



Assembly of States Parties

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Report of the Bureau on non-cooperation

I. Introduction

1. Article 112, paragraph (2) (f), of the Rome Statute provides that “the Assembly shall consider pursuant to article 87, paragraphs 5 and 7, any question relating to non-cooperation.”

2. At its tenth session, the Assembly of States Parties (“the Assembly”) adopted the “Assembly Procedures relating to non-cooperation.”¹ At its subsequent sessions the Assembly approved mandates with regard to non-cooperation and requested the Bureau to submit reports on the implementation of the non-cooperation procedures. The present report is submitted pursuant to the mandate approved at the fifteenth session of the Assembly.²

3. In operative paragraph 20 of resolution ICC-ASP/15/Res.5, entitled “Strengthening the International Criminal Court and the Assembly of States Parties”, adopted at its fifteenth session, the Assembly “[r]ecall[ed] the non-cooperation procedures adopted by the Assembly in ICC-ASP/10/Res.5, recognize[d] with concern the negative impact that the non-execution of Court requests continues to have on the ability of the Court to execute its mandate, [took] note of the decisions of the Court on non-cooperation findings in relation to Djibouti, Uganda and Kenya, and of the report of the Bureau on non-cooperation, welcome[d] the efforts of the President of the Assembly in implementing the procedures on non-cooperation during his tenure and recal[ed] that the President serves ex officio as focal point for his or her region, call[ed] upon all stakeholders, at all levels, to continue assisting the President of the Assembly, including when accomplishing his task with the support of the regional focal points for non-cooperation, and encourage[d] all States Parties to cooperate towards a successful outcome of the review of the non-cooperation procedures.”

4. In operative paragraphs 21 and 22 of resolution ICC-ASP/15/Res.5, the Assembly also “[r]ecall[ed] the role of the Assembly [of States Parties] and the Security Council with respect to non-cooperation as provided for by articles 87, paragraph 5, and 87, paragraph 7, of the Rome Statute, welcome[d] the efforts of States Parties to strengthen the relationship between the Court and the Council” and “call[ed] upon States Parties to continue their efforts to ensure that the Security Council addresses the communications received from the Court on non-cooperation pursuant to the Rome Statute, encourage[d] the President of the Assembly and the Bureau to continue consulting with the Security Council and also encourage[d] both the Assembly and the Security Council to strengthen their mutual engagement on this matter.”

5. At its fifteenth session, the Assembly “request[ed] the President of the Assembly to continue to engage actively and constructively with all relevant stakeholders, in accordance with the Assembly procedures relating to non-cooperation, both to prevent instances of

¹ ICC-ASP/10/Res.5, para. 9 and annex, amended via ICC-ASP/11/Res.8, para. 10 and annex.

² ICC-ASP/15/Res.5, annex I, paras.3(j)-(m).

non-cooperation and to follow up on a matter of non-cooperation referred by the Court to the Assembly.”³ The Assembly further requested the Bureau to “continue to actively engage throughout the inter-sessional period with all relevant stakeholders to continue to ensure effective implementation of the Assembly procedures relating to non-cooperation.”⁴ The Assembly also requested the Bureau, through the focal points on non-cooperation, to “engage with all relevant stakeholders to conduct a review of the Assembly procedures relating to non-cooperation, with a view to recommending any necessary additions or amendments”.⁵

6. Paragraph 16 of the Assembly procedures on non-cooperation calls for the appointment of four regional focal points on non-cooperation from among the members of the Bureau; the President serves *ex officio* as focal point for his own region. In 2012, the Assembly decided to amend paragraph 16 of the procedures on non-cooperation⁶ in order to allow the Bureau to appoint four or, if so requested by the President of the Assembly, five focal points from among all States Parties, on the basis of equitable geographical representation.

7. At its 20 February 2017 meeting, the Bureau appointed Australia, Czech Republic, Japan, Peru and Senegal as non-cooperation focal points (“focal points”) for their respective regional groups. The focal points are appointed on an *ad country* mandate, which implies that the respective countries are engaged at high diplomatic and political levels in New York, The Hague, capitals and in other embassies, where appropriate.

8. The present report covers activities during the inter-sessional period between the fifteenth and sixteenth session of the Assembly of States Parties.

II. Court proceedings and findings: States Parties

9. Pursuant to article 86 of the Rome Statute, States Parties shall, in accordance with the provisions of the Statute, cooperate fully with the Court in its investigation and prosecution of crimes within the jurisdiction of the Court. Pursuant to article 89, States Parties are obliged to execute the Court’s pending orders for the arrest and surrender of a person.

10. In relation to the situation in Darfur, during the period covered by this report President Omar Al-Bashir of Sudan visited Jordan, a State Party to the Statute, on 29 March 2017, and Uganda, a State Party to the Statute, on 14 to 15 November 2017.

11. Pre-Trial Chamber II was seized, under article 87(7) of the Rome Statute, with the question of whether Jordan failed to comply with the Court’s request for arrest and surrender of Omar Al-Bashir, contrary to the provisions of the Statute. No final decision was issued on this matter within the period covered by this report.

12. On 6 July 2017, Pre-Trial Chamber II issued a “Decision under article 87(7) of the Rome Statute on the non-compliance by South Africa with the request by the Court for the arrest and surrender of Omar Al-Bashir”.⁷ The decision stated the Chamber’s finding, by majority, that “South Africa failed to comply with its obligations under the Statute by not executing the Court’s request for the arrest of Omar Al-Bashir and his surrender to the Court while he was on South African territory between 13 and 15 June 2015” and its decision that “in the present circumstances, a referral to the Assembly of States Parties or the Security Council ... is not appropriate”.⁸

³ ICC-ASP/15/Res.5, annex I, para. 3(j).

⁴ *Ibid.*, para. 3(l).

⁵ *Ibid.*, para. 3(m).

⁶ ICC-ASP/11/Res.8, annex I.

⁷ ICC-02/05-01/09-302.

⁸ *Ibid.*, page 53.

III. Court proceedings and findings: States under an obligation to cooperate with the Court pursuant to a decision of the United Nations Security Council

13. Pursuant to Security Council Resolution 1593 (2005), the Government of Sudan and all other parties to the conflict in Darfur shall cooperate fully with and provide any necessary assistance to the Court and the Prosecutor.

14. Pursuant to Security Council Resolution 1970 (2011), the Libyan authorities shall cooperate fully with and provide any necessary assistance to the Court and the Prosecutor.

15. No Court proceedings took place in relation to States under an obligation to cooperate with the Court pursuant to a decision of the United Nations Security Council.

IV. Court proceedings and findings: States not Parties

16. While States not party to the Rome Statute have no obligation under it, pursuant to Security Council resolutions 1593 (2005) and 1970 (2011), all States and concerned regional and other international organizations are urged to fully cooperate with the Court and the Prosecutor.

17. With respect to Sudan, on 11 April 2017, Pre-Trial Chamber II issued a “Report of the Registry on information received regarding Omar Al-Bashir’s travels to States Parties and Non-States Parties from 5 October 2016 to 6 April 2017 and other efforts conducted by the Registry regarding purported visits”.⁹

18. During the reporting period, the Court, via the Registry, invited the competent authorities of numerous non-States Parties to the Statute to arrest President Omar Al-Bashir, in the event he entered their territories, and to surrender him to the Court, reminding them of Security Council resolution 1593 (2005), and invited the said States to cooperate in President Al-Bashir’s arrest and surrender to the Court. These States included: the Kingdom of Saudi Arabia, in relation to a visit on 23 January 2017; the Kingdom of Morocco, in relation to a visit from 7 to 18 November 2016; the Federal Democratic Republic of Ethiopia, in relation to visits on 9 November 2016,¹⁰ 9 December 2016, and 22 to 31 January 2017; the Republic of Equatorial Guinea, in relation to a visit on 24 November 2016; and the United Arab Emirates, in relation to a visit in November 2016.

19. None of the concerned authorities responded to the requests within the reporting period.

20. No Court proceedings took place regarding the non-States Parties.

V. Actions undertaken by the President of the Assembly and the Bureau, States Parties and other stakeholders

21. Throughout the year, the President of the Assembly recalled the importance for States to spare no effort in executing the arrest warrants issued by the Court. The President forwarded to States Parties decisions of the Court related to non-cooperation.

22. The focal points were grateful to receive information about the possible travel of persons subject to warrants of arrest issued by the Court known to have engaged in international travel during the reporting period, from the Court, from various States Parties and from representatives of civil society.

23. Where such information originated from States Parties or civil society, the focal points shared such information with the Court.

24. Working through their respective regional groups, the focal points also kept States Parties informed regarding any proposed travel.

⁹ ICC-02/05-01/09-296.

¹⁰ The Registry did not take any action with regards to this visit, having been informed only after the visit had been concluded.

25. The focal points were grateful that States Parties kept them informed of their diplomatic action with respect to such travel. The focal points commend those States Parties that took steps to encourage other States to meet their cooperation obligations in full.

VI. The United Nations Security Council

26. During the reporting period, the Prosecutor presented her twenty-fourth and twenty-fifth reports to the Security Council pursuant to resolution 1593 (2005), on 13 December 2016 and 8 June 2017, respectively. The Prosecutor recalled that Sudan has the primary responsibility to implement outstanding arrest warrants and has consistently and expressly refused to do so. The Prosecutor stated that it is the responsibility of the Security Council to provide the necessary support to enable the Court to carry out its mandate under the Rome Statute following the referral in resolution 1593, including by taking decisive steps in support of the arrest of suspects.

27. The Prosecutor briefed the Security Council on the travel of President Al-Bashir and once again requested the Security Council to use its powers to ensure the immediate arrest and surrender of all Sudanese persons against whom arrest warrants are in force.

28. The Prosecutor presented her twelfth, thirteenth and fourteenth reports to the Security Council pursuant to resolution 1970 (2011), with reference to several aspects relevant to cooperation and non-cooperation, on 9 November 2016, 8 May and 8 November 2017, respectively.

VII. Consultations on non-cooperation

29. Pursuant to the mandate of the Bureau, the focal points on non-cooperation engaged in consultations with relevant stakeholders in order to issue recommendations on how to improve the implementation of the non-cooperation procedures.

30. On 11 May 2017, the focal points convened the first consultation with States Parties, where they asked for suggestions regarding the extent of the review of the Assembly Procedures Relating to Non-Cooperation, with a view to recommending any necessary additions or amendments, as mandated in resolution ICC-ASP/15/Res.5. States Parties expressed their support for the improvement of the implementation of the non-cooperation procedures and encouraged the focal points to provide initial updates of the Assembly Procedures relating to non-cooperation.

31. On 3 November 2017, the focal points circulated a document containing proposed updates to the Assembly Procedures Relating to Non-Cooperation where they suggested both technical updates as well as improvements to the non-cooperation procedures reflecting established practice with the aim to enhance their effectiveness.

32. The focal points intend to continue working on the revisions to the document during the course of 2018.

VIII. Recommendations

33. The focal points recommend that the Assembly take note of the present report and adopt the proposed language concerning mandates on non-cooperation that are contained in the annex of this report.

34. The focal points consider that they and the President of the Assembly should continue to engage in any necessary measures that ensure knowledge, understanding and implementation of measures by States Parties and the Assembly, to prevent instances of non-cooperation.

35. With respect to the application of the procedures on non-cooperation, the Assembly should request the Bureau, including the President and the focal points, to implement the Assembly procedures relating to non-cooperation more consistently.

36. The focal points suggest that future sessions of Assembly include an agenda item to consider non-cooperation issues arising throughout the inter-sessional periods.
37. Additionally, during the inter-sessional period, the focal points will continue consultations on means to strengthen the application of the procedures on non-cooperation.
38. The focal points should continue to monitor judicial developments as well as travels of persons against whom warrants of arrest have been issued with the assistance of States Parties, and promptly inform the Court of any relevant information.
39. The focal points consider that the Court should continue to provide up-to-date information to the Assembly on judicial developments related to non-cooperation via the President and the focal points.
40. The focal points further recommend that States Parties continue to inform them on measures undertaken to prevent or to address instances of non-cooperation.

Annex

Language for the omnibus resolution

1. *Recalls* the non-cooperation procedures adopted by the Assembly in ICC-ASP/10/Res.5, *recognizes with concern* the negative impact that the non-execution of Court requests continues to have on the ability of the Court to execute its mandate, *takes note* of the decision of the Court on non-cooperation in relation to South Africa, and of the report of the Bureau on non-cooperation¹, *welcomes* the efforts of the President of the Assembly in implementing the procedures on non-cooperation during his tenure and *recalls* that the President serves ex officio as focal point for his or her region², *calls upon* all stakeholders, at all levels, to continue assisting the President of the Assembly, including when accomplishing his task with the support of the regional focal points for non-cooperation, and *encourages* all States Parties to continue cooperating towards a successful outcome of the review of the non-cooperation procedures;
2. *Recalls* the role of the Assembly of States Parties and the Security Council with respect to non-cooperation as provided for by articles 87, paragraph 5, and 87, paragraph 7, of the Rome Statute, and *welcomes* the efforts of States Parties to strengthen the relationship between the Court and the Council;
3. *Calls upon* States Parties to continue their efforts to ensure that the Security Council addresses the communications received from the Court on non-cooperation pursuant to the Rome Statute, *encourages* the President of the Assembly and the Bureau to continue consulting with the Security Council and *also encourages* both the Assembly and the Security Council to strengthen their mutual engagement on this matter;
4. *Noting* the orders of the Pre-Trial Chamber to the Registrar concerning action to be taken in case of information relating to travel of suspects,³ *urges* States to share with the focal points on non-cooperation any information concerning potential or confirmed travel of persons against whom an arrest warrant has been issued;
5. *Recalls* the Toolkit for the Implementation of the Informal Dimension of the Assembly Procedures Relating to Non-Cooperation and encourages States Parties to make use of the Toolkit as they see fit in order to improve the implementation of the Assembly Procedures relating to non-cooperation⁴;

Language for omnibus resolution mandates annex

Requests the President of the Assembly to continue to engage actively and constructively with all relevant stakeholders in accordance with the Assembly Procedures Relating to Non-Cooperation, both to prevent instances of non-cooperation and to follow up on any matter of non-cooperation referred by the Court to the Assembly;

Requests that any information concerning potential or confirmed travel of persons against whom an arrest warrant has been issued be promptly shared with the Court by the focal points on non-cooperation;

Requests the Bureau to continue to actively engage throughout the intersessional period with all relevant stakeholders to continue to ensure effective implementation of the

¹ ICC-ASP/16/17.

² ICC-ASP/11/29, para. 12.

³ Orders to the Registrar concerning action to be taken in case of information relating to travel of suspects”, ICC-01/04-635 (Situation in the DRC); ICC-02/04-211 (Situation in Uganda); ICC-01/05-83 (Situation in the Central African Republic); ICC-02/05-247 (Situation in Darfur); ICC-01/09-151 (situation in Kenya), PTC-I, ICC-01/11-46 (Situation in Libya); ICC-02/11-47 (Situation in Cote d’Ivoire); ICC-01/12-25 (Situation in Mali); ICC-01/13-16 (Situation regarding the registered vessels of the Comoros, Hellenic Republic and the Kingdom of Cambodia vessels); ICC-01/14-6 (Situation in the Central African Republic II); ICC-02/05-01/09-235-Corr (Al-Bashir case); ICC-02/05-01/07-71 (Harun and Kushayb case); ICC-01/11-01/11-589 (Saif al Islam case); and ICC-02/05-01/12-31 (Hussain case); ICC-02/11-01/12-73 (Simone Gbagbo case); ICC-01/04-01/12-12 (Lubanga case); ICC-02/04-01/15-222 (Ongwen case); ICC-01/09-01/13-29 (Barasa case); and ICC-01/09-01/15-6 (Gicheru and Bett case).

⁴ ICC-ASP/10/Res.5.

Assembly Procedures relating to non-cooperation and to submit a report on its activities to the Assembly at its seventeenth session;

Requests the Bureau, through the focal points on non-cooperation, to continue engaging with all relevant stakeholders to conduct a review of the Assembly Procedures relating to non-cooperation, with a view to recommending any necessary additions or amendments;
