



Office of The Prosecutor's Practice on Investigating & Prosecuting Cultural Heritage Crimes

Intersessional Workshop on Cultural Rights and the Protection of Cultural Heritage
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***Rosette Muzigo-Morrison,
Legal Advisory Section,
Office of the Prosecutor,
International Criminal Court,
Oude Waalsdorperweg 10,
2597 AK, The Hague, The
Netherlands***

Rosette.muzigo-morrison@icc-cpi.int

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1. Introduction

Importance of Investigating & Prosecuting Crimes against Cultural Heritage

- The ICC was founded on the recognition that “all people are united by common bonds, their cultures pieced together in a shared heritage and concern” and “that this delicate mosaic may be shattered at any time”.
- Cultural heritage has been a long-standing concern of the international community and its protection has been established in the governing instruments of the IMT at Nuremberg, the ICTY, the ECCC and the ICC.
- The concern for the protection of cultural heritage expressed in these and other international instruments has proven well-founded:
- Crimes against & affecting cultural heritage are a pervasive feature of the atrocities within the Court’s jurisdiction.
- Willful attacks on cultural heritage constitute a centuries-old practice that remains a feature of modern conflict.

2. Recent Examples of CAACH outside ICC Jurisdiction

- Da'esh (ISIS) – planned & systematically carried out an attack in the context of their operations in Iraq and Syria



Destroyed Mosul museum in Iraq



Syria's Cultural heritage under attack

Recent Examples of CAACH outside ICC jurisdiction

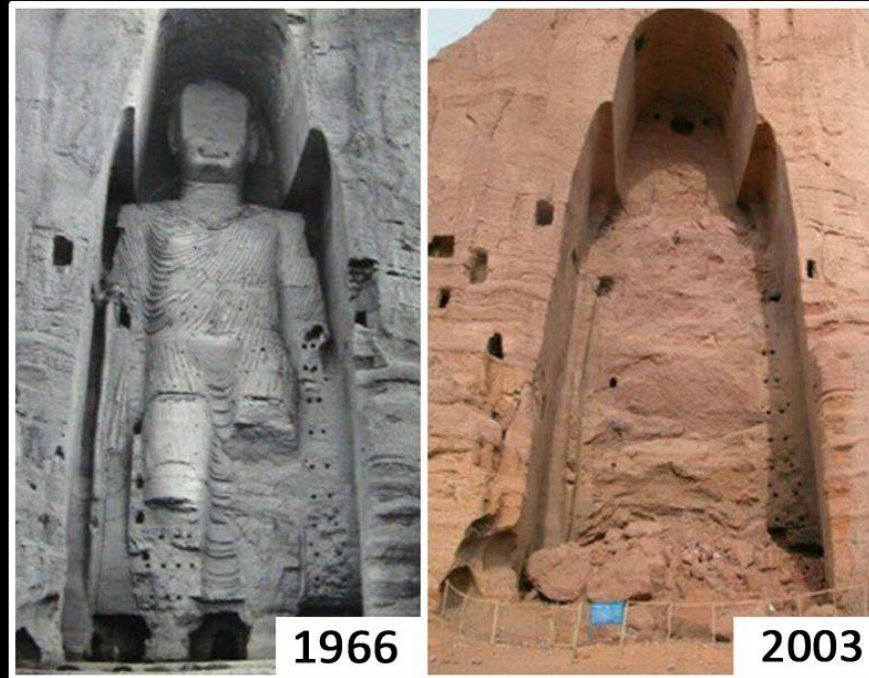
- Iraq – the most serious attack was in Mosul, the Anbar province, northern & eastern Salah ad-Din province & parts of Divala region; the Assyrian capital cities of Nimrud & Nineveh were subject to serious episodes of destruction
- Libya – since 2011, Salafist armed groups motivated by their religious views have attacked Sufi religious sites across Libya, destroying several mosques and tombs of Sufi religious leaders and scholars.



Old Roman ruins stand in the ancient archaeological site of Sabratha in Libya

- Afghanistan – under Taliban rule in Afghanistan (1996-2001), most forms of art and cultural expression were forbidden. 70% of the 100,000 artifacts of Afghan history and culture displayed at the National Museum of Afghanistan had been lost by the mid-1990s following numerous Taliban attacks and lootings. A further 2,750 artifacts from the same museum were reported to have been destroyed in 2001 alone.

Archaeological remains of the Bamiyan Valley
Afghanistan



- Israel – between 3-21 April 2002, IDF carried out an 18-day air and ground bombardment of Nablus, during which roughly 400 structures in the old city of Nablus were damaged/destroyed by Israeli bombardments.



Al-Khadra Mosque, destroyed by IDF

3. Examples of CAACH within the Court's Jurisdiction

The Prosecutor V. Al Mahdi

- Known as the City of 333 Saints, Timbuktu was an economic, intellectual and spiritual centre in 15th and 16th Centuries.
- Its UNESCO heritage sites include three mosques and 16 mausoleums associated with the city's religious and historic figures.
- These are places of prayer and pilgrimage, of symbolic and emotional value to the inhabitants of Timbuktu.
- They are also central to Mali's cultural heritage and are nationally recognised and promoted.

- 2012: Timbuktu seized by Al-Qaeda in the Islamic Maghreb (AQIM) & Ansar Dine.
- After a period of observation by the Hesbah, they were targeted for destruction and destroyed across a two-week period in June/July 2012.
- Al Mahdi supervised; acquired and provided tools; was present providing instructions and support; directly participated; and justified the attack to journalists



- September 2016: Al Mahdi convicted of the war crime of intentionally directing attacks against buildings dedicated to religion and historic monuments following his own admission of guilt and sentenced to nine years imprisonment.



- The Office brought charges of: Pillaging as a War Crime (Article 8(2)(e)(v) of the Statute) against Mr. J B Ntaganda which were confirmed on 9th June 2014 and he was convicted of this charge on 8th July 2019.
- The Office also brought charges against Mr Al Hassan of deliberate attacks against cultural heritage allegedly committed in Timbuktu, Mali.



In Mali, mausoleums such as this one of the saint Alfa Moya are destroyed

4. Legal Basis

“All peoples are united by common bonds,
their cultures pieced together in a shared
heritage...”

Preamble to the Rome Statute of the International Criminal Court

Legal Basis

“Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, [and] historic monuments ... provided they are not military objectives”

Article 8, Rome Statute of the International Criminal Court

Legal Basis

- *War Crimes (Art 8)* – at present, WC may offer the most straightforward means to address intentional harm to cultural heritage – since it is well established that these crimes not only address violence to the person but also to property.
- *Crimes Against Humanity (Art 7)* – CAACH are often committed in the context of an attack against a civilian population. They may themselves amount to CAH, or other acts amounting to CAH may have adverse consequences for cultural heritage.
- *Genocide (Art 6)* – CAACH frequently occur in connection with genocide. Acts directed specifically against a group's cultural heritage may assist to demonstrate the specific intent & manifest pattern required in art 6.
- *Crime of Aggression (Art 8bis)* – the COA poses a unique threat to cultural heritage, not only due to the harm caused by the prohibited act itself, but because of the much broader potential harm which may be caused to cultural heritage by an AC.

5. Preliminary Examination

- Conduct preliminary examination on all communications & situations that come to its attention based on the statutory criteria & the information available to justify an investigation.
- When assessing gravity of alleged CAACH, the Office will consider the broad and severe impact of these crimes may have on individuals, communities & humanity as a whole.
- Taking into account all the circumstances, including the gravity of the crime and the interests of victims, whether there are nonetheless substantial reasons to believe that an investigation would not serve the interests of justice.
- Where relevant, the Office will engage with States, international organisations and NGOs at an early stage, in order to verify the information available to prevent the recurrence of crimes.

6. Investigations

- Particular attention to CAACH from the earliest stages of an investigation, taking into consideration possible links between such attacks and other conduct being investigated (during AC/peace time).
- Ensure that any collection of evidence is done with appropriate respect for local customs, culture and religion, including consulting with the affected communities where possible.
- The Office stresses the importance of accuracy in the identification of destroyed cultural heritage and the availability of detailed documentation, and highlights, in this context, the crucial role that UNESCO and related organisations can play.
- To ensure timely and expedient investigations, the Office may consider the use of the measures provided for under article 56 of the Statute in relation to unique investigative opportunities, where conditions are met.

Investigations

- The Office may liaise with competent authorities, local, regional and international partners to reconcile the need for a thorough collection and preservation of evidence with the quick reconstruction or rehabilitation of cultural heritage.
- The Office may use the most advanced and innovative technology and preservation methods available. It may work with local, regional, and international partners when necessary.
- The Office may establish and boost its networks of contacts in the field of documentation, preservation and protection of cultural heritage to assist in effective investigations.
- Evidence will often comprise satellite imagery, geolocation data, and audio-visual material. Where the Office does not possess sufficient in-house expertise for the analysis of such evidence, external expertise will be sought.

7. Prosecution

The Office policy is to investigate & prosecute those most responsible for crimes that fall under the Court's jurisdiction. However, the Office also considers prosecuting lower-level perpetrators where their conduct was particularly grave & has acquired extensive notoriety.

Selection of charges

- Subject to evidence, the Office may bring charges for CAACH as crimes per se. In relation to other crimes, it may highlight the role of CAACH, as laid out in the regulatory framework. In this respect, the Office will consider bringing cumulative charges in order to reflect the gravity, multi-faceted nature & far-reaching impact of CAACH.

Prosecution

Presentation of evidence

- In line with its strategy to support expeditious court proceedings, the Office will streamline its presentation of evidence related to CAACH. e.g. it may seek to adduce documentary evidence, including videos & photographs, & explore the use of available technology such as satellite imagery, 360 presentation software, 3D imagery & geo-localization of visual evidence.
- The Office recognizes the benefits of strengthening networks with partners using the latest imaging & remote sensing technologies to document, preserve & promote cultural heritage, and to bring elements of the past to life in ways that transcend time & distance.
- Where necessary, the Office may consult with experts & call overview & expert witnesses/victims to provide evidence related to CAACH.

Prosecution

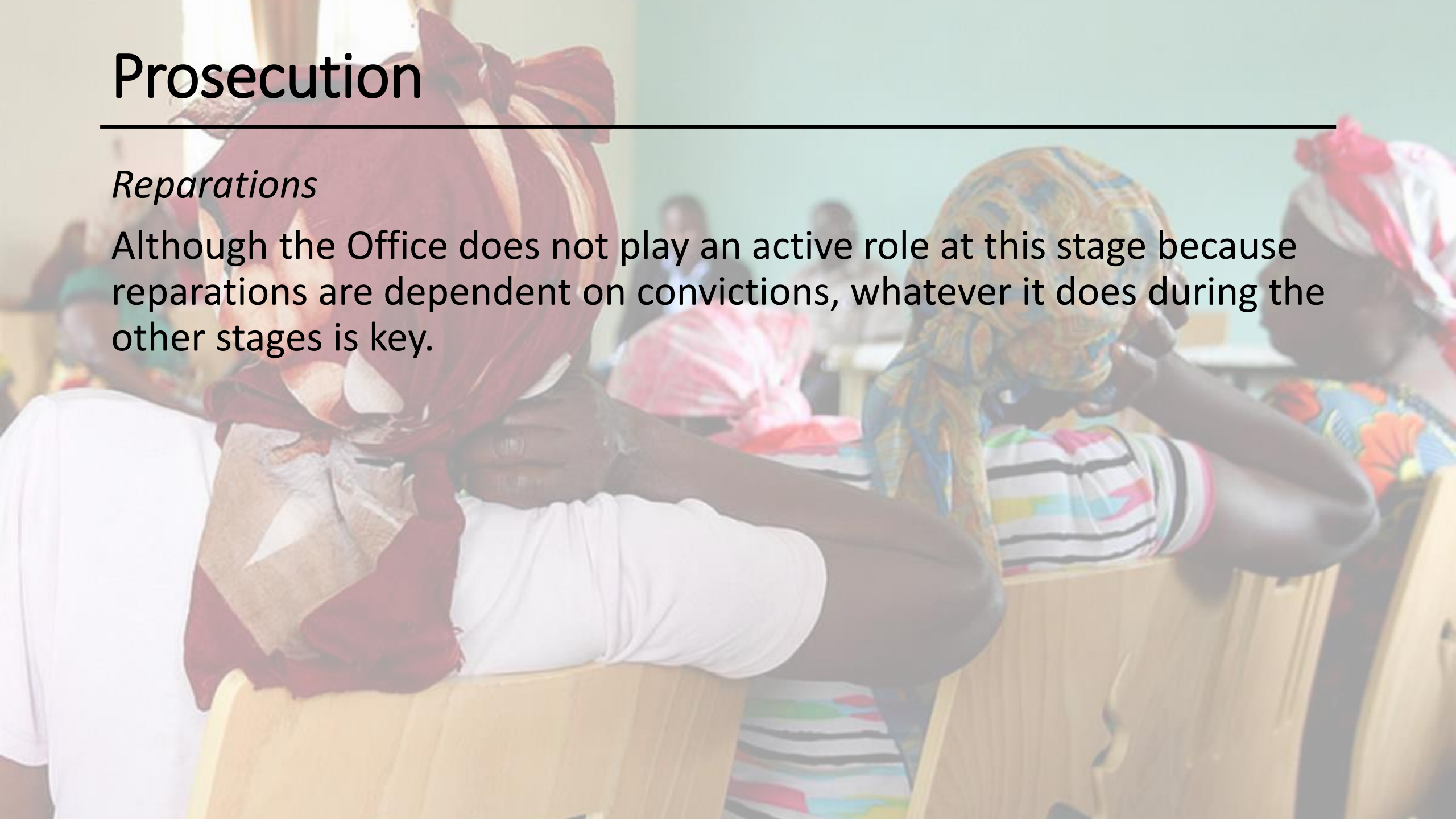
Sentencing

- In determination of an appropriate sentence, the Court is required to consider, among other factors, the gravity of the crime, the extent of the damage caused, in particular to the victims & their families, & the nature of the unlawful behaviour.
- The Office will advocate for sentences reflecting the particular gravity of & the severe & widespread harms caused by CAACH. Where appropriate, the Office will adduce evidence reflecting the impact of CAACH on victims. Their families, the community & humanity as a whole by way of victim/expert testimony & written statements.
- The Office will consider the particular gravity of CAACH in its decisions regarding appeal proceedings.

Prosecution

Reparations

Although the Office does not play an active role at this stage because reparations are dependent on convictions, whatever it does during the other stages is key.



8. Cooperation & External Relations

- Together with complementarity, cooperation is a fundamental component of the Rome Statute system and effective cooperation crucial to the Office's ability to conduct effective investigations & prosecutions.
- The Office actively engages with States and other relevant stakeholders in order to ensure the requisite level of assistance to its operations, to enhance diplomatic and political support for its work, and to improve the general understanding of its mandate.

Cooperation & External Relations

- Seek to build & strengthen cooperation and synergies with national and international bodies and institutions responsible for prevention and fight against destruction and illicit trafficking of cultural heritage.
- Collaboration will also be sought & reinforced with relevant academic institutions and NGOs with the mandate and programs pertinent to cultural heritage preservation in order to raise awareness and strengthen capacities at national levels in situation countries.
- Develop institutional and operational collaborative mechanisms with enforcement organisations both international such as Interpol, Europol and Eurojust, as well as national polices' units and departments specialised in preventing and investigating cultural heritage related crimes.

Cooperation & External Relations

- The Prosecutor has highlighted that “an effective strategy to address the destruction of cultural heritage requires a multi-faceted and collaborative approach”.
- To that end, in November 2017, the Office signed a Letter of Intent with UNESCO, memorialising the organisations’ intent to enhance contacts with one another, to collaborate on the development of this Policy, to engage in public information and raising awareness, and to explore synergies and other areas of cooperation.

Cooperation & External Relations

- Noting the extent to which relationships with external partners have already greatly empowered and enriched the Office's work, the Office may continue to consult with external partners on how best to facilitate and optimise cooperation with partners.
- In doing so, the Office also stands to strengthen its cooperation with, and continue to benefit from the unique expertise of UNESCO and other specialised bodies.

Cooperation & External Relations

- Recognising the UNC Resolution 2347 of 24 March 2017, 152 which condemned the destruction of cultural heritage, and recognised the important roles of both UNESCO and the ICC in addressing that phenomenon; the Court and UNESCO are in the process of concluding a Court-wide cooperation agreement which will among other objectives aim to:
- Strengthen collaboration with UNESCO in ending impunity for the commission of CAACH, including any form of theft, pillage or misappropriation of, and any acts of vandalism;
- Enhance and encourage the exchange of knowledge, experience and expertise, with a view to facilitating the effective discharge of their respective mandates;
- Consult each other on matters of mutual interest, pursuant to the provisions of the Agreement to be concluded, and in conformity with their respective applicable legal frameworks.

Cooperation & External Relations

- According to its positive approach to complementarity, the Office will seek to strengthen its ability and that of partners to close the impunity gap.
- In this regard, the Office will enhance its efforts to identify, support, and engage with initiatives undertaken to respond to situations where crimes against or affecting cultural heritage may occur, including:
 - Responding, where possible, to requests for assistance from States to access information pursuant to article 93(10) of the Statute, or to share its lessons learned and best practices;
 - Participating, where appropriate, in coordinated efforts; as well as, generally, by contributing to the further development of a global network among investigative and prosecutorial bodies for sharing information and experience.

Cooperation & External Relations

- Beyond its operations, and in conjunction with other stakeholders, the Office seeks to contribute to, and highlight the need for, accountability for all crimes under the Court's jurisdiction, including those against or affecting cultural heritage through missions, public statements, and participation in conferences and training.
- In this regard, and in line with its positive complementarity approach, the Office will expand its partnership with all the stakeholders in this area – including nongovernmental and academic institutions, so as to build networks for training and expertise sharing with relevant national jurisdictions.

Cooperation & External Relations

- The Office encourages various initiatives and actions — most notably those by States Parties — to address crimes against or affecting cultural heritage. These include:
 - Efforts towards universal ratification and domestic implementation of the Statute, and cooperation with the Court;
 - The adoption of domestic legislation which incorporates the conduct proscribed under the Statute, and procedures which would protect the interests of victims and facilitate the effective investigation and prosecution of such cases;
 - Support for domestic investigations and prosecutions for these crimes;
 - Enhancement of cooperation for the execution of ICC arrest warrants; and
 - Strengthening political support to end impunity and to prevent the recurrence of such crimes.

Cooperation & External Relations

- In order to integrate and create awareness on crimes against or affecting cultural heritage, the Office's public information activities may include seizing opportunities to highlight the impact of these crimes, and increase awareness and contribute to the prevention of future crimes.
- The Office will continue to develop its ability to effectively communicate with its stakeholders, with the victims and affected communities, and the general public.
- It will utilise various platforms such as the Court's website, public events, media and social-media campaigns, media programmes on high-level missions, or documentary projects, to timely and clearly communicate so as to maximise transparency and ensure that its stakeholders have an accurate and up-to-date picture of the Office's actions and decisions.

Cooperation & External Relations

- Outreach initiatives are also very important in achieving these objectives. The Registry is responsible for, and leads in, the planning and implementation of outreach-related activities, in coordination with other Organs of the Court. The Office will support the Registry and participate in outreach activities, as appropriate.

9. Conclusion & Way Forward

- Cultural heritage belonging to peoples constitutes a unique and important testimony of the culture and identities of peoples and that the degradation and destruction of cultural constitutes a loss to the international community as a whole.
- Culture touches all aspects of the Office's undertakings, and the Office is committed to respecting the many diverse cultures with which it interfaces in the course of its work.
- The Office seeks to address alleged CAACH in all stages of its work: preliminary examination, investigation, prosecution, and—when so invited—reparations.
- Recognising the importance of investigating and prosecuting CAACH, the Office brought charges relating to cultural property in the Al Mahdi case in September 2015.

Conclusion & Way Forward

- The Office further recognises that it can play a central role in galvanising & supporting efforts to document and preserve cultural heritage at risk of destruction, and that it can benefit greatly from the efforts from relevant parties.
- Noting that the ICC is complementary to national efforts, and in an effort to further address the impunity gap, the Office will continue to provide support & encouragement to national proceedings to hold individuals accountable for CAACH.
- The Office will continue to increase the awareness of CAACH by highlighting the impact of these crimes.
- The Office will seek to ensure that it has the necessary institutional capacity to conduct preliminary examinations, investigations and prosecutions of CAACH more effectively.

Conclusion & Way Forward

- The Office will seek to build and strengthen cooperation and synergies with national and international bodies and institutions responsible for prevention and fight against destruction and illicit trafficking of cultural heritage.
- Collaboration will also be sought and reinforced with relevant academic institutions and NGOs in order to raise awareness and strengthen capacities at national levels in situation countries.
- Academics & experts play an important role in providing important contribution to specific policy concerns. Their participation in the appraisal & consultation phases of the policy formation process was invaluable.
- The Office seeks to further engage with academics & experts in order to enrich and strengthen its policy implementation process.