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Report of the Court on cooperation
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I. Introduction

1. This Report on Cooperation is submitted by the International Criminal Court (“ICC” or “Court”) pursuant to paragraph 32 of resolution ICC-ASP/16/Res.2 (“2017 resolution on cooperation”). It covers the period of 2 September 2017 to 1 September 2018.¹
2. Similar to the Court’s 2014, 2015, 2016 and 2017 cooperation reports², this report is meant to provide an update on the different cooperation efforts undertaken by the Court with the support of States and other stakeholders during the reporting period.
3. This report should be read in conjunction with the latest ICC annual report on activities to the UN (A/73/334), providing, *inter alia*, information on the Court’s recent cooperation with the United Nations (“UN”).
4. The Court also recalls its analytical reports on cooperation matters, notably its general 2013 cooperation report³ and its specific 2013 report on cooperation between the Court and the UN,⁴ as useful sources of information regarding the key cooperation needs of the Court which remain valid to date.
5. Finally, the Court underlines the continued relevance of the 66 recommendations on cooperation adopted by States Parties in 2007,⁵ as well as the flyer that was produced by the co-facilitators of the working group on cooperation in 2015⁶ in collaboration with the Court in order to promote the 66 recommendations and increase understanding and implementation of them.
6. Indeed, the Court strongly believes that both documents continue to form an important basis for cooperation discussions and efforts, including making the assistance to the Court more efficient and effective. The Court therefore welcomed the decision of the Assembly of States Parties (“Assembly” or “ASP”) to request the Bureau “through its Working Groups, to continue its review of the implementation of the 66 recommendations, in close cooperation with the Court, where appropriate”.⁷
7. During the reporting period, the Court had the opportunity to continue to engage with States Parties on its cooperation priorities and challenges, as well as to brief them regularly on its ongoing efforts aimed at advancing these. In this context, the Court expresses its gratitude to the co-facilitators of the working group on cooperation, for their commitment and efforts.
8. Using as a compass the seven priority areas for cooperation identified in the 66 recommendations flyer, this report is intended to provide (i) an update on the efforts undertaken by the Court during the reporting period to strengthen cooperation in those areas; and (ii) the Court’s contribution to the 66 recommendations implementation review, identifying recommendations for a way forward for each cooperation priority, based on the Court’s experience and lessons learned in the past 15 years of operation.
9. Having in mind that 2018 marks the 20th anniversary of the adoption of the Rome Statute, the Court believes it represents an opportunity for all actors of the Rome Statute system of cooperation to review practices and achievements, and propose reflections and new avenues to enhance cooperation between States and the Court, and through that, the overall efficiency and effectiveness of the Court and the Rome Statute system.

¹ Certain information is not provided in this report in order to respect the confidentiality of a number of investigative and prosecutorial activities by the Office of the Prosecutor, as well as decisions and orders by the Chambers.

² ICC-ASP/13/23, ICC-ASP/14/27, ICC-ASP/15/9 and ICC-ASP/16/16.

³ ICC-ASP/12/35.

⁴ ICC-ASP/12/42.

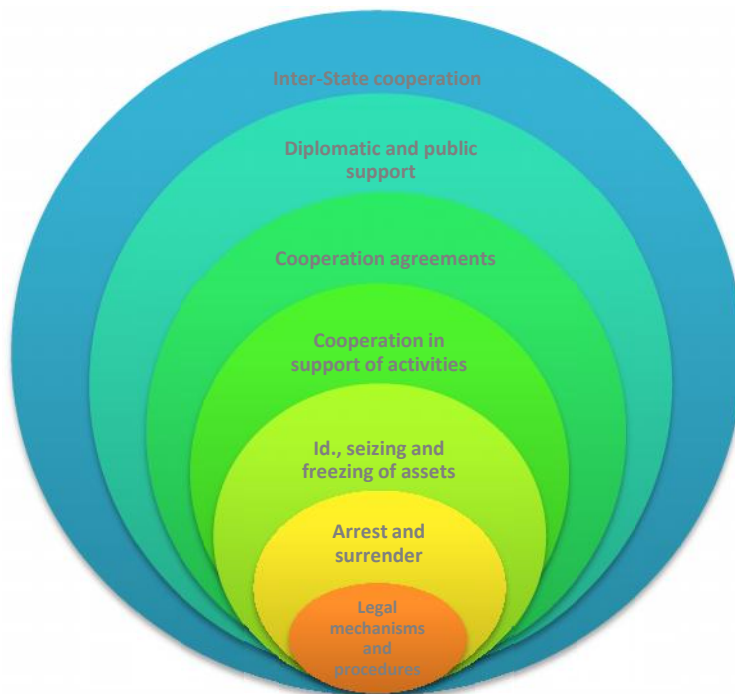
⁵ Resolution ICC-ASP/6/Res.2, annex II.

⁶ “Recommendations on States’ Cooperation with the International Criminal Court (ICC): Experiences and Priorities”, [https://www.icc-cpi.int/news/seminarBooks/66%20Recommendations%20Flyer%20\(ENG\).pdf](https://www.icc-cpi.int/news/seminarBooks/66%20Recommendations%20Flyer%20(ENG).pdf).

⁷ ICC-ASP/16/Res.2, para. 27.

II. Update on ICC efforts regarding the seven priority areas for cooperation identified in the 66 recommendations – and recommendations on way forward

The seven priority areas for cooperation identified in the 66 Recommendations Flyer



A. Enacting the legal mechanisms set in the Rome Statute and setting up effective procedures and structures regarding cooperation and judicial assistance

1. Update on ICC efforts during the reporting period

10. On 12-15 September 2017, the ICC held its fifth Seminar on Cooperation with national focal points, in The Hague. Since 2011, the Court has organized five technical seminars targeting its focal points on cooperation, thanks to the financial support of the European Commission, the Organisation Internationale de la Francophonie (“OIF”), the Kingdom of the Netherlands and the Kingdom of Norway; these week-long gatherings are aimed at strengthening cooperation between the ICC and a select group of States representatives, primarily States where the Court has active situations under investigation, but also other States on whose assistance the Court relies within the context of its prosecutorial and judicial activities. Seven years of experience organising these seminars has demonstrated that these gatherings provide a unique platform to enhance dialogue and cooperation between the Court and States, including on new developments in terms of technical areas of cooperation (such as witness protection, disclosure, cooperation with the Defence, financial investigations and asset recovery), but also that it has contributed to the development of an informal network of national experts on cooperation with the Court that can share and learn from each other’s experiences. The Court has benefited in this context from the support and participation of the HWG cooperation co-facilitators, as well as from regional and specialized networks and organizations, that have also shared their expertise and provided new avenues for States to interact and seek support should they need it to fulfil their cooperation obligations vis-à-vis the Court.

11. In the same vein, the Court has also welcomed to participation during the last focal points seminar of the HWG complementarity co-facilitators, Australia and Romania, who shared with the States representatives present their ongoing efforts to facilitate the exchange of information between the Court, States Parties and other stakeholders, including

international organizations and civil society, aimed at strengthening domestic jurisdictions, including regarding their capacity to cooperate with the Court. This participation and these ongoing efforts also demonstrate the relevance of possible synergies between the cooperation and the complementarity facilitations, as they focus on the two fundamental pillars of the Rome Statute system.

12. As recalled by paragraphs 6 to 8 of the 2017 ASP resolution on cooperation, as well as in the Paris Declaration with respect to the tracing and recovery of assets, adequate implementing legislation at the national level, including through integration of the relevant provisions of the Rome Statute into national legislation, greatly facilitates cooperation between the Court and States. As less than half of the 123 States Parties have adopted legislation in order to implement the cooperation obligations provided for in Part 9 to this date, the Registry of the ICC has availed itself in several instances during the reporting period to provide support and technical advice to interested States engaged in a domestic process to adopt cooperation implementing legislation. While the Registry will not provide substantive advice on matters for national concern, it is ready to participate in discussions and provide written submissions to national stakeholders at the request of the State on the key elements of Part 9, and share what has been its experience and lessons learned in the last 15 years of implementing the cooperation provisions with States Parties.

13. Clear procedures and distribution of roles and responsibilities at the domestic level in the national implementing legislation will help governments ensure that they can expeditiously respond to requests for assistance coming from the Court without any undue delay and that they can also investigate and prosecute ICC crimes before their national jurisdictions as relevant.

14. Further, to adopt the necessary national legislation regarding cooperation with the Court guarantees that the actors involved (governmental agencies, but also witnesses, victims and suspects) have legal certainty on the way the different requests for assistance from the Court will be treated.

15. Finally, the clear definition of a legal basis for cooperation between the Court and States Parties covering all relevant aspects of potential judicial cooperation requests helps to avoid instances where a country is not capable of addressing a specific request for assistance, thus hindering the execution of the mandate of the Court.

16. In addition, it has been the Court's experience that the availability of channels of communication and simplified domestic procedures for dealing with ICC cooperation requests, as well as coordination and information sharing between national authorities dealing with Court cooperation requests, all contribute to a smoother, more efficient cooperation. In this context, the Court has provided an update on its work during the reporting period to the HWG cooperation facilitation regarding its efforts on financial investigations and asset recovery, in order to highlight the importance that the appropriate judicial and cooperation procedures are in place at the national level to support the financial investigations conducted by the Office of the Prosecutor ("OTP" or "the Office") and the Registry in the course of their mandates (also in line with paragraph 13 of the 2017 resolution on cooperation). The Court will elaborate further on this priority area in paragraphs 46 to 57 of this report.

2. Recommendations on way forward

17. As paragraph 15 of the 2017 resolution on cooperation stresses, it is a matter of priority for the Court that States that have not yet done so to become parties to the Agreement on Privileges and Immunities of the ICC ("APIC"), and that they incorporate it in their national legislation, as appropriate.

18. States Parties are under an obligation stemming from article 48 of the Rome Statute to "respect such privileges and immunities of the Court as are necessary for the fulfilment of its purposes". Paragraphs 2-4 of article 48 furthermore provide for the privileges and immunities of specific categories of Court officials and other persons. However, the general nature of article 48 may give rise to differing interpretations of the exact scope of the Court's privileges and immunities in concrete situations. This may be problematic for the Court as well as for the States concerned.

19. Indeed, the Court faces various challenges in the context of its operations relating to the interpretation or application of the relevant legal provisions, or the absence of necessary privileges and immunities. In instances of travel to States that have not become parties to the APIC, the Registry has to send notes verbales based on article 48 and invite States to grant the privileges and immunities, instead of relying on existing legal protections covered by the APIC. Given the current and potential future contexts of operation of the Court, as well as the liability issues that can be attached, the lack of these legal protections for staff and its work can have clear legal, financial and reputational consequences for the Court and States.

20. APIC increases legal clarity and security by specifying in detail the scope of the Court's privileges and immunities. By acceding to or ratifying APIC, States can ensure consistent and unambiguous application of the Court's privileges and immunities on their territory.

21. Consequently, all States Parties are strongly urged to ratify or accede to APIC for their own as well as the Court's benefit. States are also encouraged to implement the provisions relating to the Court's privileges and immunities in their national legislation, and to take active steps to ensure that the relevant national authorities are aware of the Court's privileges and immunities and their practical implications.

B. Cooperation in support of preliminary examinations, investigations, prosecutions and judicial proceedings (including with the Defence)

1. Update on ICC efforts during the reporting period

22. In the context of its investigations and prosecutions, the OTP sent out over 567 requests for assistance to 83 different partners, including States Parties, non-Party States, and international and regional organisations, during the reporting period, an increase of 38 per cent compared to the last reporting period. During the same period, the Office also received 21 formal requests for judicial assistance from States, as well as numerous requests for preliminary information checks, for expertise, training and operational advice, including on local contacts or contexts and standard operating procedures in a given environment.

23. In light of the very high number of requests sent as well as the variety of the types of support requested from States, and while noting that, overall, cooperation has been very forthcoming and positive, the OTP still experiences challenges in the execution of some particularly technical or sensitive requests and continues to dedicate time and efforts to consult with the relevant authorities and identify suitable procedures.

24. During the reporting period, the Registry transmitted 136 requests for cooperation to States and international organisations on behalf of the Chambers, on behalf of the Defence or on its own account⁸.

25. In line with paragraph 14 of the 2017 resolution on cooperation, and in accordance with its mandate, the Registry has continued its efforts to encourage States to enhance their cooperation with requests from the Defence teams, in order to ensure the fairness of the proceedings before the Court, as well as to contribute to the expeditiousness of proceedings.

26. Indeed, the assistance of States is needed to facilitate the work of the various Defence teams with respect to *inter alia* the respect of their privileges and immunities, the organising of their travels to their territory, the facilitation of meetings with government officials, the transmission, respectfully of the applicable procedures, of their various requests (i.e. requests for obtaining information, documentation, visit to specific places, interview of witnesses, including of detained persons).

⁸ This number does not reflect notifications of judicial documents, missions and requests concerning the signature of voluntary cooperation agreements.

27. Based on its experience, the Registry has identified below two main areas of challenges faced by the Court regarding cooperation with the Defence teams:

(a) Significant delays and/or lack of answer of States to cooperation requests from the Defence:

In its 2007 Report on Cooperation, the Bureau recommended that States accommodate, to the extent possible, requests from Defence teams for operational support and that the Court explore ways in which Defence teams can benefit from existing agreements between the Court and States Parties (Recommendation 28).

The issues faced by the Registry in this regard can vary. In some cases, the main difficulty can be that a State lacks the relevant procedures in its national law to provide the requested cooperation. In other cases, the challenge arises from the way the request for cooperation is communicated to the State, as certain States (with civil law legal systems for instance) may be reluctant to accept a direct request for cooperation from the Defence team. As a result, requests made by the Registry on behalf of the Defence team may be more acceptable. Moreover, in certain cases, the requests presented by the Defence teams are too broad or do not follow the requirements already established by the ICC jurisprudence, i.e. relevance, necessity and specificity.

It is worth noting that a similar challenge may arise regarding requests for cooperation from Defence teams to international organizations. With the UN for instance, and following the Guidelines agreed between the ICC and the United Nations, all requests for cooperation from the Defence teams should be channelled by the Registry and they should fulfil certain requirements.

(b) Privileges and Immunities:

An important element of the assistance provided by the Registry to the Defence teams is to ensure that, whenever possible, the members of the teams enjoy Privileges and Immunities, which are fundamental for the performance of their duties in the territory of States where they operate. This assistance is however not always possible given the lack of internal mechanisms in the relevant States to provide such privileges and immunities.

28. During the reporting period, the Court has also continued to receive crucial support and cooperation from the United Nations (“UN”). The Court has welcomed the issuance of the “Best practices manual for United Nations-International Criminal Court cooperation” in 2016, as well as the ongoing engagement with the UN in order to further clarify and mainstream the needs and mandates and the cooperation procedures between the two institutions.

29. The annual ICC-UN roundtable was held in New York from 6 to 7 December 2017. A large number of UN offices, agencies, funds and programmes participated, in addition to different parts of the ICC. The programme included updates on activities, exchanges of best practices in ICC-UN cooperation and lessons learnt, and discussions on capacity building of national jurisdictions.

30. The Court notes also that, with the opening of its Field Office in Georgia in December 2017, it has completed the recruitment of chiefs of office for all its field offices during the reporting period. This has enhanced the offices’ capacity to engage with national authorities and local communities, as well as to cooperate with the UN and other international stakeholders. The field offices play an important role also in providing logistical and operational support to the parties and participants in proceedings of the Court (Defence teams, Legal Representatives for Victims, and, where necessary, the OTP), as well as the Chambers, the different sections of the Registry and the Trust Fund for Victims.

2. Recommendations on way forward

31. States should strive to maintain a high level of cooperation for all requests coming from the Court, including requests that might be perceived as sensitive or technically complicated at first glance. In particular, they could consider offering consultations and facilitating meetings between the Court organs formulating the requests and the competent national authorities ultimately in charge of executing them with a view to finding solutions

together, or organising regular bilateral meetings to follow up on execution of such requests to exchange on the most efficient way forward.

32. The matter of cooperation with the Defence teams is a very important one for the Court, and it is recalled by paragraph 14 of the 2017 Resolution on cooperation, which “urges States Parties to cooperate with requests of the Court made in the interest of Defence teams, in order to ensure the fairness of proceedings before the Court”.

33. Based on the analysis of the main challenges regarding cooperation with the Defence teams, the Registry has identified the following recommendations for the consideration of States and other stakeholders to provide further reflection on possible avenues to explore to enhance this form of cooperation:

(a) States could consider informing the Registry on whether they would prefer to receive requests for cooperation from the Defence teams through the Registry or directly from the teams;

(b) States could consider mainstreaming information within national judiciary and law enforcement on the legal framework of the Court and cooperation obligations with the Court as a whole, including Defence teams;

(c) States could consider specific discussion among States and the ICC on the challenges and impediments (whether legal, technical, logistical or financial) faced by States to answer Defence requests for cooperation;

(d) Compliance by the Defence teams of the requirements established by the ICC jurisprudence regarding the cooperation requests, i.e. specificity, relevance and specificity;

(e) Regular meetings of Defence Teams with the ICC Focal Points from the relevant international organizations;

(f) The signature by all States Parties of the Agreement on Privileges and Immunities;

(g) States could consider having clear and agreed procedures at the domestic level regarding privileges and immunities; not only for ICC staff but also for Defence teams.

34. Besides cooperation in support of the Court’s activities, the Court wishes to recall also the challenges related to non-cooperation. In furtherance of prerogatives and obligations under the Statute, it is hoped that the ASP will increase its efforts with a view to preventing non-compliance, especially in the critical matter of the arrest of persons subject to warrants issued by the Court. In this respect, the Court is grateful for the appointment by the Bureau of the non-cooperation focal points, as well as for their efforts to develop the “Toolkit for the Implementation of the Informal Dimension of the Assembly Procedures Relating to Non-Cooperation”. As the ASP has requested 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”, the Court hopes that further consultations will take place with a view to strengthening these procedures, as well as to developing guidelines regarding the formal dimension of the ASP procedures regarding non-cooperation.

35. The Court would also like to highlight again that the capacity of the UN Security Council to refer a situation to the Court is a crucial tool to promote accountability and avoid an impunity gap, but active follow-up to referrals by the Council in terms of ensuring cooperation remains necessary to ensure that effective justice can be delivered when peace, security and well-being of the world are threatened.

36. The Court has transmitted a total of 16 communications on non-cooperation to the Council regarding Darfur and Libya, including one during the reporting period. On 1 March 2016, the Secretary-General transmitted to the President of the Court a copy of a letter, dated 21 December 2015, from the then President of the Council, indicating that the decisions of the Pre-Trial Chambers concerning non-cooperation in the situations in Darfur and Libya had been brought to the attention of the members of the Council. Since then there has been no formal reaction from the Council to the communications on non-

cooperation. The Court looks forward to engaging with interested parties to develop methods of structured dialogue between the Court and the Council to discuss how to improve the implementation of obligations created by the Council, including the execution of arrest warrants, and to seek more constructive strategies for attaining the mutual goals of preventing and ending impunity for atrocity crimes. During the Arria-formula meeting on the ICC and the Council, organised on 6 July 2018, with participation of, *inter alia*, the Prosecutor and the President of the ASP, a number of concrete ideas were identified to enhance cooperation between both bodies, including the designation of a focal point or mechanism to enhance the interaction between both bodies beyond the biannual briefings; more information on this gathering can be found below, in paragraph 65.

C. Arrest and surrender

1. Update on ICC efforts during the reporting period

37. During the reporting period, Mr Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud was surrendered to the Court by the Malian authorities on 31 March 2018 pursuant to a warrant of arrest for war crimes and crimes against humanity allegedly committed in Timbuktu, Mali.

38. Court-issued requests for arrest and surrender remain outstanding against 15 individuals:

- (a) DRC: Sylvestre Mudacumura, since 2012;
- (b) Uganda: Joseph Kony and Vincent Otti, since 2005;
- (c) Darfur: Ahmad Harun and Ali Kushayb, since 2007; Omar Al-Bashir, since 2009 and 2010; Abdel Raheem Muhammad Hussein, since 2012; Abdallah Banda, since 2014;
- (d) Kenya: Walter Barasa, since 2013; Paul Gicheru and Philip Kipkoech Bett, since 2015;
- (e) Libya: Saif Al-Islam Gaddafi, since 2011; Al-Tuhamy Mohamed Khaled, since 2013; Mahmoud Mustafa Busayf Al-Werfalli, since 2017; and
- (f) Côte d'Ivoire: Simone Gbagbo, since 2012.

39. The pending arrest warrants are an unfortunate testament to the challenges the Court faces in terms of cooperation. Whilst the ICC will not be able to fully exercise its mandate without arrests and/or surrenders, as trial proceedings cannot take place without accused persons, ultimately the victims are the ones who suffer most. The Court therefore appreciates any efforts and strategies devised by States Parties to work towards ensuring the timely arrest and surrender of those individuals at large. The priority given to this matter during the second half of the reporting period by the HWG co-facilitators on cooperation is welcome; the Court believes additional efforts are needed by all States Parties to ensure suspects are brought to the Court to answer to the charges levelled against them.

40. The Court, while limited in its means, is nonetheless doing its part. For example, increased coordinated efforts between the OTP and the Registry have been undertaken by creating an inter-organ working group on arrest strategies in March 2016. The working group meets regularly to exchange views and information on judicial activities relevant to the warrants of arrest, to centralise, verify and analyse factual information received from external or internal sources, to share and confront leads and to develop and implement joint cooperation strategies and missions to foster arrest of ICC fugitives. The working group builds on the long term practice of working together on implementation of warrants of arrest developed by the OTP and the Registry, based on in-depth knowledge of the OTP of the situations investigated, as well as regional and international and legal environments, and the contextual and political country analysis provided by the Registry, as well as the networks available to both organs.

41. The working group serves to enhance synergies and information sharing in this field, and to build on lessons learnt from past experience by way of ensuring that information and potential leads received can be cross-checked and analysed quickly and that cooperation experts can immediately advise on prospects and make recommendations to senior management. The working group has been reinforced recently, with the addition *inter alia* of investigative capacity on the OTP side and analytical capacity on the Registry side, for more robust efforts to galvanize arrests. The working group has started reaching out for consultations and coordinated strategies with a series of relevant experts and developed its interaction with actors such as Interpol, the European Network of Fugitive Active Search Teams (“ENFAST”) and specialised national units.

42. The working group also facilitates meetings with relevant Court colleagues, and management, as well as external partners, as appropriate. In this context, the Court welcomes the possibility for informal consultations with relevant States and interested stakeholders on concrete possibilities of fostering support for arrests.

2. Recommendations on way forward

43. Based on its experience, the Court believes that in order to galvanize arrest efforts, different types of actions are needed for each warrant at different stages, all of relevance to the States. These notably include:

- (a) Tracking efforts (whereabouts, movements, activities):
 - (i) Access to information from national authorities, including when appropriate specialised services (if only to validate or invalidate information collected by the Court);
 - (ii) Transmission of information and alerts on suspects.
- (b) Identification of potential leverage and partners:
 - (i) Support in multilateral fora (UN, regional, specialised networks) and bilateral encounters, and efforts to keep the issue on the agenda;
 - (ii) Insertion of arrest warrant execution in talking points and external relation strategies;
 - (iii) Focus on compliance with ICC decisions;
 - (iv) Link arrests to the importance of the Court’s mandate. Campaigns and reminders on the alleged crimes and the charges;
 - (v) Reactivity when information sent on suspects movements.
- (c) Operational support:
 - (i) Surrender procedures and availability of legal and technical processes;
 - (ii) The existence of exceptions to UN travel bans for the fulfilment of a judicial process are also a useful tool for the ICC for the purposes of bringing arrested individuals to the Court, and these mechanisms need to be triggered on an urgent and simplified basis;
 - (iii) Transport and logistics.

44. As the Court and the Rome Statute system commemorate in 2018 the 20 years of its adoption, and with arrest warrants outstanding against 15 individuals, the time is ripe to encourage all relevant stakeholders to re-commit and make meaningful strides in order to find remedy to this crucial challenge to the cooperation regime and the credibility of the Rome Statute system.

45. Through its working group and its external relations efforts, the Court will continue to promote further informal exchanges and coordination with States and relevant intergovernmental organizations to share information and develop concrete strategies towards arrests, including but not limited to efforts concerning sanctions and travel bans.

46. The Court is also developing factsheets on the suspects at large, a leaflet to increase attention for and knowledge of pending warrants, as well as reformulating its website to further highlight the issue and make relevant information easier to access. These efforts will be combined with a communication campaign, and the Court will call upon its States Parties to support it with similar efforts at the national and regional levels.

D. Identification, seizing and freezing of assets

1. Update on ICC efforts during the reporting period

47. Regarding this key cooperation matter, the Court is thankful to the HWG cooperation co-facilitators for the efforts put forward in the course of 2017, including the organization of a conference on "The International Criminal Court and International Cooperation: The Challenges of Asset Recovery" in Paris on 20 October 2017, with the support of the Court. This important event generated very interesting exchanges, which were further continued during the plenary on cooperation of the 16th session of the ASP in New York, in December 2017, and also resulted in the adoption of the Paris Declaration, which forms a very useful basis for further discussions and concrete enhancements regarding cooperation in this area.

48. The topic of financial investigations and recovery of assets is not a new item on the international agenda. It has emerged as a key topic when States have been searching for tools to combat serious transnational organised crime, notably trafficking, corruption and the financing of terrorism. It has also been used to a certain extent in the context of freezing orders emanating from the UN Sanctions Committees and although these are not judicial processes, this has allowed States to develop tools relevant to judicial requests. Most States do have national procedures in place to facilitate cooperation in the field of financial investigations and have developed expertise to face the challenges inherent in the concealing of criminal assets and assets in general.

49. States have also developed the practice to work in networks strengthening a transnational police culture that is informal, technical and more efficient in parallel to relying on the more classical mutual legal assistance regime.

50. Therefore, the legal and operational framework for cooperation in this area clearly exists. The challenge is for the Court, with its specific legal parameters, to find its place in this general picture, taking advantage of existing mechanisms while stressing its specificity and constraints.

51. Unlike a State, the Court does not have a territory from which to start its investigations nor a police force capable of using investigative powers to obtain information from governmental agencies or the private sector. Investigations can only take place with the authorisation and cooperation of States.

52. It is also important to stress that the Court does not have jurisdiction over the crimes of money laundering, corruption or financing of terrorism. Nonetheless the crimes under its jurisdiction are either predicate offences to these crimes or are committed in an environment that allows these crimes to happen. In a world where borders are not a hold for criminality, it is important that States adjust their paradigm and associate war crimes, crimes against humanity and genocide, as transnational crimes, to financial investigations.

53. Another distinctive feature is that the Court is involved in the recovery of assets both for payment of fines and forfeitures by the accused, but also for the payment of awards for compensation for victims (what is referred to as reparations to victims). The ICC Appeals Chamber clarified that in this case, there is no need to demonstrate a link between the assets and the crimes. In other words, the Court will ask States to take conservatory measures concerning the entire patrimony of the person. It is worth reminding here that the requests for freezing of assets are issued by the Chamber only once a warrant of arrest has been issued – i.e., once the judges of the Court have identified that there is a reasonable grounds to believe that this individual has committed the crimes presented by the Prosecution. In addition to this relatively high evidential threshold, it is worth reminding that when the Court is involved, it generally concerns the most serious crimes of concern to the international community.

54. Within this context, it is clear that the success of the Court with respect to financial investigations asset recovery depends on the cooperation of States Parties. It was identified that a number of problems hinder this cooperation (the Court brings to States' attention in this regard its "Report on cooperation challenges faced by the Court with respect to financial investigations", dated 27 October 2015).

55. The Court issued a booklet on "Financial investigations and asset recovery" during the 16th session of the ASP, in December 2017, to develop a better understanding on the legal framework and build general support for the Court in this area. The Court has also strategically sought to include specific sessions on the matter during its cooperation seminars (such as most recently in Quito, Ecuador, June 2018), including with the participation of regional specialized networks and national experts.

56. In the Declaration of Paris, the Court has been encouraged by States Parties to continue strengthening its partnerships with national authorities and international organisations. The Court has an observer status in CARIN in which it can liaise with national asset recovery experts. It works also with Interpol through the Office of the Prosecutor and the national central bureau. It has engaged with STAR and the UNODC to see how to use the lesson learns from their experience in the realm of the recovery of stolen assets. Recently, the Court has also developed engagement with a regional FATF.

2. Recommendations on way forward

57. There has been engagement in the last three years with States via the co-facilitations on cooperation, expert seminars such as the one organised in 2015 at the seat of the Court, and last year in Paris and in New York on this issue. These seminars have contributed to not only highlighting the main issues at stake, but also resulted in concrete recommendations. A number of immediate steps could indeed be taken by States to support the work of the Court:

(a) the adoption of the necessary legislation or procedures in line with Rome Statute obligations to be in a position to reply timely and effectively to relevant requests from the Court. It is paramount that the Court can count on the full and timely cooperation from States in order to successfully reconstruct the complex asset recovery scheme of any given ICC suspect and/or accused;

(b) streamlining ICC specific needs domestically so that the prosecution of war crimes and crimes against humanity triggers the same reflexes in terms of financial intelligence and investigations as the prosecution of financial crimes or transnational organised crimes. It is hoped that the leaflet that was produced last year by the Court will help the national experts in understanding better these needs;

(c) the opening of domestic investigations into possible financial crimes on the basis of information received by the Court so that States can use the full arsenal offered by their national law;

(d) the appointment of focal points on freezing of assets, without prejudice to the formal channels of communication identified by each State, to follow-up on exchanges with the ICC as appropriate;

(e) within the judicial context, by replying to the Chamber's requests and asking for clarification where required, States can contribute in shaping the Court's case-law on this complex matter;

(f) Periodic bilateral meetings can be organised so that the staff of the Court understand the specificity of relevant national systems and identify the best procedures to follow together with the requested State; the Court has already started to include this item in all planned meetings with relevant State representatives it meets, whether at the headquarters in during missions.

58. Subject to the Chamber's authorization, the Registry recommends to share information provided individually by several States amongst these States with a view to obtaining a more general picture of the estate of the person. This way, States can combine their analytical efforts to obtain more targeted and comprehensive information to the benefit of the Court.

E. Cooperation agreements

1. Update on ICC efforts during the reporting period

59. During the reporting period, Argentina became the first State Party to sign all four cooperation agreements with the Court (relocation of victims and witnesses, enforcement of sentences, interim release and final release), as well as the first country to sign the agreement on final release. Argentina's critical support resulted in the signature of two new agreements; two other countries signed agreements on the relocation of witnesses also during the reporting period.

60. The Registry continued to engage actively on the promotion and the negotiation of cooperation agreements. The Registry updated its booklet on the four agreements, as well as its model agreements on witness relocation and interim release, and has now all model agreements and the booklet available in English, French and Spanish.

61. The Registry engaged directly with over 30 States during the reporting period, including 15 from the GRULAC region, 5 WEOG, 7 Eastern European and 3 African States. It conducted working level missions to three countries in order to further exchange on the agreements, and used the opportunity of the cooperation seminars, high level visits to the Court and other gatherings to raise the matter with a wide range of stakeholders. The Registry has also started to develop the practice of informal videoconferences with relevant officials in capitals of interested States in order to provide additional information and clarify concerns or misconceptions on the agreements. This has proven to be a quite successful practice, and one that the Registry is ready to explore with other interested countries.

62. Finally, the Registry is also engaging with States that have recently adopted implementing legislation concerning Part 9, which also foresee in part or in whole cooperation regarding the subject-matter of the agreements, and is working with these States to identify further steps in order to operationalize their support in these critical areas.

63. The Court is grateful in this regard for the support of civil society to promote these agreements, and is in particular thankful to the Coalition for the ICC, Parliamentarians for Global Action and the International Bar Association for their work.

2. Recommendations on way forward

64. Based on the efforts of the last three years to prioritize the signature of these agreements, the Court has identified some recommendations for the consideration of States:

(a) The inclusion of elements on the cooperation agreements in the provisions of national implementing legislation of the Rome Statute, which will facilitate the negotiation, if needed, with the Court, for the later operationalization of this cooperation; the Registry is available to advise States in this regard, if relevant;

(b) The possibility to engage in synergies between the cooperation and the complementarity facilitations, especially when considering the identified needs of certain States and available organizations or States that can share their expertise or provide capacity-building activities, including in areas covered by the cooperation agreements (such as witness protection of penitentiary systems);

(c) The possibility for States that have signed cooperation agreements with the Court to act as "goodwill Ambassadors" in their region and in their contacts with other States, in order to explain how they are working with the Court and to clarify implications and opportunities;

(d) The availability of the Court to take part in videoconferences or technical engagements with the relevant national stakeholders of interest countries, to discuss in detail the agreements and how they can function within the national legal framework of each State;

(e) The availability of the Special Fund for Relocations and of Memoranda of Understanding with the UNODC, which can contribute to neutralize costs for the State, as

well as to enhance the national capacity of an interested State, not only to cooperation with the Court but also to strengthen its domestic system.

F. Diplomatic and public support in national, bilateral, regional and international settings

1. Update on ICC efforts during the reporting period

65. During the reporting period, the Court continued to develop its interaction and cooperation with international and regional organizations, which are key partners for such priorities as promoting universality of the Rome Statute, adopting national implementing legislation, and enhancing cooperation.

66. On 6 July 2018, an Arria-formula meeting on UNSC-ICC relations, the first of its nature, was held, with participation of the Prosecutor, the President of the ASP, the UN Assistant Secretary-General for Legal Affairs, the Permanent Representative of Mali to the UN, and the Special Prosecutor of the Special Criminal Court of the CAR. The meeting, convened by the ICC States Parties on the Council and with participation of the UNSC members and the wider UN membership and civil society, had as goal to take stock of the work of the ICC, its achievements and challenges, and to explore synergies with the work of the UNSC. The initiative was welcomed as an important step towards enhancing dialogue and coordination between the two institutions. Discussions demonstrated the importance of the Court's work and the broad support it enjoys. The meeting also raised concrete issues and proposals in the context of UNSC-ICC relations, such as in relation to responses to findings of non-cooperation ("New Zealand proposal"), enhancing the mandates of peacekeeping missions, and bolstering support of the UNSC in the area of domestic capacity building, and highlighted the needed support of the Council for the Court's work. The Court remains keen to strengthening cooperation and coordination with the Council in a number of very specific areas, notably in relation to sanctions committees, travel bans and the freezing of assets.

67. By way of follow-up the co-facilitators for cooperation organised a meeting of The Hague Working Group, on 21 September 2018, with participation of the Prosecutor, and to give delegates in The Hague the opportunity to take note of the ideas developed during the Arria-formula meeting. The Court emphasizes that the various suggestions merit thorough reflection, consideration and follow-up, as appropriate, to give meaning to the inter-institutional relationship between the Court and the Council as codified in the Rome Statute, and as a practical reality. States Parties – in particular through their Missions in New York – play a lead role in this regard.

68. The Court participated in the Special working Meeting on Strengthening Cooperation with the ICC of the Organization of the American States ("OAS") on 15 March 2018 in Washington D.C, also marking the 20th anniversary of the Rome Statute; this was the tenth time the Court participated in such a meeting since 2005, providing updates on its activities and exploring avenues for further cooperation and interaction with the region and the organization. The High Level Regional Seminar organized by the Court and the Government of Ecuador in Quito, on 7-8 June 2018, was held at the Secretariat of the Union of South American Nations' Headquarters in Quito, Republic of Ecuador, with the financial support of the European Commission. It focused on the relation between the Court and South America, as well as the opportunities and challenges for cooperation and the exchange of experiences within the framework of the 20 years of the Rome Statute. It also allowed for technical and in-depth exchanges with national and intergovernmental experts on key issues of cooperation, including asset recovery and cooperation agreements.

69. The Court will also participate in the annual ICC-EU roundtable, which will take place in Brussels on 4 October 2018, and will be an opportunity to exchanges ideas and identify ways to support some of the main targets of the Court, such as universality, cooperation and complementarity. The Court hosted on 23 May 2018 the third EU Day against Impunity for Genocide, Crimes against Humanity and War Crimes, organized by the Bulgarian Presidency of the Council of the EU and Eurojust. This event focused on the 20th years of the Rome Statute and the achievements of the EU and the Member States to fight impunity.

70. The Court also organized its second Retreat with African States Parties to the Rome Statute in Addis Ababa, Ethiopia, on 22-23 November 2017, to discuss ways of strengthening the Rome Statute system of justice. Government delegates from 19 African States, representatives of the African Union and ICC and TFV officials shared experiences and explored further avenues for engagement and cooperation, including within the framework of the complementarity principle enshrined in the Rome Statute. The participants also exchanged views on the relationship between the ICC and national, sub-regional and regional organisations and judicial institutions. In addition, participants discussed victims' issues, including victims' participation in ICC proceedings as well as assistance and reparation for victims of crimes that fall within the jurisdiction of the Court. This Retreat builds on a series of seminars, organised jointly by the ICC and the African Union ("AU"), held annually in Addis Ababa between 2011 and 2015, as well as a similar retreat organised in 2016. The event was organised with the financial support of the European Commission and the OIF.

71. Representatives from the AU and the League of Arab States ("LAS") also took part in the Appeals Chamber hearing submissions on legal matters related *inter alia* to cooperation raised by Jordan in the case of *The Prosecutor v. Omar Al Bashir*, from 10 to 14 September 2018.

72. On 13 July 2018, the ICC and The Hague Project Peace and Justice hosted a kick-off event for the Asia-Pacific Forum of The Hague. The event facilitated a dialogue about the Asia Pacific region's engagement with and contribution to international criminal justice, and encouraged students and young professionals from the region to consider a career in international criminal justice and at the ICC. The event was attended by more than 150 persons and reached approximately 27,000 viewers around the world via Facebook Live. It was the first in a series of anticipated events and activities intended to enhance the engagement of the Court with the Asia-Pacific region.

2. Recommendations on way forward

73. The Court believes further engagement with regional organizations can help promote efforts regarding universality, implementing legislation, cooperation and complementarity, as well as raise awareness of its work, dispel misconceptions, and encourage wider geographical representation within its staff.

74. For this purpose, the Court welcomes opportunities to integrate its work and mandate within the activities of regional and specialized organizations, such as it did for example in 2017 with the participation of the ICC President in the Pacific Islands Forum Summit in Samoa, and the organization of a side-event on the Court in that occasion. The Court will also continue to seek increased exchanges and integration with specialised organisations on key cooperation priorities, such as regional and international networks of prosecutors and law enforcement, as well as financial investigations and asset recovery, such as UN Office on Drugs and Crime, CARIN, FATF and its regional branches, Interpol, Europol, Eurojust, Justice Rapid Response and the International Commission on Missing Persons ("ICMP").

75. The Court will continue to work towards expanding its relations with States, organizations and partners that can help facilitate such integration, and will also maximize such opportunities by also bringing forward other key objectives for the Court, such as the ongoing efforts from the Registry to promote geographical representation of all States Parties within its staff.

G. Inter-State cooperation in the context of the Rome Statute system

1. Update on ICC efforts during the reporting period

76. As already previously mentioned regarding the focal points seminars and the work of the Court with regional and specialized networks, progress on many of the concrete areas of cooperation of concern for the Court can benefit from exchanges of experience and expertise, as well as mutual assistance between States, as well as between States, the Court and other relevant partners. The Court attempts to promote these exchanges in the context

for instance of the cooperation agreements it negotiates with States, as well as by availing the expertise it has developed in the many areas of its work in its fifteen years of operations; these are further detailed in the Court's 2012 report on complementarity⁹.

77. During the reporting period, the OTP continued its efforts under Strategic Goal 9 of its Strategic Plan 2016-2018, aimed at developing, with partners and to the extent permissible under the Rome Statute, a coordinated investigative and prosecutorial strategy to close the *impunity gap*. To tackle both the crimes under its direct jurisdiction that it cannot prosecute itself and the complex international, transnational and domestic associated crimes being committed in the situations under investigation and fuelling the violence and the continuation of conflicts, the OTP has continued to engage, where appropriate and within its mandate and means, with national and regional authorities in charge of law enforcement. This has included: sharing its experience, technical expertise and lessons learned; contributing to specialised training needs by judicial actors; assisting or advising on standard setting for complex investigative activities; providing technical assistance when needed and appropriate; devising strategies to preserve evidence collectively; as well as transmission of information and evidence in its possession that may be relevant to those actors to tackle ICC crimes and the interconnected areas of criminality, thus contributing to a multi-layered, multi-party approach.

78. For instance, the OTP has done so with regard to the situation in Libya, in the context of alleged crimes against migrants, where the coordinated efforts between the OTP and national law enforcement partners, have facilitated the gathering and analysis of information and helped identify which of the judicial actors is in the best position to investigate or prosecute alleged crimes, thus fostering a symbiotic relationship in which the OTP remains focused on the investigation and potential prosecution of individuals committing crimes that fall within the parameters of the UN Security Council referral and what may amount to crimes against humanity or war crimes.

79. A similar coordination and sharing of expertise and lessons learned has also materialized in the context of the OTP's investigations in the Central African Republic (CAR II), through the OTP's interaction with the Special Criminal Court.

2. Recommendations on way forward

80. The Court believes in the mutual benefits that can result in further synergies and exchanges between the cooperation and complementarity discussions, and looks forward to the launching of the database promoted by the complementarity co-facilitators in this regard.

III. Conclusion

81. The Court looks forward to continuing its active engagement with States Parties, including through the working group cooperation facilitation, in order to find creative, tangible and concrete solutions to address the seven cooperation priorities identified.

82. The Court would warmly welcome any initiatives by States to engage in dialogue with the Court on the issues addressed in this report, to provide feedback, or to discuss proposals for the purpose of enhancing cooperation and for addressing any obstacles that may exist.

83. In the year of the 20th anniversary of the Rome Statute, the Court strongly underlines that the timely, consistent and strong support and cooperation from States Parties, as well as other relevant stakeholders, is essential to allow the Court to fulfil its mandate effectively and efficiently, providing meaningful justice to victims and the affected communities, as well as reinforcing the legitimacy and credibility of the Rome Statute system and the commitment of the international community towards it.

⁹ ICC-ASP/11/39.

84. The Court is thankful to the Assembly and the States Parties, as well as many non-States Parties and other stakeholders and partners, for their cooperation and support and remains available for further discussion or information on the basis of this as well as past reports.
