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**Review Conference to the Rome Statute**

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**Report of the Court on cooperation: update**

**A. Introduction**

1. In 2009, the International Criminal Court (“the Court”) submitted the Report of the Court on international cooperation and assistance (“the Report”) to the Bureau of the Assembly of States Parties (“the Assembly”).<sup>1</sup> At its eighth session, the Assembly requested the Court “to submit an updated report on cooperation to the Bureau in advance of the Review Conference and to the Assembly at its tenth session.”<sup>2</sup> The present report provides such an update, focusing on priority areas identified in the previous Report.

2. As detailed in the Report, the Court has found that cooperation from States Parties and from international and regional organizations has been generally forthcoming. Nevertheless, there are a number of priority areas essential to the success of the Court’s operations. This update highlights those areas where further cooperation and assistance from States are most urgently needed.

**B. Arrest and surrender of persons**

3. Arrest and surrender of suspects for whom the Court has issued an arrest warrant, along with the diplomatic support of all States Parties for such arrests and surrenders (see section D3 of the Report), remains a top priority for the Court. Since the Report, no further suspects have been surrendered to the Court, and eight persons for whom warrants of arrest have been issued remain at large. To recall: warrants have been outstanding since 2005 for Joseph Kony, Okot Odhiambo, Dominic Ongwen and Vincent Otti in the situation in Uganda; since 2006 for Bosco Ntaganda in the situation in the Democratic Republic of the Congo; and since 2007 for Ahmad Harun and Ali Kushayb, and March 2009 for Omar Al-Bashir, in the situation in Darfur, Sudan.

4. It is an obligation of States Parties to give effect to the Court’s requests for cooperation in the arrest and surrender of suspects. This obligation becomes applicable as soon as a suspect is present in the territory of a State Party to which the Court has notified the request for cooperation. States Parties with Court suspects on their territory are reminded of their obligations and called upon to fulfil these. All other States Parties are called upon to provide full diplomatic support for the enforcement of these outstanding arrest warrants.

5. Pending the arrest and surrender of the individuals sought, the Court must nonetheless continue substantial activities in relation to the respective cases and situations, in particular in regard to the protection of witnesses and victims.

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<sup>1</sup> ICC-ASP/8/44, annex I.

<sup>2</sup> ICC-ASP/8/Res.2.

**C. Public and diplomatic support, including mainstreaming of Court issues domestically**

6. Public and diplomatic support remains a priority, in particular in the galvanization of arrest efforts. In this context, in accordance with its mandate to galvanize arrest efforts, the Prosecutor has disseminated the following guidelines for the consideration of States:

- a) Eliminate non-essential contacts with individuals subject to an arrest warrant issued by the Court. When contacts are necessary, attempt first to interact with individuals not subject to an arrest warrant by the Court;
- b) In bilateral and multilateral meetings, proactively express their support to the enforcement of the Court's decisions, request cooperation with the Court, and demand that crimes, if ongoing, cease immediately;
- c) Contribute to the marginalization of fugitives and take steps to prevent the diversion of aid/funds meant for humanitarian purposes or peace talks to the benefit of persons subject to an arrest warrant issued by the Court; and
- d) Make collaborative efforts to plan and execute arrests of individuals subject to an arrest warrant issued by the Court, including by providing operational or financial support to countries willing to conduct such operations but lacking the capacity to do so.

7. The Office of the Prosecutor ("the OTP") will follow up on those guidelines, focusing on measures States take to eradicate the support networks that provide safe havens and logistical, political and financial support to suspects. Positive responses have already ranged from official statements by States Parties to the effect that they would act upon the warrants if a suspect were to travel to or on their territory, to refusing any interaction with suspects in international fora.

8. Another priority area highlighted in the Report (see section D1) was the mainstreaming of Court issues domestically and within international organizations. The creation of national focal points, committees or other structures for cooperation to coordinate and mainstream Court issues within and across ministries and government institutions could facilitate and expedite the execution of requests for cooperation and the coordinated expression of support by officials from and across different ministries. The Court is not aware of any developments in this regard since the Report.

**D. Implementing legislation**

9. As detailed in section B2 of the Report, the Rome Statute imposes an obligation on States to ensure that procedures under national law are available for "all of the forms of cooperation" specified in Part 9. The Court recalls that such legislation may be crucial (depending on the constitutional and legal system in question) in order to provide a sound national legal basis for cooperation with the Court, as well as to set up appropriate detailed procedural mechanisms nationally.

10. The Court has been informed that the Ugandan parliament adopted legislation implementing the Rome Statute in March 2010. The Court is now aware of 40 States – less than half of the States Parties - that have some form of implementing legislation (see section B2 of the Report).

**E. Cooperation in support of preliminary examinations, investigations and prosecutions**

11. As noted in the Report (see section A6), the OTP's requests for cooperation and assistance are channeled separately. The OTP recognizes that over the years 2007-2009 cooperation has been, in general, forthcoming (see section D2 of the Report). For judicial cooperation, covering mainly notification of investigative activities on the territory of States, transmission of documents and interviews of officials, the execution rate remains satisfactory at around 85 %. In addition, the OTP appreciates the willingness of States Parties, States not party to the Rome Statute and international organizations to assist in the preliminary examination phase. Based on article 15 of the Statute, the OTP sent a total of 87 requests in 2007-2009, of which 63% were answered positively.

12. As noted above, it is mostly in relation to arrests that the OTP has identified shortcomings. The Prosecutor has called the United Nations Security Council's attention to the lack of cooperation of the Government of Sudan in the situation in Darfur, Sudan.

13. A priority for supporting expeditious investigations and prosecutions as highlighted in the Report (Section D2) is the facilitation of screenings of potential witnesses or interviews of witnesses on the territory of other States; it is often the case that the screening or interviews of potential witnesses can be conducted more efficiently outside of situation countries; to this end, and as recommended in the 2007 report of the Bureau, it is important that States "should, where relevant, facilitate access to witnesses for Court officials, *inter alia* by issuing "emergency visas if required" upon request of the OTP.

14. Finally, the financial aspects of investigations – in particular access to bank records and locating assets - which would enable the Office to prove the role of those most responsible with minimum reliance on witnesses, require enhanced cooperation. While the OTP has developed its network with financial bodies both at the domestic level and within networks such as CARIN, Eurojust, the Egmont group and the World Bank, it still needs support from individual States to speed up related cooperation processes.

#### **F. Agreements with the Court on interim release, enforcement of sentence and witness relocation**

15. While judicial cooperation per se does not require additional agreements with the Court, in some specific areas of assistance the Court needs States to enter into specific agreements with the Court, including agreements on interim release, enforcement of sentences and witness relocation. The Report details the Court's efforts to enter into such agreements with States (see sections D2(f) and (g) and section D4).

16. No State has entered into an agreement on *interim release* since the Report was submitted. A Chamber may grant interim release to an accused as specifically provided in article 60(2). It is a priority for the Court to secure an agreement with at least one State that would be willing to accept such persons on its territory pending trial.

17. Since submission of the Report, the Court has reached a stage of advanced negotiations on agreements of enforcement of sentences with three States Parties. The Court hopes to have up to five agreements in place in the near future. The Court welcomes this progress, but notes that these are framework agreements, and do not guarantee that a State will accept a particular detainee convicted by the Court. Thus more agreements are needed to ensure that the detention of a convicted person will be secured in practice.

18. Further, as detailed in section D2(g) of the Report, the Court is exploring the possibility of concluding tripartite agreements with States Parties that are willing to consider funding requests for the enforcement of the sentence of a convicted person on the territory of another State Party.

19. Since the Report's submission, one State has entered into a new framework agreement on *witness relocation*, and the Court is hopeful that negotiations with two other States can soon be finalized. Despite this progress, the underlying need for more assistance has not changed. Four relocation requests remain pending, affecting a total of 25 persons. The total rate of successful relocations is still only 40%. Hence, aside from needing additional framework relocation agreements, the Court also relies on States to look favorably on specific requests for relocation made by the Court pursuant to these framework agreements.

20. With regard to the special fund for witness relocation, detailed in section D4(c) of the Report, the Court is finalizing the financial document needed to open the special fund, and is hopeful that States will respond positively to a funding appeal that will be launched soon.

## **G. International and regional organizations**

21. As noted in the Report (see section F), the Court has approached a number of regional bodies with a view to concluding relationship agreements with them as a basis for cooperation. Since the submission of the Report, the Court has initiated concrete negotiations with the Organization of American States on an exchange of letters to facilitate cooperation between the two organizations. The Commonwealth Secretariat has indicated an interest in negotiating an agreement with the Court. Negotiations on an agreement with the African Union also continue. Conclusion of these latter negotiations is particularly urgent, as the opening of the Liaison Office in Addis Ababa, which the Assembly of States Parties established at its last session, is contingent upon this agreement.

22. The OTP has also proceeded with an exchange of letters with the Organization for Economic Cooperation and Development ("OECD") in late 2009.

## **H. Conclusion**

23. This brief update has focused on what the Court has identified as its priority areas regarding the cooperation and assistance it requires from States, as well as international and regional organizations. Although some progress has been made, significant work still needs to be done to strengthen cooperation in all priority areas which are central to the successful operation of the Court. The Court welcomes the facilitation of cooperation as a crucial component of the stock-taking exercise set to culminate at the forthcoming Review Conference. The Court is hopeful that, at the Review Conference, States will be able to make tangible commitments to achieving further progress in all priority areas of cooperation.

24. In the Report, the Court sought to acknowledge the significant cooperation it has received to date from States, as well as international and regional organizations. The Court wishes to reiterate its gratitude to States Parties, and to international and regional organizations, for the significant cooperation it has received to date.