29.
- 28.4. The Senior Manager of the Services Section shall strive to reach agreement with other Organs of the Court as to how incoming material is forwarded to the Office by other Organs.

Regulation 29: Meta-information

Every piece of information received under article 15 shall be assigned the following meta-information by the Senior Manager of the Services Section or a designated subordinate:

- (a) the name of the person or entity providing the information;
- (b) the date of dispatch and of receipt;
- (c) the country where the criminal conduct allegedly took place.

Section 12: National security information

Regulation 30: Definition

For the purposes of the Regulations, national security information shall be

- (a) all information of a State, irrespective of its form [and of whether it was provided by the State concerned, by a third party or otherwise acquired,] the disclosure of which would, in the opinion of that State, prejudice its national security interests;

- (b) all information, irrespective of its form, that has been obtained by the Office subject to an agreement that it would not be disclosed at any stage of the proceedings in accordance with article 54(3)(e).

[Regulation 31: Treatment of national security information]

[inclusion within meta-information]

[agreement not to disclose, article 54(3)(e)]

[disclosure only if ordered by the Deputy Prosecutor (Investigations)]

Book 5: External communication

Part 1: Media relations

Regulation 1: Values and principles

In its relations to the media and the public in general the Office takes into account and balances five principal interests:

- (a) the individual's right to a fair trial and the preservation of his or her dignity at all stages of the proceedings;
- (b) the victims and witnesses' right to protection of their safety, physical and psychological well-being, dignity and privacy, as well as their right to participation in the proceedings;
- (c) the right of the public to take notice of and be informed about court proceedings, bearing in mind the fact that public scrutiny forms an integral part of the framework to safeguard fair trial rights;
- (d) the duty of the Court and the Office to effectively enforce the administration of justice for the most serious crimes of concern to the international community as a whole, as mandated by the Statute;
- (e) the right of States under the Statute to have preserved and protected information that prejudices their national security interests.

Regulation 2: General

The Public Information Adviser is responsible for all public relations of the Office of the Prosecutor.

Regulation 3: Public statements

- 3.1. No public statement shall be made on any matter concerning information received by the Office, preliminary examinations, article 53(1) evaluations, trial and appellate proceedings, personnel questions or any other matter of an internal nature without the approval of the Chief Prosecutor or the Public Information Adviser.
- 3.2. The Public Information Adviser shall be informed immediately of all requests from media organisations, including television and radio programmes, wire services, news magazines and papers regarding information, interviews, research for in-depth stories or other matters.

Regulation 4: Events likely to attract international, national or regional attention

The section chiefs, Case Controllers and Senior Prosecutors shall inform the Public Information Adviser of any issue that might attract international, national or regional media interest.

[Part 2: Information about crimes]

[Part 3: The problem of denial of massive crimes]

Endnotes:

- ¹ It has been pointed out in the consultation process on issues of general concern to the ICC-OTP that standard operating procedures (not only for the conduct of investigations, but for all major aspects of legal practice before the Chambers), should be adopted as quickly as possible, such procedures being a crucial tool for the promotion of consistency in the work of the ICC-OTP, but also for ensuring efficiency, transparency and accountability for OTP staff.
- ² “Members of the Office” includes the Prosecutor, Deputy Prosecutors and all professional and general services staff within the Office. “Staff of the Office” excludes the Prosecutor and Deputy Prosecutors. This usage is consistent with the Statute and Rules (see esp. arts. 42(1), 44(1), and Rules 6, 11). The Code applies to the Prosecutor and Deputy Prosecutor, as well as all staff, thus setting an example of high standards of conduct from the most senior members of the Office. The Code applies to gratis personnel to the extent consistent with guidelines to be established by the Assembly of States Parties (art. 44(4)). Clerks should undertake to uphold the Code as a condition of their service.
- ³ The expression “to inculcate the standard of excellence expected from all members of the Office...” sets the Code apart from the other Chapters of the Regulations, as a statement of ethical and professional standards to which all members of the Office aspire and strive.
- ⁴ Every principle of the Code should be read as applying only in the performance of individual duties or the exercise of powers. This allows the principles of the Code to apply within a unitary office comprising members from diverse professions, as well as across the spectrum of seniority and including the Prosecutor and Deputy Prosecutors. *Ultra vires* actions constitute breaches of ethical standards of faithful conduct [Regulation 6(b)], and may trigger disciplinary proceedings under related instruments. The Prosecutor’s inherent and thus non-delegable powers include those set forth in arts. 15 and 53 (see Rule 11).
- ⁵ See Rule 17(2)(a)(v). It is intended that provisions of the Code of the Victims and Witnesses Unit relevant to the Office will be incorporated into the Regulations of the Office.
- ⁶ Most lawyers within the OTP will be bound by professional obligations to their national regulatory body (bar association, law society etc.); certain other professions within the OTP may be bound by codes of conduct of national or international bodies. This Regulation ensures that the Code operates notwithstanding these external standards, while members of the OTP are performing duties or exercising powers within the OTP. There may be exceptional situations where this places a professional in the impossible situation of violating external standards through compliance with this Code.
- ⁷ The need to promote a single legal culture was underlined in expert consultations on general OTP matters. This standard is drafted to apply to all professions within the Office. The phrasing ‘without favour to the rules and methods of any one national system or legal tradition’ does not preclude rules or methods rooted in any one legal system from becoming part of the ‘unified legal culture’. Rather, this standard requires members of the Office to act without favour (bias) to any particular system; even lawyers trained in only one system should draw their primary inspiration from the Statute, not their national practices.
- ⁸ This standard of *independence* is excerpted from the general description of the Office of the Prosecutor in the Statute, which provides, “A member of the Office shall not seek or act on instructions from any external source.” (art. 42(1)).

- ⁹ This standard is excerpted *verbatim* from the solemn undertaking common to all members of the Office (see Rules 5(1)(b) and 6(1)).
- ¹⁰ This standard is excerpted *verbatim* from the solemn undertaking common to all members of the Office (see Rules 5(1)(b) and 6(1)).
- ¹¹ This standard of *truth-seeking* is excerpted from the statement of purpose supporting the duty of the Prosecutor to investigate all relevant facts and evidence, that is, “In order to establish the truth...” (art. 54(1)(a)). As the search for truth cannot be an obligation of result, the term “strive” is used to convey an obligation of means of central importance for individual choices of conduct.
- ¹² This standards of effective investigation and prosecution is excerpted from the statement of duties of the Prosecutor during investigation in the Statute, which provides, “The Prosecutor...shall take appropriate measures to ensure the effective investigation and prosecution of crimes within the jurisdiction of the Court.” (art. 54(1)(b)). As the nature of these measures is within the discretion of the Prosecutor, the term “promote” is used to emphasize that all members of the Office should actively support the goal of effective investigation and prosecution.
- ¹³ See also Draft Staff Regulation 1.2, which establishes general obligations of independence. It is also assumed that the Prosecutor’s ongoing obligation of disclosure in art. 67(2) of the Statute is not extinguished at conviction.
- ¹⁴ This standard is excerpted from the joint IAP/CICC *Draft Code of Professional Conduct*.
- ¹⁵ This standard is established for the Prosecutor and Deputy Prosecutors in art. 42(5), and applies to staff through Draft Staff Regulation 1.2(m).
- ¹⁶ This standard was recommended in expert comments on the joint IAP/CICC *Draft Code of Professional Conduct*.
- ¹⁷ This specific standard of honourable and professional conduct will be reflected through detailed internal policies on diversity as well as harassment.
- ¹⁸ These rights are principally provided in arts. 55, 63, 66 and 67.
- ¹⁹ These rights are principally provided in art. 68 (see also Rules 49, 50, 67, 76, 81, 82, 87-89, 91, 96, 99 and 112)
- ²⁰ The Prosecutor has the duty to respect the interests and personal circumstances of victims and witnesses, and to take into account the particular nature of crimes of sexual and gender violence and violence against children (see art. 54(1)(b)).
- ²¹ These measures are envisaged in art. 68(1) *in fine*.
- ²² The wording of Regulation 5 implies that such distinctions must be avoided in words and in deeds.
- ²³ As the Code is subject to the Statute, the definition of “gender” necessarily conforms to art. 7(3).
- ²⁴ The draft Staff Regulations preclude staff from discriminating “against any individual or group...” (Staff Regulation 1.2). This specific standard of conduct is at a higher threshold, excerpting prohibited grounds of discrimination from the Statute (art. 21(3)), where non-discrimination is provided as a requirement for application and interpretation of law by the Court. While not enumerated in art. 21(3), sexual orientation was added as a prohibited ground of discrimination following expert recommendations.
- ²⁵ Draft Staff Regulation 1.2(e) requires that staff “discharge their functions and regulate their conduct with the interests of the Court only in view”. However, the broader “interests of international justice” are reflected in the final preambular recital of the Statute, where States Parties resolve to guarantee “lasting respect for and...enforcement of international justice”.
- ²⁶ This Code applies only in the performance of individual duties and the exercise of inherent or delegated powers. This specific standard of conduct establishes that *ultra vires*

- action would be an ethical violation, as well as possibly triggering disciplinary measures in related instruments.
- ²⁷ The generic term “collegial bodies” refers to taskforces, teams, committees and other professional groupings within the Office.
- ²⁸ As superiors may be subject to disciplinary proceedings or even summary dismissal for failing to address the misconduct of subordinates, it would be appropriate to include a further ethical standard in this regard. This standard is also complementary to standard (f), below.
- ²⁹ This includes, for example, arrangements or agreements to facilitate co-operation under art. 54(3)(d).
- ³⁰ This standard is excerpted in part from the joint IAP/CICC *Draft Code of Professional Conduct*; the term “to the best of their ability” has been replaced by “concerted effort”, for concision and readability.
- ³¹ The statement of compatibility between impartiality and thorough and vigorous advocacy is excerpted from the *Federal Prosecution Service Deskbook* (Ministry of Justice, Canada).
- ³² This standard does not affect the responsibility of certain members of the Office to articulate professional opinions on the culpability of an accused. It aims, rather, to curtail unprofessional expositions of personal opinion, as these harm the general standard of impartiality, which should be maintained both within the Office (“in the context of proceedings before the Court”) and outside the Office (“in public”).
- ³³ This standard is excerpted from the *Code for Crown Prosecutors* (CPS, UK).
- ³⁴ See arts. 61(3), 64, 67, 68 and 72, and Rules 69, 72, 76-84, 112-119, 121, 126 and 152.
- ³⁵ The Prosecutor may be required to engage in *ex parte* consultations with the Pre-Trial Chamber, *inter alia*, under Rule 123(2) or during a confirmation hearing held in the absence of the person concerned, where the Pre-Trial Chamber decides that the person may not be represented by counsel under Rule 125(1). Following the confirmation hearing, members of the Office may have to engage in *ex parte* communications, *inter alia*, under art. 72(5)(d) or Rule 81(2).
- ³⁶ The test of ‘objective adverse effect’ is drawn from Rule 34(1)(d).
- ³⁷ Grounds for disqualification, as regards the Prosecutor and Deputy Prosecutors, are provided in art. 42(7) and Rule 34(1). The duty of the Prosecutor and Deputy Prosecutors to request to be excused is provided in Rule 35. There is no analogous disqualification regime applicable to staff of the Office. However, it is advisable to extend this regime, *mutatis mutandis*, to staff of the Office through the Staff Regulations and Staff Rules, as this requires a level of specificity inappropriate for the Code.
- ³⁸ This standard is derived, in part, from the joint IAP/CICC *Draft Code of Professional Conduct*. The reference to “professional methods and standards” read with the general provisions on the application of the Code, is sufficiently broad to include the several professions within the Office. As certain professional methods and standards are rooted in national systems, Regulation 3.2 would preclude bias towards methods and standards from any one national system.
- ³⁹ This includes training in standards of conduct envisaged in Regulation 16.5, below.
- ⁴⁰ These policies and procedures will need to be developed.
- ⁴¹ This standard is the only ethically-binding obligation to report within the Code, on the grounds that breaches of confidentiality may be particularly and irremediably damaging to the safety, well-being and privacy of persons outside the Office, whose interests are protected in the Statute. Members of the Office would be obliged to report exclusively to the Prosecutor or the Adviser, and then contain the breach of confidentiality under subparagraph (d).

- ⁴² This standard is excerpted, in part, from the duties of the Prosecutor with respect to investigations, which also establish the general duty of truth-seeking (art. 54(1)(a)).
- ⁴³ This standard is excerpted, in part, from the duties of the Prosecutor with respect to investigations, which also establish the general duty of truth-seeking (art. 54(1)(a)). The Statute requires that incriminating and exonerating circumstances be investigated “equally”. This standard interprets “equally” as equality in priority and diligence. It is important to note that the Code does not create rights and obligations for non-members of the Office; as such, parties to proceedings cannot derive rights from this ethical obligation to investigate exonerating and incriminating circumstances equally (e.g. by requesting disclosure of resource allocation on Investigation Teams to see if equal attention was paid to both incriminating and exonerating circumstances).
- ⁴⁴ This standard is derived, in part, from the joint IAP/CICC *Draft Code of Professional Conduct*.
- ⁴⁵ The Prosecutor is empowered to bring a claim to revise a final judgment of conviction or sentence on behalf of a convicted person under art. 84(1) of the Statute. It is envisaged that internal review procedures will be established for this purpose, through which members would “report” concerns, either directly or through the chain of command.
- ⁴⁶ This specific standard adds an ethical obligation for members of the Office preparing for and conducting certain enumerated tests of facts, evidence and law, as provided in the Statute and the Regulations of the Office. As such, the standard is broad enough to extend to investigators, analysts, lawyers and others involved in preparation and conduct of these tests. The test of reasonable basis is established in arts. 15(3) and 53(1)(a) (see especially Rule 48 as regards the relation between these articles, as well as draft Regulations on the draft investigation plan and the decision whether or not to initiate an investigation). The tests of *prima facie* admissibility, as it concerns the Office, is established in art. 53(1)(b) and elaborated in the draft Regulations. The test of interests of justice is established in art. 53(1)(c) and elaborated in the draft Regulations. The test of reconsideration is established in art. 53(4) (see also art. 53(3)(a)) and elaborated in the draft Regulations.
- ⁴⁷ This specific standard adds a heightened ethical obligation for members of the Office preparing for and conducting the test of substantial grounds, in anticipation of the need to establish substantial grounds at confirmation hearing under art. 61(5). As such, the standard is broad enough to extend to investigators, analysts, lawyers and others involved in preparation and conduct of these tests. The heightened ethical obligation is justified as the confirmation hearing represents the first public disclosure of the charges document, and thus the indictment review procedure is the final opportunity for internal review of the charges document prior to its public disclosure.
- ⁴⁸ The relevant expert consultation groups have expressed tentative and differing views on what role, if any, the Adviser should play. Accordingly, all Regulations on the role of the Adviser are bracketed. In principle, the role of the Adviser straddles tense boundaries between (a) the need to ensure that the standards of the Code are realised and enforced where necessary; (b) the reality that ethical and professional standards inevitably operate in a grey area, where consultative, collegial discussion, including a more detached, expert colleague such as the Adviser, is a most effective way to pre-empt problems before they arise; (c) the necessity for the Chief Prosecutor to retain full management authority over the Office while not having the time to allocate to monitor standards of conduct and assist staff in their day-to-day implementation; and (d) the consideration that disciplinary measures, properly so-called fall under the purview of other governing documents, notably the Staff Rules and Regulations of the Court. Another approach involves the appointment of several advisers, from various professions and sections of the Office, to serve on an advisory body for standards of conduct. Members

could seek consultations with any adviser, who would then bring the concern to the collegial body. This has the advantage of providing additional transparency, checks-and-balances and a pool of advisers; however, this approach creates an additional layer of administration that may hamper the prompt, collegial and discreet rectification of non-compliance, and may create the impression of a disciplinary body, which would be inconsistent with the aims and purposes of this Code. It is therefore not recommended in this draft text.

- ⁴⁹ The additional requirement to report on “patterns of conduct” follows on recommendations from an expert consultation process that mission reports should include more than a blanket statement of compliance with the Code of Conduct.
- ⁵⁰ It is evident that knowingly providing false information to the Adviser, for malicious or frivolous purposes, would be subject to disciplinary proceedings for misconduct. Such action would also constitute a breach of standards of honourable conduct towards members of the Office in Regulation 5(c).
- ⁵¹ This exception for disclosure to the Prosecutor, in confidence and upon request, safeguards the full authority of the Prosecutor over the management and administration of the Office, as provided in Rule 9.
- ⁵² As performance appraisal is intended as a constructive, open and ongoing dialogue, it would be inappropriate to withhold concerns on improper conduct from the member under appraisal. As disciplinary proceedings are quasi-judicial in nature, principles of natural justice preclude the confidentiality of allegations of misconduct. Thus, the confidentiality regime provided in this Regulation applies only to potential breaches of standards of conduct not amounting to misconduct.
- ⁵³ This refers to Rules 23-32.
- ⁵⁴ The expression “submitting a complaint to the Presidency” refers to the general complaints procedure regarding conduct of the Prosecutor and Deputy Prosecutors under Rule 26.
- ⁵⁵ The Prosecutor retains full authority under the preceding Regulation to request full particulars of otherwise privileged or confidential information.
- ⁵⁶ It is assumed that ethical situations in the “gray area” are best resolved through the informal individual or group consultations procedure in Regulation 13.4. As such, the Adviser would only report non-compliance that is “clear” (*i.e.* evident on the available facts) or “flagrant” (*i.e.* blatant or deliberate).
- ⁵⁷ In the latter case, the Adviser would be triggering the general complaints procedure regarding conduct of the Prosecutor under Rule 26. The presence of a Deputy Prosecutor affords a measure of protection for the Adviser, who would have sacrificed, at least in part, the right to confidentiality for complainants envisaged in Rule 26.
- ⁵⁸ The terms “appropriate steps” and “a favourable inference” are used to allay any suggestion of undue influence on disciplinary or other proceedings by the Prosecutor. All inferences, whether favourable or unfavourable, are considered by the decision-makers in any disciplinary or other proceedings. By assuring members of the Office that a favourable inference will be sought regarding their conduct, the Prosecutor upholds the central role of the Adviser in the compliance mechanism of the Code, and encourages further recourse to this compliance mechanism.
- ⁵⁹ See Draft Staff Regulations, Articles IX-XI (for staff of the Office), and Rules 23-32 (for the Prosecutor and Deputy Prosecutors). Rule 165 is also relevant, providing that the Chief Prosecutor may initiate and conduct investigations with respect to offences against the administration of justice.
- ⁶⁰ After it has been electronically processed/stored by the Services Section. A standard form giving guidance on how to submit information to the Office under article 15 is being developed and intended to be made publicly available on the website of the Office.

- ⁶¹ The rationale behind this regulation is that the fact-workers (lawyers, investigating lawyers, analysts and investigators) in the Investigation Division should be given a primary responsibility to review all incoming information first, with a view to ensuring a sufficiently contextual and case-detached assessment. This may protect the Chief Prosecutor against attempts by prosecutors in search of “their case” to force premature decisions on the start of investigations. This must be combined with direct access by the Chief of the Analysis Section to the Chief Prosecutor. Lawyers outside the Investigation Division will assist as determined by the Deputy Prosecutor (Investigations) in consultation with the Deputy Prosecutor (Prosecutions).
- ⁶² This ensures that every member of the Office, in particular the Chief Prosecutor and other members of senior management, have direct access to incoming information at all times. The Chief Prosecutor may decide to limit access to the Register for reasons of confidentiality and security.
- ⁶³ This requirement is set up in analogy to rule 49(1). Even though this Regulation deals with an earlier stage of the proceedings, the situation is comparable in terms of the dangers addressed in rule 49.
- ⁶⁴ The Log, as opposed to the Register kept by the Senior Manager of the Services Section, contains all information on every preliminary examination conducted, including all additional material requested, and work documents, such as status reports *et cetera* It thus shows the progress of all preliminary examinations.
- ⁶⁵ Given the volume of communications that is expected to reach the Office and to ensure the efficient operation of the process of preliminary examinations in accordance with the Statute, the Prosecutor may wish to install an expedited procedure to single out information that is manifestly unfounded or that refers to situations that are evidently outside the jurisdiction of the Court.
- ⁶⁶ A network-based standard format is in the process of being developed. This format and other Preliminary Examination Team related documents should be kept in a network directory dedicated to Preliminary Examination Team activities, from the beginning of the work of the Office. For some preliminary examinations, this report could amount to half a page maximum.
- ⁶⁷ *Id.*
- ⁶⁸ There should also be a standard form for the purpose of making the review process by the Deputy Prosecutors as efficient and expeditious as possible.
- ⁶⁹ A network-based standard format to be developed.
- ⁷⁰ After the review of the preliminary examination report and the decision that the situation may merit starting an investigation, the direction of the process shifts from investigators to prosecutors to give the preparation of the decision to investigate by the Chief Prosecutor and the investigation itself a more legally focused thrust.
- ⁷¹ A network-based standard format to be developed.
- ⁷² Article 53 uses the term “evaluation of information”.
- ⁷³ After it has been electronically processed/stored by the Services Section.
- ⁷⁴ A network-based standard format is in the process of being developed. This format and other Evaluation Team related documents should be kept in a network directory dedicated to Evaluation Team activities, from the beginning of the work of the Office.
- ⁷⁵ A network-based standard format to be established.
- ⁷⁶ This Section applies to both article 15 and 53 procedures.
- ⁷⁷ According to rule 11, the *inherent* powers of the Prosecutor under articles 15 and 53 cannot be delegated to any member of the Office other than to a Deputy Prosecutor.
- ⁷⁸ It is suggested that it would be problematic at this stage to give a more specific definition of the factors listed under article 17. A separate expert consultation process on this subject-matter has been established.

⁷⁹ The experts are not in a position to make a recommendation on whether the Regulations should contain a further definition of what may constitute “interests of justice”. Were it to be decided that such definition be given, this could comprise the following factors: (a) the start of an investigation would exacerbate or otherwise destabilise a conflict situation; (b) the start of an investigation would seriously endanger the successful completion of a reconciliation or peace process; or (c) the start of an investigation would bring the law into disrepute.

Some of the arguments speaking in favour of such inclusion may be: (1) If the criteria are not made public, the Prosecutor will be heavily criticised if he ever makes a decision based on these factors; inclusion brings transparency; (2) It could be important for the Security Council to know these factors and take them into account when deciding whether to refer a case to the ICC; (3) Pursuant to rule 105(4) and (5), the Prosecutor has to give reasons for not starting an investigation of only based on interests of justice assessments.

⁸⁰ The question of when the “information available to the Prosecutor provides a reasonable basis to believe that a crime ... has been or is being committed” is non-discretionary (Turone, “Powers and Duties of the Prosecutor” in Cassese (ed.), *The Rome Statute*, p. 1152). The Statute sets up a legal standard of “reasonable basis”, but gives no more specific definition. It contains, however, different levels or degrees of “suspicion” in various provisions that pertain to different stages of the proceedings before the actual trial. The first would be article 15(3), requiring a “reasonable basis to proceed with an investigation” for a request for authorisation for investigation, to be read together with article 53(1)(a) (“reasonable basis to believe”). This stage is followed by articles 53(2)(a) and 58(1)(a), making the decision to prosecute/the issuance of an arrest warrant dependent on “reasonable grounds to believe that [a] person has committed a crime ...”. Finally, article 61(5) establishes that, at the charges confirmation hearing, the Prosecutor shall present “substantial grounds to believe that the person committed the crime charged”. The first two standards are of a more general nature in that, from their text, they do not require that a specific person (a “suspect”) be identified, whereas the latter three do necessitate such specification. It is suggested that the requirements described get progressively more intense, *i.e.* the onus on the Prosecutor increases as the proceedings evolve.

Having said this, it is clear that, for the purposes of article 53(1)(a), no specific perpetrator has to be identified (even though that may be preferable from a point of view of policy at the stage of initiating an investigation) and that the evidentiary standard is less than the “substantial grounds” mentioned in article 61(5).

The present formulation takes into account the wording of the UK Crown Prosecution Service Code for Crown Prosecutors concerning the “evidential test” applied in reaching a decision on whether to *prosecute* (*i.e.* a decision parallel to article 53(2) rather than 53(1)). According to this test, a prosecution should be initiated when the prosecutor is satisfied that “there is enough evidence to provide a ‘realistic prospect of conviction’”, meaning that “a jury ... is more likely than not to convict the defendant of the charge alleged”. The test under article 53(1)(a), for its application to the start of an investigation rather than a prosecution, must necessarily be less onerous. Likewise, it has to be based on the outcome of the preliminary examination. Turone, “Powers and Duties of the Prosecutor” in Cassese (ed.), *The Rome Statute*, p.1152, suggests that a “reasonable basis” exists where “there is a *realistic prospect* that an investigation would lead to a *prima facie* case about a given crime and its perpetrators” (emphasis added). In *Prosecutor v. Milošević, Decision on Review of Indictment*, 22 November 2001, it has been decided that “[a] *prima facie* case is a credible case which, if accepted and uncontradicted, would be a sufficient basis on which to convict the accused.” Also consider the German notion of *Anfangsverdacht* (primary suspicion), the existence of which ob-

ligates the prosecutor to investigate (section 152(2) German Code of Criminal Procedure). The Federal Supreme Court (*Bundesgerichtshof*) has held that such suspicion is given where “concrete clues exist which, according to past experience in criminal investigations, make it seem possible that a person has participated in a prosecutable crime”. Alternative formulations could be “if there is a realistic prospect that the investigation will produce evidence that will lead to a *prima facie* case against the potential accused” or “if there is a clear indication that a person has participated in a crime within the jurisdiction of the Court”.

- ⁸¹ A principled and consistent approach to material legal questions contributes to achieving *certainty* and *predictability* in the work of the Office. A coherent standard approach to these issues should be developed within the Office (maybe under the co-ordination of the Legal Advisory and Policy Section) in accordance with which all legal submissions should be made.
- ⁸² A “witness interview checklist” should be prepared, enumerating relevant subjects-matters to question about.
- ⁸³ Neither the rules nor the Statute give any guidance as to whether the witness has to consent to the transmission.
- ⁸⁴ Standard form.
- ⁸⁵ A requirement not prescribed by rule 111(1).
- ⁸⁶ A “suspect and accused interview checklist” should be prepared, enumerating relevant subjects-matters to question about.
- ⁸⁷ Standard form.
- ⁸⁸ A requirement not prescribed by rule 111(1).
- ⁸⁹ The rationale of this regulation is that the translation of a document should not only be stored as a document in its own right (with its own Evidence Registration Number), but also as meta-information of the original. Even though the original and the translation would normally be hyperlinked, thus facilitating easy cross-reference, the storing of the translation as meta-information ensures that the translation is never lost and always accessible, for example in case the translation document is corrupted.
- ⁹⁰ It is suggested that a Section on disclosure be included at a later stage, once the Pre-Trial Chamber has clarified the scope of the Office’s disclosure obligations.
- ⁹¹ The exact shape of this regulation largely depends on the question whether the Court will use a common system or whether the OTP will run its own separate system.
- ⁹² Records should be kept to be in a position to adequately react to an allegation by the Defence that exonerating material was not followed up thus breaching the duty under article 54(1)(a).