

**Fourteenth session**

The Hague, 18-26 November 2015

Report of the Bureau on cooperation**Addendum II****Annex V****Summary of the Botswana seminar on fostering cooperation
(29-30 October 2015)****A. Introduction**

1. On 29 and 30 October 2015, a High-level Regional Seminar was held in Gaborone, Botswana with the participation of government representatives from Angola, Botswana, Comoros, Lesotho, Madagascar, Malawi, Mozambique, Namibia, Seychelles, and Zambia, along with regional experts from the United Nations Office on Drugs and Crime and the Southern Africa Litigation Center, and with officials and representatives of the International Criminal Court (ICC). The seminar focused on cooperation between the ICC and States, as well as the connection between cooperation and regional and national capacity building. More specifically, the participants held in-depth discussions on regional experiences on fighting impunity, the need for political support to the Court, cooperation with ICC investigations and preliminary examinations, victim and witness protection as well as on voluntary framework agreements for witness relocation, interim release and enforcement of sentences.

2. The event was organised by the ICC in close cooperation with the Government of Botswana and in consultation with the Bureau co-facilitators on cooperation, the Permanent Representative of the Netherlands to the ICC and the Ambassador of Senegal to the Netherlands. It was funded by the European Commission and the Governments of the Kingdom of the Netherlands and the Kingdom of Norway.

3. The seminar highlighted the importance of judicial cooperation nationally, regionally and with the Court, and explored avenues on how the capacity of States in this regard could be strengthened. The seminar was held in English under Chatham House rules, in order to encourage open and productive discussions, and was a continuation of the seminars that took place last year in Buenos Aires, Argentina on 20-21 May 2014, Accra, Ghana on 3-4 July 2014, Cotonou, Bénin on 3-4 November 2014 as well as this year in San José, Costa Rica, on 9-10 July 2015. A broad consensus at the Seminar was that while there may be areas in which the dialogue and cooperation between the States and the ICC could be further enhanced, cooperation is a must and pivotal for the Court's functioning.

4. In her opening address, the Hon. Dr Pelonomi Venson-Moitoi, Minister of Foreign Affairs and International Cooperation of the Republic of Botswana, stressed that the Seminar provided the "necessary platform for an exchange of views in an open, frank and

transparent manner" on issues pertaining to the ICC and the Rome Statute. She pointed out that the ICC "should be allowed to operate independently and without interference or intimidation". Minister Venson-Moitoi also recalled the important role that States Parties from Africa, as the largest regional bloc, play within the Rome Statute system and she urged the participating States to use this Seminar's platform to "strengthen relations between African States and the Court by engaging and identifying critical measures that will improve [African States'] communication channels with the Court". The Attorney General of Botswana, Dr Athaliah Molokomme, held that States Parties are the parents of the Court and that all sides have to work together towards harmonious and effective relationships.

B. General cooperation and political support

5. The Prosecutor of the ICC, Fatou Bensouda, saluted "Botswana's leading role in the promotion of the international rule of law, and in particular, its steadfast support for the ICC from its very inception to the present day." Prosecutor Bensouda stressed that "the Court and its States Parties must remain unwavering in our resolve to create a world that seeks justice for atrocity crimes. Fighting impunity for such serious crimes is our shared responsibility, and only through continuous engagement, discussion, and support can we achieve this necessary common goal."

6. Judge Sanji Mmasenono Monageng said that the ICC is "at the centre of an evolving, global paradigm of justice that States have created, in order to secure a safer and more just world for future generations." She added that "justice under the Rome Statute system can only thrive with the active support of States. Cooperation is a central pillar of this system – the ICC itself does not have enforcement powers. From investigations to enforcement, from arrest and transfer of suspects to witness protection, the ICC needs the cooperation and unwavering commitment of States Parties to do the job it has been assigned."

7. Closing officially the High-level Seminar in Gaborone, the Hon. Shaw Kgathi, Minister of Defence, Justice and Security of the Republic of Botswana, noted that during the two-day Seminar, the "delegates reaffirmed their countries' commitment to the ICC and the fight against impunity". He added that some of the main challenges include "inadequate legal and institutional frameworks at both regional and national levels", dispelling "misperceptions about the ICC, for example that it is targeting Africa", and lack of voluntary cooperation agreements with the Court. He concluded that there was a "general consensus that these challenges can only be resolved by the States Parties through dialogue and engagement with the International Criminal Court".

C. Voluntary agreements

8. The seminar allowed for an open and constructive dialogue among the participating States and the Court on the implications of entering into voluntary agreements with the Court on witness relocation, enforcement agreements, agreements on interim release and release of acquitted persons. These agreements create a framework that enables States to adapt the provisions to their legal systems in a manner that facilitates cooperation with the Court. The decision to accept specific persons under these agreements is nonetheless subject to approval in each case.

D. Witness protection

9. Participants had privileged and fruitful exchanges of views on: the system of witness protection in place at the Court, the challenges faced by States and the Court in ensuring the protection of witnesses, the relocation agreements and the Special Fund for relocations, and the complementary role of national systems of protection. The Court, while recognizing its responsibility for protecting both the prosecution and defence witnesses, emphasized the crucial importance of States Parties' cooperation in this area, through the signature of relocation agreements or ad hoc arrangements. Even if relocation of witnesses to other States was a measure of last resort, the Court expressed that it was facing a strain on its

capacity to relocate. It was emphasised that the current number of agreements was not sufficient and that the Court approached States Parties in all regions to enhance the capacity. Broad regional capacity would also allow for finding solutions that, while fulfilling the strict safety requirements, would minimize the humanitarian costs of geographical distance and the change of linguistic and cultural environment when relocating witnesses and their families.

10. Through the use of the Special Fund for relocations, States can benefit from assistance from the Court and are able to receive witnesses on a cost neutral basis. States could also benefit from the assistance of partners of the Court whose mandate is to provide capacity building in the area of the protection of witnesses. Such assistance will strengthen the national witness protection capacities in general.

E. Universality of the Rome Statute

11. The seminar offered an opportunity for high-level delegations from Angola and Mozambique, still not party to the Rome Statute, to engage with the Court and a number of States Parties to the Rome Statute from the region on various issues, with the purpose of finding more about the actual operations and functioning of the Court and facilitating Angola's and Mozambique's ratification of the Rome Statute.

F. How to take cooperation further

12. The participants discussed the recommendations which could be given to the Court and the States Parties in order to take cooperation further. The issues discussed included: agreements and arrangements on witness relocation, developing and strengthening regional networks, identifying national focal points, capacity building initiatives developed by States or other relevant stakeholders in the justice sector, implementing legislation, as well as improved routines for communication between States Parties and the Court.
