



**COUR PÉNALE
INTERNATIONALE** | **INTERNATIONAL
CRIMINAL COURT**
**BUREAU
DU PROCUREUR** | **OFFICE OF
THE PROSECUTOR**

Preliminary examinations and investigations

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Summer School on the ICC 2026

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Guiding Legal Principles

INDEPENDENCE
art. 42 Rome Statute

IMPARTIALITY
art. 21(3) Rome Statute

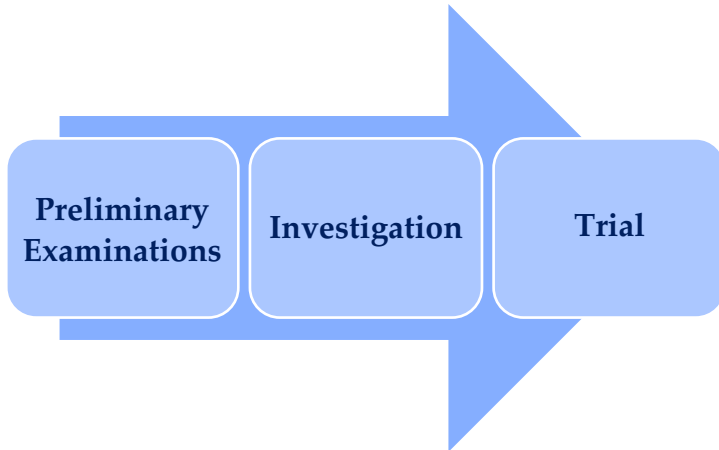
OBJECTIVITY
art. 54(1) Rome Statute



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Core Activities of the OTP

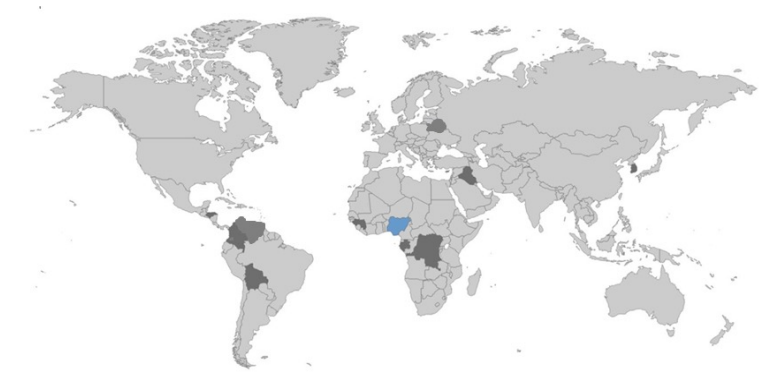


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Preliminary Examinations

Overview




Ongoing
(1)

Nigeria

Closed
(10)

- Colombia
- Guinea
- Honduras
- Republic of Korea
- Comoros, Greece and Cambodia
- Iraq/UK
- Gabon
- Bolivia
- DRC II
- Venezuela II

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Purpose


Preliminary Examination

Statutory Factors

The purpose of preliminary examination is to determine whether the statutory requirements for opening of an investigation in a situation are met




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Exercise of Jurisdiction (Articles 12-13) & Legal Framework (Article 53(1) (a)-(c))

Prosecutor determines **reasonable basis to proceed** considering:

- Jurisdiction
- Admissibility
- Interests of Justice



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Preliminary Examinations
53(1)(a) – Jurisdiction

Jurisdiction

```

    graph TD
      J[Jurisdiction] --> T[Temporal]
      J --> SM[Subject – matter]
      J --> TP[Territorial or personal]
      
```

Crimes committed after the entry into force of the Statute, on 1 July 2002 (Article 11(1))

For a State Party, jurisdiction starts from the date the Statute enters into force for that state, unless a later declaration is made (Articles 11(2), 12(3))

**For Crimes of Aggression: After the 17 July 2018*

Genocide

Crimes against Humanity

War crimes

Crime of aggression


Territory of a State Party (Article 12(2)(a))

National of a State Party (Article 12(2)(b))


Declaration 12(3)

The UN Security Council may also refer situations to the ICC regardless of the territorial/nationality limits (Article 13(b))

**For Crimes of Aggression: Jurisdiction is limited to States Parties' ratification of the related amendments*



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Preliminary Examinations
53(1)(b) – Admissibility


Admissibility

```


    graph TD
      A[Admissibility] --> C[Complementarity]
      A --> G[Gravity]
      
```

Are genuine investigations and prosecutions being conducted domestically?

- Scale
- Nature
- Manner of commission
- Impact




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Preliminary Examinations
53(1)(c) –
Interests of Justice

Interests of Justice


- Countervailing consideration - may give reason not to proceed
- Views of victims
- Not a *peace vs justice* or *feasibility* consideration
- Presumption that investigations and prosecutions **are** in the interest of justice → Decision not to proceed on the grounds of the interests of justice would be **highly exceptional**



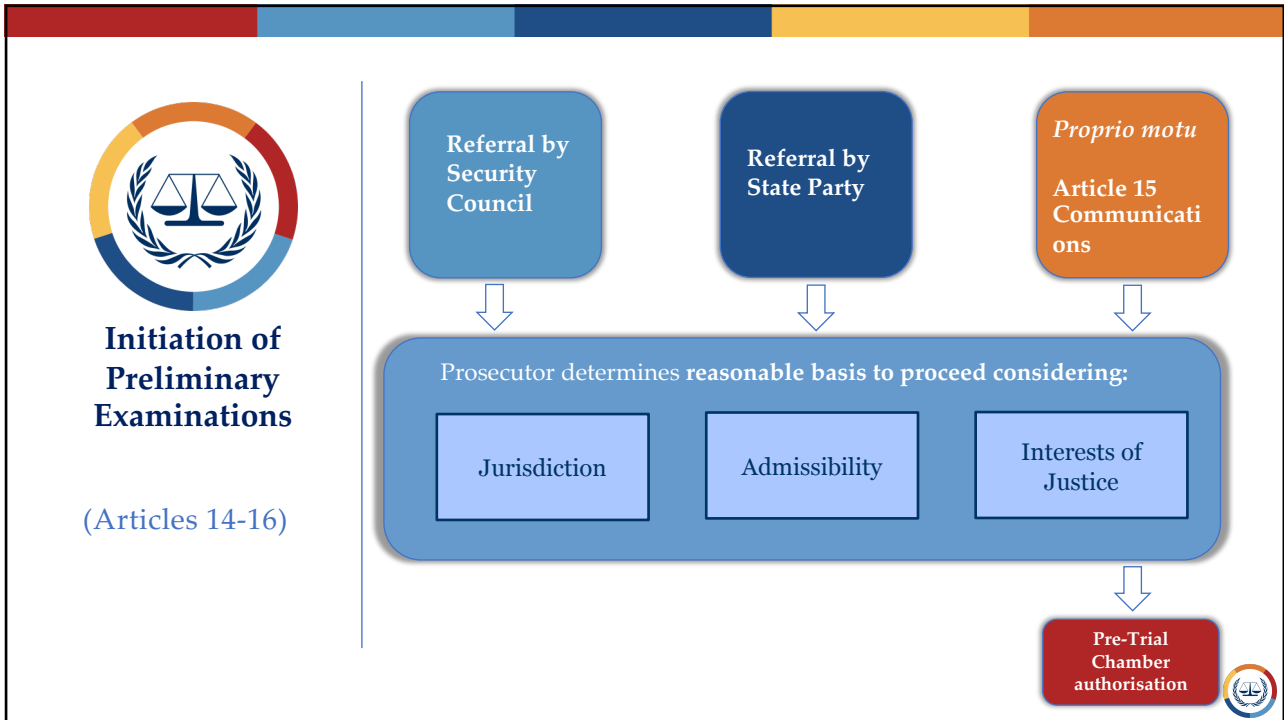
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Initiation of Preliminary Examinations



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Purpose

The purpose of preliminary examination is to determine whether the statutory requirements for opening of an investigation in a situation are met

- Requirements vary according to whether or not the situation was referred to the Court
- Where the situation was not referred (article 15), the preliminary examination serves the additional purpose of determining whether there are grounds for the Office to exercise its **discretion** to submit a request under article 15 (3)


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ICC Appeals Chamber decision authorizing the Afghanistan investigation (5 March 2020)

ILC-02/17-158 02-03-2020 11:55 NM P1 OA4

Cour Pénale Internationale
International Criminal Court




Original: English No. ICC-02/17 OA4
Date: 5 March 2020

THE APPEALS CHAMBER


Before: Judge Piotr Hofmański, Presiding
Judge Howard Morrison
Judge Luz del Carmen Ibáñez Carranza
Judge Solomy Balungi Bossa
Judge Kimberly Prost

SITUATION IN THE ISLAMIC REPUBLIC OF AFGHANISTAN

Public document
Judgment on the appeal against the decision on the authorisation of an investigation into the situation in the Islamic Republic of Afghanistan




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ICC Appeals Chamber decision Para. 28-31
“may” vs “shall”

28. If a situation is referred by a State Party or the Security Council, article 53(1) of the Statute places, in principle, an obligation on the Prosecutor to open an investigation, by providing that ‘[t]he Prosecutor *shall* [...] initiate an investigation [...]’

29. Article 53(1) of the Statute thus reflects an expectation that the Prosecutor will proceed to investigate referred situations, while allowing the Prosecutor not to proceed in the limited circumstances set out in article 53(1)(a) to (c) of the Statute. [...]



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ICC Appeals
Chamber decision
Para. 28-31

“may” vs “shall”

30. In contrast, article 15 of the Statute, titled ‘Prosecutor’, sets out the procedure for the triggering of an investigation by the Prosecutor proprio motu, that is, on her own motion when a situation has not been referred to her. In this context, it is for the Prosecutor to determine whether there is a reasonable basis to initiate an investigation proprio motu. Article 15 recognises the discretionary nature of this power, providing in paragraph 1 that ‘the Prosecutor *may* initiate investigations proprio motu’. [...] the legal framework does not envisage judicial review of the Prosecutor’s conclusion. [...]

31. In the view of the Appeals Chamber, this is consistent with the discretionary nature of the power accorded to the Prosecutor under article 15 of the Statute. Indeed, it would be contrary to the very concept to suggest that a duty to investigate could be imposed by the pre-trial chamber in the absence of a request for authorisation of an investigation by the Prosecutor.



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Summary

Referred vs non-referred situations

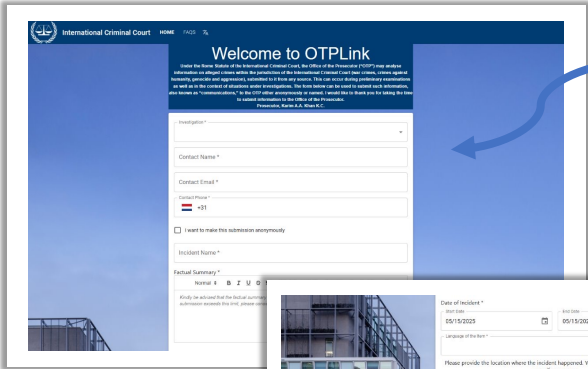
- **Referred situations** – governed strictly by article 53(1)(a)-(c)
- **Non-referred situations** – governed by article 15 taking into consideration factors of article 53(1)(a)-(c), as well as other factors



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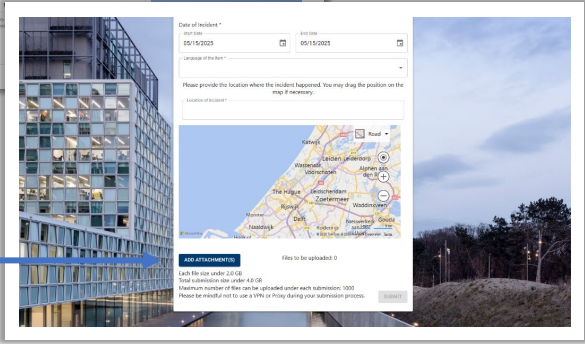


OTPLink Submission
<https://otplink.icc-cpi.int/>



Welcome to OTPLink

1000 files
4.0 GB file size



Metadata Fields
Factual Summary

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I submitted a communication, now what?

OTP's Submission Screen
 ≈160 submissions a day, 5000 a month



Dashboard

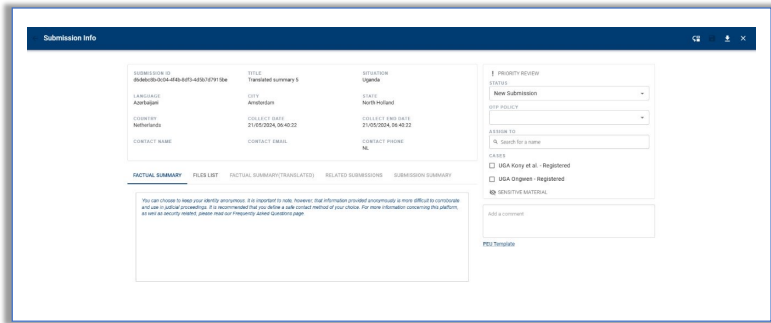
Today's New Submissions			Outstanding Submissions		
Incident Name	Situation	Submission ID	Incident Name	Situation	Submission ID
No rows			Translated summary 5	Uganda	466eb3b-0a04-440b-8493-4451...
non english summary	Republic of Cote d'Ivoire	0390804-4004-4422-41ec-828...	large file test	Burkin Faso	278c4833-1a85-4543-9117-432...
Large file download test	Republic of Cote d'Ivoire	9763230c-ca82-4274-8440-54E...	Auth download test	Republic of the Philippines	07416d1b-f14c-4056-3779-413...
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Test Post Functionality 2	Georgia	5700812-109f-46a4-9437-89fA...	Test Anna	State of Palestine	52aa446-6176-4796-9654-53...
Letter new templates	Republic of Cote d'Ivoire	42aa0c4-efcc-433b-817f-260...			

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OTPLink Submission Processing

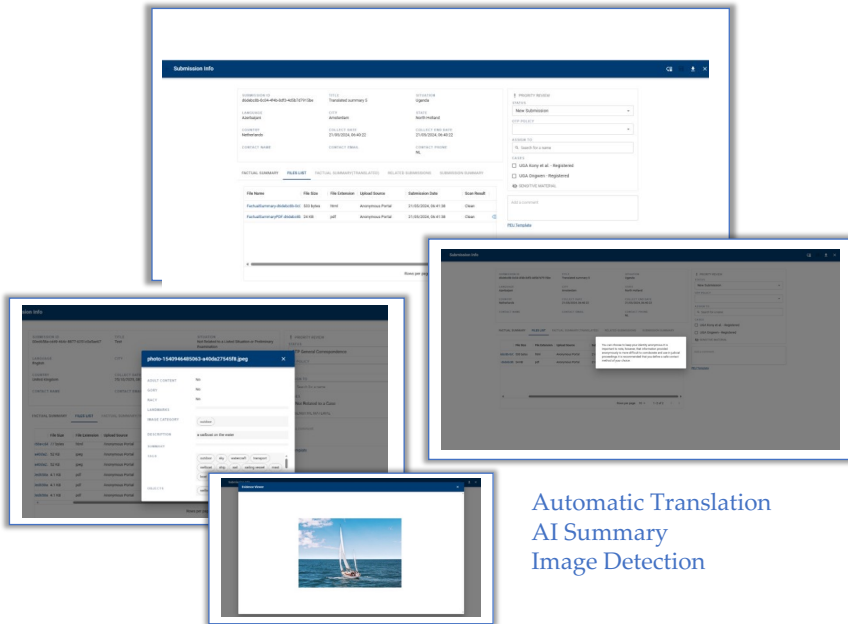
Metadata, Factual Summary, List of Files Menu for Processing



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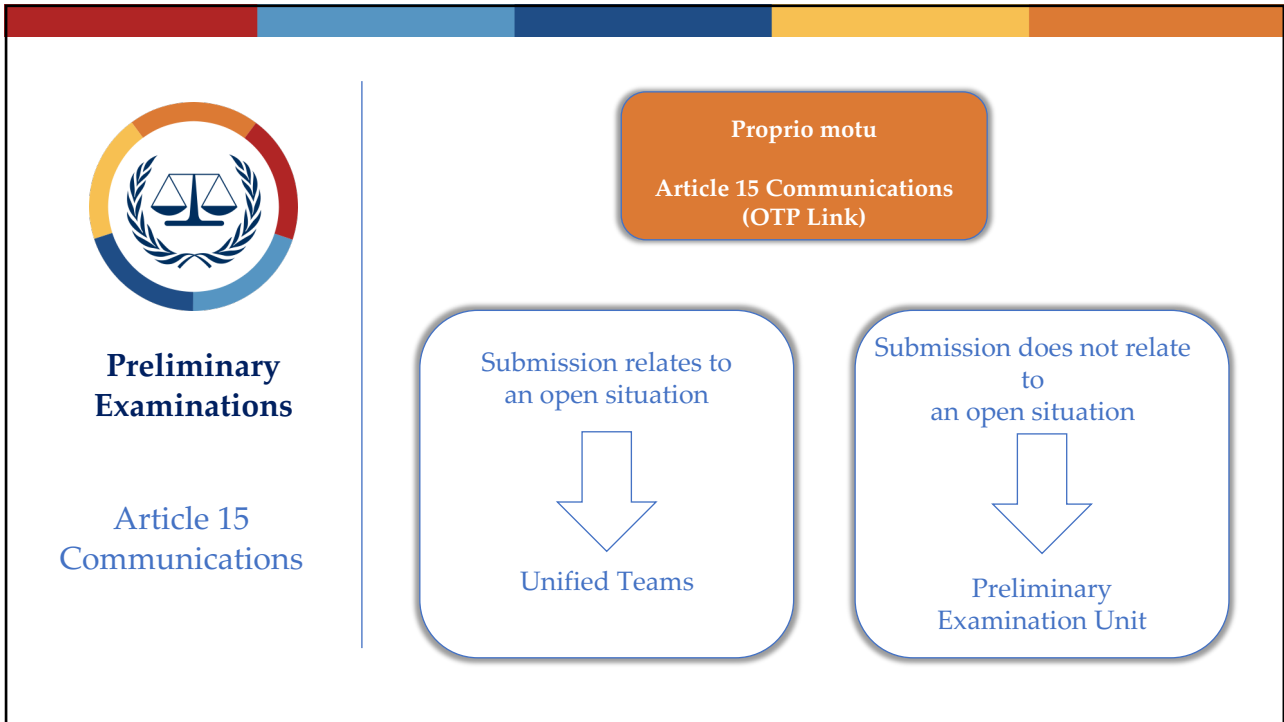


What about AI?

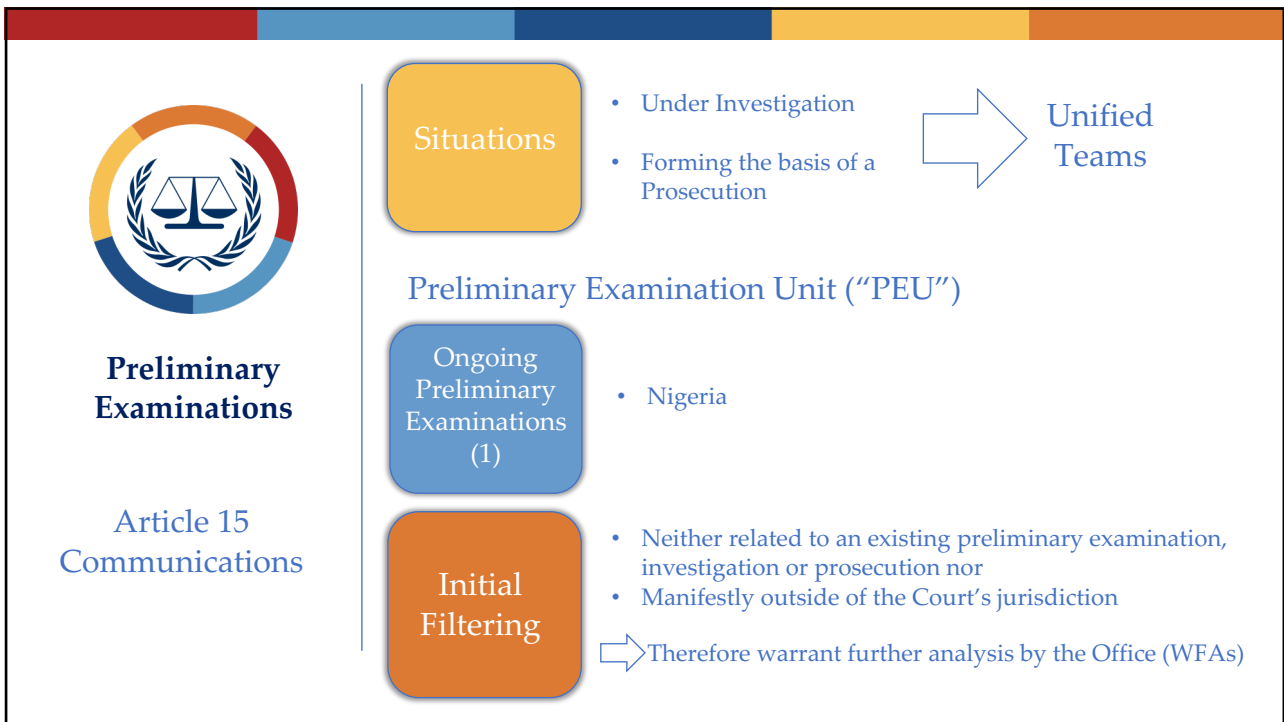


Automatic Translation
AI Summary
Image Detection

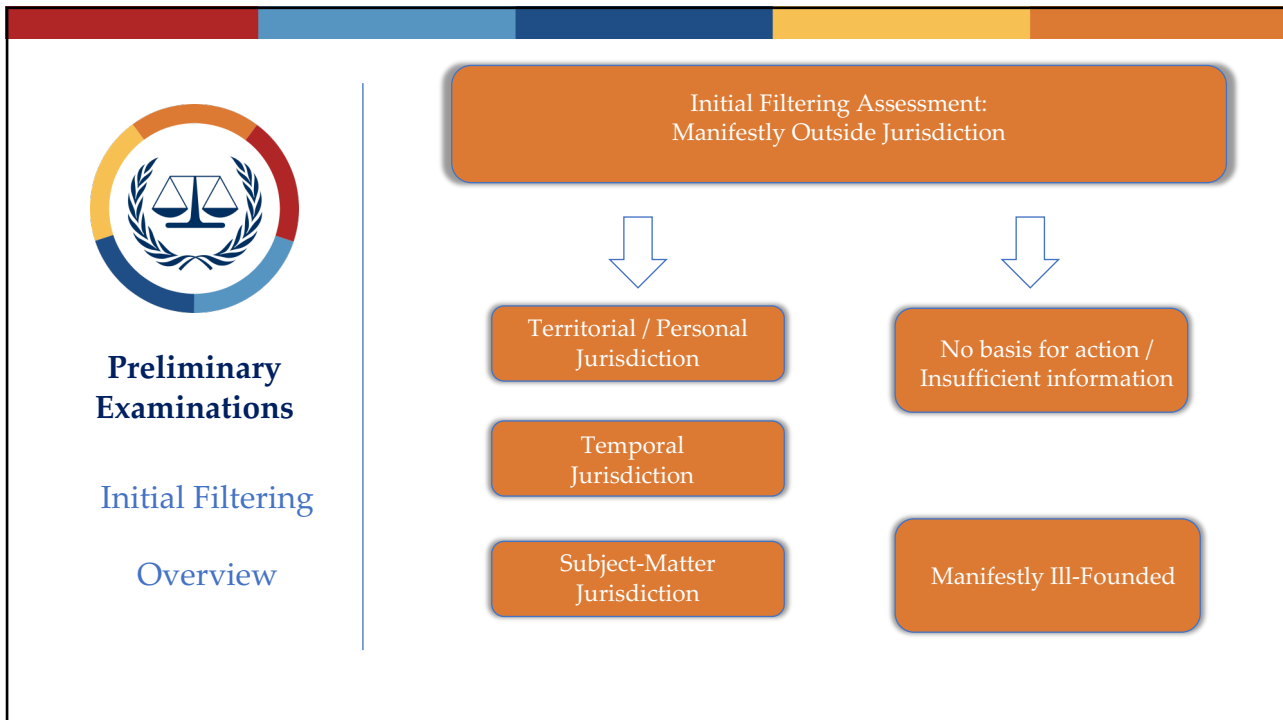
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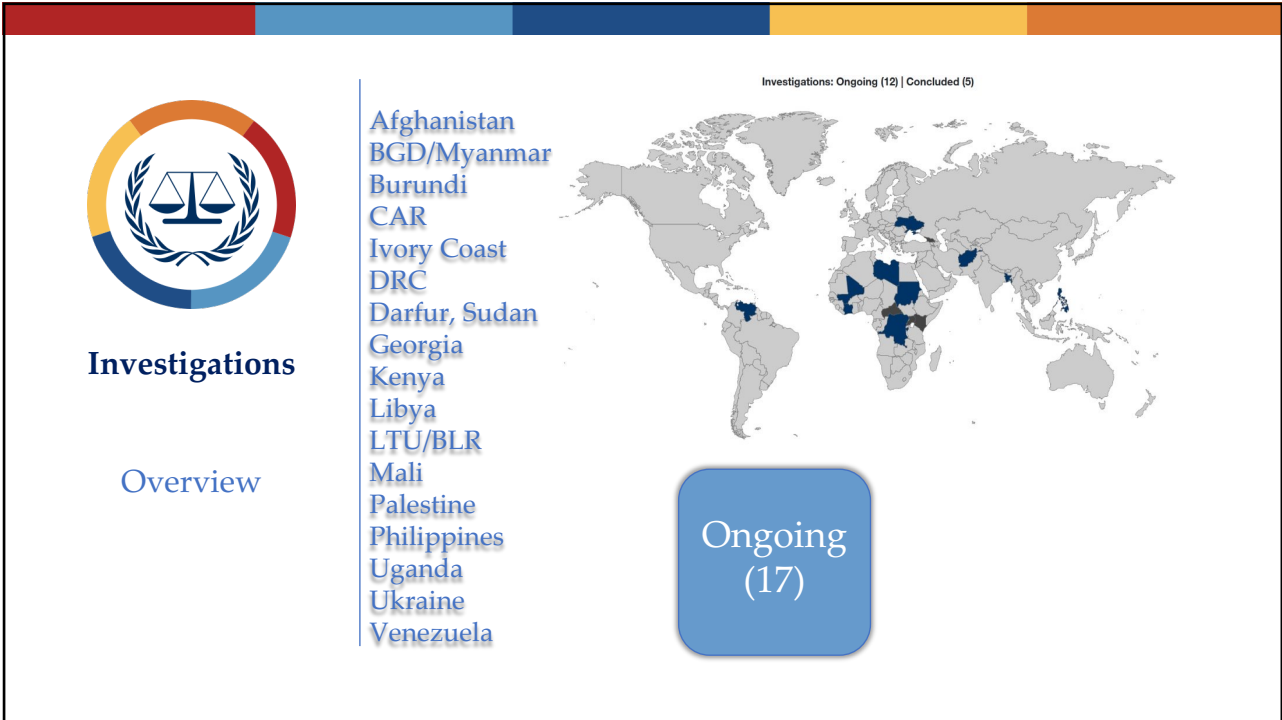
Termination of a preliminary examination

- **No investigative powers** - The office may receive and seek additional information from States, UN organs, intergovernmental and non-governmental organisations.
- **There are no timelines for bringing a PE to a close**
 - Time period that is **necessary to obtain 'reasonable basis' (1-2 years)**
 - Duration varies, often a function of the (recurrent/ongoing) commission of crimes and of the existence (or absence) of national proceedings

At the end of the PE, the Prosecutor may:

- Decline to initiate an investigation (notification)
- Initiate the investigation (subject to judicial authorisation in the case of *proprio motu*)

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Investigations

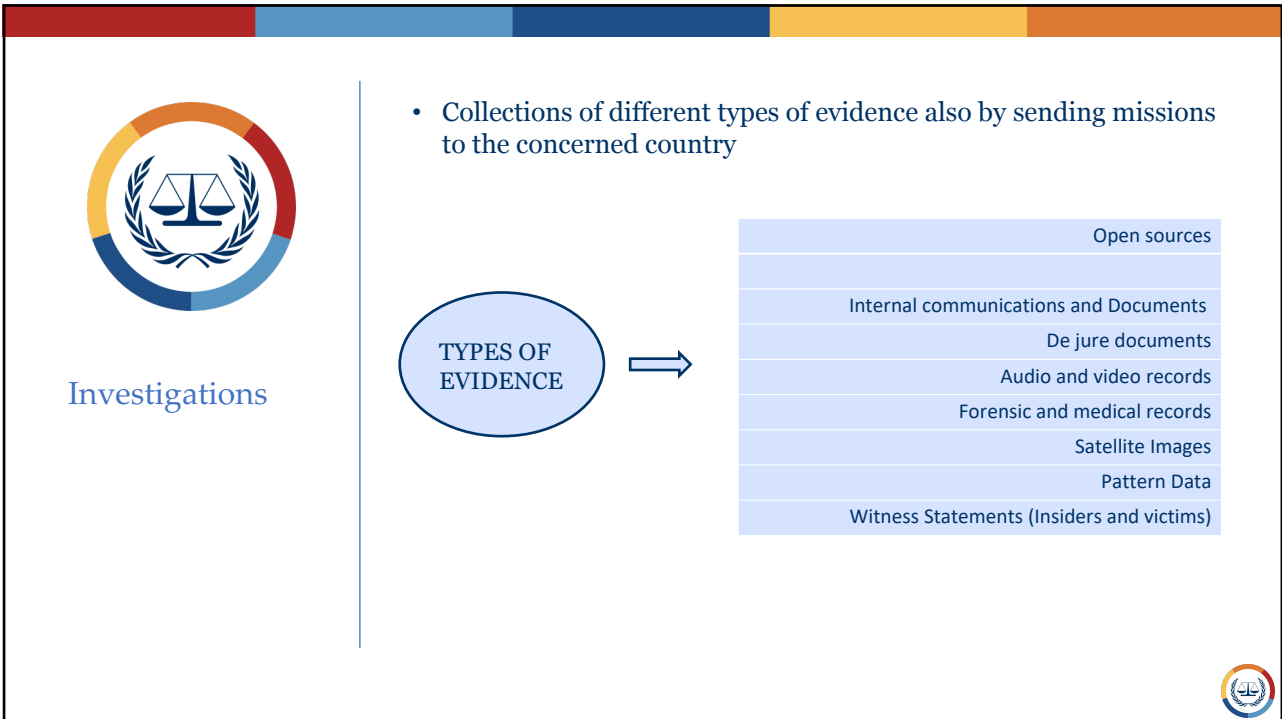
Overview

Investigations: Ongoing (12) | Concluded (5)

- Afghanistan
- BGD/Myanmar
- Burundi
- CAR
- Ivory Coast
- DRC
- Darfur, Sudan
- Georgia
- Kenya
- Libya
- LTU/BLR
- Mali
- Palestine
- Philippines
- Uganda
- Ukraine
- Venezuela

Ongoing (17)

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Investigations

- Collections of different types of evidence also by sending missions to the concerned country

TYPES OF EVIDENCE

- Open sources
- Internal communications and Documents
- De jure documents
- Audio and video records
- Forensic and medical records
- Satellite Images
- Pattern Data
- Witness Statements (Insiders and victims)

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Investigations


- Obligation to gather **both incriminating and exonerating evidence** (which will be disclosed to the Defence)

Once the OTP considers to have **sufficient evidence** to prove that an individual is responsible of a crime in the Court's jurisdiction, the Office requests


ARREST WARRANT

SUMMONS TO APPEAR

- The Pre Trial Chamber issues the warrant of arrest (or the summons to appear) if there are **reasonable grounds** to believe that the person has committed a crime in the jurisdiction of the Court (art 58).



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Prosecutions

Initial appearance of the defendant in front of the Pre-Trial Chamber


Confirmation Hearing → The Pre-Trial Chamber can confirm, decline or amend the charges (**substantial grounds to believe**)

If the charges are confirmed:

Trial → the burden of the proof is on the Prosecutor. Standard of proof: **beyond reasonable doubt.**



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Preliminary Examinations

Sources


Where to find information on preliminary examinations?

- ICC webpage - [Preliminary examinations |](#)
- [Policy Paper on Preliminary Examinations](#) (under revision)
- OTP annual reports - [Reports | International Criminal Court](#)
- OTP policy papers

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QUESTIONS?



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