

## Appendix I: Positive Complementarity in Preliminary Examinations

The International Criminal Court (ICC) is a court of last resort. Under the principle of “complementarity,” cases are only admissible before the ICC where national authorities have not conducted genuine, domestic proceedings. Where states have an interest in avoiding the ICC’s intervention, they can do so by conducting national proceedings. This means that the Office of the Prosecutor’s leverage over national authorities to press for domestic proceedings can be significant.<sup>555</sup>

The ICC Office of the Prosecutor (OTP) has recognized this opportunity by committing, where feasible, to encouraging national proceedings into crimes falling within the ICC’s jurisdiction in situations under preliminary examination by the office, that is, in situations where the OTP is considering whether or not to seek to open an ICC investigation.<sup>556</sup> This policy commitment during preliminary examinations to what is known as “positive complementarity” holds out significant potential to meet victims’ rights to justice for

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<sup>555</sup> In a 2011 briefing paper, Human Rights Watch described both the opportunities and challenges presented during the preliminary examination phase with regard to the Office of the Prosecutor’s (OTP) ability to catalyze national prosecutions. This report builds on the analysis and recommendations contained in that paper, not all of which is repeated in this report. Human Rights Watch, *Course Correction: Recommendations to the Prosecutor for a More Effective Approach to “Situations under Analysis*, June 16, 2011, <https://www.hrw.org/news/2011/06/16/icc-course-correction>.

<sup>556</sup> See OTP, “Policy Paper on Preliminary Examinations,” November 2013, <http://www.legal-tools.org/doc/acb906/> (accessed November 21, 2017), paras. 100-103. The OTP’s policy statements also have included a commitment to positive complementarity in situations under investigation. See OTP, “Paper on some policy issues before the Office of the Prosecutor,” September 2003, <http://www.legal-tools.org/doc/f53870/> (accessed November 21, 2017), p. 5; OTP, “Report on Prosecutorial Strategy,” September 14, 2006, <http://www.legal-tools.org/doc/6e3bf4/> (accessed November 21, 2017), p. 5; OTP, “ICC Prosecutorial Strategy 2009-2012,” February 1, 2010, <http://www.legal-tools.org/doc/6ed914/> (accessed November 21, 2017); pp. 4-5. While “complementarity” remained a goal, the OTP’s 2012-2015 strategic plan contained more measured language regarding encouraging national proceedings. In the 2016-2018 strategic plan, the OTP has reframed positive complementarity activities as “develop[ing] with partners a coordinated investigative and prosecutorial strategy to close the impunity gap.” See OTP, “Strategic Plan, June 2012-2015,” October 11, 2013, <http://www.legal-tools.org/doc/954beb/> (accessed November 21, 2017), pp. 28-29; OTP, “Strategic Plan, 2016-2018,” July 6, 2015, <http://www.legal-tools.org/doc/7ae957/> (accessed November 21, 2017), pp. 31-33. In practice, the OTP’s commitment to positive complementarity has been more evident in situations under analysis. While the OTP, and the court more broadly, should revisit the importance of positive complementarity strategies in situations under investigation—where the court’s contributions are likely to be substantial—this report deals only with situations under preliminary examination.

human rights crimes, amplify the impact of the ICC on national justice efforts, and limit the need for the ICC to take up its own investigations.<sup>557</sup>

In seeking to influence national justice efforts, the OTP needs to have strategies addressed to both bolstering a government's political will to support independent investigations and bridging capacity gaps, or, in the language of the Rome Statute, overcoming "unwillingness" and "inability," terms which have increasingly come to be used as shorthand for two pillars of positive complementarity activities.<sup>558</sup> Human Rights Watch's

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<sup>557</sup> Early references to positive complementarity were primarily to the role of the court. See OTP, "Paper on some policy issues before the Office of the Prosecutor," <http://www.legal-tools.org/doc/f53870/>, p. 5; Silvana Arbia, "The Three Year Plans & Strategies of the Registry in Respect of Complementarity for an Effective Rome Statute System of International Criminal Justice" (discussion paper presented at the Consultative Conference on International Criminal Justice, New York, September 9-11, 2009), <http://reliefweb.int/sites/reliefweb.int/files/resources/98D627F381ED3412C1257634004960AC-intlcriminaljustice-session2.pdf> (accessed November 21, 2017). The term "positive complementarity" has since evolved, particularly leading up to and after the 2010 International Criminal Court (ICC) review conference in Kampala, Uganda. While momentum has been difficult to sustain since Kampala, the term has come to encompass initiatives by a range of actors to encourage national prosecutions of international crimes, ranging from legislative assistance to capacity building to political dialogue to counter obstruction. The OTP is only one actor in this landscape, which also includes assistance between states, international organizations, and civil society. See discussion in Morten Bergsmo, Olympia Bekou, and Annika Jones, "Complementarity After Kampala: Capacity Building and the ICC's Legal Tools," *Goettingen Journal of International Law*, vol. 2 (2010), [http://www.gojil.eu/issues/22/22\\_article\\_bergsmo\\_bekou\\_jones.pdf](http://www.gojil.eu/issues/22/22_article_bergsmo_bekou_jones.pdf) (accessed November 21, 2017), pp. 793-803; Olympia Bekou, "The ICC and Capacity Building at the National Level," in Carsten Stahn, ed., *The Law and Practice of the International Criminal Court* (Oxford: Oxford University Press, 2015), pp. 1252-54; See also Assembly of States Parties (ASP), "Report of the Bureau on stocktaking: Complementarity," ICC-ASP/8/51, March 18, 2010, [https://asp.icc-cpi.int/iccdocs/asp\\_docs/ASP8R/ICC-ASP-8-51-ENG.pdf](https://asp.icc-cpi.int/iccdocs/asp_docs/ASP8R/ICC-ASP-8-51-ENG.pdf) (accessed February 7, 2018).

<sup>558</sup> The definitions or indicia of "unwillingness" and "inability" contained in Rome Statute article 17(2)-(3) and elaborated on in the OTP's policy on preliminary examinations, paras. 50-57, are there to guide the prosecutor and court's exercise of jurisdiction, that is, to determine which cases remain admissible before the ICC, and which, because of genuine national activity, are inadmissible. Difficulties encountered or imposed by national authorities and which may need to be addressed to ensure credible justice may go beyond the Rome Statute definitions of "unwillingness" and "inability." The judges have taken a narrow approach to their assessment of the "genuineness" of proceedings, seeking to ensure that proceedings are not undertaken to shield perpetrators from justice, rather than a concern for protecting the fair trial rights of defendants, in all but the most egregious circumstances. See, for example, *Prosecutor v. Saif Al-Islam and Abdullah Al-Senussi*, ICC, Case No. ICC-01/11-01/11, Judgment on the appeal of Mr Abdullah Al-Senussi against the decision of Pre-Trial Chamber I of 11 October 2013 entitled "Decision on the admissibility of the case against Abdullah Al-Senussi" (Appeals Chamber), July 24, 2014, <http://www.legal-tools.org/doc/ef20c7/> (accessed November 21, 2017), para. 230. Whether the OTP ought to consider increasing its focus on the quality of these proceedings as a matter of policy is an important question, but not one which our research for this report attempts to answer. In addition, admissibility before the ICC is case-specific; the existence of national proceedings that could cut off the ICC's jurisdiction is determined by reference to an actual (or, at the situation phase, potential) case, defined by the person charged (or groups of persons who could be charged) and the conduct charged (or the kinds of conduct that may be charged). Admissibility assessments before the ICC are "not a judgement or reflection on the national justice system as a whole." OTP, "Policy Paper on Preliminary Examinations," <http://www.legal-tools.org/doc/acb906/>, para. 46. Nonetheless, the concepts of "unwillingness" and "inability" contained in the Rome Statute have been useful to broader efforts to map and address obstacles to national justice. See, for example, Open Society Justice Initiative, *International Crimes, Local Justice: A Handbook for Rule-of-Law Policymakers, Donors, and Implementers* (New York: Open Society Foundations, 2011), <https://www.opensocietyfoundations.org/sites/default/files/international-crimes-local-justice-20111128.pdf> (accessed November 21, 2017); High Representative of the European Union for Foreign Affairs and Security Policy and European Commission, "Joint Staff Working Document on Advancing the Principle of

previous reporting and ongoing monitoring of situations under analysis, as well as its broader work on complementarity suggest a number of possible strategies. These include:

- Focusing public debate through media and within civil society groups on the need for accountability;
- Serving as a source of sustained pressure on domestic authorities to show results in domestic proceedings;
- Highlighting to international partners the importance of including accountability in political dialogue with domestic authorities;
- Equipping human rights activists with information derived from the OTP’s analysis, strengthening advocacy around justice; and
- Identifying weaknesses in domestic proceedings, to prompt increased efforts by government authorities and assistance, where relevant, by international partners.<sup>559</sup>

## A. Consolidating Policy and Practice

The OTP’s approach to the preliminary examination process, in general, and to positive complementarity in the context of preliminary examinations, has been consolidated over a number of years; its current approach dates to 2013, when the OTP issued a revised policy on preliminary examinations. The OTP divides its analysis into four phases (see graphic); the preliminary examinations are conducted by its Situation Analysis Section (SAS).<sup>560</sup>

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Complementarity: Toolkit for Bridging the gap between international and national justice,” SWD(2013)26final, January 31, 2013, [https://ec.europa.eu/europeaid/sites/devco/files/joint-staff-working-document-on-advancing-the-principle-of-complementarity-2013\\_en\\_12.pdf](https://ec.europa.eu/europeaid/sites/devco/files/joint-staff-working-document-on-advancing-the-principle-of-complementarity-2013_en_12.pdf) (accessed November 21, 2017).

<sup>559</sup> Other authors have also addressed strategies available to the OTP to advance positive complementarity. See note 1 above.

<sup>560</sup> The ICC’s jurisdiction can be triggered in one of three ways: ICC member states or the Security Council can refer a specific set of events—known as a situation—to the ICC prosecutor or the ICC prosecutor can seek to open an investigation on their own initiative (“*proprio motu*”) with the authorization of an ICC pre-trial chamber. See Rome Statute of the International Criminal Court (Rome Statute), U.N. Doc. A/CONF.183/9, July 17, 1998, entered into force July 1, 2002, <http://www.legal-tools.org/doc/7b9af9/> (accessed November 22, 2017), art. 13. Regardless of how the court’s jurisdiction is triggered, however, the OTP first analyzes the information it has before it regarding a situation to determine whether there is a reasonable basis for initiating a formal investigation. This process is known as a “preliminary examination.” Information about possible crimes falling within the ICC’s jurisdiction first comes to the OTP through one of two channels: communications or referrals. These channels relate to the three mechanisms that can trigger ICC jurisdiction—*proprio motu* investigations (Rome Statute, articles 13(c) and 15), Security Council referrals (article 13(b)), and state party referrals (article 13(a)). “Communications” are information received by the OTP under article 15 of the Rome Statute, which permits the

## FOUR-PHASE APPROACH TO PRELIMINARY EXAMINATIONS

### PHASE 1

OTP filters out information regarding crimes manifestly outside of the court's jurisdiction.

### PHASE 2

Formal start of a preliminary examination and when such situations are publicly announced. OTP analysis focuses on 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)).

### PHASE 3

OTP analysis focuses on whether "the case is or would be admissible under article 17" assessing complementarity and gravity regarding potential cases (article 53(1)(b)).

### PHASE 4

OTP analysis focuses on whether "taking into account the gravity of the crime and the interests of victims, there are nonetheless substantial reasons to believe that an investigation would not serve the interests of justice" (article 53(1)(c)).

During the course of its preliminary examinations, the OTP is committed to pursuing a "positive approach to complementarity." By a "positive approach to complementarity," the OTP means that it views, in a positive manner, the prospect that national authorities could exercise their primary responsibility to investigate and prosecute crimes within the ICC's jurisdiction.<sup>561</sup>

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prosecutor to open an investigation proprio motu ("on his own initiative") with the authorization of a pre-trial chamber of judges. Not all such communications, however, will lead to a preliminary examination. Instead, and consistent with article 15(2)'s instruction that the prosecutor "analyze the seriousness of information received," the OTP first filters out information regarding crimes manifestly outside the ICC's jurisdiction. This is known as Phase 1. Situations that survive this initial filter then enter Phase 2 and become formally "situations under analysis." OTP, "Policy Paper on Preliminary Examinations," para. 80. By contrast, situations referred to the ICC prosecutor by the Security Council or a state party are automatically considered to be situations under analysis and directly enter Phase 2. In addition, the prosecutor has indicated that situations directly enter Phase 2 when a declaration has been lodged under article 12(3), which permits a state to temporarily accept the jurisdiction of the ICC. Ibid.

<sup>561</sup> Human Rights Watch interview with ICC staff, The Hague, June 10, 2016. Although the term "positive complementarity" appears in the OTP's 2013 "Policy on Preliminary Examinations," the OTP prefers to avoid using the term "positive complementarity strategies" to describe its activities to encourage national proceedings within the context of preliminary examinations. In its view, the term could be interpreted to indicate that the OTP applies this as a "policy" in every situation or that it has earmarked funds to support such activities. Human Rights Watch email correspondence with ICC staff, The Hague, September 13, 2016. It could also, in the view of the OTP, imply a flexible burden-sharing, that it is up to the OTP to decide whether or not to take a case or leave it to national authorities. Human Rights Watch interview with ICC staff, June 10,

The OTP's approach, generally, is to defer to domestic authorities for a certain amount of time where it determines that genuine proceedings are or can be conducted.<sup>562</sup> To that end, "[w]here potential cases falling within the jurisdiction of the Court have been identified, the Office will seek to encourage, where feasible, genuine national investigations and prosecutions by the States concerned in relation to these crimes."<sup>563</sup>

The OTP's practice is to intensify positive complementarity activities during Phase 3 and, therefore, only after the OTP has concluded that a reasonable basis exists to believe that crimes within the ICC's jurisdiction have been committed.<sup>564</sup> An exception to this might be where there are already significant national proceedings, such that even at Phase 2 the OTP has the opportunity to engage with authorities regarding these proceedings.<sup>565</sup>

The OTP's efforts to encourage national proceedings unfold in one of two circumstances: either where national proceedings have already been opened, or, even where there are no national proceedings, if a government states its intention to investigate. In the latter case, the OTP will take the government at its word and encourage domestic authorities, while then going on to assess their progress.<sup>566</sup> But in both cases, the extent to which the OTP takes a fully active approach, or even simply defers action to afford national authorities an

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2016. Instead, the OTP considers that, under the Rome Statute, it is required to open a situation where other jurisdictional requirements are met and national authorities do not conduct genuine national proceedings. By contrast, once a situation is opened, it considers itself to have broad discretion in the selection of individual cases for investigation and prosecution. Compare OTP, "Policy Paper on Preliminary Examinations," <http://www.legal-tools.org/doc/acb906/>, para. 2, with OTP, "Policy Paper on Case Selection and Prioritisation," September 15, 2016, <http://www.legal-tools.org/doc/182205/> (accessed November 22, 2017), para. 4. In this report, we nonetheless use terms including "positive complementarity," "positive complementarity strategies," "positive complementarity activities," "strategy for positive complementarity," and "efforts to encourage national proceedings" interchangeably to describe the OTP's efforts to spur domestic proceedings.

<sup>562</sup> Human Rights Watch interviews with ICC staff, The Hague, October 2, 2015 and June 10, 2016.

<sup>563</sup> OTP, "Policy Paper on Preliminary Examinations," <http://www.legal-tools.org/doc/acb906/>, para. 101.

<sup>564</sup> Human Rights Watch interview with ICC staff, October 2, 2015; see also OTP, "Strategic Plan 2016-2018," <http://www.legal-tools.org/doc/7ae957/>, annex I, para. 18. The OTP generally does not put in place a strategy for positive complementarity at the preliminary examination phase when it comes to self-referrals by states parties under article 13. While the OTP may still seek to carry out assessments as to domestic capacity for the purposes of encouraging national proceedings to complement those of the ICC once investigations are opened, it generally takes self-referrals as confirmation that authorities will not proceed domestically. Human Rights Watch interview with ICC staff, October 2, 2015.

<sup>565</sup> Human Rights Watch interview with ICC staff, October 2, 2015.

<sup>566</sup> *Ibid.* The OTP's policy paper indicates that engagement with national authorities is contingent on avoiding the "risk [of] tainting any possible future admissibility proceedings." It further states that "[a]ny interaction between the Office and the national authorities cannot be construed as a validation of the national proceedings, which will be subject to independent examination by the Office taking into account all of the relevant factors and information." OTP, "Policy Paper on Preliminary Examinations," <http://www.legal-tools.org/doc/acb906/>, para. 102. We discuss below some of the challenges posed by conducting positive complementarity activities in the shadow of the Rome Statute's admissibility regime.

opportunity to show results domestically will depend on its rolling assessment of the government’s intention and capacity.<sup>567</sup>

Context matters to this assessment, and that context can include whether the OTP has identified other partners—in civil society or in the international community—that can assist in efforts to bring about national proceedings.<sup>568</sup> In other words, even where there are national proceedings or a stated intent to proceed nationally, the OTP may consider that prospects for genuine domestic proceedings are so limited that an active, engaged encouragement of such proceedings is not warranted.

This current statement of policy and practice reflects an evolution in the OTP’s approach, part of its overall consolidated practice in situations under analysis, memorialized in its 2013 “Policy on Preliminary Examinations.”

In the past, the OTP sometimes initiated positive complementarity activities almost from the outset of the opening of a situation under preliminary examination. Now, the OTP considers that it can more effectively engage national authorities around specific potential cases it identifies following its Phase 2 analysis, and has observed that identifying these cases to authorities has led to concrete progress in national proceedings.<sup>569</sup>

Because of these changes, the OTP’s policy statements on positive complementarity in preliminary examinations have become more qualified.<sup>570</sup> These changes in approach also explain some of the inconsistencies in the case studies in this report. In Guinea, opened in 2009, for example, the OTP began positive complementarity activities almost immediately; in the United Kingdom, re-opened in 2014, and still in Phase 2 during the course of this research, they had yet to do so.

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<sup>567</sup> Human Rights Watch interview with ICC staff, October 2, 2015.

<sup>568</sup> Ibid.

<sup>569</sup> Human Rights Watch telephone interview with ICC staff, The Hague, April 15, 2016; and interview with ICC staff, June 10, 2016.

<sup>570</sup> By way of comparison, the 2010 draft of its preliminary examinations policy contained a commitment “[a]t all phases of its preliminary examination activities, consistent with its policy of positive complementarity, ... to encourage where feasible genuine national investigations and prosecutions by the State(s) concerned and to cooperate with and provide assistance to such State(s) pursuant to article 93(10) of the Statute.” OTP, “Policy Paper on Preliminary Examinations (DRAFT),” October 4, 2010, on file with Human Rights Watch, para. 94 (emphasis added).

Where it does seek to encourage national proceedings, the OTP has identified a number of different forms of engagement: “report[ing] on its monitoring activities, send[ing] in-country missions, request[ing] information on proceedings, hold[ing] consultations with national authorities as well as with intergovernmental and non-governmental organisations, participat[ing] in awareness-raising activities on the ICC, exchang[ing] lessons learned and best practices to support domestic investigative and prosecutorial strategies, and assist[ing] relevant stakeholders to identify pending impunity gaps and the scope for possible remedial measures.”<sup>571</sup>

## B. Maintaining Leverage and the Use of Publicity

While the fact that a situation may come before the ICC can initially provide an incentive for national authorities to start their own investigations, that leverage is likely to wane with time. Authorities can become desensitized to impending ICC action, as appears to have been the case in Colombia and Georgia.

And with a number of pending situations being analyzed simultaneously by the OTP, with limited resources (see below), national authorities may judge that the chances a situation will be selected for investigation do not warrant changes in behavior. This requires the OTP to consider how best to maintain leverage with national authorities, including through targeted and creative use of publicity to increase pressure for action.

From 2008-2011, the OTP sought to heighten the profile of its preliminary examinations. Its communication activities at the time, however, did not reflect a sufficiently strategic approach to the use of publicity.

OTP statements generated significant attention in situations under analysis, as well as globally. But given limited awareness or understanding of the ICC and the preliminary

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<sup>571</sup> OTP, “Policy Paper on Preliminary Examinations,” <http://www.legal-tools.org/doc/acb906/>, para. 102. A number of the OTP’s activities during the preliminary examination highlighted above—in particular, collecting information and consultations with national authorities and other stakeholders with an informed perspective on the commission of crimes or the status of national proceedings—also relate to the primary aim of the preliminary examination, that is, the determination as to whether or not an ICC investigation in a given situation is warranted. Regular reporting also leads to increased transparency, which serves an important end, regardless of the impact on national justice: responding to interests of affected communities in knowing the status and eventual outcome of the OTP’s preliminary examination. Increased public understanding of the criteria guiding the OTP’s decision-making process also should help combat accusations of selectivity or bias in the court’s investigations.

examination process, they raised expectations of immediate ICC action. Repeated public statements but no apparent action on investigations gave rise to perceptions of the ICC as a paper tiger, lessening the weight of future statements.

Increased publicity in the absence of more information about the preliminary examination process also prompts questions as to why the OTP's approach across situations was inconsistent, with certain situations appearing to receive considerable public attention or public missions by the OTP, and others comparatively little.<sup>572</sup>

The OTP, particularly since 2011, has taken steps to change its approach to publicity in preliminary examinations.

First, while the OTP issued a draft policy on preliminary examinations in 2010, it finalized the policy in 2013, setting out in detail the principles and processes governing situations under analysis. It also now publicly identifies on the ICC's website and in other public materials where a situation falls in the four-phased approach—also explained in the policy paper.

Second, it has also increased substantive reporting on its preliminary examinations, having identified improving communications around preliminary examinations as a goal in its 2012-2015 Strategic Plan.<sup>573</sup> In December 2011, the OTP issued its first annual report spanning all preliminary examination activities over the previous year. These annual reports have become increasingly more detailed with each year.

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<sup>572</sup> At the time, Human Rights Watch made a number of recommendations related to the OTP's communication activities in preliminary examinations. First, we recommended that the OTP should increase its regular reporting on its substantive assessment of the article 53(1) factors—including admissibility—in pending situations under analysis. Among other things, we thought this would help demonstrate more credibly that the OTP is actually proceeding with the analysis, and could have helped counteract perceptions of what appeared at that time to be an inconsistent treatment of different situations, with some receiving considerable public attention or public missions by the OTP, and others comparatively little. Second, we recommended that public statements provide additional context about the preliminary examination process, and not go beyond where the OTP's own examination stands, in order to inform and manage expectations as to the prospects of ICC action. Third, we also recommended that the OTP take care to avoid improperly publicizing aspects of a possible investigation—such as the names of possible perpetrators—in a manner that could undermine the due process rights of potential accused or the reputation of others and call into question the impartiality of any subsequent investigation. We also noted that there were limits to the resources the OTP had available, and therefore it needed to strike a proper balance between the primary aim of reaching a decision as to whether or not to open an investigation, and efforts, including increased publicity aimed at positive complementarity. See Human Rights Watch, *Course Correction*, part IV. As discussed here, the OTP's current approach to publicity in preliminary examinations has since changed, and incorporates some of these recommendations.

<sup>573</sup> OTP, "Strategic Plan, June 2012-2015," <http://www.legal-tools.org/doc/954beb/>, paras. 16-17.

In 2012, the OTP also issued a lengthy “interim report” on Colombia, covering both subject matter and admissibility issues. Since 2013, the OTP has also made public an internal article 5 report when moving from one phase to the next (Nigeria, Phase 2 to Phase 3), as well as what were previously internal-only reports regarding decisions to open investigations (Mali and Central African Republic II), and decisions to close preliminary examinations without opening investigations (Republic of Korea, Honduras, and Comoros).

Third, while it continues to engage with local press during missions to situations under analysis, and sometimes holds press conferences during missions, it has scaled back on press statements. It considers its annual report to be a substitute for more frequent press releases<sup>574</sup>; it generally only issues press releases regarding missions to situations under analysis where the prosecutor or another high-level OTP representative leads them.<sup>575</sup>

The latter appears to be driven by a more ambivalent approach to the value of publicity. On the one hand, the OTP continues to view publicity as a means to amplify its leverage with government authorities. On the other hand, it considers that it can damage communication channels with these authorities, on which it depends for information to proceed in its examinations.

## C. Resources

Another important shift in OTP practice relates to the resources available to the SAS. Although the SAS has only 13 current staff members, this is a significant boost in resources from the court’s earliest years. Until 2011, the SAS had five to six staff members, but several of these were actually assigned to active situations under investigation, reflecting the then-lean staffing across the OTP. The OTP estimates that at least half of the work of the section prior to 2011 was taken up by situations under investigation, leaving minimal resources for work on the preliminary examinations.<sup>576</sup>

The OTP’s preliminary examination practice, including inconsistencies in approach and strategy, needs to be considered in this light. All but one of the case studies examined in

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<sup>574</sup> Human Rights Watch interview with ICC staff, June 10, 2016.

<sup>575</sup> Human Rights Watch interview with ICC staff, October 2, 2015.

<sup>576</sup> Human Rights Watch interview with ICC staff, June 10, 2016.

this report were initiated prior to the consolidation of the OTP's practice in its 2013 policy paper and the SAS's current boost in resources.

At the same time, this boost in resources is still less than the workload requires. As of January 2018, there are 13 staff members within the Situation Analysis Section. Of these 13 positions, two are at the P-1 level, six are at the P-2 level, four are at the P-3 level, and one position is at the P-5 level.<sup>577</sup> This staffing size falls below the 17 staff members the OTP has indicated should be the "basic size" of the SAS.<sup>578</sup>

But even with 17 staff members, under the OTP's current division of labor, by the OTP's calculations this would translate into an average of 1.5 full-time P-2 or P-3 analysts to work on each situation, assuming an average of nine preliminary examinations at any given point of time. These 1.5 staff members, with support from P-1 analysts and under the supervision of the P-5 head of section, are responsible for a wide range of activities in their assigned situations, including analysis necessary to support determinations regarding investigations, public information, efforts to deter crimes or encourage national proceedings, along with the associated field missions, consultations, and other activities necessary to support these functions.<sup>579</sup>

Clearly, particularly in preliminary examinations with widespread allegations of crimes extending over a long time, or significant national proceedings under way, the OTP's resources are highly limited as compared to the quantity of needed analysis, let alone the steps that may be necessary to engage national authorities in a way that can catalyze national prosecutions. These resources are also limited as compared to the resources that some governments are likely to allocate to engage with the OTP.

These limited resources should give some pause in considering what strategies the OTP can reasonably be expected to pursue on positive complementarity. It is worth bearing in

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<sup>577</sup> Human Rights Watch email correspondence with ICC staff, January 26, 2018.

<sup>578</sup> ASP, "Report of the Court on the Basic Size of the Office of the Prosecutor," ICC-ASP/14/21, September 17, 2015, [https://asp.icc-cpi.int/iccdocs/asp\\_docs/ASP14/ICC-ASP-14-21-ENG.pdf](https://asp.icc-cpi.int/iccdocs/asp_docs/ASP14/ICC-ASP-14-21-ENG.pdf) (accessed November 29, 2017), p. 41. The "basic size" of the OTP, presented to ICC member countries in 2015, is the size it considers necessary "not only [to] ensure that the Office attains a staffing size which is stable for the foreseeable future, but also one with sufficient depth to absorb new demands without having to continue the present unsustainable practice of repeatedly postponing new investigations which must be pursued in accordance with the Office's mandate, or constantly stripping ongoing activities of critical resources so as to staff the highest prioritised activities." *Ibid.*, p. 3.

<sup>579</sup> *Ibid.*, pp. 40-43.

mind that these strategies are, appropriately, only secondary to the SAS's primary role of reaching decisions regarding whether to open ICC investigations.

## Appendix II: Key Developments in Case Studies

### A. Colombia

2002-2008: Under pressure from superiors to show “positive” results and boost body counts in their decades-long war against guerrillas, army soldiers and officers abduct civilians or lure them to remote locations under false pretenses and kill them, placing weapons on their bodies and reporting them as enemy combatants killed in action.

June 2004: The Office of the Prosecutor of the International Criminal Court (OTP) opens a preliminary examination of crimes against humanity committed in Colombia since November 2002, when Colombia became a state party.

July 2005: Colombian Congress passes the Justice and Peace Law that allowed paramilitary death squads to receive reduced sentences in exchange for confessions.

2006: The OTP’s preliminary examination is made public.

2007: National investigations on “false positive” killings begin.

October 2007: OTP mission to Colombia.

August 2008: OTP mission to Colombia.

September 2008: “False positive” killings halted following the Soacha scandal, when it became publicly known that at least 16 young men from Soacha, a low-income suburb of Bogota, were victims of army killings.

2009: First convictions on “false positive” killings of low-ranking soldiers are handed down.

October 2009: OTP mission to Colombia.

November 1, 2009: The jurisdiction of the International Criminal Court (ICC) over war crimes begins, following a seven-year delay declared by then-President Andrés Pastrana upon ratification of the Rome Statute.

2011: Colombian government introduces the first of many bills designed to transfer investigations on “false positives” to the military jurisdiction.

July 2012: To pave the way for peace negotiations with the FARC, Colombian congress passes the Legal Framework for Peace, a constitutional amendment that includes a range of benefits for those responsible for human rights abuses. The scope of the amendment included soldiers responsible for “false positive” killings.

October 2012: Peace talks between the Colombian government and the FARC guerrillas formally begin.

October 2012: The Attorney General’s Office develops a prioritization strategy to prosecute abuses and creates a special unit, the Unit of Analysis and Contexts (UNAC), to carry out pattern-based analysis on the structure of the groups and identify those most responsible.

November 2012: OTP released its interim report on the situation in Colombia, which identifies priority areas as an effort to overcome a lack of adequate prosecutorial strategy domestically, including in relation to false positive cases.

April 2013: OTP mission to Colombia.

June 2013: OTP mission to Colombia.

July-August 2013: OTP sent letters to Colombian authorities on the inconsistencies of the Legal Framework for Peace and the Rome Statute.

August 2013: Colombian Constitutional Court fixes shortcomings in the Legal Framework for Peace.

September 2013: Prosecutor Bensouda meets President Santos.

November 2013: OTP mission to Colombia.

2014: UNAC stops directly investigating “false positive” cases, focusing instead on crimes committed by the ELN and FARC guerillas.

February 2015: OTP mission to Colombia.

May 2015: OTP mission to Colombia.

June 2015: Colombian government drops the most problematic language from a constitutional amendment that would have transferred investigations on “false positive” killings to the military jurisdiction.

July 2015: The Attorney General’s Office, for the first time, interviews generals for their alleged role in “false positives” cases.

December 2015: The Colombian government and the FARC announce a justice accord, replacing the July 2012 Legal Framework for Peace.

March-August 2016: National authorities charge and indict General Torres Escalante in relation to “false positives” incidents, the first army general to be targeted.

March 2016: The Attorney General’s Office announces it will charge General Montoya for his role in killings when he commanded the army (as of writing, he had yet to be charged).

November 2016: Peace talks between the Colombian government and the FARC guerrillas end with the signing of the peace accord.

September 2017: OTP mission to Colombia.

## B. Georgia

August 7, 2008: After months of escalating tensions between Russia and Georgia and following skirmishes between Georgian and South Ossetian forces, Georgian forces launch an artillery assault on Tskhinvali, South Ossetia's capital, and outlying villages. Assaults by Georgian ground and air forces follow.

August 8, 2008: Russia begins its military response, with the declared purpose of protecting Russian peacekeepers stationed in South Ossetia and residents who had become Russian citizens in previous years. Russian ground forces cross into South Ossetia and Russian artillery and aircraft hit targets in South Ossetia and undisputed Georgian territory.

August 10, 2008: Georgian commanders order their troops to withdraw from South Ossetia. Two days later Russian forces move into and occupy various key cities in undisputed Georgian territory. South Ossetian forces also participate in the fighting.

August 14, 2008: The OTP announces that it is opening a preliminary examination into the situation in Georgia, days after the Georgian authorities open a criminal investigation into crimes committed during the conflict.

August 15, 2008: The French European Union presidency brokers a ceasefire agreement between Russia and Georgia. Despite the ceasefire, however, looting and torching of ethnic Georgian villages in the conflict zone continues intermittently through September, and in some cases through October and November.

October 10, 2008: Russian forces complete their withdrawal from undisputed Georgian territory, although remain in Perevi and Akhagori, previously under Georgian control.

November 2008: The OTP visits Georgia for the first time.

September 2009: EU-funded fact-finding mission launched in December 2008 on the "origins and the course of the conflict" concludes that "despite a long period of increasing tensions, provocations and incidents," open hostilities began by the shelling of Tskhinvali by Georgian armed forces during the night of August 7, 2008. The report also concludes

that “evidence of systematic looting and destruction of ethnic Georgian villages” suggests that “ethnic cleansing was indeed practiced against ethnic Georgians in South Ossetia.”

March 8-10, 2010: The OTP conducts its first visit to Russia.

June 22-24, 2010: The OTP visits Georgia for the second time.

February 2-4, 2011: The OTP visits Russia for the second time. The Russian authorities report on the status of the Russian investigations into crimes allegedly committed in the context of the armed conflict in Georgia in August 2008.

October 18, 2011: In response to the OTP’s September 2011 request to Georgia and Russia for details on progress in investigations, Russia replies that its investigation faced difficulties resulting from the lack of legal assistance from Georgian authorities, and the fact that senior Georgian officials enjoy immunity from prosecution in Russia.

December 12, 2011: The Georgian government tells the OTP that it still needs “certain verifications and corroborations [...] to attain charges [on South Ossetian suspects],” without providing further details about the timeframe.

April 24, 2012: A network of international and Georgian NGOs submits an open letter to the ICC Prosecutor criticizing Georgian and Russian authorities for not making available any information regarding investigations to victims. The network recommends that, if the OTP’s preliminary examination confirms that genuine national investigations are not being undertaken, the prosecutor should open an investigation into the crimes.

June 18, 2012: Russian authorities inform the OTP that they will continue to investigate the armed conflict in Georgia despite the persisting issues of immunity and the lack of legal assistance from Georgia.

October 2012: President Saakashvili’s political party is defeated during parliamentary elections, and the opposition party forms a new government, including a new chief prosecutor, who restructures and reorganizes the office, causing delays in the investigation. By the end of 2012, the General Prosecutor’s Office informs the ICC that its investigation into acts allegedly committed by the Georgian military were hindered by the

lack of access to the crime scene—since there was no access to South Ossetia—and lack of cooperation from Russia and South Ossetia.

November 2012: The OTP releases its second Report on Preliminary Examination Activities, noting that both Russian and Georgian authorities still seemed to undertake investigative steps regarding alleged crimes committed in Georgia during the armed conflict in 2008.

March 25-28, 2013: The OTP visits Georgia for the third time.

May 15, 2013: The chief prosecutor of Georgia announces that his office would relaunch investigations into alleged crimes committed by all sides during the August 2008 conflict.

September 22-26, 2013: The OTP visits Georgia for the fourth time.

November 2013 - January 2014: The Georgian government replaces the chief prosecutor twice, stunting progress in the investigation.

January 22-24, 2014: The OTP visits Russia for the third time.

April 29-May 1, 2014: The OTP visits Georgia for the fifth time.

June 6, 2014: The OTP tells the Georgian authorities to provide “concrete, tangible and pertinent evidence” about genuine national proceedings against those bearing the greatest responsibility for crimes, or else the office would seek authorization from the ICC’s judges to open an investigation.

December 2, 2014: In its fourth annual Report on Preliminary Examination Activities, the OTP notes that the national investigations in both Georgia and Russia have not yielded specific results, more than six years after the armed conflict in Georgia.

January 21-23, 2015: The OTP conducts its sixth mission to Georgia to assess the status of relevant national proceedings.

March 17, 2015: The Georgian government informs the OTP that further progress has been halted due to “a fragile security situation in the occupied territories in Georgia” and fears that prosecutions could trigger “aggressive and unlawful reactions by the occupying forces.”

October 13, 2015: The prosecutor requests authorization to open an investigation into the situation in Georgia covering the period from July 1, 2008, to October 10, 2008, for war crimes and crimes against humanity allegedly committed in and around South Ossetia.

January 27, 2016: Pre-Trial Chamber I grants the prosecutor's request to open an investigation proprio motu in the situation in Georgia.

## C. Guinea

September 28, 2009: More than 150 peaceful protesters are massacred, hundreds more wounded, and dozens of women are raped by security forces during an opposition rally at a Conakry stadium. Security forces continue to commit abuses for several days in neighborhoods largely inhabited by people supporting the opposition, including pillage, physical abuse, and rape.

September 29, 2009: President Captain Moussa Dadis Camara announces a National Commission of Inquiry on the September 28, 2009 events.

October 14, 2009: The ICC prosecutor announces a preliminary examination into the situation in Guinea.

October 16, 2009: The UN secretary-general announces an International Commission of Inquiry to investigate the events of September 28, 2009, and their aftermath in Guinea.

October 20, 2009: The Guinean foreign minister travels to The Hague and informs the OTP that Guinea is able and willing to investigate the crimes.

December 3, 2009: President Dadis Camara is shot and gravely injured by Lieutenant Abubakar “Toumba” Diakité, Camara’s former aide-de-camp and head of his personal security. Diakité flees, and Camara seeks medical treatment in Burkina Faso.

December 18, 2009: The International Commission of Inquiry issues its report, finding that former President Dadis Camara and other high-level officials are allegedly implicated in the September 28, 2009 crimes.

February 2, 2010: The National Commission of Inquiry issues its report, which confirms that enforced disappearances, killings, and rapes were committed, but determines that the death toll was less than that found by the International Commission of Inquiry, and that former President Cpt. Moussa Dadis Camara was not likely implicated in crimes.

February 8, 2010: A domestic panel of investigative judges is appointed to investigate the crimes committed on and immediately after September 28, 2009.

February 2010: The OTP visits Guinea for the first time.

February 2010: Abubakar “Toumba” Diakité, is charged, but his whereabouts are unknown.

May 2010: The OTP visits Guinea for the second time.

May 2010: The International Federation for Human Rights and the Guinean Organisation for Human Rights initiate a *partie civile* action on behalf of victims’ associations and individual victims of the September 28, 2009 crimes.

November 2010: The OTP visits Guinea for the third time.

March-April 2011: The OTP visits Guinea for the fourth time.

October 2011: The OTP visits Guinea for the fifth time.

November 22, 2011: The Government of Guinea and the UN sign a joint communiqué welcoming assistance from the Team of Experts of the Office of the Special Representative for Sexual Violence in Conflict in the September 28, 2009 investigation.

December 13, 2011: The OTP releases its first annual Report on Preliminary Examinations. The OTP notes that the ICC has jurisdiction in Guinea and that crimes against humanity were likely committed during the September 28 events, but also notes Guinea’s stated ability and willingness to conduct a criminal investigation.

February 1, 2012: Moussa Tiégboro Camara, minister in charge of fighting drug trafficking and organized crime, is charged with crimes committed in connection with the September 28, 2009 stadium massacre, rapes, and other abuses.

April 2012: The OTP visits Guinea for the sixth time.

September 13, 2012: Colonel and medical doctor Abdoulaye Chérif Diaby, former minister of health, is charged with crimes committed in connection with the September 28, 2009 stadium massacre, rapes, and other abuses.

November 22, 2012: In its second annual Report on Preliminary Examinations, the OTP indicates that although the investigation has been slow, significant progress had been made. More than 200 victims have been interviewed and 6 individuals charged.

December 2012: UN Team of Experts deploys Ahmedou Tidjane Bal as a judicial expert to support the panel of judges.

January-February 2013: The OTP visits Guinea for the seventh time.

June 2013: The OTP visits Guinea for the eighth time.

June 27, 2013: Lt. Col. Claude “Coplan” Pivi, minister for presidential security, is charged with crimes committed in connection with the September 28, 2009 stadium massacre, rapes, and other abuses.

November 25, 2013: The OTP notes in its third annual Report on Preliminary Examinations that the national investigation has been slowed by the elections and security concerns, but progress has been made. Over 370 victims have been heard and 8 individuals have been charged.

January 20, 2014: Cheick Sako is appointed minister of justice.

February 2014: The OTP visits Guinea for the ninth time.

February 28, 2014: Judicial authorities in Burkina Faso, where former President Cpt. Moussa Dadis Camara has been in exile, interview the former president as a witness.

December 2, 2014: In its fourth annual Report on Preliminary Examinations, the OTP indicates that administrative challenges faced by the panel of judges, as well as concerns for the security of judges and victims, led to a slowdown in the domestic investigation.

May 2015: The OTP visits Guinea for the tenth time.

July 2015: The OTP visits Guinea for the eleventh time.

July 8, 2015: Former President Cpt. Moussa Dadis Camara is questioned in Burkina Faso by the Guinean panel of investigative judges and charged.

November 12, 2015: In its fifth annual Report on Preliminary Examinations, the OTP indicates that the pace of the investigation has improved, with increased support by the government. Some 400 victims have been heard by the panel of judges, and 14 individuals have been charged.

February 2016: The OTP visits Guinea for the twelfth time.

June-July 2016: The OTP visits Guinea for the thirteenth time.

November 14, 2016: In its sixth annual Report on Preliminary Examinations, the OTP indicates that since November 2015, the panel has interviewed more witnesses and approximately five high-level officials in the Guinean army.

December 16, 2016: Senegalese authorities arrest Abubakar “Toumba” Diakité in Dakar on an arrest warrant issued by Guinean authorities.

March 12, 2017: Senegal extradites Abubakar “Toumba” Diakité to Guinea.

March 2017: The OTP visits Guinea for the fourteenth time.

November 9, 2017: The justice minister announces that the judges have concluded their investigation and handed the dossier over to the prosecutor for review.

December 29, 2017: The justice minister announces that the investigation is complete has been referred for trial at a court of first instance in Conakry.

## D. United Kingdom

September 1, 2001: The United Kingdom International Criminal Court Act enters into force.

October 4, 2001: The UK ratifies the ICC Rome Statute, giving the court jurisdiction over war crimes, crimes against humanity, and genocide committed on British territory or by British nationals as of July 1, 2002.

July 1, 2002: The Rome Statute enters into force.

March 20, 2003: British forces join in the US-led invasion of Iraq.

July 16, 2003: OTP reports it has received communications related to alleged abuses in Iraq.

September 15, 2003: Baha Mousa, an Iraqi hotel receptionist, dies while in British custody in the southern Iraqi city of Basra.

July 19, 2005: Seven British soldiers, including Cpl. Donald Payne, face various charges—including under the UK International Criminal Court Act for crimes related to the ill-treatment of Iraqi citizens held in their custody, including Baha Mousa.

February 9, 2006: ICC prosecutor Luis Moreno Ocampo closes the OTP's first preliminary examination into alleged abuses by British forces in Iraq, stating that although there was reasonable basis to believe that war crimes of wilful killing and inhuman treatment were committed, the numbers were not sufficient to warrant ICC involvement. He leaves open the possibility that the decision "be reconsidered in the light of new facts or evidence."

September 19, 2006: Cpl. Donald Payne pleads guilty to a war crime under the UK's International Criminal Court Act for his role in the death of Baha Mousa. He is sentenced to one year in prison on April 30, 2007. Payne pleaded guilty to inhuman treatment. On February 14, 2007, charges were dropped against four of the six other soldiers, while the remaining two soldiers were acquitted on March 13, 2007.

August 2, 2008: A public inquiry is established to investigate and report on the death in British custody of Baha Mousa and the treatment of those Iraqi civilians detained with him. The inquiry is triggered by judicial review proceedings initiated by Baha Mousa's father, who sought a public inquiry into the death of his son.

July 30, 2009: A public inquiry, chaired by Sir John Chilcot, is officially launched to consider and identify lessons learned from the UK's involvement in Iraq.

November 29, 2009: The UK government launches the Al-Sweady inquiry to investigate allegations of torture and unlawful killing of Iraqis following a gunfight between British troops and fighters for the Mahdi Army in 2004. The inquiry is launched to investigate allegations made in another judicial review proceeding after judges held that the defence secretary's approach to the disclosure of documents in the case had been "lamentable." Sir Thayne Forbes is chosen to chair the inquiry.

February 2010: Public Interest Lawyers (PIL), acting for a group of claimants that eventually included over 100 Iraqis, sets in motion legal proceedings in a UK court seeking a single public inquiry into allegations that British armed forces tortured or otherwise ill-treated them in detention facilities in Iraq between 2003-2008. The proceedings would eventually be known by the name of the lead claimant, Ali Zaki Mousa.

March 1, 2010: In response to the Ali Zaki Mousa litigation, rather than setting up a full public inquiry, the British government establishes the Iraq Historic Allegations Team (IHAT). The IHAT becomes operational in November 2010.

December 21, 2010: A British court rejects the claimants' application in the Ali Zaki Mousa litigation to review the government's decision not to order an overarching inquiry. Instead, it endorses the government's decision to "wait and see" if another public inquiry into abuse of Iraqi detainees is necessary, pending the outcome of IHAT investigations and the Baha Mousa and Al-Sweady inquiries.

May 22, 2011: Last British troops withdraw from Iraq.

July 7, 2011: Judges ruling in the Al-Skeini case at the European Court of Human Rights reject the British government's argument that the European Convention on Human Rights (ECHR) does not extend to the UK's conduct in Iraq. This case followed proceedings initiated in the UK in 2004 and concluded in 2007 with a decision by the House of Lords. They find that British investigations into possible unlawful killings in Iraq by members of the UK armed forces violated the right to life, as those conducting the investigations were not independent (i.e., outside the military chain of command) of those being investigated.

September 8, 2011: The Baha Mousa Inquiry report is published. It identifies "corporate failure" by the British Army to prevent the use of banned interrogation techniques.

November 22, 2011: Following allegations by claimants in the Ali Zaki Mousa litigation disputing the IHAT's independence, a court of appeals holds that the IHAT is not sufficiently independent to satisfy the UK's obligation under the ECHR because of the involvement of members of the Royal Military Police.

April 1, 2012: The IHAT is reorganized from under the Royal Military Police to under the Royal Navy Police to respond to a court's ruling that it is not sufficiently independent. It is tasked to follow up on the Baha Mousa Inquiry report and the European Court of Human Rights Al-Skeini judgment.

October 23, 2012: The Ministry of Defence's Systemic Issues Working Group starts overseeing the Ministry of Defence's Directorate of Judicial Engagement Policy in its review of systemic issues and the IHAT's reports on the subject.

October 2, 2013: Justice Leggatt is appointed as "Designated Judge" to oversee the different claims made with respect to alleged abuse by British troops in Iraq.

October 10, 2013: Following a further judicial review brought by the Ali Zaki Mousa claimants seeking an overarching public inquiry, a high court holds that the IHAT is sufficiently independent to undertake investigations to fulfill the UK's obligations under the ECHR. At the same time, it decides that a procedure similar to a coroner's inquest—now known as the Iraq Fatality Investigations (IFI)—should be set up to meet the UK's obligation to investigate cases of Iraqis who had died in the custody of British forces.

January 10, 2014: The European Center for Constitutional and Human Rights (ECCHR) and PIL submit a lengthy communication to the ICC prosecutor related to alleged ill-treatment of Iraqi detainees and unlawful killings by British forces in Iraq from 2003-2008.

May 13, 2014: OTP announces the reopening of its preliminary examination related to alleged abuses by British forces in Iraq.

June 5, 2014: The chair of the new Iraq Fatalities Investigations, Sir George Newman, gives his opening statement.

June 24-26, 2014: OTP conducts a first mission to the UK and meets with the IHAT and the Service Prosecuting Authority (SPA).

December 17, 2014: The Al-Sweady Inquiry report is published, rejecting the most serious allegations of unlawful killing of Iraqi detainees but finding evidence of ill-treatment of Iraq detainees by British forces.

January 12, 2015: Following the release of the Al-Sweady report, the Solicitors Regulation Authority (SRA) announces professional misconduct investigations involving PIL and Leigh Day.

April 7, 2015: UK authorities submit a response to the allegations contained in PIL and ECCHR's January 2014 communication.

May 7, 2015: IHAT, SPA and Foreign and Commonwealth Office (FCO) officials meet OTP staff in The Hague. During this meeting, the UK delegation provides oral answers to written questions received from the OTP.

October 1-2, 2015: The OTP conducts a mission to PIL's offices in the UK to screen the supporting material relating to their claims.

October 5, 2015: In one of her first major speeches as British prime minister, Theresa May says "we will never again in any future conflict let those activist left-wing human rights lawyers harangue and harass the bravest of the brave: the men and women of our armed forces."

October 23, 2015: IHAT and FCO officials have a further meeting with the OTP in The Hague.

January 1, 2016: IHAT head Mark Warwick states in a media interview that there was "significant evidence to be obtained to put a strong case before the Service Prosecuting Authority to prosecute and charge."

January 6, 2016: The SRA refers Leigh Day to the Solicitors Disciplinary Tribunal.

April 2016: The attorney general directs retired judge and former director of public prosecutions, Sir David Calvert-Smith, to conduct an independent review of the IHAT.

April 7, 2016: The SRA refers PIL to the Solicitors Disciplinary Tribunal.

April 28, 2016: The British House of Commons Defence Committee tasks a subcommittee chaired by an MP and former British army officer, Johnny Mercer, to examine the support

the Ministry of Defence gave to former and serving armed forces personnel subject to judicial processes, in particular through the IHAT.

July 4, 2016: OTP publishes a statement correcting assertions in an article published by *The Telegraph*.

July 6, 2016: The Chilcot inquiry report is published. Though the inquiry considered examining possible systemic issues relating to the detention and treatment of detainees in Iraq, it ultimately decided against doing so, citing potential duplication and prejudice of other processes.

August 31, 2016: PIL shuts down after being stripped of its legal aid funding.

September 15, 2016: Sir David Calvert-Smith publishes his report reviewing the IHAT.

December 14, 2016: Defence Secretary Michael Fallon tells parliamentary defence subcommittee that the number of claims on the IHAT docket would fall to 250 by January 2017 and to 60 by mid-2017.

February 2, 2017: The Solicitors Disciplinary Tribunal strikes Phil Shiner off the register of solicitors, barring him from practicing law.

February 10, 2017: The House of Commons Defence Committee publishes a report on the IHAT recommending its closure after the number of cases on its docket is reduced to 60.

February 10, 2017: Defence Secretary Michael Fallon announces that the IHAT will close by the summer of 2017.

February 13-14, 2017: The OTP conducts its third mission to the United Kingdom.

April 5, 2017: Defence Secretary Michael Fallon confirms that the IHAT will officially close on June 30, 2017 with any remaining cases—anticipated to be around 20—transferred to the service police for investigation.

April 21, 2017: The UK government submits its response to the Defence Committee report on the IHAT.

June 9, 2017: The Solicitors Disciplinary Tribunal clears Leigh Day of the allegations of professional misconduct.

June 29, 2017: ECCHR sends a letter to the OTP expressing concerns about the IHAT's decision to discontinue investigations in hundreds of cases.

June 30, 2017: The IHAT ceases to investigate allegations of abuse of Iraqi civilians by British armed forces between 2003-2009. The remaining investigations are reintegrated back into the service police system through the Service Police Legacy Investigations.

September 1, 2017: ECCHR sends a letter to the OTP urging the office to open a formal investigation.

September 13, 2017: The UK Ministry of Defence posts the two last quarterly updates on the IHAT's work.

December 4, 2017: On December 4, 2017, OTP announces there was a reasonable basis to believe that members of the UK armed forces committed war crimes within the ICC's jurisdiction in Iraq against persons in their custody, including wilful killing/murder, torture and inhuman/cruel treatment, and rape or other forms of sexual violence. This conclusion reflects the OTP's decision to officially move the UK/Iraq examination to Phase 3.