

**Twenty-first session**

The Hague, 5-10 December 2022

**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 40 of resolution ICC-ASP/20/Res. 2 (“2021 Resolution on Cooperation”). It covers the period of 16 September 2021 to 15 September 2022<sup>1</sup>.

2. Similar to the Court’s previous reports on cooperation<sup>2</sup>, 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 continue providing disaggregated data pertaining to the different types of requests for cooperation following the format adopted for the Report on cooperation submitted in 2021<sup>3</sup>.

3. The report should be read in conjunction with the latest ICC annual report to the United Nations General Assembly (A/77/305), providing, *inter alia*, information on the Court’s recent cooperation with the United Nations (“UN”).

4. The Court wishes to recall its analytical reports on cooperation matters, notably its 2013 cooperation report<sup>4</sup> and its separate 2013 report focusing specifically on cooperation between the Court and the UN<sup>5</sup>, as useful sources of information regarding the key cooperation needs of the Court which largely remain valid to date.

5. The Court additionally recalls the continued relevance of the 66 recommendations on cooperation adopted by States Parties in 2007<sup>6</sup>, as well as the flyer that was produced by the co-facilitators of the working group on cooperation in 2015<sup>7</sup> 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, if duly implemented, can render the assistance to the Court more efficient and effective.

6. Finally, the Court notes the final report of the Group of Independent Experts dated 30 September 2020<sup>8</sup>. This report did not focus as such on cooperation issues but touches upon

<sup>1</sup> 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.

<sup>2</sup> 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, ASP/19/25, ICC-ASP/20/25.

<sup>3</sup> ICC-ASP/20/25.

<sup>4</sup> ICC-ASP/12/35.

<sup>5</sup> ICC-ASP/12/42.

<sup>6</sup> Resolution ICC-ASP/6/Res.2, annex II.

<sup>7</sup> “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)

<sup>8</sup> ICC-ASP/20/16.

relevant matters for this current report including the relationship between the Court and the United Nations, cooperation between the Court and international organisations and agencies, assistance in evidence collection, as well as the capacity of the Office of the Prosecutor (“OTP” or “the Office”) and increased inter-organ coordination in the field of financial investigations and the tracking of suspects.

7. 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 HWG. To amplify its messaging, the Court used, where appropriate, 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 (“TFFV”).

8. Using their internal databases pertaining to requests for cooperation and assistance, the Office of the Prosecutor and the Registry have continued their efforts in compiling and analysing information on their respective cooperation-related activities with States and other partners.

9. Cooperation remains a key component in the (forthcoming) strategic plan of the Court, and those of the Office of the Prosecutor and the Registry, for the period 2023-2025, directly linked to the Court’s goal to foster political support and develop the modalities of cooperation and operational support for all parties as regards preliminary examinations, investigations, protection of witnesses, implementation of arrest warrants and judicial proceedings. Linked to these objectives, certain Key Performance Indicators (KPIs) were and continue to be identified and measured.

10. Using as a compass the seven priority areas for cooperation identified in the 66 recommendations flyer, this report (i) provides data for cooperation priority areas two to four<sup>9</sup>; (ii) provides an update on the efforts undertaken by the Court during the reporting period to strengthen cooperation in those areas; (iii) provides an analysis of the data and highlights the main challenges it reflects; and (iv) identifies recommendations for a way forward for each cooperation priority, based on the Court’s experience and lessons learned in the past 20 years of operation. Finally, the report provides a short update and key recommendations on the three other priority areas<sup>10</sup> that are not linked to data collection.

---

<sup>9</sup> 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.

<sup>10</sup> Area 1: Enacting the legal mechanisms set in the Rome Statute and setting up effective procedures and structures regarding cooperation and judicial assistance; area 5: Cooperation agreements, 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.

**II. Presentation of the disaggregated data collected 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>	
<b>Total number of Requests for Assistance (“RFAs”) sent during the reporting period (16/09/2021 to 15/09/2022)</b>	392 RFAs (including 152 notifications of missions)
<b>Evolution based on the last reporting period (16 September 2020 to 15 September 2021)</b>	+ 1.55% (with notifications) and – 0,82% (without notifications)
<b>Average time needed to execute an RFA</b>	45.63 days

<i>Registry</i>	
<b>Total number of Requests for Cooperation (“RFCs”) sent during the reporting period (16/09/2021 to 15/09/2022)</b>	324 RFCs (including 165 RFCs sent by the relevant sections in HQ and 159 operational requests sent by the Country Offices / NYLO) <sup>11</sup>
<b>Evolution based on the last reporting period (16/09/2021 to 15/09/2022)</b>	-30,60% for the total RFC and +33% for the RFC sent by HQ
<b>Average time needed for reply to requests sent by the HQ</b>	61 days
<b>% of positive replies to RFCs sent by the HQ during the reporting period</b>	65%
<b>Number of notifications of decisions/orders sent during the reporting period</b>	63

**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>	
<b>Total number of RFAs sent during the reporting period</b>	392 RFAs (including 152 notifications of missions) – same as above since all the OTP RFAs relate to investigations, prosecutions and judicial proceedings
<b>Total number of Requests for Information (“RFIs”) concerning the preliminary examinations for the reporting period</b>	8 RFIs
<b>% of replies for the RFAs during the reporting period</b>	46,43 % (a total of 182 RFAs executed out of the 392, between 16/09/2021 and 15/09/2022) <sup>12</sup>
<b>Average time needed to execute an RFA</b>	46.86 days

<sup>11</sup> This number does not reflect notifications of judicial documents, missions and efforts deployed concerning the signature of voluntary cooperation agreements.

<b>Registry</b>	
<i>Total number of Requests for Cooperation (“RFCs”) sent during the reporting period for specific requests</i>	
<b>Number of requests for cooperation</b>	165
<b>Defence teams’ requests transmitted by the Registry</b>	34 –of which 12 received positive replies (35% execution rate)
<b>Legal Representatives for Victims teams’ requests transmitted by the Registry</b>	3
<b>Witness protection requests</b>	34
<b>Support to judicial proceedings’ requests</b>	22 (81% execution rate)
<b>Average time needed for reply to request from defence teams</b>	39 days

Update on ICC efforts during the reporting period

11. The Court welcomes the initiative of the cooperation co-facilitators in recent years 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. In the context of its investigations and prosecutions, the OTP observes that, overall, cooperation has been largely forthcoming and positive. Under the lead of Prosecutor Karim A.A. Khan KC, the Office is taking a dynamic approach to cooperation, through robust engagement with States Parties, States not Party, international organisations, and other stakeholders to enhance the effective delivery of justice, at the ICC, and in other fora including at the domestic level.

13. One example of the novel approach and engagement in this regard, is the joining, on 25 April 2022, by the Office of the Joint Investigation Team (JIT) under the auspices of Eurojust in relation to the situation in Ukraine, with the aim of enhancing the Office’s ability to access and collect information relevant to its independent investigations, and conduct rapid and real time coordination and cooperation with the JIT partner countries. Also in the Libya situation, the Office became a formal member of the Joint Team aimed at supporting investigations into crimes against migrants and refugees in Libya, joining relevant national authorities from Italy, Netherlands, the United Kingdom, Spain.

14. On the technical-operational level, the Office notes that, with regard to some of its requests for assistance, it continues to experience challenges in the execution, particularly when seeking to obtain large pools of information, or certain technical or sensitive information. The Office continues to dedicate 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.

15. The Office continues to observe in particular that getting access to information collected by military or law enforcement personnel, information from social media and telecommunication companies and entities, financial information, and information on the location of suspects remains challenging. A meaningful progress has been observed as regards States’ willingness to share immigration and asylum related information with the Office. The Office continues to emphasize the importance of the efficient and timely

<sup>12</sup> 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.*

execution of simpler requests aimed at interviewing witnesses in secure environments, through a lesser cumbersome procedure to ensure the expeditiousness of the investigations.

16. In line with paragraph 17 of the 2021 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.

17. 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 2020 ASP Resolution on Cooperation.

18. 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. While the Registry welcomes the improvement regarding the average time needed for a reply to a request from defence teams (39 days for this reporting period as opposed to 88 days for the previous one), the execution rate of defence teams requests remains low (35%). 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.

19. Another matter of key importance, is the Trust Fund for Family Visits. As family visits to indigent detainees (8 currently) 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. During the reporting period, the TFFV received only 19,000 Euros. The Court is very grateful to all the contributing States over the years for all contributions, small or big. However, despite the Court's intensified fundraising efforts, the TFFV reached zero contributions level in 2019 and it is close to reach the same situation by the end of 2022, should there be no additional funds coming in. It is thus crucial that stakeholders, States and others, cognisant of the current situation, intensify efforts towards a sustainable and adequate funding, which will ensure the integrity of the proceedings, the proper management and administration of the ICC Detention Centre and avoid the Court incurring additional costs.

20. During the reporting period, the Court continued to receive crucial support and cooperation from the UN. The Court is grateful for the important role that 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. The Court relies on its Liaison Office in New York to engage strategically and to maintain dialogue with relevant UN offices and member States, and to follow-up on urgent requests for cooperation upon request by various sections of the Court. To maintain and strengthen this crucial relationship, the three Principals visited New York during the reporting period and held discussions with the UN Secretary-General and other senior UN officials, as well as with representatives of member States. At the working level, a joint roundtable of the United Nations and the Court was held in May 2021 to discuss technical aspects of cooperation.

21. 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. In addition to the afore-mentioned existent country offices, as submitted in its proposed budget for 2023, the Court is currently looking into the establishment of a country office in Sudan and Ukraine as well as an OTP-led field presence in Venezuela and Bangladesh.

*Recommendations on the way forward*

22. Based on the analysis of the main challenges regarding cooperation, the Court has identified the following recommendations, which remain relevant:

- *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:* Ratification of the Agreement on Privileges and Immunities of the ICC by all States Parties.
- *Recommendation 8:* States could consider signing the framework agreements on interim release, release relocation of witnesses, transport of detained persons and witnesses and enforcement of sentences and accept cases on an ad hoc basis or within the framework of the said agreements.
- *Recommendation 9:* States should consider making voluntary donations to the existing Trust funds pertaining to family visits for detained persons and the relocation of witnesses.

23. 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 in the context of the 2019 Resolution on the Review of the International Criminal Court and the Rome Statute system 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”<sup>13</sup>. 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.

24. 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. This has been reflected in particular this year as the first trial at the Court stemming from a United Nations Security Council referral opened in April 2022. However it is also essential that there is 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, so as 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.

25. To date, the Court has transmitted a total of 16 communications on non-cooperation to the Council regarding the situations in Darfur and Libya. The Court looks forward to engaging relevant stakeholders 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. On 24 June 2022, a UN Security Council Arria-formula meeting was organised on the relation between the ICC and the Council, with participation of the Prosecutor. The Office and the Court as a whole continue 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>	
<b>Total number of RFCs sent during the reporting period for arrest and surrender</b>	9 (including support in surrender)
<b>Average time needed for reply</b>	29 days
<b>% of positive replies to RFCs during the reporting period</b>	33%

#### *Update on ICC efforts during the reporting period*

26. On 14 March 2022, Mr Maxime Jeoffroy Eli Mokom Gawaka was surrendered to the Court by the Chadian authorities, pursuant to an arrest warrant issued by the Court under seal on 10 December 2018, in relation to war crimes and crimes against humanity allegedly committed in various locations in the Central African Republic. On 22 March 2022, he made his first appearance before Pre-Trial Chamber II. The confirmation of charges hearing was scheduled to commence on 31 January 2023.

27. This arrest was rendered possible by the active involvement of the Suspects at Large Working Group in coordination with the relevant Chadian authorities. The surrender operation stressed again the importance of the said Working group and the allocation of adequate resources enabling it to function.

28. On 15 June 2022 the Court terminated proceedings against Mahmoud Mustafa Busayf Al Werfalli following the Prosecution notification of his death and request to withdraw the two warrants of arrest against him.

<sup>13</sup> ICC-ASP/18/Res/7, para. 18.

29. On 7 September 2022 the Court terminated proceedings against Mohamed Khaled Al-Tuhmany following the Prosecution notification of his death and request to withdraw the warrants of arrest against him.

30. It should be noted that in relation to a number of individuals, the Court has received information from various sources to the effect that they were deceased. However, official information in each case is required to establish the reported death. Warrant of arrest remains in effect until otherwise ordered by the Court.

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

- (i) DRC: Sylvestre Mudacumura, since 2012<sup>14</sup>;
- (ii) Uganda: Joseph Kony and Vincent Otti, since 2005;
- (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 and Philip Kipkoech Bett, since 2015;
- (v) Libya: Saif Al-Islam Gaddafi, since 2011;
- (vi) CAR II: Mahamat Nouradine Adam, since 2019, unsealed in 2022; and
- (vii) Georgia: David Georgiyevich Sanakoev, Gamlet Guchmazov and Mikhail Mayramovich Mindzaev, since 2022.

#### Recommendations on the way forward

32. 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 10: 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 11: Transmission of information and alerts on suspects.
  - Recommendation 12: Enhance support to the Suspects at Large Working Group, including through financial support through the ICC annual budget.
  - Recommendation 13: 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 14: Support in multilateral fora (UN, regional, specialised networks) and bilateral encounters, and efforts to keep the issue on the agenda.
  - Recommendation 15: Insertion of arrest warrant execution in talking points and external relation strategies, as appropriate.
  - Recommendation 16: Focus on compliance with ICC decisions, including as part of larger diplomatic discussions and fora.
  - Recommendation 17: 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 place.
  - Recommendation 18: Reactivity when information sent on suspects' movements.

<sup>14</sup> The Office of the Prosecutor is in the process of verifying the reported death of Sylvestre Mudacumura (in 2019).



➤ Operational support:

- *Recommendation 19:* 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 20:* 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 21:* Transport and logistics: the Registry has also 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. Only one State entered into this agreement to date.

33. 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,. 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>	
<b>Total number of RFAs sent during the reporting period for financial investigations for identification of assets</b>	2
<b>% of execution rate</b>	0 % ( <i>N.B.</i> , one partially executed)
<b>Average time needed to execute an RFA</b>	n/a

<i>Registry</i>	
<b>Total number of RFCs sent during the reporting period for financial investigations for legal aid</b>	0
<b>Total number of RFCs sent during the reporting period for asset recovery for fines and reparations</b>	4
<b>Average time needed for reply</b>	175 days (for the request which received a reply)
<b>% of positive replies to RFCs during the reporting period</b>	25%

#### Update on ICC efforts during the reporting period

34. During the reporting period, the Registry continued its effort to analyse existing case law and request from States in order to identify lessons learnt that could be used by the Court and States when working on the issue of the recovery of assets. A seminar took place online on 30 November 2021 with a group of States that received the bulk of the requests for cooperation in this area in order to update them on various developments since 2019 and discuss the best way to enhance cooperation in this realm including via the launch of a network of operational focal points. This seminar was organised thanks to a generous donation by France to advance the organisation of the first meeting of operational focal points designated to assist the Court in the implementation of its requests for identification, seizing and freezing of assets. Both the OTP and the Registry were also invited to discuss the issue during the cooperation segment of the 20<sup>th</sup> session of the Assembly of State Parties. The

Registry was invited to present this issue at the COJUR ICC in June against the background of the efforts of the European Union to harmonize practice with respect to the recovery of assets. Finally, the Registry met with representatives of EUROJUST and EUROPOL to discuss the setup of the network of operational focal points on asset recovery, avoid duplication and benefit from their experience. The Registry and the OTP are discussing with the co-facilitators on cooperation the modalities to organise the first meeting of this network.

*Recommendations on the way forward*

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

- *Recommendation 22:* 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.
- *Recommendation 23:* 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 24:* 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 25:* 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 26:* Complete the questionnaire distributed to States on the recovery of assets. Identify a focal point for the network of the operational freezing of assets.
- *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.

### **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*

36. The enactment by States of legal mechanisms and the setting up of effective procedures to facilitate cooperation and judicial assistance remains of paramount importance to the Court's activities.

37. Due to the COVID-19 pandemic, the Court was not able to organize its annual Focal Points Seminar on Cooperation during the reporting period. The seminar is expected to take place in The Hague in early 2023, 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 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 financial support of the European Union, and participation of the HWG cooperation co-facilitators, as well as representatives 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.

38. With the financial support of the European Commission, the Court organized over ten seminars and events in support of the Court's efforts to foster cooperation with States, including two visits to the ICC of officials from the Central African Republic to strengthen cooperation with that state; cooperation missions of the Registrar and other Registry officials to South East Europe and Africa, and a high-level conference in Dakar, Senegal for Ministers of Justice from the member states of the Economic Community of West African States and other regional stakeholders. The conference was organised in cooperation with the Senegalese Government and the financial support of the European Commission, the Government of Senegal and the French Embassy in the Netherlands.

39. 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 Court 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

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

- Recommendation 28: As recalled by paragraphs 7 to 9 of the 2021 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 29: 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 30: 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 31: Finally, the adoption of clear legal framework 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.

- *Recommendation 32:* 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, is a best practice that should be fostered.

41. As paragraph 18 of the 2021 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.

42. 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.

43. 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 note 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.

44. 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 33:* 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 5: Cooperation agreements

### *Update on ICC efforts during the reporting period*

45. In relation to Court-wide agreements, this area of cooperation remains a challenge despite the two voluntary agreements signed during the reporting period. On 11 October 2021, the Court and the Government of the France signed an Agreement on the Enforcement of Sentences. Under the agreement, persons convicted by the ICC may serve sentences of imprisonment in France if so decided by the Court and accepted by the Government of France. Similar agreements on the enforcement of sentences are currently in force between the ICC and Argentina, Austria, Belgium, Colombia, Denmark, Finland, Georgia, Mali, Norway, Serbia, Slovenia, Sweden and the United Kingdom of Great Britain and Northern Ireland. The Court is grateful to the Government of France for concluding the agreement and encourages other States Parties to follow this example in the spirit of article 103(3)(a) of the Rome Statute, according to which the "States Parties should share the responsibility for enforcing sentences of imprisonment, in accordance with principles of equitable distribution". During the reporting period, the Presidency of the Court continued to actively raise this important aspect of voluntary cooperation with a large number of States, which will

only increase in importance as more proceedings before the Court progress toward conclusion.

46. In September 2021, the Registry entered into one relocation agreement which brings the total number of relocation agreements to 25. The Registry strongly encourages States to enter into Relocation Agreements with the Court, which can be tailored according to their needs, culture and legal requirements. For those states that already signed a Relocation Agreement, the Registry regrets that the agreement is sometimes not implemented and witnesses not received on their territory and would encourage them to make this theoretical commitment concrete by accepting even a limited number of individuals. This would allow the Court to perform its mandate and the Registry to efficiently protect witnesses. The ICC witness protection system and the ability of the Court to enable witnesses to safely testify depends on such tangible engagement. The Registry continues its efforts to increase the number of Relocation Agreements and partner States including via its newly created Relocation task force.

47. Unfortunately, no agreement on release or interim release was signed despite numerous efforts engaged by the Registry. 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.

48. Given the scarce amount of framework or ad hoc cooperation agreements on interim release, the Registry is facing challenges in implementing the Chambers' decisions in this regard. 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.

49. In the Gbagbo / Blé Goudé case, for instance, which was referenced in previous Court's Reports on cooperation, the Registry has worked hard to find a sustainable and fair solution for more than 3 years. Although a solution was found for Mr Gbagbo's release and subsequent return to Côte d'Ivoire in July 2022, this situation has clearly shown how crucial it is 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 in order to avoid serious financial consequences for the ICC while fully respecting the rights of the released persons.

Recommendations on the way forward

50. 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 38: 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 39:* 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 40:* 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 41:* 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 42:* The possibility of including the signature of cooperation agreements as an item in the agenda of meetings of regional groups.
- *Recommendation 43:* 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.

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

#### *Update on ICC efforts during the reporting period*

51. During the reporting period, the Court has continued to engage with its long-standing partners, notably including the States Parties to the Rome Statute, the United Nations, the European Union and other international and regional organisations as well as civil society during the reporting period.

52. The President of the Court used the opportunities offered by his many meetings with senior authorities during the reporting period to underline the crucial importance of cooperation for the Court’s ability to carry out its mandate, and urged all partners to do their utmost in this respect.

53. The Prosecutor’s biannual briefings to the Security Council on the Darfur situation ([17 January 2022](#) and [23 August 2022](#)) and Libya situation ([24 November 2021](#) and [29 April 2022](#)) provided opportunities to inform the Council and the United Nations membership of progress and challenges in relation to the Office’s investigations, and the importance of cooperation including with regard to the outstanding arrest warrants. The Court believes that, building on past exchanges, the dialogue between the Court and the Council on matters of mutual interest, both thematic and situation-specific, could be further enhanced, with a view to strengthening synergies between the respective mandates and further developing working methods.

54. The Court, and the Office of the Prosecutor in particular, is grateful for the support demonstrated by the States Parties and other States serving at the Council. The Office has benefitted from formal and informal exchanges in addition to the strong expressions of support, including in the context of media stakeout sessions organised by the ICC focal points on the Council on behalf of the ICC State Party Caucus members following briefings by the Prosecutor to the Council.

55. 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.

56. In the context of efforts to enhance regional engagement, the Prosecutor amongst others attended the 35<sup>th</sup> Heads of State Summit of the African Union in February 2022, to discuss synergies and cooperation. On 5 and 6 September 2022, the Court's President and Prosecutor each met in The Hague with the Chairperson of the African Union and the Chairperson of African Union Commission to discuss possibilities of enhancing relations between the Court and the AU. The Office of the Prosecutor also actively cooperated, in various settings, with Eurojust, and together they published, on 21 September 2022, practical guidelines for civil society organisations on documenting core international crimes to empower as well as support civil society organisations that seek to collect and preserve information to contribute to investigations and prosecutions at the national level or before the ICC.

57. 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. On 1, 2 and 3 June 2022, the Court held, via videoconference, an annual roundtable with non-governmental organizations. The programme of the roundtable covered a wide range of issues of common interest.

58. Finally, the Court focused on commemorations of its 20th anniversary since the Rome Statute entered into force on 1 July 2002, highlighting the relevance of its mandate, its unique nature as a permanent international tribunal, and the support and cooperation it needs from States.

#### Recommendations on the way forward

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

- Recommendation 34: 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 35: 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 36: 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 37: 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.

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

##### Update on ICC efforts during the reporting period

60. 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 complementarity<sup>15</sup>.

61. 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. As a strategic priority, the OTP is aiming to increase, through proactive engagement with national authorities, its ability to provide tangible support to domestic proceedings in relation to core international crimes and other serious crimes, in a manner consistent with the Rome Statute. The Office has undertaken notable efforts in this regard during the reporting period, including the above referenced efforts in the context of the JIT for Ukraine and the JT for Libya; its cooperation with and visit to the opening of the first trial of the Special Criminal Court (SCC) in the Central African Republic; the signing with the Government of Venezuela of a Memorandum of Understanding (MoU), setting the stage for sustained dialogue and cooperation; its cooperation with domestic authorities in the context of Libya; the conclusion of a Cooperation Agreement between the Office and the Government of Colombia that renews the commitment of the Office to Colombia's national accountability process and the signing of a MoU with the Government of Guinea regarding increased support to and monitoring of domestic complementarity efforts while concluding the preliminary examination. The Office is currently in the process of developing and launching a policy paper, which captures these and other efforts through four pillars: creating a community for cooperation and complementarity; technology as an accelerant for complementarity; bringing justice closer to communities; and, harnessing cooperation mechanisms at the regional and international level.

62. Worth noting are also external initiatives led by states to encourage inter-States cooperation in the investigation and prosecution of crimes of the ICC mandate. One of these initiatives that has seen the participation of the OTP during the reporting period was the third round of informal consultations on the Draft Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes against Humanity and War Crimes also known as MLA initiative. Deputy Prosecutor Nazhat Shameem Khan presented remarks on the occasion.

63. 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. Information hence shared by the Court can be further shared with a third State provided necessary consultations with the Court are made and relevant Rome Statute requirements are met.

#### **IV. Conclusion**

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

65. The Court warmly welcomes 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 work plan of the cooperation facilitation for the year 2023 with a view to strengthening the Court and the Rome Statute system.

66. 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.

---

<sup>15</sup> ICC-ASP/11/39.