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Report of the Court on Cooperation

I. Introduction

1. The Report of the Court on Cooperation is submitted by the International Criminal Court (“ICC” or “Court”) pursuant to paragraph 36 of resolution ICC-ASP/18/Res.3 (“2019 Resolution on Cooperation”). It covers the period of 16 September 2019 to 15 September 2020.^{1,2}

2. Similar to the Court’s previous reports on cooperation,³ the report provides an update on the different cooperation efforts undertaken by the Court with the support of States and other stakeholders during the reporting period. For this reporting period, the Court will additionally address the request of the Assembly of States Parties (“Assembly” or “ASP”), in its 2019 Resolution on Cooperation, for “the Court to submit an updated report on cooperation to the Assembly at its nineteenth session and to present in that report disaggregated data over the responses provided by States Parties, including highlighting the main challenges”⁴; the Court will also have in mind the decision of the ASP in the same Resolution to request to the Bureau “through its Working Groups, to speed up its review of the implementation of the 66 recommendations, in close cooperation with the Court, where appropriate”.⁵

3. The report should be read in conjunction with the latest ICC annual report to the United Nations General Assembly (A/74/324), 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 2013 cooperation report⁶ and its separate 2013 report focusing specifically on cooperation between

¹ The reporting period for this report has been slightly adjusted (it was previously from 2 September 2018 to 1st September 2019), so as to harmonize it with the reporting period of the Court’s report on activities, and thus to avoid having different reporting periods producing different data depending on the reports of the Court.

² 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.

³ ICC-ASP/13/23, ICC-ASP/14/27, ICC-ASP/15/9, ICC-ASP/16/16, ICC-ASP/17/16 and ICC-ASP/18/16 and Corr. 1.

⁴ ICC-ASP/18/Res.3, para. 36.

⁵ ICC-ASP/18/Res.3, para. 30.

⁶ ICC-ASP/12/35.

the Court and the UN,⁷ 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 2007,⁸ as well as the flyer that was produced by the co-facilitators of the working group on cooperation in 2015⁹ in collaboration with the Court in order to promote the 66 recommendations and increase understanding and implementation of them. Indeed, the Court strongly believes that both documents continue to form an important basis for cooperation discussions and efforts, which can render the assistance to the Court more efficient and effective.

6. During the reporting period, the Court continued to engage with States Parties on its cooperation priorities and challenges, as well as its ongoing efforts aimed at advancing these priorities, including in the context of the facilitation on cooperation of the Hague Working Group (“HWG”). To amplify its messaging, the Court used the booklets and factsheets it has produced over the years, with the financial support from the European Commission, to disseminate information and promote cooperation in the key areas regarding the implementation of the 66 recommendations (“Recommendations on States’ Cooperation with the International Criminal Court (ICC): Experiences and Priorities”), cooperation agreements, financial investigations and recovery of assets, arrest and surrender (“Arresting ICC suspects at large”), and the Trust Fund for Family Visits.

7. To support and track their cooperation activities within their respective mandates and responsibilities in the field of cooperation, both the Office of the Prosecutor (“OTP” or “the Office”) and the Registry have created internal databases to store and keep track of the requests for cooperation and assistance they send to, or receive from, a variety of stakeholders. These databases have allowed both organs to provide overall quantitative data regarding the number of requests sent for each reporting period, to how many stakeholders, how many responses received, as well as how many requests for judicial assistance they received from States.

8. Over the years the types of cooperation requests sent by the Court have evolved as well as their level of complexity, both as regards the request itself and its implementation. Hence, in more recent years, the Court has further refined its tracking and analysis of these requests, and of the replies received. The databases mentioned in the previous paragraph have also evolved to more sophisticated tools in order to monitor these requests, first in the OTP, and by the end of 2020 in the Registry. With the adoption of the 2019-2021 ICC Strategic Plan, as well as complementing OTP and Registry Strategic Plans for the same period, further emphasis was put in collecting more detailed and qualitative data, to support the monitoring of the implementation of Strategic Plans and the goals set. In particular, Goal 4 of the ICC Strategic Plan, Strategic Goal 2 of the OTP Strategic Plan (paragraph 27) and objective a) of the Division of External Operations (paragraph 22) of the Registry Strategic Plan - are directly linked to increasing cooperation and developing modalities of cooperation and operational support in the context of investigative, prosecutorial and judicial activities. Linked to these objectives, certain Key Performance Indicators (KPIs) were and continue to be identified, to further support the refinement of the relevant data collection at the Court.

9. Owing to these developments, the Court is already well placed to address the Assembly’s request to feature “disaggregated data over the responses provided by States Parties [to

⁷ ICC-ASP/12/42.

⁸ Resolution ICC-ASP/6/Res.2, annex II.

⁹ “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) .

cooperation requests], including highlighting the main challenges”; with the finalization, by the end of 2020, of a more comprehensive database to collect and analyse data regarding cooperation from the Registry side, the Court looks forward to providing even more detailed and complete image of its cooperation efforts and challenges faced in its future reports.

10. Using as a compass the seven priority areas for cooperation identified in the 66 recommendations flyer, this report will (i) provide specific data for cooperation priority areas two to five¹⁰; (ii) provide an update on the efforts undertaken by the Court during the reporting period to strengthen cooperation in those areas; (iii) provide an analysis of the data and highlight the main challenges it reflects; and (iv) identify recommendations for a way forward for each cooperation priority, based on the Court’s experience and lessons learned in the past 17 years of operation, in order to contribute to the 66 recommendations implementation review by the Bureau and the Assembly. Finally, the report will provide a short update and key recommendations on the three other priority areas¹¹ that are not linked to data collection.

II. Presentation of the collected disaggregated data on cooperation, focusing on the four priority areas with detailed data collection (cooperation in support of investigative, prosecutorial and judicial activities; arrest and surrender; financial investigations and asset recovery; and cooperation agreements) – update on ICC efforts, challenges identified, and recommendations on the way forward

1. General overview of data collected for requests for cooperation and assistance sent and received by the OTP and the Registry during the reporting period

<i>Office of the Prosecutor</i>	
Total number of Requests for Assistance (“RFAs”) sent during the reporting period (16/09/2019 to 15/09/2020)	402 RFAs (including 70 notifications of missions)
Evolution based on the last reporting period (2nd September 2018 to 1st September 2019)	- 31,98% (with notifications) and - 12,63% (without notifications)
Average time needed to execute an RFA	40,5 days

<i>Registry</i>	
Total number of Requests for Cooperation (“RFCs”) sent during the reporting period (16/09/2019 to 15/09/2020)	430 RFCs (including requests sent by relevant sections in the HQ and the Country Offices / NYLO) ¹²

¹⁰ Area 2: Cooperation in support of preliminary examinations, investigations, prosecutions and judicial proceedings (including with the Defence); area 3: Arrest and surrender; area 4: Identification, seizing and freezing of assets; area 5: Cooperation Agreements.

¹¹ Area 1: Enacting the legal mechanisms set in the Rome Statute and setting up effective procedures and structures regarding cooperation and judicial assistance; area 6: Diplomatic and public support in national, bilateral, regional and international settings; area 7: Inter-State cooperation in the context of the Rome Statute system.

¹² This number does not reflect notifications of judicial documents, missions and requests concerning the signature of voluntary cooperation agreements.

Evolution based on the last reporting period (2 nd September 2018 to 1 st September 2019)	+ 26 %
Average time needed for reply	25 days
% of positive replies to RFCs during the reporting period	60%
Number of notifications sent during the reporting period	60

2. **Priority area 2: Cooperation in support of preliminary examinations, investigations, prosecutions and judicial proceedings (including with the Defence)**

<i>Office of the Prosecutor</i>	
Total number of RFAs sent during the reporting period	402 RFAs (including 70 notifications of missions) – <i>same as above since all the OTP RFAs relate to investigations, prosecutions and judicial proceedings</i>
Total number of Requests for Information (“RFIs”) concerning the preliminary examinations for the reporting period	10 RFIs
% of replies for the RFAs during the reporting period	32,33 % (a total of 130 RFAs executed out of the 402, as of 15/09/2020) ¹³
Average time needed to execute an RFA	40,5 days

<i>Registry</i>	
<i>Total number of Requests for Cooperation (“RFCs”) sent during the reporting period for specific requests</i>	
Defence teams’ requests transmitted by the Registry	37 – of which 9 received positive replies (24,3 % execution rate)
Legal Representatives for Victims teams’ requests transmitted by the Registry	4 – of which 4 received positive replies (100 % execution rate)
TFV’s requests transmitted by the Registry	3 – of which 3 received positive replies (100 % execution rate)
Witness protection requests	40 – of which 30 received positive replies (75 % execution rate)
Support to judicial proceedings’ requests	9 – of which 8 received positive replies (88,8 % execution rate)
Average time needed for reply	40 days
% of positive replies to RFCs during the reporting period	58 %

¹³ It is normal that all RFAs sent during a specific time period are not executed during the same time period, given the time needed to receive, process, consult, execute the requests. In addition, the closer to the end of the period it is sent, the least likely an RFA will be executed within the same time period. *The choice was made here to only include the RFAs that were sent AND recorded as executed during the period of reference, i.e. this excludes all those RFAs executed during the period of reference but sent before it and all those sent during the period of reference but executed after it.*

Update on ICC efforts during the reporting period

11. The Court welcomes the initiative of the cooperation co-facilitators of developing and collecting questionnaires among States Parties regarding their cooperation legislation, procedures and modalities, as well as their experiences so far, as well as of putting together a database compiling this information, and allowing for further information sharing between States, and between States and the Court, including in the area of cooperation linked to financial investigations and asset recovery.

12. Notwithstanding the very high number of requests as well as the variety of the types of support requested by the OTP from States, overall, cooperation has been forthcoming and positive. Nevertheless, the OTP continues to experience challenges in the execution of some of its requests, particularly those that seek to obtain large pools of information, or certain technical or sensitive requests and continues to dedicate much time and efforts to consult with the relevant authorities and identify suitable procedures that would allow for a diligent execution of its requests, pursuant to Part 9 of the Rome Statute and applicable national legislations, for all its various types of requests.

13. Among others, the OTP continues to observe that getting access to information collected by military or law enforcement personnel, information from immigration or asylum offices and agencies, information from social media and telecommunication companies and entities, financial information, and information on the location of suspects remains sometimes challenging. The OTP notes with concern that it is also increasingly experiencing difficulties in the execution of simpler requests aimed at interviewing witnesses in secure environments, which creates delays to its investigative activities and diverts disproportionately its resources and time to identify suitable locations and ensure conditions for these to take place.

14. In line with paragraph 16 of the 2019 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 Defence teams, in order to ensure the fairness of the proceedings before the Court, as well as to contribute to the expeditiousness of proceedings.

15. The Registry continues to deal with challenges it experiences regarding cooperation with the Defence teams, and most specifically linked to privileges and immunities; indeed, 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, including but not limited to appropriate legislation and procedures, in the relevant States to provide such privileges and immunities. The Court recalls here the importance of States that haven't done so yet to ratify the Agreement on Privileges and Immunities ("APIC"), as also mentioned in paragraph 17 of the 2019 ASP Resolution on Cooperation.

16. The Registry supports Defence teams in their efforts to obtain cooperation from States and other stakeholders in the conduct of their investigations and undertakings, notably regarding requests for interviews (for example, with a state official, or a representative of an intergovernmental organization), or requests for documents and information. It has been the Registry's experience that cooperation with Defence teams is not easily forthcoming, even though they do not often involve complex requests. This is reflected in the data provided above. As in the past, the Registry continues to call for States and other stakeholders to cooperate fully with the requests from the Defence, as this is fundamental to ensuring the rights of the accused and the fairness of the proceedings before the Court.

17. Another area that has called for increased efforts of the Registry in recent years in the area of voluntary cooperation pertains to States' support to the Trust Fund for Family Visits ("TFFV"). The Registry refers here to paragraphs 29 to 33 of its 2019 Report on Cooperation. As family visits to indigent detainees are subsidized entirely through voluntary contributions by States, non-governmental organizations and individuals to the TFFV, the full and timely implementation of these essential rights is intrinsically linked to the availability of adequate funding. Since its establishment in 2010, the Fund has received a total of 290,000 Euros from six States, for which the Court expresses its appreciation. However, as it happened at the end of 2019, when the Fund had been depleted, and as was conveyed by the Registrar at the 17th session of the ASP, it remains necessary to stress the importance of sustainable and adequate funding for this activity, so as to avoid potential negative outfalls on the integrity of the proceedings and the legitimacy of the ICC.

18. During the reporting period, the Court also continued to receive crucial support and cooperation from the UN. The Court is grateful for the important role OLA plays in coordinating its requests for assistance to various departments of the UN Secretariat, to the UN funds, programmes and offices, as well as to Specialized Agencies and to the UN missions deployed in various parts of the world where the Court is involved, and relies on its Liaising Office based in New York to engage strategically with the UN and States.

19. The Court continued to maintain Country Offices in the DRC, the CAR, Mali, Côte d'Ivoire, Uganda and Georgia. The Country Offices provide in-country security, administrative and logistical support to the activities of the parties and participants to the proceedings before the Court, notably the OTP, defence teams, legal representatives for victims and the Trust Fund for Victims ("TFV"). The Country Offices also handle a number of Registry functions in relation to witness protection, victim participation, outreach and cooperation. Engagement and cooperation with national and local authorities, international organisations and the diplomatic community are among the key aspects in the work of the Country Offices, without which the Court could not maintain sustainable operations in the situation countries.

Recommendations on the way forward

20. Based on the analysis of the main challenges regarding cooperation, the Court has identified the following recommendations:

- Recommendation 1: 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.
- Recommendation 2: In particular, States could consider: requesting or 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; suggesting potential alternative ways to assist or transmit the information sought; or organising regular bilateral meetings to follow up on the execution of such requests to exchange on the most efficient way forward.
- Recommendation 3: 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.

- *Recommendation 4:* 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.
- *Recommendation 5:* 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.
- *Recommendation 6:* 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.
- *Recommendation 7:* Compliance by the Defence teams of the requirements established by the ICC jurisprudence regarding the cooperation requests, i.e. specificity, relevance and necessity.
- *Recommendation 8:* Regular meetings of Defence Teams with the ICC Focal Points from the relevant international organizations.
- *Recommendation 9:* Ratification of the Agreement on Privileges and Immunities of the ICC by all States Parties.
- *Recommendation 10:* 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.
- *Recommendation 11:* States could consider signing the framework agreements on interim release, release and enforcement of sentences.

21. Besides cooperation in support of the Court’s activities, the Court wishes to recall also the challenges related to non-cooperation. In this regard, the Court welcomes the ASP’s request for the Bureau to address the issues of cooperation and non-cooperation with the International Criminal Court “as a matter of priority in 2020 through its working groups and facilitations, in a fully inclusive manner [and] in line with their mandates.”¹⁴ In this context, the Court welcomes the positive development regarding the first joint event organized by the co-facilitators on cooperation and the regional focal points on non-cooperation, which took place on 5 October 2020 in a virtual platform. In furtherance of prerogatives and obligations under the Statute, it is hoped that the ASP will continue to consider opportunities to 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. The Court hopes that further consultations will take place with a view to reviewing and strengthening the ASP procedures relating to non-cooperation, as well as to developing guidelines regarding the formal dimension of the ASP procedures regarding non-cooperation.

22. 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 from all relevant stakeholders and for as long as the warrants have not all been executed, remains necessary to ensure that effective justice can be delivered when peace, security and well-being of the world are threatened. The need for follow-up also extends to a need to step up efforts to prevent non-compliance with requests for cooperation for arresting ICC suspects, and to react to instances of non-compliance.

23. The Court has transmitted a total of 16 communications on non-cooperation to the Council regarding the situations in Darfur and Libya. 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

¹⁴ ICC-ASP/18/Res/7, para. 18.

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. Following the Arria-formula meeting on the ICC and the Council, organised on 6 July 2018, and the subsequent debrief to the Hague Working Group, both with participation of the Prosecutor, the Court continues to highlight and make efforts, where appropriate, to follow-up on concrete areas and ideas that can contribute to enhancing the interaction between both bodies. States Parties – in particular through their Permanent Missions in New York – play a lead role in this regard and as such are encouraged to devise strategies to follow up and make progress in a sustained manner.

3. Priority area 3: Arrest and surrender

<i>Registry</i>	
Total number of RFCs sent during the reporting period for arrest and surrender	5 (including support in surrender)
Average time needed for reply	4 months
% of positive replies to RFCs during the reporting period	80 %

Update on ICC efforts during the reporting period

24. Mr Abd-Al-Rahman (formerly referred to in ICC documents as "Ali Kushayb"), who allegedly was a tribal leader, a member of the Popular Defence Forces and one of the top commanders of the Janjaweed Militia in the Sudan, was transferred to ICC custody on 9 June 2020 after having surrendered himself in the CAR. The confirmation of charges hearing, regarding crimes against humanity and war crimes allegedly committed between 2003 and 2004, is set to begin on 7 December 2020.

25. The implementation of a complex transfer operation regarding Mr Abd-Al-Rahman in the context of the COVID-19 pandemic demonstrated the Court's and the States Parties' capacity to implement a surrender request even in difficult circumstances. The Court is grateful for the cooperation of all those States, organisations and individuals who contributed to this pivotal development, in particular, the Governments of the Central African Republic, the Republic of Chad, the French Republic and the Host State, The Netherlands, and the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic ("MINUSCA"), which contributed to this development notwithstanding the complexities of the operation, not least in the midst of added complications presented while operating in the COVID-19 pandemic context.

26. Court-issued requests for arrest and surrender remain outstanding against 14 individuals:

- i. DRC: Sylvestre Mudacumura, since 2012¹⁵;
- ii. Uganda: Joseph Kony and Vincent Otti, since 2005;

¹⁵ The Court is in the process of verifying Mr Mudacumura's reported death in 2019, pending further steps concerning his status.

- iii. Darfur: Ahmad Harun, since 2007; Omar Al-Bashir, since 2009 and 2010; Abdel Raheem Muhammad Hussein, since 2012; Abdallah Banda, since 2014;
- iv. Kenya: Walter Barasa, since 2013; Paul Gicheru and Philip Kipkoech Bett, since 2015;
- v. Libya: Saif Al-Islam Gaddafi, since 2011; Al-Tuhamy Mohamed Khaled, since 2013; Mahmoud Mustafa Busayf Al-Werfalli, since 2017; and
- vi. Côte d'Ivoire: Simone Gbagbo, since 2012.

27. The pending arrest warrants are an unfortunate testament to the challenges the Court faces in terms of cooperation. The ICC will not be able to fully exercise its mandate without arrests and/or surrenders, as court proceedings cannot commence without the presence of the suspect(s). 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 issue was also raised by the Prosecutor and the Registrar during the second segment of the cooperation plenary of the Assembly of States Parties on 5 December 2019.

28. The OTP and the Registry continued their common efforts to devise and implement strategies to facilitate the arrest of suspects within the inter-organ working group on arrest strategies created in March 2016 and reinforced since. The working group continued to meet 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 develop sources and foster support from relevant state and non-State partners, to share and confront leads, to make use of investigative tools available to the OTP and to develop and implement joint cooperation strategies and missions to foster arrest of ICC fugitives.

Recommendations on the way forward

29. 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 States. These notably include:

- Tracking efforts (whereabouts, movements, activities):
 - Recommendation 12: Access to information from national authorities, including, when appropriate, specialised services (including solely for the purpose of validating or invalidating information collected by the Court).
 - Recommendation 13: Transmission of information and alerts on suspects.
 - Recommendation 14: Availability of judicial measures and tools to facilitate access to information on the whereabouts of suspects, including access to special investigative techniques and tools in the hands of national law enforcement and intelligence services as needed.
- Identification of potential leverage and partners:
 - Recommendation 15: Support in multilateral fora (UN, regional, specialised networks) and bilateral encounters, and efforts to keep the issue on the agenda.
 - Recommendation 16: Insertion of arrest warrant execution in talking points and external relation strategies, as appropriate.
 - Recommendation 17: Focus on compliance with ICC decisions, including as part of larger diplomatic discussions and fora.

- Recommendation 18: Link arrests to the importance of the Court’s mandate. Campaigns and reminders on the alleged crimes and the charges, especially in the situation where the investigations take place¹⁶.
 - Recommendation 19: Reactivity when information sent on suspects’ movements.
- Operational support:
- Recommendation 20: Surrender procedures and availability of legal and technical processes (SOPs developed, including established procedures in place for different arrest / surrender / transfer scenarios, taking into account key elements that can influence legally and operationally the operations, such as for instance the existence of complete implementing legislation in the State of arrest).
 - Recommendation 21: The integration 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.
 - Recommendation 22: Transport and logistics: the Registry has also recently developed a model agreement for air transport, following earlier contact with a number of States to explore innovative ways of tapping into their air transport capacity that could be made available to the ICC when persons arrested are transferred to the seat of the Court. The Registry will be approaching States with this model agreement, hoping it will provide the Court with new options to enable the operational and logistical support needed to make transfer operations a success.

30. Through its dedicated Working group and its external relations efforts, the Court on its side 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. At the same time, the Court encourages 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.

4. Priority area 4: Identification, seizing and freezing of assets

<i>Office of the Prosecutor</i>	
Total number of RFAs sent during the reporting period for financial investigations for identification of assets	12
% of execution rate	16 %
Average time needed to execute an RFA	4 months

<i>Registry</i>	
Total number of RFCs sent during the reporting period for financial investigations for legal aid	5

¹⁶ The Court has developed factsheets on the suspects at large, a leaflet to increase attention for and knowledge of pending warrants, as well as reformulated its website to further highlight the issue and make relevant information easier to access as well as to facilitate transmission of relevant information from external sources. These efforts were combined with a communication campaign launched in November 2018, and the Court will continue to call upon its States Parties to support it with similar efforts at the national and regional levels.

Total number of RFCs sent during the reporting period for asset recovery for fines and reparations	1
Average time needed for reply	4 months
% of positive replies to RFCs during the reporting period	16 %

Update on ICC efforts during the reporting period

31. Regarding this key cooperation matter, the Court is thankful to the HWG cooperation co-facilitators for the efforts put forward in the course of 2019 and 2020, in furtherance of the Paris Declaration on cooperation regarding financial investigations and asset recovery of 2017, which forms a very useful basis for further discussions and concrete enhancements regarding cooperation in this area.

32. The OTP and the Registry have continued to approach several State Parties on a bilateral basis during the reporting period to explore with them ways to access information in a timely manner and identify focal points among the relevant authorities and fast track channels to ensure preservation of relevant information. Reference is made here to paragraphs 48 to 56 of the 2018 ICC Report on Cooperation, which detail the specific legal and operational framework in which the Court seeks cooperation from States and other stakeholders in the area of financial investigations and recovery of assets. The Court also continued its efforts to exchange with States to improve its requests and explain its specific mandate to States as recommended by the Assembly of States Parties following the Paris Declaration. In support to its investigative activities, the OTP has also approached private entities and experts to seek their support and advice to review and improve as needed its investigative practices and methodologies in this area. The Registry continued to raise the importance of this issue during high-level and technical meetings and virtual contacts undertaken during the reporting period, notably with countries in Latin America, as well as in Western and Eastern Europe.

33. During the reporting period, the Registry continued to face difficulties in obtaining diligent replies from States in this area, which is highlighted by the data provided above.

Recommendations on the way forward

34. A number of immediate steps could indeed be taken by States to support the work of the Court:

- *Recommendation 23:* 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 retrace the complex asset recovery scheme of any given ICC suspect and/or accused.
- *Recommendation 24:* 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 in 2018 on Financial Investigations and the Recovery of Assets by the Court will help the national experts in understanding better these needs.
- *Recommendation 25:* 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.

- *Recommendation 26:* 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.
- *Recommendation 27:* Within the judicial context, by replying to the requests of Chambers and asking for clarification where required, States can contribute to shaping the Court's case-law on this complex matter.
- *Recommendation 28:* 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 or during missions.
- *Recommendation 29:* Subject to the authorization of the relevant Chamber, 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 could combine their analytical efforts to obtain more targeted and comprehensive information to the benefit of the Court.

5. Priority area 5: Cooperation agreements

<i>Registry</i>	
Total number of RFCs sent during the reporting period for release matters	65 (including requests for observations on interim release from the Chamber)
Average time needed for reply	10 days
% of positive replies to RFCs during the reporting period	16 %

Update on ICC efforts during the reporting period

35. The Court regrets to report that it did not conclude any new cooperation agreements with States Parties. As it stands, the Court has agreements in force on the enforcement of sentences with the governments of Argentina, Austria, Belgium, Denmark, Finland, Georgia, Mali, Norway, Serbia, Sweden and the United Kingdom of Great Britain and Northern Ireland. The Court also has signed 24 agreements on the relocation of witnesses with States. Finally, the Court has two agreements on interim release with Argentina and Belgium, and one agreement on the final release of persons, with Argentina.

36. The Court urges States Parties to consider signing these agreements, and stands available to provide additional information and enter into bilateral discussions with any interested State Party on the matter. It will continue to engage with States and other relevant stakeholders through high level and working level engagements, including official visits and meetings, as well as seminars and events it organizes, thanks notably to the financial support of the European Commission, or takes part in. The Registry has continued 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. Finally, the Registry continues to rely on the brochure on cooperation it has developed in English, French and Spanish to promote better understanding of its needs, as well as to share with interested States model agreements they can consider in their national discussions.

37. Finally, the Court is also continuing to engage with States that have recently adopted implementing legislation concerning Part 9 of the Rome Statute which also foresee in part or

in whole cooperation regarding the subject-matter of the agreements, and has worked with two of these States to identify further steps in order to operationalize their support in these critical areas.

38. 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.

39. Given the scarce amount of framework or ad hoc cooperation agreements on interim release, the Registry is facing challenges in implementing Chambers' decisions in this regard. This is demonstrated by the data collected regarding cooperation in the area of release. As emphasized repeatedly by the Court, the consequences of the absence of States Parties willing to accept released persons are serious. For example, individuals who cannot be successfully relocated may remain *de facto* detained, despite having been released. In this respect, other international criminal tribunals, such as the International Criminal Tribunal for Rwanda, have encountered difficulties in finding States willing to accept acquitted persons on their territory. In addition to the egregious impact such a situation would have on the released person, it prevents the Court's system from functioning and runs counter to the Court's objective of applying the highest international standards. Moreover, in the case that the Pre-Trial or Trial Chamber grants a person with interim release, in order for it to be effective, the Court must rely on States Parties and their willingness to accept the person on their territory. If States Parties are unwilling to do so, this could hamper the possibility of interim release or render it impossible.

40. In the Gbagbo / Blé Goudé case, for instance, which was referenced in the Court's Report on cooperation of 2019, the Registry has had to deploy extensive efforts since early 2019 to try to find a sustainable and fair solution. While these energies are geared towards finding a solution to the case at hand, it is crucial to build a common understanding of the fact that voluntary cooperation requires sustained multilateral, shared efforts for the Court and States Parties to find effective long-term solutions.

Recommendations on the way forward

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

- Recommendation 30: The inclusion of elements of 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.
- Recommendation 31: 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, monitoring systems, reintegration programs or the national penitentiary systems).
- Recommendation 32: 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.
- Recommendation 33: 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.

- *Recommendation 34*: The possibility of including the signature of cooperation agreements as an item in the agenda of meetings of regional groups.
- *Recommendation 35*: Utilizing, where necessary, 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.

III. Update and key recommendations on the three other cooperation priority areas not linked to data collection (legal mechanisms and procedures for cooperation; diplomatic and public support; and inter-State cooperation)

1. Priority area 1: Enacting the legal mechanisms set in the Rome Statute and setting up effective procedures and structures regarding cooperation and judicial assistance

Update on ICC efforts during the reporting period

42. Due to the COVID-19 pandemic, the Court was not able to organize its 7th Focal Points Seminar on Cooperation during the reporting period. The activity is expected to take place in 2021, bringing together the national focal points from situation countries and other countries of relevance for the judicial activities of the Court and which are instrumental in facilitating the cooperation between the Court and the competent authorities. 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, implementation of arrest warrants); they also have 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.

43. With the financial support of the European Commission, the Court organized a regional seminar on cooperation with respect to witness security management in Pretoria, South Africa, in November 2019, which provided a forum to engage national focal points and develop cooperation networks. The Court is grateful to the host authorities, partner organizations and participating experts for their valuable support and contributions. Several planned events aimed at promoting cooperation had to be postponed due to travel restrictions related to the COVID-19 pandemic.

44. Also thanks to the financial support from the European Commission, the Registrar of the ICC led a high-level mission to Croatia and Bosnia-Herzegovina on 10-12 September 2019, in order to discuss enhanced cooperation, including cooperation agreements, with the authorities of both countries.

45. Missions to States Parties provide important opportunities for engagement with multi-ministerial counterparts that are part of the national effort to cooperate with the Court, and

allow the OTP and the Registry to identify specific focal points as well as areas of further cooperation (including regarding cooperation agreements). They can also be used as opportunities to raise awareness of the Rome Statute and the Court within a variety of relevant pools of interlocutors, such as the judiciary, law enforcement agencies, bar associations, specialized units working on witness protection or asset recovery, as well as civil society, academia and students.

Recommendations on the way forward

46. Based on its experience and assessment, the Court suggests the following recommendations:

- *Recommendation 36:* As recalled by paragraphs 7 to 9 of the 2019 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 of 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. The Court is also following the Mutual Legal Assistance (“MLA”) initiative with interest, as an example of a platform where relevant inter-State cooperation matters are being discussed.
- *Recommendation 37:* 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, where incorporating the Rome Statute crimes in domestic legislation is concerned, that they can also investigate and prosecute such crimes before their national jurisdictions as relevant.
- *Recommendation 38:* 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.
- *Recommendation 39:* 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.

47. As paragraph 17 of the 2019 Resolution on Cooperation stresses, it is a matter of priority that States that have not yet done so become parties to the Agreement on Privileges and Immunities of the ICC (“APIC”), and that they incorporate it in their national legislation, as appropriate.

48. 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.

49. 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.

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

- *Recommendation 40:* Accordingly, 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.

2. Priority area 6: Diplomatic and public support in national, bilateral, regional and international settings

Update on ICC efforts during the reporting period

51. In September 2019, the President and the Prosecutor participated in the high-level segment of the seventy-fourth General Assembly session, each holding bilateral meetings with Heads of State and other high-level representatives of States as well as United Nations representatives, to strengthen political and diplomatic support for the Court's operations and further mainstream its mandate. During the high-level week, the President and Prosecutor also addressed the meeting of the Informal Ministerial Network for the ICC.

52. For 17 July 2020, the Day of International Criminal Justice, the Court launched a sub-page of its web-based Sustainable Development Goal 16 "Humanity against crimes" campaign, on the theme of #Resilience in crisis and conflict, complementing themes of the UN75 campaign and reflecting that people across the globe are coping not only with grave human rights violations but also the COVID-19 pandemic. Content of the new campaign segment includes a "Life after conflict" story series focused on the resilience of survivors, and messages on the Court's and United Nations' social media platforms on Peace and Justice.

53. The Prosecutor's biannual briefings to the Security Council related to the Darfur and Libya situations provided opportunities to inform the Council and the UN membership of progress and challenges, especially the failure to execute outstanding arrest warrants. The Court welcomed the joint statement of 10 June 2020 by the ten ICC States Parties on the Council reaffirming their "unwavering support for the Court as an independent and impartial judicial institution". The Court believes that a structured dialogue between the Court and the Council on matters of mutual interest, both thematic and situation-specific, could improve the implementation of Council referral resolutions and enhance the fight against impunity.

54. The Court continued to develop its interaction and cooperation with international and regional organizations as key partners for promoting universality of the Rome Statute, raising awareness of the Court's work, adopting national implementing legislation, enhancing cooperation and promoting wider geographical representation within staff. The Secretary-General of the Commonwealth delivered a keynote speech at the ceremony for the opening of the Court's judicial year on 23 January 2020, marking the long-standing, cooperative relations between the two organizations.

55. On the same day, the Court held its Third Annual Judicial Seminar, bringing together judges from national, regional and international jurisdictions and the Court to exchange views on topical issues, including guidelines on time limits for the issuance of key judicial decisions adopted by the Court's judges in October 2019 and incorporated in the Chamber Practice Manual in December 2019 to enhance the efficiency of proceedings.

56. The Court greatly values the activities that civil society partners undertake to raise awareness about the Court, to promote the universality of the Rome Statute and to encourage the Statute's full implementation, and continued to participate in those activities. From 12 to 14 May 2020, the Court held, via videoconference, its twenty-fourth annual round table with non-governmental organizations to discuss issues of common interest.

57. A development of grave concern during the reporting period was the issuance by the President of the United States, on 11 June 2020, of Executive Order 13928 titled "Blocking Property of Certain Persons Associated with the International Criminal Court". This broadly worded Executive Order represents an escalation of threats and coercive actions, including potential financial measures, against the Court and its personnel. As indicated in the Court's statement of the same date, such unprecedented measures taken against the Court with the declared aim of influencing the actions of its officials in the context of investigations and judicial proceedings constitute an unacceptable attempt to interfere with the rule of law and the Court's activities. On 2 September 2020, Prosecutor Fatou Bensouda, as well as the Director of the Jurisdiction, Complementarity and Cooperation Division of the OTP, Phakiso Mochochoko, were designated under the Executive Order. The Court stands firmly by its personnel and remains unwavering in its commitment to discharging, independently and impartially, the mandate bestowed upon it by the Rome Statute and the States that are party to it. The Court is highly appreciative of the numerous expressions of strong support in the wake of the issuance of the Executive Order and following the imposition of sanctions from the Assembly of States Parties, individual States Parties, States Parties jointly across regional groups, international and regional organisations, professional associations and civil society. The Court has engaged with these stakeholders in different fora to discuss how to protect the Court and its personnel in face of such attacks. In this context, various supportive measures were mentioned, such as the EU blocking statute. The Court urges sustained engagement regarding these coercive actions matter as it continues to rely on the firm support of its stakeholders and recalls that undermining the work of the ICC undermines the global fight against impunity for atrocity crimes, and the interests of victims, for many of whom the Court represents the last hope of justice.

Recommendations on the way forward

58. Based on its experience and assessment, the Court would suggest the following recommendations:

- *Recommendation 41:* 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. For this purpose, the Court welcomes opportunities to integrate its work and mandate within the activities of regional and specialized organizations.
- *Recommendation 42:* 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”).
- *Recommendation 43:* 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.
- *Recommendation 44:* The Court calls on the ASP to devise a strategy to protect the Court and its personnel against attacks, and be prepared to speak up in the Court’s defence, given that its dignity and political impartiality seriously inhibits its ability to defend itself against such attacks by political actors.

3. Priority area 7: Inter-State cooperation in the context of the Rome Statute system

Update on ICC efforts during the reporting period

59. 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 annual focal points’ seminar; 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. Some of these aspects are further detailed in the Court’s 2012 report on complementarity¹⁷.

60. Much like inter-State cooperation combines elements of cooperation and complementarity, this is also the case where the Court provides assistance to national jurisdictions in accordance with the Rome Statute for the purpose of domestic proceedings. During the reporting period, the OTP continued its efforts under Strategic Goal 6 under the Strategic Plan 2019-2021, 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 and when possible in the difficult context associated with the COVID19 pandemic, with national and regional authorities in charge of law enforcement. This has included: sharing its experience, technical expertise and lessons learned, when possible directly with national partners or otherwise through online consultations; 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

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strategies to preserve evidence collectively; as well as answering positively to multiple incoming requests and transmitting 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. The OTP has been able, in that context and during the reporting period, to provide an essential contribution to several national judicial proceedings against persons accused of ICC crimes. The OTP has continued in parallel to ensure a diligent turnaround of information and support requested by national jurisdictions and to address the ever-increasing number of demands received in a timely manner. Although access to relevant information through missions to its Headquarters has proven more difficult, the OTP has sent up tools to facilitate the secure sharing and remote review of material when legally possible and safe to continue facilitating the work of various law enforcement national authorities.

61. Coordination and sharing of expertise and lessons learned have continued and actually increased in particular in the context of the OTP's investigations in Libya, in the Central African Republic (CAR II), including through the continued OTP's interaction with the Special Criminal Court, as well as in the DRC and Uganda situations.

62. 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.

IV. Conclusion

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

64. 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, including, *inter alia*, in the context of the continuation of the process of review commenced by States Parties in 2019, with a view to strengthening the Court and the Rome Statute system.

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.