



Cour  
Pénale  
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International  
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Court



BUREAU DU  
PROCUREUR  

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OFFICE OF THE  
PROSECUTOR

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# POLICY ON SLAVERY CRIMES

December 2024

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## PREFACE

Slavery and the slave trade are foundational international crimes. International law accords them the utmost importance, that of peremptory norms from which no derogation is permitted, designed to prevent violations of liberty, dignity, autonomy and humanity. The Rome Statute expressly includes certain slavery crimes. The Court has heard evidence of these crimes in earlier cases such as *Katanga* and *Ngudjolo*, as well as more recent cases including *Ntaganda*, *Ongwen* and *Al Hassan*. Yet, contemporary slavery crimes continue to entrap children, parents, migrants, and civilians, causing incalculable harm.

Despite clear legal prohibitions, odious slavery crimes continue to be committed in various ways today. Whether individuals are enslaved for years or days, whether for labour, sexual, or reproductive purposes, survivors recount the pervasive brutalisation of their existence and the trauma that reverberates through generations. To effectively uncover, investigate and prosecute the full scope of these slavery crimes, we must reassess our understanding of these crimes, analyse the realities of the experiences of victims and survivors and act urgently and together to address this category of crimes.

Since assuming my duties as Prosecutor, I have dedicated specific attention to slavery crimes by marshalling the successful outcome in the *Ongwen* case, appointing a Special Adviser for Slavery Crimes, reviewing our charging practices in ongoing cases and establishing networks with our national and international partners in accountability.

The Slavery Crimes Policy you are about to read represents a significant next step. It is the first policy issued by an international court or tribunal specifically addressing international slavery crimes. This Policy closely examines the scope of slavery crimes under the Rome Statute, while also acknowledging the slave trade as a form of slavery crimes and the transnational crime of trafficking in persons. As we deepen our understanding of the myriad ways in which the powers of ownership over a person can be exercised, we must adopt a more vigilant approach to identify and respond to these crimes. This Policy will guide us at every stage of our work, articulating the concepts, principles and practical considerations surrounding slavery crimes that will inform the Office's investigations, submissions before the Court and interactions with survivors.

I commend Deputy Prosecutor Nazhat Shameem Khan for her steadfast leadership and my Special Adviser on Slavery Crimes Professor Patricia Viseur Sellers for her

unwavering expertise in leading the work on this Policy. I also wish to express my gratitude to the practitioners, advocates, survivors, academics and staff who generously shared their experiences and insights during the Policy's development. Additionally, I appreciate the productive exchanges my Office has had with the broader community of justice actors, facilitated by the Policy's inclusive consultative process.

I am very pleased to promulgate this Policy for the Office and extend this to you, the international community, as a shared tool aimed at enhancing accountability for slavery crimes.

**Karim A. A. KHAN KC**  
Prosecutor, International Criminal Court

December 2024

The development of the Office of the Prosecutor's Policy on Slavery Crimes has been a hallowed responsibility for me as an international lawyer, who descends from enslaved people. I know how slavery crimes have ruptured the essence of innumerable human beings, legating transgenerational "afterlives" of discrimination, degradation and of resilience.

During the last century, international treaties, customary law, protocols and the statutes of international courts and tribunals outlawed these egregious acts, wherever, whenever and to whomever they occur. Landmark legal decisions from the Nuremberg and Tokyo judgements, to the *Kunarac*, *Ongwen* and *Ntaganda* cases have sternly condemned slavery as war crimes and as crimes against humanity.

Yet, today, enslavement, the slave trade and sexual slavery persist, if not thrive. We still stand amid contemporary enslaved persons and survivors of slavery crimes who vehemently clamor for accountability as envisioned by international criminal law. This Policy on Slavery Crimes responds to survivors' deserved demands for justice.

A North Star of the Policy on Slavery Crimes lies in the signalling of a plethora of acts and omissions committed against enslaved persons. From forced labour, sexual, reproductive and psychological harms, to tearing asunder cultural, religious, family and community ties, the Policy delineates how each could comprise an indicia of enslavement. Another lodestar of the Policy's development was how the Office of the Prosecutor purposefully conferred and consulted with communities of justice actors, inclusive of survivors and descendants of enslaved persons, to deepen the comprehension of the drivers and impacts of slavery crimes. My colleagues at the Office and I are appreciative of the external and internal engagements that generated a celestial mapping of critical legal positions, fortified principles and renewed practices that will guide the Office's pursuit of slavery crimes under the Court's jurisdiction.

Allow me to clarify the analogy. Stars in the sky inspire the enslaved. The North Star, the lodestar, the brightest point in the Drinking Gourd or the Big Dipper constellation literally shone a trail out of slavery and to freedom for enslaved persons escaping the American South. This Policy—cognisant of the revulsion of slavery crimes—decidedly gazes upward, in hope and determination, while recognising the resilience needed to illuminate the road toward justice for (survivors of) slavery crimes.

**Patricia VISEUR SELLERS**

ICC Prosecutor's Special Adviser on Slavery Crimes

December 2024



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## **I. EXECUTIVE SUMMARY**

Slavery crimes are among the most fundamental of international crimes known to humankind. With this Policy on Slavery Crimes (“Policy”), the Office of the Prosecutor (“Office”) addresses accountability for these grave crimes. This Policy embodies the Office’s pledge to secure accountability for slavery crimes under the Rome Statute (“Statute”) and to serve as a bulwark for their prevention. As with its continuing emphasis on investigating and prosecuting gender-based crimes, gender persecution and crimes against and affecting children, the Office will prioritise seeking redress for slavery crimes.

The wisdom of ancient and modern philosophies have condemned slavery, reflecting the principle of equal dignity of all humans. Peremptory norms of international law also forbid it. Slavery and the slave trade have nonetheless denigrated humanity for millennia. Institutions of slavery and the slave trade have forged and deformed economies, cultures and entire political systems. Whether forgotten, remembered or denied, institutions of slavery have touched virtually every corner of the world—every continent, every country, every island. Certain slavery practices endured centuries, with trans-generational reach and effect. Other slavery institutions manifested during periods of armed conflict or coincided with the perpetration of genocide or crimes against humanity. Slavery and the slave trade spared none, neither newborn nor the aged, simultaneously ensnaring both the individual and the group.

In contrast to several religious or philosophical injunctions, this Policy traces the slow acknowledgement in international law of the criminal nature of slavery and the slave trade, first through prohibitions of war under the laws of armed conflict, then through the 1926 Slavery Convention and the 1956 Supplementary Slavery Convention, and eventually under the Universal Declaration of Human Rights (“UDHR”) and the International Covenant on Civil and Political Rights (“ICCPR”).

Redress for slavery crimes at international courts commenced in earnest with the International Military Tribunals for Nuremberg and Tokyo, which prosecuted the slave labour policies that had sustained the waging of World War II. A half century later, the International Criminal Tribunal for the former Yugoslavia (“ICTY”) adjudicated evidence of the sexualised enslavement of girls and women as crimes against humanity. The Special Court for Sierra Leone (“SCSL”), importantly, rendered convictions for the enslavement of civilians forced to mine diamonds, boy child soldiers and the sexual slavery of women and girls. The Extraordinary

Chambers in the Courts of Cambodia (“ECCC”) rendered convictions for the mass enslavement of Cambodian civilians through forced labour and forced marriages, as crimes against humanity.

Today, slavery crimes come before the International Criminal Court (“ICC”). Under its Statute, enslavement and sexual slavery are crimes against humanity under article 7 and sexual slavery is a war crime under article 8. The ICC has reviewed evidence, rendered convictions and ordered reparations in cases involving slavery crimes. Most recently, the *Ntaganda* and *Ongwen* cases underscored the prevalence of contemporary slavery practices as international crimes. While this Policy refers to slavery crimes broadly in treaty, custom and the legal frameworks of various international courts and tribunals, the term “slavery crimes” in the context of this Court’s jurisdiction refers to enslavement and sexual slavery as contained under the Rome Statute.

This Policy enhances the Office’s pursuit of accountability for slavery crimes. The Office undertook a comprehensive external and internal consultation process that directly engaged over 154 practitioners, survivors and advocates from over 24 countries, after also receiving considerable global response to Prosecutor Karim A. A. Khan’s call for public submissions.

The Policy strongly aligns with the Office’s Policy on the Crime of Gender Persecution (2022), the Policy on Gender-based Crimes (2023), the Policy on Crimes against and affecting Children (Policy on Children, 2023) and the Policy on Complementarity and Cooperation (2024). This Policy echoes previously stated principles of the Office, including emphasis on a survivor-centred and trauma-informed approach, intersectionality, contextualisation, and gender-competent and child-competent practices. It also introduces a principle that highlights the importance of historical and cultural knowledge when redressing slavery crimes.

First, the Policy tracks the historical trajectory of the institutions and practices of slavery and recounts their gradual prohibition under international law. Second, it delineates key terms and definitions of slavery crimes and slavery-related crimes, such as forced labour, trafficking in persons or servile status, to clarify the conceptualisation of slavery crimes. It also imprints core features of slavery crimes, such as their *jus cogens* status under international law (a peremptory norm from which no derogation is permitted), as well as critical misconceptions, such as assumptions about required duration or the relevance of consent. The Office aims to correct inaccurate assumptions about the gravity and nature of slavery crimes.

Third, the Policy elaborates upon the specific crimes of enslavement and sexual slavery under the Statute. The elements of the specific slavery crime provisions

under articles 7 and 8 are examined in relationship to other provisions of the Statute, including the contextual requirements.

Slavery crimes are often gender-based crimes and can overlap with crimes against and affecting children. Therefore, this Policy embraces and enlarges the various practical approaches for the different phases of the Office's work set out in the 2023 Policy on Gender-based Crimes and the 2023 Policy on Crimes against and affecting Children. It introduces additional considerations that assist in prosecuting slavery crimes effectively. This Policy will be applied at all stages of the Office's work on slavery crimes, including when formulating the case hypothesis and when gathering myriad forms of relevant and probative evidence. The development and use of effective tools at the investigative stage and the thorough knowledge of facts, theories and relevant jurisprudence at the case hypothesis stage will strengthen the Office's ability to undertake accountability for slavery crimes.

The Office pursues complementarity through coordination with multiple justice actors. The Slavery Crimes Policy situates the Office in a constellation of national courts, clarifying their respective responsibilities to confront slavery crimes that engulf migrants, children or minority communities frequently when they are most vulnerable, most in need of the protection of the law.

The Office trusts that this Policy is a significant step toward justice for survivors and victims of slavery crimes that leads, in turn, to the prevention and eradication of such reprehensible and damaging conduct.



*Slavery crimes are committed against an untold number of persons and populations, persons forced to migrate or those who are trafficked, and persons detained, disappeared, including child soldiers or those forced into marriage or labour that devolves into slavery. The harm caused transcends generations. I pledge to strengthen my Office's efforts to seek justice for those enslaved in the context of armed conflict, crimes against humanity or genocide. This is—and will remain—a key priority during my tenure as Prosecutor.*

PROSECUTOR KARIM A.A. KHAN KC

## II. INTRODUCTION

1. Past enslavement practices foreshadow contemporary slavery situations. Children have endured slavery over the millennia, as child soldiers do now. Enslaved labourers worked in armament factories during World War II and today, toil in mines. Religious, racial and social minorities or communities of the disabled are perpetually vulnerable to slavery crimes. The Office draws upon these egregious slavery parallels to investigate, prosecute and eliminate the standing impunity gaps for slavery crimes.

2. The tools to fight slavery crimes exist. International criminal law outlawed all acts of slavery, *de facto* and *de jure*, by the 1926 Slavery Convention and the 1956 Supplementary Slavery Convention. The Rome Statute definitively condemns enslavement and sexual slavery as crimes against humanity and sexual slavery as a war crime. Within this framework, the Office of the Prosecutor (“Office”) has engaged with national actors and survivor communities, including in Uganda, Libya and the Democratic Republic of the Congo (“DRC”). For example, in the landmark case of *Prosecutor v. Ntaganda*, the Court accepted the Office’s submissions and found that sexual slavery as a war crime could be committed by a militia group against its own members—in this case, children.

3. With this new Slavery Crimes Policy (“Policy”), the Office will deepen its consideration of and fight against slavery crimes. Our submissions will recognise children born enslaved. We will set aside myths and misconceptions that tend to obscure slavery crimes, and recognise their full scope under the Statute. When appropriate, we will plead slavery and the slave trade as fundamental deprivations of human rights under persecution, as a crime against humanity. Led by the evidence, we will fully characterise the broad scope of sexual, gendered and reproductive harms as slavery crimes.

4. The Office is also aware that proposed amendments to the Rome Statute currently under discussion by the Assembly of States Parties (“ASP”) suggest the addition of the slave trade as a crime against humanity and as a war crime, as well as slavery as a war crime. The Office would welcome these added legal tools to the Rome Statute to further confront slavery crimes and to protect survivors. For now, this Policy guides us according to the Statute as it currently stands.

## a. Issues and challenges<sup>1</sup>

5. The Slavery Crimes Policy represents the Office's commitment to recognise, redress and seek the non-repetition of slavery crimes. The Policy underscores that slavery—the perpetration of the exercise of powers attaching to the right of ownership over a person—is unacceptable in any form, for all victims and survivors.<sup>2</sup> This Policy was developed to support the Office's responsibility to properly investigate and prosecute the full character of enslavement and sexual slavery as crimes against humanity, and sexual slavery as war crimes. This Policy was developed in order to help discharge the Office's responsibility to fully and effectively investigate and prosecute slavery crimes.

6. The histories of slavery and slave trade institutions have receded from memory, or been frequently denied, misunderstood or minimised. For this reason, the Policy underscores the ubiquitous presence of slavery institutions over time by briefly recounting some of them and shows how contemporary<sup>3</sup> slavery crimes perpetuate aspects of earlier slavery practices and precepts. The Policy then briefly reviews the scope of treaty law and customary law prohibitions of slavery crimes, and their eventual articulation in the Rome Statute. Finally, the Policy presents the principles underlying the Office's approach to slavery crimes and outlines relevant aspects of its practice.

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<sup>1</sup> This Policy's references to slavery crimes encompass the treaty and customary law-based international crimes of slavery and the slave trade, as well as their recognition as crimes against humanity and war crimes; enslavement as a war crime and crime against humanity as found in the London and Tokyo Charters and the Statutes of international judicial courts and tribunals, and; sexual slavery as a war crime and crime against humanity as enumerated in the Statutes of the courts and tribunals. This Policy, at times, uses slavery and enslavement interchangeably.

<sup>2</sup> The Office declines to use the term "slaves" in this Policy. When referring to persons who have been subjected to slavery practices, this Policy instead refers to "survivors", "enslaved persons", "persons formerly enslaved" or "persons formerly slave traded". This Policy otherwise aligns with the Office's general terminology practice by using the word "victim" when referencing the language of its legal framework or "witness" when referring to a person's role in the context of certain ICC processes. However, consistent with the survivor-centred approach, the Office takes the position that at an individual level, it is for a person to decide how to refer to themselves.

<sup>3</sup> The Policy prefaces slavery crimes with the word "contemporary" to denote the slavery crimes that occur today. The Policy, intentionally, does not use the term "modern slavery", which often conflates slavery crimes with institutions and practices that are similar to slavery, such as servitude or trafficking, but that are not legally equivalent under international law. Contemporary slavery acknowledges that today's instances of slavery crimes remain informed by historical slavery practices and are outlawed by the treaty and customary law frameworks that redress slavery crimes under international humanitarian law, international criminal law and international human rights law.



## b. Objectives

7. The Policy will guide the staff<sup>4</sup> of the Office in situations and cases where enslavement and sexual slavery come before the ICC. The Policy will also communicate to survivor communities, States Parties and justice actors, the Office's current and evolving positions on slavery crimes. Specifically, the Policy is aimed at:

- i. Affirming the Prosecutor's commitment to the diligent, rigorous and skilful investigation and prosecution of the slavery crimes under the jurisdiction of the Court;
- ii. Conveying the key concepts, definitions and principles that will guide the Office's pursuit of accountability for slavery crimes;
- iii. Clearly enunciating the Office's positions and interpretations with respect to the application of the Statute, the Elements of the Crimes and international law regarding slavery crimes;
- iv. Providing clarity, guidance and a basis for skill development to staff across the Office related to the investigation and prosecution of slavery crimes;
- v. Ensuring that the Office is guided by historical and cultural knowledge of slavery crimes, congruent with non-discriminatory, gender-competent, age-disaggregate and survivor-centred approaches;
- vi. Applying best practices for trauma-informed approaches in the engagement and participation of victims and witnesses of slavery crimes, with awareness of potentially collective and transgenerational dimensions of slavery-related trauma;
- vii. Contributing to the progressive development of the international jurisprudence and partaking in developing best practices regarding accountability, redress and non-repetition of slavery crimes; and
- viii. Supporting, facilitating and enhancing national investigations of slavery crimes.

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<sup>4</sup> For the purposes of this Policy, references to "staff" include Office staff members, consultants, and individual contractors.

### c. Methodology

8. At the ASP in December 2023, Prosecutor Karim A.A. Khan KC announced that his Office would formulate a Slavery Crimes Policy. He entrusted its development to his Special Adviser on Slavery Crimes, Patricia Viseur Sellers, with guidance from Deputy Prosecutor Nazhat Shameem Khan and support from a core team of Office staff.

9. From January to May 2024, the Office conducted 11 hybrid and in-person external consultations with 152 participants from at least 51 countries, including survivor communities, civil society organisations (“CSOs”), advocates, academics, national authorities, international organisations, investigative mechanisms and other justice actors. The consultations were grouped thematically, addressing slavery crimes through the varied lenses of national cases, reproductive violence, children, migration and trafficking, survivors’ experiences, gender-focus and the work of other international accountability mechanisms. Other consultations engaged participants from the Permanent Forum of People of African Descent, and from the Asia and Asia-Pacific regions. Several United Nations (“UN”) mandate holders and agency representatives attended these sessions, including relevant Special Rapporteurs.

10. In March 2024, Prosecutor Karim A. A. Khan KC issued a public call for written submissions on the issue of slavery crimes, which prompted 50 responses from stakeholders in 24 countries. Meanwhile, the Office undertook a review of international and national cases of slavery crimes.

11. In June 2024, a working draft of the Policy was circulated to external stakeholders and Office staff. Between July and October 2024, the Prosecutor and Deputy Prosecutors conducted a final review, approving the Policy. The Policy was formally launched in English and French at the annual meeting of the ASP in The Hague in December 2024. Translation into other languages was anticipated in due course.

#### d. Harmonisation with OTP Policies and Operational Guidance

12. This Policy is the first expression by an international court or tribunal of its examined approach to the understanding, investigation and prosecution of enslavement, slavery, the slave trade or sexual slavery. The Policy should be read in alignment with the key concepts, definitions and principles of the other policies of the Office. These include the Policy on the Crime of Gender Persecution (2022), the Policy on Gender-based Crimes (2023), the Policy on Crimes against and affecting Children (Policy on Children, 2023) and the Policy on Complementarity and Cooperation (2024). Moreover, guidance provided in this Policy will be integrated into the Office's internal operational guidance.



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*We must remain alert to the history and context of the discrimination that underpins slavery crimes. They may begin with systems of forced marriages, forced pregnancy and forced labour, such as the historical practice of black birding, or the contemporary forced recruitment of children into armed militia groups. Whenever there is an exercise of powers of ownership over children, women or men, slavery crimes are committed. When we apply a trauma-informed approach, we see the transgenerational impact of these crimes on individuals and communities clearly.*

DEPUTY PROSECUTOR NAZHAT SHAMEEM KHAN

### III. SLAVERY: HISTORICAL AND CONTEMPORARY CONTEXT

13. Slavery and slave trade practices have shaped societies since antiquity.<sup>5</sup> Slave trades and regulation of the enslaved were recorded in the Code of Hammurabi in Babylon<sup>6</sup> in the 18th century B.C.E., in the Laws of Manu of India in the first century B.C.E.<sup>7</sup> and in ancient Athenian and Roman Law, colonial codes of South Carolina<sup>8</sup> and Barbados<sup>9</sup> and the laws of Ethiopia<sup>10</sup> from the 13<sup>th</sup> until the 20<sup>th</sup> century.

14. Slavery practices existed during the Umayyad and Abbasid Caliphates (mid-500s to mid-700s), the Malian Empire (1260 to 1670), the Ming Dynasty of China (1300s through the early 1900s), and the Renaissance of Europe (1600s through 1700s).<sup>11</sup> These systems of slavery had vast reach. The East African Slave Trade sent an estimated 8 to 17 million enslaved Africans to Iraq, Iran, Saudi Arabia, India and into the Ottoman Empire,<sup>12</sup> where they co-existed with enslaved Slavs. From the 13<sup>th</sup> to 15<sup>th</sup> centuries, the Sultanate of Delhi enslaved males to fill their armies and enslaved males, who were castrated, to guard their harems of enslaved females.<sup>13</sup> From the 13<sup>th</sup> through the 19<sup>th</sup> centuries, the originally endogenous Indian Ocean Slave Trade expanded with European participation, transporting hundreds of thousands of Indians, Indonesians, and Malays into slavery systems in Central Asia, South Africa and the Mascarene Islands of Mauritius and Réunion.<sup>14</sup>

15. The Trans-Atlantic Slave Trade of the 17<sup>th</sup> to 19<sup>th</sup> centuries ensnared upwards of twelve million West Africans.<sup>15</sup> Their enslavement and that of their descendants were central to English, Dutch, French, Spanish and Portuguese

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<sup>5</sup> In this section, the Office notes some views of various scholars and commentators on the evolution and diversity of slavery practices around the world, over time. The views expressed here are not exhaustive. See [Patterson 1982](#), p. 542; [Thomas 1997](#), pp. 33-47.

<sup>6</sup> [The Code of Hammurabi](#).

<sup>7</sup> [Sahoo 2012](#), pp. 451-456; [Laws of Manu VIII 415](#), p. 56.

<sup>8</sup> [Sirmans 1962](#), pp. 462-473.

<sup>9</sup> [Rugemer 2013](#), pp. 429-458.

<sup>10</sup> [Merid and Meckelburg 2024](#), pp. 1-21.

<sup>11</sup> See [Patterson 1982](#), pp. 109, 113, 123, 249, 252, 296, 315, 324-325; [Thomas 1997](#), pp. 42-43.

<sup>12</sup> Lovejoy 1986, pp. 25, 44, 137; Austen 1987, p. 275.

<sup>13</sup> [Sahoo 2012](#), pp. 451-456.

<sup>14</sup> See [Hägerdal 2022](#), pp. 445-459.

<sup>15</sup> Lovejoy 1986, pp. 44, 137.

colonisation of the Americas and the Caribbean.<sup>16</sup> Enslaved indigenous peoples and Africans in Andean South America laboured in the silver mines of modern-day Bolivia, enriching Spain.<sup>17</sup> In the post-colonial era, countries like the United States and Brazil, inherited and perpetuated these colonial systems of slavery.<sup>18</sup>

16. Across the Atlantic, Barbary Coast slave raiding and enslaving engulfed over a million Mediterranean and northern European people in the 18<sup>th</sup> century, including inhabitants of Palermo.<sup>19</sup> Other complex slavery practices rooted in the colonialism of the 18<sup>th</sup> and 19<sup>th</sup> centuries included the Pacific and Oceanic Islanders in black birding labour systems and the *de facto* enslavement of Aborigines in Australia.<sup>20</sup> In Africa, endogenous enslavement of black sub-Saharan Africans by northern African Muslim polities led to descendent-based hereditary slavery.<sup>21</sup>

17. These institutions of slavery were constructed and maintained through interplays of racial discrimination and asserted racial superiority, religion and ethno-centrism, commerce and empire, traditions and customs, military forays, and patriarchal norms as well as raw political prowess.<sup>22</sup> They were deeply rooted and difficult to dismantle.

18. The Republique of Saint Domingue, or Haiti, defeated both slavery and French colonialism in 1804, helping to propel the gradual outlawing of the international slave trade.<sup>23</sup> However, the abolition of slavery systems and the lucrative internal slave trade was a generally piecemeal process throughout the 19<sup>th</sup> century in the Americas and the Caribbean, progressing in fits and starts with declarations of independence, colonial writs, civil wars or national edicts.<sup>24</sup> Enslaved Brazilians were not manumitted until 1888.<sup>25</sup>

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<sup>16</sup> [Baptist 2014](#); [Obregón 2018](#); Weindl 2008.

<sup>17</sup> Almeida 2021, pp. 545-564; [Minority Rights Group: Afro-Bolivians in Bolivia](#); [British Library: Potosí, the Celebrated City](#); [BBC: "Colonial-era Mass Grave"](#).

<sup>18</sup> [Davis 2001](#), p. 95; Phillips and Sandy 2021, pp. 847-849.

<sup>19</sup> [Davis 2001](#), p. 95.

<sup>20</sup> [Gray 2007](#); [Anthony and Gray 2020](#); [Mortensen 2000](#).

<sup>21</sup> See [James 2001](#).

<sup>22</sup> See e.g. [Vernet 2009](#); [Toledano 1998](#), pp. 3-111; [Thomas 1997](#), p. 381.

<sup>23</sup> [Blackburn 2006](#), p. 643.

<sup>24</sup> [James 2001](#); [Blackburn 2006](#), pp. 643-645.

<sup>25</sup> In 1888, Portugal passed the Golden Law (Lei Áurea) officially abolishing slavery in Brazil. See [Schmidt-Nowara 2008](#).

19. In eastern Africa, slave trading and slavery ceased circa 1910 with the abatement of concubinage slavery in Zanzibar. Still, 20<sup>th</sup> century slavery institutions persisted in Ethiopia, the Saudi Arabian Peninsula and Mauritania.<sup>26</sup>

20. The League of Nations promulgated the 1926 Slavery Convention.<sup>27</sup> Its successor organisation, the United Nations, promulgated the 1956 Supplementary Slavery Convention.<sup>28</sup> These foundational treaties proscribed slavery and the slave trade, *de jure* and *de facto*, in all their forms. In 2000, the Palermo Protocol<sup>29</sup> prohibited slavery as a form of exploitation. Together with the UDHR,<sup>30</sup> the ICCPR<sup>31</sup> and the Convention on the Rights of Persons with Disabilities (“CRPD”),<sup>32</sup> freedom from slavery and the slave trade was also recognised as a non-derogable international human right.

21. Throughout this historical backdrop, slavery and slave trading were endemic to war. As such, prohibitions gradually emerged in international humanitarian law and, eventually, international criminal law. The 1863 Lieber Code,<sup>33</sup> which governed troops during the United States’ war to end its systems of slavery, banned slavery practices related to armed conflict. For example, the Code prohibited troops from engaging in slavery, including through the slave trading of enemy soldiers or inhabitants. It also barred the re-enslaving of the formerly enslaved.

22. After World War II, the London and Tokyo Charters condemned deportation and enslavement as crimes against humanity and as war crimes. The International Military Tribunal Judges delivered stern disapprobation for the systems that enslaved hundreds of thousands of civilians, occupied inhabitants, and prisoners of war. Slave labour policies of the Nazi regime<sup>34</sup> and of the Japanese government<sup>35</sup> were integral structures of these wars. For example, Axis powers established systems of slave trading and sexualised enslavement of over a hundred thousand women and girls during the war. Most were Asian, oftentimes

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<sup>26</sup> See [Abolition Chronology](#).

<sup>27</sup> [1926 Slavery Convention](#).

<sup>28</sup> [1956 Supplementary Slavery Convention](#).

<sup>29</sup> [Palermo Protocol](#).

<sup>30</sup> Article 4, [UDHR](#).

<sup>31</sup> Article 8, [ICCPR](#).

<sup>32</sup> Article 27(2), [CRPD](#).

<sup>33</sup> Articles 42 and 58, [The Lieber Code](#).

<sup>34</sup> See e.g., [Krupp Judgment](#), pp. 58-88; [Nuremberg Judgment](#), “Slave Labour Policy”, pp. 71-75.

<sup>35</sup> See e.g., [Tokyo Judgment](#), “Native Labor”, p. 528.

colonial subjects, inhabitants of occupied territories, or indigenous, rural or socially marginalised women; others were European women.<sup>36</sup> Slavery crimes committed against these so-called “comfort women” were not adjudicated at the International Military Tribunal for the Far East.<sup>37</sup>

23. Today, slavery and the slave trade are acknowledged as serious violations of international humanitarian law. Article 4 of Additional Protocol II to the 1949 Geneva Conventions (“AP II”) prohibits slavery and the slave trade in all their forms<sup>38</sup> during non-international armed conflicts, while Rule 94 of the International Committee of the Red Cross (“ICRC”) Study<sup>39</sup> on customary international humanitarian law condemns slavery, slave trade and sexual slavery, irrespective of how the armed conflict is characterised.

24. In more recent history, enslavement has been enumerated as a crime against humanity in the Statutes of the International Criminal Tribunal for the former Yugoslavia (“ICTY”), the International Criminal Tribunal for Rwanda (“ICTR”), the Special Court for Sierra Leone (“SCSL”), the Extraordinary Chambers in the Courts of Cambodia (“ECCC”), the Extraordinary African Chamber (“EAC”) and the ICC. Statutes of the latter four also listed sexual slavery as a crime against humanity, with the ICC Statute criminalising sexual slavery during both international and non-international armed conflicts. Further, each of these international judicial institutions has delivered landmark jurisprudence on enslavement or sexual slavery. This jurisprudence recognised multiple forms of contemporary slavery across the world: where victims were detained, raped and tortured, forced to work, abducted as children and forced to serve as so-called “wives” to commanders.<sup>40</sup> Collectively, international courts have indicated that slavery crimes are often structural to the commission of war crimes,

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<sup>36</sup> [Sellers 2011](#).

<sup>37</sup> [Chinkin 2001](#); Argibay 2003, pp. 375-389.

<sup>38</sup> Article 4(2)(f), [AP II](#).

<sup>39</sup> [Rule 94 ICRC](#).

<sup>40</sup> See e.g., [Kunarac et al. AJ](#), paras. 116-124, 254-255; [Ntaganda TJ](#), para. 1063; [Case 001 TJ](#), para. 225; [Ongwen TJ](#), paras. 3050-3055, 3085-3087.

during international<sup>41</sup> and non-international armed conflict,<sup>42</sup> periods of crimes against humanity<sup>43</sup> and situations of genocide<sup>44</sup>.

25. These crimes continue, both in war and peace. Contemporary slavery crimes— including the use of child labour, child soldiers or hereditary slavery— remain driven by, *inter alia*, discrimination, political and/or religious ideology, or economic interest or sustained by cultural (ab)normalities. International trade and national economies still depend upon sectors of industrial enslaved labour, often undocumented immigrants. Today's enslaved people may be individuals from economically depressed geographies who are reduced to sexualised commodities, disabled people forced to beg in city traffic, or minority group members disproportionately imprisoned and forced to labour in detention. In other cases, they may be workers exploited in commercial fishing industries or children from war-affected areas who are bought and sold through unregulated or illegal adoption processes.<sup>45</sup>

26. Factual indicators of contemporary slavery practices could include various forms of force or control over workers, as through the confiscation of passports,<sup>46</sup> the use of addictive drugs, or the use of physical sequestration and violence. It is also common to find verbal intimidation, threats of non-payment, and threats of reporting undocumented or otherwise vulnerable labourers to the authorities. These signs may indicate contemporary slavery practices.<sup>47</sup>

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<sup>41</sup> See [Pohl Judgment](#) p. 120 (“By April 1942 the prisoners had fallen into such a pattern of slavery that the SS administration no longer regarded them as free human beings, but as chattels belonging to the Reich permanently. That they were merely war detainees did not enter the minds of the SS hierarchy. Thus, plans were made as to how these prisoners should be used even after the war ended.”)

<sup>42</sup> [Ntaganda TJ](#), para. 1063 (the Chamber found that during the ratissage operation which followed the takeover, UPC/FPLC soldiers murdered at least two persons, pillaged, and destroyed houses by burning them down. They also raped women and subjected them to sexual slavery.)

<sup>43</sup> [Case 001 TJ](#), para. 225 (“Certain detainees at S21 and Prey Sar were forced to work. Strict control and constructive ownership were exercised over all aspects of their lives by limiting their movement and physical environment; taking measures to prevent and deter their escape; and subjecting them to cruel treatment and abuse.”)

<sup>44</sup> [Taha Al Judgment](#), para. 485 (The defendant is guilty of genocide pursuant to Section 6(1) subparagraph 2 VStGB by, with the intention of destroying the Yazidi religious group in whole or in part, causing B and witness A serious bodily (B) or mental (witness A) harm as members of the group.)

<sup>45</sup> The historic precedents of *de jure* chattel slavery remain the legators of identical or related contemporary *de facto* slavery practices. Today's use of the enslaved labour of children in cocoa farms in West Africa, or the mines in DRC, is reminiscent of the ubiquitous use of children in the slavery-based agriculture institutions of the 19th century.

<sup>46</sup> There are widespread reports of labour exploitation and human trafficking of migrants from countries throughout Africa and Asia to the Arab States. See generally, [Lived Experience of Migrant Women 2019](#).

<sup>47</sup> See [LAW Press Release](#); [Walkfree Global Slavery Index](#).



27. The Office recognises and applauds national, international and civil society efforts to address contemporary slavery practices, at times through the frameworks of trafficking in persons or through national prosecutions for enslavement or through administrative labour proceedings. For example, Brazil, in recent years, has addressed contemporary slavery practices that entrapped hundreds of women as domestic workers.<sup>48</sup> Guatemala prosecuted the *Sepur Zarco* case that led to convictions for the armed conflict-related enslavement of indigenous women.<sup>49</sup> Germany has successfully convicted Da'esh perpetrators of the enslavement of Yazidis.<sup>50</sup> Recently, national authorities in Uganda also successfully entered convictions for enslavement, among others, in the *Kwoyelo* case.<sup>51</sup>

28. The Office acknowledges the increased susceptibility of indigenous populations to slavery crimes because of the dispossession or occupation of their land. As significant are the risks posed by ecological disasters and degradation, and the progression of climate change that propels migration, renders land unproductive, or threatens the ability of communities to remain intact. Like other forcibly displaced persons, those fleeing threats to their natural environment can become vulnerable to forms of slavery and sexualised enslavement by organised crime and trafficking networks.

29. The Office is cognisant that, due to required contextual elements of Statute crimes, the Court's jurisdiction might not extend to all the acts, practices and institutions of these contemporary slavery situations. However, where it has jurisdiction, the Office has pursued contemporary slavery crimes in certain instances, including in the context of *de facto* policies of non-state actors, as with the Lord's Resistance Army and its abduction and enslavement of thousands of Ugandan civilians.

30. Contemporary slavery crimes can comprise integral structures of war economies dependent upon the forced labour of enslaved civilians. This includes the enslaving of girls and women as so-called "bush wives" or the forced procreation or so-called "breeding" of enslaved children to produce future fighters. Even private actors are implicated. Criminal networks and enterprises from the Horn of Africa to the Darien Gap prey upon vulnerable people fleeing humanitarian crises and other hardships, subjecting them to extortion, enslaved labour and slave trading practices.

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<sup>48</sup> See [Brazil Ministry of Labor and Employment Article](#).

<sup>49</sup> [Sepur Zarco Judgment](#).

<sup>50</sup> [Kather 2024](#).

<sup>51</sup> [Kwoyelo Judgment](#).

31. The Office resolves to strengthen its understanding of contemporary slavery crimes, and to diligently investigate, fully characterise, competently charge and assiduously litigate the slavery crime provisions under the Statute. The Office will share its experience and practice with States Parties, other authorities and justice actors, as it pursues contemporary slavery crimes under the Court's jurisdiction.

## IV. KEY TERMS, CONCEPTS AND MISCONCEPTIONS

32. In light of the above historical and contemporary context, this section offers key terms and concepts that align with the Statute and customary international law. It also notes critical misconceptions that the Office, through this Policy, aims to dispel.

### a. Slavery

33. “Slavery” is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.<sup>52</sup> Slavery is an international crime and a human rights violation.<sup>53</sup> The prohibition of slavery is a peremptory norm, with attendant *erga omnes* obligations for States.<sup>54</sup> Slavery crimes have no statute of limitations.<sup>55</sup>

34. Proof of slavery crimes focuses on the mental state (*mens rea*) and the acts or omissions of the enslaver(s) and slave trader(s), and not the consent, mental state, reactions, or actions of the victims/survivors. Types of evidence, or *indicia* of acts or omissions that prove the exercise of such powers, are non-exhaustive.<sup>56</sup>

35. The term “slavery” is not used in an expressly enumerated provision in the ICC Statute.<sup>57</sup> Notwithstanding, the right to be free from slavery is a fundamental

<sup>52</sup> Article 1, [1926 Slavery Convention](#); Article 7(a), [1956 Supplementary Slavery Convention](#).

<sup>53</sup> Article 8, [ICCPR](#); Article 27(2), [CRPD](#); Article 35, [CRC](#) (refers to sale of child for any purpose or any form).

<sup>54</sup> Bassiouni 1996, p. 68. [Ntaganda Jurisdiction Decision](#), para. 51 (the prohibition of sexual slavery is *jus cogens*); [Brima et al. TJ \(Judge Doherty Dis. Op.\)](#), para. 705 (slavery for the purpose of sexual abuse is a *jus cogens* prohibition in the same manner as slavery for the purpose of physical labour); [McDougall Report](#), para. 30.

<sup>55</sup> Article 1, [Non-Applicability Convention](#).

<sup>56</sup> Such indicia or means might be control over labour, such as carrying of goods, mining, industrialised labour, construction, agricultural work, fishing, any domestic labour, guarding children, control over physical movement, control over reproductive autonomy and integrity, control over family relations, marriage relations, control over sexual integrity and autonomy, psychological control, religious, cultural, emotional control, linguistic control, control over institutionalisation, detention, status of descendants, control over access to education, health care, or any denial of fundamental rights.

<sup>57</sup> State Party Sierra Leone proposed an amendment to the Rome Statute to enumerate provisions for slavery under article 8 as war crimes. See [Sierra Leone Statement](#). The Office will remain abreast of these proposals and their eventual implication on the current Policy.

and non-derogable human right, making it potentially relevant to the crime of persecution under article 7(1)(h) of the Statute.

## b. Enslavement

36. Enslavement, another term for slavery, is enumerated under article 7(1)(c) of the Statute as a crime against humanity.<sup>58</sup> It requires the intentional or knowing exercise of any or all of the powers attaching to the right of ownership over one or more persons. Evidence or *indicia* demonstrating such powers over enslaved persons may include purchasing, selling, lending, bartering or imposing a similar deprivation of liberty on such persons. Deprivation of liberty may include exacting forced labour or otherwise reducing a person to a servile status, as defined in the 1956 Convention.<sup>59</sup> Evidence could include acts that would satisfy trafficking in persons, in particular women and children,<sup>60</sup> or evidence of sexual or reproductive harms. Enslavement is often a gender-based crime that is driven by gender and has gendered consequences.<sup>61</sup>

## c. Sexual Slavery

37. Sexual slavery is slavery.<sup>62</sup> It is a crime against humanity under article 7(1)(g) and war crime under articles 8(2)(b)(xxii) and 8(2)(e)(vi) of the Statute. Sexual slavery deprives a person of their sexual integrity and autonomy.<sup>63</sup> Like enslavement, sexual slavery requires the intentional or knowing exercise of any or all of the powers attaching to the right of ownership over one or more persons. In addition, the perpetrator must knowingly cause the enslaved person to engage in one or more acts of a sexual nature, such as rape.<sup>64</sup> The Office does not consider

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<sup>58</sup> Article 7(1)(c), [Statute](#). Enslavement as a crime against humanity was enumerated in article 6(c) of the [London Charter](#), article 5(c) of the [Tokyo Charter](#), article II(c) of the [Control Council No. 10](#), and in the Statutes of the [ICTY](#) (article 5(c)), [ICTR](#) (article 3(c)), [SCSL](#) (article 2(c)), [ECCC Statute](#) (article 5), [EAC Statute](#) (article 6(f)).

<sup>59</sup> Article 7(1)(c) (footnote 11), [Elements of Crimes](#).

<sup>60</sup> Article 7(1)(c) (footnote 11), [Elements of Crimes](#).

<sup>61</sup> [2023 GBC Policy](#), para. 57.

<sup>62</sup> [McDougall Report](#), para. 30; [Kwoyelo Judgment](#), para 437.

<sup>63</sup> [Ongwen AJ](#), para. 1678.

<sup>64</sup> Articles 7(1)(g)-2, 8(2)(b)(xxii)-2, 8(2)(e)(vi)-2, [Elements of Crimes](#); [Ongwen TJ](#), para. 2715; See e.g., [Sellers and Kestenbaum May 2020](#), p. 5. Acts of a sexual nature are a form of gender-based violence, which the Office has addressed in detail in its separate Policy on Gender-based Crimes ([2023 GBC Policy](#)). These two Policies must be read together, along with the Office's other relevant Policies, that inform the Office's work.

that the requirement of “causing to engage” indicates volition on the part of the enslaved person.

#### d. Slave Trade

38. The slave trade is an international crime,<sup>65</sup> a war crime<sup>66</sup> and a human rights violation.<sup>67</sup>

39. Article 1(2) of the 1926 Slavery Convention defines the slave trade as “all acts involved in the capture, acquisition or disposal of a person with intent to reduce him (*her/them*) to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him (*her/them*); all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves.”<sup>68</sup>

40. The international crime of the slave trade condemns the reducing of a free person to a situation of enslavement and the further disposition, transfer, or transport of an enslaved person into a further situation of enslavement. As such, slave trade and slavery often act in tandem. The slave trade precedes or is a precursor to slavery, enslavement or sexual slavery situations. All persons who are reduced to slavery are first slave traded, except when children are born into slavery.

41. The Court does not exercise *per se* jurisdiction over the crime of the slave trade.<sup>69</sup> However, slave trading may manifest as conduct such as enlistment, conscription of child soldiers, the distribution of wives to fighters, or the knowing transfer of enslaved migrants to other enslavers. The slave trade is often gendered: persons might be slave traded based on reproductive considerations, such as presumed fertility or for the gendered nature of work to be assigned.

42. Evidence of slave trade conduct, such as abduction and kidnapping of children, the transfer of civilians and the distribution and redistribution of

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<sup>65</sup> Article 1(2), [1926 Slavery Convention](#); Article 7(c), [1956 Supplementary Slavery Convention](#); [UNITAD Report](#), p. 122.

<sup>66</sup> Article 4(2)(f), [AP II](#); [Rule 94 ICRC](#).

<sup>67</sup> Article 8, [ICCPR](#).

<sup>68</sup> Text of (*her/them*) was inserted into the treaty provision and emphasis added.

<sup>69</sup> [2023 ASP Working Group Report](#), paras. 13-15; State Party Sierra Leone proposed an amendment to the Rome Statute to enumerate slave trade provisions under article 7, as a crime against humanity and under article 8 as war crimes. See [Sierra Leone Statement](#). The Office will remain abreast of these proposals and their eventual implication on the current Policy.

enslaved boys, girls and adults, is often related to the *indicia* of the exercise of powers of ownership to prove enslavement as a crime against humanity, as in the *Ongwen* case.<sup>70</sup>

43. Since the protection from the slave trade is a non-derogable human right, the slave trade could serve as evidence of deprivation of a fundamental right under the persecution provision of article 7(1)(h) of the ICC Statute.

#### e. Servile Status (Practices and Institutions Similar to Slavery)

44. The Office underscores the distinctions between slavery and servile status. Under the 1956 Supplementary Slavery Convention, servile status consists of practices and institutions that are similar to, but do not constitute, slavery. Article 1 of the Convention denotes practices and institutions as: debt bondage;<sup>71</sup> serfdom; non-consensual marriage of a woman upon payment; transfer of a woman by her husband to another clan, for value; inheritance of a woman upon the death of her husband to another person; or transfer of a child, under 18 years old, by their parents or guardians for exploitation or labour.

45. Servitude, or the servile status of a person, is not *per se* slavery. Servitude does not require establishment of the exercise of powers attaching to the right of ownership over another person. Whenever acts or omissions of servitude satisfy proof of the exercise of any or all the powers attaching to the right of ownership over a person, then such servitude is no longer *similar* to slavery: it is slavery, as proscribed in the 1956 Supplementary Slavery Convention, and enslavement, as defined under article 7(1)(c) of the Statute.

#### f. Forced Labour; Child Labour; Labour of Persons with Disabilities

46. Forced labour, as defined under article 2(1) of the International Labour Organization Convention No. 29, is “forced or compulsory labour”.<sup>72</sup> It refers to all work or service which is exacted from any person under the threat of any penalty and for which the said person has not offered himself voluntarily, with exceptions such

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<sup>70</sup> [Ongwen TJ](#), paras. 3050-3055.

<sup>71</sup> Article 1(a), [1956 Supplementary Slavery Convention](#).

<sup>72</sup> Article 2(1), [ILO Convention No. 29](#).

as military service. The definition of forced labor was reaffirmed in article 1(3) of the ILO Protocol 2014.<sup>73</sup> Freedom from forced labour is also a fundamental human right.<sup>74</sup>

47. Forced labour is not an express crime under the ICC Statute. Unlike forced labour, slavery or enslavement do not require force, menace, compulsion, threat or lack of a victim's volition.<sup>75</sup> However, where forced labour evinces the exercise of the powers attaching to the rights of ownership, it constitutes slavery.

48. All child labour that is forced or compulsory is outlawed.<sup>76</sup> Child labour is often a euphemism for child enslavement. Article 3(a) of the 1999 ILO Convention No. 182<sup>77</sup> condemns, *inter alia*, all forms of slavery. Egregious forms of child labour also include "practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict."<sup>78</sup>

49. Labour of persons with disabilities is equally protected. Persons with disabilities, including those with long-term physical, mental, intellectual or sensory impairments are vulnerable to being reduced into slavery. Enslaved persons, likewise, are exponentially exposed to debilitating acts and omissions that could inure disabilities. Article 27(2) of the CRPD, directly, condemns holding of persons with disabilities in slavery or in situations of forced or compulsory labour.<sup>79</sup>

50. The Office, therefore, will be cognisant of the frequent overlap and interplay of situations of slavery, forced labour or compulsory labour. The Office will consistently undertake an intersectional analysis that is age-disaggregated,

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<sup>73</sup> Article 1(3), [ILO Protocol 2014](#) (The definition of forced or compulsory labour contained in the Convention is reaffirmed, and therefore the measures referred to in this Protocol shall include specific action against trafficking in persons for the purposes of forced or compulsory labour).

<sup>74</sup> Preamble, [ILO Protocol 2014](#) (the prohibition of forced or compulsory labour forms part of the body of fundamental rights).

<sup>75</sup> Article 3(2)(b) of the [ILO Convention No. 189](#) (calls for the elimination of all forms of forced or compulsory work).

<sup>76</sup> Article 3(2)(c) of the [ILO Convention No. 189](#) (calls for the abolition of child labour).

<sup>77</sup> See *below* section on misconceptions of Slavery Crimes.

<sup>78</sup> Article 3(a), [ILO Convention No. 182](#). Article 3(b-d) of [ILO Convention No. 182](#) also condemns: (b) The use, procuring, or offering of a child for prostitution, for the production of pornography, or for pornographic performances; (c) The use, procuring, or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties; (d) Work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety, or morals of children.

<sup>79</sup> Article 27(2), [CRPD](#).

gender-competent and culturally informed to recognise the multiple forms of forced or compulsory labour that could be evidence of slavery crimes.

#### g. Child Soldiers

51. “Child soldier”, while not a term under the ICC Statute, in international humanitarian law means a child under the age of 15 who was conscripted or enlisted into the armed forces or armed groups or used to participate actively in hostilities. This conduct describes war crimes under articles 8(2)(b)(xxvi) and 8(2)(e)(vii) of the Statute. The use of children under the age of fifteen years is always criminal and can be an *indicia* of enslavement. Likewise, the conscription, enlistment, or use of children between 15 and 18 years old, can be relevant indicia of enslavement, even though such children are ineligible for protection under the war crime of conscription, enlistment or use in hostilities. The utilisation of the enslavement framework closes a critical protective gap. It advances a more child-friendly application of international criminal law aligned with the Optional Protocol to the CRC and the Office’s Policy on Crimes against and affecting Children.

#### h. Forced Marriage

52. “Forced marriage” describes a situation in which a person is compelled to enter into a conjugal union with another person by the use of physical or psychological force, or threat of force, or by taking advantage of a coercive environment.<sup>80</sup> Forced marriage is not a crime *per se* under the Statute, but such conduct qualifies as the crime of other inhumane acts under article 7(1)(k) of the Statute.<sup>81</sup>

53. Enslaved persons are vulnerable to being forcibly married, whether to their perpetrators or other enslaved persons. Likewise, persons who are forcibly married are vulnerable to slavery crimes. Forced marriage, therefore, can serve as an indicia of enslavement or sexual slavery.

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<sup>80</sup> [Ongwen AJ](#), para. 1024; See [2023 GBC Policy](#), para. 63.

<sup>81</sup> [Ongwen TJ](#), paras. 3026-3071, 3116; [Ongwen AJ](#), paras. 1020-1021; [Al Hassan CD](#), paras. 552-651.



## i. Child Brides

54. Child brides denote girls who are married under coercive circumstances.<sup>82</sup> “Child bride” is not a formal legal term nor does it constitute a specific crime under the Court’s jurisdiction. The situation of child brides usually constitutes servile status. However, any child who is forcibly married is potentially an enslaved child<sup>83</sup> whenever the circumstances of the “marriage” entail the exercise of the right attaching to ownership over the child. Such practices are best characterised as enslavement or sexual slavery, as found under article 7 or article 8 of the Statute. Likewise, evidence of child brides could indicate the conduct of forced marriage, as an other inhumane act under article 7.

## j. Trafficking in Persons

55. The Court does not have jurisdiction over trafficking in persons, which is not itself a crime under the Statute. However, trafficking is relevant to the Office insofar as its occurrence may indicate or be evidence of the crimes of enslavement or sexual slavery. Trafficking may also be part of a witness’ lived experience, including in the context of displacement from armed conflict, thus obliging the Office to understand the impacts of trafficking and take a trauma-informed approach at all stages of interaction with possible survivors.

56. Trafficking in persons is proscribed by the Palermo Protocol.<sup>84</sup> Article 3(a) states that “trafficking in persons” shall refer to the “recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery, or practices similar to slavery, servitude, or the removal of organs.”<sup>85</sup>

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<sup>82</sup> [Aptel 2016](#), p. 316.

<sup>83</sup> See generally, [Aptel 2016](#), p. 319.

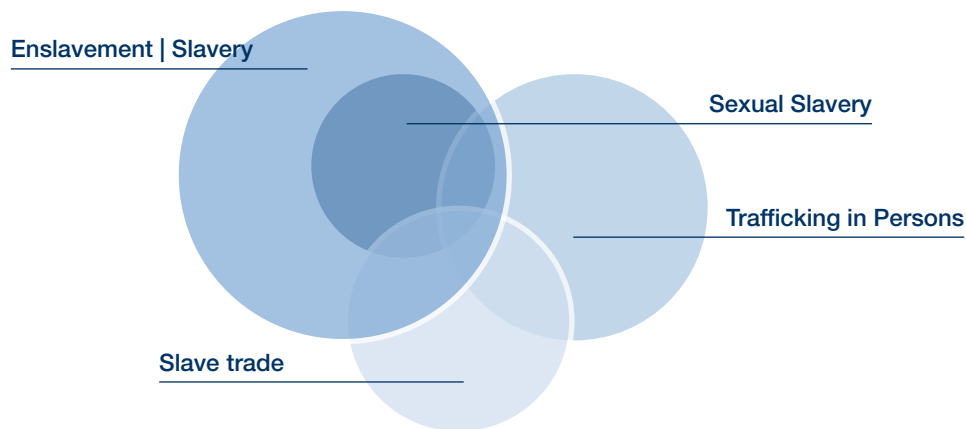
<sup>84</sup> [Palermo Protocol](#). The legal framework to address trafficking in persons has historical roots in the early 20<sup>th</sup> century with the [1904](#) and [1910 White Slavery Conventions](#), [1921 Women and Children Traffic Convention](#), and [1950 Traffic and Prostitution Convention](#).

<sup>85</sup> Article 3(a), [Palermo Protocol](#).

57. Under the Palermo Protocol, the crime of trafficking in persons covers both cross-border and domestic acts. It requires proof of an action, a prohibited means, and a purpose of exploitation. Consent of the adult victim is immaterial if abusive means have been used. Consent of the child victim is always immaterial.

58. The crime of trafficking focuses on exploitation and, unlike slavery, does not require proof of the exercise of powers attaching to the rights of ownership.<sup>86</sup> Conversely, slavery crimes focus on reducing and maintaining a person in the status of slavery, irrespective of exploitation. The conduct of trafficking in persons and slavery crimes, at times, overlap. However, their distinctive national and international jurisdictional venues offer separate safeguards and protections for accessing accountability and providing support to survivors.

59. The Office further acknowledges that the risk of trafficking may be exacerbated during periods of armed conflict, crimes against humanity and genocide. Undoubtedly, a certain percentage of persons who are trafficked are also victims of enslavement or slave trade. These distinct but related crimes will be investigated and prosecuted by the Office and/or by national authorities, as appropriate.



**FIGURE 1**

Slavery (Enslavement under the Statute), Sexual Slavery, Slave Trade, and Trafficking in Persons. There is overlap between conduct amounting to enslavement, sexual slavery, slave trade and trafficking in persons. However, these violations involve distinct legal definitions.

<sup>86</sup> Siller 2016, p. 415; Comrie 2024, pp. 67-100. In some instances, the conduct of smuggling may overlap with that of trafficking and slavery.

## k. Misconceptions

60. Many misconceptions and biases about contemporary slavery crimes are rooted in historical and cultural ignorance, discrimination, racist, colonial, sexist, ableist, paternalistic, patriarchal, and homophobic (mis)perceptions. These misconceptions can narrow the scope of condemnation under international humanitarian and international criminal law. As stated in the 2023 Policy on Gender-based Crimes, “(t)he Office of the Prosecutor will confront these issues with a measure of introspection, humility, and urgency. It is necessary to acknowledge this reality with self-awareness and emotional intelligence, to recognise power and privilege and to overcome barriers to work and success.”<sup>87</sup> Misconceptions about slavery crimes abound and could negatively influence the work of the Office if unacknowledged and unaddressed. Below, the Policy raises certain key misconceptions to promote Office staff awareness and action.

61. The Office resists the notion that contemporary slavery crimes are always obvious – or that they involve literal bondage, captivity, or even clear nomenclature. Instead, the Office recognises slavery in all its subtle manifestations and references. This requires a recognition of a range of historical harms including family separations, reproductive control, sexual harms, malnutrition, branding, or corporal punishments for attempts to escape. The Office acknowledges the violence that has been committed against diverse enslaved people, over time. To fully perceive contemporary slavery crimes, the Office will be proactively cognisant of the breadth of slavery practices and institutions outlawed by the 1926 Slavery Convention and the 1956 Supplementary Slavery Convention. It further recognises the euphemistic language that has often hidden slavery practices from view, for example reference to the “*sabaya*” of Da’esh’s Islamic Caliphate, the “fancy girls” groomed to work in the brothels of New Orleans in the United States, or the “comfort women” during World War II. Today, this camouflage persists in references to the enslaved “*ting ting*” girls of Uganda or the “bush wives” in Sierra Leone or the Democratic Republic of Congo.

62. At the same time, proof of work, labour, sexual violence, reproductive harms, or establishment of any form of exploitation, or mental or physical harm are not required elements of slavery crimes. Neither slavery nor enslavement require that the person who is enslaved “do” anything. In fact, a person may be well-fed, clothed and housed and still be enslaved.<sup>88</sup> The key to slavery crimes is the exercise of powers of ownership over a person or persons. This assertion of ownership may even manifest as omissions. For example, slavery may be enacted

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<sup>87</sup> [2023 GBC Policy](#), para. 79.

<sup>88</sup> [Pohl Judgment](#), p. 15.

through denials of access to rights or degradation of human dignity and humane existence.

63. Further, the Office understands that awareness and consent are irrelevant. A survivor/victim is not required to be aware of their enslavement nor of the extent of the powers attaching to the right of ownership exercised over their person in order to establish the crime. Further, for slavery crimes, consent or lack thereof is neither an element to establish nor a defence to conviction. For sexual slavery, the element of “caused to engage” in the act of a sexual nature does not require an examination of the survivor’s consent at all.

64. The Office acknowledges that specific slavery practices may affect individuals and groups sharing certain characteristics and vulnerabilities. However, there is usually not a uniform profile for members of an enslaved population. Under certain circumstances, slavery crimes may affect individuals of any age, ethnicity, race, religion, gender identity or sexual orientation, disability status, indigenous status, legal or immigration or economic status, or political opinion. In fact, these traits may be the reason persons were slave traded or enslaved in the first place.

65. The Office further notes that slavery crimes are not single, momentary acts. They are continuing crimes. They encompass the entire period from the commission of a slave trade through the entire time of enslavement in which the powers attaching to the rights of ownership are exercised over a person or persons. However, a specific time duration is not an element for proof of slavery crimes.

66. As noted above, trafficking in persons, servile status, detention and forced labour are not *per se* slavery crimes. However, aspects of their conduct might be evidence of slavery, enslavement, the slave trade and sexual slavery.



*Slavery crimes hide in plain sight, with the thin yet strong veil of old beliefs giving them credence. It is a necessity to debunk all myths around them and unveil the wide range of conducts through which they manifest. Too many victims, irrespective of gender and age still suffer from these crimes....these crimes, the eradication of which has been hailed almost two centuries ago. The prosecution of this “hydra” must be relentless...until it is totally overcome.*

DEPUTY PROSECUTOR MANDIAYE NANG

## V. SLAVERY CRIMES AND THE ROME STATUTE

67. The Statute must be understood in a manner consistent with its object and purpose<sup>89</sup> and with the Court's obligation, under article 21(3) of the Statute, to apply and interpret law consistently with internationally recognised human rights.<sup>90</sup> To fulfil its statutory obligations, the Office must actively avoid discrimination and bias in all its forms.<sup>91</sup> Following this approach, the Office recognises that the experiences of enslaved persons are not limited to only those crimes expressly recognised as slavery crimes under the Statute (enslavement and sexual slavery). Equally, slavery crimes may intersect with other crimes under the Statute in myriad ways. Moreover, since the Statute presently recognises enslavement as a crime against humanity but not as a war crime, the Office seeks to utilise its full statutory framework to fairly and accurately characterise the experience of victims and survivors and to advance accountability. In general, the safeguards under the Statute apply to the civilian population, protected persons under the framework of international law and members of targeted genocide groups. For enslavement as a crime against humanity in particular, the protection extends to the entire spectrum of members of the civilian population, inclusive of any age, (dis)ability, race, indigenous, ethnic minority, gender,<sup>92</sup> religious, caste, hereditary, social, migration, displacement, political, geographic, labourer or other status, including child soldiers.

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<sup>89</sup> Preamble, [Statute](#); see e.g., [Katanga & Ngudjolo Admissibility AD](#), para. 79 ("The aim of the Rome Statute is 'to put an end to impunity' and to ensure that 'the most serious crimes of concern to the international community as a whole must not go punished.'").

<sup>90</sup> Article 21 of the [Statute](#) sets out the applicable law. Article 21(3), [Statute](#): The application and interpretation of law pursuant to this article must be consistent with internationally recognised human rights, and be without any adverse distinction founded on grounds such as gender as defined in article 7, paragraph 3, age, race, colour, language, religion or belief, political or other opinion, national, ethnic or social origin, wealth, birth or other status; [Afghanistan Judge Ibáñez Dis Op](#), para. 36 ("As internationally recognised human rights evolve in real time, article 21(3) imposes an obligation [...] to keep the text of the Statute up to date with our times. Article 21(3) makes the Statute a living instrument.").

<sup>91</sup> See e.g., [Gender Persecution Policy](#), para. 7; [2023 GBC Policy](#), para. 46.

<sup>92</sup> Refers to gender under article 7(3) of the [Statute](#) and informed by the [2023 GBC Policy](#) and [Gender Persecution Policy](#).

## a. Enslavement

68. Enslavement, as a crime against humanity, requires the exercise of any or all of the powers attaching to the right of ownership over one or more persons.<sup>93</sup> This exercise of powers of the right of ownership manifests in varied ways. Indicia to determine enslavement include control or restrictions of movement; measures to deter or prevent escape; control of physical environment; psychological control or pressure; force, threat of force or coercion; control of sexuality and reproductive autonomy; assertions of exclusivity; control over breeding; forced administration of contraception, forced gestation, control of breastfeeding, starvation; forced labour; torture; subjugation to medical experimentation; removal of organs; menstrual verification; impregnation; and cruel treatment and abuse.<sup>94</sup> These *indicia* are non-exhaustive. Physical, psychological, emotional, religious, cultural, spiritual, economic, reproductive, sexual, moral, or other inflicted harms could be evidence or *indicia* of enslavement.<sup>95</sup> These *indicia* are equally relevant to the crimes of enslavement and sexual slavery: their common element (exercise of powers attaching to the right of ownership) should be interpreted identically in both contexts.<sup>96</sup>

69. Article 7(1)(c) illustrates some situations of enslavement.<sup>97</sup> While purchasing, selling, lending or bartering the victim can be relevant, evidence of a commercial

<sup>93</sup> [Elements of Crimes](#), Article 7(1)(c)-1. See [Katanga TJ](#), para. 975 (the exercise of powers of ownership has been interpreted to mean “the use, enjoyment and disposal of a person who is regarded as property, by placing him or her in a situation of dependence which entails his or her deprivation of any form of autonomy”). See [Sarah O Judgment](#), para. 661 (German courts have held that since there is no right of ownership over a person as a matter of law, the crime of enslavement includes any comparable treatment in which the perpetrator subjects a person to his or her will and denies them the freedom to act in a self-determined manner); [Macrocase 01](#), para. 308 (The Special Jurisdiction for Peace in Colombia (JEP) recognised the evolving interpretation of the *actus reus* of the crime of enslavement as including instances in which the victim’s will is undermined or their autonomy is significantly diminished due to substantial restrictions or deprivation of their individual freedom).

<sup>94</sup> [Ntaganda TJ](#), para. 952; [Katanga TJ](#), para. 976; [Katanga CD](#), para. 431; [Al Hassan CD](#), paras. 546-547; [Ongwen TJ](#), paras. 2712, 2715-2716; [Kunarac et al. TJ](#), paras. 542-543; [Kunarac et al. AJ](#), paras. 119-124; [Sesay et al. TJ](#), paras. 160-161, 199; [Taylor TJ](#), para. 420; [Case 001 TJ](#), para. 342; [Sellers and Kestenbaum 2022](#), pp. 157-158, 163-168; Grey 2022, pp. 255-256; [Ongwen Prosecution Response to Amici](#), paras. 37-38; [2023 GBC Policy](#), para. 57; See also [Hacienda Brasil Verde](#), paras. 271-272.

<sup>95</sup> International courts and tribunals had rendered convictions for enslavement based upon conduct such as transporting and carrying of goods, labouring in mines, domestic labour, guarding children, abduction, kidnapping, transfer of civilians, control over movement, rapes, sexual integrity, and autonomy. See [Ongwen TJ](#), para. 2712; [Ntaganda TJ](#), para. 952; [Katanga TJ](#), para. 976; [Kunarac et al. AJ](#), para. 119; [Sesay et al. TJ](#), para. 199; [Case 001 TJ](#), para. 342; [Hacienda Brasil Verde](#), paras. 271-272.

<sup>96</sup> Element 1, article 7(1)(c) and Element 1, article 7(1)(g)-2, [Elements of Crimes](#). The same applies to Elements 1 of articles 8(2)(b)(xxii)-2 and 8(2)(e)(vi)-2; [Ongwen Prosecution Response to Amici](#), paras. 37-38.

<sup>97</sup> Element 1, article 7(1)(c)(fn 11), [Elements of Crimes](#).

or financial transaction is not legally required.<sup>98</sup> There is also no temporal or minimum duration requirement.<sup>99</sup> Similarly, evidence of formal imprisonment or detention is not necessary to establish the imposition of a similar deprivation of liberty. Deprivation of liberty can take many forms.<sup>100</sup> It may be assessed in light of the victim's subjective perception of their situation and reasonable degree of fear, however, the survivor's state of mind is not an element of enslavement *per se*.<sup>101</sup> Victims need not be physically confined but may otherwise be unable to leave as they would have nowhere else to go and fear for their lives".<sup>102</sup>

70. Trafficking, forced labour and reducing a person to servile status may also be relevant to understanding enslavement's critical element of exercising powers attaching to the right of ownership. When the conduct of trafficking, forced labour or servile status occurs with the exercise of powers attaching to the rights of ownership over a person, then it can amount to the crime of enslavement.<sup>103</sup> As such, trafficking can be evidence or *indicia* of the crime of enslavement under article 7 of the Statute. Trafficking, however, is not a standalone crime under the Statute.<sup>104</sup> Therefore, the transnational crime of trafficking, or of servitude, cannot be charged *per se* under the Statute.<sup>105</sup> Forced labour, when committed with the exercise of powers attaching to the rights of ownership, can amount to the crime of enslavement<sup>106</sup> including when committed against victims in detention.<sup>107</sup>

<sup>98</sup> [Ongwen TJ](#), para. 2713; [Ntaganda TJ](#), para. 952; [Katanga TJ](#), para. 976.

<sup>99</sup> [Ongwen TJ](#), para. 2714; [Taylor TJ](#), para. 447; [Sesay TJ](#), para. 200; [Kumarac et al. TJ](#), para. 121.

<sup>100</sup> [Ongwen TJ](#), para. 2713; [Ntaganda TJ](#), para. 952; [Katanga TJ](#), para. 977; [Taylor TJ](#), para. 420. See article 7(1)(g)-2 (fn. 18) and article 8(2)(e)(vi)-2 (fn. 66). See also [Brima et al. TJ](#), para. 709.

<sup>101</sup> [Katanga TJ](#), para. 977.

<sup>102</sup> [Ntaganda TJ](#), para. 952; [Ongwen TJ](#), para. 2713.

<sup>103</sup> Article 7(2)(c), [Statute](#); articles 7(1)(c) (fn. 11), 7(1)(g)-2 (fn. 18), 8(2)(b)(xxii)-2 (fn. 53), 8(2)(e)(vi)-2 (fn. 66), [Elements of Crimes](#). See [Sellers and Kestenbaum 2022](#), p. 182 ("[...] Under the Rome [Statute](#), trafficking in persons is neither a separate crime nor an element of enslavement, but a mere description of enslavement conduct without legal force."). The conduct of trafficking may also be charged as persecution.

<sup>104</sup> [2023 GBC Policy](#), para. 57 ("[...] while trafficking or any other similar deprivation of liberty—when combined with the exercise of powers attaching to the right of ownership over a person—can describe relevant conduct for the crime of enslavement, trafficking is not itself an international crime under the [Statute](#).")

<sup>105</sup> Article 7(2)(c), [Statute](#); articles 7(1)(c) (fn. 11), 7(1)(g)-2 (fn. 18), 8(2)(b)(xxii)-2 (fn. 53), 8(2)(e)(vi)-2 (fn. 66), [Elements of Crimes](#).

<sup>106</sup> See e.g., [Pohl Judgment](#), p. 969 ("Slavery may exist even without torture. Slaves may be well fed, well clothed, and comfortably housed, but they are still slaves if without lawful process they are deprived of their freedom by forceful restraint. We might eliminate all proof of ill-treatment, overlook the starvation, beatings, and other barbarous acts, but the admitted fact of slavery—compulsory uncompensated [labour]—would still remain. There is no such thing as benevolent slavery. Involuntary servitude, even if tempered by humane treatment, is still slavery.")

<sup>107</sup> See e.g., [Case 001 TJ](#), para. 346.

71. Enslavement can be entrenched, structural, systemic and interconnected. Within an overarching system of slavery, the crime of enslavement may encompass the commission of several other article 7(1) acts such as forced marriage as an inhumane act, forced pregnancy, torture and rape. Within this enslavement “umbrella”, children born into enslavement and/or held captive with their enslaved parent(s) can be direct victims of enslavement along with their parents. Intertwined acts relevant to sexualised enslavement and the control of sexual and reproductive autonomy may also fall under the rubric of enslavement. When various *indicia* of enslavement are properly contextualised and seen through the lens of a survivor-centred and trauma-informed approach, it allows a comprehensive and accurate understanding of the complex and multi-faceted harm.<sup>108</sup>

## b. Sexual slavery

72. Sexual slavery can be committed as a crime against humanity<sup>109</sup> or as a war crime in both international<sup>110</sup> and non-international<sup>111</sup> armed conflicts. While its first element is identical to the definition of enslavement,<sup>112</sup> it additionally requires that the perpetrator caused the enslaved victim to engage in one or more acts of a sexual nature. Acts of sexual nature can take many different forms.<sup>113</sup> An act of a sexual nature should be seen in its proper context and informed by the survivor’s point of view.<sup>114</sup> The framing of this element—that the perpetrator “caused the victim to engage” in an act of a sexual nature—should be interpreted in a gender appropriate and non-heteronormative manner, in line with article 21(3).<sup>115</sup> All enslaved persons, regardless of gender, sexual characteristics and sexual orientations could be subjected to sexual slavery whenever “caused to engage” in act(s) of a sexual nature. Examining the volition of victims is not required in this context.

73. Enslavement and sexual slavery are often gender-based crimes. However, some forms of sexualised and reproductive harm (for instance: forced nudity,

<sup>108</sup> See e.g., [Kony Prosecution Response](#), paras. 8-10.

<sup>109</sup> Article 7(1)(g), [Statute](#).

<sup>110</sup> Article 8(2)(b)(xxii), [Statute](#).

<sup>111</sup> Article 8(2)(e)(vi), [Statute](#).

<sup>112</sup> Articles 7(1)(g)-2, 8(2)(b)(xxii)-2, 8(2)(e)(vi)-2, [Elements of Crimes](#). See further [Ongwen Prosecution Response to Amici](#), paras. 37-38.

<sup>113</sup> See [2023 GBC Policy](#), paras. 59, 62.

<sup>114</sup> See [2023 GBC Policy](#), paras. 33-44.

<sup>115</sup> Article 21(3), [Statute](#).



grooming of children, interdictions on procreation, sexual threats or forced sterilisation) may not always be found to satisfy elements of sexual slavery (for instance, being *caused to engage* in an act of a sexual nature). They, nonetheless, remain relevant *indicia* to demonstrate the exercise of powers of the right to ownership.<sup>116</sup> Consistent with the principles identified in this Policy and tailored to the spectrum of violence present on each case's facts, the Office will assess the evidence and charges to accurately reflect the harm and protected interests at issue.

### c. Relationship with other Rome Statute crimes

74. Slavery crimes can intersect with other Rome Statute crimes in a number of ways. Victims of slavery crimes may also experience or witness other violations of international criminal law before, during or after the situation of enslavement. The acts or conduct underlying slavery crimes—including facts or evidence relating to the exercise of powers attaching to the rights of ownership, such as deprivation of liberty or acts of a sexual nature—may also satisfy the legal elements of crimes under the Statute. Perpetrator groups or individual suspects may be considered criminally responsible for both slavery crimes and other crimes under the Rome Statute. Slavery crimes can be committed against the same victim concurrently with other international crimes. For example, the *Ongwen* case included charges for enslavement, sexual slavery and forced marriage as other inhumane act, involving the same victims.<sup>117</sup> Victims of those slavery crimes were also subjected to crimes of rape, torture, forced pregnancy, outrages on personal dignity and pillaging as other crimes under the Statute.<sup>118</sup> The Office will seek full and fair legal characterisation of the conduct, and where appropriate, request cumulative convictions.<sup>119</sup>

75. Neither enslavement nor sexual slavery are explicitly listed as an act of genocide under article 6 of the Rome Statute. However, the acts and conduct underpinning slavery crimes (such as starvation, branding or family separation) could be characterised as various genocidal acts. These include those of causing serious bodily or mental harm (article 6 (b)), bringing about conditions of life

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<sup>116</sup> [Kony Prosecution Response](#), paras. 10, 14.

<sup>117</sup> [Ongwen TJ](#), paras. 35-36.

<sup>118</sup> [Ongwen TJ](#), paras. 35-36.

<sup>119</sup> [Chambers Practice Manual](#), para. 68 (allowing cumulative charges); [Ongwen AJ](#), paras. 1631, 1635-1636 (allowing cumulative convictions). Convictions may be entered cumulatively if the conduct in question violates two distinct provisions of the Statute, each having a "materially distinct" element not contained in the other, i.e., an element which requires proof of a fact not required by the other.

calculated to destroy the group (article 6(c)),<sup>120</sup> or transferring children to a different group (article 6(e)), if committed against members of a national, ethnic, racial or religious group with the intent to destroy that group in whole or in part.

76. Reducing a person to the status of a slave in and of itself amounts to a severe deprivation of a fundamental human right,<sup>121</sup> an element of the crime against humanity of persecution under article 7(1)(h) of the Statute.

77. The war crime of enlisting, conscripting or using children under the age of 15 to participate in hostilities is contiguous with the exercise of powers attaching to the rights of ownership over those children. In fact, the labour of child soldiers is controlled, their movement is restricted, and their psyche is controlled. The crime of enslavement can encompass acts that are *de facto* or *de jure* slavery, making it irrelevant whether armed groups or armed forces have legal property rights over these children under national law.<sup>122</sup> Child soldiers, essentially, are enslaved children. Their recruitment and use often involves coercion, exploitation and severe deprivation of personal liberty to establish their enslavement. Similarly, the war crime of compelling service in hostile forces during an international armed conflict (article 8(2)(a)(v)) can include aspects of forced labour relevant to slavery.<sup>123</sup>

78. Forced marriage, as an other inhumane act,<sup>124</sup> can also be an *indicia* of enslavement. It involves the imposition of a forced conjugal union and deprivation of the victim's relational autonomy,<sup>125</sup> referred to in some caselaw as "conjugal slavery".<sup>126</sup>

79. The physical or mental harm caused by slavery crimes—whether by violence, mistreatment, or its uniquely dehumanising nature—could be

<sup>120</sup> *Taha Al Judgment*, para. 485-502; *Akayesu TJ*, paras. 731-732 ("Sexual violence was a step in the process of destruction of the [T]utsi group—destruction of the spirit, of the will to live, and of life itself."); Eichmann TJ, pp. 199, 201.

<sup>121</sup> *Sarah O Judgment*, para. 674; *Al Hassan TJ*, para. 1201.

<sup>122</sup> *Sellers and Kestenbaum 2022*, pp. 27-28.

<sup>123</sup> Article 8(2)(a)(v), *Statute*.

<sup>124</sup> "Forced marriage" is not a crime per se under the Statute. When charged as relevant conduct as an other inhumane act under article 7(1)(k), the conviction entered is for the crime of other inhumane acts (forced marriage), and not for forced marriage itself.

<sup>125</sup> *Ongwen AJ*, para. 1024; *Brima et al. AJ*, para. 196; *Sesay et al. AJ*, para. 735; *Al Hassan CD*, para. 559; *Brima et al. TJ* (Judge Sebutinde Sep. Op.), para. 12; *Brima et al. TJ* (Judge Doherty Dis. Op.), para. 36.

<sup>126</sup> *Taylor TJ*, paras. 427, 430.

characterised as torture, other inhumane acts, outrages upon personal dignity, wilfully causing great suffering or serious injury, or cruel treatment.<sup>127</sup>

80. Acts of a sexual nature committed against victims of sexual slavery, or conduct controlling a person's sexual or reproductive autonomy as an *indicia* of powers of ownership against victims of enslavement constitute gender-based crimes. Rape, enforced prostitution or other forms of sexual violence and reproductive crimes like forced pregnancy, forced sterilisation are rooted in gender-based discrimination.

81. Acts of enslavement may also relate to crimes of imprisonment, deportation and enforced disappearances.

82. In some circumstances, acts relevant to specific other crimes under the Statute may still constitute relevant *indicia* of enslavement or sexual slavery, even if they are themselves not established in full. For example, the act of unlawfully confining the victim while forcibly pregnant (the *actus reus* of the crime of forced pregnancy) can still be relevant to establish the crime of enslavement, even if it is not established that it was also committed with the necessary mental element for forced pregnancy (*i.e.* intending to affect the ethnic composition of a population or to carry out other grave violations of international law).

83. Evidence of slavery crimes can also be used to prove the contextual or chapeau elements of international crimes.<sup>128</sup> For crimes against humanity, evidence of multiple acts following a similar *modus operandi* can be relevant to establish the systematic nature of the attack against a civilian population and the existence of a state or organisational policy to commit such an attack.<sup>129</sup> For instance, in *Ntaganda*, acts of sexual slavery committed by members of the UPC/FPLC were found to have formed part of the relevant "course of conduct" amounting to a widespread and systematic attack against the civilian population.<sup>130</sup>

<sup>127</sup> See *Ongwen SD*, para. 378 ("the conduct underlying the crimes of torture and the conduct underlying the crimes of enslavement significantly overlap"); *Al Hassan TJ*, para. 1129 (fn. 3821) (with respect to the crime of torture, "[the term] 'under the control of the accused' is broader and would include any other form of restraint by another, including enslavement.").

<sup>128</sup> Genocide requires that the enumerated acts must be committed with the specific intent to destroy a national, ethnic, racial or religious group as such. Crimes against humanity require the existence of a widespread or systematic attack against a civilian population pursuant to a State or organisational policy. War crimes can only be committed in the context of an international or non-international armed conflict.

<sup>129</sup> *Katanga TJ*, paras. 1109, 1113.

<sup>130</sup> *Ntaganda TJ*, paras. 663-665, 694-695. See also *Macrocase 01*, para. 318 (the JEP in Colombia has held that forced labour imposed on victims of kidnappings and enslavement by the former FARC-EP can be considered part of the widespread or systematic attack).

## ” SURVIVORS OF SLAVERY CRIMES

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He did not say anything to me. I did nothing, I was only crying. I did not say anything nor refuse to sleep with him because I was fearful because he was a commander and if I said anything or refused I would be killed....I would not share my pain with anyone in the bush. I thought that if I shared this I may be killed, because all the time I saw that girls who made mistakes were being killed. I was scared because he was the man who raped me. I did not know the people I stayed with and I did not trust anybody.

*P-0351, Ongwen Trial Judgment  
paras. 2256-2257*

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When I arrived he asked if I really knew what had brought me here. I said I did not know and he told me to make his bed and that now I was his wife. I started crying and thought how could I become his wife, he was an old man, he had grey hair, and I did not want to be his wife. When I started crying he asked me 'between death and life, what do you choose?' He asked me this twice and then I said I choose life.

*P-0352, Ongwen Trial Judgment,  
para. 2205*

## VI. PRINCIPLES

84. The Office's strategic and operational approach to slavery crimes is guided by the following principles:<sup>131</sup>

### a. Survivor-centred approach

85. A survivor-centred approach prioritises survivors' rights. Survivors and victims of slavery crimes are acknowledged as diverse individuals, and as members of communities, who have different capacities, reactions, needs, resources, strengths, vulnerabilities and life experiences. A survivor-centred approach orients all the Office's actions and decision-making around treating survivors with dignity, compassion, empathy, respect and in a non-discriminatory manner. They should be informed about relevant developments in a manner appropriate to their age and circumstances. It recognises that survivors are not passive recipients of justice, but experts in their own right.

### b. Trauma-informed approach

86. Slavery crimes are continuing crimes. Victims might experience many traumatising events during their enslavement. A trauma-informed approach understands trauma and its impact on survivors of slavery crimes, particularly child survivors, on the families and communities of survivors. The Office recognises that a trauma-informed approach comprehends impacts on the physical, emotional, and mental health, well-being, intra-personal and community relationships. A trauma-informed approach also recognises that survivors might experience traumatising bonds with their perpetrators, especially given the duration of some slavery situations. It also acknowledges that survivors differ in their responses to traumatisation over time. It seeks to avoid or diminish the causing of further harm or re-traumatisation.

87. Traumatisation from slavery crimes may be transmissible trans-generationally, affecting the descendants of the formerly enslaved persons. A trauma-informed approach, therefore, promotes safety, healing, and recovery and adapts to survivors' needs within their context and community.

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<sup>131</sup> These principles are consistent with those articulated in the [2023 GBC Policy](#) and the [2023 CAC Policy](#).

### c. Intersectional perspective

88. Intersectionality addresses how distinct aspects of social identity and structural discrimination overlap to combine with and compound each other. In the context of international criminal law, intersectionality is a tool that helps to analyse how multiple aspects of an individual's identity (for example, race, ethnicity, nationality, gender, age, socio-economic status, disability, sexual orientation, religion, caste or indigenous status) increase their vulnerability at determined periods, when faced with confluent systems of discrimination, oppression or violence. The commission of slavery crimes, as well as the targeting of persons to be enslaved, arises out of and is driven by these systems of intersectional, compounded discrimination, including as established by perpetrators. A perpetrator's motives, conduct and presumptions of impunity regarding slavery crimes can reflect their overlapping sources of power that create or further intersectional vulnerabilities.

### d. Gender-competent approach

89. A gender-competent approach requires an understanding of how gender drives and impacts slavery crimes, and an awareness of how internal biases and discriminatory attitudes may impact the quality of the Office's substantive work or its practical operations with respect to slavery crimes. The Office will increase its capacity to comprehend the gendered dimensions of slavery crimes throughout its procedures and decision-making, by ensuring that staff are capable of understanding how gender relates to all phases of their work, irrespective of their role.

### e. Child-competent approach

90. A child-competent approach recognises that children are persons with rights that require special consideration. Histories show that children are targeted for slavery crimes at each stage of their development. The targeting of children may be influenced by their gender, gender-identity, ethnicity, religion, socio-economic status, the status of their parents, or their circumstances, such as being displaced, born in captivity of non-state groups, being a migrant or being institutionalised. Children endure slavery crimes in unique ways, that could include separation from family, exclusion from education, the inability to attain medical care, inadequate nutrition during developmental stages of life, psychological and social impairments and the denial of a safe and secure childhood. Children who were enslaved or who experience the enslavement of parents or siblings are profoundly

impacted by discrimination, stigma, economic disparities, societal rejection and long-term physical health and psychological consequences.

91. In line with its 2023 Policy on Crimes against and affecting Children, the Office will consider the experiences of children related to slavery crimes, especially those of children born enslaved. The Office will use the best practices for children during the investigation stage and whenever children choose to give evidence of slavery crimes.

#### f. Contextualisation

92. Slavery crimes must be properly contextualised within the broader attack against civilians, the armed conflict or during periods of genocide. The structures of discrimination and oppression resulting in slavery crimes must be properly understood. The Office's contextual analysis addresses when, why and how slavery crimes are committed. It offers a critical and nuanced understanding of the initial and subsequent circumstances, including the coercive environment in which slavery crimes arise. A holistic contextualisation of slavery crimes also reveals the interaction of slavery with other Statute crimes, such as reproductive harms, imprisonment or sexual violence.

#### g. Full and faithful characterisation

93. The full and faithful characterisation of slavery crimes most accurately captures and conveys the complexity of survivors' experiences, and the extensive scope of a perpetrator's criminal responsibility. The Office will follow the evidence in each case and use appropriate provisions of the Statute to capture the full spectrum of conduct. When required, the Office will request cumulative convictions.<sup>132</sup> To reflect the diverse dimensions and the extent of survivors' experiences, and to acknowledge the distinct interests violated by different Rome Statute crimes, the Office's submissions to Chambers will reflect not only the legal elements of slavery crimes, but also their underlying harms and protected values.

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<sup>132</sup> [Chambers Practice Manual](#), para. 68 (allowing cumulative charges); [Ongwen AJ](#), paras. 1612, 1631, 1635-1636.

## h. Historical Knowledge and Cultural Context

94. The Office will situate contemporary slavery crimes within their historical and cultural perspectives when necessary to comprehend their commission and to achieve accountability. Deeply embedded marginalisation of minority communities, cultural beliefs, the presumptive inferiority of women and persons of diverse gender identities and sexual orientations, or the persistent discrimination against persons with disabilities, can presage vulnerability to slavery crimes. Legacies of past atrocities may render certain communities more vulnerable to contemporary slavery crimes.

95. The centuries-old castigation of the Yazidi population in Sinjar, or the persistent discrimination against the so-called immigrant population of Rohingya in Myanmar, presaged their susceptibility to contemporary slavery practices. Cognisant of paternalistic and patriarchal norms that predate, yet drive and inform, the gender-based crimes governed by the Statute, the Office will undertake a holistic examination of antecedent discriminatory norms and institutions that foreshadow the commission of slavery crimes.

96. Additionally, guided by the principle of substantive equality, the Office will investigate slavery crimes using anti-colonial, anti-racist, anti-ableist and anti-ageist approaches that do not replicate prejudice. The skilful investigation and litigation of slavery crimes entails the application of non-biased approaches to serve survivors' interests in attaining justice.



*Children are particularly vulnerable to slavery crimes. They are all too frequently forced outside the nurturing and protective environment they are entitled to and enslaved. Many are enslaved from their birth. The harrowing experiences of this vulnerable group are as incomprehensible as they are unacceptable. They demand accountability.*

PROSECUTOR KARIM A.A. KHAN KC



## **VII. PRACTICE: OTP PROCESS**

97. The Office’s work extends across several different phases: preliminary examination, investigations, confirmation of charges, pre-trial, trial, sentencing, appeal and reparations. While every phase is distinct, the successful implementation of this Policy depends on applying the key principles consistently at every step of the Office’s work. This requires proactive planning ahead of time, deliberate execution, the ability to course correct where necessary, and adopting a learning mindset and culture. Senior management will exercise oversight over the different phases to ensure that the key principles of this Policy are being implemented.

98. Given the overlap between slavery crimes, gender-based crimes and crimes against and affecting children, many of the Office’s practices and approaches in the different phases of its work as set out in its 2023 Policies on Gender-Based Crimes and Crimes against and affecting Children are equally relevant to this Policy. Figure 2 below sets out the general practices the Office follows in different phases of the proceedings.

<b>PRELIMINARY EXAMINATION</b>	<ul style="list-style-type: none"> <li>■ Conduct gender-competent and child competent intersectional analysis of available information to assess if slavery crimes are committed</li> <li>■ Consider slavery crimes <i>inter alia</i> to determine gravity and complementarity</li> <li>■ Support genuine national slavery crimes investigations/prosecutions if feasible</li> </ul>
<b>INVESTIGATIONS</b>	<ul style="list-style-type: none"> <li>■ Include slavery crimes in investigation and analysis plans; update gender-competent and child-competent intersectional analysis</li> <li>■ Compose competent teams with relevant expertise, consult country experts; avoid stereotypes</li> <li>■ Include slavery crimes in case hypothesis, consult varied sources and types of evidence, recognise “red flags”</li> <li>■ Undergo proper interview training; consider all potentially relevant witnesses; seek psychosocial assessment of victim/witness, where relevant</li> </ul>
<b>CONFIRMATION AND PRE-TRIAL</b>	<ul style="list-style-type: none"> <li>■ Select charges, consulting with slavery crimes subject-matter experts</li> <li>■ Fully use legal framework on crimes, modes of liability and cumulative charging</li> <li>■ Emphasise slavery crimes in written and oral submissions; consider strategic litigation</li> <li>■ Consider procedural innovations (e.g., article 56) to preserve evidence; make deliberate and empowering choices with respect to witnesses</li> </ul>
<b>TRIAL</b>	<ul style="list-style-type: none"> <li>■ Undergo proper training in examining relevant witnesses; avoid stereotypes</li> <li>■ Request witness preparation at least for vulnerable witnesses; support witness familiarisation</li> <li>■ Request protective measures, tailored to witness’s agency and needs</li> <li>■ Keep evidence under close review; emphasise slavery crimes in submissions</li> </ul>
<b>SENTENCING</b>	<ul style="list-style-type: none"> <li>■ Consider gravity of slavery crimes, vulnerability of victims and related facts</li> <li>■ Highlight gender dimensions of crimes and their impact</li> <li>■ Call experts at sentencing, as permitted</li> </ul>
<b>APPEAL</b>	<ul style="list-style-type: none"> <li>■ Consider slavery crimes priority crimes, when deciding on appeals and strategic litigation</li> </ul>
<b>REPARATIONS</b>	<ul style="list-style-type: none"> <li>■ Consider making submissions on reparations, when invited by Chamber</li> <li>■ Support intersectional gender-inclusive and child competent approaches to reparations</li> </ul>

**FIGURE 2**

Additionally, the Office considers that the investigation and prosecution of slavery crimes may give rise to specific practical considerations.

### Preliminary examination

99. During a preliminary examination, the Prosecutor determines if there is a reasonable basis to proceed to an investigation within a situation.<sup>133</sup> In making this determination, the Office considers a wide range of information from varied sources to assess the following factors: jurisdiction (temporal, subject-matter, and either territorial or personal jurisdiction), admissibility (complementarity and gravity), and the interests of justice.<sup>134</sup> Information on the commission of slavery crimes is relevant to all these assessments, whether a referred or non-referred situation. Additionally, in exercising discretion with respect to preliminary examinations of non-referred situations, the Office will pay close attention to crimes of priority to the Office, including slavery crimes. In general, the Office considers slavery crimes to be among the gravest under the Statute. In assessing their gravity, the Office considers their multi-faceted character, and resulting harm and impact. While investigations are usually in the interests of justice,<sup>135</sup> this is even more the case when slavery crimes are being investigated.

100. While the Prosecutor has relatively limited investigative powers during a preliminary examination, the Office recognises that any assessment at this stage will support any investigation if opened at a later stage. It will therefore carefully analyse the available information to assess if slavery crimes have been committed, consulting a range of local, regional, national, and international actors and expertise, including survivors' groups, as relevant. In this respect, the Office may make requests for information and/or undertake field missions. Further, where appropriate, the Office will also rely on its country experts at this early stage, to better understand cultural, social, and linguistic factors, the larger context of the crimes and the patterns/trends of under-reporting and bias. In addition, the Office will identify patterns of targeting of particular victims or victim groups, to understand the background context of the situation and alleged crimes, and to recognise specific vulnerabilities affecting specific victims, victim groups, or others relevant to the Office's operational activities. This should be done at this earliest phase (preliminary examination) and the analyses updated as the situation progresses to investigation.

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<sup>133</sup> Articles 15(3) and 53(1), [Statute](#); rule 48, [Rules](#).

<sup>134</sup> Article 53(1), [Statute](#).

<sup>135</sup> [Afghanistan AD](#), para. 49.

101. Where crimes including slavery crimes within the Court's jurisdiction have been identified, the Office determines admissibility by considering factors of gravity and complementarity. In this context, the Office will give particular consideration to slavery crimes when it assesses gravity. The Office considers whether there are relevant and genuine national proceedings, and where such proceedings exist, whether they relate to potential cases being examined by the Office (defined by reference to the relevant criminality and same groups or categories of individuals).<sup>136</sup> While there is no requirement that the crimes charged in national proceedings should be identically characterised as those before the Court, the domestic proceedings must cover substantially the same underlying conduct as those before the Court.<sup>137</sup> While complementarity assessments are factually-driven, legal qualifications used in national cases may help assess whether the domestic proceedings encompass substantially the same conduct as the case before the Court.<sup>138</sup> This is a case-specific determination. Various national barriers to genuine investigations and prosecutions may be relevant. Such barriers include discriminatory attitudes and gender/other stereotypes in substantive law, and/or procedural rules limiting access to justice, the existence of amnesties or immunity laws and statutes of limitations, the absence of proper protective measures for victims, the lack of political will (including official attitudes of trivialisation, minimisation, or denial of these crimes).

## Investigation

### Planning and preparation

102. It is mandatory to include slavery crimes in investigation and analysis plans for every situation and proactively investigate these crimes. Internal tools and templates, including those used to plan investigations, should also include issues relevant to slavery crimes. The situation-specific analysis during preliminary examination should also be updated. The intersectional, gender-competent and child-competent analysis at this stage ensures that the case theory is accurate and complete, and that harms are properly identified for the case and for the stages beyond convictions. The Office will conduct a careful intersectional analysis using bespoke tools to identify the underlying and layered harms caused

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<sup>136</sup> Article 17(1), *Statute*. See *Burundi article 15 Decision*, para. 143; *Georgia article 15 Decision*, para. 37; *Kenya article 15 Decision*, paras. 50, 59; *Côte d'Ivoire article 15 Decision*, para. 191. This is also relevant to proceedings under articles 18 and 19 of the *Statute*. See *Philippines article 18(2) AD*, paras. 106, 110.

<sup>137</sup> *Venezuela article 18(2) Decision*, para. 67; *Al-Senussi Admissibility AD*, para. 119.

<sup>138</sup> *Simone Gbagbo Admissibility AD*, para. 100; *Simone Gbagbo Admissibility Decision*, paras. 48-49 and fn. 87; *Venezuela article 18(2) Decision*, para. 124.

by slavery crimes to different victims. For example, young female members of a particular ethnic or religious group may be more vulnerable to enslavement, due to pre-existing discriminatory assumptions about both their gender and their religious or ethnic community. Disability may be a pre-existing vulnerability which increases the likelihood of a person being targeted for slavery crimes. It may also be an important consequence that arises from their enslavement. Applying an intersectional analysis also may reveal that the gendered expectations imposed on boys and men as providers and protectors increase their exposure to slavery through the *indicia* of forced labour, conscription by militia groups, or trafficking networks during migration.

103. The plans should also be used to anticipate support for victims and witnesses. For instance, refugees may not be allowed to access public health facilities in a host country, requiring planning for proper referral pathways. To ensure that the situation and case planning is based on a sound understanding of history, culture and context, the Office will consult experts (including country experts) with multi-disciplinary skills. It will also compile glossaries of culturally appropriate terms, idioms and euphemisms for investigators, prosecutors and judges to enhance communication with witnesses. Adequate interpretation is provided for interviews. All team members will also receive briefings on relevant background and context; they must also proactively familiarise themselves with the nuances of the situation.

104. The teams must also be properly composed, including staff with relevant professional experience from diverse backgrounds. All team members must have, at least, a basic level of gender, child and intersectional competence.

### Case hypothesis

105. Building on its work during the preliminary examination, the Office develops the case hypothesis once specific cases within the situations are selected and prioritised for investigation.

106. Unified Teams will proactively address the potential for slavery crimes as case hypotheses are developed and updated, including when prioritising incidents for investigation, identifying potential suspects and when framing charges. The Teams should be prepared to diversify their evidentiary sources and scrutinise relevant facts or red flags that were identified at the earliest stage that might indicate the commission of slavery crimes. Factual indicators for slavery crimes could entail situations of detention, captivity, or institutionalisation; forcible conscription of adults or children; persistent cultural legacies of slavery (such as communities of descent-based slavery or caste); persecution of

marginalised indigenous, immigrant or minority communities; and the use of sexual, reproductive or other gender-based violence.

### Sources of evidence

107. Multiple varied sources and types of evidence are relevant. These include witness testimony (*e.g.*, eye-witness, insider, contextual, expert), forensic evidence (*e.g.*, clinical examinations, forensic epidemiology, autopsies), documentary evidence (*e.g.*, video footage, formal and informal notices to perpetrators, expert and forensic reports), and digital and open source evidence (*e.g.*, social media analysis, satellite imagery).

108. To establish its case to the required standard of proof, the Office will collect evidence regarding the crime base, contextual elements and linkage to the suspect. Diverse types and sources of evidence can help prove slavery crimes, including:

- i. Witness evidence (*e.g.*, victim/survivor, eyewitness, insider, overview testimony);
- ii. Documentary evidence (*e.g.*, medical/ psychological records, call data logs, financial/corporate records, birth/death/marriage certificates, national legislation, employment contracts, school/administrative records, police/court records, identity documents);
- iii. Physical evidence (*e.g.*, injuries, branding/scarring, ligatures, burial sites, maps, diagrams/photos, so-called “battlefield evidence”);
- iv. Digital and open-source evidence (*e.g.*, emails/texts/messages, social media posts, on-line platforms, including the Dark Web, satellite imagery, UN/government/civil society reports, drone footage, public speeches/comments, internet activity);
- v. Financial evidence as relevant to identify transactions relating to slave trading and human trafficking. Slavery crimes may include a financial motivation and may leave a financial trail useful to identify patterns and networks of criminality, and persons of interest to the investigation.<sup>139</sup>

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<sup>139</sup> Expertise in cyber and financial investigations can be extremely valuable to obtain evidence of slavery crimes and individual criminal responsibility.

109. Forensic expertise and medico-legal evidence, while not a pre-requisite, can help to establish the legal elements of slavery crimes and illustrate harmful impacts.<sup>140</sup> Forensic documentation of injuries can establish the use of violence, torture, sexual violence or other forms of ill-treatment in situations of enslavement and corroborate individual victim or witness accounts. Forensic clinical examinations can provide evidence of the long-term impact on the physical, psychological and reproductive health of slavery survivors. Bioarchaeology can establish patterns of physiological stress and disease, to reconstruct osteobiographies (the biography written in the bones) of persons who were enslaved.

110. Pre-interview psychosocial assessment of victims or witnesses of slavery crimes—while necessary to establish their capacity to be interviewed—may also give a preliminary indication of the physical, psychological and social harms they have experienced and their potential protection or support needs.

111. Expert witness reports or testimony may be relevant to show the context, gravity and impact of slavery crimes. Relevant forms of expertise could include:

- i. Forensic experts (*e.g.*, DNA evidence of paternity, forensic examination of lesions/injuries, forensic medical evidence of autopsies, analysis of audio-visual or documentary evidence, forensic anthropologists on exhumations, age determination, satellite imagery);
- ii. Psychological or psychiatric experts (*e.g.*, impact of trauma, long-term or intergenerational harm from slavery crimes, memory issues, child development, reasons for delayed disclosure);
- iii. Socio-political, historical or country experts (*e.g.*, use of hate speech, inter-ethnic or inter-religious dynamics, racial and ethnographic analysis, human rights documentation methodologies, local/regional/national, political or security structures);
- iv. Linguistic experts (*e.g.*, attribution of the reported dialect or accent of the perpetrators, naming conventions, meaning behind euphemisms);
- v. Military experts (*e.g.*, command or disciplinary structures, conscription and demobilisation practices, radio intercepts, role and use of child soldiers).
- vi. Country experts to understand the history, culture and context.

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<sup>140</sup> These considerations apply equally to gender-based crimes and crimes against and affecting children.

112. The Office will comprehensively evaluate all sources of evidence, bearing in mind that some sources may contain and reproduce implicit biases preventing the discovery of slavery crimes. While there is no legal requirement to corroborate evidence<sup>141</sup> and testimonies need not be identical to be considered corroborated,<sup>142</sup> the Office will seek to collect evidence to reinforce the crime base, contextual elements, and linkage to the suspect.

113. In addition, given the importance of—and challenges with—establishing intent and knowledge of the suspect or accused for these crimes, the Office will collect and examine evidence from diverse sources.<sup>143</sup> These include oral statements or written materials such as arts and literature, visual and audio media, educational and religious materials, orders, decrees, brochures, magazines, posters, radio or television broadcasts, internet postings such as social media or blogposts, speeches and everyday language or utterances. Evidence of an individual suspect's background or prior conduct may also indicate intent and knowledge. Likewise, reports of UN experts or bodies, Commissions of Inquiry, civil society organisations, and universities may also be relevant.

114. Moreover, types of evidence relevant to establishing intent and knowledge include the acts or statements of the direct perpetrators, legislation, policies or regulations promulgated by the perpetrator group or other authorities, the use of hate speech, slurs or discriminatory language, or public statements. Intent and knowledge can also be inferred from the pattern of violence or targeting, such as when crimes are committed exclusively or predominantly against certain individuals or groups. Intent and knowledge can also be inferred from prior or subsequent conduct.

115. The Office will keep the evidence being collected under review, identify gaps in the collection, and proactively take steps to fill those gaps.

### Interviews

116. Many individuals may be relevant for interview. This includes victims and survivors; their families, neighbours and friends; community and religious leaders; doctors and community health professionals; and insiders. Moreover,

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<sup>141</sup> Rule 63(1), [Rules](#).

<sup>142</sup> [Ntaganda AJ](#), para. 672 (“[D]ifferent testimonies do not need to ‘be identical in all aspects or describe the same fact in the same way. Every witness presents what he has seen from his own point of view at the time of the events, or according to how he understood the events recounted by others’”); [Gbagbo AJ](#), paras. 356-357.

<sup>143</sup> [Gender Persecution Policy](#), paras. 94-95.



victims should not only be asked about their own personal experiences. They may have important information about the context, modes of liability, intent, knowledge and group/organisation structures. In deciding to interview victims, teams will avoid making assumptions about the victims' agency or ability. Similarly, teams will avoid making assumptions when choosing an interviewer. The interview team should seek the witness's preferences regarding the kind of interviewer and interpreter, including with respect to gender. The Office should provide the best possible match based on the profiles and competencies of available interviewers and interpreters.

117. The interview team and interpreters conducting interviews, in particular with victims and survivors, will have undergone relevant training and will prepare thoroughly for each interview. In all interactions, the interview team will use gender-competent and culturally sensitive language and address victims and witnesses in the most respectful and preferred way.<sup>144</sup> Before the interview, members of the interview team will familiarise themselves with context-appropriate terms to describe acts of discrimination, violence and harms. When conducting the interview, interviewers should take a survivor-centred, trauma-informed approach to all aspects of the interaction. This includes using empathy to build rapport and to create a safe and comfortable environment. It also involves appropriate questioning and memory retrieval techniques to support the interviewee's recall efforts while also mitigating the risk of re-traumatisation. Staff shall be aware of how time and exposure to past traumatic events may affect a witness's memory or manner of recounting the past. Inability to describe time or events fully or in linear ways is not indicative of a witness's credibility.<sup>145</sup> Likewise, belated or hesitant disclosure of experiences of gender-based violence does not automatically implicate their credibility. Victims and witnesses should always be given the opportunity to speak about their past experiences of slavery crimes and the consequences resulting from the crimes – this can also have implications later in a reparations context.

118. Finally, multiple interviews of the same witness should generally be discouraged. However, it should also not be assumed that multiple interviews will necessarily re-traumatise a witness, so long as a careful, survivor-centred and trauma-informed approach is taken. The Office commits to building staff competence to undertake these interviews safely and consistently across its cases.

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<sup>144</sup> For adults, this includes the use of preferred gender pronouns where appropriate. Cultures and communities differ on their use of gender pronouns.

<sup>145</sup> See e.g., [Helena Judgment](#); [Gazdić Judgment](#); [Musa Azar Judgment](#).

### Protection and support

119. The Office recognises the ethical and statutory obligations inherent in engaging with victims and witnesses of slavery crimes.<sup>146</sup>

120. Before interviewing a relevant victim or witness, the Office will assess the need to rely on a psychosocial expert to conduct an assessment to determine whether the person is fit to be interviewed at that time and the person's potential vulnerabilities. The psychosocial expert will make recommendations on the conduct of the interview, risks of re-traumatisation and any particular accommodations needed during the interview process. The assessment also helps to identify any additional follow up needed or referral to local support pathways or the Victims and Witnesses Section ("VWS") of the Registry.

121. Witnesses may risk danger because of their cooperation with the Court. In addition to being targeted for intimidation or retaliation for their engagement with the OTP, they may also suffer severe social consequences related to the violence they have, or are assumed to have, experienced. The Office should consider the potential impact of those measures on any dependent children for whom the witness is a parent or caregiver. In conducting its security and risk assessments for a given situation under investigation, the Office will take all these factors into account. It will develop tailored protection strategies and will identify specific mitigation measures so that witnesses, victims and their dependents are protected. In addition, the Office will conduct an individual assessment for each witness's security situation to determine potential risks arising from their cooperation with the Office. This assessment of risks and mitigation should take an intersectional and gender-competent approach. Where necessary, the Office may make a protection referral to the VWS of the Registry.

### **Confirmation and Pre-trial**

122. Building on the earlier phases and the substantive investigations, the Office will ensure that charges for slavery crimes are brought as early as possible when there is sufficient evidence. This requires teams to plan sufficiently ahead, to actively consult expertise and to keep the evidence collected under constant review. Consistent with this Policy, the Office will use procedural innovations in the Statute to advance its investigations and prosecutions. Article 56 (unique investigative opportunity) is one such avenue to elicit and preserve evidence ahead of trial. In the pre-trial phase of a case, the Office will make deliberate, planned and empowering choices on how to most effectively hear witnesses relevant to slavery

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<sup>146</sup> Article 68(1), [Statute](#).

crimes before the Trial Chamber. Depending on the specific witness, methods include hearing the witness viva-voce, or introducing previously recorded audio or video testimony, transcript or other documented evidence of such testimony under various conditions. The Office will advise testimony by audio-video link where appropriate.<sup>147</sup>

### Selection of charges

123. Regarding its charging practices on slavery crimes, the Office will make appropriate use of the Statute and its regulatory framework. Where necessary, the Office will charge cumulatively, while also reflecting the full spectrum of relevant conduct and harm. In appropriate instances, the Office will consider evidence of sexual, reproductive and other gender-based violence under the charge of enslavement when it leads to a proper acknowledgement and contextualisation of the harm. If appropriate, the Office will request cumulative convictions, and, where possible, pursue thematic prosecutions of slavery crimes.<sup>148</sup> In selecting charges, the Office will be guided by the facts and evidence in the case, as well as the contextual circumstances. For crimes against humanity, enslavement may be the “umbrella crime” to address conduct relating to situations of slavery in some circumstances. If enslavement, slavery or slave trade are not available as legal characterisations, their underlying conduct may still satisfy the elements of other crimes.

124. To fully capture the criminal responsibility of individual accused persons, the Office will consider the full range of modes of liability under articles 25, 28 and the mental elements under article 30 of the Statute. Slavery crimes are often systemic and continuing crimes, involving large, diverse perpetrator groups, such as state and non-state actors. Various individuals, commercial suppliers, intermediaries, whether in close geographical proximity or not, may have diverse levels of involvement in slavery crimes. Their contribution can give rise to individual criminal responsibility under one or more of the modes of liability listed in articles 25 and 28. Proving the intent and knowledge of a less physically proximate perpetrator does not entail a higher burden of proof, nor necessarily greater difficulties with proof. Contextualising slavery crimes properly within the broader patterns of violence, discrimination or oppression often yields relevant evidence of the perpetrator’s intent and knowledge.

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<sup>147</sup> See e.g., [2023 GBC Policy](#), paras. 126-130.

<sup>148</sup> “Thematic prosecutions” refers to prosecution strategies that orient cases around particular themes of criminality, in this case, various aspects of slavery crimes.

## Submissions

125. The Office will proactively identify and emphasise issues relating to slavery crimes in its oral<sup>149</sup> and written<sup>150</sup> submissions, including as they relate to the various elements of proof. The Office will properly articulate the link between slavery crimes and systemic/structural issues. In addition, the Office will anticipate issues of substance (e.g., elements of crimes, evidentiary thresholds) and procedure (e.g., protective and special measures, redactions, questioning procedures) relating to slavery crimes that may benefit from strategic litigation in a particular case.

## **Trial**

126. During trial proceedings, the Office will continue to make relevant submissions, where required, and keep the evidence under close review, as witnesses testify before the Chamber

## Witness preparation

127. Witness preparation is conducted by the party calling the witness before testimony to assist the witness as well as for the calling party to assess and clarify the witness's evidence to allow for focused, efficient and effective questioning during the proceedings<sup>151</sup> While the statutory framework does not expressly provide for witness preparation, some Chambers allow the practice depending on the circumstances.<sup>152</sup> Its conduct is strictly regulated. The Office's ethical code and the Court's jurisprudence disallow certain conduct, such as coaching the witness on their testimony or practicing it with them. Depending on the circumstances of the case, the Office will request authorisation from the Chamber to conduct witness preparation for witnesses in a case. Where the Chamber does not permit witness

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<sup>149</sup> For example, submissions at confirmation hearing, status conferences, opening and closing statements at trial, any no case to answer submissions, closing submissions, submissions at any sentencing hearing, appeals hearing submissions.

<sup>150</sup> For example, requests for authorisation of an investigation, applications for an arrest warrant or summons, confirmation briefs, trial briefs, any no case to answer submissions, closing briefs and any submissions on sentence, appeals briefs, reparations submissions.

<sup>151</sup> [Al Hassan Witness Preparation Decision](#), para. 11.

<sup>152</sup> [Al Hassan Witness Preparation Decision](#), para. 10.

preparation as a general rule, the Office will seek the Chamber's permission for exceptions or special allowances for vulnerable witnesses to the extent possible.<sup>153</sup>

128. Irrespective of whether witness preparation is allowed, all counsel questioning vulnerable witnesses will undergo bespoke training on questioning and will also conduct mock sessions with the team before the testimony.

### Witness familiarisation

129. Witness familiarisation is a process conducted by the VWS of the Registry to orient witnesses before their testimony. It consists of showing the witness the courtroom or the remote witness room, explaining the proceedings, assessing the need for in-court protective and special measures, and meeting with the persons who will examine the witness in court.

130. The Office supports the continued use of witness familiarisation to safeguard the witness's well-being, especially when they are vulnerable witnesses. The Office cooperates with the VWS so that the witness familiarisation process is adapted to the special needs of the witness and conducted by persons with the required training and experience.

### Protective and special measures

131. Depending on an individual witness's needs and concerns, and in coordination with the VWS, the Office will request the Chamber to authorise protective and/or special measures for their testimony.<sup>154</sup> The Office recognises that individual witnesses may have multiple intersecting requirements for protection, for instance, vulnerable witnesses identifying as LGBTQI+. Likewise,

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<sup>153</sup> In *Ntaganda*, witness preparation was allowed for all witnesses ([Ntaganda Witness Preparation Decision](#)). In *Gbagbo and Blé-Goudé*, witness preparation was sought but denied. Leave to appeal was also denied. However, at the Prosecution's further request, the Chamber amended the familiarisation protocol in the case, (i) allowing vulnerable witnesses to review prior to their testimony certain documents and materials that may be shown to them when they testified so as "to avoid any psychological harm" if exposed to that material for the first time in court; and (ii) allowing, in exceptional cases and with the Chamber's leave, the presence and limited interaction with counsel from the calling party during the statement-reading session "to further reduce the scope of potential re-traumatisation", see [Gbagbo and Blé-Goudé Oral Ruling](#). In *Ongwen*, witness preparation was once again sought but denied ([Ongwen Witness Preparation Decision](#)). Leave to appeal was also denied. However, the Prosecution conducted "memory-refresh" meetings where examining counsel meets with the witness in the field and reads out the statement to the witness. Such meetings assist to develop a rapport with witnesses, and especially with vulnerable witnesses, ahead of their testimony.

<sup>154</sup> Articles 68(1), 68(2), 68(4), [Statute](#).

the Office will be careful not to make assumptions about the kind of protection that witnesses may need.

132. Protective measures may include giving testimony partly or entirely in closed session; testifying by audio-video link from a different location; voice and/or image distortion; use of pseudonyms; and redacting the name and identifying information from public records and prohibiting disclosure to a third party. Special measures may include the use of a screen to prevent direct contact with the accused; the presence of an accompanying support person (e.g., psychologist, family member or other trusted person); adapting the manner of questioning to the witness's needs; using testimonial aids and taking regular breaks.

### Witness examination

133. When examining a relevant witness, the team will prepare carefully in advance. This includes preparing interview outlines that address all necessary topics (*i.e.*, specific elements of the crimes, modes of liability and linkage aspects, contextual elements, impact and harms). In particular, it should not be assumed that a victim can only give crime-based evidence. As with investigative interviews, examining counsel will actively refrain from making assumptions about the witness's agency or ability. Likewise, teams will also avoid stereotypes when selecting an examining counsel. Rather, the team will carefully assess the witness's preference and the profiles and competencies of available counsel.

134. Counsel conducting relevant witness examinations, in particular with victims and survivors, will have undergone relevant training and will prepare thoroughly for each examination. In all interactions, the team will use gender-competent and culturally sensitive language and address victims and witnesses in the most respectful and preferred way.<sup>155</sup> Before the examination, counsel will familiarise themselves with context-appropriate terms to describe acts of gender discrimination, violence and harms. They should take a survivor-centred, trauma-informed approach to all aspects of the interaction. Staff shall be aware that witnesses may not always describe time or events fully or in linear ways. This is not indicative of credibility.<sup>156</sup> Likewise, belated or hesitant disclosure of acts of gender-based violence by witnesses does not automatically implicate their credibility. To support future sentencing and reparations proceedings, victims and witnesses should also be examined on the various harms and consequences resulting from the crimes. Where appropriate, counsel will make use of

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<sup>155</sup> For adults, this includes the use of preferred gender pronouns where appropriate. Cultures and communities differ on their use of gender pronouns.

<sup>156</sup> See e.g., [Helena Judgment](#); [Gazdić Judgment](#); [Musa Azar Judgment](#).

stipulations (agreed to by other parties) to limit the depth of in-court questioning and thus minimise the risk of re-traumatisation.<sup>157</sup> This may include euphemisms, contextual elements, coercive circumstances or stipulations on some elements of the crimes.

135. Following the examination, the Office will carefully follow up with the witness to ensure their well-being.

## Sentencing

136. When recommending an appropriate sentence for a convicted person, the Office considers factors such as the gravity of slavery crimes, their systemic nature, the impact of the crime on the victims (including their particular vulnerability such as their age, disabilities, economic status, and defencelessness), any continuing and transgenerational harm, and the individual circumstances of the convicted person.<sup>158</sup> Further, recognising that many slavery crimes involve conduct that continues beyond the scope of the charges in a given case, evidence of acts or conduct after the offence itself (even if outside the scope of the charges) may be relevant to the sentence.<sup>159</sup>

137. For instance, subsequent criminal conduct such as continuing enslavement, forced marriage, or forced pregnancy of persons enslaved during the scope of charges may inform the gravity of the crime, if it is sufficiently linked.<sup>160</sup> Likewise, evidence regarding children born enslaved as a result of rapes may be relevant at sentencing, even if the births occur after the scope of the charges. Enslavement and sexual slavery have been recognised as continuing crimes.<sup>161</sup>

138. Enslavement is inherently “a crime of considerable gravity” since it involves a violation of an individual’s personal liberty.<sup>162</sup> Targeting multiple

<sup>157</sup> Rule 69, [Rules](#).

<sup>158</sup> Article 78(1), [Statute](#). See also rules 145(1) and (2), [Rules](#), listing several factors to be considered in determining the sentence, including aggravating and mitigating circumstances.

<sup>159</sup> [Ongwen SAJ](#), paras. 160-162 (“conduct after the offence must not be taken into account for its own sake [...] because the convicted person is not punished for it”, but such conduct may inform the gravity assessment or give rise to an aggravating circumstance; there must be a “sufficiently proximate link” between the conduct and the crimes for which the person has been convicted).

<sup>160</sup> [Ongwen SD](#), paras. 312-313, 353-354.

<sup>161</sup> [Cote d'Ivoire Judge Fernández Sep. Op.](#), para. 69.

<sup>162</sup> [Ongwen SD](#), paras. 163-164. (Sexual slavery was found to be a crime of “particular gravity” due to the element of causing the victim to engage in acts of a sexual nature and the coercion inherent to enslavement), para. 305.

survivors and victims,<sup>163</sup> or the commission of multiple and/or cumulative criminal acts against the same victim,<sup>164</sup> can be considered as aggravating circumstances, as well as crimes committed with particular cruelty.<sup>165</sup> Slavery crimes that are committed for motives involving discrimination can also give rise to a higher sentence.<sup>166</sup> Acts or conduct that are *indicia* of the exercise of powers of ownership may also amount to aggravating factors for sentencing.<sup>167</sup> It is recognised that psychological harm to survivors of slavery crimes and their family members “is inherent to the exercise of powers attaching to the right of ownership”.<sup>168</sup> The impact of slavery crimes on survivors and victims, their families and communities is a relevant consideration for sentencing,<sup>169</sup> as are facts and circumstances relating to their age, vulnerability and defencelessness.<sup>170</sup>

## Appeal

139. The Office will consider the particular gravity of slavery crimes affecting victims, their families and communities in its decisions regarding appeals and strategic litigation. The Office will consider strategic litigation (including relevant interlocutory appeals) on relevant substantive and procedural issues, where appropriate. To the extent necessary and appropriate, the Office will also actively pursue opportunities during the appeal to add value to the submissions made at trial on slavery crimes.

## Reparations

140. The Office of the Prosecutor is not a party to reparations proceedings. However, the Chamber may invite observations from the Office.

141. The Office supports an intersectional, gender-inclusive and child-competent approach to reparations, considering the complex impact of these

<sup>163</sup> Rule 145(2)(b)(iv), [Rules; Ongwen SD](#), paras. 164, 235, 271.

<sup>164</sup> [Ntaganda SD](#), paras. 122, 127, 194.

<sup>165</sup> Rule 145(2)(b)(iv), [Rules; Ntaganda SD](#), para. 123.

<sup>166</sup> Rule 145(2)(b)(v), [Rules; Ongwen SD](#), para. 182; [Ntaganda SD](#), para. 125.

<sup>167</sup> See e.g., [Ongwen SD](#), paras. 349-350.

<sup>168</sup> [Ongwen SD](#), para. 165.

<sup>169</sup> [Ongwen SD](#), para. 166.

<sup>170</sup> Rule 145(2)(b)(iii), [Rules; Ntaganda SD](#), paras. 121, 126, 130 (recognising that victims of sexual slavery “suffered physical, psychological, psychiatric, and social consequences (ostracisation, stigmatisation and social rejection), both in the immediate and longer term”).



crimes.<sup>171</sup> To allow for transformative reparations that contribute to non-discrimination and equality, the Office supports consultation with survivors of slavery crimes to determine the most effective and appropriate forms of reparation within a particular community. This requires a gender-competent and intersectional approach to understanding the impact of harms on individuals, over their lifespan, and on communities. Further, the Office recognises that children born into enslavement are direct victims in their own right for the purposes of reparations.<sup>172</sup> The Office is also mindful of the transgenerational harm caused by slavery crimes that may continue across generations.<sup>173</sup>

142. In framing its submissions, the Office will bear in mind that individual and collective reparations awards, including non-monetary awards such as apologies, may enhance a survivor's sense of justice. Collective reparations may promote community reconciliation and provide the greatest benefit to groups of survivors. For example, the Office acknowledges the reparative value of commemoration; (re)construction of cultural, religious, or social centres, healthcare facilities; educational institutions and historical archives or preservation or restoration of art, culture and religious objects from affected groups.

### Complementarity

143. As the Court is complementary to national criminal jurisdictions, the Office commits to working closely with States, accountability mechanisms, and other relevant partners to facilitate coordinated and effective accountability efforts, aiming to close the impunity gap for international slavery crimes at both national and international levels. Based on the Prosecutor's vision for the Office to serve as a hub for justice—a centre to facilitate international and national accountability efforts—the Office takes a positive and dynamic approach to complementarity and cooperation. The Office's approach to complementarity—as set out in its 2024 Complementarity and Cooperation Policy—includes supporting States' efforts to fulfil their responsibility to effectively investigate and prosecute serious slavery crimes, such as the slave trade or the transnational crime of trafficking in persons as governed by national penal codes. This support may take the form of assisting

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<sup>171</sup> [2023 GBC Policy](#); See also [Lubanga Reparations Decision](#), para. 231, where the Chamber ordered that awards should consider the gender and age-specific impact.

<sup>172</sup> [Ntaganda Reparations AD](#), paras. 652-661. Close family members of child soldiers and victims of rape or sexual slavery can be considered indirect victims, since they have “suffered personally in an emotional, material and, in some cases, a physical sense” due to their relationship with the direct victim.

<sup>173</sup> [Ongwen Reparations Order](#), para. 207 (recognising the concept of transgenerational harm and finding “children of victims of unimaginable atrocities may also experience personal suffering, even if they did not personally experience the atrocities that caused their parents’ trauma”).

national jurisdictions in their domestic proceedings, sharing information, knowledge, and best practices, defining common operational standards on areas of mutual interest, seconding experts, and engaging with local, regional and international partners. Where relevant, the Office will participate in joint teams with national and international authorities, to facilitate the mutual sharing of knowledge and expertise.

144. The Office therefore undertakes to stay actively informed of relevant investigative and prosecutorial developments at the national level concerning slavery crimes, and to positively engage with national authorities to provide prompt and effective assistance where feasible. The Office will make this Policy available and accessible to national jurisdictions.

## **VIII. WAY FORWARD**

145. The Slavery Crimes Policy is representative of the Office's strategic implementation of its mandate, in the interest of transparency, clarity, and predictability in the application of the legal framework of the Statute. The Policy does not give rise to legal rights; however, it gives guidance to the staff of the Office and communicates to our justice partners the Office's commitments to fortify accountability for slavery crimes.

146. The Office is committed to the implementation, monitoring, and, when appropriate, the review and renewal of the Policy. The development of any slavery crimes procedures and protocols will align with the guiding principles, strategic aims, and internal responsibilities of the Office, to prioritise judicial access for survivors for the redress of slavery crimes under the Statute.

147. The Office reiterates that the Policy is to be executed in a coherent and compatible manner with the Office's other policies.

148. The Office trusts that the issuance of the Policy provides greater comprehension of the need for accountability for slavery crimes to State Party members and to the ecosystem of justice partners.

149. Most significantly, the Policy pledges to survivors the Office's commitment to holistically recognise, investigate and prosecute slavery crimes within the Court's jurisdiction.

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## INTERNATIONAL AND REGIONAL TREATIES AND DOCUMENTS

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<u>1921 Women and Children Traffic Convention</u>	International Convention for the Suppression of the Traffic in Women and Children, 30 September 1921
<u>1926 Slavery Convention</u>	The League of Nations Slavery Convention, 25 September 1926
<u>1950 Traffic and Prostitution Convention</u>	Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 21 March 1950
<u>1956 Supplementary Slavery Convention</u>	UN, Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 7 September 1956

<a href="#"><u>ACHR</u></a>	OAS, American Convention on Human Rights "Pact of San Jose, Costa Rica", 18 July 1978
<a href="#"><u>AP II</u></a>	Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-International Armed Conflicts, 8 June 1977
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<a href="#"><u>CRPD</u></a>	UNGA, Convention on the Rights of Persons with Disabilities, 12 December 2006
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<a href="#">Sellers and Kestenbaum April 2020</a>	Sellers, P.V., and Kestenbaum, J.G., "Missing in Action :The International Crime of the Slave Trade", <i>Journal of International Criminal Justice</i> , Vol. 18, No. 2 (2020)



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<a href="#">2023 CAC Policy</a>	Policy on Children (2023)
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## OTHER ABBREVIATIONS

Abbreviation	Full citation
<a href="#">Elements of Crimes</a>	ICC Elements of Crimes
<a href="#">OTP Code of Conduct</a>	Code of Conduct for the Office of the Prosecutor
<a href="#">Regulations of the Court</a>	ICC Regulations of the Court
<a href="#">Rules</a>	ICC Rules of Procedure and Evidence
<a href="#">Statute</a>	Statute of the International Criminal Court



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