Unlocking National Law Enforcement to Effectively Address Global Challenges

Reinhold Gallmetzer and Matthew E. Cross

I.   ABSTRACT

1.   This proposal explains how to improve the effectiveness of the judicial branch of government to confront "Global Challenges" by empowering citizens and other non-state actors to provide it with the support needed to do so.

2.   Properly coordinated and enforced, *existing national law* and *existing judicial systems* can contribute to effectively addressing many Global Challenges including climate change, large-scale environmental damage, politically motivated violence, and other drivers contributing to extreme poverty and rapid population growth. Currently, however, national laws are *inadequately enforced* in these areas, resulting in a "Global Challenges Law Enforcement Gap". Our enquiries with national and international law enforcement authorities indicate that this gap results from the absence of coordination among national law enforcement authorities to address Global Challenges, and the general lack of access to high quality information and support that would enable them to conduct effective proceedings with the means available to them. National law enforcement authorities must frequently balance competing priorities, meaning that 'hard' cases, even if globally significant, fail to get the attention they deserve. This gap prevents national law enforcement authorities from fully exploiting their vast collective potential. Our proposal offers an opportunity to break this deadlock.

3.   Recent developments in information and communication technology ("ICT") have created new and unprecedented possibilities for organizations and citizens to communicate, and to generate, access, verify and disseminate information. These developments empower non-state actors to support and enhance national law enforcement efforts. Indeed, certain techniques—such as "crowd-sourcing" and other forms of open-source information collection and analysis—may potentially be employed by non-state actors *more effectively* than by state agencies. This is because collectively they have significantly more human resources; more immediate and direct access to certain kinds of information and expertise; and the ability to share relevant information swiftly across borders, within the law, but without being restricted by jurisdictional limitations or narrow procedural rules. If mobilized and coordinated in a strategic manner, non-state actors can help incentivise and support national law enforcement agencies to address Global Challenges more effectively.

4.   Over the last century, the contribution of the judicial branch to international governance has largely followed two major approaches: the international justice model (or 'top-down' approach), and the cooperation and harmonisation model (or 'horizontal' approach). This paper proposes a third model—the support model (or 'bottom-up' approach)—which recognises the largely untapped *collective* power of national law enforcement authorities, and seeks to coordinate and support their activities in confronting Global Challenges, by harnessing the new opportunities for citizen and other non-state actor engagement. This collective approach can be particularly effective in addressing Global Challenges given their magnitude and transnational nature.

5.   Accordingly, we propose the development of the **National Law Enforcement Support Mechanism (**the **"Mechanism")** to support the work of national law enforcement authorities in addressing Global Challenges. This initiative does not need to be undertaken by states but can be put in place by *civil society* with a view to cooperating with state agencies. The Mechanism may first be established as an independent non-governmental organisation. In this form, it will benefit from a relatively rapid start-up. In the future, the Mechanism could by treaty be transformed into an international organisation. Either way, the Mechanism would have a simplified governance structure with a Board of Directors or Assembly of States Parties, who appoint members of the other organs and who oversee the management of the Mechanism by a Director-General, with the assistance of an Advisory Board and a Standing Committee.

6.   The Mechanism would combine strategic vision with specialist expertise and a network approach. Without challenging state sovereignty, it would focus instead on providing a strategic 'supply-side' solution to Global Challenges. It would investigate conduct relevant to Global Challenges by directing and coordinating the lawful collection of information by other organizations, experts and private citizens, and through cutting-edge open source exploitation techniques. A multi-disciplinary team from the Mechanism would analyse this information in light of potential violations of criminal, administrative or other relevant law and develop concrete cases, before sharing the product (information, leads and analysis) with competent and appropriate national authorities. The Mechanism would ensure that all its methods and procedures are suited to the rigorous standard required for criminal prosecution. However, to maximise its impact on the Global Challenges, the Mechanism would share information and analysis with relevant national authorities

not only for the purpose of criminal prosecution, but also administrative or other regulatory actions.

7.   By strategic case selection, the Mechanism would harness the individual efforts of national law enforcement authorities within their own legal frameworks to address Global Challenges collectively. This would ensure that conduct relevant to a Global Challenge—such as illegal deforestation in the Congo Basin—is addressed holistically and most effectively. For example, national authorities should be supported to address illegal activity not only in the deforestation itself, but also the *enabling* conduct (such as corruption) and *consequential* conduct (such as direct human and environmental harms, property and proceeds of crime offences, and various regulatory, revenue, tax, and customs violations). Potentially, different states may have jurisdiction over each of these aspects. Without assistance, states may not even realise that they each hold a vital piece of a collective puzzle.

8.   To achieve its objectives, the Mechanism would unlock and coordinate the untapped power of the public or the "crowd": the hundreds of non-state organisations and thousands of citizens with access to information or expertise relevant to addressing Global Challenges. The Mechanism would assemble, analyse and strategically disseminate this collective knowledge, and thereby bridge the gap between the crowd and law enforcement in addressing Global Challenges. This could generate a 'win-win' for both states *and* civil society. Citizens can find their voice in addressing harmful conduct which directly affects them. National authorities will benefit from high quality information and analysis that would otherwise be unavailable to them except at substantial financial cost, which enables significant efficiency gains for national law enforcement. Multiplied across the globe, this will have significant effects to benefit humankind as a whole.

II. DESCRIPTION OF THE PROPOSED MODEL

1. Enhancing the role of national law enforcement authorities in effectively addressing Global Challenges: harnessing the contributions of global citizens

9.   To date, the international community has primarily taken two approaches to improving the scope and effectiveness of judicial governance, based on international institutions and state-to-state cooperation. Both have merits, and have achieved notable successes. This proposal does not seek to supplant these approaches. We propose that these approaches should be complemented by a *third* approach, which has the potential to significantly strengthen the role of national law enforcement in addressing Global Challenges. To explain this better, and to identify the gap which this proposal meets, it is helpful to consider the existing models, and their key attributes.

10.   Until the twentieth century, judicial governance was seen almost uniquely as an aspect of state sovereignty. States did not recognise a need for collective action on matters of law and order, nor indeed were matters of law enforcement generally seen as affecting the interests of any state other than the enforcing state. The history of the twentieth century, however, reflected the developing international consensus that the conduct of states within their own borders, in at least some respects, was not uniquely their own concern. States have thus identified a need for institutions through which they can act collectively to uphold the rule of law, and various arrangements by which they can cooperate with one another in this process.

11.   The international community addresses legal matters of international concern most obviously and directly through the "**international justice model**". This approach depends on the creation of independent international institutions, in which states choose to vest certain powers, and which can be tailored to meet different needs such as:

- the peaceful resolution of disputes between states (like the International Court of Justice, or the International Tribunal for the Law of the Sea);
- the regulation of a common market and political community (like the European Court of Justice); and
- the prosecution of crimes of international concern (like the International Criminal Court ("ICC").

12.   The "international justice" model is characterised by being state-driven, institutionally-focused, and 'exceptional'. It operates *outside* the normal judicial governance of the states concerned and might loosely be termed a 'top-down' approach.

13.   The "international justice" model is complemented by the subtler—but in many ways wider-reaching and more influential—approach in which states assist one another in matters of law enforcement and to adopt basic common standards on areas of mutual interest. This might be termed the "**cooperation and harmonisation model**". Again, it takes various forms including:

- information sharing and operational cooperation (such as through [INTERPOL](#) and [Europol](#));
- technical assistance ([UN Office on Drugs and Crime ("UNODC")](#));
- mutual legal assistance and standard-setting (through various bilateral treaties, as well as multilateral treaties such as the [Palermo Convention](#) and [Convention against Corruption](#)); and
- human rights promotion (largely through multilateral treaties and associated treaty bodies, such as the [Human Rights Committee](#), or as part of global governance institutions such as the [UN Human Rights Council](#)).

14.   These various examples of the "cooperation and harmonisation model" are also largely state-driven and state-centred. Rather than delegating law enforcement authority to the institutions, they emphasise the ways in which the institutions can facilitate cooperation and harmonisation between sovereign states. This approach might loosely be considered a "horizontal" approach.

15.   These models have some weaknesses. For example, the "international justice" model is inevitably limited in its capacity, and must to some extent be selective in its operations. Moreover, it generally depends on the cooperation of states. The "cooperation and harmonisation model" has much wider capacity and potential traction because it is working within established national systems, but, as presently designed, it lacks the focus of the "international justice model". And at the heart of both approaches is the sense that, in order to preserve state sovereignty (which is effectively non-negotiable), it is necessary for these institutions and arrangements to be state-driven or closely limited by states. Both models are predicated on the assumption that law enforcement and judicial governance depend entirely (or to a very great extent) on powers which are uniquely held by states.

16.   This assumption is now outdated.

17.   As explained in more detail below, the rapid growth in ICT means that individual citizens and other non-state actors can now contribute to—or even sometimes directly undertake—many of the tasks which were previously exclusively the competence of states. Indeed, in some ways, global citizens—if their individual actions are properly coordinated and directed—may be *more* effective than states, in their capacity to undertake these lawful and everyday activities worldwide.

18.   This is primarily because collectively they have significantly more human resources, and more immediate and direct access to certain kinds of information and expertise, which they can share swiftly and lawfully across borders, without restriction by jurisdictional limitations or narrow procedural rules. For the first time, global citizens—with their enhanced power to communicate, and to generate, access, verify and disseminate information—have something they can genuinely offer to improving law enforcement, and most particularly in addressing Global Challenges.

19.   This creates an opportunity for a third model to significantly improve judicial governance specifically with respect to transnational and widespread illegality. Without challenging the sovereignty of states in adopting and enforcing national laws, there is now room for a 'bottom up' approach in which states are incentivised and helped to improve their law enforcement responses to Global Challenges by the provision of high-quality information and expertise from global citizens and other non-state actors. This model is characterised by three qualities: strategic vision, specialist expertise, and a worldwide network with global citizens, experts and other non-state actors.

20.   Such a model—which could also be referred to as the "**support model**"—does not dictate to states or tell them what to do. Rather, it is premised on the "nudge theory". It addresses the underlying reasons for the Global Challenge Law Enforcement Gap, namely a lack of coordination among national law enforcement authorities to address Global Challenges, and the general lack of access to high quality information and support that would enable national law enforcement authorities to conduct effective proceedings with the means available to them. Once these barriers to effective law enforcement are removed, national authorities are much more likely to use their power to enforce the law relevant to Global Challenges, as it relates to conduct that states have already determined to be criminal or otherwise illegal. In addition, it concerns issues—such as climate change,

sustainable development and international peace and justice—that virtually every state is seeking to address as a matter of priority.

21.   Some first steps of interest towards the support model are already apparent in global governance, but the trend has not until now been fully conceptualised nor taken to its logical conclusion.

22.   For example, the paralysis of the international community in confronting the crimes committed in the Syrian crisis has led to states supporting alternative mechanisms to gather and refine evidence which can then be offered to willing individual jurisdictions. This approach has been adopted both outside the UN system, in the Commission for International Justice and Accountability (unofficial profile), and within the UN system in the form of the International, Impartial, and Independent Mechanism for Syria (UN press release). However, these first steps do not realise the full potential of the support model, due to their limited scope and mandate. They are limited to international crimes committed in Syria and have no mandate to make independent enquiries outside these boundaries. They also have no mandate to address different types of conduct committed in different jurisdictions, under legislation other than criminal law, or conduct that would be relevant to different Global Challenges.

23.   Nor do groups such as WikiLeaks—which may at first glance appear to espouse similar claims concerning the power of global citizens—represent a path which can or should be followed. Crucially, the support model operates only *within the framework of national laws*. Although information from legitimate "whistle-blowers" can properly be accepted, the solicitation or knowing acceptance of illegally-obtained information is *not* consistent with the support model. This is important to ensure the long-term cooperation of states. It is also important as a matter of ethics, legality, and risk management. For similar reasons, the support model does not encompass techniques relying on deception, or other conduct which might be seen as 'vigilante-ism'.

24.   The newly formed Center for Climate Crime Analysis ("CCCA") demonstrates the full reach and potential of the support model, even if directed to address just one Global Challenge: climate change. It seeks to trigger and support national prosecutions and enforcement of any criminal or otherwise illegal activities worldwide that result in, or are associated with, the emission of significant amounts of greenhouse gases, drawing upon information from a global network, enhanced and organised by the CCCA. Although this is a non-state initiative, international law

enforcement organizations, such as INTERPOL and the ICC, as well as national law enforcement authorities, NGOs and expert organizations, have already embraced it. They are cooperating with the CCCA to enhance the enforcement of national criminal and other laws to address the climate crisis.

25.   The next step in this evolution is thus to establish an organization that further scales up the support model in relation to a broad array of Global Challenges. For these reasons, we propose the creation of a global mechanism to support the work of national law enforcement authorities in addressing the Global Challenge Law Enforcement Gap: the National Law Enforcement Support Mechanism (the "Mechanism").

2. Technological and sociological enablers for the support model

26.   Recent developments in ICT have created new and unprecedented possibilities for citizens to communicate, and to generate, access, verify and disseminate information. This empowers private citizens and other non-state actors to build legal action, which can significantly enhance the role of law enforcement in addressing Global Challenges. This section explains how they can do that.

27.   The International Telecommunication Union estimated that in June 2017, about 3.8 billion people were online. The percentage of young people who are online was particularly high. In developed countries, 94% of people aged 15-24 use the Internet, compared with 67% in developing countries and 30% in Least Developed Countries. In addition, mobile-broadband subscriptions have grown more than 20% annually in the last five years and are expected to reach 4.3 billion globally by the end of 2017.

28.   This technological revolution transformed billions of people from passive recipients of information into active participants in a globally interconnected information community. Virtually every person who has access to the Internet can share information and ideas and every person with a smartphone can preserve information by taking pictures or videos or by communicating through social media or other technological means. Online applications such as Witness or the Eye Witness Project assist citizens to preserve information in a manner that it is relevant to law enforcement.

29.   People are also more connected. Not only can they share information and ideas, but their action can be coordinated. The experience of open source

investigation platforms, such as [Bellingcat](), has shown that people are willing to lend their talent, expertise and free time to participate in investigative projects that they believe to be socially beneficial and that are coordinated by a steering body. This form of expert-led social crowdsourcing is an immense resource that can be used for the benefit of law enforcement. It not only enables law enforcement to access expertise that it does not possess or often cannot afford, but it also allows for investigations to be conducted *in real time*—as opposed to official *ex post facto* investigations—and *through* global citizen participation. Thus, instead of being confined to a small number of official investigators that have specific but limited skills and resources, information may be generated, collected and verified through thousands of persons who have immediate access to information and who have a broad range of relevant expertise.

30.   Similarly, civil society organizations, scientific and educational institutions, health professionals, media organizations and private sector corporations are increasingly active in collecting and publicizing information that is relevant to Global Challenges simply because this is consistent with their organisational or corporate sustainability objectives. During the annual [RightsCon]() meetings, many of these organizations and corporations present their approaches and applications—some based on cutting edge technology—to generate, access, verify and disseminate information. These entities harbour a huge amount of talent, expertise and commitment. They represent invaluable sources of information, and are ideal first responders, because often they have access to information and the possibility to preserve information long before government officials can conduct an official inquiry. In addition, they often have relevant expertise to verify information. Cooperation with these entities opens a vast pool of information and expertise that is currently unavailable to most law enforcement entities. The Mechanism would bridge the gap between these organizations and law enforcement and ensure that the information and expertise of the former would be made available to the latter in a focussed and user-friendly manner.

31.   Developments in ICT have also revolutionized the type of information that can be made available to law enforcement. While in the past most communication took place orally—either face-to-face or over the phone—today people increasingly communicate in writing or by sharing other forms of documentary information. For instance, some 2.46 billion people worldwide communicate through [social media]()—which includes social networks, chat apps, blogs, forums, business networks and photo-sharing platforms. Unlike oral interaction, this form of communication is

generally preserved. Because most of it is publicly available or otherwise accessible through the crowd, it can be a vital source of information for law enforcement, provided that it is lawfully obtained and properly verified and analysed. The Mechanism, with its vast network of organizations, citizens and experts, can provide this service to law enforcement.

3. If properly supported, national law enforcement authorities can effectively address Global Challenges under existing national law

32.   National law enforcement authorities are already equipped with the necessary legislation to effectively address Global Challenges. Virtually every country around the world criminalizes or otherwise outlaws, in one way or another, conduct that either causes, or is directly associated with, the damaging effects of climate change, large-scale environmental damage or politically motivated violence, as well as with extreme poverty and rapid population growth. In fact, law enforcement may address these phenomena most effectively by taking a holistic approach and by focussing also on *enabling* conduct (such as corruption or discrimination) and *consequential* conduct (such as direct human and environmental harms, property and proceeds of crime offences, and various regulatory, revenue, and tax violations). Potentially, different states may have jurisdiction over each of these aspects.

33.   For instance, most national legal systems directly criminalize or otherwise outlaw environmental destruction or some other conduct that exacerbates climate change. For instance, a [World Bank study on forest crimes](#) shows how up to 90% of logging in 'key producer' tropical countries is illegal and violates existing criminal law. Even when environmental destruction or climate damaging conduct is not directly illegal, it may be associated with illegal conduct, such as corruption, trade ban violations, regulatory infractions, financial crimes or fraud.

34.   Conduct related to politically motivated violence, such as war, terrorism or the damage caused by weapons of mass destruction is criminal and otherwise illegal in virtually every country, as well as under international criminal law. In addition, to contribute to the prevention of such violence, law enforcement may also focus on the precursors of violence, war or terrorism, which may equally be criminal or otherwise illegal under national law. This includes the public incitement to violence, membership to illegal organizations, or the illegal trade of arms or toxic substances.

35.   Extreme poverty and rapid population growth are broader and more complex phenomena and they are intrinsically linked. In order to address them, it is necessary to examine their underlying reasons and drivers. Law enforcement is an effective tool to contribute to mitigating extreme poverty and to slowing population growth by confronting some of their drivers that are linked to criminal or otherwise illegal activity. These include gender or ethnic discrimination, corruption, land grabbing, economic exploitation, and indeed large-scale environmental damage and politically motivated or other forms of violence.

4. Practical illustration of the relevance, efficiency and methodology of the support model to address Global Challenges

36.   This sub-section demonstrates—on the basis of a practical example, namely the illegal deforestation in the Congo Basin—how the Mechanism could strategically build cases and support national law enforcement around the world to enhance its role in confronting Global Challenges. Before illustrating the practical operation of the support model, it may be helpful to briefly examine the relevance of deforestation in the Congo Basin to Global Challenges and why the Mechanism's support may be critical to enable law enforcement to address this challenge.

(i)   Relevance of deforestation in the Congo Basin to Global Challenges

37.   Unlawful deforestation in the Congo Basin demonstrates the fundamental connections between many of Global Challenges. For example:

➢ *Large scale environmental destruction*: The Congo Basin measures 777,000 square kilometres and extends over six countries, namely the Democratic Republic of Congo ("DRC"), the Republic of Congo, Cameroon, the Central African Republic, Gabon and Equatorial Guinea. It is the home to the world's second largest rainforest area and the world's largest tropical peatlands. Yet, the Congo Basin loses about 6,000 square kilometres of forest cover every year.

➢ *Climate change:* The Intergovernmental Panel on Climate Change in its latest report has found that deforestation, agriculture and other forms of land use account for about 24% of global GHG emissions. Deforestation is responsible for about half of these emissions. The Congo Basin's rain forests and tropical peatlands are a major carbon sink whose preservation plays a key role in regulating the planet's climate.

➢ *War financing and arms trafficking*: The [United Nations Expert Panel](#) on the Illegal Exploitation of Natural Resources of the DRC has found a link between the exploitation of natural resources, arms trafficking and armed conflict in the DRC. Armed groups controlling areas rich in natural resources have built a self-financing war economy centred on the exploitation and trade of natural resources, including charcoal. In addition, a report by [Global Witness](#) demonstrates how European businesses financed militia and rebel groups in the war torn Central African Republic through the illegal trade of timber.

➢ *Extreme poverty and rapid population growth*: The six countries sharing the Congo Basin rank among the lowest in UNDP's [Human Development Index](#) (between 109 and 188) and according to the World Bank, they have among the highest [fertility rates](#) (DRC: 5.9). The [World Bank](#), [INTERPOL/UNEP](#), [UNODC](#) and [Greenpeace](#) have consistently reported that there is a high level of criminality associated with deforestation in the Congo Basin, which is primarily driven by illegal logging engineered by national and international companies, as well as by corrupt public officials. Accordingly, the income generated by deforestation does not benefit the local population, including indigenous people, but instead destroys their way of living and deprives them of their means of livelihood. On the other hand, upholding the rule of law to address the illegal deforestation can contribute to developing a more sustainable forestry industry and thereby directly impact on the economic and social development of the region. As shown by the experience in other parts of the world, such economic and social development can not only lift people out of extreme poverty, but can also be a key driver to slow population growth.

(ii)   The essential role of the support model in addressing deforestation in the Congo Basin through law enforcement

38.   Reports from the [World Bank](#) and [INTERPOL/UNEP](#) indicate that the illegal deforestation in the Congo Basin involves environmental crimes, financial crimes, corruption, trade ban violations, and fraud, among other crimes. These crimes fall within the jurisdiction of various states, including those sharing the Congo Basin, states whose nationals or companies are involved in the crimes, states that import the proceeds of the crimes and states of registration of the vessels transporting the proceeds. However, no single state has jurisdiction, and no individual law

enforcement entity has the practical abilities to comprehensively address the *entire* phenomenon of illegal deforestation in the Congo Basin. Each entity can, at best, address a specific snapshot of this phenomenon, but if the activities of all relevant offices among multiple countries and continents are coordinated, the impact of the law enforcement response will be greater. By implementing the support model, the efforts of these states can be enabled, supported, and even magnified. Their coordinated efforts may be more significant in addressing deforestation than the sum of the states' individual contributions.

(iii)   Implementing the support model in practice: a three-step process to build cases and support national law enforcement action

39.   The following describes how the Mechanism implementing the support model would (a) collect information; (b) conduct legal and forensic analysis; and (c) share information and analysis with the competent national authorities.

Step One: Information collection

40.   The Mechanism would collect information in three ways, namely by directing and coordinating the information collection of other organizations and individuals; by conducting open source investigations; and by soliciting the provision of information (anonymously or otherwise) which has been lawfully obtained.

41.   Many organizations, including NGOs, are currently collecting information that relates to deforestation in the Congo Basin. However, because this information is not collected for the purpose of law enforcement and because the information collection is not supported by law enforcement expertise or coordinated in any way, it rarely generates information that is relevant, reliable and sufficiently complete to trigger formal investigations or judicial proceedings. According to law enforcement authorities, this is a key reason for the current Global Challenges Law Enforcement Gap.

42.   The Mechanism would review the information made available by these organizations, build provisional case hypotheses and then develop a collection plan for each selected hypothesis. The Mechanism would then partner with relevant organizations and coordinate and direct their information collection by providing guidance on the type of information to be collected, the type of sources to be utilized, the minimum standards for information collection, the protection of sources and the security of communications. This guidance would ensure that the information

collected is relevant, reliable, as complete as possible, and admissible in criminal or administrative proceedings. It would also help protecting information collectors and their sources.

43. The following is a sample of organizations that are already collecting information relevant to the illegal deforestation in the Congo Basin and whose information collection efforts could be coordinated and directed by the Mechanism:

- NGOs that conduct independent forest monitoring and forest crime investigations:[36] Global Forest Watch; Earthsight; Illegal Deforestation Monitor; Global Eye; Open Foris; Environmental Investigation Agency; Global Witness; Greenpeace Africa; ENOUGH; Virunga; Rainforest Foundation UK; Center for International Forestry Research.
- Web-portals that "crowdsource" and analyse information on deforestation and land use in the Congo Basin, including: LoggingRoads; Moabi DRC; Land Matrix; Land Portal; and Congo Basin Forest Atlas.
- Organizations conducting independent monitoring and investigations of timber market and timber trade in and from the Congo Basin, including: Traffic; Forest Trends; REDD Monitor; and private businesses, tasked by the EU to monitor the timber market in Europe.
- NGOs investigating financial aspects of relevant crimes in the Congo Basin, including: C4ADS; The Sentry, and the International Consortium of Investigative Journalists.
- International organizations, including: International Tropical Timber Organization (FLEGT project); UN Panels of Experts for the DRC and CAR; UN Food and Agriculture Organization; European Timber Trade Federation; UN REDD; CITES; ICCWC; FAO's Global Forestry Survey.

44. The Mechanism would further conduct cutting edge open source investigations and analysis through in-house investigators and together with specialized institutions or organizations such as Bellingcat; the member organizations of Amnesty International's Digital Verification Corps; or Benetech. Open source investigations and analysis also heavily rely on the "crowd", for instance to geo-locate videos and photographs, to identify persons and objects, to track movements and to verity documents.

45. Finally, the Mechanism would establish a secure communication channel (SecureDrop) to receive documents from and communicate with anonymous

sources, in accordance with its legal and ethical rules. It would also use social media and other tools to solicit discrete information.

Step Two: Analysis

46. The Mechanism would conduct legal and forensic analysis of the information by carrying out the following activities:

- *Identify reliable information*: In doing so, the Mechanism would (a) apply objective, standard and analytical methodology and focus on best information; (b) seek corroboration from multiple independent sources; (c) indicate source of information and chain of custody; and (d) indicate why information is believed to be credible and reliable.
- *Analyse information in light of relevant substantive and procedural law*: Information would be analysed in relation to applicable criminal, administrative or other law that can form the basis for enforcement or litigation. It would be prepared in a user-friendly case file as opposed to a report.
- *Conduct gap analysis and identify lead information and security risks:* To ensure the usefulness of a case file to law enforcement authorities, the Mechanism would (a) analyse exculpatory information and theories; (b) identify any gaps and weaknesses in the case hypotheses; (c) provide lead information on how any gaps and weaknesses could be addressed through formal investigation by national authorities; and (d) identify and analyse security risks for sources.

Step Three: Share information with relevant and appropriate law enforcement agencies and provide ongoing support

47. Before sharing a case file, the Mechanism would engage with competent and appropriate national law enforcement authorities, including during the information collection phase. The Mechanism would seek to coordinate its information collection with that of the national authority, especially for information where official powers or warrants are necessary, such as for bank statements.

48. The Mechanism would also build synergies with [INTERPOL's forestry crimes initiative](#) to ensure that any additional information that INTERPOL may have can be made available directly to the competent national authorities.

49. The Mechanism would then share its information and analysis with the national law enforcement agencies that are in charge of criminal prosecution or other

forms of enforcement. In the context of the DRC and the Central African Republic, the Mechanisms may also share information with the relevant UN/EU/US sanction bodies. Because a case may require additional investigation, in particular by using the state's official enforcement powers, the Mechanism would share all relevant lead information assisting the national authorities or the sanction bodies to close any gaps in the evidence.

50.   Upon request by a competent national law enforcement agency, the Mechanism would collect further information and/or provide ongoing analytical support.

51.   The Mechanism may further share information with non-state organizations that spearhead civil or administrative litigation and thereby coordinate and support a multifaceted litigation campaign aimed addressing illegal deforestation in the Congo Basin.

5. The structure of the Mechanism

52.   The Mechanism could initially be founded as an independent non-governmental organisation. This would have the benefit of a relatively rapid start-up. Funding could be obtained from a variety of philanthropic, charitable, and other sources. Yet with sufficient political consensus among (at least some) states, the Mechanism could at any time be transformed into an international organisation. The legal status of the International Commission on Missing Persons was changed in a similar way after years of operation.

53.   Either way, whether established as an NGO or as an international organization, the Mechanism would have a similar governance structure, except that the NGO's Board of Trustees would be replaced by the international organization's Assembly of State Parties. If established as an international organisation, the Mechanism's governance structure would include:

➢ *Assembly of States Parties*: Establishes the legal framework of the Mechanism, approves its budget and sets out specific Global Challenges to be addressed by the Mechanism as a matter of priority.

➢ *Standing Committee*: Provides the link between the Assembly of States Parties, the Board of Advisers and the Director-General. It comprises members elected by the Assembly. Its main functions are to monitor the proper

implementation of the budget, oversee management and report on these items to the Assembly.

➢ *Board of Advisors*: Contributes to the Assembly's decisions and provides technical advice to the Director-General to facilitate and support his or her mandate.

➢ *Director-General*: Manages the Mechanism, including its staff, within the legal framework and general priorities identified by the Assembly. The Director-General is appointed by the Assembly. The Mechanism's staff would be primarily composed of lawyers, analysts and open source investigators.

54.   Establishing the Mechanism as an international organisation would provide much greater assurance of its financial stability and permanence. In addition, it would provide the Mechanism's staff with service related functional immunities and protect the Mechanisms against subpoena powers of national authorities that could force it to provide any information in its possession. On the other hand, if supported only by a narrow group of states, it might risk appearing more 'politicised', and thus its ability to work with non-member states might to some extent be compromised.

6. Challenges and risks

55.   The support model and the Mechanism face the following three key challenges and risks. First, since the model ultimately depends on independent state action in order to achieve the desired impact on Global Challenges, there is a risk that states will simply not cooperate, for whatever reason, and hence no action will occur. Second, states may in some way take the 'wrong' action based on the Mechanism's support. Third, the actions of individual information-providers may bring the Mechanism into disrepute and limit its ability to function. However, for the reasons that follow, measures can be put in place to mitigate and manage these risks.

56.   The risk of *'non-cooperation' by states* is the greatest risk, and may result from various factors including 'intentional' policy-making by states and other 'unintentional' barriers to cooperation, such as ineffective state agencies or corrupt individuals in positions of influence. This risk may be effectively managed in a number of ways.

• *First*, because the underlying conduct of a Global Challenge, if considered holistically, is multi-jurisdictional, the Mechanism can select the states with

which it works based on criteria including the prospects of cooperation. Although an all-inclusive response by law enforcement to a Global Challenge would be most effective, the Mechanism could initially prioritise the 'low hanging fruit'.

- *Second*, the Mechanism can mitigate the risk by working with and through existing international and regional law enforcement networks to obtain the cooperation of the relevant national authorities. The experience of the CCCA has already demonstrated that networks such as INTERPOL and the [European Environmental Crimes Network](#) are amenable to engaging with initiatives based on the support model. Access to these and other networks is primarily based on the *credibility* of the Mechanism as a professional organisation.

- *Third*, the Mechanism can further mitigate the risk by consciously managing and developing its relationships with states. It can do this by establishing a track record and building up credibility, and by manifest demonstration of its political neutrality, professionalism, and the basic incentive that it offers— enhancing the efficiency of state law enforcement action.

57.   The risk of *states taking the 'wrong' action* is two-fold. The lesser risk, simply, is that states may mismanage an investigative action or prosecution. Yet this is a risk which the Mechanism is very well-adapted to manage, because its engagement with the state agencies can include the provision of expert assistance, advice, or other forms of support. The greater risk is that at least some states may potentially seek to use the Mechanism's product for purposes incompatible with basic legal principles of the international community, including international human rights law. An obvious example of this would be to use a Mechanism's lead to target a person for extrajudicial punishment, as an alternative to a fair trial. This risk can be mitigated by clarity on the part of the Mechanism concerning the basis on which information is shared. The Mechanism will not support a state where it is not reasonably satisfied that the state will comply with applicable international human rights.

58.   Finally, *individual information-providers may potentially act in a way which brings the* Mechanism *into disrepute*. For example, individuals may steal information, in violation of domestic law, with a view to providing it to the Mechanism. The Mechanism would manage this risk by clearly stating at all relevant times the basis upon which it receives and acts upon information (*i.e.*, only in accordance with all applicable national law, and its core values). Such a stance likewise helps to protect

the Mechanism against potential legal action (to which it is *not* immune, if it is configured as an NGO), or consequent reductions in state cooperation.

III.   THE PROPOSED MODEL MEETS THE GGC'S ASSESSMENT CRITERIA

1. Core Values

59.   The Mechanism largely uses the means and decision-making model applied in national justice systems, and reflects similar values. Such models are found universally in national law. The basic principle of an independent, impartial, fair, and effective judicial branch is nearly incontrovertible. The Mechanism's core values directly inform the way in which it will operate. In particular, it is committed to acting at all times in accordance with applicable national laws and international human rights. This includes in particular procedural fairness, and non-discrimination.

60.   The Mechanism's work with national law enforcement authorities to address the Global Challenges ensures that national decision-making (by the competent law enforcement authorities) is used strategically and in a coordinated manner so that it indeed serves all of humankind and respects the core values of all human beings. In working with states, and respecting their sovereignty, the Mechanism will moreover seek to manifest neutrality with regard to their internal political affairs.

61.   By helping to enforce national law relevant to Global Challenges, the Mechanism also contributes to protecting the underlying values that are directly aimed at by the relevant national law. These include the protection of the integrity of human life, human health and well-being. To the extent that the Mechanism builds cases based on corruption or tax evasion, it also contributes to building a good public administration. In addition, coordinated and strategically selected charges based on fraud, financial or other regulatory infractions strengthen the national and international economy, as they contribute to creating a level playing field among all competitors by eliminating competitive advantages of actors that resort to illegal means.

62.   Lastly, the Mechanism supports national law enforcement authorities and by introducing methodologies that are still not universally applied, such as open source investigations or increased reliance on, and cooperation with, non-state first

responders. Once these methodologies have been adopted successfully in the context of a Global Challenge, national law enforcement authorities may apply some of them independently. This may result in enhancing the capacity of national law enforcement.

2. Decision-Making Capacity

63.   The decision to establish the Mechanism is not expected to cause any delays, especially if the *non*-governmental route is initially taken. States that cooperate with the Mechanism do not need to change their national laws or adopt new legislation. Moreover, even if the intergovernmental option is ultimately taken, states need only conclude a treaty that acts as the charter creating the Mechanism. To join the Mechanism in such circumstances, states would need to ratify the treaty in accordance with the procedures prescribed under their national law, but no further amendment to national law would be required.

64.   Nor in any event would the Mechanism require universal cooperation from states in order to carry out its functions, no matter the basis for its foundation. This is because in carrying out its activities the Mechanism would never exercise powers over sovereign states, and would only provide support to national law enforcement authorities in accordance with the relevant national law. The basis for the Mechanism's governance and funding is thus largely irrelevant to its day-to-day operations. The ultimate decision for a state to avail itself of the support of the Mechanism and/or to prosecute or otherwise enforce a certain case remains with the national authorities, whatever the nature of the legal relationship established between that state and the Mechanism. It is fundamental to the support model that each national authority acts independently and pursuant to its national law.

65.   The decision-making process within the Mechanism is adapted to ensure its independence, manifest neutrality, as well as economy and efficiency of action. Even if ultimately established as an international organisation, the Mechanism's governing body—namely the Assembly of States Parties—would not take any operational decisions. Its functions would be limited to maintaining the legal framework of the Mechanism (by acting in accordance with the founding treaty, and making any amendments), approving its budget, and identifying broad priorities for the Mechanism. Furthermore, to the extent the Mechanism functions only as a non-governmental organisation, the governance structure remains effectively the same, with a Board of Trustees substituted for the Assembly of States Parties.

66.   Likewise, in either model, operational decisions by the Mechanism—namely, the selection of specific cases within the set parameters, and decisions on how to build those cases or to otherwise support the competent national authorities—would be made by the Director-General. The Director-General, who is appointed by the Assembly (or Board of Trustees, as applicable), would need to be vested with the power to act independently within the framework set by the Assembly (or Board of Trustees) and any applicable law. This independence would be comparable to the independence of a judge in a national or international legal system. Such independence would enable the Mechanism to preserve its credibility with its partners, and thus to carry out its mandate neutrally, professionally, and effectively.

3. Effectiveness

67.   Addressing Global Challenges through enforcement of existing national law can be extremely efficient because the political risk is minimal—it is already accepted that the damaging conduct in question is criminal or otherwise illegal and should not be occurring.

68.   Criminal prosecutions—and, more important still, the *realistic threat* of criminal prosecutions—have a unique ability to repress, disrupt and deter the conduct. This is because human individuals can be held directly responsible, and thus may be liable for imprisonment or a significant personal fine. Nor do insurers cover prosecution-related risks. Moreover, being linked to a criminal investigation and prosecution may cause devastating reputational damage for individuals and businesses, and directly impact on their ability to do business. As a result of their general deterrent impact, criminal prosecutions are an effective means to trigger large-scale and lasting change. The targeted prosecution of a carefully selected sample of actors has a direct impact on the behaviour of a much larger pool of actors who operate under similar conditions. This is particularly true for business actors who generally take a rational approach to assessing risks and to considering those risks as part of their decision-making. For instance, the recent experience of Brazil has shown that criminal law enforcement can contribute to a significant reduction of deforestation. A combination of government policies with enforcement actions by prosecutors caused a positive response by soy and beef industries, which resulted in a reduction of tropical deforestation in Brazil by 70% within less than 10 years.

69.   To maximise its effectiveness and impact, the Mechanism will also share information and analysis with law enforcement authorities that address Global

Challenges through other legal means, such as regulatory or administrative actions. These legal tools may sometimes be available when criminal justice is not, and they may sometimes be more effective because of a higher likelihood of a successful enforcement.

70. Finally, to complement other enforcement action, the Mechanisms may share its information and analysis with non-state organizations that spearhead civil litigation aimed at addressing Global Challenges. Such information sharing would be subject to an assessment that it does not detrimentally impact on potential or actual state-led investigations or on the security of information providers or persons identified in the shared information. By sharing its information and analysis with such non-state organization, the Mechanism can trigger, coordinate and support a multifaceted enforcement and Global Challenges litigation campaign.

71. Under the support model there are assurances that the relevant decisions by the national judiciary will be implemented, as the model relies on the national mechanism to enforce judicial decisions. Sentences of imprisonment, fines or other sanctions will be enforced by the national authorities in accordance with national law.

4. Resources and Financing

72. Because of its network approach, the Mechanism model is extremely resource efficient.

73. First, the Mechanism would conduct investigations to a very large extent by directing and coordinating the information collection of other organizations, experts or private citizens. Through this approach, the Mechanism would mobilize the talent, expertise and commitment of hundreds of organizations and thousands of individuals who may be willing to lend their expertise and time *for free* to participate in a project that they believe in. Because the Mechanism would rely on such a large network of sources, this approach has the potential to result in a quantum leap in the law enforcement's access to information, resources and expertise. This in turn could lead to significant efficiency gains by law enforcement authorities and therefore may result in scaling up the prosecution and enforcement of national law relevant to Global Challenges.

74. Second, the Mechanism would prepare cases and provide information and analysis to national law enforcement authorities. Once the Mechanism has shared

all relevant information, it will be for that authority to close the evidence gap by conducting further investigations, to prosecute or otherwise enforce a case and, if applicable, to impose and execute any sentence, fine or other sanction. The national authority, if it chooses to pursue a case, will do so within its structures and with the resources allocated to it by its own government. The Mechanism may provide ongoing assistance and support, but does not take a leading role in the prosecution or enforcement of a case. Accordingly, no additional financial or human resources will be required for those tasks.

75.   Third, in any event, for the Mechanism to efficiently contribute to addressing Global Challenges, it will require sufficient staff—primarily lawyers, analysts and open source investigators—and some additional financial resources. However, compared to its potential benefits, the resources required are relatively low. In addition, because the Mechanism is a centralized expert organization and would support many national law enforcement authorities around the world, national authorities would not be required to build the same capacity within its own system. In any event a similar expert body which would operate only domestically would not be able to coordinate the work of national law enforcement beyond the boundaries of a national jurisdiction and it would therefore be much less effective in addressing Global Challenges.

5. Trust and Insight

76.   The power to decide whether to prosecute or otherwise enforce a case, the power to adjudicate a case and the power to impose and execute any sentence, fine or other sanction lie with the national authorities—and these powers are exercised consistent with national laws. In most countries, there is already a large degree of public trust in those authorities. In addition, because the applicable legal provisions are public and the relevant criminal or other proceedings are conducted publicly, there is a large degree of transparency in how justice is administered domestically.

77.   The Mechanism would also operate transparently. First, the decisions of its governance structures would be public. This applies in particular to the priorities set for the Mechanism's work. Such announcements may in themselves come to contribute to the prevention of crimes, as it would signal to the likelihood of enhanced scrutiny given to identified types of unlawful activity, and thus potentially an increased risk of criminal prosecution or other forms of law enforcement.

78.   Second, the Mechanism may—in accordance with its values and any agreement with the relevant state authorities—publicise the fact that it has shared a case concerning a certain Global Challenge with a national authority. Although the Mechanism may not provide details of a case or the underlying information—in order to protect an ongoing investigation and the sources of information—even limited publicity could have a positive effect. For example, it could trigger a form of peer control between states and thereby help contribute to a decision by the competent national authority in favour of national action. It also signals to all Mechanism partners and information-providers that their efforts are meaningful, and establishes the credibility of the Mechanism for future cases.

6. Flexibility

79.   Because the Mechanism can be established by various means, it is highly flexible. Even if it is eventually given the status of an international organisation, which requires a treaty among a number of like-minded states, this treaty can be amended by the State Parties at any time by following a procedure set out in the treaty itself.

80.   In addition, the Mechanism's governance structure would in any event vest the Director-General with the greatest possible flexibility and independence to adjust the Mechanism's operations to changing circumstances, consistent with its mandate and priorities, and thereby ensure the efficiency of the Mechanism in addressing Global Challenges in a fast evolving world. By working closely with expert organizations and individuals around the world, the Director-General will be well equipped to identify and apply new methodologies to obtain and analyse information and new technologies. The Mechanism could at any time extend its cooperation to new organizations, and identify and apply new law as enacted by the national authorities with which it will cooperate.

7. Protection against the Abuse of Power

81.   The most effective protection against the Mechanism's abuse of power lies in the fact that, ultimately, it will be the decision of a national authority whether and how to prosecute or otherwise enforce a case initially prepared by the Mechanism. Cases will be prosecuted, enforced and adjudicated by the competent national authorities in accordance with the application domestic law. Accordingly, there is virtually no risk that the Mechanism's activity would unduly interfere with the internal affairs of states.

82.   To ensure that the Mechanism does not favour special interests of individuals, groups, organizations or states, the Mechanism's governing instrument will further set out clear principles that guide its activities. This will include reference to core values, as previously described, as well as the distinct competences of its different governing bodies. It should also positively set out a number of objective criteria that should be taken into consideration in setting the priorities of the Mechanism, with a view to ensuring its efficiency in addressing Global Challenges while not focusing unduly on a particular region or group.

83.   Further oversight of the operations of the Mechanism may be exercised by relevant governance structures. Thus, while the Director-General should have a degree of independence, he or she shall be advised by a Board of Advisors. Moreover, the Board of Trustees or Assembly of States Parties (as applicable) may set out objective principles which should be applied when selecting cases. These principles could be similar to those set out in the [Policy Paper on Case Selection and Prioritisation](#) of the ICC's Office of the Prosecutor.

84.   Finally, the Mechanism's Standing Committee would monitor the proper implementation of the budget, oversee management, and report on these items as required. In addition, provision may be made enabling the removal of the Director-General in case of serious misconduct or a serious breach of his or her duties.

8. Accountability

85.   Similar mechanisms that protect against abuse of power also ensure accountability of the relevant decision-makers involved in the Mechanism.

86.   Each state has its own mechanism to ensure that judges, prosecutors and other law enforcement agents exercise their powers within the framework prescribed by national law, and to hold them accountable in the event that they exceed their powers. Because cases prepared by the Mechanism will ultimately be prosecuted, enforced and adjudicated by the national authorities pursuant to domestic law, these control mechanisms will apply.

87.   The governing instrument of the Mechanism should clearly set out the objectives of the Mechanism, and the lines of accountability between its different organs. As mentioned above, the Director-General may be held accountable in case of serious misconduct or a serious breach of his or her duties. The Director-General

shall, in turn, hold other staff members of the Mechanism accountable for the performance of their duties.

88.   Persons or organisations who provide information to the Mechanism are not its agents, and are not subject to its direct control. However, by ensuring transparency as to the conditions on which the Mechanism will work with third parties (and especially that it will only receive and act upon information in compliance with applicable national law), the Mechanism will ensure there is no expectation that it can or should be held accountable for their conduct.

89.   Moreover, the Mechanism is also accountable by the 'discipline of natural consequences'. Very simply, with no 'hard' powers of its own, the Mechanism can only work while it maintains credibility with information-providers, states, and other partners. For this reason, it has a powerful incentive to ensure that it is proactive in addressing any issues of concern.