

## Annex II

### Recommendations on States' Cooperation with the International Criminal Court (ICC): Experiences and Priorities

#### A. Why is cooperation important?

1. Without cooperation the **ICC cannot function**, because it relies on its States Parties as its **enforcement pillar**.
2. When States adopted the ICC's founding treaty, the Rome Statute, they decided that the Court would not have enforcement powers of its own; rather, the **States Parties have the responsibility to support the ICC's judicial and prosecutorial functions** by providing concrete cooperation at all stages of the Court's activities, including investigations, arrest and transfer of suspects, access to evidence and witnesses, protection of individuals, and the enforcement of judicial decisions and sentences.
3. **Part IX of the Rome Statute** clearly stipulates States Parties' **legal obligations** to support and facilitate the work of the Court throughout its judicial proceedings. Furthermore, various forms of **voluntary cooperation**, such as the relocation of witnesses, are essential to ensure the efficient functioning of the Court, and a fair and expeditious trial.

#### B. What are the 66 Recommendations?

4. In 2007, the Assembly of States Parties to the Rome Statute (ASP) adopted a document that contains a comprehensive list of 66 recommendations on cooperation. These recommendations are a **useful tool for States Parties and the ICC**, as they:
  - (a) Identify **key areas of priority and challenges** regarding cooperation; and
  - (b) Give **guidance** and suggest **possible remedies** for overcoming challenges.

#### C. The priority is now the full implementation of the 66 Recommendations

5. Taking stock of their experiences, States Parties and the Court have identified specific **challenges and lessons learned in terms of the implementation** of the 66 recommendations, as well as some new cooperation challenges that were not adequately addressed by them.
6. Looking forward, the following **seven key areas requiring attention** have been identified:
  - (a) Enacting the **legal mechanisms** set in the Rome Statute and setting up **effective procedures and structures** regarding cooperation and judicial assistance
    - (i) Key issues include adoption of **comprehensive implementing legislation** of Part IX of the Rome Statute, and **ratification of the Agreement on the Privileges and Immunities of the Court**<sup>1</sup>.
    - (ii) **Designating national focal points** for ICC matters and adopting **simplified and centralized national procedures** have been identified as useful practices for effective cooperation.
  - (b) Cooperation in support of **preliminary examinations, investigations, prosecutions and judicial proceedings** (including with the Defence)
    - (i) Full cooperation is essential to enable the ICC to **carry out its mandate effectively and efficiently**, and to ensure that justice is done.

<sup>1</sup> Done at New York on 9 September 2002, in force on 22 July 2004, United Nations, Treaty Series, vol. 2271, No.40446, Depositary: Secretary-General of the United Nations, [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-13&chapter=18&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-13&chapter=18&lang=en).

- (ii) Increased attention is required to prevent and address instances of **non-cooperation** and to incentivize full compliance with States Parties' legal obligations under the Rome Statute.
- (c) **Arrest and surrender**
  - (i) Several ICC suspects **remain at large**, some for more than 10 years.
  - (ii) Concrete **arrest strategies** are required.
- (d) Identification, seizing and freezing of **assets**
  - (i) Important for the purposes of potentially providing evidence to demonstrate **linkage** between the crimes and the individuals identified, securing funds for possible **reparations** to victims if the accused person is found guilty, covering costs of **legal aid**; as well as contributing to the **prevention** of further crimes.
  - (ii) The Court and the States Parties need to work together to identify **effective legal and practical mechanisms** for enhanced cooperation in this area.
- (e) **Voluntary cooperation**
  - (i) Certain highly important forms of cooperation such as the **relocation of witnesses** under threat, the **enforcement of sentences**, and **receiving acquitted persons** or suspects or accused on **interim release**, are not strict obligations for States Parties under the Rome Statute, but the ICC cannot perform these functions on its own and it needs the cooperation of States.
  - (ii) A limited number of States Parties have concluded **cooperation agreements** with the ICC on the abovementioned issues, but much more support is needed, also to ensure that the burden of cooperation is shared collectively by States.
  - (iii) Cooperation is also important in areas such as logistics, security and personnel.
- (f) **Diplomatic and public support** in national, bilateral, regional and international settings
  - (i) The ICC is a relatively young permanent international institution; active efforts by States to **raise awareness and to enhance understanding** of the Court are essential for broadening international support for the Rome Statute system of international criminal justice.
  - (ii) States can express their support by making **public statements** in international fora, as well as through **diplomatic dialogue** in various settings.
  - (iii) States Parties play a key role in ensuring the support of the **United Nations**, and **regional and other intergovernmental organizations** for the ICC.
- (g) **Inter-State cooperation** in the context of the Rome Statute system
  - (i) While concrete cooperation requests are usually addressed by each State individually, helping the ICC to fulfil its mandate is the collective responsibility of the community of States Parties. Progress on many of the concrete steps discussed above will benefit from **further exchanges of experience** and **mutual assistance** where appropriate between States, the Court and other relevant partners, including civil society.

7. **To see all the 66 recommendations**, go to [http://www.icc-cpi.int/iccdocs/asp\\_docs/Resolutions/ICC-ASP-ASP6-Res-02-ENG.pdf#page=10](http://www.icc-cpi.int/iccdocs/asp_docs/Resolutions/ICC-ASP-ASP6-Res-02-ENG.pdf#page=10)